

**Barahona v Clinton W. 53rd Hous. LLC**

2022 NY Slip Op 32466(U)

January 6, 2022

Supreme Court, Queens County

Docket Number: Index No. 716474/17

Judge: Frederick D.R. Sampson

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Short Form Order

**NEW YORK STATE SUPREME COURT - QUEENS COUNTY**

Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31

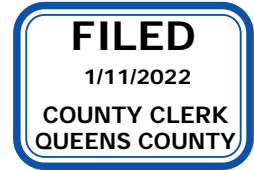
Justice

-----X  
WILSON BARAHONA,

Plaintiff,

-against-

Index No: 716474/17  
Motion Date: 10/27/21  
Motion Cal. No: 5  
Motion Seq. No: 5



CLINTON WEST 53<sup>RD</sup> HOUSING LLC, CLINTON WEST 53<sup>RD</sup> HOUSING DEVELOPMENT FUND CORPORATION, CLINTON HOUSING DEVELOPMENT COMPANY, INC., CLINTON HOUSING DEVELOPMENT FUND CORPORATION, CLINTON HOUSING 53<sup>RD</sup> PARTNERS, L.P., MEGA CONTRACTING, INC., and MEGA CONTRACTING GROUP LLC,

Defendants.

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CLINTON WEST 53<sup>RD</sup> HOUSING LLC, CLINTON WEST 53<sup>RD</sup> HOUSING DEVELOPMENT FUND CORPORATION, CLINTON HOUSING DEVELOPMENT COMPANY, INC., CLINTON HOUSING DEVELOPMENT FUND CORPORATION, CLINTON HOUSING 53<sup>RD</sup> PARTNERS, L.P., and MEGA CONTRACTING GROUP LLC,

Third- Party Plaintiffs,

-against-

ALL CONCRETE CORP.,

Third-Party Defendant.

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The following papers numbered E 118 to E 179 read on Defendant Clinton West 53<sup>rd</sup> Housing LLC, Clinton West 53<sup>rd</sup> Housing Development Find Corporation, Clinton Housing Development Company, Inc., Clinton Development Fund Corporation, and Clinton Housing 53<sup>rd</sup>

Partners, L.P’s motion for an Order granting defendant summary judgment on the issue of liability for plaintiff’s causes of action based on to Labor Law §§ 240, 200 and alleged selections of the Industrial Code violations.

	PAPERS
	NUMBERED
Notice of Motion-Affidavits-Exhibits.....	E 118 - E 130
Answering Affidavits-Exhibits.....	E 131 - E 145
Reply.....	E 174 - E 179

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

This action arises from the personal injuries sustained by the plaintiff Wilson Barahona, an employee of Third-party Defendant All Concrete Corp. (“Concrete”). Concrete was hired by the general contractor Mega Contracting Group, LLC (“Mega”) to preform masonry work on the property owned by Clinton West 53<sup>rd</sup> Housing, LLC (“Clinton”). During the performance of his employment plaintiff claims he was caused to slip and fall due to water, trash, garbage and construction debris strewn about the floor on the construction site. Plaintiff alleges that due to his slip and fall he was caused to sustain personal injuries. Defendant Clinton West 53<sup>rd</sup> Housing LLC, Clinton West 53<sup>rd</sup> Housing Development Fund Corporation, Clinton Housing Development Company, Inc., Clinton Development Fund Corporation, and Clinton Housing 53<sup>rd</sup> Partners, L.P’s (“Clinton”) moves *inter alia* for summary judgment on the issue of liability for plaintiff’s causes of action based on to Labor Law Labor Law §§ 240, 200 and alleged selections of the Industrial Code violations.

On a motion for summary judgment, the evidence must be viewed in the light most favorable to the non moving party. (*See Vega v Restani Const. Corp.*, 18 NY3d 499 [2012].) In so doing, the evidence submitted by the moving party must eliminate all material issues of fact. (*Id.*)

With regard to Labor Law §241(1), this statute was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder, ropes or other protective device proved inadequate to protect a worker from harm directly flowing from the application of the force of gravity to an object or person. (*See Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993].) The duty is nondelegable and an owner or general contractor who breaches that duty may be held liable in damages regardless of whether either had actually exercised supervision or control over the work. (*Id.*) The plaintiff must show that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute, (*Fabrizi*, 22 NY3d 658; *Escobar*, 150 AD3d 1081), and that the violation of the statute was

a proximate cause of his injuries. (*Id.*) A defendant may establish its prima facie case by demonstrating that the accident was not caused by gravity acting upon an object or person, or that the absence or inadequacy of a safety device, of the kind enumerated in Labor Law § 240 [1], was not a proximate cause of plaintiff's injuries. (*See Flossos v Waterside Redevelopment Co, L.P.*, 108 AD3d 647 [2d Dept 2013].) Here, in reviewing the evidence and facts presented, it is clear plaintiff's accident did not involve any violation of this statute. In opposition, the plaintiffs have not raised a triable issue of fact on this claim. (*See Zuckerman v City of New York*, 49 NY2d 557 [1980].) As such, Clinton's motion for summary judgment and dismissal of plaintiff's Labor law 240 (1) claim is granted.

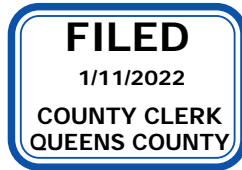
On the plaintiff's Labor Law § 200 and common law negligence claims, generally, construction worksite cases fall into two categories, those where the injuries sustained are as a result of dangerous or defective conditions at the worksite, and those involving the manner in which the work is performed. (*See Ortega v Puccia*, 57 AD3d 54 [2d Dept 2008].) This matter involves the former, and in such a case, to make a prima facie showing the defendants must establish that they did not have control over the work site, and that it neither created the hazardous condition, nor had actual or constructive notice of its existence within a sufficient time to remedy it. (*See Rizzuto*, 91 NY2d 343; *Korostynskyy v 416 Kings Highway, LLC*, 136 AD3d 758 [2d Dept 2016].) As this Court previously held [Motion Seq. 4] there are issues of fact as to whether Clinton had actual or constructive notice of the dangerous or defective condition which plaintiff alleges caused his injuries and as such, Clinton's application for summary judgment and dismissal of plaintiff's Labor Law 200 claim is denied.

With regards to plaintiff's Labor Law 241 (6) claims owners and general contractors have a non-delegable duty to provide reasonable and adequate protection and safety to persons employed in areas in which construction is being performed. (*See Rizzuto v L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998].) To meet its prima facie burden, the plaintiff must show defendants violated one or more of the Industrial Code regulations, and that such violations were a proximate cause of plaintiff's injuries. (*Id.*) This Court previously granted plaintiff summary judgment on plaintiff's Labor Law 241 (6) 12 NYCRR 23-1.7(d) is granted [Motion Seq. 4]. In addition, the Court previously found that as the plaintiff testified at deposition that he slipped and fell, 12 NYCRR 23-1.7(e)(1) and 12 NYCRR 23-1.7(e)(2) are not applicable. Further, plaintiff has failed to oppose Clinton's arguments with regards to the remaining alleged violations of the industrial code.

Accordingly, defendants' motion for summary judgment pursuant to Labor Law 241 (1) is granted. Defendants' motion to dismiss plaintiff's alleged violations of the Industrial Code is granted solely to the extent of dismissing all of plaintiff's claims except

plaintiff's claims relating to 12 NYCRR 23-1.7(d) and defendants' motion for summary judgment pursuant to Labor Law 200 is denied.

Dated: January 6, 2022.



A handwritten signature in black ink, appearing to be "J.S.C.", written over a horizontal line.

J.S.C.