

**Louis v Hudson 36 LLC**

2025 NY Slip Op 30309(U)

January 23, 2025

Supreme Court, New York County

Docket Number: Index No. 155660/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57M**

*Justice*

-----X

DARNELL LOUIS,

Plaintiff,

- v -

HUDSON 36 LLC,

Defendant.

-----X

INDEX NO. 155660/2020

MOTION DATE 09/27/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68

were read on this motion to/for DISMISS.

**BACKGROUND**

This action is for personal injuries allegedly sustained by Plaintiff, Darnell Louis, on May 10, 2018, when he tripped and fell on a wooden plank at the premises located at 515 West 36th Street, New York, New York 10018, and allegedly sustained injury.

The complaint asserts two causes of action negligence and nuisance.

**PENDING MOTION**

On October 28, 2024, Defendant moved for summary judgment and dismissal of the complaint. On December 11, 2024, the motion was fully briefed, marked submitted and the Court reserved decision.

For the reasons set forth below, the motion is denied.

**ALLEGED FACTS**

On the date of the accident and for some time thereafter, Plaintiff was employed by Rotavele Elevator as an elevator mechanic, and was working at 515 West 36th Street, New York,

New York 10018, a building owned by Hudson 36 LLC (“Owner”). Plaintiff had been working on a project involving the installation of elevators at the building for approximately three months before the accident.

The project foreman was Matt. Matt supervised Plaintiff’s work. Dennis Morales was the head mechanic for Rotavele and gave Plaintiff his assignments daily.

There was a shanty located on the first floor of the building, where Plaintiff would change upon arriving to the job site in the mornings. Just outside the shanty, the floor had wooden planks that Plaintiff had to cross over to get in and out of the shanty. On the date of the accident, Plaintiff was coming out of the shanty, he tripped on a plank and fell forward, and a nail pierced his hand when he landed.

The record does not disclose who placed the planks on the floor, but they were allegedly covering a hole underneath. Plaintiff had traversed the planks approximately twice a day while on the project.

Plaintiff alleges he complained to Dennis Morales about the loose condition of the planks and the fact that there were nails sticking out of the planks. Plaintiff alleges Morales told him he had complained of the planks, but the record does not disclose to whom Morales made said complaint. The planks were in the same condition on the date of the accident as they had been since Plaintiff started work at the project.

David Sani was the controller for Owner and alleges that the Owner did not supervise or manage the installation of the elevators. However, there was no general contractor for the project. Hudson 37 LLC was the construction manager for the project and appears to be related to or a subsidiary of the Owner. Plaintiff submits documentation showing both entities maintain

the same business address, which is also Sani's office address. Sani was deposed in other matters as an agent for both entities.

Sani was notified of the Plaintiff's accident by the project manager, Mark Terrle, who was employed by Hudson 37 LLC. Sani might have been at the building at some point during the construction but could not recall when. Sani also acknowledged there may have been a few falls in the area where Plaintiff's accident occurred.

### DISCUSSION

To prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). “[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]).

“On a motion for summary judgment, the court's function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact” (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] [“The court's role, in passing on a motion for summary judgment, is solely to

determine if any triable issues exist, not to determine the merits of any such issues”],  
*citing Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

To demonstrate prima facie entitlement to judgment as a matter of law in a premises liability case, a defendant must establish that it did not create the condition that allegedly caused the fall or have actual or constructive notice of that condition (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]; *McMahon v Gold*, 78 AD3d 908, 909 [2010]; *Applegate v Long Is. Power Auth.*, 53 AD3d 515, 516 [2008]; *Powell v Pasqualino*, 40 AD3d 725 [2007]). To provide constructive notice, “a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the defendant] to discover and remedy it” (*Gordon v American Museum of Natural History*, 67 NY2d at 837).

*Hoffman v. Brown*, 109 A.D.3d 791, 792 (1<sup>ST</sup> Dept., 2013); *see also Buckle v Buhre* 232 AD2d 269 (1<sup>ST</sup> Dept., 1996)( *it was defendant’s burden as movant to establish the absence of creation of the dangerous condition or notice thereof as a matter of law*).

Defendant has failed to meet its burden as it made no specific affirmative showing that it did not have actual or constructive notice of the hazardous condition or that it made any attempt to inspect the area or keep it reasonably safe.

Nor does Defendant’s argument that the condition was open and obvious warrant a different result. “[E]ven if a hazard qualifies as ‘open and obvious’ as a matter of law, that characteristic merely eliminates the property owner’s duty to warn of the hazard, but does not eliminate the broader duty to maintain the premises in a reasonably safe condition” (*Powers v 31 E 31 LLC*, 123 AD3d 421, 422 [1st Dept 2014], quoting *Westbrook*, 5 AD3d at 70). *Matos v. Azure Holdings II, L.P.*, 181 A.D.3d 406, 407 (1<sup>st</sup> Dept., 2020). Defendant does not argue that the condition was not inherently dangerous.

Finally, the motion asks for dismissal of the entire complaint but does not address the second cause of action for nuisance.

The elements of a cause of action for a private nuisance are: “(1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act” (*Copart Indus. v. Consolidated Edison Co. of NY*, 41 N.Y.2d 564, 570, 394 N.Y.S.2d 169, 362 N.E.2d 968 [1977]; see *61 W. 62 Owners Corp. v. CGM EMP LLC*, 77 A.D.3d 330, 334, 906 N.Y.S.2d 549 [2010], *affd. as mod.* 16 N.Y.3d 822, 921 N.Y.S.2d 184, 946 N.E.2d 172 [2011] ).

*Ewen v. Maccherone*, 32 Misc. 3d 12, 14 (App. Term 2011).

The Court having searched the record and given the parties an opportunity to be heard on the issue finds that these elements are not plead in the underlying complaint nor is such a claim applicable to the facts of this action. The Court notes that at oral argument Plaintiff indicated it was not opposing the dismissal of this cause of action.

WHEREFORE it is hereby:

ORDERED that the motion is denied; and it is further

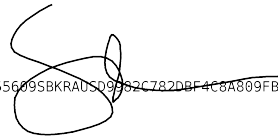
ORDERED that the cause of action for nuisance is dismissed without opposition; and it is further

ORDERED that Plaintiff shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that counsel appear for a virtual pre-trial conference on February 18, 2025 at 2:30 PM, at which time a final trial date will be scheduled.

This constitutes the decision and order of this Court.



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1/23/2025

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE