

Lardiere v Site 6 DSA Owner LLC

2024 NY Slip Op 34026(U)

November 13, 2024

Supreme Court, New York County

Docket Number: Index No. 153260/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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ROSARIO LARDIERE,

Plaintiff,

- v -

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL
LLC, TACONIC INVESTMENT PARTNERS, L&M
DEVELOPMENT PARTNERS, BFC PARTNERS, L.P,
DELANCEY STREET ASSOCIATES LLC, NYU LANGONE
HEALTH SYSTEM, HUNTER-ROBERTS CONSTRUCTION
GROUP, LLC, BFC PHASE 1 DSA LLC, THE PACE
COMPANIES NEW YORK, INC., PEEPELS MECHANICAL
CORP.,

Defendant.

-----X

SITE 6 DSA OWNER LLC, TACONIC INVESTMENT
PARTNERS, L&M DEVELOPMENT PARTNERS, DELANCEY
STREET ASSOCIATES LLC, NYU LANGONE HEALTH
SYSTEM, HUNTER-ROBERTS CONSTRUCTION GROUP,
LLC

Plaintiff,

-against-

GIL-BAR INDUSTRIES, THE PACE COMPANIES NEW YORK
INC., PEEPELS MECHANICAL CORP

Defendant.

-----X

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Plaintiff,

-against-

SITE SAFETY, LLC, MECHANICAL PIPING SOLUTIONS

INDEX NO. 153260/2018
MOTION DATE 11/12/2024
MOTION SEQ. NO. 013 015

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595818/2018

Second Third-Party
Index No. 595217/2020

Defendant.

-----X

SITE 6 DSA OWNER LLC, SITE 6 COMMERCIAL LLC,
TACONIC INVESTMENT PARTNERS, L&M DEVELOPMENT
PARTNERS, DELANCEY STREET ASSOCIATES LLC, NYU
LANGONE HEALTH SYSTEM, HUNTER-ROBERTS
CONSTRUCTION GROUP, LLC, BFC PHASE 1 DSA LLC

Third Third-Party
Index No. 596072/2021

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP.

Defendant.

-----X

PEEPELS MECHANICAL CORP

Fourth Third-Party
Index No. 595014/2024

Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP., MECHANICAL
PIPING SOLUTIONS INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 013) 975, 976, 977, 999,
1000, 1003, 1006, 1007, 1008

were read on this motion to/for REARGUE.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 978, 979, 980, 981,
982, 1001, 1004, 1005

were read on this motion to/for REARGUE.

Motion Sequence Numbers 013 and 015 are consolidated for disposition. Defendant The
Pace Companies New York Inc. (“Pace”)’s motion (MS013) to reargue and third-party defendant
Gil-Bar Industries (“Gil-Bar”)’s motion (MS015) to reargue are granted and, upon reargument,
the Court modifies its prior decision as described below.

Background

In this Labor Law action, plaintiff claims he was hit in the head by a pipe while visiting a construction site. This Court previously found, in connection with a prior decision on multiple summary judgment motions, that plaintiff was not entitled to protection under Labor Law §§ 240(1) and 241(6) because he was not actively engaged in any construction activities at the time of his accident (NYSCEF Doc. No. 959). Plaintiff was a commissioned salesperson who sold HVAC units for Gil-Bar and was at the construction site that day merely to take a look at the HVAC unit; he was not there to do any construction work.

Both Pace and Gil-Bar now move to reargue. Pace, the entity that installed the sprinkler, contends that the Court should find that plaintiff is not entitled to protection under Labor Law § 200. Gil-Bar makes similar arguments.

Discussion

The Court grants reargument, and upon reargument, the Court now dismisses the Labor Law § 200 claim. The Court's prior determination with respect to Labor Law § 200 was based on the text of the statute, which provides that "All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places" (Labor Law § 200[1]). The Court viewed plaintiff as an individual who was "lawfully frequenting" the area under instructions from his employer. However, the Court observes that this phrase, "lawfully frequenting" has been interpreted narrowly (*Mordkofsky v V.C.V. Dev. Corp.*, 76 NY2d 573, 577, 561 NYS2d 892 [1990] [observing that Labor Law § 200 was designed to protect workers and declining to extend its protection to a contract-vendee]).

More recently, the Appellate Division, First Department held that an employee of nonparty moving company hired to move a large computer server rack was not entitled to the protections of the Labor Law, including section 200, because he was not hired to do construction work nor was his task “necessary and incidental” to the construction work (*Minholz v Columbia Univ.*, 222 AD3d 595, 596, 204 NYS3d 468 [1st Dept 2023]). This case law compels the Court to find that plaintiff is not entitled to assert a Labor Law § 200 claim.

However, plaintiff’s common law negligence claim remains for the reasons the Court articulated in the prior decision (NYSCEF Doc. No. 959 at 19-21). The Court cannot embrace Pace’s view of the facts on a motion for summary judgment. Moreover, plaintiff and defendant Peepels Mechanical Corp. identified issues of fact concerning Pace’s presence on the job site and the exact reason for why the pipe fell.

Accordingly, it is hereby

ORDERED that the motions (MS013 and MS015) to reargue are granted and, upon reargument, the Court dismisses plaintiff’s Labor Law § 200 claim but otherwise adheres to its prior decision.

11/13/2024
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE