

White v New York City Tr. Auth.

2025 NY Slip Op 32875(U)

July 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 520844/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 520844/2022
Seqs. 003, 004

Part LL1

DECISION/ORDER

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

THOMAS WHITE,

Plaintiff,

against

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, TC ELECTRIC, LLC, J-
TRACK LLC, AND TC-JT RUTGERS JV.,

Defendants.

Papers Numbered

Notice of Motion and Affidavits Annexed . . .	<u>1</u>
Order to Show Cause and Affidavits Annexed . . .	<u>2-4</u>
Answering Affidavits	<u>5-6</u>
Replying Affidavits	<u>Var.</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

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

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on November 15, 2021, when he fell from an A-frame ladder while working as an HVAC mechanic employed by Welkin Mechanical at the York Street subway station in Brooklyn, NY. Plaintiff testified as follows: On the date of his accident, plaintiff was instructed to install fire dampers in Electrical Room A by his foreman, Frank Lucarelli (White EBT at 40). To do this work, plaintiff was using a six-foot A-frame ladder to install the 24 inch by 12 inch by 30 inch fire damper, which weighed fifty to sixty pounds.

The plaintiff testified that he was working at a low enough height that he did not require a harness (*id.* at 71), and that a six-foot ladder was sufficient to perform the job that he was required to do (*id.* at 72–73). Plaintiff set up the ladder himself and inspected it before using it (*id.* at 80–81). Plaintiff received the fire damper from his co-worker, “Mel,” while plaintiff was

standing on the ladder (*id.* at 98–99). This procedure was not the industry standard for installing a fire damper (*id.* at 64). Instead, the preferred method is to use a high jack to lift the damper up to the bottom of the duct (*id.* at 65). Plaintiff testified that this was not possible because of the cables throughout the electrical room, although there was a high jack available on site (*id.* at 65). Instead, plaintiff positioned his ladder at a 45-degree angle to the wall, instead of the preferred 90-degree angle, because a four-inch yellow conduit blocked his ladder (*id.* at 95). The conduit was supposed to be removed by TC Electric before he performed his work, but it was not (*id.*).

While attempting to insert the fire damper into the wall penetration, the ladder “jerked out” from underneath him and he fell onto the floor (*id.* at 98–99, 105, 109). Plaintiff “[assumed] that the cables that were underneath the rungs of my ladder got pulled and possibly jilted the ladder out from underneath me” (*id.* at 68). Plaintiff continued to use the same ladder that day to perform more work “because the ladder was still in good shape” (*id.* at 112–113). Plaintiff further testified that he inspected the ladder after his accident and that his fall “wasn’t a ladder issue” (*id.* at 119). There is no testimony about a Baker scaffold, and plaintiff testified that his “career is basically working off a ladder” (54).

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)

Liability under Labor Law § 240 (1) is “absolute” where the failure of a safety device enumerated by the statute (e.g. a ladder) 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 *Haines 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)]).

In support of their motion, defendants contend that plaintiff testified that his accident was “not [caused] by a ladder issue” and that it would have been impossible to use a Bakers scaffold or high jack in the area where plaintiff needed to work. In opposition, and in support of his own motion, plaintiff argues that the ladder “jerked,” causing him to fall, and that the presence of cables and the conduit forced plaintiff to set up his ladder on unsafe footing.

Ultimately, there are material issues of fact that require denial of both parties’ motions with respect to plaintiff’s Labor Law § 240 (1) claim. Plaintiff testified that he “assum[ed]” the cables caused the ladder to jerk, but speculation is insufficient to support a motion for summary judgment. Plaintiff also testified that he ensured the four shoes of the ladder “rested squarely on the concrete” (*id.* at 84). Although ordinarily a plaintiff is not required to identify precisely how a safety device failed to prevail under Labor Law § 240, where a plaintiff testified that the safety device itself was “fine” both before and after the accident and does not affirmatively identify another statutory violation, there is question of fact as to liability. The presence of the cables under the ladder and plaintiff’s testimony that the ladder moved are sufficient to warrant denial of defendants’ motion for summary judgment.

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he 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 (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only substantively opposes defendants' motion with respect to Industrial Codes 23-1.21 (b) (1) (ladder must be able to support four times their weight), (b) (3) (proper maintenance and removal of defective ladders), and (b) (4) (ii) and (iv) (adequate footing for ladders). Therefore, plaintiff's other pleaded Industrial Code violations are deemed abandoned (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]). Accordingly, defendants' motions are granted with respect to those claims.

Since plaintiff testified that the ladder he was using was in good condition before, during, and after the accident, defendants' motion must be granted as to Rules 1.21 (b) (1) and (b) (3). Rule 1.21 (b) (4) (iv) is also inapplicable, as the plaintiff was working from the fourth rung of a six foot ladder and cannot, therefore, have been standing six feet or more above the footing of the ladder. However, there is a material issue of fact as to whether the ladder was on secure footing, as required by Rule 1.21 (b) (4) (ii) in light of the testimony about the cables on the floor.

Labor Law § 200

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). Here, there is a question of fact as to whether

defendants had authority to control the means and methods of plaintiff's work. The record contains testimony that Transit Authority had authority to coordinate the trades and that the general contractor and site-safety manager retained had stop-work authority (Marc Belevan, TC Electric representative, at 42-44; 94-99). Therefore, there are questions of fact about the exercise and extent of these parties' authority, and specifically whether it involved control over the removal of the conduit or cables from the wall or the floor.

Conclusion

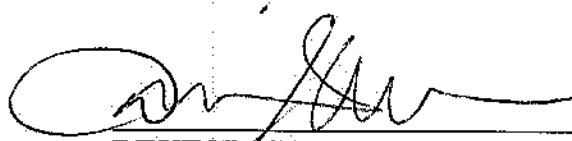
Defendants' motion for summary judgment (Seq. 003) is granted to the extent of dismissing the Labor Law § 241 (6) claim against it as predicated on all alleged Industrial Code violations except Rule 23-1.21 (b) (4) (ii); the motion is otherwise denied.

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

This constitutes the decision and order of the court.

July 8, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court