

Cruz v Sutton 58 Holding Co. LLC

2025 NY Slip Op 31846(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 156663/2022

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. 156663/2022

JUAN CRUZ, and MARIA D. AGUIRRE-REYES

MOTION DATE 04/12/2024

Plaintiffs,

MOTION SEQ. NO. 002

- v -

SUTTON 58 HOLDING COMPANY LLC, LEND LEASE (US) CONSTRUCTION INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND)

Upon the foregoing documents, and after oral argument, which took place on March 11, 2025, where Damon Velardi, Esq. appeared for Plaintiffs Juan Cruz ("Mr. Cruz") and Maria D. Aguirre-Reyes (collectively "Plaintiffs"), and Laurent B. Chevalier, Esq. appeared for Defendants Sutton 58 Holding Company LLC ("Sutton") and Lend Lease (US) Construction Inc. ("Lend Lease") (collectively "Defendants"), Defendants' motion for summary judgment dismissing Plaintiffs' Complaint is granted in part and denied in part.

I. Background

On June 28, 2022, non-party Delco Electrical Corp. ("Delco") employed Mr. Cruz as an electrician at a construction site located at 430 East 58th Street, New York, New York (the "Premises"). He allegedly slipped on debris while walking down a stairway carrying a bundle of electrical tubes (NYSCEF Doc. 38 at 72; 82-83). Lend Lease was the general contractor at the Premises and Sutton owned the Premises. Plaintiffs sued the Defendants for Mr. Cruz's slip and

fall, alleging violations of Labor Law §§ 241(6) and 200. Defendants move for summary judgment seeking dismissal of Plaintiffs' Complaint, and Plaintiffs oppose.

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 241(6)

Defendants' motion for summary judgment dismissing Plaintiffs' Labor Law § 241(6) claims is granted in part and denied in part. Plaintiffs only oppose dismissal of their Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d). Therefore, Plaintiffs' Labor Law § 241(6) claims predicated on alleged violations of Industrial Code §§ 23-1.5, 12-1.7(e)(1)-(2); 23-1.7(f), 12-1.15; 23-1.16; 23-1.17; 23-1.21; 23-1.22; 23-1.30; 23-2.4; 23-2.7; 23-3.2; and 23-3.3 are dismissed as abandoned (*see Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]).

However, an issue of fact prevents dismissal of Plaintiffs' Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d). A staircase may constitute a passageway within the meaning of Industrial Code § 23-1.7(d) when it is the sole means of access to the work

site (*Tolk v 11 W. 42 Realty Invs., L.L.C.*, 201 AD3d 491, 492 [1st Dept 2022] citing *Harasim v Eljin Constr. Of N.Y., Inc.*, 106 AD3d 642, 643 [1st Dept 2013]). Viewing the facts in the light most favorable to the non-movants, the Plaintiffs, the Court finds there is an issue of fact as to whether the staircase was the sole means by which Mr. Cruz was allowed to bring bundles of electrical tubing to the cellar. Although there was a freight elevator which theoretically could have been used to move the bundles to the cellar, Mr. Cruz's testimony was that he never was given permission to move the bundles using the freight elevator (NYSCEF Doc. 38 at 144-45). He also testified he was following his supervisor's instructions to move the bundles using the stairs (NYSCEF Doc. 39 at 37-38).

Mark Lubrano, a project executive at Lendlease, likewise testified he normally used the stairs if he only had to move from one floor to another and only used the elevator when travelling up or down multiple floors. (NYSCEF Doc. 41 at 26). When he was allegedly injured, Mr. Cruz was moving materials down just one floor. And while Mr. Lubrano submitted an affidavit in support of Defendants' motion for summary judgment averring Delco employees were permitted to use the freight elevator, there remain an issues of fact as to whether Plaintiff was ever instructed he could use the freight elevator and whether the movement of the bundles of electrical wiring could be done in a timely manner by using the freight elevator.

While Defendants rely on the First Department's decision in *Bradley v. NYU Langone Hospitals*, 223 A.D.3d 509, 510-11 (1st Dept 2024), this reliance is misplaced. In *Bradley* the First Department found there was an issue of fact as to whether the staircase used by plaintiff when she fell was the sole means of access to the second-floor work site. Thus, *Bradley* is like this case in that there is an issue of fact as to whether staircase was the sole means by which Mr. Cruz was permitted to carry the bundles of electrical wiring to the cellar. Therefore, Defendants' motion is

denied with respect to Plaintiffs' Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d).

C. Labor Law § 200

Defendants' motion for summary judgment dismissing Plaintiffs' 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, Plaintiffs allege his injury was caused by a dangerous condition – namely the accumulation of debris on a staircase.

Defendants have failed to establish a lack of actual or constructive notice of the alleged debris in the staircase. Failure to submit evidence of cleaning schedules for the work site, or any documentation as to when the site of the accident was last inspected, is fatal to a defendant's motion for summary judgment based on lack of constructive notice (*see Pereira v New School*, 148 AD3d 410, 412-13 [1st Dept 2017] citing *Landignon v Lower Manhattan Dev. Corp.*, 128 AD3d 534 [1st Dept 2015]). There is no evidence submitted regarding cleaning or inspection schedules. Thus, there remains a triable issue of fact as to constructive notice (*Spencer v Term Fulton Realty Corp.*, 183 AD3d 441, 443 [1st Dept 2020]). Moreover, to the extent the affidavit of Yaroslav Kryvonyuk (NYSCEF Doc. 43) contradicts Mr. Cruz's testimony, this simply creates a credibility issue, which is an issue for the jury (*Duley v S & N Rugova Properties LLC*, 236 AD3d 544, 544 [1st Dept 2025]).

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment dismissing Plaintiffs' Complaint is granted solely to the extent that Plaintiffs' Labor Law 241(6) claims predicated on violations of Industrial Code §§ 23-1.5, 12-1.7(e)(1)-(2); 23-1.7(f), 12-1.15; 23-1.16; 23-1.17; 23-

1.21; 23-1.22; 23-1.30; 23-2.4; 23-2.7; 23-3.2; and 23-3.3 are dismissed as abandoned; and it is further

ORDERED that Defendants' motion for summary judgment dismissing Plaintiffs' Complaint is otherwise denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs 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.

5/23/2025
DATE

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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE