

Novaku v 3328 Coney Is. Ave., LLC

2025 NY Slip Op 32939(U)

July 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 500030/2023

Judge: Devin P. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
County of Kings

Index Number 500030/2023
Seq. 003

Part LL1M

DECISION/ORDER

DRANOEL NOVAKU,

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

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed	<u>1-3</u>
Order to Show Cause and Affidavits Annexed.	<u>4-6</u>
Answering Affidavits	<u>7-8</u>
Replying Affidavits	<u>Var.</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

3328 CONEY ISLAND AVENUE, LLC, SH5
CONSTRUCTION CORPORATION, UNITED JEWISH
APPEAL-FEDERATION OF JEWISH
PHILANTHROPIES OF NEW YORK, INC,
SHOREFRONT YM-YHWA OF BRIGHTON-
MANHATTAN BEACH INC, SHOREFRONT YM-
YHWA OF BRIGHTON BEACH-MANHATTAN
BEACH INC., AND DORMITORY AUTHORITY OF
THE STATE OF NEW YORK,

Defendants.

Upon the foregoing papers,¹ plaintiff's motion for summary judgment (Seq. 003) is decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on December 17, 2022, when he fell from the roof of a construction project located at 3300 Coney Island Avenue, Brooklyn, NY (Shorefront or the premises). The following is undisputed: On the date of the accident, plaintiff was performing flash removal work on the edge of the building. To perform the work, plaintiff was required to lean out over the edge of the building, instead of

¹ Plaintiff's papers exceed the word limit as established by Uniform Rule 202.8. However, the document is combined affirmation in support and memorandum of law, and addresses a longer procedural history than the typical affirmation. Therefore, plaintiff's papers have been accepted and the motion will be resolved on the merits (*Taveras v Incorporated Village of Freeport*, 225 AD3d 822 [2d Dept 2024]).

working from an articulated boom lift, scaffold, or other elevated platform adjacent to the building. The plaintiff was employed by non-party NBA Construction, Inc. (NBA). The Dormitory Authority of the State of New York (DASNY) hired NBA to perform roofing work at Shorefront. DASNY was involved because some of the renovations were paid for by post-Sandy rehabilitation funding. The premises was owned by 3328 Coney Island Avenue LLC. Shorefront YM-YWHA of Brighton-Manhattan Beach, Inc. (Shorefront Y) was the lessee of the premises. SH5 Construction Corporation (SH5) was the original general contractor; it was replaced by plaintiff's employer, NBA, at DASNY's discretion. All claims were discontinued against SH5 on November 10, 2023, without prejudice.

It is further undisputed that plaintiff's supervisor, Jabbar Habib, was working with plaintiff at the time of the accident and told him to cut the metal flashing from the side of the roof. Plaintiff was holding a crowbar in one hand and using his left hand to hold onto the perimeter railing on the roof. Plaintiff was wearing a harness, but testified that there was no rope or safety line available where he was working (Novaku EBT at 67). Plaintiff claims the middle of the railing detached while he was holding on and he fell twenty feet to the ground.

Mr. Habib, in an affidavit filed in opposition to plaintiff's motion, contended that the plaintiff was tied off (Habib aff. at ¶ 19). Mr. Habib claimed that plaintiff disconnected his harness and fell from the roof (*id.* at ¶¶ 21). Mr. Habib admitted the work should have been performed from a scaffold instead of attempting to anchor workers and then have them hang over the edge of the building (Habib EBT at 99–100). Additionally, defendants' site safety plan indicate that a boom lift should have been used to remove the flashing.

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]).

As an initial matter, plaintiff does not make any arguments with respect to defendant United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc (UJA); therefore, plaintiff's motion is denied with respect to this defendant.

Plaintiff also does not demonstrate that the Shorefront defendants are proper Labor Law defendants. The Shorefront defendants contend that, although they are commercial lessees of the premises, they did not contract for the work; DASNY did (Susan Fox, Shorefront representative, EBT at 29, 33–36). Plaintiff fails to demonstrate that the Shorefront defendants are proper Labor Law defendants; therefore, plaintiff's motion is denied as to these defendants (*cf. Seferovic v Atlantic Real Estate Holdings, LLC*, 127 AD3d 1058 [2d Dept 2015]).

With respect to DASNY, the plaintiff's sole argument is that DASNY was an agent of Shorefront and hired NBA to perform the work at the site (aff. in supp. at ¶ 173). It is undisputed that plaintiff's employer, NBA, was the general contractor at the site. Mallikarjuna Dokku, DASNY's project manager, testified that DASNY functioned as "the general construction manager," monitoring progress and ensuring that work was completed on time (Dokku EBT at 17). Mr. Dokku was usually present at the site once every two weeks (*id.* at 22). Mr. Dokku was not asked whether DASNY had authority "to control the activity that brought about his accident," and plaintiff has not provided any such evidence. Therefore, given the

presence of a different general contractor and the lack of sufficient testimony concerning DASNY's authority over the site, plaintiff's motion with respect to DASNY is denied due to issues of material fact (*see Walls v Turner Const. Co.*, 4 NY3d 861 [2005]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute (*e.g.* a lift) 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)]).

Here, plaintiff has demonstrated his prima facie entitlement to summary judgment on his Labor Law § 240 (1) claim based on his testimony that he was required to lean over the side of the building to perform the work, instead of working from a lift. To the extent that there is a question of fact as to whether plaintiff had a proper tie-off point or unhooked his harness, it is not determinative since this would amount at most to evidence of plaintiff's comparative fault, which is not a defense under Labor Law § 240 (1) (*Blake*, 1 NY3d at 289).

Labor Law § 241 (6)

Labor Law § 241(6) requires that owners and contractors provide reasonable and adequate protection and safety to workers. Still, a defendant that is liable under Labor Law § 240 (1) may not necessarily be liable under Labor Law § 241 (6). The former imposes liability when plaintiff suffers harm due to any absence of an adequate safety device or the presence of an inadequate safety device. The latter requires the plaintiff to prove that he suffered harm due to the violation of a sufficiently specific section of the Industrial Code (*see Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501-502 [1993]).

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]). Defendants move for summary judgment on plaintiff's Labor Law § 241 (6) claim.

Here, there is conflicting testimony about whether the plaintiff was not provided with proper fall-arrest protective equipment and anchorage points in violation of Rule 23-1.16. Therefore, although plaintiff is awarded summary judgment on Labor Law § 240 (1), he has not made a sufficient factual demonstration to warrant summary judgment on Labor Law § 241 (6), and his motion is denied, in this regard.

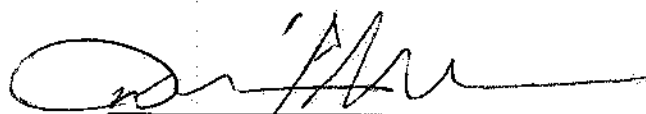
Conclusion

Plaintiff's motion for summary judgment (Seq. 003) is granted as to his Labor Law § 240 (1) claim against 3328 Coney Island Avenue and the motion is otherwise denied.

This constitutes the decision and order of the court.

July 9, 2025

DATE



DEVIN P. COHEN
Justice of the Supreme Court