

Gonzalez v New York City Sch. Constr. Auth.

2025 NY Slip Op 30223(U)

January 21, 2025

Supreme Court, New York County

Docket Number: Index No. 150843/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 150843/2021

ALEJANDRO GONZALEZ,

MOTION DATE 10/27/2023

Plaintiff,

MOTION SEQ. NO. 002

- v -

NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY, THE CITY OF NEW YORK, THE NEW YORK
CITY DEPARTMENT OF EDUCATION,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45,
46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,
74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument, which took place on September
24, 2024, where David A. Cvengros, Esq. appeared for Plaintiff Alejandro Gonzalez ("Plaintiff"),
and Jason Meneses, Esq. appeared for Defendants New York City School Construction Authority,
the City of New York, and the New York City Department of Education (collectively
"Defendants"), the Defendants' motion for summary judgment dismissing Plaintiff's Complaint is
granted in part and denied in part.

I. Background

This is an action for personal injuries arising from alleged violations of the New York
Labor Law. On February 12, 2020, at approximately 6:00 p.m., Plaintiff slipped walking down a
metal scaffold stairway outside of 443 W. 135th Street, New York, New York (the "Premises")
(see NYSCEF Doc. 45). At the time of the accident, Plaintiff was working for non-party Padilla
Construction Services ("Padilla") as a laborer (NYSCEF Doc. 50 at 19:16-19). Plaintiff was

walking from the thirteenth floor to the eleventh floor down the scaffold when he slipped and fell (*Id.* at 34; NYSCEF Doc. 51 at 64-65). The stairs were allegedly wet from rain (*Id.* at 35). Plaintiff further testified that there were Padilla employees who would use a hose to clean dust (NYSCEF Doc. 52 at 26). Adam Gorski, a project officer for Defendant New York City School Construction Authority (“SCA”) testified that SCA safety inspectors would visit the site to inspect for safety hazards (NYSCEF Doc. 55 at 40-41). He admitted that if the stairs were wet and “really unsafe”, then the workers should have been told not to use the stairs (*Id.* at 34). Defendants now seek dismissal of Plaintiff’s Complaint.

II. Discussion

A. Standard

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]).

B. Labor Law § 240(1)

Defendants’ motion seeking dismissal of Plaintiff’s Labor Law § 240(1) claim is denied. The facts of the instant case are on all fours with the Court of Appeals’ decision in *O’Brien v Port Authority of New York and New Jersey*, 29 NY3d 27 (2017). There, a worker was injured after he

slipped on rainwater walking down a temporary scaffold. There was expert testimony regarding evidence of wear and tear on the stairs and lack of anti-slip measures. The Court of Appeals found that a plaintiff who slipped on water while walking down a temporarily erected scaffold falls within the ambit of Labor Law § 240(1), and given competing expert affidavits, there were issues of fact as to whether the scaffold provided was an adequate safety device. The facts analyzed by the Court of Appeals in *O'Brien* are nearly identical to the facts of this case, and this Court is bound to follow *O'Brien*.

C. Labor Law § 241(6)

Defendant's motion to dismiss Plaintiff's Labor Law § 241(6) claim is granted in part and denied in part. The motion is granted to the extent that Plaintiff does not oppose dismissal of his Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 23-1.5, 23-1.7(f), 23-1.15, 23-1.16, 23-1.17, 23-1.21, 23-1.24, 23-3.2, 23-3.3, 23-5.1, 23-5.2, 23-5.3, 23-5.9 and OSHA.

Defendants' motion to dismiss Plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d) is denied. As held by the Court of Appeals, Labor Law § 241(6) imposes a non-delegable duty upon an owner and general contractor to "respond in damages" if a worker engaged in construction is injured due to inadequate safety and protection, even if the worker sustains an injury because of another party's negligence (*Rizzuto v L.A. Wenger Contracting Co.*, 91 NY2d 343, 350 [1998]). A general contractor is not absolved of liability for lack of notice of a dangerous condition or for lack of an opportunity to cure the dangerous condition (*Gallina v MTA Capital Construction Company*, 193 AD3d 414 [1st Dept 2021]). Industrial Code 23-1.7(d) provides that "[e]mployers shall not suffer or permit any employee to use a floor...which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed...".

The presence of water may constitute a violation of Industrial Code 23-1.7(d). Plaintiff provided testimony on multiple occasions that slippery wet stairs caused him to fall. Although Plaintiff may have provided differing accounts to medical providers or his employer, this creates a credibility issue which cannot be resolved on summary judgment (*see Orenstein v 301 E. 78 St. Owners Corp.*, 231 AD3d 626 [1st Dept 2024]). Likewise, while Defendants' meteorological experts cast doubt on the presence of rainwater, this simply raises more credibility issues.

D. Labor Law § 200

Defendants' motion seeking dismissal of Plaintiff's Labor Law § 200 claim is denied. Where a plaintiff's injury is caused by a dangerous condition, liability attaches if the owner or general contractor had actual or constructive notice of it. (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). Here, the injury was caused by an allegedly dangerous condition – a wet scaffold. Defendants have failed to meet their prima facie burden of showing a lack of actual or constructive notice of it. There is nothing in the record indicating the last time Defendants or their agent inspected the scaffold, and Defendants' witness admitted that if the outdoor scaffold was too wet it should have been closed off to workers (*see, e.g. Ladignon v Lower Manhattan Dev. Corp.*, 128 AD3d 534 [1st Dept 2015]). The failure to eliminate issues of fact surrounding notice precludes summary judgment (*Pereira v New School*, 148 AD3d 410 [1st Dept 2017]).

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Complaint is granted solely to the extent that Plaintiff's Labor Law § 241(6) claims predicated on violations of Industrial Code §§ 23-1.5, 23-1.7(f), 23-1.15, 23-1.16, 23-1.17, 23-1.21, 23-1.24, 23-

3.2, 23-3.3, 23-5.1, 23-5.2, 23-5.3, 23-5.9 and OSHA is granted, and these claims are dismissed; and it is further

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 240(1), § 200, and § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d) is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/21/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: