

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO.

GINA M. FERRINI, as Special Personal Representative of the Estate of PETER F. MONSINI,
Plaintiff

v.

JOHN MORIARTY & ASSOCIATES, INC. and THE HYM INVESTMENT GROUP, LLC,
Defendants

22-1656

2022 JUL 21 A 11:13
SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
MICHAEL J. JOSEPH DONOVAN
CLERK OF THE COURT
MAGISTRATE

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Parties

1. The plaintiff, Gina M. Ferrini, the duly appointed Special Personal Representative of the Estate of Peter F. Monsini, is an individual residing at 18 Caroline Road, Easton, Bristol County, Massachusetts.
2. The defendant, John Moriarty & Associates, Inc. (Moriarty), is a domestic for profit corporation with a principal office located at 3 Church Street, Winchester, Middlesex County, Massachusetts.
3. The defendant, The HYM Investment Group, LLC (HYM Investment), is a domestic for profit corporation with a principal office located at One Congress Street, Boston, Suffolk County, Massachusetts.

Facts

4. On March 26, 2022, Peter F. Monsini was an employee of JDC Demolition Company, Inc. (JDC Demolition) and was working at a construction site located at the Government Center Garage, One Congress Street, Boston, Suffolk County, Massachusetts.
5. At all relevant times, JDC Demolition was a subcontractor having a contract with the defendant, Moriarty, the general or prime contractor at the construction site.
6. At all relevant times, the defendant, Moriarty, was the general or prime contractor having a contract with the defendant, HYM Investment, the developer who owned and/or controlled the construction site, to perform supervision and construction services at the construction site.
7. At all relevant times, the defendant, HYM Investment, was the developer who owned and/or controlled the construction site.

8. On March 26, 2022, Peter F. Monsini was assigned to perform demolition work that involved operating a construction vehicle inside the Government Center Garage and was performing the work on the ninth floor of the building when the floor caved in underneath the vehicle. As a result, Mr. Monsini fell into the rubble, suffered consciously, and died.
9. At all relevant times, the defendant, Moriarty, as the general or prime contractor, owed Peter F. Monsini, as its subcontractor's employee, a non-delegable duty to ensure jobsite safety pursuant to 29 C.F.R. 1926.16.
10. In violation of good and accepted construction safety practices and OSHA regulations, the defendant, Moriarty, allowed the unstable walking-working surface of the floor to be used by demolition workers operating construction vehicles, such as Peter F. Monsini. The unstable walking-working surface of the floor constituted an unreasonably dangerous and hazardous condition of the construction site. Due to its insufficient load capacity, the floor posed an unreasonably high risk of falls to demolition workers operating construction vehicles on the floor, such as Peter F. Monsini. This risk materialized when the floor caved in underneath the vehicle operated by Peter F. Monsini and he fell to his death.
11. The defendant, Moriarty, grossly deviated as follows from good and accepted construction safety practices, violated C.M.R., and OSHA regulations, and violated its own Site-Specific Safety and Health Program, thereby breaching its duties and responsibilities of protecting the health and safety of workers and/or employees on the jobsite, including Peter F. Monsini:
 - (a) by failing to ensure that the construction site was so constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection to the lives, health, and safety of workers and/or employees on the jobsite, including Peter F. Monsini;
 - (b) by failing to conduct a pre-demolition engineering survey of the building as required by 29 C.F.R. 1926.850(a) to determine the condition of the framing, floors, and walls so that measures could be taken, if necessary, to prevent the premature collapse of any portion of the building;
 - (c) by permitting workers and/or employees on the jobsite, including Peter F. Monsini, to work under conditions prohibited by 780 C.M.R. 1604.2, 780 C.M.R. 3302.1, and 29 C.F.R. 1910.22(b), i.e., by permitting them to work on the walking-working surface of the floor that could not support the maximum intended load for that surface;
 - (d) by failing to take necessary precautions required by 29 C.F.R. 1910.22(d) relative to the walking-working surface of the floor, i.e., by failing to inspect the walking-working surface of the floor regularly and as necessary, failing to maintain the walking-working surface of the floor in a safe condition, and failing to timely warn workers and/or employees on the jobsite, including Peter F. Monsini, against

using the hazardous walking-working surface of the floor when its hazardous condition could not be immediately remedied;

