

Chisag v Masaryk Towers Corp.

2025 NY Slip Op 32786(U)

July 17, 2025

Supreme Court, New York County

Docket Number: Index No. 157769/2020

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

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INDEX NO. 157769/2020

CHRISTIAN CHISAG, MAGDALENA QUINATO, A

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

MASARYK TOWERS CORPORATION, AM&G
WATERPROOFING LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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MASARYK TOWERS CORPORATION

Third-Party
Index No. 595553/2021

Plaintiff,

-against-

AM&G WATERPROOFING LLC, J COFFEY CONTRACTING
INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 101, 102, 103, 104

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

Plaintiff Christian Chisag commenced this action to recover damages for serious personal injuries sustained on September 4, 2020, while performing construction and excavation work in the course of his employment with J Coffey Contracting at a construction site located at 85 Columbia Street, New York, New York 10002. Plaintiff alleges that he was positioned inside an excavation trench, guiding a 16-foot-long timber shoring plank (“beam”) into the ground. The beam was being manually lowered into place by a co-worker located above the trench, with the assistance of an excavator machine.

While Plaintiff was guiding the beam into position, the beam allegedly snapped and fell approximately five feet from the excavator bucket, striking Plaintiff and knocking him to the ground inside the trench. Plaintiff alleges that the impact from the unsecured beam caused Plaintiff to suffer multiple serious injuries. These injuries have required, among other treatment, lumbar decompressive surgery on his lower back.

Plaintiff now moves for partial summary judgment pursuant to Labor Law § 240(1) against Defendants Masaryk Towers Corporation (“Masaryk”) and AM&G Waterproofing LLC. (“AM&G”). Defendant Masaryk is the owner of the site where the construction work was occurring and AM&G was the general contractor assigned to the site.

Labor Law §240(1) states “All contractors and owners and their agents...in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or 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.”

The statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). “[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

“To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's

injuries. The burden then shifts to the defendant to raise a triable issue of fact” (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). “The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity” (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

Plaintiff has established a prima facie case for liability under Labor Law § 240(1). The facts, as supported by deposition testimony, contemporaneous accident reports, and Department of Buildings (“DOB”) violations, demonstrate that plaintiff was engaged in protected activity—excavation involving the placement of timber shoring beams—when a beam became dislodged and fell onto him due to the lack of any securing device. Plaintiff produced a Stop Work Order issued by the Department of Buildings and a Department of Buildings Summons, against AM&G which identified violations of New York City, N.Y., Code § 3301.2 for “failure to institute safety measures” related to the alleged accident. (NYSCEF Doc Nos. 89-90). Plaintiff provides further proof that the violations related to the accident resulted in fines to AM&G totaling \$18,000. (NYSCEF Doc Nos. 91-92).

There is no dispute that no hoist, brace, sling, or similar safety apparatus was provided to prevent the beam from falling. The beam, by plaintiff’s account and as confirmed in the DOB report, was simply being guided manually by workers without mechanical assistance. The record reflects that plaintiff and his co-worker were used in effect as “human hoists,” which is insufficient as a matter of law. (*Iuculano v City of New York*, 214 AD3d 535 [1st Dept 2023]).

The elevation differential—approximately five feet—is legally sufficient to establish a Labor Law § 240(1) violation. (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009]). Moreover, the focus of § 240(1) is not the distance of the fall per se, but whether the injury

resulted from the application of gravity without adequate protective devices. Here, it is uncontroverted that a beam fell from a height, striking plaintiff.

Defendants have failed to raise a triable issue of fact precluding summary judgment. First, given that there is uncontroverted evidence that the beam was unsecured, Plaintiff cannot be the sole proximate cause of the accident. Likewise, the argument that plaintiff failed to submit an expert affidavit is unavailing as Plaintiffs in a Labor Law 240(1) action are "not required to submit any expert testimony concerning the required safety device." (*Cazho v Urban Builders Group, Inc.*, 205 AD3d 411 [1st Dept 2022]). The court has considered the remaining arguments and finds such unavailing.

For the foregoing reasons, Plaintiff Christian Chisag's motion for partial summary judgment as against Defendants Masary and AM&G pursuant to Labor Law 240(1) is granted.


7/17/2025
DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE



 LESLIE A. STROTH, J.S.C.