Poblocki v Port Auth. of N.Y. & N.J.
2026 NY Slip Op 30961(U)
March 11, 2026
Supreme Court, New York County
Docket Number: Index No. 159797/2019
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

----------X

YVONNE POBLOCKI,

Plaintiff,

- v -

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, MCR DEVELOPMENT LLC, TURNER CONSTRUCTION COMPANY,

Defendants.

----------X

INDEX NO. 159797/2019

MOTION DATE 03/05/2026

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff's motion for summary judgment on her Labor Law § 241(6) claim predicated on Industrial Code sections 23-1.7(e)(1) and 23-1.7(e)(2) is granted.

Background

In this Labor Law case, plaintiff contends that while working as an electrician for non-party Dooley Electric ("Dooley") at JFK airport, she was injured after tripping on a raised bucket and drain sticking out of the floor. At her deposition, plaintiff testified that on the day of the accident, she was tasked with working on the housing for certain lights at the TWA building (NYSCEF Doc. No. 167 at 45-46). Plaintiff explained that she had finished work for the day and was leaving when she tripped over a drain in the middle of a hallway (NYSCEF Doc. No. 167-68 at 100-101).

She insisted that "I was walking down the hallway. I tripped and fell. I hit my head. I don't know if I hit it on the wall or if I hit it on the floor. I fell flat out. I pulled over a fire extinguisher to help myself up. I couldn't breathe. I was in pain" (NYSCEF Doc. No. 168 at 116-17).

Plaintiff moves for summary judgment with respect to two Industrial Code sections concerning passageways and working areas. She contends that there was a clear violation of these sections and that she is therefore entitled to summary judgment as to liability.

In opposition, defendants point out that plaintiff had walked through the particular area where she tripped on many prior occasions and had never tripped over the drain in question. They also contend that plaintiff had never raised a complaint about this drain prior to her accident. Defendants argue that there are questions of fact concerning whether or not the specific Industrial Code sections are applicable to the facts of this case. They contend plaintiff was walking in an open room.

In reply, plaintiff claims she established as a matter of law that she is entitled to summary judgment on both Industrial Code Sections.

Labor Law § 241(6)

"The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6). . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" *(Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

"Section 241(6) subjects owners and contractors to liability for failing to adhere to required safety standards whether or not they themselves are negligent. Supervision of the work, control of the worksite, or actual or constructive notice of a violation of the Industrial Code are not necessary to impose vicarious liability against owners and general contractors, so long as some actor in the construction chain was negligent" (*Leonard v City of New York*, 216 AD3d 51, 55-56, 188 NYS3d 471 [1st Dept 2023]).

The first Industrial Code section in question is 23—1.7(e)(1) and provides that: "(e) Tripping and other hazards. (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered."

The Court's review of plaintiff's testimony that she tripped while walking in a hallway and the photographs included in this motion compel the Court to grant this branch of the motion. The photographs (NYSCEF Doc. No. 174 at 3-5) depict a passageway as defined under relevant caselaw. "A 'passageway' is commonly defined and understood to be a typically long narrow way connecting parts of a building and synonyms include the words corridor or hallway (see Merriam–Webster's online Thesaurus). In other words, it pertains to an interior or internal way of passage inside a building" (*Quigley v Port Auth. of New York*, 168 AD3d 65, 67, 90 NYS3d 156 [1st Dept 2018]). The description offered by plaintiff plus the above-cited photographs requires the conclusion that plaintiff tripped in a passageway.

Defendants failed to raise an issue of fact on this issue. Instead, they speculate that "There is simply no way of knowing the dimensions of the area in which the drain sat"

(NYSCEF Doc. No. 180 at 8). But they did not point to any deposition testimony or other evidence to suggest that this was anything other than a hallway as plaintiff indicated.

Plaintiff also relies upon 23-1.7(e)(2). "(2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed."

The Court also grants the motion based on this section. The definition of sharp projection with respect to this Industrial Code section has been defined to "include any projection that is "sharp" in the sense that it is clearly defined or distinct" (*Lenard v 1251 Americas Assoc.*, 241 AD2d 391, 393 [1st Dept 1997] [concluding that a door stop that caused plaintiff to trip qualified under section 23-1.7[e][2]). There is no requirement that the object be capable of puncturing or cutting a person (*id.*).

Defendants' argument that the that the drain was a part of the project (an apparent suggestion that the drain was an integral part of the work) does not raise a material issue of fact. They did not adequately explain why, as plaintiff pointed out, simple fixes could not have been utilized to prevent the accident. The drain could have been cut down to make it level with the floor, there could have been a cone put up, or contrasting paint applied to draw attention to it. There is no basis to find that the drain had to be left while in a raised position in order to complete the work.

The Court also dismisses the first, fifth and sixth affirmative defenses alleging culpable conduct and comparative fault as there is no evidence that plaintiff was negligent (*Gervasi v FSP 787 Seventh LLC*, 228 AD3d 459, 460, 213 NYS3d 299 [1st Dept 2024] [dismissing affirmative defenses in a Labor Law case where plaintiff tripped over a steel pin or nail]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on her two Industrial Code sections 23-1.7(e)(1) and (2) as to liability and dismissing the first, fifth and sixth affirmative defenses is granted.

3/11/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE