

Chimbo v New York City Hous. Auth.

2025 NY Slip Op 32261(U)

June 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 515627/2020

Judge: Ingrid Joseph

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At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of June, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X

CHRISTIAN CHIMBO and MARIA SEGARRA,
Plaintiffs,

DECISION

-against-

NEW YORK CITY HOUSING AUTHORITY and
NYCHA I HOUSING DEVELOPMENT FUND
CORPORATION,

Index No.: 515627/2020
Motion Seq. 3

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>42-51, 68</u>
Opposing Affidavits (Affirmations) _____	<u>75-96</u>
Affidavits/ Affirmations in Reply _____	<u>99</u>

Upon the foregoing papers, plaintiffs Christian Chimbo and Maria Segarra (plaintiffs), move for an order, pursuant to CPLR 3212, granting them partial summary judgment as to liability on the Labor Law § 240 (1) cause of action as asserted against defendant New York City Housing Authority (NYCHA) (motion sequence number 3).

Plaintiff Christian Chimbo (injured plaintiff) and Maria Segarra (together, plaintiffs) plead causes of action premised on common-law negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6), based on injuries he suffered on November 19, 2019, while he was performing asbestos removal from a façade of a building located at 2115 Rockaway Parkway in Brooklyn (the premises), when the suspended scaffold on which the injured plaintiff was working allegedly collapsed (NY Cts Elec Filing [NYSCEF] Doc No. 44). At the time of the accident, the premises was owned and operated by NYCHA (NYSCEF Doc No. 45 at 2; NYSCEF Doc No. 50 at 12-13). NYCHA had hired the injured plaintiff's employer, Zoria Housing, LLC (Zoria) (not a party herein), as the general contractor on a project consisting of roofing replacement and façade work (NYSCEF Doc No. 50 at 14-15).

According to the injured plaintiff's testimony, on November 19, 2019, he was assigned to continue working on the façade of the eighth floor of one of the buildings at the premises

(NYSCEF Doc No. 47 at 34, 36; NYSCEF Doc No. 48 at 27). Specifically, the injured plaintiff was assigned to remove asbestos from bricks on the exterior wall of one of the buildings at the premises, which required the use of a suspended scaffold (NYSCEF Doc No. 47 at 39; NYSCEF Doc No. 48 at 38, 46). The scaffolds had been erected previously, and the injured plaintiff believed the scaffolds were erected by a different crew employed by Zoria (NYSCEF Doc No. 47 at 44; NYSCEF Doc No. 49 at 136). On the morning of the accident, the injured plaintiff visually inspected the scaffold prior to using it, and did not notice anything unusual (NYSCEF Doc No. 47 at 61-63, 66; NYSCEF Doc No. 49 at 147-148, 149, 150). The injured plaintiff worked approximately three and a half to four hours on the scaffold before the accident occurred (NYSCEF Doc No. 47 at 81; NYSCEF Doc No. 49 at 151). During this entire time, both the injured plaintiff and his coworker, who was on the scaffold, were attached to lifelines while working on the scaffold (NYSCEF Doc No. 47 at 82; NYSCEF Doc No. 49 at 144). While the injured plaintiff and his coworker were removing bricks and copper wiring as assigned, “the wire that [was] attached to the pulleys [of the scaffold] broke” and the injured plaintiff “just went down with everything” (NYSCEF Doc No. 47 at 93; NYSCEF Doc No. 49 at 161-162). As the scaffold fell, the plaintiff and his coworker were left hanging suspended on the lifelines (NYSCEF Doc No. 47 at 99; NYSCEF Doc No. 49 at 167, 186). According to the injured plaintiff, in addition to a laceration on his arm, he lost consciousness, and suffered injuries to his head, neck, back, and right arm (NYSCEF Doc No. 47 at 98, 106; NYSCEF Doc No. 49 at 168).

The injured plaintiff’s coworker, Luis Macias, also testified that the accident occurred when a steel cord attached to the suspended scaffold broke, and the scaffold collapsed (NYSCEF Doc No. 83 at 25-27; NYSCEF Doc No. 85 at 115, 118). Macias confirmed that he had also visually inspected the scaffold prior to beginning work on the day of the accident, and did not notice anything unusual (NYSCEF Doc No. 83 at 20-22; NYSCEF Doc No. 84 at 34, 35-36, 57, 74-75, 76). After the scaffold collapsed, Macias and the injured plaintiff were left hanging from their lifelines, before getting pulled up to the roof (NYSCEF Doc No. 83 at 27, 29, 32).

“ “[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Rotuba Extruders, Inc v Ceppos*, 46 NY2d 223, 231 [1978], quoting *Moskowitz v Garlock*, 23 AD2d 943 [3rd Dept 1965]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of

fact” (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ Med Center*, 64 NY2d 851 [1985]). When evaluating a motion for summary judgment, “facts must be viewed ‘in the light most favorable to the nonmoving party’” (*Vega v Restani Const Corp*, 18 NY3d 499, 503 [2012]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Const Corp*, 18 NY3d at 505).

“Labor Law § 240 (1) requires contractors to provide appropriate safety devices for the protection of workers engaging in labor that involves elevation related risks” (*Santiago v Hanley Group, Inc.*, 216 AD3d 833, 833-834 [2d Dept 2023]). Labor Law § 240(1) provides that:

“[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed”

“To prevail on a cause of action alleging a violation of Labor Law § 240 (1), a plaintiff must show, prima facie, that the defendant violated the statute and that such violation was a proximate cause of his or her injuries” (*Lochlan v H&H Sons Home Improvement, Inc.*, 216 AD3d 630, 632 [2d Dept 2023]). Generally, “[w]hether a device provides proper protection is a question of fact, except when the device collapses, moves, falls or otherwise fails to support the plaintiff and his or her material” (*Zholanji v 52 Wooster Holdings, LLC*, 188 AD3d 1300, 1302 [2d Dept 2020], quoting *Melcor v Singh*, 90 AD3d 866, 868 [2d Dept 2011]). Indeed, “[t]he collapse of a scaffold or ladder for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute creates a presumption that the ladder or scaffold did not afford proper protection” (*Yi Jiang Pai v Nelson Senior Hous. Dev. Fund Corp.*, 232 AD3d 822, 825 [2d Dept 2024], quoting *Valentin v Stathakos*, 228 AD3d 985, 989 [2d Dept 2024] [internal quotation marks omitted]).

Here, plaintiffs established their prima facie entitlement to judgment as a matter of law with respect to their Labor Law § 240 (1) cause of action. The injured plaintiff’s uncontroverted testimony at his deposition and his 50-H hearing established that he was subjected to the elevation-related risk of working on a suspended scaffold when a cable of the scaffold broke and the scaffold

collapsed, causing him to fall (NYSCEF Doc No. 47 at 93, 99; NYSCEF Doc No. 49 at 161-162, 167, 186) (*see Amaro v New York City Sch. Constr. Auth.*, 229 AD3d 746, 748 [2d Dept 2024]; *Cruz v Roman Catholic Church of St. Gerard Magella*, 174 AD3d 782, 783 [2d Dept 2022] [“Thus, in the instant case, the collapse of the scaffold, for no apparent reason, gave rise to ‘a prima facie showing that the statute was violated and that the violation was a proximate cause of the worker’s injuries’”], quoting *Dos Santos v State of New York*, 300 AD2d 434, 434 [2d Dept 2002]).

“Once a plaintiff makes a prima facie showing, the burden then shifts to the defendant, who may defeat [the] plaintiff’s motion for summary judgment only if there is a plausible view of the evidence – enough to raise a fact question – that there was no statutory violation and the plaintiff’s own acts or omissions were the sole cause of the accident” (*Mora v 1-10 Bush Terminal Owner, L.P.*, 214 AD3d 785, 786 [2d Dept 2023]).

In opposition to plaintiffs’ prima facie showing, NYCHA contends merely that there remain issues of fact as to whether the injured plaintiff’s alleged injuries were causally related to the accident. In support of this argument, NYCHA includes the affirmation of Dr. Craig H. Sherman, who opined that, based on a review of “various X-Rays, CT Scans, and MRI films” from the date of the accident and forward, that “the radiographic, CT and MRI findings identified in Mr. Chimbo-Parra’s imaging studies are related to chronic, long standing degenerative findings that were present prior to November 19, 2019 and were in no way caused by the alleged accident (NYSCEF Doc. No. 89 at 13). NYCHA argues that Dr. Sherman’s affirmation raises triable issues of fact as to NYCHA’s liability pursuant to Labor Law § 240 (1), because Dr. Sherman avers that “the injuries plaintiff claims to have sustained to his head, right shoulder, cervical spine and lumbar spine as a result of the alleged accident are pre-existing and degenerative in nature” (NYSCEF Doc No. 95 at 1-2).

Contrary to NYCHA’s contention, NYCHA has failed to raise a triable issue of fact regarding plaintiffs’ prima facie showing of liability under Labor Law § 240 (1). NYCHA’s argument that some of the injuries – specifically those to the injured plaintiff’s head, right shoulder, cervical spine, and lumbar spine - were caused by pre-existing conditions rather than the subject accident pertains to the issue of damages, not liability. Furthermore, where, as here, there is no evidence contradicting plaintiffs’ allegation that the scaffold upon which the injured plaintiff was working collapsed without reason, and where NYCHA has failed to establish, or even allege, that there was no statutory violation or that injured plaintiff’s own conduct was the proximate cause of

his accident, NYCHA has failed to raise a triable issue of fact in opposition to the plaintiffs' prima facie showing of entitlement to judgment as a matter of law as to liability under Labor Law § 240 (1) (NYSCEF Doc No. 47 at 93, 99; NYSCEF Doc No. 49 at 161-162, 167, 186; NYSCEF Doc No. 83 at 25-27; NYSCEF Doc No. 85 at 115, 118) (*see Sangare v 985 Bruckner Boulevard Housing Development Fund Corp.*, 212 AD3d 547, 547 [1st Dept 2023] ["Defendants' argument that all or some of the injuries pled were not caused by the subject accident is not an issue of liability, but rather an issue of damages which remains unresolved. The dispute concerning damages does not raise credibility issues relative to the issue of liability where plaintiff gave no inconsistent version of how the accident occurred nor is there any evidence contradicting the allegation that the scaffold collapsed"], citing *Gramigna v Morse Diesel, Inc.*, 210 AD2d 115, 116 [1st Dept 1994] and *Doyle v Sithe/Independence Power Partners*, 296 AD2d 847, 847 [4th Dept 2002]). In any event, Dr. Sherman's affirmation, which fails to address all of the injuries claimed by plaintiffs in their Bills of Particulars, or any of the injured plaintiff's medical records pre-dating the accident, and lacks an explanation for the conclusion that the injuries are "related to chronic, long standing degenerative findings that were present prior to November 19, 2019 and were in no way caused by the alleged accident," is without probative value and insufficient to raise a triable issue of fact regarding plaintiffs' prima facie showing under Labor Law § 240 (1) (NYSCEF Doc No. 89 at 13; NYSCEF Doc No. 90 at 4-8; NYSCEF Doc No. 91 at 1-6; NYSCEF Doc No. 92 at 1-7; NYSCEF Doc No. 93 at 1-8) (*see e.g. Schuler v Kings Plaza Shopping Center and Marina, Inc.*, 294 AD2d 556, 558 [2d Dept 2002]; *Carringi v International Paper Co.*, 184 AD2d 137, 141 [3d Dept 1992]).


Accordingly, it is hereby

ORDERED that plaintiffs' motion seeking partial summary judgment as to liability under their Labor Law § 240 (1) claim is granted; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that plaintiffs shall serve a copy of this order, with notice of entry, upon defendants.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**