

**Marroquin v American Express Co.**

2013 NY Slip Op 33533(U)

November 12, 2013

Supreme Court, New York County

Docket Number: 111956/2009

Judge: Eileen A. Rakower

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. EILEEN A. RAKOWER  
*Justice*

PART \_\_\_\_\_

Index Number : 111956/2009  
MARROQUIN, REGINALDO  
VS.  
AMERICAN EXPRESS  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

No(s). 1, 2, 3

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

No(s). 4, 5, 6

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

No(s). 7, 8, 9

Upon the foregoing papers, it is ordered that this motion is

## FILED

NOV 25 2013

NEW YORK  
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

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

Dated: 11/21/13

 \_\_\_\_\_, J.S.C.

HON. EILEEN A. RAKOWER

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

PRESENT: Hon. EILEEN A. RAKOWER  
*Justice*

PART 15

REGINALDO MARROQUIN,  
  
Plaintiffs,

INDEX NO. 111956/2009

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

- v -

MOTION SEQ. NO. 1

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

AMERICAN EXPRESS CO., HENEGAN  
CONSTRUCTION CO., BROOKFIELD PROPERTIES,  
BROOKFIELD PROPERTIES HOLDINGS, INC.,  
BROOKFIELD PROPERTIES MANAGEMENT LLC,  
BROOKFIELD PROPERTIES ONE WFG G.P. CORP.,  
BROOKFIELD FINANCIAL PROPERTIES LP,  
BROOKFIELD REAL ESTATE FINANCIAL PARTNERS  
LLC, BROOKFIELD FINANCIAL LLC, RBC CAPITAL  
MARKETS CORP. AND HI TECH DATA FLOOR INC.,  
AND BFP TOWER C. CO. LLC.

**FILED**

NOV 25 2013

Defendants.

NEW YORK  
COUNTY CLERK'S OFFICE

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answer — Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1, 2	_____
3, 4, 5	_____
6, 7	_____

Reginaldo Marroquin (“Plaintiff”) brings this action to recover for injuries allegedly sustained on September 4, 2007, while working for non-party Forest Electric Corp. (“Forest”). Plaintiff brings causes of action pursuant to Labor Laws §200, §240, and §241. Defendants American Express Company (“American Express”), Henegan Construction Co. (“Henegan”), RBC Capital Markets Corp. (“RBC”), and BFP Tower C. Co., LLC (“BFP Tower”) now move for summary judgment pursuant to CPLR §3212. Defendant Hi Tech Data Floors, Inc. (“Hi Tech”) also cross-moves for summary judgment on all claims and cross-claims. Defendants American Express, Henegan, RBC and BFP Tower partially oppose Hi

Tech's cross-motion to the extent that Hi Tech seeks to dismiss cross-claims brought by them.

This case was previously discontinued as against defendants Brookfield Properties, Brookfield Properties Holding, Inc., Brookfield Properties Management LLC, Brookfield Properties One WFC G.P. Corp., Brookfield Financial Properties LP, Brookfield Real Estate Financial Partners, LLC and Brookfield Financial LLC per stipulation dated April 7, 2011. Plaintiff now agrees to discontinue this case as against defendant, Hi Tech.

Plaintiff also withdraws all claims pursuant to Labor Law §240(1) against the moving and cross-moving defendants, and agrees to withdraw the common law negligence and Labor Law §200 claims as to defendants, American Express Company and BFP Tower. Plaintiff also withdraws Labor Law §241(6) claims premised upon Industrial Code 23-1.5, 23-1.7(b), 23-1.15, 23-1.16, 23-1.17, 23-1.30, 23-2.1(b), 23-2.2 and 23-2.4.

The claims that therefore remain arise under Labor Law §200 against Henegan and RBC, and Labor Law §241(6) premised under Industrial Code §§23-1.7(d) and (e)(2).

After oral argument on November 12, 2013 and for the reasons stated on the record, the motion to dismiss the Labor Law §241(6) claim premised under Industrial Code §§23-1.7(d) is granted. Plaintiff narrowed his description of the cause of his accident as his boot rolling on a "scrap," which he identified as a small piece of sheet rock. Thus the motion to dismiss the Labor Law §241(6) claim premised under Industrial Code §§23-1.7(e)(2) is denied.

The Labor Law §200 against Henegan and RBC is premised upon Mr. Yee's candid testimony that he, site supervisor for Henegan Construction, who was hired by RBC as construction manager for the project, was responsible for cleaning the debris left by the trades, and that he walked the site daily and directed laborers to clean such debris when he saw it. However, there is no indication that defendants knew or should have known that debris existed under the specific area of raised floor that Plaintiff uncovered and stepped into. Plaintiff states that there was no debris on the raised floor where he was working, and that he unscrewed the single two foot by two foot tile to uncover the cement floor below. There, he did not see

actual debris under the tile, but when he stepped in, his foot rolled on a scrap. Plaintiff did not know for how long such scrap was there, nor could he say that anyone had actual or constructive notice of its presence. Mr. Yee concedes he has seen debris under the raised floor tiles on the project, and has directed it be cleaned when he does. However, there is no evidence that this was a recurring problem in the area where plaintiff was working, as Plaintiff contends.

Hi Tech cross moves to dismiss all claims and cross claims as against it. Plaintiff withdraws his claims as against Hi Tech. What remains are cross claims for indemnification; however there is no claim that this accident is at all related to work performed by Hi Tech at this project. Hi Tech installed the raised floor, and the raised floor installation is not at issue in this action. Nor does plaintiff indicate he fell on anything related to Hi Tech's work as Hi Tech's work did not involve sheet rock.

Wherefore, it is hereby,

ORDERED that all claims are discontinued as to Hi Tech, and all cross-claims as against Hi Tech are dismissed; and it is further,

ORDERED that all Labor Law §240(1) claims against American Express, Henegan, RBC and BFP Tower are discontinued; and it is further,

ORDERED that Labor Law §200 claims against American Express and BFP are discontinued; and it is further,

ORDERED that all Labor Law §241(6) claims premised upon Industrial Code 23-1.5, 23-1.7(b), 23-1.15, 23-1.16, 23-1.17, 23-1.30, 23-2.1(b), 23-2.2 and 23-2.4 are discontinued; and it is further,

ORDERED that all Labor Law §200 claims against Henegan and RBC are dismissed; and it is further,

ORDERED that Labor Law §241(6) claims premised upon Industrial Code §23-1.7 (e)(2) remains.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: November 12, 2013

  
HON. EILEEN A. RAKOWER  
J.S.C.

Check one:      FINAL DISPOSITION    X NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST     REFERENCE

**FILED**  
NOV 25 2013  
NEW YORK  
COUNTY CLERK'S OFFICE