

**Metus v Ladies Mile, Inc.**

2007 NY Slip Op 33240(U)

September 24, 2007

Supreme Court, New York County

Docket Number: 0112861/2005

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. ROLANDO T. ACOSTA

Index Number : 112861/2005

PART 61

METUS, FISNIK

vs

LADIES MILE INC.,

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

see attached

Cross-Motion:  Yes  No

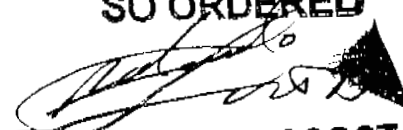
Upon the foregoing papers, it is ordered that this motion be granted.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To effect entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 5018).

**MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION**

SO ORDERED

Dated: 7/2/07

  
ROLANDO T. ACOSTA, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

Fisnik Metus,

Plaintiff,

– against –

Ladies Mile, Inc., VJB Construction Corp., &  
Regional Scaffolding & Hoisting Co., Inc.,

Defendants,

DECISION/JUDGMENT

Index No. 112861/05

Seq. Nos. 2 & 3

Present:

**Rolando T. Acosta**  
Supreme Court Justice

Ladies Mile, Inc., VJB Construction Corp., &  
Regional Scaffolding & Hoisting Co., Inc.,

Third-Party Defendants,

– against –

Prestige Construction Services, Inc.,

Third-Party Defendants.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 4002).

Motions Sequence Numbers 2 and 3 were consolidated for disposition. The following documents were considered in reviewing plaintiff's motion for partial summary judgment on liability on his labor Law § 240(1) claim, defendants' and third-party defendant's cross-motions to dismiss the complaint, and defendants' motion for common law and contractual indemnification from third-party defendant:

Papers	Numbered
Notice of Motion & Affirmation (Seq. No. 2)	1 (Exhibits 1-20)
Notice of Cross-Motion & Affirmation (defendants)	2 (Exhibits A-H)

(motion seq. 2). Plaintiff's motion is granted. As the Court of Appeals held in Ross v Curtis-Palmer Hydro-Electric Co., 81 N.Y.2d 494, 501 (1993), Labor Law 240(1) is designed to protect workers from "gravity-related accidents [such] as . . . being struck by a falling object that was . . . inadequately secured." See also Outar v The City of New York, 5 N.Y.3d 731 (2005); Narducci v. Manhasset Bay Associates, 96 N.Y.2d 259 (2001). Here, the junior beam was inadequately secured since it fell during the construction of the scaffold. See Aragon v. 233 West 21<sup>st</sup> Street, Inc., 201 A.D.2d 501 (1<sup>st</sup> Dept. 1994)(collapse of a scaffold is prima facie evidence of a violation of labor law 240(1)). Accordingly, plaintiff established his prima facie entitlement to summary judgment and the burden shifted to defendants to raise triable issues of fact, which they have failed to do.

Defendants' assertions to the contrary, there is no indication in the record that plaintiff was solely responsible for the accident. And although defendants' expert asserts that there are no code or regulations which require that a junior beam be secured, the fact remains, that plaintiff was not properly protected from the risk of having an unsecured beam falling on his face.

Defendants' and third-party defendant (Prestige)'s motion to dismiss the complaint is granted to the extent of dismissing plaintiff's Labor Law 241(6) cause of action inasmuch as plaintiff has failed to identify an applicable industrial code violation. Ross v Curtis-Palmer Hydro-Electric Co., *supra*, 81 N.Y.2d at 505. Indeed, plaintiff does not even address this portion of the motion in its opposition.

VJB and Regional have failed, however, to establish their prima facie entitlement to summary judgment dismissing the Labor Law 200 claim. Labor Law 200 liability attaches where the owner and/or general contractor exercises supervisory control over the work, equipment or safety procedures or had actual or constructive notice of the unsafe condition. Higgins v. 1790 Broadway Associates, 261 A.D.2d 223 (1<sup>st</sup> Dept. 1999). Here, although defendants were not supervising Prestige's work during the time of the accident, VJB and Regional provided Prestige with the specifications for the scaffold and Regional provided the necessary materials to build the scaffold pursuant to their plan. Accordingly, there are triable issues of fact as to whether VJB and Regional were negligent in their design. The motion is nonetheless granted with respect to Ladies Mile inasmuch as it clearly exercised no supervisory control over Prestige's work.

Defendants' motion for common law and contractual indemnification (motion seq. 3) is granted with respect to Ladies Mile only inasmuch as there are triable issues of fact as to whether VJB and Regional were negligent. If VJB and Regional are found to be negligence free after trial, the Court will entertain an appropriate motion at that juncture. Accordingly, based on the foregoing it is hereby

ADJUDGED that plaintiff's motion for an order granting partial summary judgment on liability on his Labor Law § 240(1) claim against defendants is granted; and it is further

ORDERED that defendants' and third-party defendant's motion for an order dismissing the complaint is granted solely to the extent that plaintiff's Labor law § 241(6) claim is dismissed against all defendants and plaintiff's Labor Law § 200 claim is dismissed against defendant Ladies Mile, Inc; and it is further

ADJUDGED that defendants' motion for common law and contractual indemnification from Prestige is granted with respect to defendant Ladies Mile, Inc., only; and it is further

ORDERED that the matter proceed to trial on the remaining issues.

This constitutes the Decision, Judgment and Order of the Court.

Dated: September 24, 2007

ENTER

**SO ORDERED**



Rolando T. Acosta, J.S.C.  
**ROLANDO T. ACOSTA**  
J.S.C.

**UNFILED JUDGMENT**  
*This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141E).*

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