Cruz v USTA Natl. Tennis Ctr.
2020 NY Slip Op 34385(U)
December 28, 2020
Supreme Court, Kings County
Docket Number: 513739/2018
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 28 day of Dec, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

EDWIN CRUZ,
Plaintiff,
- against -

USTA NATIONAL TENNIS CENTER INC., HUNT CONSTRUCTION GROUP, INC., AECOM and AECOM TECHNOLOGY CORP.,
Defendants.

Index No.: 513739/2018

Motion Seq. # 2 & 3

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	PAPERS NUMBERED
Notice of Motion, Affidavits, Affirmation & Exhibits	1
Plaintiff's Memo of Law in Support	2
Defendants' Notice of Cross-Motion, Affirmation & Exhibits	3
Defendants' Memo of Law in Support	4
Plaintiff's Memo of Law in Opposition to Cross-Motion	5
Defendants' Reply Memo of Law	6

Upon the foregoing papers Plaintiff, EDWIN CRUZ, moves this Court for an Order granting partial summary judgement pursuant to CPLR § 3212 on the cause of action based upon Labor Law § 240 (1). Defendants collectively move this Court for an Order pursuant to CPLR § 3212 granting partial summary judgement in their favor and dismissing Plaintiff's cause of action based upon Labor Law § 240 (1).

FACTS

USTA NATIONAL TENNIS CENTER INC. (USTA), leased the property known as the "Billy Jean King National Tennis Center" (BJK) from the City of New York. USTA was the Project Owner for the new Louis Armstrong Stadium (LAS) construction project on the BJK property. On or about August 15, 2016 USTA entered into an agreement with Defendant Hunt

Construction Group, Inc. (Hunt), a subsidiary of Defendant, Aecom, as construction manager for the new LAS. Sometime thereafter Hunt entered into a subcontractor agreement with American Pile & Foundation (APF). On April 18, 2017 Plaintiff was working as a union dockbuilder for APF. APF was responsible for the installation of deep foundation piles to support the new LAS.

There is no dispute that APF utilized a CAT 325 Excavator, containing a grappler attachment to pick up the piles and move them to the location where they would be installed. On the day of the accident, the end of one of the piles became lodged into the hydraulic lines that were connected to the excavator's boom. In order to extricate the lodged pile, APF supervisors directed Plaintiff and a co-worker to rig the higher end of the pile that was not lodged into the hydraulic lines to a nearby pile already driven into the ground and a loader machine. At the same time, Plaintiff was instructed to place a sling around the pile that was stuck in the hydraulic lines. Then the excavator operator was directed to back up slowly and the plan was that this would dislodge the pile so it would release and drop. The pile, a 60-foot-long segment weighing in excess of 2000 pounds, was eventually dislodged but allegedly struck Plaintiff as it dropped to the ground.

Analysis

Labor Law § 240(1) imposes a nondelegable duty ... to provide safety devices necessary to protect workers from risks inherent in elevated work sites. ***Vasquez–Roldan v. Two Little Red Hens, Ltd., 129 A.D.3d 828, 829 (2d Dept 2015); McCarthy v. Turner Constr., Inc., 17 N.Y.3d 369, 374 (2011).*** To prevail on a motion for summary judgment in a Labor Law § 240(1) 'falling object' case, the plaintiff must demonstrate that at the time the object fell, it either was

being hoisted or secured. ***Wiski v Verizon New York, Inc., 186 AD3d 1590 (2d Dept 2020), quoting Fabrizi v. 1095 Ave. of the Americas, L.L.C., 22 N.Y.3d 658, 662–663 (2014).*** However, Labor Law § 240(1) does not automatically apply simply because an object fell and injured a worker. A plaintiff must also establish that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute. ***Henriquez v Grant, 186 AD3d 577, 577 (2d Dept 2020), citing Narducci v. Manhasset Bay Assoc., 96 N.Y.2d 259, 268, (2001).*** Additionally, 'falling object' liability under Labor Law § 240(1) is not limited to cases where the falling object is in the process of being hoisted or secured. ***Sarata v. Metropolitan Transp. Auth., 134 A.D.3d 1089, 1091 (2d Dept 2015), citing Quattrocchi v. F.J. Sciame Constr. Corp., 11 N.Y.3d 757, 758–759, (2008).*** Liability also attaches "where the plaintiff demonstrates that, at the time the object fell, it required securing for the purposes of the undertaking." ***Escobar v. Safi, 150 A.D.3d 1081, 1083 (2d Dept 2017), quoting Fabrizi v. 1095 Ave. of the America, supra at 663.***

Plaintiff submits an affidavit from Stuart Sokoloff, P.E. in support of the instant motion. Mr. Sokoloff opines that the device (the excavator) being utilized to hoist and install the piles was inadequate for the task. Moreover, Mr. Sokoloff stated that once the tip of the subject pile became entangled in the hydraulic lines of the excavator, the structural integrity of the device was compromised. Mr. Sokoloff further opines that the workers should have been instructed to keep clear of the hoisted pile while attempting to dislodge it from the excavator's hydraulic lines.

In opposition and in support of their motion for summary judgment, Defendants contend that Plaintiff's motion relies only upon his self-serving testimony as no one at the work

site actually witnessed the pile striking Plaintiff after it was dislodged and fell to the ground. Additionally, Defendants claim that Plaintiff failed to produce any evidence that the alleged injuries resulted from the inadequacy of a safety device as enumerated in the statute. According to the Defendants, the occurrence is entirely attributable to error by the excavator's operator. Defendants further argue that they are not proper statutory Defendants pursuant to Labor Law § 240 (1).

The meaning of owners under Labor Law § 240(1) has not been limited to titleholders but has been held to encompass one who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for the owner's benefit. ***Kwang Ho Kim v. D & W Shin Realty Corp., 47 AD3d 616, 618 (2d Dept 2008).*** Clearly USTA's hiring of Hunt at the very least raises a question of fact as to whether or not it was the statutory agent of the owner. Moreover, courts have consistently held that a party that coordinates the hiring and payment of subcontractors for the project is a general contractor for the purposes of Labor Law § 240 (1). ***Sanchez v Metro Builders Corp., 136 AD3d 783,786 (2d Dept 2016); Guanopatin v Flushing Acquisition Holdings, LLC, 127 AD3d 812, 813-14 (2d Dept 2015).***

Defendants also claim there can be no liability against Hunt or Aecom because they did not supervise or control any of the work being performed. However, contractor status pursuant to Labor Law § 240 (1) is dependent upon <u>whether it had the authority to exercise control over the work</u>, not whether it actually exercised that right. ***Id at 814; Walls v. Turner Constr. Co., 4 N.Y.3d 861, 864 (2005).*** A triable issue of fact has, therefore, been raised as to Hunt and Aecom's status on the subject project.

While both parties submit portions of deposition testimony to support their positions,

when read as a whole much of the evidence is either conflicting or relies upon hearsay and is insufficient to support a motion for summary judgment. ***Guanopatin v Flushing Acquisition Holdings, LLC, 127 AD3d 812, 813-14 (2d Dept 2015).*** Defendants contend that Plaintiff failed to establish that any safety device enumerated in the statute would have prevented Plaintiff's injuries and that they the injuries solely out of the manner in which the work was being performed. ***Wein v E. Side 11th & 28th, LLC, 186 AD3d 1579, 1581-82 (2d Dept 2020).*** Liability pursuant to Labor Law § 240(1) will not attach if the injuries arose solely out of the manner of his employer's work and the defendants exercised no supervisory control over that work. ***Portalatin v Tully Const. Co.-E.E. Cruz & Co., 155 AD3d 799, 800 (2d Dept 2017).*** The evidence submitted by Plaintiff is insufficient to establish that his injuries resulted from the absence or inadequacy of an enumerated safety device. ***Houston v State, 171 AD3d 1145 (2d Dept 2019).***

Under the circumstances of this case, triable issues of fact exist as to whether the named Defendants are proper parties pursuant to Labor Law § 240 (1) and whether or not there is a sufficient nexus between Plaintiff's injuries and the absence or inadequacy of an enumerated safety device. ***Powell v Norfolk Hudson, LLC, 164 AD3d 1283, 1284 (2d Dept 2018).*** Accordingly, both motions for summary judgment are denied in their entirety. The parties' remaining contentions are without merit.

This is the Decision and Order of this Court.

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KINGS COUNTY CLERK
FILED

ENTER,

LOREN BAILY-SCHIFFMAN, JSC