Coleman v URS Corp.
2017 NY Slip Op 31542(U)
July 19, 2017
Supreme Court, New York County
Docket Number: 156959/2013
Judge: Erika M. Edwards

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

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FRANCIS COLEMAN and SIOBHAN COLEMAN, Index No. 156959/2013

Plaintiffs,

-against-

URS CORPORATION, URS CORPORATION-NEW YORK, URS GREINER WOODWARD-CLYDE CONSULTANTS, INC., URS GROUP, INC. and BECHTEL INFRASTRUCTURE CORPORATION,

Defendants.

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Edwards, J.

This is an action to recover damages for personal injuries sustained by Plaintiff Francis Coleman ("Plaintiff") on November 21, 2011, when he was allegedly struck by a compressor cable and parts of a chipping gun causing him to slide down a 30-degree incline 10-15 feet at the East Side Access construction project.[1]

Plaintiff moves for partial summary judgment as to liability on his Labor Law §§ 240(1) and 241(6) claims against Defendants URS Corporation ("URS"), URS Corporation-New York ("URS NY"), URS Greiner Woodward-Clyde Consultants, Inc. ("URS Greiner"), URS Group, Inc. ("URS Group") and Bechtel Infrastructure Corporation ("Bechtel") (collectively, "Defendants"). Defendants cross-move, for summary judgment seeking to dismiss the complaint in its entirety.

For the reasons stated herein, Plaintiff's motion for partial summary judgment is ***denied*** in its entirety and Defendants' cross-motion for summary judgment is ***granted*** in its entirety. As such, Plaintiff's complaint is dismissed.

In his motion for summary judgment, Plaintiff alleges that on November 21, 2011, he was injured when an air hose and other components of a chipping gun disconnected from the gun and struck him, causing him to fall 10-15 feet down a 30-degree incline meant for an escalator. Plaintiff

[1] Plaintiff Siobhan Coleman discontinued her derivative claims against Defendants.

argues in substance that Defendants were agents of the property owner and/or the general contractors who hired Plaintiff's employer, Dragados/Judlau, to perform certain work for the East Side Access construction project. Additionally, Plaintiff argues that each Defendant either supervised, managed and/or controlled the worked performed in connection with the project. Therefore, Plaintiff contends that, pursuant to Labor Law §§ 240(1), 241(6) and 200, each defendant is liable for Plaintiff's injuries.

In opposition, Defendants argue in substance that Defendants URS, URS Greiner, URS Group, and Bechtel were not involved in the East Side Access construction project at the time of Plaintiff's injury. Additionally, Defendants further argue that Defendant URS NY was neither an owner, contractor nor an agent of the owner or contractor. As such, it is not subject to liability under the Labor Law. Moreover, Defendants argue in substance that Labor Law §§ 240(1) and 241(6) were not violated and do not apply to the circumstances of this case. Defendants further argue in substance that Labor Law § 200 does not apply because Defendant URS NY was not negligent, as it did not supervise, direct or control the means and methods of Plaintiff's work.

DISCUSSION

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

For efficiency, the court will first address the portion of Defendants' cross-motion which seeks to dismiss the complaint in its entirety against Defendants URS, URS Greiner, URS Group, and Bechtel because these entities did not work on the East Side Access construction project at the time of Plaintiff's incident.

In their cross-motion, Defendants argue in substance that Defendants URS, URS Greiner, URS Group and Bechtel were not involved in the East Side Access construction project and they are not proper Defendants. Defendants support their motion with an affidavit from Louis Toucciarone ("Toucciarone Affidavit"), the Vice President of Defendant URS NY, who stated that Defendants URS, URS Greiner and URS Group were not involved with the project. Additionally, Defendants submitted the affidavit of George B. Morschauser, the General Manager of Defendant Bechtel, who stated that Defendant Bechtel assigned all of its rights to URS NY in 2007, and Bechtel was not involved with the East Side Access construction project at the time of Plaintiff's incident.

Plaintiff does not offer any evidence to demonstrate that Defendants URS, URS Grenier, URS Group and Bechtel were involved with the East Side Access construction project on the date

of his incident. Therefore, Defendants' motion for summary judgment is ***granted*** as to Defendants URS, URS Grenier, URS Group and Bechtel. The remainder of this decision will address the claims against Defendant URS NY.

The Labor Law §§ 240(1) and 241(6) Claims

Plaintiff moves for partial summary judgment as to liability on his Labor Law §§ 240(1) and 241(6) claims. Defendants cross-moves for summary judgment dismissing the same, on the ground that it is not a proper Labor Law defendant.

Labor Law § 240(1) states that all contractors, owners and their agents "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed" (Labor Law § 240[1]). Labor Law § 240(1) imposes absolute liability upon owners and contractors who fail to provide or erect safety devices necessary to give proper protection to a worker who sustains injuries proximately caused by that failure (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]). The purpose of the statute is to protect workers from elevation-related risks by placing the ultimate responsibility for construction safety practices on the owner and contractor and it is to be construed as liberally as necessary to accomplish that purpose (*id.*; *Gordon v Eastern Ry. Supply, Inc.*, 82 NY2d 555, 559 [1993]).

To succeed under Labor Law § 240(1), a plaintiff must demonstrate that the statute was violated and that the violation was the proximate cause of his injury (*Cahill v Triborough Bridge and Tunnel Authority*, 4 NY3d 35, 39 [2004]). A plaintiff must also demonstrate that the injury sustained is the type of elevation-related hazard to which the statute applies, that there was a failure to use, or an inadequacy of, a safety device of a kind set forth in the statute and that the fall or the application of an external force was a foreseeable risk of the task being performed (*see Narducci*

v. Manhasset Bay Assoc., 96 NY2d 259, 267-268 [1st Dept 2001]; *Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 267 [1st Dept 2007]).

Labor Law § 241(6) imposes a nondelegable duty upon an owner or subcontractor, regardless of who controls or supervises the site, to use reasonable care to provide reasonable and adequate protection and safety to employees working at the site (*St. Louis v N. Elba*, 16 NY3d 411, 413 [2011]). Therefore, Plaintiff's § 241(6) claim is not dependent on the degree of Defendant's control over his work, rather it is dependent on the application of the specific Industrial Code provision and a finding that the violation of the provision was a result of negligence (*Alonzo v Safe Harbors of the Hudson Housing Development Fund Co., Inc.*, 104 AD3d 446, 450 [1st Dept 2013] [citation omitted]).

Defendant URS NY argues in substance that it cannot be liable for Plaintiff's injuries under Labor Law §§ 240(1) and 241(6), because it was not a contractor, owner, or agent, for Labor Law purposes. Plaintiff does not offer evidence to establish that Defendant URS NY was an owner or contractor, but argues in substance that Defendant URS NY was an agent of the owner, the MTA.

> "When the work giving rise to these [Labor Law] duties has been delegated to a third party, that third party then obtains the concomitant authority to supervise and control that work and becomes a statutory 'agent' of the owner or general contractor. Only upon obtaining the authority to supervise and control does the third party fall within the class of those having nondelegable liability as an 'agent' under sections 240 and 241"

(*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]; *see also Nascimento v Bridgehampton Constr. Corp,* 86 AD3d 189, 193 [1st Dept 2011], citing *Headen v Progressive Painting Corp.*, 160 AD2d 319, 320 [1st Dept 1990] [an entity becomes a statutory agent under the Labor Law when it has been "delegated the supervision and control either over the specific work area involved or the work which [gave] rise to the injury"]). "[U]nless a defendant has supervisory control and authority over the work being done when the plaintiff is injured, there is no statutory

agency conferring liability under the Labor Law" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 864 [2005]).

Plaintiff alleges that he was injured when portions of a defective chipping gun struck him, causing him to fall down an incline meant for an escalator. Therefore, Defendant URS NY would be liable for plaintiff's injuries as an agent if it supervised and directed the work involving the operation of the chipping gun. Plaintiff fails to provide any evidence to show that Defendant URS NY supervised or controlled the work done in connection with the East Side Access construction project. Moreover, Defendant URS NY stated that it was only a consultant or program manager at the site with general oversight duties and it did not have the authority to supervise or control Plaintiff's work. Additionally, Plaintiff testified that his employer directed and supervised his work on the project. Therefore, this court finds that Defendant URS NY is not an agent under Labor Law §§ 240(1) and 241(6).

As such, Defendant URS NY is not a proper labor law defendant pursuant to Labor Law §§ 240(1) and 241(6) and the court ***denies*** Plaintiff's motion for summary judgment and ***grants*** Defendants' motion for summary judgment seeking to dismiss the claims pursuant to Labor Law §§ 240(1) and 241(6).

The Common-Law Negligence and Labor Law § 200 Claims

Defendants cross-move for summary judgment in their favor dismissing the common-law negligence and Labor Law § 200 claims against them. As previously discussed, the court dismissed the complaint against Defendants URS, URS Grenier, URS Group and Bechtel because those Defendants were not involved with the East Side Access construction project at the time of Plaintiff's incident. As such, the court addresses below the portion of the motion seeking to dismiss the Labor Law § 200 claim as it pertains to Defendant URS NY.

It is well settled that Labor Law § 200 is the codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work

(*Comes v N.Y. State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). To prevail on such a claim, a plaintiff must demonstrate that a defendant has the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]). Accordingly, liability can only be imposed if the defendant has exercised control or supervision over the work and has actual or constructive notice of the alleged unsafe condition (*Espinosa v Azure Holdings II, LP*, 58 AD3d 287, 289 [1st Dept 2008]; *Giovengo v P&L Mech.*, 286 AD2d 306, 307 [1st Dept 2001]).

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: (1) when the accident is the result of the means and methods used by the contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the work site (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]; *see also Griffin v New York City Tr. Auth.*, 16 AD3d 202, 202 [1st Dept 2005]). "Under either liability standard, the common-law duty of the owner to provide a safe place to work, as codified by Labor Law § 200 (1), has also been extended to include the tools and appliances without which the work cannot be performed and completed" (*Chowdhury v Rodriguez*, 57 AD3d 121, 128-129 [2d Dept 2008]).

In this case, the alleged incident occurred when a pressurized hose detached from a chipping gun and the hose along with other pieces of the gun struck plaintiff causing him to fall. Therefore, the accident was caused by a defective tool.[2]

Pursuant to Labor Law § 200, an owner, its agent, or the general contractor may not be liable "where the accident arises out of a defect in the subcontractor's tools, equipment, or methods

[2] It should be noted that plaintiff also argues that his accident arose from an unsafe condition. However, liability for an unsafe condition only arises where the condition is "inherent in the premises" (*Markey v. C.F.M.M. Owners Corp.*, 51 AD3d 734, 736 [2d Dept 2008]). Here, plaintiff's injury was caused by defective equipment used at the site, not by a condition inherent in the Premises.

of operation" (*Vilardi v Berley*, 201 AD2d 641, 644 [2d Dept 1994]; *see also Ortega v Puccia*, 57 AD3d 54, 62 [2d Dept 2008] citing *Persichilli v Triborough Bridge & Tunnel Auth.*, 16 NY2d 136, 145 [1965] ["the duty to provide a safe place to work is not breached when the injury arises out of a defect in the subcontractor's own plant, tools and methods, or through negligent acts of the subcontractor occurring as a detail of the work"]).

Significantly, "[w]hen a defendant lends allegedly dangerous or defective equipment to a worker that causes injury during its use, in moving for summary judgment that defendant must establish that it neither created the alleged danger or defect in the instrumentality nor had actual or constructive notice of the dangerous or defective condition" (*Lam v Sky Realty, Inc.*, 142 AD3d 1137, 1138–39 [2d Dept 2016]). However, where "a worker's injury results from his or her employer's own tools or methods, . . . a defendant . . . [would] be liable only if possessed of authority to supervise or control the work" (*Chowdhury v Rodriguez*, 57 AD3d at 130).

In this case, Defendant argued in substance that it did not provide any tools to Plaintiff or his employer, but Plaintiff testified that his employer provided him with the tools. If Plaintiff's employer provided the alleged defective equipment, it must be determined whether Defendant URS NY had the authority to supervise or control the work involving the operation of the chipping gun. The Toucciarone Affidavit stated that Defendant URS NY had no authority to supervise or control Plaintiff's work and Plaintiff testified that his employer supervised his work. As such, Defendant URS NY is not liable to Plaintiff for the injuries sustained on November 21, 2011, under common law negligence or Labor Law § 200.

For the reasons stated herein, Defendants' cross-motion for summary judgment seeking to dismiss the common-law negligence and Labor Law § 200 claims is ***granted***.

As such, Plaintiff's complaint is dismissed in its entirety. It is hereby

ORDERED that Plaintiff Francis Coleman's motion for partial summary judgment in his favor as to liability on the Labor Law §240 (1) and 241 (6) claims as against Defendants URS

Corporation, URS Corporation-New York, URS Greiner Woodward-Clyde Consultants, Inc., URS Group, Inc. and Bechtel Infrastructure Corporation (collectively, Defendants) is ***denied*** in its entirety; and it is further

ORDERED and ADJUDGED that Defendants' cross-motion for summary judgment dismissing the complaint in its entirety as against them is ***granted***, and the complaint is dismissed as against all Defendants. The Clerk is directed to enter judgment accordingly in favor of all Defendants.

Dated: July 19, 2017

ENTER:

J.S.C.

HON. ERIKA M. EDWARDS