

Torres v Caton Flats Hous. Dev. Fund Corp.

2025 NY Slip Op 32314(U)

June 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 518594/2020

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 23rd day of June 2025.

PRESENT: HON. CAROLYN E. WADE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
GERARDO TORRES and ROCIO TORRES,

Plaintiffs,

-against-

Index No.: 518594/2020

CATON FLATS HOUSING DEVELOPMENT FUND CORPORATION, BRP CATON FLATS, LLC and LETTIRE CONSTRUCTION CORP.,

DECISION AND ORDER

Defendants.

Motion Sequence Nos. 2 & 3

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Plaintiffs' GERARDO TORRES and ROCIO TORRES (hereinafter "Plaintiffs") Motion Seq. 002 (NYSCEF Doc. Nos. 55-82) seeks an Order pursuant to CPLR §3212, granting summary judgment with respect to liability in Plaintiffs' favor and against Defendants CATON FLATS HOUSING DEVELOPMENT FUND CORPORATION ("HDFC"), BRP CATON FLATS, LLC ("BRP"), and LETTIRE CONSTRUCTION CORP. ("LETTIRE") under Labor Law § 240(1) and § 241(6).

Defendants' CATON FLATS HOUSING DEVELOPMENT FUND CORPORATION, BRP CATON FLATS, LLC, and LETTIRE CONSTRUCTION CORP. (hereinafter referred to collectively as "Defendants") Cross-Motion Seq. 003 (NYSCEF Doc. Nos. 83-93), seeks an Order pursuant to CPLR § 3212, dismissing Plaintiff's claims under Labor Law §240(1), §241(6), §200,

and/or the common law.

STATEMENT OF FACTS

Plaintiff, Gerardo Torres, an employee of non-party RNC Industries (“RNC”), alleges that on July 26, 2019, he was working on a construction project located at 800 Flatbush Avenue, Brooklyn, New York (the “Project”). At the time of the incident, Defendants HFDC and BRP were the Premises Owners and Defendant LETTIRE was the General Contractor. LETTIRE subcontracted with RNC to have the latter perform excavation and foundation work. During the course of his construction activity, Plaintiff alleges that he was struck by a “metal form” which fell 16 feet from the column wall under which he was standing, causing personal injuries.

LEGAL ANALYSIS

Upon a reading of the foregoing papers, and all other papers and proceedings in this action, and after oral argument, Motion Seq. 002 and Motion Seq. 003 are decided as follows:

Labor Law § 200 and Common Law Negligence

Labor Law § 200 is a codification of the common law duty application to owners and general contractors of construction sites to act reasonably in providing workers with a safe place to work. *Comes v. New York State Electric and Gas Corp.*, 82 N.Y.2d 876, 609 N.Y.S.2d 168 (1993). Under Labor Law § 200, Courts have drawn a distinction between accidents arising out of the “means and methods” of a sub-contractor’s work and those which occur due to a defect “inherent in the premises.” Accidents that are caused not by a defective condition of the land, but by the manner of a contractor’s work, require a showing of supervisory control over the work in order to impose liability upon an owner or general contractor. *Davis v. Manitou Construction Co.*, 299 A.D.2d 927, 751 N.Y.S.2d 136 (4th Dept. 2002).

“In order for a Plaintiff to sustain a Labor Law § 200 cause of action based on “unsafe work methods,” it must be established that (1) the owner or contractor exercised supervisory control over the operation and (2) had actual or constructive notice of the unsafe manner in which the work was being performed.” *Ross v. Curtis Palmer Hydro-Electric Co.*, 81 N.Y.2d, 494, 601, N.Y.S.2d 49 (1993). Where there is no evidence that an owner or general contractor “supervised, directed, or controlled the work of the injured Plaintiff or provided tools, equipment, or safety devices to workers at the site, a Plaintiff’s claims of common law negligence or statutory violation under § 200 of the Labor Law must be dismissed against them.” *Tilton v. Gould*, 303 A.D.2d 491 (2nd Dept 2003). Thus, where the alleged defect or dangerous condition is not a condition of the property, but instead arises from the means and methods by which Plaintiff was performing his or her work, if the Defendant did not exercise any supervisory control over that work, no liability attaches to the defendant under the common law or under Labor Law § 200 (see *Comes*, supra).

Here, Plaintiff’s own testimony and the Bill of Particulars allege that the defective condition(s) that caused Plaintiff’s accident are directly related to the unsafe manner in which the work was performed and/or due to the materials or equipment Plaintiff and his co-workers were using, and *not* due to any condition(s) of the premises. Further, Plaintiff specifically testified that all of the materials used, and directions received, were provided exclusively by his employer, RNC. As Defendants did not provide Plaintiff with any materials or equipment, nor direction regarding how to perform the work, they cannot be held liable under Labor Law § 200.

