

Gerosimo v JP Morgan Chase & Co.

2025 NY Slip Op 33504(U)

September 18, 2025

Supreme Court, New York County

Docket Number: Index No. 152342/2022

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

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JAMES GEROSIMO and MARIELA GEROSIMO,

Plaintiffs,

- v -

JP MORGAN CHASE & CO., TISHMAN CONSTRUCTION CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, JOHN CIVETTA & SONS, INC., and JP MORGAN CHASE BANK, N.A.

Defendants.

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INDEX NO. 152342/2022

MOTION DATE 08/19/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

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

Appearances:

Plaintiffs: The Perecman Firm, P.L.L.C., (Peter Rigelhaupt, Esq.)

Defendants: Wilson Elser Moskowitz Edelman & Dicker LLP (Tal Cushmaro, Esq.)

Upon the foregoing documents, and after oral argument, which took place on June 17, 2025, Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim asserted against Defendants’ cross motion for summary judgment dismissing Plaintiff’s common law negligence and Labor Law § 200 claims asserted against them and Plaintiff’s Labor Law §§ 240(1) and 241(6) claims asserted against John Civetta & Sons, Inc.’s (“Civetta”) is granted in part and denied in part.

I. Background

On January 6, 2022, non-party Tri State Ground Water (“Tri State”) employed Plaintiff as an operating engineer at 270 Park Avenue, New York, New York (the “Premises”) (NYSCEF Doc.

90 at 15; 19-20). Chase owned the Premises (NYSCEF Doc. 92 at 17-18). Tishman was the general contractor (*id.* at 17). Civetta was subcontracted to excavate and to construct the foundation of the Premises while Tri State was subcontracted to remove excess water pooling at the Premises during excavation (*id.* at 16-19). Plaintiff was required to set up a pump in a pit to remove excess water (NYSCEF Doc. 90 at 46). He used an unsecured ladder to descend into the pit (*id.* at 47; 75; 77). The ladder slipped out from under Plaintiff, and he fell (*id.* at 75; 78-79; 84).

Tishman's safety director, Everol Hill, responded to the scene and testified there was an unsecured extension ladder and a closed A-frame ladder on the floor (NYSCEF Doc. 92 at 26). According to Mr. Hill, the ladders belonged to Civetta (*id.* at 28). Prior to Plaintiff's accident, Mr. Hill saw Civetta using unsecured ladders (*id.* at 32-33). After the accident, Tishman received a partial stop work order from the New York City Department of Buildings (*id.* at 73-74). Now, Plaintiff seeks summary judgment against Chase and Tishman on his Labor Law § 240(1) claim. Defendants cross move for summary judgment dismissing Plaintiffs' common law negligence and Labor Law § 200 claims and Plaintiff's Labor Law §§ 240(1) and 241(6) claims against Civetta.

II. Discussion

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim against Chase and Tishman is granted. There is no dispute Plaintiff was engaged in work covered by Labor Law § 240(1), nor is there any dispute that Chase, as the owner of the Premises, is a proper Labor Law § 240(1) defendant. Plaintiff satisfied his burden of showing Tishman is a proper Labor Law § 240(1) defendant through Mr. Hill's testimony that Tishman served as the construction manager responsible for hiring subcontractors, issuing ladder permits, and distributing safety guidelines to all contractors (NYSCEF Doc. 92 at 17; 45). These undisputed facts show Tishman is "an agent of the property owner" who had "authority to exercise control over the work that brought about

plaintiff's injuries" and is subject to vicarious liability under Labor Law § 240(1) (*Douglas v Tishman Constr. Corp.*, 205 AD3d 570, 571 [1st Dept 2022]; *see also Lind v Tishman Constr. Corp. of N.Y.*, 180 AD3d 505 [1st Dept 2020]).

Plaintiff met his burden of establishing a Labor Law § 240(1) violation through his uncontroverted testimony that he was descending from a height using an unsecured ladder when the ladder slipped out from under him, causing him to fall. It is well established that when an unsecured ladder shifts, slips, or collapses, a Labor Law § 240(1) violation is established (*Sanchez v MC 19 East Houston LLC*, 216 AD3d 443, 443 [1st Dept 2023]; *Castillo v TRM Contracting 626, LLC*, 211 AD3d 430, 430 [1st Dept 2022] citing *Panek v County of Albany*, 99 NY2d 452, 458 [2003]; *Howard v Turner Const. Co.*, 134 AD3d 523, 524 [1st Dept 2015] [fall from unopened A-frame ladder which could not be opened properly gave rise to Labor Law § 240(1) claim]). The burden now shifts to Defendants to raise a triable issue of fact.

Defendants' argument that there is an issue of fact as to whether Tishman is a proper Labor Law § 240(1) defendant is without merit given Mr. Hill's testimony, the unrefuted documentary evidence, and analogous precedent. Defendants' argument that Plaintiff was the sole proximate cause of his accident because he used an unsecured ladder in an unauthorized workspace is insufficient. First, where a Labor Law § 240(1) violation is established, it is conceptually impossible for Plaintiff to be considered the sole proximate cause of his accident (*Quiroz v Memorial Hospital for Cancer and Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022]). Second, there is no evidence showing Plaintiff was ever instructed not to use the ladder which caused his injury, nor is there evidence that an adequate safety device was readily available at the location of Plaintiff's accident. In fact, according to Mr. Hill, the A-frame ladder was improper to descend into the pit, and the extension ladder available was not properly secured (*Saavedra v 111 John*

Realty Corp., 179 AD3d 442, 442 [1st Dept 2020] quoting *Vasquez v Cohen Bros. Realty Corp.*, 105 AD3d 595, 598 [1st Dept 2013]).

Nor is there evidence Plaintiff was ever instructed he could not descend into the pit from the location where he was injured. Even if there was, the First Department has repeatedly held “[a] worker’s injury in an area of the work site where the worker was not supposed to be amounts to comparative negligence, which is not a defense to a Labor Law § 240(1) claim” (*Plaku v 1622 Van Buren LLC*, 198 AD3d 431, 432 [1st Dept 2021] citing *Hewitt v NY 70th St. LLC*, 187 AD3d 574 [1st Dept 2020]). Thus, there being no triable issues of fact, Plaintiff’s motion for summary judgment on his Labor Law § 240(1) claim is granted.

Defendants’ cross motion is granted to the extent Plaintiff’s common law negligence and Labor Law § 200 claims are dismissed against Defendants. Moreover his Labor Law §§ 240(1) and 241(6) claims against Civetta are dismissed. Plaintiff does not oppose dismissal of his common law negligence and Labor Law § 200 claims against Chase, nor does he oppose dismissal of his Labor Law §§ 240(1) and 241(6) claims against Civetta. Therefore, these claims are dismissed as abandoned.

Plaintiff’s Labor Law § 200 and common law negligence claims asserted against Tishman and Civetta are also dismissed. “Where a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises” (*see Villanueva v 114 Fifth Avenue Associates LLC*, 162 AD3d 404, 406 [1st Dept 2018]). Here, the mechanism which caused Plaintiff’s injury were unsecured ladders – i.e., faulty equipment. Plaintiff was not injured due to an inherently dangerous condition existing on the Premises (*see, e.g. Estrella v GIT Industries, Inc.*, 105 AD3d 555, 556 [1st Dept 2013] citing *Castellon v Reinsberg*, 82 AD3d 635, 636 [1st

Dept 2011]). Therefore, Plaintiff's Labor Law § 200 and common law negligence claims fall into the "means and methods" bucket. Tishman and Civetta may only be held liable if they exercised supervisory control over the injury-producing work (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143 [1st Dept 2012]).

However, there is no evidence that Tishman and Civetta exercised the requisite supervisory control over Plaintiff's work (*Hughes v Tishman Const. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]). Nor does Plaintiff argue they exercised the requisite supervision and control. Plaintiff's sole argument in opposition is that the unsecured ladder constituted a dangerous condition under Labor Law § 200. But Plaintiff cites to no case law where a worker's fall from an unsecured ladder gave rise to a Labor Law § 200 claim under a dangerous condition theory of liability, and First Department precedent is directly contrary on this point (*Howard v Turner Const. Co.*, 134 AD3d 523, 524-25 [1st Dept 2015]; *see also Estrella, supra*). Therefore, the Labor Law § 200 and common law negligence claims against Tishman and Civetta are dismissed. The prong of Defendants' cross motion which asks this Court to deny Plaintiff's motion for summary judgment in favor of his Labor Law § 240(1) claim is denied.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim asserted against Defendants JP Morgan Chase Bank, N.A. and Tishman Construction Corporation of New York is granted; and it is further

ORDERED that Defendants' motion for summary judgment is granted to the extent that Labor Law §§ 240(1) and 241(6) asserted against Defendant John Civetta & Sons, Inc. are dismissed, and Plaintiff's Labor Law § 200 and common law negligence claims against Defendants JP Morgan Chase Bank, N.A., JP Morgan Chase & Co., Tishman Construction Corporation of

New York, Tishman Construction Corporation, and John Civetta & Sons, Inc. are dismissed, and the branch of Defendants' motion for summary judgment which asked this Court to deny Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is denied; 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.

9/18/2025
DATE

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

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE