Supreme Court of the State of New York
County of Kings

Part LL1

SHELDON MITCHELL,

Plaintiff,

against

RP1185 LLC, LENDLEASE (US) CONSTRUCTION INC., LENDLEASE (US) CONSTRUCTION HOLDINGS INC., AND LENDLEASE (US) CONSTRUCTION LMB INC.,

Defendants.

Index Number 518877/2022
Seqs. 005 and 006

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	3–4
Replying Affidavits	4–5
Exhibits	
Other	

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 005) and plaintiff's motion for summary judgment (Seq. 006) are decided as follows:

Procedural Posture

Plaintiff commenced this action to recover for damages he claims to have sustained when he was struck by a falling pipe, which lacerated his hand, on December 15, 2021, while working at 1185 Broadway, New York, NY. On January 3, 2025, Lendlease (US) Construction Inc. and Lendlease (US) Construction Holdings Inc. were awarded summary judgment. RP1185 LLC was the owner of the premises. Lendlease (US) Construction LMB Inc. (Lendlease) admitted that it was the construction manager at the premises. Lendlease sub-contracted non-party Command HVAC (Command), which in turn employed the plaintiff.

Factual Background

Plaintiff testified as follows: On the date of loss, plaintiff was performing work on ceiling-height pipes (Mitchell EBT at 57). To reach the pipes, plaintiff was standing on the second step from the top of an A-frame ladder (*id.* at 60–62). Specifically, plaintiff testified:

> "I was attempting to put the elbow into those pipe and as attempting to put in elbow, all I know is the pipe come down. (Descriptive sound.) Like, the pipe came down. I don't know. The pipe came down, fall on my hand, knock the—the elbow so I get to do no connection" (*id.* at 77).

The pipe fell from the ceiling and hit his right hand, cutting plaintiff through his glove (*id.* at 78–79, 87). Plaintiff did not know who had originally installed the pipe (*id.* at 80), but did testify that the pipes were connected to the ceiling with a "metal band" (*id.* at 59).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 500 (1993)]). "To prevail on a motion for summary judgment in a section 240 (1) 'falling object' case, the plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking" (*Henriquez v Grant*, 186 AD3d 577, 577 [2d Dept 2020]).

Here, plaintiff's testimony is unrebutted that he was working on pipes that were attached to the ceiling. The plaintiff contends that the pipe required securing for the purpose of making the connection, and that the failure to properly secure the pipe was a proximate cause of his

accident. This testimony is sufficient to make out plaintiff's prima facie entitlement to summary judgment.

As an initial matter, although defendants mention "sole proximate cause" in a subheading in their memorandum of law, the defendants do not provide any actual argumentation to support this contention. What defendants do provide are medical records from Neurodiagnostics Medical, CityMD, and New York Hand Surgery. The description of the mechanism of injury in these records do not indicate that the pipe fell, but state variously: that the pipe was broken and slashed plaintiff's hand; that the pipe shattered and cut plaintiff's hand; that the plaintiff withdrew his hand and suffered a laceration on a sharp piece of pipe. The court must, therefore, determine whether the statements in these records are "germane to diagnosis [or] treatment" (*Rodriguez v Piccone*, 5 AD3d 757, 758 [2d Dept 2004]). Here, although the differences between the statements in the medical records themselves are likely not germane to the treatment, the difference between being struck by a falling pipe versus experiencing a laceration from touching a broken pipe is germane to treatment. For example, being struck by a falling object may require an x-ray whereas being lacerated by the edge of a pipe upon withdrawing a hand would not.

Since there are materially different accounts of how the accident occurred before the court, neither party is entitled to summary judgment as to plaintiff's Labor Law § 240 (1) claim.

Labor Law § 241 (6)

Defendants move with respect to plaintiff's Labor Law § 241 (6) claim; the plaintiff does not. In order to prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury (4) a proximate cause of which was a violation of an Industrial Code provision (*Moscati v*

Consolidated Edison Co. of N.Y., Inc., 168 AD3d 717, 718 [2d Dept 2019]). The plaintiff opposes the motion with respect to Industrial Code 23-1.5 (c) (3); the remaining alleged code violations are deemed abandoned. (*see Medina v 1277 Holdings, LLC*, 234 AD3d 839, 843 [2025]).

Rule 23-1.5 (c) (3) reads: "[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." Here, defendants have failed to demonstrate that the ceiling bracket holding the pipe was not a "safety device," and have further failed to demonstrate the bracket did not fail to support the pipe while plaintiff was working. Moreover, as noted in the section on Labor Law § 240 (1) above, there are material issues of fact in the record as to how plaintiff's accident happened.

Therefore, defendants' motion is granted to the extent of those Industrial Codes which plaintiff does not oppose; the remainder of the motion is denied.

Labor Law § 200

Finally, defendants seek summary judgment on plaintiff's Labor Law § 200 claim; plaintiff did not move on this claim. Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]).

As noted previously, there is an open question as to whether plaintiff's accident was caused by a defective or ineffective ceiling bracket. There is no testimony in the record about the condition of the bracket and, by extension, no testimony about whether the condition was 1) caused or created by defendants and 2) whether defendants had actual or constructive notice of

the condition. There is no testimony about when the pipe was installed or by whom. In light of these issues of material fact, defendants' motion is denied.

Conclusion

Defendants' motion for summary judgment (Seq. 005) is granted to the extent of dismissing all Industrial Code violations except 23-1.5 (c) (3); the remainder of the motion is denied.

Plaintiff's motion for summary judgment (Seq. 006) is denied.

This constitutes the decision and order of the court.

March 25, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court