Notably, the portion of Defendants’ Cross-Motion seeking dismissal of Plaintiff’s Labor Law § 200 and common law negligence claims is not opposed by Plaintiff.

Accordingly, it is hereby ORDERED that the portion of Defendants’ Cross-Motion

dismissing Plaintiff's claims under Labor Law § 200 is GRANTED.

Labor Law § 240 (1)

Labor Law § 240(1) provides that “all contractors and owners and their agents” engaged in demolition, repairing, or altering a building or structure shall furnish, or erect, or cause to be furnished and erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and any other device which shall be so constructed so as to be placed and operated so as to give proper protection to a person so employed.” *Sanatass v. Consolidated Investing Co., Inc.*, 10 N.Y.3d 333, 338, 858 N.Y.S.2d 67, 70 (2008).

Additionally, Labor Law § 240 (1) imposes absolute liability on owners, contractors and their agents for failing to provide safety devices necessary for the protection of workers subject to elevation-related risks, including injuries proximately caused by (1) an object that falls during the course of being hoisted or secured, or (2) a load that required securing for the purposes of the undertaking at the time it fell and, under either scenario, was inadequately secured by a safety device of the kind enumerated in the statute. *Narducci v. Manhasset Bay Associates*, 96 N.Y.2d at 268, 727 N.Y.S.2d at 41 (2001); see also, *Quattrocchi v. F.J. Sciamè Construction Corp.*, 11 N.Y.3d 757, 866 N.Y.S.2d 592; *Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509, 513, 577 N.Y.S.2d 219, 221 (1991).

Plaintiff argues summary judgment under Labor Law § 240(1) is warranted because Defendants were obligated, but failed, to provide Plaintiff with the proper equipment and/or safety devices, so as to protect him from elevation-related hazards. Conversely, Defendants argue that Plaintiff failed to offer any evidence to show that the item which allegedly fell on Plaintiff (i.e., the “metal form”) needed to be “hoisted or secured” or that the accident occurred due to the

“absence or inadequacy of a safety device of the kind enumerated in the statute” as required under Labor Law § 240(1).

Here, there are triable issues of fact as to whether the “metal form” constituted a falling object that required securing for purposes of the undertaking and whether Plaintiff was provided with the proper safety protections to perform his work in the vicinity of those materials. As such, there are issues of fact to be determined by a jury. Accordingly, it is hereby

ORDERED that the portion of Plaintiff’s Motion granting summary judgment under Labor Law § 240(1) is **DENIED**; and it is further

ORDERED that the portion of Defendants’ Cross-Motion dismissing Plaintiff’s claims under summary judgment under Labor Law § 240(1) **DENIED**.

Labor Law § 241(6)

Labor Law § 241(6) places a non-delegable duty on owners and contractors to “provide reasonable and adequate protection and safety” for workers by complying with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor. *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 501-502, 601 N.Y.S.2d 49 (1993). In order to prevail under § 241(6), a plaintiff must establish that defendants breached certain “specific provisions” of the New York State Industrial Code, as opposed to a general reiteration of common-law principles, and that the violation was a proximate cause of his injuries. *Rizzuto v. L.A. Wenger Contracting Co., Inc.*, 91 N.Y.2d 343, 349-350, 670 N.Y.S.2d 816, 819 (1998).

Plaintiff argues that summary judgment under Labor Law § 241(6) is warranted because Defendants violated New York Industrial Code § 23-1.7(a)(1), requiring that “[e]very place where persons are required to work or pass that is normally exposed to falling material or objects shall

be provided with suitable overhead protection,” as well as New York Industrial Code § 23-2.2(a), requiring that “forms, shores and reshores shall be structurally safe and shall be properly braced or tied together so as to maintain position and shape.” Conversely, Defendants argue that Plaintiff failed to prove that any of the Industrial Code Sections are applicable, were violated, or that such violation(s) were a “proximate cause” of plaintiff’s alleged injuries as required under Labor Law § 241(6).

Here, there are triable issues of fact as to whether the area where Plaintiff was allegedly struck was one that is normally exposed to falling material or objects and whether the “metal form” was structurally safe and properly braced. As such, there are issues of fact to be determined by a jury. Accordingly, it is hereby

ORDERED that the portion of Plaintiff’s Motion granting summary judgment under Labor Law § 241(6) is **DENIED**; and it is further

ORDERED that the portion of Defendants’ Cross-Motion dismissing Plaintiff’s claims under summary judgment under Labor Law § 241(6) **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: June ^{red}23, 2025
Brooklyn, New York

ENTER



HON. CAROLYN E. WADE, J.S.C

**Hon. Carolyn E. Wade
Supreme Court Justice**