Guillermo v Maple K 43-10 23rd St Owner, LLC
2026 NY Slip Op 31652(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 154082/2019
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02M**

Justice

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INDEX NO. 154082/2019

ROSA GUILLERMO,

Plaintiff,

MOTION DATE 02/26/2024, 02/26/2024, 02/10/2025

- v -

MOTION SEQ. NO. 004 005 007

MAPLE K 43-10 23RD ST OWNER, LLC,VANGUARD CONSTRUCTION AND DEVELOPMENT COMPANY, INC.,

DECISION + ORDER ON MOTION

Defendant.

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MAPLE K 43-10 23RD ST OWNER LLC,

Plaintiff,

Third-Party
Index No. 595976/2019

-against-

VANGUARD CONSTRUCTION AND DEVELOPMENT COMPANY, INC. and PRECISE SERVICES CORP.,

Defendant.

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MAPLE K 43-10 23RD ST OWNER LLC,

Index No. 595012/ 2024

Plaintiff,

-against-

CLA COMMERICAL CLEANING LLC,

Defendant.

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VANGUARD CONSTRUCTION AND DEVELOPMENT COMPANY, INC.,

Index No. 595361/ 2024

Plaintiff,

-against-

CLA COMMERICAL CLEANING LLC,

Defendant.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 122, 123, 124, 129, 130, 133, 134, 135, 145, 160, 258, 261

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 125, 131, 132, 136, 137, 138, 139, 140, 141, 142, 143, 144, 146, 147, 148, 161

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 260, 262, 263, 264, 265

were read on this motion to/for JUDGMENT - SUMMARY.

In Motion Sequence No. 004 of this Labor Law action, Plaintiff Rosa Guillermo ("Plaintiff") moves for summary judgment on liability against Defendants Maple K 43-10 23rd Street Owner LLC ("Maple K") and Vanguard Construction and Development Company Inc. ("Vanguard") on her § 241(6) and § 200 causes of action. Defendants oppose the motion.

In Motion Sequence No. 005, Maple K moves for summary judgment dismissing Plaintiff's Complaint in its entirety and granting its third-party claims for breach of contract and contractual and common law indemnification against Vanguard and Third-Party Defendant Precise Services Corp. ("Precise"). Vanguard supports the motion as to the dismissal of Plaintiff's claims and opposes the motion as to the claims against it. Precise also opposes the motion. Plaintiff opposes the motion, except that she does not specifically oppose dismissal of her § 240(1) claim. She further cross-moves for an order precluding Maple K from seeking summary judgment due to its purported failure to disclose a contract between it and Third-Party Defendant CLA Commercial Cleaning, Inc. ("CLA"), and for dismissal of certain affirmative defenses. Maple K opposes the cross-motion.

In Motion Sequence No. 007, CLA moves for summary judgment dismissing the third-party claims for contractual and common law indemnification and contribution brought against it by Maple K and Vanguard. Those parties oppose the motion. Plaintiff cross-moves to amend the Complaint to add CLA as a defendant in the main action. CLA opposes the cross-motion.

Plaintiff was an employee of Precise working as a demolition laborer on a gut renovation of a commercial building located at 43-10 23rd Street in Queens, owned by Maple K. Vanguard was the general contractor on the project and Precise was a subcontractor providing demolition services. CLA provided cleaning services to Maple K unrelated to the construction project. CLA was the employer of a porter named Damion Bennett ("Bennett").

On November 15, 2018, Plaintiff was removing debris from the fourth floor of the building where Precise was doing demolition work. As she was instructed to do by the Precise foreman, Plaintiff was bringing six wheeled containers filed with debris onto a freight elevator, taking them down to the first floor to be emptied, and returning them to the fourth floor using the same elevator (NYSCEF Doc. No. 98, Plaintiff's EBT 1, 64-83). The elevator in question was the building's permanent freight elevator, which had doors opening from the top and bottom, and was being operated by Bennett (*id.* at 50, 55).

Plaintiff had unloaded five empty containers on to the fourth floor, and while she was pulling the sixth container off the elevator, Bennett prematurely began closing the elevator door (*id.* at 77-78). Plaintiff's right leg and her body were outside the elevator and her left leg and the container were inside of the elevator when the elevator's bottom door started closing (*id.* at 78, 80). The closing door caused her leg to become trapped between the door and the container "at around ankle height"; Plaintiff felt a "strong impact to [her] leg," at which point she screamed, and Bennett stopped the elevator (*id.* at 79-81).

An accident report completed on the same day states "[Plaintiff] was pulling a mini container off of the elevator when the saddle plate raised because another Precise employee started closing the elevator. [Plaintiff] then got her left leg stuck between the mini container and the saddle plate" (NYSCEF Doc. No. 105, "Accident Report"). According to the Accident Report, Bennett gave the following verbal statement: "Injured was walking off elevator w/ dumpster and saddle plate raised when Precise employee started closing door that raised plate causing caught between dumpster and saddle. Door shouldn't have been touched" (*id.*). The Accident Report further provides that John Alba, an employee of Vanguard, was called to respond to the incident by another Vanguard employee. His written statement provides, in part: "Did observe injured left leg at shin and concur with statements given above. Direct Precise Foreman to take injured to medical facility. Contacted Precise Safety director was requested to site & complied" (*id.*). Despite the statements made in the Accident Report, it is undisputed that Bennett was an employee of CLA, not Precise (*see* NYSCEF Doc. No. 87, Plaintiff's Affirmation, 12; NYSCEF Doc. No. 100, Loughlin EBT, 30-31; NYSCEF Doc. No. 138, Vanguard Aff. In Partial Support, 2; NYSCEF Doc. No. 253, Reed EBT, 18).

Michael Loughlin, Vice President of Development and Construction for non-party Normandy Real Estate Partners ("Normandy") was deposed on behalf of Maple K. Loughlin did not explain the relationship between Maple K and Normandy, but it is evident that the entities are related (*see, e.g.*, *id.* at 11; Accident Report; NYSCEF Doc. No. 113). Loughlin testified that CLA was a cleaning firm and not involved in cleaning the jobsite, which was Vanguard's role (Loughlin EBT, 8, 31-33). Instead, "CLA would provide perimeter, sidewalk, make sure the lights are on, kind of more base building, not construction-related cleaning" (*id.* at 31). Loughlin did not know who hired CLA but stated he did not sign a contract with CLA (*id.*). Loughlin did

not know whether Bennett had any training in elevator operation and did not know who the elevator contractor was as it was not in his purview (*id.* at 47, 50).

Michael Reed, a partner of CLA, testified that when CLA obtained work in commercial buildings, sometimes there is a contract and sometimes there is only a verbal agreement (Reed EBT, 15). There were two CLA workers at the Maple K site at the time of the accident, but Reed had never seen a written agreement and did not recall if he was the person involved in negotiating any verbal agreement (*id.* at 16-18). He stated Bennett was "already working for Normandy and in some other capacity and [was] already at the building" (*id.* at 19, *see also id.* at 29-30 ["I believe Normandy was the account"]). Reed testified he was unaware that Bennett had been operating the elevator until he learned of this action, and that "freight operation is not something we do a lot" (*id.* at 20). Reed was asked whether the account holder, be it Maple K or Normandy, would contact him if they had concerns about Bennett. He answered "There was no overseeing. This was their people. We just had them on our payroll. They never complained to us ever, because they chose the people, put the people there, instructed the people what to do. We had no day-to-day operational influence on what went on there" (*id.* at 31-32).

With respect to Vanguard's role as general contractor, Vanguard's employee, Alba, testified that each subcontractor had their own supervisor, but ultimately he could stop the work of a subcontractor's employee if they were doing something unsafe (NYSCEF Doc. No. 101, Alba EBT, 13). Vanguard needed to be in the building if there were any subcontractors in the building (Loughlin EBT, 20). Vanguard had overall responsibility for site safety and would run safety meetings with their subcontractors (*id.* at 21, 48). Loughlin did not think it was Vanguard's role to stop work if the elevator operating was being done in an unsafe manner, but

that "if anybody was on the elevator that wasn't being handled or operated properly, they would stop the work or get off the elevator" (*id.* at 47-48).

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

At the outset, Plaintiff's cross-motion to preclude Maple K from seeking summary judgment because of its purported failure to disclose its contract with CLA is denied. Based on the testimony indicating there may not have been a written contract, the Court cannot find that Maple K has willfully failed to disclose information in accordance with CPLR § 3126.

Turning to Plaintiff's claims, Plaintiff does not oppose the portion of Maple K's motion seeking to dismiss her Labor Law § 240(1) cause of action, and in light of the absence of any facts relating to a gravity-related hazard (*see Runner v New York Stock Exch. Inc.*, 13 NY3d 599, 604 [2009]), the motion is granted, and this cause of action is dismissed.

Plaintiff and Maple K each move for summary judgment on Plaintiff's § 241(6) cause of action. Section 241(6) "imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection to persons employed in . . . all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Constr. Co.*, 91 NY2d 343, 348-349 [1998]). To establish a defendant's liability under Section

241(6), "a plaintiff must show that a specific, applicable Industrial Code regulation was violated and that the violation caused the complained-of injury" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 146 [1st Dept 2012], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494).

Plaintiff alleges violations of 12 NYCRR §§ 23-1.7(e)(1), 23-1.7(e)(2), and 23-7.2(j)(3). Section 23-1.7(e)(1) provides "[a]ll passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping," while § 23-1.7(e)(2) requires that working areas be kept from "accumulations of dirt and debris," from scattered tools and materials, and from sharp projects. Here Plaintiff did not trip on dirt, debris, or any other objects falling within these sections. Therefore, these sections are inapplicable. Section 23-7.2(j)(3), which provides "the car attendant shall not cause the car to move unless he is satisfied that the load being carried is prepared for movement," specifically relates to car attendants of "temporary personnel hoists," as opposed to the permanent freight elevator involved in Plaintiff's accident. Therefore, this section is also inapplicable. Accordingly, Plaintiff's Labor Law § 241(6) cause of action must be dismissed.

Plaintiff and Maple K further move for summary judgment on Plaintiff's § 200 and common law negligence causes of action. Labor Law § 200 codifies the common law duty of owners and general contractors to provide a safe workplace to construction site workers (*Comes v NY State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Owners and general contractors may be held liable for injuries caused by a dangerous premises condition for which they had actual or constructive notice (*DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 625 [1st Dept 2015]). Where the alleged injury was "caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work" (*Cappabianca*, 99 AD3d at 144). An owner or general

contractor will not be liable under a method and means theory where they "at most exercised general supervisory powers over plaintiff" (*see Foley v Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476, 477 [1st Dept 2011]).

Issues of fact exist as to the circumstances surrounding who instructed Bennett to operate the elevator, who was responsible for supervising his work, and whether Vanguard was or should have been aware of these circumstances such that it should have instructed its subcontractors not to use the elevator. These issues prevent the Court from granting both Plaintiff and Maple K's motions on the § 200 and common law negligence claims. Plaintiff's argument that Maple K is liable on a theory of *res ipsa loquitor* is unavailing. The cases cited by Plaintiff involve injuries resulting from a mechanism in the elevator itself, as opposed to the acts of an elevator operator.

With respect to the defendants' indemnification claims, all claims for common law indemnification must be dismissed. Entitlement to common law indemnification requires a party to show it has been held vicariously liable without proof of any negligence or actual supervision on its part. As the Court has dismissed Plaintiff's Labor Law § 240(1) and § 241(6) claims, there is no vicarious liability for which any defendant could seek common law indemnity (*see Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]). Therefore, Maple K's and CLA's motions are decided to that extent.

Maple K's motion for summary judgment is denied with respect to the remaining contractual indemnification and breach of contract claims against Vanguard and Precise. Liability has not been determined with respect to Plaintiff's Labor Law § 200 and common law negligence claims and as such there are issues of fact as to the apportionment of responsibility, if any, between Maple K and Vanguard (*see, e.g., Cackett v Gladden Props., LLC*, 183 AD3d 419, 422 [1st Dept 2020]; *see also* General Obligations Law § 5-332.1[1][an agreement by a

subcontractor to indemnify an owner or general contractor for the latter's own negligence is void]). Maple K's motion is also denied, and CLA's corresponding motion is granted, as to the contractual indemnification claim and breach of contract claims against CLA. Maple K has not produced a contract with CLA and does not address this branch of CLA's motion.

Finally, Plaintiff moves to amend her Complaint to add CLA as a defendant in the main action. Leave to amend pleadings pursuant to CPLR 3025 is generally freely granted so long as there is no surprise or prejudice to the opposing party, or where the proposed pleading lacks merit (CPLR 3025[b]; *Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). However, because the statute of limitations has tolled, Plaintiff must also show that CLA is "united in interest" with Maple K or Vanguard such that CLA can be charged with notice of the commencement of this action and the proposed claims against CLA can be found to relate back to those asserted in the other defendants (*Buran v Coupal*, 87 NY2d 173, 177 [1995], citing CPLR 203[b], [e]). Plaintiff fails to show that CLA is united in interest with either defendant, therefore the motion to amend must be denied.

Accordingly, for the reasons set forth herein, it is hereby:

ORDERED that Plaintiff's motion seeking summary judgment on her Complaint is denied in its entirety; and it is further

ORDERED that Maple K's motion seeking summary judgment on Plaintiff's Complaint is denied as to the Labor Law § 200 and common law negligence causes of action and granted as to the Labor Law §§ 240(1) and 241(6) causes of action and the latter causes of action are dismissed; and it is further

ORDERED that Maple K's motion seeking summary judgment granting its common law indemnification and contribution claims against Vanguard and Precise and dismissing the same

claims asserted against it by Vanguard and Precise, as well as CLA's motion seeking dismissal of the same claims asserted against it by Maple K and Vanguard, are decided to the extent that all claims for common law indemnification and contribution asserted by Maple K, Vanguard, and Precise are dismissed; and it is further

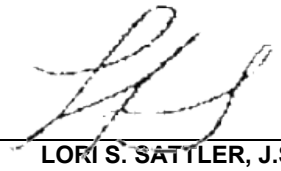
ORDERED that CLA's motion seeking dismissal of Maple K's claims for contractual indemnification and breach of contract for failure to produce insurance is granted and those claims are dismissed; and it is further

ORDERED that Maple K's motion on its breach of contract and contractual indemnification claims against Vanguard and Precise is denied; and it is further

ORDERED that Plaintiff's cross-motion to preclude is denied; and it is further

ORDERED that Plaintiff's cross-motion to amend the Complaint is denied.

All other relief sought is denied. This constitutes the Decision and Order of the Court.



4/10/2026
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE