

**Swiergalski v Perlbinder Holdings LLC**

2025 NY Slip Op 32657(U)

June 5, 2025

Supreme Court, Kings County

Docket Number: Index No. 514245/2019

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5<sup>th</sup> day of June 2025

HONORABLE FRANCOIS A. RIVERA

-----X  
PIOTR P. SWIERGALSKI,

Plaintiff,

Index No.: 514245/2019

-against-

**DECISION AND ORDER**

PERLBINDER HOLDINGS LLC, COUSINS COMPANY,  
MARBRU ASSOCIATES, 330 W. 56 STREET  
CORPORATION, 330 WEST 56TH STREET ASSOCIATES,  
CHARLES H. GREENTHAL MANAGEMENT CORP.,  
PRATT CONSTRUCTION & RESTORATION INC., and  
RBS RENOVATION CORP.,

Ms. 7 & 8

Defendants.

-----X  
PERLBINDER HOLDINGS LLC, COUSINS COMPANY,  
MARBRU ASSOCIATES, 330 W. 56 STREET  
CORPORATION, 330 WEST 56TH STREET ASSOCIATES,  
and CHARLES H. GREENTHAL MANAGEMENT CORP.,

Third-Party Plaintiffs,

-against-

RBS RENOVATION CORP.,

Third-Party Defendant.

-----X  
PRATT CONSTRUCTION & RESTORATION INC.,

Second Third-Party Plaintiffs,

-against-

RBS RENOVATION CORP.,

Second Third-Party Defendant.

-----X

PRATT CONSTRUCTION & RESTORATION INC.,

Third Third-Party Plaintiffs,

-against-

RITEWAY RENOVATION INC.,

Third Third-Party Defendant.

-----X  
RBS RENOVATION CORP.,

Fourth Third-Party Plaintiff,

-against-

RITEWAY RENOVATION INC.,

Fourth Third-Party Defendant.

-----X

By notice of motion, under motion sequence number seven, Defendants PERLBINDER HOLDINGS LLC, COUSINS COMPANY, MARBRU ASSOCIATES, 330 W. 56 STREET CORPORATION, 330 WEST 56TH STREET ASSOCIATES, CHARLES H. GREENTHAL MANAGEMENT CORP., PRATT CONSTRUCTION & RESTORATION INC., and RBS RENOVATION CORP. sought an Order, pursuant to CPLR § 3212, granting Defendants summary judgment under Labor Laws §§ 240(1), 241(6), and 200/common law negligence, dismissing Plaintiff's complaint, as well as for judgment as a matter of law on contractual indemnification claims against third-party defendant RITEWAY RENOVATION, INC.

By notice of cross-motion, under motion sequence number eight, Plaintiff, PIOTR P. SWIERGALSKI sought an Order, pursuant to CPLR § 3212, granting Plaintiff summary judgment on liability under Labor Laws §§ 240(1) and 241(6), predicated on Industrial Code §§ 23-1.7 (d) and 23-1.7 (e) (1) as against all Defendants; and summary judgment on liability as to Labor Law

§ 200/common law negligence against Defendant PRATT CONSTRUCTION & RESTORATION INC.

Following oral argument, the Decision and Order of the Court is as follows:

**Defendants' Motion (Motion Seq. No. 7)**

As for the Labor Law § 240 claim, Defendants argued that the staircase Plaintiff was on at the time of his incident is a permanent building structure which does not constitute a safety device within the meaning of the statute, and the circumstances surrounding Plaintiff's incident do not involve a gravity-related risk necessary to fall within the ambit of § 240. In opposition, Plaintiff, relying on *Foufana v. City of New York*, 621 N.Y.S.2d 572 (1<sup>st</sup> Dept. 1995), argued that the placement of Masonite on each individual tread of the staircase rendered the staircase temporary. This Court, however, finds that *Foufana* is distinguishable from the instant case and that the placement of Masonite on the subject staircase did not render the staircase temporary. Therefore, Defendants are granted summary judgment dismissing Plaintiff's Labor Law § 240 claim.

Defendants contended that the Industrial Code violations alleged by Plaintiff are either inapplicable or insufficient to support liability under Labor Law § 241 (6), specifically Industrial Code §§ 23-1.2(a); 23-1.30; 23-1.5; 23-1.7(d); 23-1.7(e)(1); 23-1.7(e)(2); 23-2.1(a)(1); 23-2.1(b); 23-2.7; 23-3.3(f) and 23-3.3(k). Plaintiff only opposed as to Industrial Code §§ 23-1.7 (d) and 23-1.7(e)(1). The unopposed Industrial Code Sections are deemed abandoned, and therefore are dismissed. With regards to Industrial Code §§ 23-1.7 (d) and 23-1.7(e)(1), there exists triable issues as to whether the Masonite laid on the staircase was an integral part of the work performed at the jobsite, thus requiring denial of Defendants' summary judgment on Labor Law § 241(6).

Defendants moved for summary judgment as to Labor Law § 200 / common law negligence contending that the alleged incident arose from a condition at the jobsite of which they did not

have notice. Plaintiff advanced opposition on a means and methods of work theory with respect to Defendant PRATT CONSTRUCTION & RESTORATION, arguing that the PRATT foreman assisted Plaintiff and his RITEWAY co-workers with laying down the Masonite on the staircase and had authority to instruct them to replace it. Plaintiff also opposed on a dangerous condition theory with respect to all Defendants, alleging that they had constructive notice of the unsecured Masonite that caused Plaintiff to fall. The Court found a question of fact as to whether Plaintiff's injuries resulted from both a dangerous and defective condition at the premises, as well as the method and means of construction, and not solely due to a dangerous condition. Since Defendants did not address the method and means theory of negligence, they failed to demonstrate that they lacked authority to supervise the means and methods of the work, and therefore did not meet their burden to establish a prima facie showing of entitlement to dismiss Plaintiff's Labor Law § 200 / common law negligence claim.

**Plaintiff's Cross-Motion (Motion Sequence No. 8)**

By virtue of the Court granting Defendants summary judgment dismissing Plaintiff's Labor Law § 240(1) claim, the arguments on Plaintiff's cross-motion seeking summary judgment on § 240 are rendered academic. As such, this branch of Plaintiff's motion is denied.

With regards to Labor Law § 241(6), Plaintiff sought summary judgment based upon violations of Industrial Code §§ 23-1.7(d) and 23-1.7 (e)(1). Plaintiff argued that due to unsecured Masonite, he was caused to slip and fall with the Masonite down the subject staircase, and that both Industrial Code Sections were applicable. Further, Plaintiff contended that for purposes of liability under § 23-1.7(e)(1), it was immaterial whether he slipped or tripped.<sup>1</sup> However, this Court found that Plaintiff failed to eliminate all factual issues as to whether the unsecured Masonite

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<sup>1</sup> Lois v. Flintlock Const. Servs, LLC, 27 N.Y.S.3d 120, 122 (1st Dep't 2016); Pereira v. New School, 48 N.Y.S.3d 391, 393 (1st Dep't 2017).

was the proximate cause of his fall. As such, triable issues of fact exist requiring the denial of Plaintiff's summary judgment motion on his Labor Law § 241(6) claim.

Additionally, Plaintiff sought summary judgment on Labor Law § 200 against Defendant PRATT, alleging that the unsecured Masonite was a result of the method and means of the ongoing work at the construction site where Plaintiff was working. Plaintiff also argued that Defendant PRATT was not merely responsible for site safety, but was responsible for quality control, which constitutes responsibility for the manner and means of work at the construction site. The Court found that issues of fact exist as to whether Defendant PRATT exercised sufficient control over the manner and means by which the Masonite was placed on the subject staircase, and whether said control and/or lack thereof was the proximate cause of the subject incident and resultant injuries. As such, Plaintiff's application for summary judgment as to Labor Law § 200/common negligence against PRATT was denied.

#### **Defendants' Contractual Indemnification Claims**

Defendants also moved for summary judgment on their contractual indemnification claims against third-party Defendant RITEWAY RENOVATION INC. Said motion was filed and served upon RITEWAY'S attorney via nyscef electronic filing on July 16, 2024. Subsequently, RITEWAY'S attorney was relieved as counsel by a January 30, 2025 Order (Nyscef Doc. No. 296).

As such, out of an abundance of caution, this Court is reserving decision on this branch of defendants' motion until service of the motion papers is made upon RITEWAY.

Accordingly, it is

ORDERED, that Defendants' summary judgment motion (Motion Seq. No. 7) is granted in part to the extent that Plaintiff's Labor Law § 240(1) claim is dismissed;

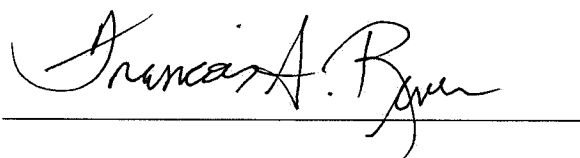
ORDERED, that Defendants' summary judgment motion (Motion Seq. No. 7) is denied as to Labor Law §§ 241(6) and 200/common law negligence;

ORDERED, that Plaintiff's cross-motion (Motion Seq. No. 8) is denied;

ORDERED, that Defendants shall serve a hard copy of the motion papers through the Secretary of State and regular mail by July 7, 2025; Oral argument as to the contractual indemnification claims is scheduled for July 24, 2025 (Plaintiff's appearance is waived for that date).

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

**MON. FRANCOISA RIVERA**