

Cunas v E&T Skyline Constr. LLC

2025 NY Slip Op 32356(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 158461/2018

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

-----X

BRAULIO GABRIEL CUNAS,

Plaintiff,

- v -

E&T SKYLINE CONSTRUCTION LLC, 31ST STREET ZEF
LLC, ECOSAFETY CONSULTANTS, INC,

Defendant.

-----X

E&T SKYLINE CONSTRUCTION LLC, 31ST STREET ZEF
LLC

Plaintiff,

-against-

ECOSAFETY CONSULTANTS, INC.

Defendant.

-----X

INDEX NO. 158461/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595428/2020

The following e-filed documents, listed by NYSCEF document number (Motion 003) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 127, 128, 129

were read on this motion to/for JUDGMENT - SUMMARY

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Plaintiff Braulio Cunas commenced this personal injury action against Defendants Skyline and ZEF by Summons and Verified Complaint filed on September 12, 2018, asserting claims sounding in negligence and violations of Labor Law §§ 200 and 241(6). (NY St Cts Elec Filing [NYSCEF] Doc No. 1). Defendants E&T Skyline Construction LLC (“Skyline”) and 31st Street ZEF LLC (“ZEF”) interposed a Verified Answer on November 16, 2018. (NYSCEF Doc No. 4).

On June 10, 2020, Skyline and ZEF initiated a third-party action against ECOSAFETY CONSULTANTS, INC. (“Ecosafety”). (NYSCEF Doc. No. 13). Thereafter, pursuant to a stipulation, Plaintiff filed a Supplemental Summons and Amended Verified Complaint on June 23, 2020, naming Ecosafety as a direct defendant. (NYSCEF Doc No. 17). Skyline and ZEF served a Verified Answer to the Amended Complaint on August 19, 2020.

Plaintiff served a Verified Bill of Particulars on December 30, 2019, and subsequently served Supplemental Verified Bills of Particulars on March 23, 2020; October 21, 2021; October 26, 2021; November 9, 2021; December 12, 2022; and December 18, 2023. (NYSCEF Doc No. 99). Plaintiff filed a Note of Issue on January 23, 2024. (NYSCEF Doc No. 100).

Plaintiff now brings the instant motion for summary judgment pursuant to Labor Law § 241(6). Defendants Skyline and ZEF cross move for summary judgment pursuant to Labor Law §§ 241(6) and 200 and for dismissal.

Plaintiff was deposed on December 28, 2022, January 19, 2023, and April 17, 2023. He testified that on July 16, 2018, while employed as a carpenter by Regulator Construction Corp. (“Regulator”), he was injured at a construction site located at 30 East 31st Street, New York, New York. Plaintiff had been employed by Regulator since approximately December 2017. The construction site here related to the construction of a 40-plus story building.

Plaintiff further testified that on the date of the incident, Plaintiff was engaged in removing concrete forms from wooden floors from the 41st or 42nd floor of the building. While using a crowbar to remove a form, he allegedly “slipped and fell” on debris consisting of rebar pieces left on the floor. (NYSCEF Doc No. 113 at 142). The debris, according to Plaintiff, was the product of prior work by the “rebar team” from Regulator. Plaintiff testified that he did not observe the rebar prior to slipping and falling, but later noticed multiple 7-inch pieces scattered

on the floor. Plaintiff stated that upon slipping on the rebar, he fell, striking his back and neck on a 2x4 piece of wood, and experienced immediate pain. (NYSCEF Doc No. 113 at 134) Plaintiff ultimately left the construction site around 12:30 p.m. complaining of pain and upon returning home made an appointment to see a chiropractor. (Id. at 152-154)

In an Affidavit in Support of Plaintiff's Motion 003, Plaintiff's coworker, Adonay Tula, testified that he personally witnessed the accident and asserts that it occurred as described by Plaintiff in that Plaintiff slipped on a piece of rebar. (NYSCEF Doc No. 102) Kevin Tolbert, a principal of Skyline, was deposed on June 13, 2023. He testified that Skyline served as general contractor for the subject project pursuant to a written contract with ZEF and that Skyline subcontracted the superstructure concrete work to Regulator.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986)). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990)).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494

(1993) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). Here, plaintiff's claim under Labor Law §241(6) is based on violations of 12 NYCRR §23-1.7(d), (e)(1), and (e)(2), reproduced below:

Industrial Code §23-1.7(d) Slipping hazards provides:

“Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.”

Industrial Code §23-1.7(e) Tripping and other hazards, such provides:

“(1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

(2) Working areas. The parts of floors, platforms, and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.”

The Court is granting Plaintiff's motions for summary judgment as to Labor Law 241(6) based on to Industrial Code §23-1.7(e). First, the Court finds that, despite the conflicting testimony as to whether the location of the incident was a passageway, it is undisputed that the area was a working area as set forth in Industrial Code §23-1.7(e)(2) for the purposes of liability pursuant to Labor Law § 241(6).

Plaintiff's deposition testimony, confirmed by the affidavit of Adonay Tula, establishes conclusively that there was rebar debris on the floor and that such debris was never cleaned up. Accordingly, Plaintiff clearly establishes that the working area was not “free from accumulation” and as such makes a prima facie showing that Defendants violated Industrial Code § 23-1.7(e)(2). Therefore, Plaintiff's summary judgment motion for Labor Law § 241(6) should be

granted, as there is no issue of material fact for the court to resolve as to Defendants' violation of Industrial Code § 23-1.7(e)(2).

Alternatively, this Court finds that Plaintiff's motion also sufficiently sets forth a prima facie showing that summary judgment pursuant to Labor Law § 241(6) is appropriate based on Industrial Code § 23-1.7(d).

The Court of Appeals recently ruled that, "to meet their summary judgment burden, plaintiffs here were required to show that: (1) section 23-1.7(d) applied under the circumstances; (2) defendants [...] violated that section's specific commands; (3) this violation alone, or considered with other undisputed factual evidence, constitutes negligence; and (4) the violation caused plaintiffs' injuries. (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 318 [2024]).

Plaintiff has established that the rebar debris created a slippery condition and that Defendants violated the specific requirements of Industrial Code §23-1.7(d), thereby satisfying the first two elements above. First, Plaintiff established that the rebar debris was not integral to the work surface. (*Id.* at 321). The Court of Appeals held in *Bazdaric* that materials, even those not specifically enumerated in the statute, may constitute slipping hazards when such materials create conditions which "when the substance is present, would make it difficult if not impossible to use the work area safely." (*Id.* at 320). Plaintiff testified that on the date of the accident, he slipped on a piece of loose rebar while performing form removal work on the 41st or 42nd floor of an active high-rise construction site. His co-worker, Adonay Tula, independently confirmed that pieces of rebar had been left behind by a separate trade and that such debris was common at the site.

Plaintiff additionally satisfies the third element, showing that Defendants were negligent based on the undisputed facts of the condition of the site. Under *Badzarac*, even if no direct act

of negligence is shown, a violation of the Industrial Code, combined with undisputed facts—such as repeated failure to clean the area, routine presence of debris, and lack of supervision or enforcement of cleanup—can support a finding of negligence. Here, there is testimony that cleanup was typically only done before Department of Buildings visits and that debris was left in place for days. That undisputed context supports an inference of negligence based on the violation of Industrial Code § 23-1.7(d).

Plaintiff has met his prima facie burden to establish liability based on Labor Law § 241(6). There is no dispute that Plaintiff fell when his foot slipped on a piece of rebar. He was using both hands on a crowbar at the time and had just completed work in the area. He immediately reported pain and was sent home due to his injuries. Defendants do not raise a triable issue of fact to dispute Plaintiff's claims that Defendants' violation of § 23-1.7(d) was a proximate cause of Plaintiff's fall and resulting injuries.

Turning to Defendants' cross motion for summary judgment dismissing the complaint, the Court does not find that the motion was made timely, and as such the motion is denied. First, the Court's Part Rules require motions to be made within 60 days of filing the note of issue. Plaintiff filed the Note of Issue on January 23, 2024. (NYSCEF Doc No. 100). Defendants argue that any delay in filing the instant motion related to Motion Sequence 2 by Defendants to strike the Note of Issue, which was filed on February 13, 2024. (NYSCEF Doc. No 72). That motion was resolved by stipulation dated May 8, 2024, with a decision and order resolving such on May 15, 2024. (NYSCEF Doc Nos. 106, 107). Defendants' cross motion was made on June 17, 2024, over one month after the court's denial to vacate the Note of Issue and almost five months after Plaintiff filed the Note of Issue. Though Defendants requested an extension of the time to file a motion in their moving papers in Motion Sequence 2, the parties did not stipulate to such

extension nor did the Court order such. Accordingly, the 60-day rule related to filing of motions applies to Defendants' motion. Moreover, even if the cross-motion had been timely, to the extent that Defendants' cross motion seeks summary judgment and dismissal pursuant to Labor Law § 241(6), such would be denied as this Court has found herein that Plaintiff's motion for summary judgment pursuant to Labor Law § 241(6) is meritorious. In addition, although Plaintiff did not move for summary judgment pursuant to Labor Law § 200, the established facts do not support summary judgment and dismissal of claims related to Labor Law § 200. Thus, Defendants' cross motion is denied.

The court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that Plaintiff's motion for summary judgment for liability pursuant to Labor Law § 241(6) is granted.

ORDERED that Defendants' cross-motion for summary judgment is denied.


The foregoing constitutes the decision and order of the Court.

7/3/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


HON. LESLIE A. STROTH
J.S.C.