

Torres v Monadnock Constr., Inc.
2026 NY Slip Op 30997(U)
February 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 506968/2023
Judge: Devin P. Cohen
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**Supreme Court of the State of New York
County of Kings**

Index Number 506968/2023
Seq. 003, 004

Part LL1M

JAIRON ALVARENGA TORRES,

Plaintiff,

against

MONADNOCK CONSTRUCTION, INC.,
GREENPOINT LANDING LOT 6 LLC,
GREENPOINT LANDING ASSOCIATES LLC, PARK
TOWER MANAGEMENT LTD, AND
ROCKEFELLER GROUP DEVELOPMENT,

Defendants.

DECISION/ORDER

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion, by reference to the New York State Courts Electronic Filing System docket numbers: 73-93, 98-122.

Upon review of the foregoing papers, defendants' motion for summary judgment (Seq. 003) and plaintiff's cross-motion for summary judgment (Seq. 004) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on February 9, 2023, while working on a construction site located at 16 Dupont Place, Brooklyn, NY (the premises). The premises was owned by Greenpoint Landing Lot 6 LLC (Greenpoint 6). Monadnock Construction Inc. (Monadnock) was the general contractor. Non-party New Leaf was sub-contracted by Monadnock to provide, *inter alia*, carpentry and metalwork at the site. Plaintiff was employed by New Leaf as a welder.

The following is undisputed: At the time of the accident, the site was an excavation pit and the ground was loose soil. Plaintiff was instructed to cut caissons (steel support members drilled into the bedrock) with a blow torch while standing on a platform ladder. The ladder shifted while plaintiff was standing on it, and he fell to the ground. A video, taken from a bird's-eye perspective, depicts the conditions where plaintiff was working and plaintiff's fall from the ladder.

New Leaf general foreman Erjon Pacaj conducted site-safety meetings, which included instructing workers to place support under the ladders prior to performing the work. Mr. Pacaj testified that he gave this instruction (Pacaj EBT at 58–60). Although the meeting logs from the days prior to plaintiff's accident do not mention placing plywood under the ladder, the meeting log from the date of the accident says “plywood under ladders in soil” in a smaller font than the rest of the document, placed in a corner of the box titled “protective measures.”

Plaintiff testified that he attended the safety talk and understood it (Torres first EBT at 97–98), and the plaintiff signed the meeting log. Plaintiff also testified that he had been trained to place plywood under a ladder on loose soil “when the plywood fits in the space,” but that there was not enough space to place plywood here (Torres second EBT at 27–28). Plaintiff testified that it was “like committing suicide” to put plywood under the ladder because the ladder could slip more easily (*id.* at 31). Plaintiff testified that another worker could not be too close to him without getting burned (Torres first EBT at 71).

Mr. Pacaj testified that, if the plaintiff could not find a piece of plywood that would fit under the ladder, then he should have asked one of the New Leaf carpenters to cut a board to size for him (Pacaj EBT at 64). Monadnock representative Mr. Rizzo testified that there was “an abundance of lumber throughout the site, so it was readily available” for plaintiff to use (Rizzo

EBT at 40–41). Plaintiff testified that “the plywood is used by carpenters and if I need them to work with me I would ask them to be there for me to work with me” (Torres second EBT at 32–33), but did not testify that he had the authority to give the carpenters instructions or permission to take wood from their stacks.

Defendants also submit affidavits from plaintiff’s co-workers, Leonel Valerio and Miguel Loja, but these are written in Spanish and do not have any translation attached, let alone a certified translation. Additionally, Muhamed Jabbi, another co-worker who provided an affidavit, does not claim to have witnessed the incident and does not materially contradict or add to the testimony in the record.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant’s showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is “absolute” where the failure of a safety device enumerated by the statute (*e.g.* a ladder) is a proximate cause of the plaintiff’s accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). In order to bar a plaintiff from recovery on the basis that he was “recalcitrant,” defendants must demonstrate that plaintiff “(1) had adequate safety devices available, (2) knew both that the safety devices were available and that they were expected to use

them, (3) chose for no good reason not to do so, and (4) would not have been injured had they not made that choice”; mere comparative fault is not a defense to Labor Law § 240 (1) (*Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1167–1168 [2020]).

Here, questions of fact preclude granting both plaintiff’s and defendants’ motions for summary judgment. There is a question of fact as to whether the plywood defendants allege plaintiff should have used was actually available to him. Defendants’ arguments that plaintiff could have constructed a safety device out of the raw materials available to him runs contrary to the purpose of the Labor Law (*see e.g. Ortiz v 164 Atl. Ave., LLC*, 77 AD3d 807, 809 [2d Dept 2010] [no recalcitrance where “device alone is not sufficient to provide safety without the use of additional precautionary devices or measures”]). Plaintiff’s specific testimony that he had a reason for not placing the plywood under the ladder raises a further issues of fact about whether he was actually recalcitrant (*see Iannaccone v United Natural Foods, Inc.*, 219 AD3d 819 [2d Dept 2023]).

Additionally, the record does not contain dispositive evidence that plaintiff had the authority to ask the carpenters to cut wood for him, that the carpenters were instructed to do so, or that the wood piles around plaintiff were available for his use and not intended for another purpose. That said, Mr. Rizzo did testify that adequate wood was readily available to plaintiff which did not need to be cut, including lagging. The safety log, which plaintiff acknowledges signing, indicates that plaintiff was given a specific instruction about placing wood under ladders on the date of the incident. Since neither party has demonstrated their entitlement to summary judgment as a matter of law, both parties’ motions for summary judgment on this claim are denied (*see e.g. Sisalima v Thorne Construction, Inc.*, 237 AD3d 1126 [2d Dept 2025]).

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscatti v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only advances substantive argument with respect to Rule 1.21 (b) (4) (ii) and 1.21 (e) (3). Therefore, the remaining alleged Industrial Code violations are deemed abandoned (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

Rule § 23- 1.21 (b) (4) (ii) requires that all ladder footings be firm and Rule § 23-1.21 (e) (3) requires that standing stepladders be used only on firm, level footings. The same issues of fact identified above preclude summary judgment for either party on this issue. Plaintiff contends that it would have been impossible to use the plywood referenced by the defendants and to complete his work (*see Salazar v Novalex Contracting Corp.*, 18 NY3d 134 [2011]). Defendants contend that plaintiff was instructed to use plywood that was readily available to him and refused to do so. In light of the conflicting testimony, triable issues of fact exist as to whether plaintiff was recalcitrant (*see Cahill v Triborough Bridge and Tunnel Authority*, 4 NY3d 35 [2004]). Therefore, both parties' motions are also denied with respect to this claim.

Labor Law § 200

Plaintiff waived opposition to defendants' motion with respect to his Labor Law § 200 claim (plaintiff's aff in supp at 2 n. 1). Therefore, defendants' motion is granted as to this claim without opposition.

Conclusion

Defendants' motion for summary judgment (Seq. 003) is granted to the extent of dismissing the unopposed Industrial Code provisions alleged and plaintiff's Labor Law § 200 claim only; the motion is otherwise denied.

Plaintiff's cross-motion for summary judgment (Seq. 004) is denied.

This constitutes the decision and order of the court.

February 27, 2026

DATE



DEVIN P. COHEN

Justice of the Supreme Court