Villavicencio v West 97th St. Realty Corp.
2026 NY Slip Op 31113(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 155147/2020
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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ANDREA VILLAVICENCIO,

Plaintiff,

- v -

WEST 97TH STREET REALTY CORP., STELLAR MANAGEMENT, MEL MANAGEMENT CORP. D/B/A STELLAR MANAGEMENT,

Defendants.

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INDEX NO. 155147/2020

MOTION DATE 11/14/2025

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 149, 150, 151, 152, 154, 156, 158

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

This is an action to recover damages for personal injuries allegedly sustained by plaintiff construction worker on February 26, 2020, when, while walking on top of a temporary scaffold bridge at a construction site located at 50 West 97th Street, New York, New York (the Premises), a plank gave way underneath her, causing her to fall down onto the plank.

In motion sequence number 005, defendants/third-party plaintiffs West 97th Street Realty Corp (Realty) and Mel Management Corp. d/b/a Stellar Management NT (i/s/h/a Stellar Management) (Stellar) (together, defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241(6) claims against them.

I. BACKGROUND

On the day of the accident, Realty was the owner of the Premises, and Stellar was the property manager. Stellar, on behalf of Realty, hired third-party defendant/second third-party plaintiff RCD Restorations, Inc. (RCD) to perform Local Law § 11 façade work on the Premises.

RCD installed scaffolding, including a sidewalk bridge around the Premises. Plaintiff alleges she was employed by RCD.

Plaintiff's Deposition Testimony (NYSCEF Doc. No. 140 & 141)

On the day of the accident, plaintiff was employed by RCD at the Premises (plaintiff's tr at 16), and was supervised only by an RCD employee (*id.* at 17). She was a "mechanical helper," responsible for brick demolition and installation (*id.* at 17-18). Every morning, her foreman would provide plaintiff with her work orders for the day (*id.* at 27).

The day of the accident, plaintiff was using a jackhammer to break façade bricks when the jackhammer broke (*id.* at 25). While on the way to obtain a replacement, plaintiff walked on the sidewalk bridge, took three steps and then "felt a board give way" (*id.* at 25), causing her right "leg to go through" (*id.* at 26). She then fell backwards onto the sidewalk shed's planks (*id.* at 26).

Prior to her accident, plaintiff had walked on the sidewalk bridge many times over the course of her employment (*id.* at 116-117). While she noted that the planks were "not new" (*id.* at 120), plaintiff never had any issues with them (*id.* at 135), nor was she aware of any complaints about them (*id.* at 135).

On the day of the accident, plaintiff walked across the sidewalk bridge "a couple of times" (*id.* at 157), but did not notice anything wrong with the planks until after the accident (*id.* at 157).

Deposition Testimony of Arianit Jakupaj (Stellar's Property Manager) (NYSCEF Doc. No. 151)

Jakupaj was Stellar's property manager for the Premises (Jakupaj tr at 13), and he visited the Premises one or two times a week to "inspect the building in general" or to have meetings "with tenants and/or staff" (*id.* at 18).

Deposition Testimony of Joseph Caggiano (RCD's Owner) (NYSCEF Doc. No. 152)

Caggiano was the owner and president of RCD (Caggiano tr at 6), a construction company specializing in restoration work, including exterior façade and waterproofing work (*id.* at 10). Stellar hired RCD for Local Law 11 façade work, including installation of the sidewalk bridge (*id.* at 24). RCD itself did not employ any construction workers (*id.* at 14), rather, it would subcontract that work to other companies.

To that end, RCD hired non-party "Arsenal" to erect the sidewalk bridge and scaffolding at issue (*id.* at 27). Arsenal installed the sidewalk bridge, and RCD accepted their work (*id.* at 57). RCD also hired second third-party defendant Regalado Contracting Inc. (Regalado) to perform the actual façade work (*id.* at 33).

II. DISCUSSION

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Smalls v AJI Industries, Inc.* 10 NY3d 733, 735 [2008] [internal citation and quotation marks omitted]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must "'assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions'" (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods*., 194 AD2d 482, 483 [1st Dept 1993]). Finally, "[s]ummary judgment should not be granted where there is any doubt as to the existence of a factual issue or

where the existence of a factual issue is arguable" (*Matter of New York City Asbestos Litig.,* 33 NY3d 20, 25 [2019]).

Plaintiff's Common-Law Negligence and Labor Law § 200 Claims

There are two distinct standards applicable to section 200 cases, depending on the situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the premises. Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it actually supervised or controlled the means and methods of the plaintiff's work (*Andino v Wizards Studios N. Inc.*, 223 AD3d 508, 509 [1st Dept 2024]).

Where an injury stems from a dangerous condition on the premises, an owner may be liable in common-law negligence and under Labor Law § 200 "'when the owner created the dangerous condition causing an injury or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice'" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

In a prior order dated August 28, 2025 (NYSCEF Doc. No. 127) (the Prior Order), which resolved motion sequence number 003 of this action, it was held:

> Here, the loose plank that caused the accident was 'not a defect inherent in the property' but, rather, was part of the scaffolding which was erected as a result of the means and methods of work . . . . Plaintiff testified at her deposition that RCD's foreman gave her instructions regarding the means and methods of her work, and that she never encountered anyone who represented themselves to be the owner of the building.

