

Cronin v Carolina Mfg. Co., Inc.
2022 NY Slip Op 32200(U)
July 8, 2022
Supreme Court, New York County
Docket Number: Index No. 154434/2019
Judge: Richard G. Latin
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD LATIN PART 46V

Justice

-----X

DAVID CRONIN,

Plaintiff,

- v -

CAROLINA MANUFACTURING CO., INC., OMNIBUILD
CONSTRUCTION, INC.,

Defendant.

-----X

CAROLINA MANUFACTURING CO., INC.

Plaintiff,

-against-

NORDEST SERVICES, LLC

Defendant.

-----X

OMNIBUILD CONSTRUCTION, INC.

Plaintiff,

-against-

NORDEST SERVICES, LLC

Defendant.

-----X

INDEX NO. 154434/2019

MOTION DATE 07/08/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595687/2019

Second Third-Party
Index No. 595297/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

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

Upon the foregoing documents, it is ordered that plaintiff's motion for summary judgment with respect to his Labor Law § 241(6) claim is granted.

Plaintiff commenced the instant action alleging that he was injured on February 1, 2018, while working on a construction site located at 520 West 29th Street, New York, New York 10011. Specifically, he averred that he was at an interior demolition site, moving stone and rubble. He recalled that there was debris all over the ground, including the pathways, that consisted of bricks and stone and that there were also beams all over. He further alleged that he was attempting to step over a whole 10-foot beam when his left boot got caught on it and it rolled over onto his leg, pinning him underneath. Plaintiff now moves for summary judgment on his Labor Law § 241(6) claims predicated on violations of Industrial Code §§ 12 NYCRR 23-1.7(e)(1), 12 NYCRR 23-1.7(e)(2), and 12 NYCRR 23-2.1(a)(1).

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 494, 501–502 [1993]). Importantly, to sustain a Labor Law § 241 (6) claim, it must be shown that the defendant violated a specific, “concrete” implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*Ross*, 81 NY2d at 505). Such violation must be a proximate cause of the plaintiff’s injuries (*see Annicaro v Corporate Suites, Inc.*, 98 AD3d 542, 544 [2d Dept 2012]).

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

Industrial Code 12 NYCRR 23-1.7 (e) governs “[t]ripping and other hazards.” It is sufficiently specific to support a Labor Law § 241 (6) claim (*Vieira v Tishman Constr. Corp.*, 255 AD2d 235, 235 [1st Dept 1998]; *see also Singh v Young Manor, Inc.*, 23 AD3d 249, 249-250 [1st Dept 2005]). Section 23-1.7 (e) (1) provides the following:

“Passageways. 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.”

Industrial Code 12 NYCRR 23-1.7 (e) (2)

Industrial Code 12 NYCRR 23-1.7 (e) (2) governs “working areas.” It is sufficiently specific to support a Labor Law § 241 (6) claim (*Vieira v Tishman Constr. Corp.*, 255 AD2d at 235). It provides the following:

“The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.”

(*id.*).

Industrial Code 12 NYCRR 23-2.1 (a) (1)

Industrial Code 12 NYCRR 23-2.1 (a) (1) governs the “[s]torage of material or equipment.” It is sufficiently specific to support a Labor Law § 241 (6) claim (*see Tucker v Tishman Constr. Corp. of N.Y.*, 36 AD3d 417, 417 [1st Dept 2007]). It provides the following:


“All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.”

All three Industrial Code provisions are sufficiently specific and supported by plaintiff's deposition testimony. Since the movant met his prima facie burden, it was incumbent on the owner and general construction manager to raise a triable issue of fact, which they failed to do.

Accordingly, it is ORDERED that plaintiff's motion for summary judgment on its Labor Law § 241(6) claim is granted as against defendants Carolina Manufacturing Co., Inc. and Omnibuild Construction, Inc.; and it is further

ORDERED that the parties appear for a conference in Part 46 via Microsoft Teams on August 15, 2022, at 2 PM.

This constitutes the decision and order of this Court.

<u>7/8/2022</u> DATE	 RICHARD G. LATIN, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE