

Ray v Berkshire Capital Realty, LLC

2025 NY Slip Op 33639(U)

September 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 514902/2023

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 514902/2023
Seqs. 004

Part LL1

DECISION/ORDER

HERBERT RAY,

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</u>
Order to Show Cause and Affidavits Annexed	<u>2-3</u>
Answering Affidavits	<u>4</u>
Replying Affidavits	<u>4</u>
Exhibits	<u> </u>
Other	<u> </u>

BERKSHIRE CAPITAL REALTY, LLC and ABE GREEN,

Defendants,

BERKSHIRE CAPITAL REALTY, LLC

Third-Party Plaintiff,

against

CORE DEVELOPMENT COMPANY, LLC A/K/A CORE
DEVELOPMENT COMPANY,

Third-Party Defendant.

Upon the foregoing papers, plaintiff’s motion for summary judgment (Seq. 004) is decided as follows:

Procedural Posture & Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on May 16, 2021, when he fell from a ladder while engaged in ceiling repair. Plaintiff testified that the ladder moved unexpectedly and he fell approximate eight feet (Ray EBT at 26). Plaintiff was not provided with personal fall protection equipment, including harnesses, tie-offs, or assistance from another worker (*id.* at 21–28). Plaintiff’s job was to “get the premises ready for inspection” (*id.* at 37–38). On the date of the accident, plaintiff was directed to work on the sixth floor

bathroom (*id.* at 48–49). Plaintiff inspected the bathroom and decided that the ceiling and walls required extensive scraping, plastering, skim coating and eventual painting (*id.*). Plaintiff retrieved a ladder from the basement of the premises in order to access the ceiling (*id.* at 56, 63). Plaintiff was working alone and his accident was unwitnessed.

It is undisputed that plaintiff was employed by Core Development Company, LLC (Core). Core was leasing the premises from Berkshire Capital Realty, LLC (Berkshire), the owner. The property was overseen by Greenrock Management, and Abe Green was listed as the managing officer in the HPD Registration.

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]).

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 ladder) 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 *Haines 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)]).

Plaintiff’s testimony is sufficient to make out his prima facie entitlement to summary judgment. It is un rebutted that plaintiff fell from a ladder that moved while performing covered work (*see e.g. Pai v Nelson Senior Housing Development Fund Corporation*, 232 AD3d 822 [2d

Dept 2024]). In opposition, defendants contend that plaintiff's motion is premature because third-party Core has not been deposed. This argument is unavailing. Issue was joined in the third-party action on December 29, 2023. Pursuant to the preliminary conference order, all depositions were to be completed on or before August 6, 2024, approximately six months before the instant motion was made. Despite multiple discovery motions, defendants never sought to compel Core's deposition nor sought discovery from Core. A plaintiff is not obliged to wait for completion of discovery in the third-party action before moving for summary judgment, and that is particularly true where, as here, the third-party defendant joined issue early in the case and the allotted time for depositions has elapsed (*see Ramirez v Pace University*, 230 AD3d 811 [2d Dept 2024]).

The plaintiff has been deposed, and the defendants have not identified facts that would contradict plaintiff's account. Defendants concede that plaintiff was not given specific instructions about how to perform his work. Contrary to defendants' contentions, this belies rather than bolsters defendants' contentions that plaintiff was the sole proximate cause of his accident or recalcitrantly used a ladder that he was not supposed to use.

Therefore, plaintiff's motion for summary judgment is granted on his Labor Law § 240 (1) claim.

Labor Law § 241 (6)

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 harm, (4) a 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]).

Here, plaintiff's claim is predicated on an alleged violation on various sub-sections of Rule 1.21 (b) and Rule 1.5 (c) (3). Although plaintiff testified that the ladder shifted while he was working, he did not identify any particular defects with the ladder. While this is not a requirement to obtain summary judgment under Labor Law § 240 (1), Labor Law § 241 (6) requires a plaintiff to show that the violation of an Industrial Code was a proximate cause of plaintiff's harm. Plaintiff has not provided sufficient evidence that a provision of the Industrial Code was violated, and evidence that the ladder failed is not alone evidence that an Industrial Code was violated. Therefore, plaintiff's motion is denied with respect to plaintiff's Labor Law § 241 (6) claim.

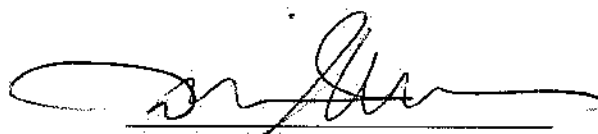
Conclusion

Plaintiff's motion for summary judgment (Seq. 004) is granted with respect to plaintiff's Labor Law § 240 (1) claim; the motion is otherwise denied.

This constitutes the decision and order of the court.

September 12, 2025

DATE


DEVIN P. COHEN
Justice of the Supreme Court