

Ritorto v 1350 LLC

2025 NY Slip Op 31867(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 160751/2021

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

-----X

JOSEPH RITORTO,

Plaintiff,

- v -

1350 LLC, and SL GREEN REALTY CORP.,

Defendant.

-----X

1350 LLC, and SL GREEN REALTY CORP.

Plaintiff,

-against-

ALLIANCE ELEVATOR COMPANY, LLC D/B/A UNITEC
ELEVATOR COMPANY

Defendant.

-----X

INDEX NO. 160751/2021
MOTION DATE 07/02/2024
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595935/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 105, 107, 108, 109, 110, 119

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of March 25, 2025, Plaintiff Joseph Ritorto's ("Plaintiff") motion for summary judgment on his Labor Law § 240(1) claim is granted. Defendant/Third-Party Plaintiffs 1350 LLC and SL Green Realty Corp. ("SL Green") (collectively "Defendants") cross-motion for summary judgment Dismissing Plaintiff's Complaint and all counterclaims asserted against them is granted in part and denied in part.

1 This case and the accompanying motions were transferred to Part 33 on January 20, 2025.

I. Background

On March 22, 2019, Plaintiff worked as a mechanic's helper for Third-Party Defendant Alliance Elevator Company LLC d/b/a Unitec Elevator ("Unitec") who was modernizing elevators at 1350 Sixth Avenue, New York, New York (the "Building") (NYSCEF Doc. 66 at 12-14). 1350 LLC owned the Building and SL Green managed the Building (NYSCEF Doc. 67 at 15). Plaintiff was working in the "pits" where the elevator shaft ended in the basement (NYSCEF Doc. 66 at 56). His supervisor, Chris Bellantone, instructed him to screw in a metal sheets to protect wires coming out of the wall (NYSCEF Doc. 66 at 77-78). To reach the trough, Plaintiff had to climb up to an elevated platform, and then use interlocking ladders placed on the platform. He interlocked four five-foot long fiberglass ladders (NYSCEF Doc. 66 at 60) Plaintiff ascended the ladders wearing a harness and made it up fifteen to sixteen feet when he was knocked off the ladder by an elevator, which should not have been in operation, and fell to the ground (NYSCEF Doc. 66 at 79-80). Plaintiff was wearing a harness but there was nowhere for him to tie off his lanyard, nor was a safety line available. All witnesses agree there was no safety line, but Plaintiff should have been provided one (NYSCEF Doc. 70 at 106; 124-25).

Plaintiff sues Defendants for alleged violations of the New York Labor Law and seeks summary judgment on his Labor Law § 240(1) claim. Defendants cross move for summary judgment dismissing Plaintiff's Complaint and any counterclaims.

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]). Once this showing is made, the burden shifts to

the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Courts must interpret Labor Law §240(1) liberally to accomplish its purpose of ensuring workers are protected against elevation related hazards (*Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513 [1985]).

B. Plaintiff's Motion

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted. There is no dispute that Plaintiff's involvement in the elevator modernization project constituted "altering...a building" within the meaning of Labor Law § 240(1). Nor is there any dispute that 1350 LLC, as the owner of the Building, is a proper Labor Law defendant. While Defendants submit an affidavit stating that SL Green Realty Corp. is a trust with no involvement managing the Building, SL Green Realty Corp.'s attorney stipulated on the record that it was the managing agent of the Building at the time of Plaintiff's accident (NYSCEF Doc. 67 at 19). Having represented at the deposition that Plaintiff had named the proper SL Green entity as a defendant, it is estopped from now arguing that it is not a proper Labor Law defendant. As held by the United States Supreme Court, parties are bound by their factual stipulations (*Christian Legal Soc'y Chapter of the Univ. of Cal. v Martinez*, 561 US 661, 676 [2010]).

Moreover, it is undisputed that Plaintiff was working at a substantially elevated height to screw in a metal trough to protect electrical wiring and was not provided a safety line when he fell all the way to the concrete floor (*Vasquez v Cohen Bros. Realty Corp.*, 105 AD3d 595, 597-598 [1st Dept 2013]). Indeed, the First Department has repeatedly granted injured workers summary judgment under Labor Law § 240(1) based on the failure to provide a safety line, or where harnesses and lanyards provided were inadequate to shield a worker from falling (*see, e.g. Loaiza*

v Museum of Arts and Design, 228 AD3d 511, 512 [1st Dept 2024]; *Gomez v Trinity Centre LLC*, 195 AD3d 502, 502-03 [1st Dept 2021]; *Goundan v Pav-Lak Contracting, Inc.*, 188 AD3d 596 [1st Dept 2020]; *Espinoza v Fowler-Daley Owners, Inc.*, 171 AD3d 480 [1st Dept 2019]; *DeJesus v 888 Seventh Ave. LLC*, 114 AD3d 587, 588 [1st Dept 2014]).

Nor can Plaintiff be considered the sole proximate cause of his accident because he did not ask for a safety line to be erected prior to engaging in work. As held by Justice Acosta:

“The Labor Law, recognizing the realities of construction and demolition work, does not require a worker to demand an adequate safety device by challenging his or her supervisor’s instructions and withstanding hostile behavior... workers would be placed in a nearly impossible position if they were required to demand adequate safety devices from their employers or the owners of buildings on which they work” (*DeRose v Bloomingdale’s Inc.*, 120 AD3d 41, 47 [1st Dept 2014]).

Here, Plaintiff testified he did complain he was not provided a lifeline (NYSCEF Doc. 66 at 176). When confronted again with the unsafe condition, he testified he did not complain again “because they don’t want no questions asked.” (NYSCEF Doc. 66 at 81). He further testified on the day of his accident his supervisor was upset from being yelled at, and they were getting “pushed back on the job.” (NYSCEF Doc. 66 at 96). Given these circumstances, and the testimony from Unitec’s representative that there was no safety line available for plaintiff in the elevator shaft, Defendants’ sole proximate cause defense fails (NYSCEF Doc. 70 at 105-06). Indeed, Plaintiff’s conduct at most amounts to comparative negligence, which is no bar to summary judgment on his Labor Law § 240(1) claim (*Mederos for Sena v 147 Amsterdam LLC*, 230 NYS3d 98, 99 [1st Dept 2025]). Therefore, Plaintiff’s motion for summary judgment is granted.

C. Defendants’ Cross Motion

Defendants’ cross motion is granted in part and denied in part. Defendants’ cross motion seeking dismissal of Plaintiff’s Labor Law § 240(1) claim is denied, as Plaintiff is granted summary judgment on the issue of liability with respect to his § 240(1) claim. However, the

remainder of Plaintiff’s claims are dismissed, without opposition, as abandoned (see, e.g. Saidin v Negron, 136 AD3d 458 [1st Dept 2016]). While Defendants’ cross moved for dismissal of any counterclaims asserted, a review of Third-Party Defendant’s answer shows no counterclaims were asserted – therefore this branch of the motion is denied (see NYSCEF Doc. 32).

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim asserted against Defendants/Third-Party Plaintiffs 1350 LLC and SL Green Realty Corp. is granted; and it is further

ORDERED that Defendants/Third-Party Plaintiffs 1350 LLC and SL Green Realty Corp. cross-motion for summary judgment dismissing Plaintiff’s Labor Law § 240(1) claim is denied, and the branch of their cross-motion dismissing Third-Party Defendant’s counterclaims is denied as there were no counterclaims asserted; and it is further

ORDERED that Defendants/Third-Party Plaintiffs 1350 LLC and SL Green Realty Corp. cross-motion for summary judgment dismissing Plaintiff’s Labor Law §§ 241(6), 241-a, 200, and common law negligence claims is granted, without opposition; 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.

<u>5/23/2025</u> DATE	<u>Mary V Rosado Jsc</u> 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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE