

<b>Andrade-Gutierrez v YWA-Amsterdam LLC</b>
2024 NY Slip Op 35010(U)
September 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 705917/2020
Judge: Laurentina S. McKetney Butler
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**SHORT FORM ORDER**

NEW YORK STATE SUPREME COURT - COUNTY OF QUEENS

Present: Hon. Laurentina S. McKetney Butler  
Justice

IAS PART 28

**FILED**  
6/4/2025  
COUNTY CLERK  
QUEENS COUNTY

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Maria Elena Andrade-Gutierrez,

Index No.: 705917/2020

Plaintiff(s),

Motion Submission Date:3/26/2024

Cal. No.: 1

-against-

Seq. No.: 1

YWA-Amsterdam LLC and The Rinaldi Group of  
New York, LLC,

Defendant(s).

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**The court *sua sponte* recalls and corrects typographical errors, nunc pro tunc, in the previous order on this motion.**

Recitation, as required by CPLR 2219(a), the following electronically filed documents were considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmations	
Affidavits and Exhibits.....	EF 27 – 38
Notice of Cross-Motion, Affirmations	
Affidavits and Exhibits.....	EF 41 – 51
Opposition Affirmations	
Affidavits .....	EF 53 – 55
Reply Affirmation	
and Affidavit.....	EF 57

Upon the review of the foregoing documents, this motion is decided as follows:

This is a labor law action in which plaintiff alleges she sustained personal injuries at a construction site owned by defendant YWA-Amsterdam, when she slipped and fell down stairs that were wet and covered with debris. By this motion defendants move for an order, pursuant to CPLR §3212, granting summary judgment YWA-Amsterdam LLC and The Rinaldi Group Of New York, LLC dismissing plaintiff’s complaint in its entirety. Plaintiff opposes the motion and

cross moves for summary judgment, pursuant CPLR 3212, against Defendants YWA-Amsterdam LLC and The Rinaldi Group Of New York, LLC. pursuant to New York State Labor Law §§ 240(1) and 241(6), and 200.

To obtain summary judgment, the movant must establish their cause of action sufficiently to warrant the court, as a matter of law, to direct judgment in its favor by tendering sufficient evidence in admissible form to eliminate any material issues of fact from the case. Failure to make a prima facie showing of entitlement to judgment requires denial of the motion, regardless of the sufficiency of the opposing papers. Once proof has been established, the burden shifts to the opponent to show facts sufficient to require a trial of any material issue of fact. (See, CPLR §3212(b); Winegard v. New York Univ. Med. Ctr., 64 NY2d 851 (1985); Zuckerman v. City of New York, 49 NY 557 (1980); Friends of Animals v. Associated Fur Mfrs., 46 NY2d 1065 (1979)).

At the time of the alleged accident defendant YWA-Amsterdam LLC (“YWA”) was the owner of a construction site located at 2420 Amsterdam Avenue in the County, City and State of New York (the “Property”) and The Rinaldi Group Of New York, LLC (“Rinaldi”) was the general contractor. Plaintiff was a construction worker at the Property as an employee of non-party Prime Structure Inc. Plaintiff alleges that on February 19, 2020, while carrying a piece of metal up a set of stairs at the Property she was caused to slip and fall due to the stairs being wet and covered in debris. Plaintiff alleges that defendants violated Labor Law §§240, 241(6) and 200.

In this action plaintiff testified that she slipped and fell on debris and wet conditions on stairs she was using to move a metal beam from the first floor to the third floor. Plaintiff testified that on her third trip from the first floor to the second floor she was caused to slip and fall on debris and wet conditions on the fifth or sixth step of the staircase. Although a handrail was available, plaintiff testified she was using both hands to carry the metal beam, she slipped on the debris and wet conditions, and fell backward with the metal beam which hit her leg but did not land on her. Although she was wearing a hard hat, after the fall she was unconscious for approximately five minutes, when she came to, she remained on the floor in the position that she fell until the ambulance arrived, approximately 30 minutes later. At some point after the accident and prior to being removed from the construction site by ambulance, pictures of plaintiff on the ground, which included the staircase on which plaintiff allegedly fell, were taken, by an unidentified individual.

Defendants’ argue that the photographs, in and of themselves, establish that plaintiff’s alleged accident could not have happened as sworn to by plaintiff. However, defendant’s speculative conclusions about the happening of the alleged accident based on the unauthenticated photographs is insufficient to make a prima facie defense entitling defendants to judgment as a matter of law pursuant to CPLR 3212.

Labor Law § 240 (1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in

elevated work sites (Probst v 11 W. 42 Realty Invs., LLC, 106 AD3d 711, 965 NYS2d 513, 2013 NY Slip Op 03074, [2013], quoting McCarthy v Turner Constr., Inc., 17 NY3d 369, 374, 953 NE2d 794, 929 NYS2d 556 [2011]).

" To prevail on a cause of action alleging a violation of Labor Law § 240 (1), a plaintiff must establish that the Labor Law §240(1) was violated and that the violation was a proximate cause of his or her injuries' " (Gaspar v Pace Univ., 101 AD3d 1073, 1074, 957 NYS2d 393 [2012], quoting Lopez-Dones v 601 W. Assoc., LLC, 98 AD3d 476, 479, 949 NYS2d 165 [2012]). "The extraordinary protections of Labor Law § 240(1) extend only to a narrow class of special hazards, and do 'not encompass any and all perils that may be connected in some tangential way with the effects of gravity'" (Nieves v Five Boro A.C. & Refrig. Corp., 93 NY2d 914, 915-916, 712 N.E.2d 1219, 690 N.Y.S.2d 852, quoting Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501, 618 N.E.2d 82, 601 N.Y.S.2d 49; see Meng Sing Chang v Homewell Owner's Corp., 38 AD3d at 626-627). "Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no section 240(1) liability exists" (Nieves v Five Boro A.C. & Refrig. Corp., 93 NY2d at 916; see Melber v 6333 Main St., 91 NY2d 759, 763-764, 698 N.E.2d 933, 676 N.Y.S.2d 104; Aquilino v E.W. Howell Co., Inc., 7 AD3d 739, 740, 776 N.Y.S.2d 893). Krarunzhiy v. 91 Cent. Park W. Owners Corp., 212 A.D.3d 722, 723.

Based on the testimony provided by the plaintiff, the alleged slip and fall occurred on debris and a wet condition on the steps. Plaintiff further testified that the debris included wood from the construction project, plastic bags and further speculated that the water came from buckets of water and other stuff that was carried up the subject staircase. Plaintiff also testified that the conditions on the stairs were present from the time she made her first trip up the subject staircase until she slipped however, she did not report the condition to anyone. As alleged and testified to, plaintiff's slip and fall was not a result of a separate hazard related to the risk which brought about the need for the safety device required by Labor Law §240(1) and therefore, no Labor Law §240(1) liability exists (Nieves v Five Boro A.C. & Refrig. Corp., 93 NY2d at 916; see Melber v 6333 Main St., 91 NY2d 759, 763-764, 698 N.E.2d 933, 676 N.Y.S.2d 104; Aquilino v E.W. Howell Co., Inc., 7 AD3d 739, 740, 776 N.Y.S.2d 893). (See also rarunzhiy v. 91 Cent. Park W. Owners Corp., 212 A.D.3d 722.)

Labor Law §241 (6) imposes a nondelegable duty upon an owner and general contractor to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor (see Misicki v Caradonna, 12 NY3d 511, 515, 909 NE2d 1213, 882 NYS2d 375 [2009]; Perez v 286 Scholes St. Corp., 134 AD3d 1085, 1086 [2015]). " To establish liability under Labor Law § 241 (6), a plaintiff or a claimant must demonstrate that his [or her] injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case' " (Zaino v Rogers, 153 AD3d 763, 764, 59 NYS3d 770 [2017], quoting Aragona v State of New York, 147 AD3d 808, 809, 47 NYS3d 115 [2017]; Cruz v 1142 Bedford Ave., LLC, 192 A.D.3d 859).

Pursuant to Labor Law §241(6) plaintiff's cross-motion alleges that defendants violated Labor Law § 241(6), specifically New York State Industrial Code § 23-1.7(d) (requiring that all passageways be kept free from slipping hazards), which violation was a proximate cause of plaintiff's incident as well as New York State Industrial Code § 23-1.7(e)(2), since that section is not limited to tripping hazards. (See e.g. *Collins v. Switzer Const.Group, Inc.*, 69 A.D.3d 407, 892 N.Y.S.2d 94 (1st Dept. 2010) (§ 23-1.7(e)(2) applies to slipping hazards).

The plaintiff, has abandoned her reliance on provisions of the Industrial Code other than 12 NYCRR 23-1.7 (d) and 1.7(e)(2), since she failed to address them in her motion (see *Musillo v Marist Coll.*, 306 AD2d 782, 762 NYS2d 663 [2003]; *Fairchild v Servidone Constr. Corp.*, 288 AD2d 665, 667 n 3, 733 NYS2d 735 [2001]). Therefore, plaintiff's allegations of violations of Industrial Code sections 23-1.5, 23-1.6, 23-1.15, 23-1.16, 23-1.17, 23-1.19, 23-1.21, 23-1.22, 23-1.33, and 23-2.1 are deemed abandoned,

Neither party has met their burden with respect to Industrial Code §§12 NYCRR 23-1.7 (d) and 1.7(e)(2), therefore, issues of fact of fact exist which prevent the awarding of summary judgment to either party.

Labor Law § 200 is a codification of the common-law duty imposed on owners, contractors, and their agents to provide workers with a safe place to work (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352, 693 NE2d 1068, 670 NYS2d 816 [1998]; *Annicaro v Corporate Suites, Inc.*, 98 AD3d 542, 544, 949 NYS2d 717 [2012]). "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' " (*Rojas v Schwartz*, 74 AD3d 1046; 903 NYS2d 484 [2010], quoting *Gallelo v MARJ Distribs., Inc.*, 50 AD3d 734, 735, 855 NYS2d 602 [2008]). " 'A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed' " (*Torres v Perry St. Dev. Corp.*, 104 AD3d 672, 676, 960 NYS2d 450 [2013], quoting *Ortega v Puccia*, 57 AD3d 54, 62, 866 NYS2d 323 [2008]). " '[T]he right to generally supervise the work, stop the contractor's work if a safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law § 200 or for common-law negligence' " (*Austin v Consolidated Edison, Inc.*, 79 AD3d 682, 684, 913 NYS2d 684 [2010], quoting *Gasques v State of New York*, 59 AD3d 666, 668, 873 NYS2d 717 [2009], *affd on other grounds* 15 NY3d 869, 937 NE2d 79, 910 NYS2d 415 [2010]; *see Torres v Perry St. Dev. Corp.*, 104 AD3d at 676; *Harrison v State of New York*, 88 AD3d 951, 954, 931 NYS2d 662 [2011]). Where a plaintiff's injuries arise not from the manner in which the work was performed, but from a dangerous condition on the premises, a contractor may be liable under Labor Law § 200 " 'only if it had control over the work site and either created the dangerous condition or had actual or constructive notice of it' " (*Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663, 11 NYS3d 201 [2015], quoting *Martinez v City of New York*, 73 AD3d 993, 998, 901 NYS2d 339 [2010]; *see Schultz v Hi-Tech Constr. & Mgt. Servs., Inc.*, 69 AD3d 701, 701-702, 893 NYS2d 225 [2010]).

A defendant moving for summary judgment dismissing a cause of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability

standards (*see DiMaggio v Cataletto*, 117 AD3d 984, 986, 986 NYS2d 536 [2014]; *Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 52, 919 NYS2d 44 [2011]).

YWA established, prima facie, that it did not have the authority to supervise or control the performance of the work (*see Singh v Black Diamonds LLC*, 24 AD3d 138, 140, 805 NYS2d 58 [2005]). YWA also established, prima facie, that it did not have control over the work site and did not create the alleged dangerous condition (*see Simon v Granite Bldg. 2, LLC*, 114 AD3d 749, 754, 980 NYS2d 489 [2014]; *Thomas v Benton*, 112 AD3d 812, 812, 977 NYS2d 336 [2013]). In opposition, the plaintiff failed to raise a triable issue of fact with respect to YWA. Accordingly, the branch of YWA’s motion for summary judgment dismissing the Labor Law § 200 cause of action asserted against YWA are dismissed. Marquez v L & M Dev. Partners, Inc., 141 A.D.3d 694, 698-699. However, the contract together with the testimony of the Rinaldi representative raise issues of fact regarding defendant’s Rinaldi’s authority to supervise or control the performance of the work, therefore the branch of defendant’s motion to dismiss the Labor Law § 200 claims against defendant Rinaldi are denied.

Based on the foregoing it is

ORDERED, that the branch of defendants’ motion to dismiss plaintiff’s claim based on the unauthenticated photos submitted as Exhibit H is denied;


ORDERED, that defendants’ motion for summary judgment is granted only to the extent that plaintiff’s Labor Law §240(1) claim is dismissed; and it is further

ORDERED, that plaintiff’s Labor Law §241(6) claims based on Industrial Codes §§ 23-1.5, 23-1.6, 23-1.15, 23-1.16, 23-1.17, 23-1.19, 23-1.21, 23-1.22, 23-1.33, and 23-2.1 are dismissed as abandoned however the claims based on Industrial Code §§ shall proceed; and it is further

ORDERED, that the branch of defendants’ motion to dismiss plaintiff’s Labor Law §200 claim is granted only as against defendant YWA; and it is further

This constitutes the Decision and Order of the Court

Dated: September 18, 2024  
Jamaica, New York

  
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Laurentina S. McKetney Butler, J.S.C.

**RECEIVED**

6/3/2025

COUNTY CLERK  
QUEENS COUNTY

**FILED**

6/4/2025

COUNTY CLERK  
QUEENS COUNTY