Rios v 677 Eleventh Ave.
2025 NY Slip Op 32874(U)
July 9, 2025
Supreme Court, Kings County
Docket Number: Index No. 520684/2021
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings
Part LL1M

Index Number 520684/2021
Seqs. 003, 004

DECISION/ORDER

MEICY ANDREA NAVARRO RIOS,

Plaintiff,

against

677 ELEVENTH AVENUE AND REDCOM CM INC.,

Defendants.

677 ELEVENTH AVENUE AND REDCOM CM INC.,

Third-Party Plaintiff,

against

MBARETE CONTRACTING CORP.,

Third-Party Defendant.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2–3
Replying Affidavits	3
Exhibits	Var.
Other	

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 003) and defendants' motion for summary judgment (Seq. 004) are decided as follows:

Plaintiff commenced this action to recover for damages she claims to have sustained on February 25, 2020, while performing taping work at the premises located at 660 12th Avenue, New York, NY. The premises was owned by 677 Eleventh Avenue (Eleventh), and Redcom CM Inc. (Redcom) was the general contractor. Redcom sub-contracted plaintiff's employer, third-party defendant Mbarete Contracting Corp.

Plaintiff testified as follows: on the date of her accident, her supervisor "Nestor" assigned her to work on the fifth floor (Rios first EBT at 47–49). Plaintiff requested a scaffold, and someone from another work group came and assembled it (*id.* at 48–51; 53). After plaintiff ascended the scaffold to begin applying compound to the walls, the middle of the scaffold broke

and plaintiff fell to the ground (*id.* at 62, 63, 68–70). The accident was unwitnessed (*id.* at 72). Plaintiff fell in a seated position and struck her head, rendering her unconscious for an indeterminate amount of time (Rios third EBT at 13–14).

Plaintiff testified that she was taken to CityMD after her accident (Rios second EBT at 62–63). Plaintiff claims that her boss, who drove her to the CityMD, told her to lie and say that she was cleaning her house when she slipped and cut her leg (*id.* at 63–67), and plaintiff testified that she did so (*id.* at 70–71). Erme Ullon testified that he did not take plaintiff to the CityMD on February 25, 2020 and did not tell her to lie about what caused her injuries (Ullon EBT at 37, 38). The entry from the CityMD record, under "History of Present Illness," reads: "Pt states she was cleaning at home this morning when she slipped and cut her RT leg below the knee and has pain on her LT arm."

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1) and Labor Law § 241 (6)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute (*e.g.* a scaffold) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). To prevail on a cause of action pursuant to Labor Law

§ 241 (6), plaintiff must show that she was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]).

Here, plaintiff's testimony is sufficient to make out her prima facie entitlement to summary judgment on her Labor Law § 240 (1) claim; however, defendants have raised a triable issue of fact as to whether the accident occurred based on Mr. Ullon's testimony and the CityMD medical records. The statement in the medical record is attributed to plaintiff and the information itself is germane to treatment. Plaintiff's account of falling a significant distance, injuring her back, and being knocked unconscious would require materially different treatment than a ground-level slip resulting in a leg laceration and arm pain (*see Kamolov v BIA Group, LLC*, 79 AD3d 1101 [2d Dept 2010]). Therefore, the medical report is admissible and provides an account of plaintiff's accident that does not implicate a statutory violation (*Moran v. Trustees of Columbia Univ. in the City of New York*, 224 AD3d 803, 833 [2d Dept 2024]). "The fact that an accident was unwitnessed does not preclude granting summary judgment to the plaintiff" (*Rivera v Dafna Const. Co., Ltd.*, 27 AD3d 545 [2d Dept 2006]); however, here, defendants have identified a credibility determination that is inappropriate to resolve on a motion for summary judgment (*see Schultheis v Arcate*, 216 AD3d 1018 [2d Dept 2023]). Therefore, plaintiff's motion for summary judgment is denied.

Contractual Indemnification

Eleventh and Redcom seek summary judgment on their contractual indemnification claim against Mbarete. As an initial matter, the motion was untimely. Movants have offered a non-perfunctory excuse of law officer failure (*Brill v City of New York*, 2 NY3d [2004]; *cf. Lanza v M-A-C Home Design*, 188 AD3d 855 [2d Dept 2020]). However, Eleventh and Redcom's

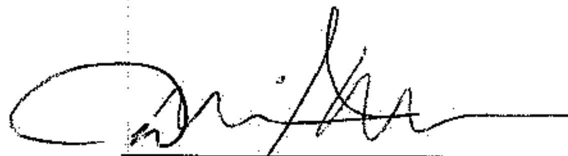
motion is denied as the issue of contractual indemnification is not yet ripe. There are questions of fact as to how plaintiff was injured and whether the accident occurred on the worksite. Therefore, the issues of negligence and of whether this activity "[arose] out of" Mbarete's work have not yet been resolved.

Conclusion

Plaintiff's motion for summary judgment (Seq. 003) is denied.

Defendants' motion for summary judgment (Seq. 004) is denied.

This constitutes the decision of the court.



July 9, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court