

Hao Sheng Zhou v Rockaway Hotel Owner LLC

2025 NY Slip Op 32135(U)

June 15, 2025

Supreme Court, New York County

Docket Number: Index No. 156652/2020

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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HAO SHENG ZHOU,

Plaintiff,

- v -

ROCKAWAY HOTEL OWNER LLC, COMALLA
CONSTRUCTION LLC, JBS PROJECT MANAGEMENT
LLC, A&B HEATING AND AIR CONDITIONING INC.,

Defendant.

-----X

ROCKAWAY HOTEL OWNER LLC, COMALLA
CONSTRUCTION LLC

Plaintiff,

-against-

JDP DESIGN CONSTRUCTION, INC.

Defendant.

-----X

ROCKAWAY HOTEL OWNER LLC, COMALLA
CONSTRUCTION LLC, JBS PROJECT MANAGEMENT LLC

Plaintiff,

-against-

A&B HEATING AND AIR CONDITIONING, INC.

Defendant.

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INDEX NO. 156652/2020
MOTION DATE 09/16/2024
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596057/2020

Second Third-Party
Index No. 596057/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 145, 150, 161, 162

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of April 15, 2025, Plaintiff Hao Sheng Zhou's motion for summary judgment on the issue of liability with respect to his Labor

Law § 240(1) claim asserted against Defendants Rockaway Hotel Owner LLC and Comalla Construction LLC is denied.

I. Background

On December 14, 2019, Third-Party Defendant JDP Design Construction, Inc. (“JDP Design”) employed Plaintiff Hao Sheng Zhou (“Plaintiff”) as carpenter at a project constructing the Rockaway Hotel (the “Premises”). The general contractor at the Premises was Defendant/Third-Party Plaintiff/Second Third-Party Plaintiff Comalla Construction LLC (“Comalla”) (NYSCEF Doc. 67 at 29). Plaintiff testified he climbed a six-foot white aluminum ladder to take measurements on the first-floor ceiling at the Premises when he fell off the ladder, which shook and wobbled (NYSCEF Doc. 65 at 79-80; NYSCEF Doc. 66 at 25). The ladder was old, and Plaintiff was concerned about its sturdiness because the metal braces, which lock the ladder in position, were bent (NYSCEF Doc. 65 at 99-101). When Plaintiff fell, the ladder fell with him (NYSCEF Doc. 66 at 25).

At the time of Plaintiff’s accident, there were many different trades working at the Premises, including plumbers, sheet rockers, electricians, framers, and HVAC mechanics (NYSCEF Doc. 67 at 34-35). Comalla contracted JDP Design as a framer and sheet rocker while A&B Heating was contracted to complete HVAC work (NYSCEF Doc. 67 at 39). According to JDP’s foreman, Plaintiff fell from a blue ladder owned by A&B Heating (NYSCEF Doc. 69 at 80). A JDP employee present at the time of Plaintiff’s fall likewise testified Plaintiff fell from a blue ladder (NYSCEF Doc. 70 at 53). A&B Heating’s witness stated it was not their blue ladder involved in Plaintiff’s accident, but a silver ladder (NYSCEF Doc. 68 at 21). Plaintiff admitted he did not know who the ladder belong to, and admitted he was told not to use other contractors’ tools

(NYSCEF Doc. 66 at 121). Plaintiff now seeks summary judgment on his Labor Law § 240(1) claim, which Owner and Comalla oppose.

II. Discussion

“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]).

Viewing the facts in the light most favorable to the non-movants, the Court finds there are issues of fact as to whether Plaintiff was the sole proximate cause of his accident. As a preliminary matter, Plaintiff admitted that he was instructed not to use other contractors’ equipment on the jobsite. Nonetheless, he decided to use an aluminum ladder, whose locking mechanism was noticeably bent, and despite not knowing who owned the ladder (NYSCEF Doc. 66 at 87-88; 100-01). Moreover, he knowingly placed the ladder on unsteady footing, by allowing three of the ladder’s feet to rest on level concrete but placing the fourth foot on cardboard (NYSCEF Doc. 66 at 94-95). When asked why, he stated “I didn’t really give it much thought. I think it’s only one of the feet and it’s not that thick of a pile of cardboard.” (*Id.*). Furthermore, Plaintiff admitted that he knew his employer had its own ladders on the job site and they were “very stable and steady” and he admitted that those ladders were available to him but he decided to use the allegedly defective adder because it was “right by me” (NYSCEF Doc. 66 at 102).

On this record, Plaintiff has failed to eliminate triable issues of fact as to whether he was the sole proximate cause of his accident. Indeed, Plaintiff admitted there were other adequate safety devices available, yet he seemingly chose to use an old and defective ladder, whose owner was unidentified, and despite being instructed by his employer to only use JDP design ladders. Therefore, Plaintiff's motion is denied (*see Cantre v BLDF Oceanside LLC*, 216 AD3d 451 [1st Dept 2023]; *Quinones v Olmstead Properties, Inc.*, 133 AD3d 87 [1st Dept 2015]; *Garzon v Metropolitan Transp. Auth.*, 70 AD3d 568 [1st Dept 2010]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for partial summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants Rockaway Hotel Owner LLC and Comalla Construction LLC is denied; and it is further

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

6/15/2025
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 checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE