

Sandy v 21E12 LLC

2022 NY Slip Op 33371(U)

October 5, 2022

Supreme Court, New York County

Docket Number: Index No. 156557/2019

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

ERNEST SANDY, QUINTANA GRIFFIN,

Plaintiffs,

- v -

21E12 LLC C/O BROAD STREET PRINCIPAL
INVESTMENTS, LLC, WILLIAM MACKLOWE COMPANY
LLC, ACE INDUSTRIES CONSTRUCTION LLC

Defendants.

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INDEX NO. 156557/2019

MOTION DATE 05/03/2022,
06/22/2022,
06/27/2022

MOTION SEQ. NO. 002 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 180, 181 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 169, 170, 171, 176, 177, 178, 179 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 172, 173, 174, 175 were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff, an employee of the general contractor CNY Group, a non-party, commenced this Labor Law action against the defendant-owners 21E12LLC and William Macklowe Company LLC and a carpentry sub-contractor, defendant Ace Industries Construction, Inc., after he was injured when an unsecured door stored on an A-frame cart fell on his leg. In motion #002, plaintiff moves for summary judgment on his Labor Law 240, 241(6) and 200 claims. Defendant Ace filed a cross-motion for summary judgment, which has since been withdrawn pursuant to a stipulation, and re-filed as motion #003. In motion #004, defendant-owners move for summary

judgment on the Labor Law 200 claim asserted against them as well as their cross-claims for common law and contractual indemnification against defendant Ace. The motions are consolidated for purposes of disposition.

With regard to plaintiff's motion on his Labor Law 240 claim, plaintiff has met his prima facie burden on this claim as against defendants-owners by submitting his testimony and the testimony of CNY Group which shows that plaintiff was injured when an unsecured door, which weighed approximately 100 pounds, fell on his leg from a distance of at least one foot. *Touray v. HFZ 11 Beach Street LLC*, 180 A.D.3d 507 (1st Dep't 2020). Defendants-owners' attempt to create an issue of fact by submitting the testimony of defendant Ace is unavailing as the witness conceded in his deposition that he did not know and could not estimate how much the doors weighed. Accordingly, plaintiff is entitled to summary judgment on his Labor Law 240 claim against defendants-owners. In light of this holding, plaintiff's motion with respect to the Labor Law 241(6) and Labor Law 200 claims need not be addressed. *Squicaray v. Con. Edison Co. of NY, Inc.*, 2017 NY Misc LEXIS 4060, 2017 NY Slip Op 32277 [U], *aff'd* 171 AD3d 416 (1st Dept 2019) (holding "[s]ince the court properly granted partial summary judgment in favor of the [plaintiff on his] Labor Law § 240 (1) claim, [defendant's] remaining arguments, concerning plaintiff's Labor Law § 241 (6) claim, are academic", *citing Fanning v Rockefeller Univ.*, 106 AD3d 484, 485 [1st Dept 2013]).

With respect to defendant Ace, the subcontractor, plaintiff's motion on the Labor Law 240 and 241(6) claims must be denied as it is undisputed that defendant Ace did not have authority to supervise plaintiff's work and thus cannot be deemed a statutory agent for purposes of the Labor Law. *Velez v. Tishman Foley Partners*, 245 A.D.2d 155, 156 (1st Dep't 1997). Likewise, defendant Ace's motion for summary judgment seeking dismissal of the Labor Law

240 and 241(6) claims asserted against it must be granted. With regard to the Labor Law 200 claim against defendant Ace, plaintiff's motion seeking summary judgment on this claim and defendant Ace's motion seeking dismissal of this claim must be denied as there are issues of fact as to who created the defective condition and whether defendant Ace launched an instrument of harm so as to be liable under *Espinal v. Melville*, 98 N.Y.2d 136 (2002).

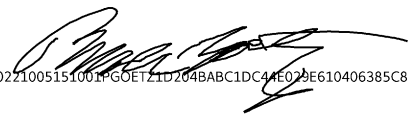
Turning to the issues of contractual and common law indemnification, defendant-owners' motion for summary judgment on these cross-claims must be denied due to the issues concerning their negligence for the accident. *See* Gen. Obl. Law Section 5-322.1; *Mikelatos v. Theofilaktidis*, 105 A.D.3d 822 (2d Dep't 2013). Contrary to defendants-owners' argument, liability under Labor Law 200 arises here due to the unsafe condition of the work site, and not due to the means and methods of the work. *Villanueva v. O'Mara Org.*, 204 A.D.3d 557 (1st Dep't 2022). It is undisputed that the doors were stacked on the A-frame cart for at least 2-3 days prior to plaintiff's accident and thus there are issues of fact as to whether defendants-owners were negligent because they had actual or constructive notice of the condition. Thus, summary judgment on these claims must be denied.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment (MS # 2) is granted on his Labor Law 240 claim against defendants-owners and is otherwise denied; and it is further

ORDERED that defendant Ace's motion for summary judgment (MS # 3) is granted to the extent the Labor Law 240 and 241(6) claims are dismissed as against Ace and is otherwise denied; and it is further

ORDERED that defendants-owners' motion for summary judgment (MS # 4) is denied.


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10/5/2022
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: