

Elliott v 509 W 34, L.C.C.

2025 NY Slip Op 33166(U)

August 21, 2025

Supreme Court, New York County

Docket Number: Index No. 150882/2020

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

RICHARD ELLIOTT,

Plaintiff,

- v -

509 W 34, L.C.C., TURNER CONSTRUCTION COMPANY

Defendants.

-----X

INDEX NO. 150882/2020
MOTION DATE 11/21/2024
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action, defendants move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff opposes the motion.

I. PROCEDURAL BACKGROUND AND FACTS

Plaintiff commenced this action on January 24, 2020, asserting claims under Labor Law 200, 240(1), and 241(6), as well as common-law negligence, against defendants 509 W 34 L.C.C. (owner) and Turner Construction Company (Turner).

On August 22, 2019, at approximately 8:40 a.m., while working at a construction site located at 66 Hudson Boulevard, New York, New York (premises), owned by owner, plaintiff sustained injuries when he received an electric shock while handling rebar over a temporary electrical cord (NYSCEF 22). At the time of the incident, Turner served as the general contractor for the building project, and plaintiff was employed as a journeyman lather by Tonnage, Inc. (Tonnage), a subcontractor retained by Turner (*id.*). On the day of the incident, plaintiff and his coworkers were installing steel rebar in the middle of the jobsite footprint (*id.*).

The jobsite was surrounded by perimeter protections that separated the work area from the elevated street level (*id.*).

Plaintiff Depositions (NYSCEF 32-34)

Leading up to the incident, plaintiff was positioned inside the jobsite, receiving 30-foot lengths of steel rebar over or through the perimeter fencing, which was being passed by his co-workers who were positioned at street level. Street level sat at a slightly higher elevation than the position in which plaintiff was working. Photographs produced by plaintiff (NYSCEF 31) and marked as deposition exhibits depict the accident location, including the perimeter fencing and the temporary orange electrical cord suspended from it. He was farthest from the perimeter fence and was guiding the front end of the rebar as it was passed into the jobsite. Plaintiff testified that all instructions concerning how the rebar was to be passed came from Tonnage personnel.

At the time of the incident, he had both hands on the rebar and was wearing gloves with rubber-coated palms. He did not recall whether any coworkers were in contact with the rebar at the time. While performing this task, plaintiff received an electric shock and immediately lost consciousness. He did not recall falling but stated that when he awoke, he was lying on the ground while being attended to by a site medic. He did not observe the precise source of the shock and was unaware of any exposed wiring in the area before the incident.

The area where the rebar was passed was cluttered with wood and pipes, with an orange electrical cord running along the path where the rebar was being maneuvered. Plaintiff denied knowing whether this cord was energized or whether it had been damaged prior to contact with the rebar and was unaware of who created the hole in the perimeter fencing through or over which the rebar was passed.

Coworker Statements (NYSCEF 30)

The Workers' Compensation Board file submitted by defendants contains notarized statements from several of plaintiff's coworkers who were present at the site on the date of the incident. In substance, these witnesses reported that they did not observe plaintiff fall from a height but saw him in a dazed condition after contact between the rebar and a temporary electrical cord. One stated that sparks were visible near the cord immediately after the incident.

Harriendorf Affirmation (NYSCEF 25)

Harry Harriendorf, a Project Safety Manager at Turner Construction, affirms that he was present at the premises on August 22, 2019, and responded immediately to the incident involving plaintiff. In his role, he was responsible for monitoring jobsite safety and ensuring compliance with Department of Buildings (DOB) regulations. The temporary orange electrical cord involved in the incident was suspended off the ground using ceramic grommets made of non-conductive materials, and the cord was properly insulated and grounded at all times prior to the incident. Turner did not own the cord, but it was installed in accordance with applicable safety standards.

Upon arriving at the scene, Harriendorf observed that a hole had been torn through the perimeter fencing and that plaintiff and his coworkers had been passing ribbed rebar through it and dragging it across the orange cord. He observed that the rebar had forced the cord downward, altering its route, and that the friction from the rebar had stripped away the insulation in one specific area, exposing current-carrying parts. No other portion of the cord was damaged, and the exposure was created contemporaneously with the incident. Harriendorf confirmed that Turner did not authorize any breach of the perimeter or use of this method, was unaware of it prior to the incident, and would have denied permission had it been requested.

Shinske Affirmation (NYSCEF 24)

Matthew Shinske, the Business Unit Environmental Health and Safety Director at Turner Construction Company, affirmed that he was the lead Project Safety Manager for the construction project at the premises on August 22, 2019. Although not physically present at the site on the day of the incident, he was informed of plaintiff's injury by Harriendorf. In his capacity, Shinske was responsible for overall jobsite safety and was familiar with the requirements of the DOB concerning perimeter protections and temporary electrical wiring. After the incident, he reviewed the incident report and jobsite photographs, which, in his view, confirmed that the temporary orange electrical wiring was properly suspended using ceramic grommets, insulated, and in compliance with code prior to the incident. The wiring was not looped over nails or otherwise improperly installed, and no exposed or unprotected wires were present.

II. DISCUSSION

“On a motion for summary judgment, facts must be viewed ‘in the light most favorable to the non-moving party’ ” (*Vega*, 18 NY3d at 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). A party moving for summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and by the pleadings and other proof such as affidavits, depositions and written admissions (*see CPLR 3212[b]*). The movant’s “failure to make a prima facie showing of entitlement to summary judgment requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*William J. Jenack Estate Appraisers &*

Auctioneers, Inc. v Rabizadeh, 22 NY3d 470, 475 [2013], citing *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). Only if movant's burden is met does the burden then shift to the opposing party to demonstrate the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman*, 49 NY2d at 557).

A. LABOR LAW 240(1)

Defendants move for dismissal of plaintiff's Labor Law 240(1) cause of action, arguing that plaintiff's injury did not result from a gravity-related hazard within the statute's scope, as he was working at ground level at the time of the incident and did not fall from an elevated height. Moreover, the alleged injury—electrical shock while handling rebar—was not the direct consequence of an elevation differential or a failure to provide proper protective equipment under the statute.

Plaintiff opposes, arguing that the electrical shock that caused him to “fall back” and strike his head, coupled with the absence of any fall protection or adequate safety devices, raises triable issues as to whether the accident arose from an elevation-related risk within the scope of Labor Law 240(1). He maintains that the fall occurred from a height, within a rebar cage, and was proximately caused by defendants' failure to provide proper protection against the effects of gravity.

Defendants reply, arguing that plaintiff's lack of memory of the alleged fall, the absence of credible evidence of a fall from any height, and co-worker accounts refuting an alleged fall from any height, foreclose the applicability of 240(1). They argue any fall was at most to the same level and not the result of an absent or failed safety device, and therefore outside the statute's protections.

Legal Standard and Analysis

Labor Law 240(1), also known as the Scaffold Law, provides, as relevant:

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.

Labor Law 240(1) “ ‘imposes on owners or general contractors and their agents a nondelegable duty, and absolute liability for injuries proximately caused by the failure to provide appropriate safety devices to workers who are subject to elevation-related risks’ ” (*Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 495 [1st Dept 2018], quoting *Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]; see also *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]). “Labor Law 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009] [internal quotation marks and citation omitted]).

Not every worker who falls at a construction site is afforded the protections of Labor Law 240(1), and “a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace” (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]). Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no section 240(1) liability exists (*Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 916 [1999]; *Makarius*, 76 AD3d at 807 [1st Dept 2010]).

To prevail on summary judgment dismissing a Labor Law 240(1) claim, defendants must establish, as a matter of law, that plaintiff's injuries were not caused by an elevation-related hazard contemplated by the statute, which includes demonstrating that plaintiff was not exposed to a physically-significant elevation differential and that no statutorily-enumerated safety device was required or failed (*Runner*, 13 NY3d 599; *Rocovich*, 78 NY2d 509).

Here, defendants have met their prima facie burden of demonstrating that plaintiff's injuries were not caused by an elevation-related risk within the meaning of Labor Law 240(1), based on plaintiff's testimony that he was standing at ground level and manually receiving rebar being passed through an opening in perimeter fencing, when he received an electrical shock and lost consciousness. He does not recall falling, and there is no testimony or physical evidence that he fell from a height or was positioned on any elevated surface at the time of the incident. Defendants also submit witness statements from plaintiff's coworkers who uniformly report that, if he collapsed at all, he collapsed at ground level, not from any elevation.

This evidence is sufficient to establish, as a matter of law, that the injury was not caused by a physically-significant elevation differential or the failure to provide a safety device of the kind contemplated by the statute. Rather, the injury was caused by an electric shock, a workplace hazard wholly unrelated to the risk that brought about the need for an elevation-related safety device in the first instance (*see Nieves*, 93 NY2d at 916 [no liability where injury arose from an "electrical hazard unrelated to the risk which brought about the need for the safety device"]).

Plaintiff fails to raise a triable issue of fact in opposition. He does not dispute that at the time of the incident he was working at a lower elevation, on the first or ground floor of the jobsite, nor does he contend that he was standing on a ladder, scaffold, or any other elevated

surface when the electric shock occurred. There are no allegations that he was struck by a falling object or that any safety device contemplated by the statute was required for the task he was performing—namely, manually guiding rebar through a perimeter opening. Although plaintiff claims to have sustained injuries after receiving an electric shock, he repeatedly testified that he does not remember the fall itself, does not know how or where he landed, and cannot identify any height differential involved. At most, his submissions suggest a fall from the same level or a collapse to the floor following the shock, which is not a gravity-related hazard within the meaning of the statute (*see German v Antonio Dev., LLC*, 128 AD3d 579, 579–80 [1st Dept 2015] [240(1) inapplicable where plaintiff slipped on a wet grate at ground level while lifting grate slightly to pass wire, as injury was caused by separate hazard wholly unrelated to elevation-related risk]).

Although plaintiff’s memorandum of law asserts that a fall from a height of 13 or 14 feet “constitute[s] precisely the type of elevation-related risk envisioned by the statute,” there is no evidence that he fell from such a height, if at all. Furthermore, his reliance on *Naughton v City of New York* (94 AD3d 1 [1st Dept 2012]) is misplaced. In *Naughton*, the plaintiff was standing on top of a stack of bundles on a flatbed truck approximately 15 feet above the ground and was knocked off by a swinging load while unloading materials, a task for which a safety device such as a ladder or harness was plainly required and would have prevented the fall. Here, by contrast, plaintiff was working at ground level and there is no evidence that any safety device contemplated by Labor Law 240(1) would have prevented the alleged injury.

Accordingly, plaintiff’s claims fall outside the scope of Labor Law 240(1), and defendants’ motion for summary judgment on that cause of action is granted.

B. LABOR LAW 241(6)

Labor Law 241(6) “imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed” (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998] [internal quotations omitted]). To prevail on a Labor Law 241(6) claim, the plaintiff must establish that there was a violation of rule or regulation setting forth a specific standard of conduct, and that the violation was a proximate cause of the injury (*Santos v Condo 124 LLC*, 161 AD3d 650 [1st Dept 2018]; *Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 268-269 [1st Dept 2007]).

“Section 241(6) subjects owners and contractors to liability for failing to adhere to required safety standards whether or not they themselves are negligent. Supervision of the work, control of the worksite, or actual or constructive notice of a violation of the Industrial Code are not necessary to impose vicarious liability against owners and general contractors, so long as some actor in the construction chain was negligent” (*Leonard v City of New York*, 216 AD3d 51, 55-56, 188 NYS3d 471 [1st Dept 2023]).

In his bill of particulars, plaintiff’s Labor Law 241(6) claims are predicated on alleged violations of multiple Industrial Code provisions. However, plaintiff’s opposition papers address only meaningfully the applicability of 12 NYCRR 23-1.13(b)(4). As plaintiff fails to respond to defendants’ arguments concerning the remaining provisions, his claims under those provisions are deemed abandoned (*see Rodriguez v Dormitory Auth. of the State of N.Y.*, 104 AD3d 529, 530–531 [1st Dept 2013] [plaintiff deemed to abandon Labor Law 241(6) claims predicated on Industrial Code provisions cited in the bill of particulars but not addressed in motion papers]).

i. 12 NYCRR 12-1.13(b)(4) – (General Electrical Safety Requirements)

Section 23-1.13(b)(4) provides: “All wiring for light, heat or power shall be effectively insulated or otherwise properly guarded. If such wiring is not permanently installed it shall be supported on suitable insulators to prevent contact with conducting material.”

Defendants move for summary judgment, arguing that the temporary electrical cord was intact, insulated, and suspended at the time of the incident, and that it only became hazardous when plaintiff and his coworkers dragged rebar over it in a manner not anticipated by defendants. Defendants further assert that plaintiff was not working in proximity to a known electrical hazard and that the accident arose from his own conduct, not any failure to comply with regulatory safety obligations.

Plaintiff opposes, arguing he received an electric shock while guiding rebar and that the cord that allegedly caused the shock was suspended near the area where he was working. He argues that the cord lacked sufficient insulation to prevent injury from foreseeable contact with metal and that no other guard, barrier, or de-energization procedure was used. Plaintiff maintains that section 23-1.13(b)(4) applies to non-electricians working near temporary wiring and that triable issues exist as to whether the cord was properly guarded and whether that failure proximately caused his injuries.

In reply, defendants reiterate that the cord was properly installed and insulated, and that plaintiff has offered no evidence that the wiring was exposed or defective before the incident. They contend that any breach in the insulation was caused by the Tonnage crew’s handling of rebar, and that defendants were not on notice of any hazard requiring remediation.

Legal Standard and Analysis

Section 23-1.13(b)(4) imposes a duty to guard against electrical shock when employees work near live circuits, either by de-energizing the circuit or providing effective insulation or other safeguards. A violation of it may support liability under Labor Law 241(6) even where the worker is not an electrician and the wiring is temporary (*see Lopez*, 239 AD3d 417 [affirming denial of summary judgment where worker contacted unguarded live wire near active construction area]; *Leonard*, 216 AD3d at 56 [energized wiring near demolition activity may support liability under 23-1.13[b][4]]).

Here, defendants prove that the temporary electrical cord was properly insulated and suspended using ceramic grommets in accordance with jobsite safety protocols, based on testimony from Turner safety managers stating that the cord posed no hazard, and that Turner had received no prior complaints or notice of any defect. Defendants further establish that the condition was not visible or apparent and that it arose only when plaintiff and his coworkers deviated from the designated unloading zone and dragged rebar across the cord, allegedly tearing its insulation contemporaneously with the accident. Based on this evidence, defendants meet their burden of showing that no violation of 23-1.13(b)(4) occurred.

However, plaintiff raises triable issues of fact in opposition. He testified that he received an electric shock while guiding rebar, as the rebar passed over a temporary electrical cord suspended along the perimeter fence. A coworker reported that sparks were visible near the cord immediately after the shock, and photographic evidence depicts the cord hanging in a position that arguably intersected with the path rebar installation.

Plaintiff further contends that Turner, as construction manager, retained overarching site safety responsibilities and should have ensured that energized wiring was de-energized,

relocated, or otherwise physically guarded against foreseeable contact with conductive materials such as rebar.

While defendants maintain that the cord's damage occurred contemporaneously with the incident, they do not establish when it was last inspected or whether its placement posed a known or reasonably foreseeable risk, particularly in light of ongoing rebar installation activity in the immediate area. On this record, it cannot be determined as a matter of law that the insulation was "effective" or that Turner discharged its regulatory duty to protect workers from contact with live electrical conductors. Whether the cord's inadequate guarding or placement proximately caused plaintiff's injuries presents a factual issue that cannot be resolved on summary judgment (*see Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007]).

Accordingly, summary judgment is denied as to plaintiff's Labor Law 241(6) claim.

C. LABOR LAW 200 AND COMMON LAW NEGLIGENCE

Defendants argue that the accident arose from the means and methods of the work, which were directed and controlled exclusively by plaintiff's employer, Tonnage. They contend that the injury was caused by the Tonnage crew's decision to deviate from the designated rebar unloading area by tearing perimeter netting and manually guiding rebar into the jobsite in an unapproved manner. Defendants maintain that they neither created nor had actual or constructive notice of the condition that allegedly caused the incident, and that they did not supervise or control the manner in which plaintiff and his coworkers handled the rebar. As such, defendants argue that they cannot be held liable under either Labor Law 200 or a common-law negligence theory.

Plaintiff opposes, arguing that the accident arose from a dangerous condition on the jobsite, namely, an improperly insulated or inadequately protected live electrical cord that was placed in close proximity to the area where rebar was being handled. He contends that the cord's placement and lack of physical guarding constitute a premises condition for which defendants may be held liable, regardless of whether they directed his work. Plaintiff also maintains that defendants exercised site-wide authority for safety and failed to take appropriate steps to protect workers from foreseeable electrical hazards.

In reply, defendants reiterate that they did not control the manner in which rebar was handled and that plaintiff's employer Tonnage created the condition by altering the work area which allegedly resulted in contact with and damage to the electrical cord. They argue that the injury did not result from a latent premises defect, but rather from the Tonnage crew's mishandling of materials in a location not intended for that purpose.

Legal Standard and Analysis

Labor Law 200 “codifies the common-law duty to maintain a safe workplace” (*Toussaint v Port Auth. of N.Y. & N.J.*, 38 NY3d 89, 94 [2022]). Liability may be imposed under two distinct theories: (1) where the accident arises from the means and methods of the work, liability attaches only if the owner or general contractor exercised supervisory control over the work (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Castro v Brito*, 235 AD3d 527 [1st Dept 2025]); and (2) where the injury arises from a dangerous or defective premises condition, liability depends on whether the defendant created the condition or had actual or constructive notice of it (*Coon v WFP Tower B Co., L.P.*, 220 AD3d 407, 408 [1st Dept 2023]), whereas proof of the defendant's supervision or control over the plaintiff's work is unnecessary (*Licata v AB Green Gansevoort, LLC*, 158 AD3d 487 [1st Dept 2018]).

With respect to means and methods, the evidence shows that plaintiff was supervised exclusively by his employer, Tonnage, and that Turner neither directed nor controlled the manner in which the rebar was installed; plaintiff testified that all instructions came from Tonnage personnel. Furthermore, the record establishes that the electrical cord was part of the ongoing construction and became hazardous, if at all, only because of the way in which the rebar was handled in its vicinity. Such a condition is not a latent premises defect but one created by the work itself, and thus falls within the means-and-methods category (*see O'Sullivan v IDI Constr. Co., Inc.*, 7 NY3d 805, 806 [2006]; *Dalanna v City of New York*, 308 AD2d 400, 401 [1st Dept 2003]). It is undisputed that Turner did not direct or control plaintiff's work, and there is no evidence it gave more than general instructions about what needed to be done at the premises. As in *Dalanna v City of New York*, general oversight, safety monitoring, or the authority to stop work is insufficient to impose Labor Law 200 liability, and plaintiff's reliance on such general supervisory authority fails to raise a triable issue of fact as to whether Turner supervised or controlled the injury-producing work (*see Dalanna*, 308 AD2d at 401).

Accordingly, the Labor Law 200 and common-law negligence claims are dismissed.

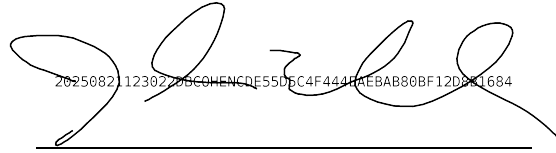
D. CONCLUSION

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is granted to the extent of dismissing plaintiff's Labor Law 240(1) claim, the Labor Law 241(6) claim except as predicated on an alleged violation of 12 NYCRR 23-1.13(b)(4), and the Labor Law 200 and common-law negligence claims, and is otherwise denied; and it is further

ORDERED that the parties appear for a settlement/trial scheduling conference at 71

Thomas Street, Room 305, on November 19, 2025, at 9:00 a.m.



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8/21/2025

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE