

DOCKET NO. HHD-CV-22-6152310-S : SUPERIOR COURT
JAMIE HERNANDEZ : JUDICIAL DISTRICT OF
HARTFORD
V. : AT HARTFORD
JAMES CALCIANO, ET AL : APRIL 15, 2024

**MEMORANDUM OF DECISION RE: DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT (#184)**

INTRODUCTION

The present action arises out of a fall at a construction site. The plaintiff alleges that the moving defendants (defined below) were negligent and are liable to him for his injuries based on contractor liability, premises liability, and negligence. The moving defendants filed a motion for summary judgment, arguing that they did not owe a legal duty to the plaintiff. For the reasons set forth below, the motion for summary judgment is granted.

FACTS AND PROCEDURAL HISTORY

The plaintiff, Jamie Hernandez,¹ commenced this action by complaint filed on February 17, 2022, against defendants James Calciano, Robert Palazzo, John Cellino, and Wayne Rand (moving defendants)² for injuries he allegedly suffered as a result of a fall on

¹ On March 29, 2021, the plaintiff filed a related action styled *Hernandez v. Farmington Heritage Trail Crossing, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-21-6140099-S, against Farmington Heritage Trail Crossing, LLC (Farmington Heritage). That action was consolidated with the present action. (See docket entry #116.86.) The plaintiff is identified as “Jaime” in the companion case.

² Defendants West High Enterprises, LLC, Global 17, LLC, Rand Construction, Inc., Northeast Storage Construction, LLC (Northeast), TST Construction, LLC (TST), and Thomas Lance III (Lance) are not parties to the motion.

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or about February 28, 2020, while working on the roof of a structure at 155 Scott Swamp Road in Farmington, Connecticut (premises) owned by the defendants. The plaintiff's complaint alleges in the first, third, fifth, and seventh counts (contractor liability) that the plaintiff's fall and injuries were caused by the moving defendants' negligence in failing to ensure the safety of workers at the premises. The second, fourth, sixth, and eighth counts (premises liability) allege that the plaintiff suffered injuries and losses as a result of the moving defendants' negligence in failing to inspect, maintain, and otherwise act to keep the premises safe.³

The plaintiff alleges that the moving defendants hired Lance, Northeast, and/or TST to perform certain construction work at the premises. Lance owns and/or controls Northeast. At the time of the fall the plaintiff had worked for Lance or a Lance-owned company (e.g., Northeast), for some thirty years. At his deposition, the plaintiff testified that he was paid in cash, typically did not receive a W-2 from Lance, and Lance was present at the premises on most days during construction and gave the plaintiff instructions for each day's work. (Docket entry #187, 22, 24-25, 54.)

On the day the plaintiff fell he was performing roofing work related to the construction of storage units that Lance had instructed him to perform. The area where the plaintiff was working had a fall protection system installed by Lance or Northeast. The plaintiff lost his balance and fell. The plaintiff acknowledged that Farmington Heritage, not any of the moving defendants, owned, maintained, inspected, and acted as general

³ On May 20, 2022, the intervening plaintiff, the treasurer of the State of Connecticut, and custodian of the second injury fund, filed its motion to intervene as well as its intervening complaint. (Docket entries #126 and #127.)

contractor on the premises and the moving defendants did not possess or control the premises. (Docket entry #187, 26-27, 29, 32, 38, 40, 42, 44, 50.)

In his first, third, fifth, and seventh counts, the plaintiff alleges, among other things, that the moving defendants: (1) exercised control over the construction project; (2) exercised control over the workers employed by Lance, Northeast, or TST and the work they were performing; (3) exercised control over the safety protocols employed by Lance, Northeast, or TST; (4) knew or should have known that the construction work would likely be performed in an incompetent or untrustworthy manner with respect to proper fall protection for the workers; (5) knew or should have known that Lance, Northeast, or TST were performing the construction work in an incompetent or untrustworthy manner with respect to proper fall protection for the workers; and (6) either told Lance directly to implement safety protocols for the workers or directed Lance in the project. (Compl., 2-3, 10-11, 18-19, 26.)

The plaintiff testified at his deposition that he never met Calciano or Cellino and he did not know how they could have control of the premises because they were never at the site. Nor did Calciano, Palazzo, or Cellino tell him how to do his job or exercise control over the safety protocols employed by Lance. The plaintiff was aware that Rand, a member of Farmington Heritage, was periodically on site, but he did not know in what capacity Rand appeared and could not confirm whether Rand was acting on behalf of Farmington Heritage or some other entity with which Rand was affiliated. Rand last gave any instructions on the site some two months before the fall.

In his second, fourth, sixth, and eighth counts, the plaintiff alleges, among other things, that the moving defendants: (1) possessed and controlled the premises; (2) failed to maintain or inspect the premises; (3) knew the premises was dangerous, yet failed to act or make corrections; and (4) failed to properly train their agents. (Compl., 6-7, 14-15, 23-24, 31.)

The plaintiff testified at his deposition that he had no support for the claim that anyone other than Farmington Heritage maintained, inspected, or had a building permit for the premises. Nor did he have any support for the claim that the moving defendants owned or controlled the premises, engaged in a construction project on the premises, or personally managed or oversaw the premises.

In his ninth count, the plaintiff alleges, among other things, that Rand: (1) employed him; (2) was engaged in a construction project on the premises; (3) directed him to perform roofing work without proper fall protection; (4) failed to properly supervise the work when he knew the contractor did not follow safety protocol; and (5) knew he was in danger, but allowed him to work. (Compl., 33-35.)

The plaintiff conceded at his deposition that he had no support for the assertion that Rand personally owned equipment on the premises, that he was not employed by Rand personally, and that Rand did not direct him to perform roofing work without proper fall protection.

On August 30, 2023, the moving defendants filed their motion for summary judgment, memorandum in support, and exhibits (docket entry #184), including: an affidavit of James Calciano dated August 29, 2023 (exhibit A); an affidavit of Robert

Palazzo dated August 29, 2023 (exhibit B); an affidavit of John Cellino dated August 30, 2023 (exhibit C); and an affidavit of Wayne Rand dated August 29, 2023 (exhibit D).⁴

On October 16, 2023, the plaintiff filed his memorandum in opposition to the motion for summary judgment (docket entry #185), together with the following exhibits: (1) an affidavit of James Calciano dated September 5, 2023 (exhibit 1); (2) an affidavit of Wayne Rand dated September 5, 2023 (exhibit 2); (3) Wayne Rand's responses to the plaintiff's requests for admission dated November 23, 2022 (exhibit 3); (4) Farmington Heritage's responses to interrogatories and requests for production dated July 16, 2021 (exhibit 4); (5) a copy of a permit application dated August 19, 2019 (exhibit 5); (6) James Calciano's responses to the plaintiff's requests for admission dated December 7, 2022 (exhibit 6); (7) Robert Palazzo's responses to the plaintiff's requests for admission dated December 20, 2022 (exhibit 7); (8) a copy of portions of citations and notifications of penalties issued by the Occupational Safety and Health Administration (exhibit 8); and (9) an affidavit of the plaintiff dated May 15, 2020 (exhibit 9). Attached as exhibit 1 to the Calciano affidavit is a copy of the subcontract between Farmington Heritage and Northeast defining the scope of work for the project (contract).

In his opposition papers, the plaintiff argues that there are genuine issues of material fact compelling denial of the motion with respect to whether (1) Farmington Heritage and

⁴ Attached as exhibit 1 to the Calciano affidavit is a copy of the warranty deed conveying the premises to Farmington Heritage on May 25, 2018. Attached as exhibit 2 to the Calciano affidavit is a copy of the notice from the Town of Farmington changing the street address of the premises from 1784 New Britain Avenue to 155 Swamp Scott Road. Attached as exhibit 1 to the Palazzo affidavit is a copy of the building permit for the premises (permit).

the moving defendants delegated duties vested in the premises owner and general contractor to another party; (2) whether the moving defendants had a duty to provide a safe working environment; (3) whether an act or omission by any of the moving defendants constituted a breach of duty; and (4) whether Palazzo, by virtue of filling out the permit application, had actual knowledge of safety concerns directly related to the plaintiff's injuries. (Docket entry #185, 3-4, 9-10, 12, 15-20, exhibit 5, exhibit 7.) The plaintiff also argues that the motion should be denied because the moving defendants may be held personally liable for their conduct that was a breach of the duty owed by their limited liability company (LLC) pursuant to *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 141-42, 881 A.2d 937 (2005), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006).⁵

On October 27, 2023, the moving defendants filed a reply memorandum in further support of their motion for summary judgment (docket entry #187), including excerpts from the plaintiff's certified deposition transcript dated July 19, 2023 (exhibit E). In the transcript, the plaintiff confirmed that he had no support for the claims that: (1) Calciano, Palazzo, or Cellino negotiated or contracted with Lance, Northeast, or TST; (2) Cellino was a Farmington Heritage member; or (3) Rand paid Lance, who paid the plaintiff, with Farmington Heritage checks.

⁵ *Ventres v. Goodspeed Airport, LLC*, supra, 275 Conn. 141-42, provides in relevant part: “[A]n officer of a corporation does not incur personal liability for its torts merely because of his official position. Where, however, an agent or officer commits or participates in the commission of a tort, whether or not he acts on behalf of his principal or corporation, he is liable to third persons injured thereby. . . . Thus, a director or officer who commits the tort or who directs the tortious act done, or participates or operates therein, is liable to third persons injured thereby, even though liability may also attach to the corporation for the tort.” (Citations omitted; internal quotation marks omitted.)

The court held a remote hearing on the motion for summary judgment on January 2, 2024.

Additional facts will be discussed below.

DISCUSSION

A. Legal Standard

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018). “The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case.” (Internal quotation marks omitted.) *Doe v. West Hartford*, 328 Conn. 172, 191–92, 177 A.3d 1128 (2018). “[T]he existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence. . . . If the affidavits and the other supporting documents are inadequate, then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof.” (Internal quotation

marks omitted.) *U.S. Bank, National Assn. v. Bennett*, 195 Conn. App. 96, 107, 223 A.3d 381 (2019).

“[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law.” (Internal quotation marks omitted.) *Streifel v. Bulkley*, 195 Conn. App. 294, 304, 224 A.3d 539, cert. denied, 335 Conn. 911, 228 A.3d 375 (2020). “The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand.” (Internal quotation marks omitted.) *Sic v. Nunan*, 307 Conn. 399, 407, 54 A.3d 553 (2012). “If the court determines, as a matter of law, that a defendant owes no duty to a plaintiff, a verdict should be directed [or summary judgment rendered] because [i]t is merely reaching more speedily and directly a result [that] would inevitably be reached in the end.” (Internal quotation marks omitted.) *Fajardo v. Boston Scientific Corp.*, 341 Conn. 535, 548, 267 A.3d 691 (2021).

B. First through Eighth Counts – Contractor Liability and Premises Liability

The parties agree that Farmington Heritage acted as the project’s general contractor and owned the premises. (Docket entry #184, 11-12; docket entry #185, 1, 9, 11, 14-21.) The plaintiff contends, however, that there is a genuine issue of material fact as to whether Farmington Heritage hired Northeast or any other Lance entity as a subcontractor, and whether the moving defendants are personally liable for their acts as Farmington Heritage members. The plaintiff maintains that there is a genuine issue of material fact whether Farmington Heritage delegated all responsibility over the project and safety requirements to a subcontractor. In particular, the plaintiff argues that the contract between Farmington

Heritage and Northeast failed to establish a general contractor-subcontractor relationship because the contract was undated; was not signed by anyone on behalf of Farmington Heritage; did not specify which party was to furnish materials, tools, or safety devices; and failed to address the relationship between the parties or incorporate requirements regarding insurance or indemnification. The plaintiff contends that the contract failed to delegate Farmington Heritage's duty and that the moving defendants are personally liable to him as Farmington Heritage members. "As a general rule, an employer is not liable for the negligence of its independent contractors." (Internal quotation marks omitted.) *Pelletier v. Sordoni/Skanska Constr. Co.*, 264 Conn. 509, 517 (2003). This rule has limited exceptions. *Id.*, 518.

In the consolidated case, *Hernandez v. Farmington Heritage Trail Crossing, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-21-6140099-S (March 12, 2024, *Rosen, J.*), the court found that there was no genuine issue of material fact that Northeast was retained as a subcontractor and that the plaintiff's claims did not fall within an exception under which a general contractor or premises owner could be held liable. The present case arises out of the same set of facts and there is no new or overriding circumstance compelling a different conclusion. Because Farmington Heritage was not liable to the plaintiff, its members also cannot be liable.

In his opposition to the moving defendants' motion, the plaintiff cites the general principle that LLC members may be held personally liable for tortious conduct they commit in their capacity as members. He argues that because (1) Calciano and Palazzo had personal knowledge that a fire marshal or similar authority expressed concern over safety issues

prior to the fall, (2) Palazzo attested in the permit application that he was the sole premises owner, and (3) Rand hired Lance or Lance-owned entities in the past, there are genuine issues of material fact as to whether the moving defendants can be held personally liable for the plaintiff's injuries. "A debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager." General Statutes § 34-251a (a). "*The facts at issue [in the context of summary judgment] are those alleged in the pleadings. . . .* The purpose of the complaint is to limit the issues to be decided at the trial of a case and is calculated to prevent surprise."

(Emphasis in original; internal quotation marks omitted.) *Straw Pond Associates, LLC v. Fitzpatrick, Mariano & Santos, P.C.*, 167 Conn. App. 691, 728-29, 145 A.3d 292, cert. denied, 323 Conn. 930, 150 A.3d 231 (2016). A plaintiff may not raise a new theory of liability in its opposition to a summary judgment motion when it did not plead the theory in the complaint or amend the complaint to plead the theory. *White v. Mazda Motor of America, Inc.*, 313 Conn. 610, 629, 99 A.3d 1079 (2014).

The plaintiff's complaint alleges only that Calciano, Palazzo, and Cellino each individually managed and oversaw the construction project and premises. (Compl., 1, 9, 17.) The plaintiff did not allege that they did so as members of the LLC. The plaintiff cannot raise a new theory of liability for the first time in his opposition memorandum. (See

docket entry #185, 1, 11-21.) Therefore, the moving defendants are entitled to summary judgment as a matter of law on the first through eighth counts.⁶

C. Ninth Count – Negligence

The plaintiff also asserts a negligence claim against Rand only, alleging, among other things, that: (1) Rand was engaged in the subject construction project; (2) Rand employed the plaintiff; (3) Rand directed the plaintiff to perform roofing work without proper fall protection; and (4) Rand failed to ensure that appropriate safety precautions were used for the project. (Compl., 33-36.) Rand argues that the ninth count fails because he did not employ the plaintiff or control the plaintiff's work performance.

“[T]he essential elements of . . . negligence are well established: duty; breach of that duty; causation; and actual injury If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant.” (Citations omitted; internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 538-39, 51 A.3d 367 (2012). “[T]here generally is no duty that obligates a party to aid or protect another party absent a relationship of custody or control.” *Id.*, 553. “[C]ontrol has no legal or technical meaning distinct from that given in its popular acceptance . . . and refers to the power or authority to manage, superintend, direct or oversee. . . . [When] the evidence on the question as to who had control of the area or instrumentality causing the injury is such that the mind of a fair and reasonable [person] could reach but one conclusion as to the identity of the person exercising control, the

⁶ Additionally, there is no evidence that Cellino was a Farmington Heritage member. (Docket entry #187, 1 n.1.)

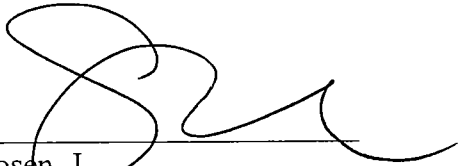
question is one for the court, but, if honest and reasonable [people] could fairly reach different conclusions on the question, the issue should properly go to the jury.” (Citations omitted; internal quotation marks omitted.) *Gonzalez v. O & G Industries, Inc.*, 341 Conn. 644, 683-84, 267 A.3d 766 (2021).

As discussed above, the court found in *Hernandez v. Farmington Heritage Trail Crossing, LLC*, supra, Superior Court, Docket No. CV-21-6140099-S, and finds here, that there is no genuine issue of material fact that Northeast was retained as a subcontractor. Thus, in the present case, the plaintiff’s claim that Rand employed him or exercised control over him must fail. Even if Farmington Heritage retained control of the premises, the plaintiff did not plead that Rand is personally liable to him, and the claim fails on that basis as well. See *White v. Mazda Motor of America, Inc.*, supra, 313 Conn. 629; *Straw Pond Associates, LLC v. Fitzpatrick, Mariano & Santos, P.C.*, supra, 167 Conn. App. 728-29. For these reasons, Rand is entitled to summary judgment as a matter of law on the ninth count.

CONCLUSION

For the foregoing reasons, the moving defendants’ motion for summary judgment is granted as to counts one through nine of the plaintiff’s complaint.

BY THE COURT



Rosen, J.

Checklist for Clerk

Docket Number: HHD CV22-6152310

Case Name: Hernandez v. Calciano

Memorandum of Decision dated: 4/12/2024

File Sealed: Yes No X

Memo Sealed: Yes No X

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HHD-CV22-6152310-S

HERNANDEZ, JAMIE v. CALCIANO, JAMES Et Al

Prefix: HD6

Case Type: T90

File Date: 02/17/2022

Return Date: 03/15/2022

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Case Information

Case Type: T90 - Torts - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 01/04/2024 (The "last action date" is the date the information was entered in the system)

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By Date
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Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Legal Notices

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Party & Appearance Information

Party	No Fee Party	Category
P-01 JAMIE HERNANDEZ Attorney: THE FLOOD LAW FIRM LLC (433718) 190 WASHINGTON STREET MIDDLETOWN, CT 06457 File Date: 02/17/2022		Plaintiff
P-02 STATE OF CONNECTICUT Attorney: CYNTHIA W SHEPPARD (442847) AG-WORKERS COMP/LABOR 165 CAPITOL AVE 4TH FLR HARTFORD, CT 06106 File Date: 05/20/2022		Plaintiff - Intervening
D-01 JAMES CALCIANO Attorney: WEINSTEIN & WISSER PC (045674) SUITE 207 29 SOUTH MAIN STREET WEST HARTFORD, CT 06107 File Date: 03/07/2022		Defendant
D-02 ROBERT PALAZZO Attorney: WEINSTEIN & WISSER PC (045674) SUITE 207 29 SOUTH MAIN STREET WEST HARTFORD, CT 06107 File Date: 03/07/2022		Defendant
D-03 JOHN CELLINO Attorney: WEINSTEIN & WISSER PC (045674) SUITE 207 29 SOUTH MAIN STREET WEST HARTFORD, CT 06107 File Date: 03/07/2022		Defendant
D-04 WAYNE RAND Attorney: WEINSTEIN & WISSER PC (045674) SUITE 207 29 SOUTH MAIN STREET WEST HARTFORD, CT 06107 File Date: 03/07/2022		Defendant
D-05 WEST HIGH ENTERPRISES, LLC Attorney: MARSHALL DENNEHEY (435965) GRANITE SQUARE 700 STATE ST 3RD FL #303 NEW HAVEN, CT 06511 File Date: 11/07/2022		Defendant
D-06 GLOBAL 17, LLC Attorney: MILBER MAKRIS PLOUSADIS & SEIDEN LLP (419029) 100 MANHATTANVILLE ROAD SUITE 4E20 PURCHASE, NY 10577 File Date: 03/16/2022		Defendant



Comments

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D-07 RAND CONSTRUCTION, INC.	Attorney: LITCHFIELD CAVO (416477) 82 HOPMEADOW STREET SUITE 210 SIMSBURY, CT 06089	File Date: 03/15/2022	Defendant
D-08 NORTHEAST STORAGE CONSTRUCTION, LLC	Attorney: DONOHUE SEAN C. LAW OFFICES OF (428369) 111 HUNTINGTON STREET SUITE 1 NEW LONDON, CT 06320	File Date: 03/22/2023	Defendant
D-09 TST CONSTRUCTION, LLC	Attorney: DONOHUE SEAN C. LAW OFFICES OF (428369) 111 HUNTINGTON STREET SUITE 1 NEW LONDON, CT 06320	File Date: 03/22/2023	Defendant
D-10 THOMAS LANCE III	Attorney: DONOHUE SEAN C. LAW OFFICES OF (428369) 111 HUNTINGTON STREET SUITE 1 NEW LONDON, CT 06320	File Date: 03/22/2023	Defendant

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	02/17/2022	P	COMPLAINT	
	02/17/2022	P	ADDITIONAL PARTIES PAGE	
	02/18/2022	D	APPEARANCE Appearance	
	03/07/2022	D	APPEARANCE Appearance	
	03/15/2022	D	APPEARANCE Appearance	
	03/16/2022	D	APPEARANCE Appearance	
	05/20/2022		APPEARANCE P-02 INTERVENING	
	11/07/2022	D	APPEARANCE Appearance	
	03/22/2023	D	APPEARANCE Appearance	
100.30	02/17/2022	P	RETURN OF SERVICE	No

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