SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seqs. # 2, 3

WILLIAM LATTERI,

Plaintiff,

- against -

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Defendant.

Index No.: 33226/2018E

DECISION and ORDER

	PAPERS NUMBERED
Plaintiff's Notice of Motion, Affirmation in Support, Exhibits (Mtn. Seq. # 2)	1, 2, 3
Defendant's Affirmation in Opposition (Mtn. Seq. # 2)	4
Plaintiff's Reply Affirmation (Mtn. Seq. # 2)	5
Defendant's Notice of Motion, Affirmation in Support, Exhibits (Mtn. Seq. # 3)	6, 7, 8
Plaintiff's Affirmation in Opposition (Mtn. Seq. # 3)	9
Defendant's Letter Correspondence to the Court dated December 3, 2020 (Mtn. Seq. # 3)[1]	10

Upon the enumerated papers, Plaintiff's summary judgment motion (Mtn. Seq. # 2) seeking judgment as to liability on his Labor Law §240(1) claim is granted, and Defendant's summary judgment motion (Mtn. Seq. # 3) seeking the dismissal of Plaintiff's Labor Law §240(1), 241(6), and 200 claims is granted in part, in accordance with the annexed decision and order.

Dated: **6/1/2021**

Hon. **LUCINDO SUAREZ, J.S.C.**

LUCINDO SUAREZ, J.S.C.

[1] This court will consider Plaintiff's late-served opposition papers filed in connection with Defendant's summary judgment motion (Mtn. Seq. # 3) as there was no showing of prejudice by Defendant. Defendant's opposition papers to Plaintiff's summary judgment motion (Mtn. Seq. # 2) raised almost the identical arguments that it proffered in its summary judgment motion (Mtn. Seq. # 3), therefore, there is no prejudice or unfair advantage by this court's consideration of Plaintiff's opposition papers. *See Serradilla v. Lords Corp.*, 117 A.D.3d 648, 987 N.Y.S.2d 320 (1st Dep't 2014).

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Defendant.

PRESENT: Hon. Lucindo Suarez

The threshold procedural issue that first must be addressed is whether Plaintiff's complaint asserting causes of action under Labor Law §§240(1), 241(6) and 200 could be maintained against Defendant Port Authority of New York and New Jersey ("Port Authority"). If answered in the affirmative, then this court will address the issue raised in Plaintiff's summary judgment motion regarding his entitlement to liability as to his Labor Law §240(1) claim, and the issue presented in Port Authority's summary judgment motion seeking the dismissal of Plaintiff's Labor Law §200 claim.

This court finds that Plaintiff can maintain his Labor Law §§240(1), 241(6) and 200 claims against Port Authority, and this court rejects Port Authority's arguments concerning the United States compact clause and Federal supremacy laws. Moreover, this court finds that Plaintiff established his entitlement to judgment as to his Labor Law §240(1) claim. Lastly, this court finds that Port Authority established its entitlement to a dismissal of Plaintiff's Labor Law §200 claim.

According to Plaintiff, on the day of his accident he was employed by non-party Fujitec America as an escalator and elevator mechanic. His tasks included responding to repair calls on escalators, elevators, and moving walks in the AirTrain terminal located at JFK International

Airport. Plaintiff claims that on the day of his accident, he was assigned to make repairs to one of a pair of escalators. Upon arriving to the escalators, Plaintiff alleges that in order to access the area of the escalator that needed repair, he had to utilize a crawl space in between the two escalators and traverse to the top. Plaintiff testified that his accident occurred as he was descending from the top of the crawl space he slipped and was injured when he grabbed onto metal tubing truss-work in order to keep himself from falling.

I. Applicability of Labor Law §§240(1), 241(6), and 200

Article I, Section 10, Clause 3 of the United States Constitution ("compact clause") provides the constitutional mechanism to allow two or more States to enter into a compact (also referred to as a contract) to change their relation to one another in a significant way, as long as the compact is approved by those states' respective legislatures and consented to by Congress. *See Port Auth. Trans-Hudson Corp. v. Feeney,* 495 U.S. 299, 110 S. Ct. 1868, 109 L. Ed. 2d 264 (1990); *see also Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.,* 527 U.S. 666, 119 S. Ct. 2219, 144 L. Ed. 2d 605 (1999). Hence, under that constitutional framework the Port Authority, which is a bi-state corporation, came into existence by compact between New York and New Jersey, and approved by Congress in 1921. *See e.g., Helvering v. Gerhardt*, 304 U.S. 405, 58 S. Ct. 969, 82 L. Ed. 1427 (1938).

Federal and New York courts have taken divergent approaches with respect to whether a bi-state entity operating under an interstate compact could be subject to suit solely based on an individual State's law. Although Federal Courts have applied hodgepodge standards when approaching this inquiry it appears that a majority of Federal courts have adopted the "express intent standard" test, which requires the court to interpret the bi-state compacts to determine whether the compacts "expressly authorize" the compacting states to amend the compact through

legislation "concurred in" by the respective States' legislatures. *See Caceres v. Port Auth.*, 631 F.3d 620 (2d Cir. 2011); *see also HIP Heightened Independence & Progress, Inc. v Port Auth.*, 693 F.3d 345 (3d Cir. 2012); *see also Intl. Union of Operating Engrs., Local 542 v. Delaware Riv. Joint Toll Bridge Commn.*, 311 F.3d 273 (3d Cir. 2002).

New York courts, in contrast, when confronted with the task of assessing whether a bi-state entity could be subject to suit solely under New York State law have created a bright line rule. New York's jurisprudence dictates that a bi-state entity is not subject to New York legislation governing "internal operations" unless both New York and New Jersey have enacted legislation providing that the same is applicable to the bi-state entity. *See Matter of Lopez v. Port Auth. of N.Y. & N.J.*, 171 A.D.3d 500, 98 N.Y.S.3d 35 (1st Dep't 2019). However, New York courts have held that a bi-state entity is subject suit under New York State law if the suit involves health and safety, insofar as its activities "may externally affect the public". *Id.*; *see also Agesen v. Catherwood*, 26 N.Y.2d 521, 260 N.E.2d 525, 311 N.Y.S.2d 886 (1970).

Here, Port Authority posits that this matter should be dismissed against it under the federal "express intent standard" test. First, Port Authority contends that nowhere in the provisions of Labor Law §§240(1), 241(6), and 200 did New York State Legislators intend for it to apply to the Port Authority. Secondly, Port Authority argues that New Jersey's Legislature in no way concurred to the application of Labor Law §§240(1), 241(6), and 200 through the passing of parallel legislation in New Jersey.

Further, Port Authority cites to a study conducted by the Nelson A. Rockefeller Institute of Government, which provides that New York is the only State in the Union to have laws that impose strict liability upon owners and general contractors for injuries occurring to workers at their construction sites. Lastly, Port Authority cites to an unpublished New York State Supreme

Court decision *Riegger v. Port of Authority of New York and New Jersey, et al.,* 15176/2018 (New York County Supreme Court, J. Jaffe) wherein the court applied the federal "express intent standard" test, thereby, dismissing Port Authority from the action.

Plaintiff contends that Port Authority's constitutional arguments with respect to the compact clause must fail as it did not place the New York State Attorney General's Office on notice of its arguments pursuant to CPLR §1012(b)(3). In addition, Plaintiff argues that the application of Labor Law §§240(1), 241(6), and 200 does not affront the compact clause. Plaintiff cites to another unpublished New York State Supreme Court decision *Granados v. Port of Authority of New York and New Jersey, et al.,* 714754/2017 (Queens County Supreme Court, J. Butler) wherein the court rejected Port Authority's arguments when it applied the New York State's legal standard and found that the subject Labor Law provisions governed Port Authority's external conduct that bears on matters of public health and safety. Moreover, Plaintiff argues that Port Authority aside from the unpublished decision in *Riegger* provides no case law to support its proposition. On the other hand, Plaintiff argues that there have been numerous cases emanating from the Second Circuit and New York courts, which have consistently held that Port Authority could be found liable under Labor Law §240(1).

This court finds that Port Authority's arguments concerning the applicability of Labor Law §§240(1), 241(6), and 200 unavailing. This court is bound by case law originating from the New York State Court of Appeals and the Appellate Division, First Department, who both have adopted the bright line rule approach first articulated in the Court of Appeals' opinion *Agesen v. Catherwood*, 26 N.Y.2d 521, 260 N.E.2d 525, 311 N.Y.S.2d 886 (1970), when weighing if bi-state entity could be subject suit under New York law. *See, e.g. Ray v. Port Auth. of NY & New Jersey*, 184 A.D.3d 476, 124 N.Y.S.3d 189 (1st Dep't 2020); *see also Salvador-Pajaro v. Port*

Auth. of NY & New Jersey, 52 A.D.3d 303, 860 N.Y.S.2d 47 (1st Dep't 2008). Therefore, this court is constrained by binding appellate authority from adopting the Federal courts' "express intent standard" test.

Moreover, there have been several cases from the Appellate Division, First Department, explicitly rejecting Port Authority's instant arguments with respect to the applicability of New York's Labor Law §§240(1), 241(6), and 200 statutes. *See Rosario v. Port Auth. of NY & New Jersey*, 179 A.D.3d 516, 114 N.Y.S.3d 219 (1st Dep't 2020); *see also Ayars v. Port Auth. of NY & New Jersey,* 180 A.D.3d 520, 115 N.Y.S.3d 896 (1st Dep't 2020); *see also Wortham v. Port Auth. of NY & New Jersey,* 177 A.D.3d 481, 110 N.Y.S.3d 539 (1st Dep't 2019).

Therefore, because it was undisputed that Plaintiff's injuries occurred at a worksite located in New York State and considering that Labor Law §§240(1), 241(6), and 200 promote the public policy of protecting workers, this court finds that the application of said statutes does not contravene the compact clause nor does it impinge upon federal supremacy laws as the subject Labor Law statutes are undoubtedly governing Port Authority's external activities revolving around health and safety that affect the public.

II. Labor Law §240(1)

Labor Law §240(1), imposes absolute liability on building owners, contractors, and their agents whose failure to provide adequate protection to workers employed on a construction site proximately causes injury to a worker. *Santos v. Condo 124 LLC,* 161 A.D.3d 650, 78 N.Y.S.3d 113 (1st Dep't 2018). To establish liability under Labor Law §240(1), a plaintiff must show that the statute was violated, and that the violation was a proximate cause of the injury. *Id.* In addition, a plaintiff must demonstrate that his injury was attributed to a specific gravity-related injury such as falling from a height or being struck by a falling object that was improperly

hoisted or inadequately secured. *See Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, 959 N.E.2d 488, 935 N.Y.S.2d 551 (2011).

Here, Plaintiff argues that he is entitled to judgment concerning his Labor Law §240(1) claim because his injuries resulted from working from atop of a crawl space ramp with a vertical height of approximately twenty feet. Plaintiff claims that despite being exposed to a gravity-related risk Port Authority failed to provide him with any safety devices to protect him from same, thereby, violating the provisions of Labor Law §240(1). In the alternative, Plaintiff argues that the crawl space ramp may be considered as a "functional equivalent" of a ladder, which also failed to protect him from a gravity-related risk, therefore, violating Labor Law §240(1). Lastly, Plaintiff contends that he was not the sole proximate cause of his accident, thus, entitling to him to judgment with respect to his Labor Law §240(1) claim.

In opposition, Port Authority contends that liability under Labor Law §240(1) should not attach because Plaintiff was the sole proximate cause of his injuries. Further, Port Authority argues that there was no evidence that Port Authority knew what work Plaintiff was performing at the time of his accident. In addition, Port Authority contends that because Plaintiff did not trip or slip on any substance or foreign object that it did not violate Labor Law §240(1).

This court finds that Port Authority's contention that it did not have knowledge of Plaintiff's injury-producing work is of no moment as Labor Law §240(1) imposes strict liability upon owners whether or not they supervised or controlled the work. *See Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 823 N.E.2d 439, 790 N.Y.S.2d 74 (2004). Furthermore, this court is unpersuaded by Port Authority's sole proximate cause arguments as it failed to establish that Plaintiff "had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he

not made that choice he would not have been injured." *See Kosavick v. Tishman Constr. Corp. of NY*, 50 A.D.3d 287, 855 N.Y.S.2d 433 (1st Dep't 2008). Therefore, this court finds that Plaintiff established his *prima facie* burden of a Labor Law §240(1) violation and Port Authority failed to raise any triable issues of fact concerning same.

III. Labor Law §200

Labor Law §200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work. *Licata v. AB Green Gansevoort, LLC*, 158 A.D.3d 487, 71 N.Y.S.3d 31 (1st Dep't 2018). Where an existing defect or dangerous condition causes injury, liability under Labor Law §200 attaches if the owner or general contractor created the condition or had actual or constructive notice of it. *Id.* In addition, under Labor Law §200, liability for a dangerous condition may arise from the methods employed by a subcontractor, over which the owner or general contractor exercises supervision and/or control. *Makarius v. Port Auth. of NY & New Jersey,* 76 A.D.3d 805, 907 N.Y.S.2d 658 (1st Dep't 2010).

Port Authority contends that Plaintiff's Labor Law §200 claim should be dismissed against it because it did not direct, supervise or control the means and methods of Plaintiff's injury-producing work. Port Authority supports it argument through Plaintiff's testimony, which they claim establishes that he only received instruction for his injury-producing work from his supervisor. Further, Port Authority argues that there is no evidence to suggest that it had any notice of the dangerous conditions or that it created the dangerous condition that led to Plaintiff's injuries. In opposition, Plaintiff argues that Port Authority failed to demonstrate that it did not have notice of the dangerous condition that led to his injuries or that it did not create it.

This court finds that Plaintiff produced no evidence that Port Authority was responsible for

supervising, controlling and directing his injury-producing work or that Port Authority controlled the means and methods of his work. Moreover, there is no indication that Port Authority ever received any complaints relating to the conditions inside the crawl space where Plaintiff's injuries occurred. Therefore, this court finds that Port Authority demonstrated its *prima facie* burden for a dismissal of Plaintiff's Labor Law §200 claim and Plaintiff failed to raise any triable issues of fact to preclude the dismissal of same. *See Carty v. Port Auth. of NY & New Jersey*, 32 A.D.3d 732, 821 N.Y.S.2d 178 (1st Dep't 2006).

Accordingly, it is

ORDERED, that Plaintiff's summary judgment motion (Mtn. Seq. # 2) seeking judgment as to liability on his Labor Law §240(1) claim is granted; and it is further

ORDERED, that Port Authority's summary judgment motion (Mtn. Seq. # 3) seeking a dismissal of Plaintiff's Labor Law §§240(1), 241(6), and 200 claims is granted in part; and it is further

ORDERED, that Port Authority's request for a dismissal of Plaintiff's Labor Law §§240(1) and 241(6) claims is denied; and it is further

ORDERED, that Port Authority's request for a dismissal of Plaintiff's Labor Law §200 is granted.

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: June 1, 2021

Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.