

Martinez v 85 Jay St. (Brooklyn) LLC
2025 NY Slip Op 35265(U)
August 15, 2025
Supreme Court, Kings County
Docket Number: Index No. 520293/2020
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of MARCH, 2025

PRESENT:
HON. RICHARD VELASQUEZ
Justice.

-----X
ERICKSON PINEDA MARTINEZ,

Plaintiff,

-against-

Index No.: 520293/2020
Decision and Order
Mot. Seq. No. 3 & 4

85 JAY STREET (BROOKLYN) LLC ET AL,

Defendants,
-----X

The following papers NYSCEF Doc #'s 64 to 96 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	64-76; 77-89
Opposing Affidavits (Affirmations) _____	78; 92; 96
Reply Affidavits _____	95

After having come before the Court and the court having heard Oral Argument on September 11, 2024 and after review of the foregoing papers the court finds as follows:

Defendants, 85 Jay Street Brooklyn, LLC and New Line Structures & Development, LLC, move for an order pursuant to CPLR 3212 seeking summary judgment, dismissing plaintiff's New York Labor Law §§240, 241(6) and 200 and common-law negligence claims. (MS#3) Plaintiff opposes the same.

Plaintiff cross-moves for an order pursuant to CPLR 3212 as against Defendants, 85 JAY STREET (BROOKLYN), LLC. and NEW LINE STRUCTURES &

DEVELOPMENT, LLC on the issue of liability under Labor Law § 240(1). (MS#4)
Defendants oppose the same.

FACTS

This action arises from an alleged incident on September 6, 2019, at approximately 8:30 a.m., in the basement of the building located at 85 Jay Street, Brooklyn, New York. (NYSCEF DOC #67) It is alleged on the morning of his accident, Plaintiff's supervisor, Onei, sent him (along with Plaintiff's father, Douglas Pineda, and a helper) to the basement of the building to work on the cinder block walls. See, NYSCEF DOC #84, pp. 33-35. Plaintiff was directed to work atop a scaffold at the time of his accident. See, NYSCEF DOC #84, p. 56. Plaintiff did not place the scaffold in the location it was at the time of his accident. See, NYSCEF DOC #84, pp. 55-56. Plaintiff was standing on an OSHA plank atop the scaffolding which was approximately fifteen feet above the ground. See, NYSCEF DOC #84 at p. 56. It is alleged by the plaintiff that it was incredibly difficult for Plaintiff to work on the scaffold where it was placed due to the pipes and the corner of the wall obstructing his ability to move. See, NYSCEF DOC #84. It is further alleged that as Plaintiff was lifting up a cinder block, he struck his back on rods/pipes which caused him to drop the block and fall backwards. See, NYSCEF DOC #84, pp. 38-41. His left hand had been inside one of the holes in the cinder block when he tried to release the block. See, NYSCEF DOC # 84 p. 41. There were pipes coming down vertically from the ceiling and other horizontal pipes (parallel with the ceiling). See, NYSCEF DOC #84 p. 44. Plaintiff struck both the vertical and horizontal pipes when he stood up on the scaffold. See, NYSCEF DOC #84, pp. 47-48. One of the pipes Plaintiff struck was a piece of threaded rod. See, NYSCEF DOC #86. Plaintiff

alleges the protective cover of the bar had been removed or slid off. See, NYSCEF DOC #84, pp. 22, 38. Pursuant to the Plaintiff's foreman, Manuel Merchan, the rods should have been covered while the Plaintiff was working atop the scaffold. See, NYSCEF DOC # 84 p. 40.

It is undisputed that on the date of the incident Plaintiff was working for non-party, Structure Tech, at the time of the alleged incident. (NYSCEF DOC #67, p. 16, 27.) Plaintiff's job title was mason and he had two supervisors who were employed by Structure Tech. (NYSCEF DOC #67, p. 17-18, 27-28.) Both supervisors, Maneul and Onei, gave plaintiff instructions as to what to do each day. (NYSCEF DOC #67, p. 28.) Plaintiff provided his own tools to perform his work. (NYSCEF DOC #67, p. 29-30.) Structure Tech provided the materials to perform plaintiff's work. (NYSCEF DOC #67, p. 31.)

It is undisputed on September 6, 2019, Jay Street owned the premises located 85 Jay Street, Brooklyn, New York. See, NYSCEF DOC #80, ¶ 23; NYSCEF DOC #81, ¶ 3. Jay Street was managed by an entity known as CIM Group, which is a real estate development company. See, NYSCEF DOC #85, pp. 8, 12. Jay Street hired New Line to serve as the construction manager for a project that involved the construction of a new mixed-use commercial/residential building at the Premises. See, NYSCEF DOC #85, pp. 15-16, 18; NYSCEF DOC #86, pp. 13-15. Prior to Plaintiff's accident, Manuel Merchan inspected the scaffold and work area to determine if there were any dangerous conditions and found none. See, NYSCEF DOC # 84 p. 20. It is alleged Plaintiff had difficulty seeing at the time of the accident as the basement was not well lit. There was a single light bulb in opposite corner of the basement from where Plaintiff was working.

See, NYSCEF DOC #84, pp. 49-50.

ANALYSIS

“Liability under Labor Law 240(1) depends on whether the injured worker's task creates an elevation-related risk of the kind that the safety devices listed in section 240(1) protect against”. (*Salazar v. Novalex Contracting Corp.*, 18 NY3d 134, at 139, 960 NE2d 393, 936 NYS2d 624 [Ct. of App. 2011].) “ Labor Law 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person.*” (*Runner v. New York Stock Exchange*, 13 NY3d 599, at 604, 922 NE2d 865, 895 NYS2d 279 [2009] [quoting *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, at 501, 618 N.E.2d 82, 601 N.Y.S.2d 49 (1993)].) In determining the applicability of the statute, the “relevant inquiry” is “whether the harm flows directly from the application of the force of gravity to the object.” (*See Runner v. New York Stock Exchange*, 13 NY3d at 604.) “The dispositive inquiry ... does not depend upon the precise characterization of the device employed or upon whether the injury resulted from a fall, either of the worker or of an object upon the worker.” (*id* at 603.) “Rather, the single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential.” (*Id.*)

“The purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction work site elevation differentials, and, accordingly, that there will be no liability under the statute unless the injury producing accident is attributable to the latter sort of risk.” (*See*

Runner v. New York Stock Exchange, 13 NY3d at 603). To prevail on a Labor Law § 240(1) cause of action, a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries (see *Berg v. Albany Ladder Co.*, 10 N.Y.3d 902, 904, 861 NYS2d 607, 891 NE2d 723; *Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287, 771 NYS2d 484, 803 NE2d 757; *Martinez v. Ashley Apts Co., LLC*, 80 AD3d 734, 735, 915 NYS2d 620). “[W]here a plaintiff’s own actions are the sole proximate cause of the accident, there can be no liability” (*Cahill v. Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39, 790 NYS2d 74, 823 NE2d 439; see *Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d at 290, 771 NYS2d 484, 803 NE2d 757).

In the present case, there is a question of fact as to whether the scaffold was “improperly” placed to allow plaintiff to do his work, see *Vislocky v. City of New York*, 62 AD3d 785, 786, 879 NYS2d 176, 178 (2009), where the court concludes that odd things happening to workers at an elevation can be enough to warrant trial of the 240(1) claim.

With respect to plaintiff’s common-law negligence and Labor Law § 200 causes of action, when such claims arise out of alleged defects or dangers in the methods or materials of the work, “there is no liability under the common law or Labor Law § 200 unless the owner or general contractor exercised supervision or control over the work performed” (*Carranza v JCL Homes, Inc.*, 210 AD3d 858, 860 [2d Dept 2022], quoting *Cun-En Lin v Holy Family Monuments*, 18 AD3d 800, 801 [2d Dept 2005]; see *Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 435 [2015]; *Valencia v Glinski*, 219 AD3d 541, 545 [2d Dept 2023]). Where a premises condition is at issue, property owners and

general contractors may be held liable under common-law negligence and for a violation of Labor Law § 200 if they either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident (see *Abelleira v City of New York*, 120 AD3d 1163, 1164 [2d Dept 2014]; *Bauman v Town of Islip*, 120 AD3d 603, 605 [2d Dept 2014]; *Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). Similarly, liability under Labor Law § 200 and common-law negligence may be imposed upon a subcontractor where it had control over the work site and either created the allegedly dangerous condition or had actual or constructive notice of it (see *Vita v New York Law Sch.*, 163 AD3d 605, 607 [2d Dept 2018]; *Wolf v KLR Mech., Inc.*, 35 AD3d 916, 918 [3d Dept 2006]). In the present case there is an issue of fact regarding whether the space was properly illuminated and whether the alleged uncovered pipe threading was a dangerous condition. See, *Vitucci v. Durst Pyramid LLC*, 205 A.D.3d 441, 443–44, 168 N.Y.S.3d 45, 49 (2022). In addition, this court notes that the Note of Issue was filed in this case on August 1, 2023 and plaintiffs cross-motion for summary judgment was filed after the 60 day window to do so.

Accordingly, Defendants, 85 Jay Street Brooklyn, LLC and New Line Structures & Development, LLC motion for summary judgment MS#3 is denied for the reasons stated above. Plaintiff's motion for summary judgment is hereby denied (MS#4), for the reasons stated above.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
August 15, 2025

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

MAR 05 2026

Hon. Richard Velasquez, JSC

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 KINGS COUNTY CLERK
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