

Plaza v Clune Constr. Co. LP

2025 NY Slip Op 32917(U)

August 11, 2025

Supreme Court, New York County

Docket Number: Index No. 157958/2019

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

-----X

KENNETH PLAZA, DIANE PLAZA,
Plaintiff,

INDEX NO. 157958/2019

04/04/2025,
07/14/2025,
07/14/2025

MOTION DATE

- v -

MOTION SEQ. NO. 005 006 007

CLUNE CONSTRUCTION COMPANY LP, RXR
CONSTRUCTION SERVICES LLC, RXR REALTY
LLC, DONALDSON INTERIORS INC., MAIA MP
CONSTRUCTIONS, INC., LIBERTY CONTRACTING
CORP.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

CLUNE CONSTRUCTION COMPANY LP
Plaintiff,

Third-Party
Index No. 595406/2021

-against-

DONALDSON INTERIORS INC., MAIA MP
CONSTRUCTIONS, INC., LIBERTY CONTRACTING CORP.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 175, 176, 177, 178,
179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199,
200, 201, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 006) 203, 204, 205, 206,
207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227,
228, 229, 230, 254, 255, 256, 257, 258, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289,
290, 291, 292, 293, 294, 297, 299, 300

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 007) 231, 232, 233, 234,
235, 236, 237, 238, 239, 240, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273,
274, 275, 276, 295, 296, 298, 301, 302, 303

were read on this motion to/for JUDGMENT - SUMMARY

ALLEGED FACTUAL BACKGROUND

On May 21, 2018, Plaintiff Kenneth Plaza (“Plaintiff”), a journeyman electrician employed by non-party Unity Electric, was performing electrical work on the 20th floor of 237 Park Avenue, New York, New York, as part of a renovation project.

Defendant Clune served as the general contractor while RXR oversaw the project and delegated day-to-day coordination to Clune.

Defendant Donaldson performed carpentry work, including drywall installation, under a subcontract with Clune. Donaldson subcontracted taping and finishing to Maia, whose work involved applying joint compound to drywall. Joint compound was delivered in five-gallon buckets and frequently stored on pallets.

Plaintiff testified that he was descending an eight-foot A-frame fiberglass ladder after installing conduit in the ceiling. The ladder was positioned in a narrow area adjacent to a wooden pallet loaded with buckets of joint compound. Plaintiff stated that the ladder suddenly “shook” or “shifted” sideways. As he turned to steady himself, he alleges his right foot came down on or near the pallet and became trapped beneath it or between its slats and a bucket, twisting his knee and causing him to fall onto his left side.

Plaintiff alleges he immediately reported the accident to his supervisor and later sought medical treatment for injuries to his right knee and left shoulder.

Coworker Severino Avellino allegedly witnessed the incident, confirming that the ladder moved and that Plaintiff’s foot became caught near the pallet. Photographs taken shortly afterward allegedly depict the ladder next to a pallet stacked with buckets in a confined workspace.

Plaintiff's engineering expert, Nicholas Bellizzi, P.E., opined that the ladder's proximity to stored materials violated 12 NYCRR §§ 23-1.21(b)(4)(ii) and 23-1.7(e)(1), depriving Plaintiff of secure footing and creating a tripping hazard in a passageway. Bellizzi concluded that the condition materially increased the risk of injury.

Donaldson's scope of work covered carpentry only, but it had personnel on site in the area of the accident. Maia performed finishing work involving the same type of joint compound stored on the pallet. The parties dispute whether Donaldson, Maia, or another subcontractor placed the pallet in the accident location. Both Donaldson and Maia deny placing it or having control over Plaintiff's ladder placement.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

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]).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 (1992)). Plaintiff’s Complaint and Second Supplemental Complaint alleges violations of the Industrial Codes Found in 12 NYCRR §§23-1.7, 1.15, 1.16, 1.17 1.21, 1.24,

1.30, 2.1 and subpart 23-512 NYCRR §23-1.5(a)(b)(c)(1)(2)(3); §23-1.7(b)(d); In Motion

Sequence 005, Plaintiff only argues under violations of Industrial Codes 12 NYCRR §§ 23-

1.7(e), 23-1.21 and 23-2.1(a)(1), which read, in pertinent part, as follows:

- i) 23-1.7(e)(1) & (2);
(e) Tripping and other hazards.
 - (1) Passageways. All passageways shall be kept free from ... obstructions or conditions which could cause tripping...
 - (2) Working areas. The parts of floors, platforms, and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.
- ii) 23-1.21
(b) General requirements for ladders.
 - (1) Strength. Every ladder shall be capable of sustaining without breakage, dislodgment or loosening of any component at least four times the maximum load intended to be placed thereon.
 - (3) Maintenance and replacement. All ladders shall be maintained in good condition. A ladder shall not be used if any of the following conditions exist:
 - (ii) If it has any insecure joints between members or parts.
 - (iv) If it has any flaw or defect of material that may cause ladder failure.
 - (4) Installation and use.
 - (ii) All ladder footings shall be firm. Slippery surfaces and insecure objects such as bricks and boxes shall not be used as ladder footings.
 - (8) Spreaders. All ladders with spreading bases, such as step and trestle ladders, shall be equipped with locking type spreaders to hold such bases rigid when in the open position.
- (e) Stepladders.
 - (2) Bracing. Such bracing as may be necessary for rigidity shall be provided for every stepladder. When in use every stepladder shall be opened to its full position and the spreader shall be locked.
- ii) 23-2.1(a) Storage of material or equipment:
 - (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare

DISCUSSION

Labor Law § 240(1)

Plaintiff was engaged in a covered activity for the purposes of Labor Law § 240(1) as he was involved in electrical installation from an elevated ladder when the ladder shifted, causing him to lose balance and land on or near a pallet. This constitutes an elevation-related hazard within the scope of § 240(1) (*Kyle v City of New York*, 268 AD2d 192, 196 [1st Dept 2000]). The eyewitness account and photographs confirm the hazardous placement of the ladder and pallet. Additionally, Defendants' "sole proximate cause" defense fails absent proof that Plaintiff had an adequate safety device available which he misused (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 39-40 [2004]).

Clune, as the general contractor on the project, had overall responsibility for the coordination and safety of the work being performed at the site. "[W]hile under Labor Law §§ 240 and 241 owners and general contractors are generally absolutely liable for statutory violations, other parties may be liable under those statutes only if they are acting as the 'agents' of the owner or general contractor by virtue of the fact that they had been given the authority to supervise and *control* the work being performed at the time of the injury." (*Serpe v Eyriss Productions, Inc.*, 243 AD2d 375, 379-80 [1st Dept 1997]); *see also Rizzuto v. L.A. Wenger Contr. Co.*, 91 NY2d 343, 350 [1998]). Clune has not produced evidence rebutting its status as a statutory agent with nondelegable duties under the Labor Law.

Similarly, RXR, as the owner's agent, stood in the shoes of the owner for purposes of the Labor Law. Courts have consistently held that such authority is sufficient to impose vicarious liability under §§ 240(1) and 241(6), regardless of whether RXR actually exercised day-to-day control over Plaintiff's specific task. (*Id.*).

By contrast, Donaldson and Maia were subcontractors with more limited scopes of work. To impose liability upon them under these statutes, Plaintiffs were required to demonstrate that either subcontractor had the authority to supervise or control the specific injury-producing work. The record contains conflicting testimony on these points. While the pallet of joint compound that allegedly contributed to the accident may have been associated with work performed by Donaldson or Maia, neither Plaintiff's testimony nor the photographic evidence conclusively establishes which subcontractor placed it in the accident location, whether that placement was under their control at the time of the accident, or whether they had authority to direct or control Plaintiff's ladder setup. As such, issues of fact remain precluding summary judgment as against Donaldson and Maia, as it remains unclear whether Donaldson or Maia had supervisory control over Plaintiff's work. As such, the Court grants Plaintiff's summary judgment motion as to Clune and RXR but denies it as to Donaldson and Maia. Moreover, as those same issues of fact persist for the purposes of Labor Law § 241(6), there can be no summary judgment as against or in favor of those parties pursuant to Labor law § 241(6), and as such their subsequence motions in Sequences 006 and 007 are denied.

Labor Law § 241(6)

Testimony from Plaintiff and coworker Avellino establishes that the pallet partially blocked a narrow corridor-like space, which workers regularly traversed to move between sections of the floor. Photographs confirm that the pallet occupied a substantial portion of the walking path, forcing workers to navigate around or over it.

“A passageway for purposes of this regulation ‘mean[s] a defined walkway or pathway used to traverse between discrete areas as opposed to an open area” (*Smith v Extell W. 45th LLC*, 230 AD3d 1044, 1045 [1st Dept 2024] citing *Quigley v. Port Auth. of N.Y. & N.J.*, 168 AD3d 65,

67, 90 NYS3d 156 [1st Dept. 2018]). Even if materials are temporarily placed, they must not obstruct the path in a manner that creates a tripping hazard. Here, the pallet's presence directly contributed to Plaintiff's loss of balance and inability to safely plant his foot when the ladder shifted. This constitutes a clear violation of the Industrial Code section found at 12 NYCRR § 23-1.7(e)(1), and as such both Clune and RXR are liable pursuant to Labor Law § 241(6).

The area immediately surrounding the ladder was not only a travel route but also an active "working area" where Plaintiff performed electrical installation. The pallet and buckets were not necessary for Plaintiff's task and were not in use by him at the time. Expert Bellizzi opined that their placement in close proximity to the ladder created an unnecessary hazard. Here, the cluttered condition reduced safe clearance for ladder use and impeded foot placement during descent, establishing that the working area was not "free from accumulation" for the purposes of Labor Law § 241(6). As such, Plaintiff established a prima facie entitlement to summary judgment pursuant to Labor Law § 241(6) for violations of the Industrial Code section found at 12 NYCRR § 23-1.7(e)(2).

Moving next to Industrial Code sections found at 12 NYCRR § 23-1.21(b). Plaintiff testified that the ladder was stable when first placed but shifted laterally when he was descending. The left-side ladder feet were within inches of the pallet, and there was no open floor space to fully extend his foot without contacting the pallet. Bellizzi opined that the ladder was effectively against an insecure pallet violating § 23-1.21(b)(4)(ii). (NYSCEF Doc No. 188). Photographs show the ladder open with spreaders engaged, so there is no evidence of a violation of 12 NYCRR § 23-1.21(b)(8) or (e)(2). However, the improper footing provision of 12 NYCRR § 23-1.21(b)(4)(ii) is directly applicable, as the close, obstructive placement adjacent to the pallet compromised footing stability and foreseeably caused the loss of balance. Accordingly,

Summary Judgment is appropriate pursuant to Labor Law § 241(6) for a violation of the industrial code section found at 12 NYCRR § 23-1.21(b)(4)(ii) as well.

Finally, as to Industrial Code sections found at 12 NYCRR § 23-2.1(a)(1), the pallet of joint compound was left in the narrow work/passage space for an extended period before the accident. Both Plaintiff and Avellino testified they had to maneuver around it during the day. There is no evidence the storage location was temporary or that its placement was unavoidable given site constraints. However, Plaintiff has not made a prima facie case related to any storage location, and as such the Court does not grant summary judgment pursuant to this Industrial Code Section.

In sum, Plaintiff's motion for summary judgment is granted in part, as the Court finds that both Clune and RXR are liable pursuant to both Labor Law §§240 and 241(6). Plaintiff's motion as to Donaldson and Maia are denied. As the Court finds that issues of fact remain as to Maia and Donaldson's liability, summary judgment in their favor is not warranted, and so Motion Sequences 006 and 007 are denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that Plaintiff's Motion Sequence 005 for Summary Judgment pursuant to Labor Law §§240 and 241(6) is granted against Defendant's Clune and RXR and denied as to Donaldson and Maia; and it is further

ORDERED that Motion Sequence 006 is denied in its entirety; and it is further

ORDERED that Motion Sequence 007 is denied in its entirety.

The foregoing constitutes the decision and order of the court.

Leslie A. Stroth

HON. LESLIE A. STROTH
J.S.C.

8/11/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE