

**Maloney v Skanska USA Civil Northeast Inc.**

2017 NY Slip Op 33075(U)

July 20, 2017

Supreme Court, Rockland County

Docket Number: 030879/14

Judge: Gerald E. Loehr

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X

JAMES J. MALONEY

Plaintiff,

**DECISION AND ORDER**

Index No.: 030879/14

-against-

SKANSKA USA CIVIL NORTHEAST INC.,  
TULLY CONSTRUCTION CO. INC. and  
SKANSKA/TULLY JV, URS CORPORATION,  
MALCOLM PIRNIE, INC., URS/MALCOLM  
PIRNIE, JOINT VENTURE, SCHIAVONE  
CONSTRUCTION, CO. LLC, JOHN P.  
PICONE, INC., and SCHIAVONE/PICONE  
JOINT VENTURE,

Defendants.

-----X

SKANSKA USA CIVIL NORTHEAST INC.,  
TULLY CONSTRUCTION CO. INC., and  
SKANSKA/TULLY JOINT VENTURE,

Third-Party Plaintiffs,

-against-

SIEMENS ELECTRICAL, LLC, f/k/a  
SCHLESINGER-SIEMENS ELECTRICAL, LLC,

Third-Party Defendant.

-----X

MALCOLM PIRNIE, INC. and URS CORP. GROUP  
CONSULTANTS, individually and as a member of the  
URS CORPORATION/MALCOLM PIRNIE, INC.,  
JOINT VENTURE,

Second Third-Party Plaintiffs,

-against-

SIEMENS ELECTRICAL, LLC, f/k/a  
SCHLESINGER-SIEMENS ELECTRICAL, LLC,

Second Third-Party Defendant.

-----X

LOEHR, J.

The following papers numbered 1- 13 were read on motions of all Defendants for summary judgment dismissing the Complaint and all Third Party Complaints.

	<u>Papers Numbered</u>
Notice of Motion (#2) - Affirmation - Exhibits	1
Memorandum of Law in Support	2
Notice of Motion (#5) - Affirmation - Exhibit	3
Memorandum of Law in Support	4
Notice of Motion (#4) - Affirmation - Exhibits	5
Memorandum of Law in Support	6
Notice of Motion (#3) - Affirmation - Exhibits	7
Memorandum of Law in Support	8
Affirmation in Partial Opposition to Motion #5	9
Reply Affirmation re Motion #5	10
Reply Affidavit re Motion #5	11
Affirmation in Opposition re Motion #2 - Exhibits	12
Reply Affirmation re Motion #2	13

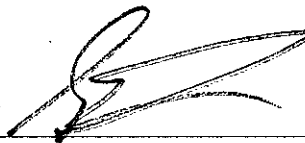
Upon the foregoing papers, it appears that commencing in and around 2000, the New York City Department of Environmental Protection (the "DEP") sought bids with respect to various aspects of work on the Croton Water Treatment Plant (the "Project"). Rather than retaining a General Contractor, DEP retained the prime contractors itself. Thus, DEP retained the joint venture of Skanska USA Civil Northeast Inc./Tully Construction Co. Inc./Skanska/TullyJV ("Skanska") as the concrete, structural, steel, architectural and mechanical prime contractor. DEP retained Schiavone Construction Co. LLC and the joint venture of Schiavone/Picone as construction/tunneling contractors. DEP retained the joint venture of URS Corporation Group Consultants and Malcolm Pirnie, Inc. ("URS") for management construction services and Siemens Electrical, LLC ("Siemens") as the prime electrical contractor. Siemens' subcontracted with E-J Electric ("E-J"). Plaintiff was an electrician employed by E-J. On February 22, 2011, while working at the Project, Plaintiff was injured when he fell from a ladder. Plaintiff

commenced actions, first against Skanska on May 17, 2013, and then against the other Defendants on February 19, 2014, asserting claims under Labor Law §§ 200, 240(1), 241(6) and for negligence. The two actions were consolidated on September 16, 2014. In 2014 both Skanska and URS impleaded Siemens. For reasons that do not appear, Plaintiff did not assert a direct claim against Siemens. All of the Defendants now timely move for summary judgment dismissing the Complaint – or Third Party Complaints – as asserted against them.

Inasmuch as the owner is not a party and there is no General Contractor, the individual contractors may be held liable for the Plaintiff's injuries under the Labor Law or for negligence only if they had the authority to, or actually did, supervise or control the work in connection which the Plaintiff was injured, as a statutory agent for the owner/General Contractor (*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-18 [1981; *Everitt v Nozkowski*, 285 AD2d 442, 443 [2d Dept 2001]; *accord Nascimento Bridgehampton Construction Corp.*, 86 AD3d 189,192-93 [1<sup>st</sup> Dept 2011]). Here, with the exception of E-J and Siemens, none of the prime contractors had any authority to, nor exercised control over, the work Plaintiff was doing. While URS was a Construction Manger, the title notwithstanding, its duties and authority was limited to inspecting and reporting on the progress of the work and not to supervising or directing the various contractors' work. As to Siemens, while there is evidence that it supervised Plaintiff's work, as it is not a Defendant, that is of no moment.

Accordingly, all motions are granted and the Complaint and Third Party Complaints are dismissed. This constitutes the decision and order of the Court.

Dated: New City, New York  
July 20, 2017



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HON. GERALD E. LOEHR  
J.S.C.

NEIMARK & NEIMARK  
Attorneys for Plaintiff  
37 Congers Road  
New City, NY 10956

LAWRENCE, WORDEN, RAINIS & BARD, P.C.  
Attorneys for Defendant Malcolm Pirnie  
225 Broad Hollow Road, Suite 105E  
Melville, NY 11474  
Peekskill, NY 10566

MARKS, O'NEILLE, O'BRIEN, HOHERTY & KELLY, P.C.  
Attorneys for Defendant SIEMENS  
708 Third Avenue, Suite 2500  
New York, NY 10017

Lewis, JOHS, AVVALLONE, AVILES LLP  
Attorneys for Defendant URS/MALCOLM PIRNIE, JOINT VENTURE  
61 Broadway, Suite 2000  
New York, NY 10016

RANZULLI LAW FIRM, LLC  
Attorneys for Defendant JOHN P. PICONE, INC.,  
SHIACONE/PICONE JOINT VENTURE  
81 Main Street, Suite 81  
White Plains, NY 10601