

Velasco v Skyline Restoration Inc.

2025 NY Slip Op 32778(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 157350/2021

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

-----X

ALEJANDRO VELASCO,
Plaintiff,

- v -

SKYLINE RESTORATION INC., 1199 HOUSING
CORPORATION,

Defendant.

-----X

SKYLINE RESTORATION INC.
Plaintiff,

-against-

ONETEAM RESTORATION INC.

Defendant.

-----X

INDEX NO. 157350/2021
MOTION DATE 08/30/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 596100/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 134, 154, 165, 168, 169, 170, 171, 172, 173, 175, 176

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument on May 27, 2025, where Jeffrey Schietzelt, Esq. appeared for Plaintiff Alejandro Velasco ("Plaintiff"), Katherine M. Weiss, Esq. appeared for Defendants Skyline Restoration Inc. ("Skyline") and 1199 Housing Corporation ("1199 Housing Corp.") (collectively "Defendants"), and Third-Party Defendant Oneteam Restoration Inc. ("Oneteam") did not appear, Plaintiff's motion for summary judgment against Defendants on the issue of liability with respect his Labor Law §§ 240(1) and 241(6) claims, and seeking dismissal of Defendants' seventeenth and eighteenth affirmative defenses is granted in part and denied in part.

I. Background

On July 22, 2021, Oneteam employed Plaintiff as a laborer at 2120 1st Avenue, New York, New York (the “Premises”) (NYSCEF Doc. 119). Plaintiff was disassembling a scaffold at the Premises when he heard a cracking sound, the scaffold collapsed, and Plaintiff fell to the floor (NYSCEF Doc. 120 at 104; 113; 115). 1199 Housing Corp. owned the Premises and contracted Skyline as a general contractor (NYSCEF Doc. 126). Skyline contracted Oneteam for masonry and façade work at the Premises (NYSCEF Doc. 122 at 21; 24; 96). According to Skyline, it was Oneteam’s duty to inspect the scaffolds (NYSCEF Doc. 122 at 39). Skyline’s witness could not explain why a lifeline or anchor point was not nearby the scaffold that caused the accident (NYSCEF Doc. 122 at 49). Skyline’s witness also testified the scaffold which injured Plaintiff did not appear to be secured to the building (NYSCEF Doc. 122 at 70-71). Plaintiff’s liability expert, Nicholas Bellizzi, P.E., opined that the failure to provide Plaintiff with a lifeline and Defendants’ failure to secure the scaffold to the building violated Labor Law § 240(1) (NYSCEF Doc. 129 at ¶¶ 22-23). Plaintiff now seeks summary judgment on the issue of liability with respect to his Labor Law §§ 240(1) and 241(6) claims against Defendants, and Defendants 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]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Plaintiff’s motion for summary judgment with respect to his Labor Law § 240(1) claim is granted. There is no dispute that Defendants are proper Labor Law defendants, nor is there any

dispute that Plaintiff was engaged in work covered by Labor Law § 240(1). Moreover, there is no dispute that Plaintiff was working on a scaffold that collapsed, causing him to fall to the ground. These undisputed facts establish Plaintiff's *prima facie* burden on the issue of liability with respect to his Labor Law § 240(1) (*Lemache v Elk Manhasset LLC*, 222 AD3d 491, 492 [1st Dept 2023]; *see also Kind v 1177 Avenue of the Americas Acquisitions, LLC*, 168 AD3d 408, 409 [1st Dept 2019]).

In opposition, Defendants fail to raise a triable issue of fact. Defendants' argument that lifelines and parapet clamps were available to Plaintiff on the worksite is insufficient given Plaintiff's uncontroverted testimony that the nearest lifeline was three meters away from the scaffold on which he was working (NYSCEF Doc. 120 at 101-02). Nor is there any evidence that Plaintiff was ever provided the necessary materials to drill his own lifeline into the building (*Jara-Salazar v 250 Park, L.L.C.*, 231 AD3d 674, 674 [1st Dept 2024] [plaintiff was not recalcitrant because he was not provided with an adequate safety device in the first instance]). Defendants' argument that Plaintiff improperly removed a cross brace supporting the scaffold is without merit, as the witness who testified Plaintiff removed the cross brace admitted he had no firsthand knowledge of that fact (NYSCEF Doc. 170 at 107). Oneteam's owner testified the accident occurred because Plaintiff's co-worker removed a cross brace on the scaffold (NYSCEF Doc. 123 at 35).

The Court declines to consider the witness affidavit of David Conde as he was never identified as a witness in Defendants' discovery responses (*Moore ex rel. Hill v City of New York*, 85 AD3d 623, 624-25 [1st Dept 2011]). Even if the Court were to consider Mr. Conde's affidavit, it fails to establish Plaintiff was the sole proximate cause of his accident. Nor have Defendants produced any expert testimony to rebut Mr. Bellizzi's expert opinion.

Therefore, Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim is granted and Defendants’ seventeenth and eighteenth affirmative defenses, which allege Plaintiff was a “recalcitrant worker” and was the “sole proximate cause” of his injuries are dismissed (see also Mederos v Sena v 147 Amsterdam LLC, 237 AD3d 410, 410-11 [1st Dept 2025]; Pirozzo v Laight Street Fee Owner LLC, 209 AD3d 596, 596-97 [1st Dept 2022]). “In view of the foregoing, the issue of defendants’ liability under Labor Law § 241(6) is academic” (Nyanteh v 590 Madison Ave., LLC, 238 AD3d 643, 643 [1st Dept 2025]).

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against is granted, and Defendants’ seventeenth and eighteenth affirmative defenses are hereby dismissed; and it is further

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 241(6) claim is denied as academic; and it is further

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

8/5/2025
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 type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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