

Caseres v 222 E. Broadway Prop. Owner, LLC

2025 NY Slip Op 33438(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 156892/2020

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

CARLOS CASERES,

Plaintiff,

- v -

222 EAST BROADWAY PROPERTY OWNER,
LLC, ASCEND GROUP LLC, TITAN INDUSTRIAL
SERVICES CORP.,

Defendant.

-----X

222 EAST BROADWAY PROPERTY OWNER, LLC

Plaintiff,

-against-

TITAN INDUSTRIAL SERVICES CORP.

Defendant.

-----X

INDEX NO. 156892/2020

MOTION DATE 01/23/2025,
01/23/2025,
03/10/2025

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

Third-Party
Index No. 595808/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 108, 111, 112, 113, 114, 126, 127, 128, 131, 136, 137

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 115, 116, 117, 118, 124, 125, 129, 132, 138, 139

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 119, 120, 121, 122, 123, 130, 133, 134, 135

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after a final submission date of June 16, 2025, motion sequences 003 through 005 are consolidated for disposition and decided as follows:

- A. Defendant/Third-Party Plaintiff 222 East Broadway Property Owner, LLC's ("East Broadway") motion for summary judgment (Mot. Seq. 003) dismissing Plaintiff Carlose Caseres' ("Plaintiff") Complaint and all crossclaims asserted against it and granting it summary judgment on its third-party claims against Defendant/Third-Party Defendant Titan Industrial Services Corp. ("Titan") is granted in part and denied in part.
- B. Plaintiff's motion for summary judgment (Mot. Seq. 004) on the issue of liability with respect to his Labor Law § 240(1) claim against East Broadway is granted.
- C. Titan's motion to dismiss ("Mot. Seq. 005") Plaintiff's Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted.

I. Background

On September 5, 2017, Titan, a demolition contractor, employed Plaintiff as a laborer at 232 East Broadway, New York, New York (the "Premises") (NYSCEF Doc. 85 at 21-22). East Broadway owned the Premises. Plaintiff took direction from his coworker, Alejandro, who told him to go to the third floor of the Premises and cut a duct on the ceiling with a saw (NYSCEF Doc. 85 at 26-33). Plaintiff climbed an eight-foot A-frame ladder while holding a saw to cut the duct, but as he was cutting the duct the ladder wobbled, causing him and the ladder to fall (NYSCEF Doc. 85 at 33-34; 43; 134). To complete his task, the ladder had to be opened on unlevel flooring covered in debris and trash, and not all of the ladder's legs were able to rest on the floor simultaneously (NYSCEF Doc. 85 at 46; 123).

According to Titan's safety manager, Luis Veloz Rodriguez, he did not learn of Plaintiff's accident until October of 2017 when he received a notification from the Workers' Compensation Board (NYSCEF Doc. 86 at 25; 27-28). However, Mr. Rodriguez admitted there was ongoing

work at the Premises, there was a site safety meeting on the date of Plaintiff's accident, and there may have been interior demolition work carried out on the third floor of the Premises (NYSCEF Doc. 86 at 63-64; 73). More specifically, he admitted the foreman at the Premises informed him that there was general interior demolition work, including possible duct removal, at the Premises on September 5, 2017 (NYSCEF Doc. 86 at 79). Now, Plaintiff and East Broadway move for summary judgment, while Titan moves to dismiss.

II. Discussion

A. Plaintiff's Motion (Mot. Seq. 004)

The Court begins its analysis with Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim, which is granted. Plaintiff met his prima facie burden of demonstrating a Labor Law § 240(1) violation through his uncontroverted testimony that he fell from an unsecured ladder, placed on top of an unlevel floor covered in debris, which wobbled as he used a saw to cut a duct on the ceiling. It is well established that when a ladder wobbles and causes a worker to lose their balance and fall, a Labor Law § 240(1) violation is established (*Ciborowski v 228 Thompson Realty, LLC*, 189 AD3d 428 [1st Dept 2020]; *Plywacz v 85 Broad Street LLC*, 159 AD3d 543, 544 [1st Dept 2018]; see also *Kebe v Greenpoint-Goldman Corp.*, 150 AD3d 453, 454 [1st Dept 2017]). The burden now shifts to Defendants to raise a triable issue of fact.

In opposition, Defendants fail to raise an issue of fact. Titan mischaracterizes the deposition testimony of Mr. Rodriguez, who admittedly did not have personal knowledge of the accident and was not at the Premises on the date of Plaintiff's accident. Contrary to Titan's arguments, Mr. Rodriguez's testimony does not contradict Plaintiff's testimony, as Mr. Rodriguez testified there

may have been interior demolition work, including duct removal, on the third floor of the Premises at the time of Plaintiff's accident (NYSCEF Doc. 86 at 63-64; 73; 79).

That Plaintiff's accident was unwitnessed is no bar to summary judgment absent sufficient evidence impugning his credibility (*Dyszkiewicz v City of New York*, 194 AD3d 444 [1st Dept 2021]; *Erkan v McDonald's Corp.*, 146 AD3d 466 [1st Dept 2017]). Nor is there any contradictory evidence that Plaintiff informed the shop steward he was injured, and he testified he was afraid to notify his employer of his accident for fear of being fired. Moreover, although he did not receive immediate medical treatment, there is no dispute he received medical treatment for his injuries shortly after his fall and his injuries are believed to be causally related to a fall from a ladder (*Pinzon v Royal Charter Properties, Inc.*, 211 AD3d 442, 444 [1st Dept 2022]). The alleged discrepancies in Plaintiff's testimony, which was provided through a translator, are insufficient to raise an issue as to Plaintiff's credibility. Whether the ladder was wobbly when Plaintiff began to climb it or began to wobble as Plaintiff carried out his work is immaterial as under either version of events a Labor Law § 240(1) violation exists (*Arias v 139 East 56th Street Landlord, LLC*, 212 AD3d 517, 517-18 [1st Dept 2023]). That Plaintiff did not identify any defect in the ladder is insufficient as a plaintiff is not required to identify the defect in the safety device provided to him to establish a Labor Law § 240(1) violation (*Cafisi v L&L Holding Company, LLC*, 219 AD3d 1215, 1216 [1st Dept 2023]; *see also Soriano v St. Mary's Indian Orthodox Church of Rockland, Inc.*, 118 AD3d 524, 526 [1st Dept 2014]).

The fact that Plaintiff climbed the ladder, which he testified was wobbly, and placed it on a floor covered in debris, amounts to at most comparative negligence which is no bar to summary judgment under Labor Law § 240(1) (*see, e.g. Cardona v New York City Hous. Auth.*, 153 AD3d 1179, 1179-80 [1st Dept 2017]). Nor could Plaintiff be faulted for carrying out his tasks without

demanding an adequate safety device – which would place “workers in a nearly impossible position” of “challenging his or her supervisor’s instructions and withstanding hostile behavior” (*DeRose v Bloomingdale’s Inc.*, 120 AD3d 41, 47 [1st Dept 2014]). Therefore, Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against East Broadway is granted.

B. East Broadway’s Motion (Mot. Seq. 003)

East Broadway’s motion for summary judgment is granted in part and denied in part. To the extent East Broadway seeks dismissal of Plaintiff’s Labor Law § 240(1) claim, that branch of the motion is denied as Plaintiff was granted summary judgment as to liability on his Labor Law § 240(1) claim against East Broadway. Plaintiff does not oppose dismissal of his Labor Law §§ 241(6), 200, and common law negligence claims against East Broadway, therefore these claims are dismissed as abandoned.

East Broadway’s motion for summary judgment on its contractual indemnification claim against Titan is granted. Titan, defined as “Contractor” in the indemnification clause, agreed to:

“defend and [] indemnify...the Owner of the property...from and against all liability or claimed liability for bodily injury or death to any persons, and for any and all property damage or economic damage, including all attorney fees, disbursements and related costs, arising out of or resulting from the Work covered by this Contract Agreement to the extent such Work was performed by or contracted through the Contractor or by anyone for whose acts the Contractor may be held liable, excluding only liability created by the sole and exclusive negligence of [East Broadway].” (NYSCEF Doc. 88 at Rider ¶ 3).

The indemnification clause was triggered because Plaintiff was injured while performing demolition work for Titan at the Premises and due to Titan’s failure to provide Plaintiff an adequate safety device, for which East Broadway is now vicariously liable. Moreover, as there is no evidence of any negligence on the part of East Broadway, who was merely the owner of the Premises and provided no direction, supervision, or supplies during Titan’s demolition, East

Broadway is entitled to full contractual indemnification (*see Travalja v 135 West 52nd Street Owner LLC*, 232 AD3d 503, 505 [1st Dept 2024] citing *Guzman v 170 W. End Ave. Assoc*, 115 AD3d 462, 464 [1st Dept 2014]). Because East Broadway is entitled to full contractual indemnification from Titan, the portions of East Broadway's motion which seeks summary judgment on its contribution and common law indemnification claims is moot.

C. Titan's Motion (Mot. Seq. 005)

Titan's motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted. Contrary to Plaintiff's contention that Titan's motion is untimely, Titan's motion to dismiss can be made at any time (*M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1, 6 [1st Dept 2020]). Moreover, Plaintiff obtained summary judgment on his Labor Law § 240(1) claim by arguing he was employed by Titan. He cannot, therefore, now argue in good faith against Titan's motion to dismiss Plaintiff's direct claims asserted against it as barred by the Workers' Compensation Law (*Jean-Louis v Hilton Hotels Corp.*, 68 AD3d 406 [1st Dept 2009]; *Kligman v Call Again Thrift Shop, Inc.*, 209 AD2d 199 [1st Dept 1994]). Nor has Plaintiff argued or alleged that Titan's conduct falls within one of the exceptions to the Workers' Compensation bar. In fact, Plaintiff does not offer any substantive opposition, merely arguing the motion is untimely. Therefore, Titan's motion to dismiss Plaintiff's Complaint is granted. However, Titan remains a third-party defendant who must indemnify East Broadway for its liability to Plaintiff under Labor Law § 240(1).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment (Mot. Seq. 004) on the issue of liability with respect to his Labor Law § 240(1) claim against Defendant/Third-Party Plaintiff 222 East Broadway Property Owner, LLC is granted; and it is further

ORDERED that Defendant/Third-Party Plaintiff 222 East Broadway Property Owner, LLC's motion for summary judgment (Mot. Seq. 003) dismissing Plaintiff's Labor Law §§ 241(6) and 200, and common law negligence claims asserted against it is granted without opposition, but Defendant/Third-Party Plaintiff 222 East Broadway Property Owner, LLC's motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is denied; and it is further

ORDERED that the branch of Defendant/Third-Party Plaintiff 222 East Broadway Property Owner, LLC's motion seeking summary judgment on its contractual indemnification claim against Defendant/Third-Party Defendant Titan Industrial Services Corp. is granted, and the remainder of Defendant/Third-Party Plaintiff 222 East Broadway Property Owner's motion is denied as academic; and it is further

ORDERED that Defendant/Third-Party Defendant Titan Industrial Services Corp.'s motion to dismiss (Mot. Seq. 005) Plaintiff's Complaint asserted against it is granted, and Plaintiff's Complaint asserted against Defendant/Third-Party Defendant Titan Industrial Services Corp. is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/11/2025
DATE

Mary V. Rosado J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE