

# Eldoh v. Astoria Generating Co., L.P. Supreme Court, Appellate Division, Second Department, New York 917 N.Y.S.2d 289 (Decided Feb. 22, 2011)

Marcus Araujo, Class of 2013

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**LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT DOES NOT  
PREEMPT A CAUSE OF ACTION FOR COMMON LAW NEGLIGENCE ON THE PART OF  
A CONTRACTING EMPLOYER**

**The New York Appellate Division, Second Department, affirmed a ruling that the  
Longshore and Harbor Workers' Compensation Act did not bar Plaintiff's suit**

Eldoh v. Astoria Generating Co., L.P.  
Supreme Court, Appellate Division, Second Department, New York  
917 N.Y.S.2d 289  
(Decided Feb. 22, 2011)

Plaintiff Elsayed Eldoh (hereinafter "Eldoh") worked as a mechanic for Defendant Amertech Industries, Inc. (hereinafter "Amertech"). Eldoh injured himself while overhauling an electricity-generating turbine on a barge located in waters off Brooklyn, New York. This barge was part of a power station owned by Defendants Astoria Generating Company, L.P.; Orion Power Holdings, Inc.; Orion Power New York GP II, Inc.; Reliant Resources, Inc., d/b/a Reliant Energy; and Reliant Energy, Inc. (hereinafter, "Reliant"). Reliant had contracted with both AAR Engine Services, Inc. and with AAR Power Services, Inc. (hereinafter "AAR"), to overhaul four electric turbines. AAR, in turn, entered into a subcontract with Amertech to provide workers to complete the project.

Eldoh filed suit against Reliant and AAR in New York State court, alleging violations of Labor Law Sections 200, 240(1) and § 241(6), as well as common-law negligence. In response, Reliant and AAR both moved for summary judgment to dismiss the complaint against them, on the ground that a federal statute preempted Eldoh's causes of action. Reliant also moved for summary judgment on their cross claim and third-party cause of action for indemnification against AAR. The Supreme Court denied Reliant and AAR's motions. In concluding that federal law did not preempt Eldoh's Labor Law causes of action, the Supreme Court relied on the holding of the Appellate Division, First Department, in *Lee v Astoria Generating Co.*<sup>1</sup> The Supreme Court also denied Reliant's motion for summary judgment on their cross claim and third-party cause of action for indemnification against AAR.

Thereafter, the Court of Appeals reversed *Lee*.<sup>2</sup> Both Reliant and AAR consequently moved to renew their cross motions for summary judgment on the ground that there had been a change in the law. Upon renewal, the Supreme Court granted Reliant's motion for summary judgment; thereby dismissing the causes of action regarding Labor Law Sections 240(1) and 241(6) since a federal statute preempted them. However, the Supreme Court denied Reliant's motion for summary judgment, dismissing the causes of action alleging common-law negligence and violation of Labor Law Section 200, concluding that these causes of action were not preempted. Upon renewal, the Supreme Court also denied AAR's motion for summary judgment dismissing the complaint. Reliant and AAR then both separately appealed this decision.

This case presents two issues. First, whether the Longshore and Harbor Workers' Compensation Act (hereinafter "LHWCA") preempt Eldoh's claims against his contractor. Second, whether summary judgment with respect to Eldoh's claims was under the Labor Law provision that established a general duty to protect an employee's health and safety. The New York Supreme Court, Appellate Division, Second Department answered both questions in the negative, and affirmed the lower court's judgment.<sup>3</sup>

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<sup>1</sup> *Lee v. Astoria Generating Co., L.P.*, 55 A.D.3d 124, 863 N.Y.S.2d 164 (2008) *rev'd*, 13 N.Y.3d 382, 920 N.E.2d 350 (2009).

<sup>2</sup> *Eldoh v. Astoria Generating Co., L.P.*, 917 N.Y.S.2d 281, 291 (App. Div 2d Dep't 2011).

<sup>3</sup> *Id.* at 292.

The Court found that LHWCA<sup>4</sup> did not preempt Eldoh's asserted causes of action. Although the barge is a "vessel"<sup>5</sup> within the meaning of the statute, the statute does not apply to AAR, since AAR is neither the owner of the vessel nor Eldoh's employer.<sup>6</sup> Accordingly, LHWCA did not preempt the causes of action alleging violation of Labor Law Sections 240(1) and 241(6). Moreover, the Court noted that the LHWCA did not preempt causes of action alleging common-law negligence and violation of Labor Law § 200. The Court concluded that as a result, federal preemption did not defeat the causes of action for common-law negligence and violation of Labor Law Section 200.<sup>7</sup>

The Court found that neither Reliant nor AAR established their respective prima facie entitlements to judgment as a matter of law, dismissing the causes of action for common-law negligence and violation of Labor Law Section 200. To be liable under this statute for an injury caused by the means and methods of work, an owner or general contractor must have the authority to control the activity bringing about the injury to enable it to avoid or correct the unsafe condition.<sup>8</sup> A Defendant's prima facie demonstration of entitlement to judgment, as a matter of law pursuant to Labor Law Section 200 also serves as a demonstration of entitlement to judgment as a matter of law dismissing a common-law negligence cause of action. The Court stated that, "the determinative factor on the issue of control is not whether a defendant furnishes equipment but whether he has control of the work being done and the authority to insist that proper safety practices be followed."<sup>9</sup> Here, an employee of Reliant testified that although he never instructed Eldoh how to go about performing his tasks, he admitted that it was his job "to assure the contractors work in a safe manner, to make sure they follow our safety rules and regulations."<sup>10</sup> AAR's general manager testified that AAR supplied some of the equipment for Amertech's employees. Additionally, AAR actually assumed responsibility for the safety of its subcontractors' employees in its contract with the Reliant.

Finally, Reliant's motion for summary judgment on their cross claim and third-party cause of action for indemnification against AAR were dismissed. The Court concluded that there were no justiciable claims due to the liability of the parties not having been completely determined at the time.<sup>11</sup>

For the foregoing reasons, the Supreme Court's decision is affirmed regarding Eldoh's claims for common-law negligence and violation of the Labor Law Sections 240(1) and 241(6). The LHWCA did not preempt Eldoh's causes of action asserted against Defendants. Additionally, neither Reliant nor AAR established their respective prima facie entitlements to judgment as a matter of law dismissing the causes of action for common-law negligence and violation of Labor Law § 200. The Supreme Court's decision regarding Reliant motion for summary judgment on their cross claim and third-party cause of action for indemnification against AAR is also affirmed.

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<sup>4</sup> 33 U.S.C.A §905(b).

<sup>5</sup> The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C.A. § 3.

<sup>6</sup> *Lee*, 55 N.Y.3d at 391.

<sup>7</sup> *Eldoh*, 917 N.Y.S.2d at 292.

<sup>8</sup> *Singleton v. Cinalta Constr. Corp.*, 737 N.Y.S.2d 630 (App. Div. 2d Dep't 2002).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 293.