> "Accordingly, [defendants] have met their burden of showing that [they] cannot be held liable for plaintiff's Labor Law 200 and common-law negligence claims.

While defendants initially argue the merits of this issue, they also reference the Prior Order and ask the court to apply its ruling to the instant motion. "The doctrine of law of the case contemplates that the parties had a full and fair opportunity to litigate when the initial determination was made. When applied, the doctrine precludes parties or their privies from relitigating an issue that has already been decided" (*Chanice v Fed. Exp. Corp.*, 118 AD3d 634, 635 [1st Dept 2014]).

Here, the prior motion was brought by defendants against RCD addressing defendants' liability for the accident under the common-law and Labor Law § 200, in relation to the third-party contractual indemnification claim. Plaintiff was provided with notice of the motion and was electronically served with all the motion papers, but did not oppose it. Nor did she seek to renew or reargue the Prior Order and has not appealed it. Therefore, the Prior Order is law of the case and applies herein.

In order to overcome a prior order's holding, a party must "show[] subsequent evidence or [a] change of law" that would materially affect the prior order's holding (*Carmona v Mathisson*, 92 AD3d 492, 493 [1st Dept 2012]], quoting *Kenney v City of New York,* 74 AD3d 630, 630-631 [1st Dept 2010]).

In the instant motion, plaintiff's opposition raises no new evidence or change in law, and thus defendants are entitled to summary judgment dismissing the common-law negligence and Labor Law § 200 claims against them.

Plaintiff's Labor Law § 241(6) claims

> Labor Law § 241(6) provides, in pertinent part, as follows:
>
> All contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "'to provide reasonable and adequate protection and safety' to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *see also Ross v Curtis-Palmer Hydro-Electric Co.,* 81 NY2d at 501–502).

To sustain a Labor Law § 241(6) claim, it must be established that the defendant violated a specific "concrete specification" of the Industrial Code, rather than a provision that considers only general worker safety requirements (*Messina v City of New York,* 300 AD2d 121, 122 [1st Dept 2002]). Such violation must be a proximate cause of the plaintiff's injuries (*Yaucan v Hawthorne Vil., LLC*, 155 AD3d 924, 926 [2d Dept 2017] ["a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the circumstances of the accident"]; *see also Sutherland v Tutor Perini Bldg. Corp.*, 207 AD3d 159, 161 [1st Dept 2022]). "Whether a regulation applies to a particular condition or circumstance is a question of law for the court" (*Harrison v State of New York,* 88 AD3d 951, 953 [2d Dept 2011]).

As an initial matter, plaintiff lists multiple violations of the Industrial code in his complaint and bill of particulars. However, except for section 23-1.7(e)(1), plaintiff does not oppose their dismissal, and therefore, the uncontested provisions are deemed abandoned (*Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section"]).

Industrial Code 12 NYCRR 23-1.7(e)(1)

Industrial Code 12 NYCRR 23-1.7(e)(1) governs tripping hazards and provides, in pertinent part:

> (1) 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.

Although defendants do not dispute that the accident location constituted a passageway, they argue that section 23-1.7 (e) (1) does not apply to plaintiff's accident as her fall was caused when her foot broke through the planking, and was not caused by dirt, debris, obstructions or sharp projections as contemplated by the provision.

In opposition, plaintiff argues that the weakened/broken wooden plank constitutes a "condition that could cause tripping," citing to *O'Brien v Tectonic Builders, Inc.*, 244 AD3d 421 (1st Dept 2025). In *O'Brien*, the plaintiff tripped over a "two to three inch raised nose of the damaged ramp" (*id.* at 422). The First Department held that this raised nose of a ramp constituted an "obstruction[] or condition[] which could cause tripping" as well as a "sharp projection" within the meaning of section 1.7(e)(1) (*id.* at 422).

There was no such tripping hazard here. In their brief in support of the motion, defendants correctly observe that there is no evidence that the plank was "misleveled or otherwise out of plumb" such that it would constitute a tripping hazard akin to the ramp nose in *O'Brien* (*see e.g.* plaintiff's tr at 157 [indicating that she had traversed the planks several times and that the planking did not appear damaged prior to the accident]).

Given the foregoing, defendants have established that 12 NYCRR 23-1.7(e)(1) does not apply to plaintiff's accident. Accordingly, defendants are entitled to summary judgment dismissing plaintiff's section 241(6) claim against them.

The parties' remaining arguments were considered and found unavailing.

III. CONCLUSION AND ORDER

Accordingly, it is hereby

ORDERED that the motion of defendants/third-party plaintiffs West 97th Street Realty Corp and Mel Management Corp. d/b/a Stellar Management NT (i/s/h/a Stellar Management) for summary judgment dismissing plaintiff's common-law negligence and Labor Law §§ 200 and 241(6) claims against them is granted, and those claims are severed and dismissed as against said defendants, and the clerk is directed to enter judgment accordingly.

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3/23/2026
DATE

DAVID B. COHEN, 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