

**Bittrolff v City of New York**

2023 NY Slip Op 32800(U)

July 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 525907/18

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: TRIAL TERM PART 35 X  
BRIAN BITTROLFF,

Plaintiff(s),  
-against-

Index No: 525907/18

DECISION AND ORDER

THE CITY OF NEW YORK and NEW YORK  
CITY DEPARTMENT OF PARKS &  
RECREATION,

Defendant(s)

Recitation as required by CPLR 2219(a), of the papers considered in defendants’  
motion for summary judgment.

Papers	NYSCEF Doc. Nos.
Order to Show Cause/Motion and Affidavits Annexed.	91-101
Cross-motion and supporting papers.....	
Answering Affidavits.....	105-107
Reply papers.....	
Memoranda of law.....	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

In this action to recover damages for personal injuries, the defendants, The City of New York and New York City Department of Parks & Recreation [collectively the City defendants] move [seq. no. 5] pursuant to CPLR 3212 for summary judgment dismissing the plaintiff Brian Bittrolff’s complaint.

Bittrolff, a plumber, employed by non-party Crescent Contracting, alleges that he sustained injuries as a result of an accident that occurred on July 26, 2018, at a renovation project at the St. John’s Recreational Center in Brooklyn. Bittrolff claims that he slipped and became tangled on a plastic tarp that was on the floor in the “pool room” of the recreational center causing him to fall and sustain injuries. Bittrolff testified that the tarp, which had been placed over a pool table to protect the table from dust and debris, was larger than the pool table and portions of it draped down onto the floor. The accident occurred when he went into the “pool room” to place tools into his bag. Bittrolff testified that after putting his tools away, he walked around the side of the pool table closer to the wall, and then slipped and got tangled in the plastic tarp. Bittrolff further testified that the plastic tarp was not cut and was longer than the side of the pool table where he had his accident. Bittrolff’s co-worker, Lawrence Lorenzo, who had been working in the

”pool room” prior to and on the date of the accident, testified that the plastic tarp was placed on the pool table each morning and removed at the end of the work day by Crescent employees so that the pool table could be utilized by the public in the evenings. Lorenzo also testified that while excess portion of plastic tarp had been tucked under the opposite side of the pool table on the morning of the accident, it had not been tucked under the side of the pool table where Bittrolff had been walking.

Bittrolff commenced this action against the City defendants, who allegedly owned and managed the facility on the date of this accident, for violations of Labor Law §§200, 241(6), and common-law negligence.

Labor Law § 200 codifies the common-law duty of owners, contractors and their agents to provide workers with a reasonably safe place to work (*see Pacheco v Smith*, 128 AD3d 926 [2d Dept 2015]; *Everitt v Nozkowski*, 285 AD2d 442 [2d Dept 2001]). “Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (*Ortega v. Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). “To be held liable under Labor Law § 200 for injuries arising from the manner in which work is performed, a defendant must have authority to exercise supervision and control over the work” (*Salgado v. Rubin*, 183 AD3d 617, 618–619 [2d Dept 2020], quoting *Rojas v. Schwartz*, 74 AD3d 1046, 1046 [2d Dept 2010]). “Where the plaintiff’s injuries arise from a dangerous condition on the premises, a defendant may be liable under Labor Law § 200 ‘if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition’ ” (*Salgado* at 619 quoting *Rojas* at 1047).

Here, the court agrees with the defendants that the accident arose directly from methods and means of the contractor’s work (*see Cody v. State of New York*, 82 AD3d 925 [2d Dept 2011]). The defendants also establish, prima facie, that they did not exercise supervision or control over the contractor’s work to render them liable under Labor Law § 200 (*see Austin v Consolidated Edison, Inc.*, 79 AD3d 682 [2d Dept 2010]). Even assuming that the accident arose from a dangerous premises condition, the submitted testimonies establish that the City defendants did not create or have actual or constructive notice of the allegedly dangerous condition in the staging room (*see Ortega v Puccia*, 57 AD3d 54 [2d Dept 2008]). In opposition, the plaintiff, in failing to address this portion of the defendants’ motion, does not raise a triable issue of fact.

Labor Law § 241(6) imposes on owners, contractors and their agents a nondelegable duty 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” (*Lopez v. New York City Dept. of Envntl. Protection*, 123 AD2d 982, 983 [2d Dept 2015]). In order to establish liability under Labor Law §241(6), “a plaintiff or claimant must demonstrate that his injuries were proximately

caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case” (*Aragona v State of New York*, 147 AD3d 808, 809 [2d Dept 2017]). The City defendants move for summary judgment dismissing Bittrolff’s Labor Law § 241(6) cause of action on the grounds that the Industrial Code sections set forth in Bittrolff’s bill of particulars [22 NYCRR 23-1.7 and 23-2.1] are not applicable to the facts and/or were not violated.

Here, the City defendants demonstrate prima facie that §§ 23-2.1(a) [storage of material or equipment] and (b) [disposal of debris], as well as §§ 23-1.7(a) [overhead hazards], (b) [falling hazards], (c) [drowning hazards], (f) [vertical passage], (g) [air-contaminated or oxygen deficient work areas], and (h) [corrosive substances] are not applicable to the facts of this case.

However, in light of the submitted deposition testimonies, the City defendants fail to eliminate all triable issues of fact exist as to whether the plastic tarp, which had been placed as a protective covering on the pool table, was integral to the renovation project, and, therefore, whether § 23-1.7(d), pertaining to slipping hazards, was violated (*see Bazdaric v Almah Partners, LLC*, 203 AD3d 643 [1<sup>st</sup> Dept 2022]; *Kryzanowski v City of New York*, 179 AD3d 479 [1<sup>st</sup> Dept 2020]). The City defendants also fail to eliminate all triable issues as to whether the area between the pool table and wall where Bittrolff slipped was a “passageway” and thus, whether § 23-1.7(e)(1), pertaining to tripping hazards in passageways, was violated (*see Rosenberg v Ben Krupinski General Contractors, Inc.*, 284 AD2d 523 [2d Dept 2001]). In addition, a triable issue of fact remains as to whether Bittrolff’s accident occurred in a “work area” and thus, whether § 23-1.7(e)(2), pertaining to tripping hazards in working areas, was violated (*id.*). Also, contrary to the City defendants’ contention, whether Bittrolff slipped, rather than tripped, on the plastic tarp does not render § 23-1.7(e)(1) and (2) inapplicable to this accident (*see Lois v Flintock Const. Services, LLC*, 137 AD3d 446 [1<sup>st</sup> Dept 2016]); *DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623 [1<sup>st</sup> Dept 2015]).

Accordingly, it is hereby


Ordered, that the portion of the City defendants’ motion for summary judgment dismissing Bittrolff’s causes of action for a violation of Labor Law § 200 and for common-law negligence claims is granted; and it is further

Ordered, that the portion of the City defendants’ motion for summary judgment dismissing Bittrolff’s cause of action under Labor Law § 241(6) is granted insofar as it is predicated upon alleged violations of 22 NYCRR 23-2.1 and 22 NYCRR 23-1.7(a), (b), (c), (f), (g) and (h), and is otherwise denied.

This constitutes the decision/order of the Court

Dated: July 14, 2023

Enter,

  
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Karen B. Rothenberg, J.S.C.