- (e) by failing to have a job safety engineer hold adequate safety meetings and carry out all phases of an adequate safety program;
- (f) by failing to have a job safety engineer, superintendent, and foreman train all workers in job safety methods;
- (g) by failing to require and provide continuous safety education, including safety training instructions for all workers, by means of safety films, accident records, safety motivation contests, safety meetings, and job safety publications;
- (h) by failing to establish safety methods and good practices to be carried out by all workers;
- (i) by failing to control accident hazards by evaluating prior to the start of operation accident exposures that may arise from every portion of the work;
- (j) by failing to arrange and conduct daily inspections of the construction site to detect and correct unsafe working conditions and practices;
- (k) by failing to ensure the use of sound and operable safeguards and warnings; and
- (l) by failing to ensure that the work was performed under the supervision of a designated person with the degree of competence necessary to perform the work in a safe manner;
- (m) by failing to enforce compliance with its Project Safety and Health Program;
- (n) by failing to assist subcontractors, including JDC Demolition, in pre-planning their operation to prevent personal injury through job hazard analysis;
- (o) by failing to conduct project safety audits and inspect activities for safety compliance; and
- (p) by failing to conduct regular safety inspections of the work in progress and to monitor subcontractor compliance with safety regulations.

12. In particular, the defendant, Moriarty, failed to comply with the following applicable standards codified in C.M.R. and OSHA regulations:

- (a) 29 C.F.R. 1926.850(a) requiring to conduct a pre-demolition engineering survey of the building to determine the condition of the framing, floors, and walls so that measures could be taken, if necessary, to prevent the premature collapse of any portion of the building;

- (b) 780 C.M.R. 1604.2, 780 C.M.R. 3302.1, and 29 C.F.R. 1910.22(b) requiring that walking-working surfaces support the maximum intended loads for those surfaces;
 - (c) 29 C.F.R. 1910.22(d)(1) requiring that Moriarty ensure that “walking-working surfaces [were] inspected, regularly and as necessary, and maintained in a safe condition”;
 - (d) 29 C.F.R. 1910.22(d)(2) requiring that Moriarty ensure that “hazardous conditions on walking-working surfaces [were] corrected or repaired before an employee use[d] the walking-working surface again” and that “[i]f the correction or repair [could] not be made immediately, the hazard [was] guarded to prevent employees from using the walking-working surface until the hazard [was] corrected or repaired”; and
 - (e) 29 C.F.R. 1910.22(d)(3) requiring that Moriarty ensure that “a qualified person perform[ed] or supervise[d] the correction or repair” that “involve[d] the structural integrity of the walking-working surface.”
13. The defendant, Moriarty, breached as follows its duties and responsibilities of protecting the health and safety of workers and/or employees on the jobsite, including Peter F. Monsini:
- (a) by allowing Peter F. Monsini to use the walking-working surface of the floor when Moriarty knew or should have known that the walking-working surface of the floor constituted an unreasonably dangerous and hazardous working condition due to its insufficient load capacity;
 - (b) by failing to designate a competent person, who was capable of identifying existing and predictable hazards in the surroundings or hazardous working conditions, to supervise the work, and take prompt corrective measures to eliminate such conditions, including the unreasonably dangerous and hazardous walking-working surface of the floor;
 - (c) by failing to ensure that its subcontractor, JDC Demolition, and workers employed by JDC Demolition, including Peter F. Monsini, were adequately trained and qualified to recognize and mitigate unreasonably dangerous and hazardous working conditions, including the unreasonably dangerous and hazardous walking-working surface of the floor;
 - (d) by failing to adequately supervise and inspect the work being performed at the construction site and by allowing Peter F. Monsini to work under unreasonably dangerous and hazardous conditions, including the unreasonably dangerous and hazardous walking-working surface of the floor; and
 - (e) by failing to timely detect and correct unreasonably dangerous and hazardous working conditions and practices, including the unreasonably dangerous and hazardous walking-working surface of the floor.

14. The defendant, HYM Investment, as the developer who owned and/or controlled the construction site, improperly allowed the unreasonably dangerous and hazardous walking-working surface of the floor to be used as such, thereby foreseeably endangering workers present at its construction site, including Peter F. Monsini, and thus breaching its duty of reasonable care owed to workers present at its construction site, including Peter F. Monsini.
15. As a direct and proximate result of the defendants' negligence, gross negligence, and malicious, willful, wanton and reckless conduct, Peter F. Monsini fell, suffered consciously, and died.

Count I

(Negligent Wrongful Death against John Moriarty & Associates, Inc.)

16. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.
17. Moriarty's alleged conduct constituted negligence.
18. As a direct and proximate result of Moriarty's negligence, Peter F. Monsini fell to his death.
19. Moriarty's negligence caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, John Moriarty & Associates, Inc., for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, together with interest and costs.

Count II

(Grossly Negligent Wrongful Death against John Moriarty & Associates, Inc.)

20. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.
21. Moriarty's alleged conduct was malicious, willful, wanton, reckless, or grossly negligent.
22. As a direct and proximate result of Moriarty's malicious, willful, wanton, reckless, or grossly negligent conduct, Peter F. Monsini fell to his death.
23. Moriarty's malicious, willful, wanton, reckless, or grossly negligent conduct caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, John Moriarty & Associates, Inc., for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, including punitive damages, together with interest and costs.

Count III
(Conscious Pain and Suffering against John Moriarty & Associates, Inc.)

24. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.
25. As a direct and proximate result of Moriarty's negligence, Peter F. Monsini was caused to suffer consciously until his death.
26. Moriarty's negligence caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, John Moriarty & Associates, Inc., for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, together with interest and costs.

Count IV
(Negligent Wrongful Death against The HYM Investment Group, LLC)

27. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.
28. HYM Investment's alleged conduct constituted negligence.
29. As a direct and proximate result of HYM Investment's negligence, Peter F. Monsini fell to his death.
30. HYM Investment's negligence caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, The HYM Investment Group, LLC, for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, together with interest and costs.

Count V
(Grossly Negligent Wrongful Death against The HYM Investment Group, LLC)

31. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.
32. HYM Investment's alleged conduct was malicious, willful, wanton, reckless, or grossly negligent.
33. As a direct and proximate result of HYM Investment's malicious, willful, wanton, reckless, or grossly negligent conduct, Peter F. Monsini fell to his death.

34. HYM Investment's malicious, willful, wanton, reckless, or grossly negligent conduct caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, The HYM Investment Group, LLC, for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, including punitive damages, together with interest and costs.

Count VI
(Conscious Pain and Suffering against The HYM Investment Group, LLC)

35. The plaintiff repeats and incorporates herein the allegations contained in the previous paragraphs in this Complaint.

36. As a direct and proximate result of HYM Investment's negligence, Peter F. Monsini was caused to suffer consciously until his death.

37. HYM Investment's negligence caused Peter F. Monsini's wrongful death in violation of Mass. Gen. Laws ch. 229, § 2.

WHEREFORE, the plaintiff, Gina M. Ferrini, as the Special Personal Representative of the Estate of Peter F. Monsini, demands judgment against the defendant, The HYM Investment Group, LLC, for Peter F. Monsini's wrongful death and damages under Mass. Gen. Laws ch. 229, § 2, together with interest and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES.

Respectfully submitted,
Plaintiff, Gina M. Ferrini,
as Special Personal Representative
of the Estate of Peter F. Monsini,
by her Attorney,

/s/ Paul Mitchell

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