

Davis v Structure Tone, Inc.
2020 NY Slip Op 32868(U)
September 1, 2020
Supreme Court, New York County
Docket Number: 155796/2015
Judge: James E. d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

Justice

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BEVAN DAVIS,

Plaintiff,

- v -

STRUCTURE TONE, INC., NEW YORK & COMPANY, INC.,
VORNADO OFFICE MANAGEMENT LLC, VORNADO
REALITY LP, VORNADO REALITY TRUST, 330 WEST
34TH SPE CORP., 330 WEST 34TH SPE LLC, 330 WEST
34TH MANAGER SPE LLC, VORNADO 330 WEST 34TH
LLC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 63, 81, 82, 83, 85

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion is granted in part as follows:

This is an action under Labor Law Sections 241(6), 200, and common law negligence.¹ On November 3, 2014, while working as a construction electrician for Polo Electric (“Polo”) at a construction project located at 330 West 34th Street (the “building”), plaintiff Bevan Davis was walking through a hallway from the elevator when his left foot allegedly slipped on a “wet greasy substance” and “kicked an electrical junction box sticking up from the floor.” *See*, Lynch aff p. 1-2 [NYSCEF Doc. No. 81]. After plaintiff’s foot struck the floor box, Mr. Davis tripped and fell onto both knees and hands. Plaintiff claims that in addition to these slipping and tripping hazards in the hallway, the hallway itself was very dark because defendants allegedly failed to turn on the temporary construction lighting in this passageway and work area.

¹ Defendants' motion appears to seek summary judgment on a Labor Law 240(1) claim, but plaintiff, in his opposition papers, expressly “withdraws any 240(1) claim, to the extent it was made.” Lynch aff at p. 1, n. 1.

Defendants Vornado Office Management LLC, Vornado Reality LP, Vornado Realty Trust, 330 West 34th SPE Corp., 330 West 34th SPE LLC, 330 West 34th Manager SPE LLC, Vornado 330 West 34th LLC (collectively “owner-defendants”) were the owners of the project, and Structure-Tone, Inc. (“Structure-Tone”) was owner-defendants’ general contractor. Structure-Tone hired subcontractors, including plaintiff’s employer, Polo. The project involved interior construction of the building for a new tenant, defendant New York & Company, Inc. Plaintiff claims that as a result of his fall, plaintiff suffered injury to his left knee, which required surgery and left him permanently disabled from working as a construction electrician.

Contrary to defendants’ assertions, there are triable issues of fact that preclude summary judgment in defendants’ favor on plaintiff’s Section 200 and common law negligence claims. Even if defendants did not have notice of an alleged slippery or wet substance, thereby precluding liability under Section 200 or common law negligence for that alleged hazard, the same cannot be said of the protruding junction box and the allegedly deficient lighting, of which defendants would have been aware of and/or created. In this regard, the Court rejects defendants’ assertion that plaintiff’s deposition testimony makes “very clear that the alleged cause of the plaintiff’s accident was the substance he claims existed on the floor not the junction boxes.” Plaintiff testifies that a wet or slippery substance caused his foot to slip into the box installed on the floor over which he tripped and fell. While defendant might assert that his testimony is inconsistent, that is an issue for a jury to decide. Additionally, the project manager for defendant Structure-Tone testified that the “typical” installation of these electrical boxes would have been for them to be installed flush to the concrete slab (thereby eliminating it as a potential tripping hazard), which required workers to core drill holes into the floor and place the boxes into the holes, but that because it was considered temporary (20 weeks), defendants opted for the more

time efficient and less costly method of surface mounted boxes. Lynch aff at p. 6-7. Also, both accident reports, as well as plaintiff's testimony, indicate that the passageway in which plaintiff was injured was "dimly lit," or that "the lights hadn't been turned on."


Such hazards could also be found to violate 12 NYCRR 23-1.7(e)(1) as a tripping hazard within a passageway as there is testimony that there was apparently a safer way to install the junction box, allegedly exacerbated by the lighting that is described to have been dim or not turned on. Accordingly, plaintiff raises triable issues of fact with regard to his claim under Labor Law Section 241(6) to the extent that it relates to an alleged violation of 12 NYCRR 23-1.7(e)(1). However, plaintiff's claims under Section 241(6) arising from all other industrial codes, including 12 NYCRR 23-1.7(e)(2) and 12 NYCRR 23-1.7(d), are dismissed as plaintiff has failed to present evidence of a prima facie violation of any other code section. As the alleged tripping hazard (the electrical junction box) was not debris, tools or other scattered materials, but an integral part of the construction project, 12 NYCRR 23-1.7(e)(2) is inapplicable. See, *Ernest Thomas V. Goldman Sachs Headquarters, LLC*, 109 A.D.3d 421, 970 N.Y.S.2d 224 (1st Dept.2013). Further, regarding the alleged violation of 12 NYCRR 23-1.7(d), there is no evidence of what the alleged slippery substance was, when it was there, how long it had been there, or whether defendants or anyone else through whom defendants could be held vicariously liable, had notice of such alleged slipping hazard.

ORDERED, that defendants' motion for summary judgment seeking dismissal of plaintiff's causes of action under Labor Law Section 200 and common law negligence is denied; and it is further

ORDERED, that defendants' motion for summary judgment seeking dismissal of plaintiff's cause of action under Labor Law Section 240(1) is granted; and it is further

ORDERED, that defendants' motion for summary judgment seeking dismissal of plaintiff's cause of action under Labor Law Section 241(6) is denied to the extent that such claims arise from an alleged violation of 12 NYCRR 23-1.7(e) but granted with regard to all other alleged code violations.

This is the decision and order of the Court,

<u>09/01/2020</u> DATE			 _____ JAMES EDWARD D'AUGUSTE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE