

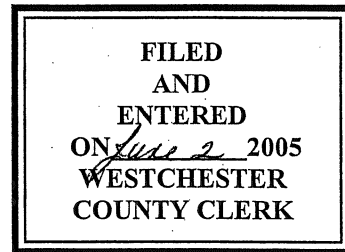
SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

TRIAL/SPECIAL TERM PART-WESTCHESTER COUNTY

PRESENT: HON. LOUIS A. BARONE
Justice

To commence the statutory time for 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: WESTCHESTER COUNTY

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SYLVAN PHILLIPS and LILLIAN PHILLIPS,

Plaintiffs,

- against -

Index No.: 3476/03

McCLIER CORPORATION, HARLEM RIVER YARD VENTURE, INC., NEW YORK POST CO., INC., NEW YORK POST CORPORATION and NEW YORK POST HOLDINGS, INC. s/h/a NYP HOLDINGS, INC.,

Defendants.

Motion
Date: May 20, 2005

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McCLIER CORPORATION, NYP HOLDINGS, INC. and HARLEM RIVER YARD VENTURE, INC.,

Third-Party Plaintiffs,

- against -

Third-Party Index No.:
83440/02

ARCHITECTURAL ROOFING AND SIDING INC., ARCHITECTURAL INSTALLATIONS, INC., GOODISON METAL COMPANY, ANDREW KRAUSE, MATTHEW KRAUSE and HIRANI ENGINEERING and LAND SURVEYING, P.C.,

Third-Party Defendants.

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McCLIER CORPORATION, NYP HOLDINGS,
INC. and HARLEM RIVER YARD VENTURE, INC.,

Second Third-Party Plaintiffs,

- against -

Second Third-Party Index No.:

PROTO CONSTRUCTION COMPANY,
BLANDFORD LAND DEVELOPMENT
CORPORATION and FIRST WOMEN'S FIRE
SYSTEMS CORPORATION,

Second Third-Party Defendants.

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The following documents numbered 1 to 52 read on this motion by Defendant McClier, NYP Holding and Harlem River to dismiss Plaintiff's summons and complaint; cross-motion for summary judgment by Second Third-Party Defendant Blandford; cross-motion by Hirani for summary judgment.

Notice of Motion - Affidavits	1, 2
Cross-Motion Affidavits	28, 29
Cross-Motion Affidavits	38, 39
Answering Affidavits	42, 44
Reply Affidavits	45, 46, 49, 50, 51, 52
Pleadings-Exhibits-Stipulations-Minutes	3-26, 30-37, 40, 41, 43, 47-48
Briefs: Defendant	27

This motion is decided as follows:

The Defendant's McClier Corporation (McClier) NYP Holding, Inc. (NYP) and Harlem River Yard Venture, Inc. (Harlem) move for an order dismissing Plaintiff's Labor Law § 240, § 200 and § 241 claims. Defendants also seek contractual indemnification over and against all Third-Party Defendants as well as common law indemnification Defendants also seek contractual indemnification over and against the Second Third-Party Defendant Blandford.

FACTUAL HISTORY

On October 13, 2000, there was a construction project (New York Post Project) at 132nd Street in New York. Plaintiff alleges he was working on the Project. As he exited, a manlift "he was caused to fall as a result of mounds of dirt in plain view, open and obvious".

McClier was the designer and builder of the Project. McClier had a contract with NYP Trust. McClier had written subcontracts with the other trades necessary to complete the Project. McClier had a subcontract with Architectural Roofing and Siding, Inc. (ARS) to procure and install metal panel siding. ARS had a subcontract with Architectural Installation, Inc. and Goodison Metal Company (Goodison) to perform the installation.

McClier entered into a subcontract with Third-Party Defendant Hirani Engineering and Land Surveying, P.C. (Hirani) to manage and oversee site safety. McClier contracted with Second Third-Party Defendant Blandford Land Development Corporation (Blandford) for the installation of the water service piping and sewer service. McClier subcontracted with Second Third-Party Defendant First Women's Fire Systems Corporation (First Women's) to furnish and install fire protection materials and piping.

Plaintiff alleges that McClier, NYP and Harlem River were negligent in allowing the building under construction to remain in a dangerous condition; in permitting the installation and placing of materials in a faulty and dangerous manner; and in violating Sections 200, 240 and 241 of the Labor Law and Rule 23 of the Industrial Code of the State of New York.

Defendants alleges Plaintiff's claim must be dismissed because his accident occurred on the ground, he tripped over a mound of dirt. His injuries were not caused by the effects or forces of gravity.

Plaintiff alleges he stepped off the "manlift and fell". Plaintiff testified that the manlift did not cause the accident. Plaintiff did not fall from an elevated height nor was he struck by an object from an elevated height. Thus Plaintiff's § 240 claim should be dismissed. Plaintiff alleges he fell on debris which was not visible.

Defendants' McClier, Harlem River and NYP did not control, supervise or direct Plaintiff's work. They did not cause or have knowledge of any condition that caused Plaintiff's accident. Pursuant to the existing contracts, ARS was in control of on-site supervision during installation and Goodison provided all the equipment including the manlift. Additionally, Hirani was hired as the "safety eyes and ears". It is responsible for overseeing all safety aspects at the site. thus the claim, under Labor Law §200 should be dismissed because Defendants had no supervisory control of Plaintiff.

Plaintiff's claim under Labor Law § 241(6) must be dismissed because it refers to violations of various sections of the Industrial Code which were all general in nature.

Defendants allege in the event Plaintiff's claims are not dismissed the Defendants should be granted contractual and/or common law indemnification over and against ARS, Goodison, Hirani, Blandford, First Women's and ALL.

Each of the first and Second Third-Party Defendants were required to maintain insurance coverage naming McClier, NYP and Harlem River as additional insureds. Each policy was in effect at the time of Plaintiff's accident.

Goodison was not Plaintiff's employer. Plaintiff was employed by Dart, Inc. Goodison, through Brian Boch, Goodison's project superintendent, instructed Goodison workers and Plaintiff as to what had to be done on a daily basis.

Defendants alleges is there no evidence of negligence or proof that McClier, Harlem River or NYP Holdings directed, controlled or supervised the manner in which Plaintiff did his work. Defendants are thus entitled to a dismissal of Plaintiff's claim and/or contractual and/or common law indemnification against ARS, Goodison, Blandford, First Women's and Hirani.

Plaintiff stated during his examination before trial there was nothing wrong with the lift and there was no debris in the area left by Goodison that caused his accident.

The Second Third-Party Defendant Blandford Land Development Corporation (Blandford) moves for summary judgment dismissing as to it all claims, cross-claims and counterclaims. Blandford alleges it was a subcontractor hired by McClier to perform general construction work, including framing and the installation of piping required for the sanitary sewer, storm sewer and water services for the NYP Project. Blandford did very little excavation work. Blandford alleges First Women's was the only entity to perform excavation work in the vicinity where Plaintiff had his accident and within that time frame. First Women's had to excavate to repair a break in a water line they had recently installed underground. Blandford was working on the other side of the Project from where Plaintiff had his accident. On the day of Plaintiff's accident, October 13, 2000, Blandford was doing sub-grading work and recycling blend inside of the building.

Blandford alleges since it had no supervisory authority, was not negligent, did not cause any condition that caused Plaintiff's accident there is no basis for holding Blandford in this action.

The Defendant/Third-Party Defendant Hirani cross-move for summary judgment dismissing Plaintiff's claims under Labor Law §§ 240(1), 240(6), 200 and the common law negligence cause of action as well as for an order of contractual and common law indemnification over and as against ARS, First Women and Blandford. Hirani also opposes McClier's motion.

McClier hired Hirani as the site safety supervisor. Hirani was responsible for reporting all safety violations to McClier. Once reported McClier was responsible for correcting all safety issues.

Hirani Engineering and Surveying, P.C. alleges it did not have authority to supervise and control the Plaintiff, "nor did it have the authority to direct the construction procedures or safety methods employed by McClier". Hirani further alleges Engineers are exempt from liability under the Labor Law. Hirani contract with McClier provided that it was "not directly or indirectly stop or delay any work pending the determination of any dispute". Hirani did not have authority to initiate any corrective measure at the job site.

Hirani states Plaintiff's claim under Labor Law § 241(1) should be dismissed because his injuries were not gravity related. Plaintiff has failed to show any violations of the Industrial Code and thus his claim under § 241(6) should be dismissed. Plaintiff's claim under § 200 should be dismissed since he has failed to prove any negligence against Hirani and Hirani did not supervise his work.

However, Hirani states Plaintiff's claim against McClier under § 200 should not be dismissed since McClier alone had the authority to control all the work at the job site.

Hirani states it was not the agent of either the owner or the general contractor.

Hirani seeks a dismissal of the complaint and all claims and counterclaims against it or in the alternative, an order granting Hirani contractual and common law indemnification from ARS, Blandford and First Women.

Opposition is submitted by Blandford with reference to Hirani's request for contractual and common law indemnification from Blandford. Blandford states the indemnification clause does not define "agent" and makes no reference to Hirani "there is no evidence that it was the intent of either McClier or Blandford to provide contractual indemnification to Hirani".

Furthermore, there is no proof that Blandford had any authority over Plaintiff or in any way caused his accident. Thus the motion of Hirani for contractual indemnification from Blandford should be denied.

Plaintiff submits opposition to the motion and the two cross-motions for dismissal of Plaintiff's action. Plaintiff alleges many issues of fact exist as to the Defendant's liability under Labor Law § 200 and 241(6) as well as common law negligence. Plaintiff has no objection to dismissal of the cause of action pursuant to Labor Law § 240(1).

Plaintiff alleges Labor Law §241(6) was violated by NYP as owner and McClier as the general contractor in that they allowed and permitted the work site to become hazardous with the accumulation of dirt, debris, scattered tools and materials. McClier was aware of the condition and did not correct same. Complaints as to open trenches, debris, boulders, etc. were made by each of the trades to McClier.

After a review of all motions, affidavits and exhibits presented, the Court finds that Plaintiff's cause of action under Labor Law § 240(1) is dismissed.

The cross-motion by Hirani for summary judgment dismissing the complaint and all cross-claims and counter-claims as to it is granted.

The cross-motion of Blandford Land Development for dismissal of all claims, cross-claims and counter-claims as to it is granted.


The motion of Defendants' McClier, NYP Holding and Harlem River to dismiss the complaint is denied except Plaintiff's cause of action under Labor Law § 240(1) is dismissed.

Defendants' McClier, NYP Holding and Harlem River, pursuant to written contracts are granted common law and contractual indemnification as to ARS, Goodison, First Women's and ALL.

This constitutes the order of this Court.

Dated: June 2, 2005
White Plains, N.Y.

ENTER,



HON. LOUIS A. BARONE, J.S.C.

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