

**Hunter v BSC Owner LLC**

2025 NY Slip Op 33662(U)

September 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 517675/2020

Judge: Steven Z. Mostofsky

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At an IAS Term, Part 9, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse of 360 Adams Street, Brooklyn, New York on the 7 Day of SEP, 2025.

P R E S E N T:

HON. Steven Z. Mostofsky,  
Justice.

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LEROY HUNTER,

Plaintiff,

-against-

**Index No.:** 517675/2020  
**Motion Seq. No.:** 5 and 6

BSC OWNER LLC, BSC HOUSING COMPANY,  
INC.,

Defendants.

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BSC OWNER LLC, BSC RETAIL OWNER LLC, and  
BSC HOUSING COMPANY, INC.,

Third-Party Plaintiffs,

-against-

STRUCTURAL PRESERVATION SYSTEMS, LLC,

Third-Party Defendant.

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The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____	116-158
Opposing Affidavits (Affirmations) _____	189-202
Affidavits/ Affirmations in Reply _____	207-209
Exhibits _____	Var.

On September 21, 2020, Plaintiff was allegedly injured while working a construction site. He claims BSC is liable for his injuries under Labor Law § 241(6). Plaintiff claims this his injury arises out of a slip, trip, and fall due to rebar debris on the floor.

Plaintiff seeks summary judgment against defendant BSC Owner LLC on the issue of liability pursuant to Labor Law § 241(6) (Mot. Seq. 5). The court notes that Plaintiff does not raise Labor Law § 200.

Defendant BSC moves for summary judgment against Plaintiff, dismissing Plaintiff's claim that BSC is liable under a theory of Labor Law § 200 and § 241(6) (Mot. Seq. 6).

### **Statement of Facts**

Plaintiff was employed on December 2, 2019, as a carpenter by third-party defendant Structural Preservation Systems, LLC ("SPS"), on a construction site at 155 Elmira Loop in Brooklyn, New York. BSC was the owner of the property known as Spring Creek Tower, which included a parking garage undergoing repair on December 2, 2019. BSC contracted with SPS to repair the multilevel garage. Plaintiff allegedly worked at a workstation with Roy Anderson who was cutting rebar for installation. Plaintiff's employer, SPS was the construction manager on the site on the date of the alleged incident, and was the only contractor hired to do work at said site on December 2, 2019. The incident allegedly occurred 1-2 hours after the time his co-worker was cutting the rebar at the workstation table.

### **Legal Standard**

“ ‘[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue’ ” (*Rotuba Extruders, Inc v Ceppos*, 46 NY2d 223, 231 [1978], quoting *Moskowitz v Garlock*, 23 AD2d 943 [3rd Dept 1965]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ Med Center*, 64 NY2d 851 [1985]) and “facts must be viewed ‘in the light most favorable to the non-moving party’” (*Vega v Restani Const Corp*, 18 NY3d 499, 503 [2012]). The court’s function is to determine “material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Const Corp*, 18 NY3d at 505).

#### **Labor Law § 241(6)**

Labor Law § 241(6) “imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites” (*McCarthy v Turner Const., Inc.*, 17 NY3d 369, 374 [2011]). “To establish liability, a plaintiff must demonstrate that his injuries were proximately caused by a violation of an applicable Industrial Code provision” (*Graziano v. Source Builders & Consultants, LLC*, 175 AD3d 1253, 1258 [2d Dept 2019], quoting *Aragona v. State of New York*, 147 AD3d 808, 809 [2d Dept 2018]). A party must breach a “specific, positive command” rather than a “reiteration of common-law standards” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 [1993]). *Ross* distinguished between Code provisions “mandating compliance with concrete specifications and those that establish general safety standards” (*Id.* at 505).

#### **Labor Law § 200**

Labor Law § 200 is “a codification of the common-law duty imposed on owners, contractors and their agents to provide workers with a safe place to work” (*Mondragon-Moreno v Sporn*, 189 AD3d 1574, 1576 [2d Dept 2020]).” The two broad categories of Labor Law § 200 are “those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (*Southerton v City of New York*, 203 AD3d 977, 979-80 [2d Dept 2022]). Liability under Labor Law § 200 requires a plaintiff to allege that their injuries resulted from the means or methods by which work is performed, “to be held liable under Labor Law a defendant must have the authority to exercise supervision and control over the work” (*Navarra v Hannon*, 197 AD3d 474, 475 [2d Dept 2021]).”

Property owners often have a general authority to oversee the progress of the work, however, “mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200” (*Ortega v. Puccia*, 57 A.D.3d at 62, 866 N.Y.S.2d 323). A premises owner may be liable under Labor Law § 200 if it had control over the work site where the plaintiff was injured. The owner is liable only if a dangerous condition on the premises caused the injury. If the owner created the dangerous condition, had actual or constructive notice that the dangerous condition existed, they may be liable for common-law negligence (*Azad v 270 5th Realty Corp.*, 46 AD3d 728, 730 [2d Dept 2007]).

**BSC is Not Liable Under Labor Law § 241(6)**

In their motion for summary judgment (Mot. Seq. 5), Plaintiff alleges that BSC violated Industrial Code § 23-1.7(e)(1). In their motion for summary judgment (Mot. Seq. 6), defendant BSC claims that they did not violate the following industrial codes: Industrial Code § 23-1.7(e);

Industrial Code § 23-1.7(d); Industrial Code § 23-2.1(a)(1); and Industrial Code § 23-1.7(a)(2). BSC has made a prima facie showing that the following industrial codes were not violated:

**Industrial Code § 23-1.7(e):** References “Tripping and other hazards.” Section 23-1.7(e)(1) requires “all passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping, and sharp projections which could cut or puncture any person shall be removed or covered.” Section 23-1.7(e)(2) requires that “the parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.”

Industrial Code § 23-1.7(e) has no application where the object that caused the plaintiff's injury was an integral part of the work being performed (*see Mitchell v Caton on the Park, LLC*, 167 AD3d 865, 866 [2d Dept 2018]). BSC has established that this section is inapplicable by demonstrating that the rebar on which Plaintiff allegedly tripped was an integral part of the work.

Here, at the time of Plaintiff's alleged incident, Plaintiff's employer SPS was the only contractor working at the worksite repairing existing concrete structures, and all SPS workers were responsible for maintaining a clear work area throughout the worksite (*NYSCEF Doc. No. 182-18; NYSCEF Doc. No. 169 at 23- 24, 35:12-14*). Plaintiff was constructing rebar form boxes to specifically repair and replace damaged beams and other support structures at the garage when the incident occurred (*NYSCEF Doc. No. 170 at 22:5-20, 22-23, 23:16-21, 23-24, 24-25, 43-44:2-3*). While performing this task Plaintiff did not observe any materials, objects nor debris in the vicinity of the cutting table before approaching and working at that location (*NYSCEF Doc. No. 182 at 65:13-17, 82-83*), and the supervisors at SPS neither saw any materials, objects or debris in the vicinity of this workstation (*NYSCEF Doc. No. 170 at pg. 62:9-18, 65:21-25*,

106:22-25, 122-123, 123-124; *NYSCEF Doc. No. 171* at 31-32, 32:15-21, 32-33, 33:9-25, 35:3-11). Plaintiff failed to raise a triable issue of fact regarding the alleged violation of Industrial Code § 23-1.7(e).

**Industrial Code § 23-1.7(d):** References “slipping hazards.” Section 23-1.7 (d) requires employers to remove, sand, or cover “foreign substance[s]” which may cause slippery footing (12 NYCRR 23-1.7 [d]). BSC has established that this section is inapplicable by demonstrating that the rebar upon which Plaintiff slipped on was an integral part of the construction work (*see Lopez v Edge 11211, LLC*, 150 AD3d 1214, 1215 [2d Dept 2017]). The rebar was being used to form boxes to repair the structures throughout the worksite (*NYSCEF Doc. No. 182* at 27:21-23, 35:6-36:2). The rebar Plaintiff claims he allegedly slipped, tripped, and fell on naturally results from the work being performed, and it is not generally considered a “foreign substance” under this provision. In opposition, Plaintiff failed to raise a triable issue of fact regarding the alleged violation of Industrial Code § 23-1.7(d).

**Industrial Code § 23-2.1(a)(1):** References “Storage of material or equipment.” BSC has established that this section is inapplicable because the alleged incident did not involve a “material pile,” but rather a single piece of rebar (*NYSCEF Doc. No. 182* at 71:2-14) (*See Castillo v Starrett City, Inc.*, 4 AD3d 320, 321 [2d Dept 2004]). Plaintiff fails to oppose an alleged violation regarding Industrial Code § 23-2.1(a)(1).

**Industrial Code § 23-2.1(a)(2):** References “Disposal of debris.” BSC has established that this section is inapplicable because Plaintiff was not “beneath” the “edge” of a “floor, platform or scaffold” at the time of the incident (*See Rodriguez v D & S Builders, LLC*, 98 AD3d 957, 959 [2d Dept 2012]). Plaintiff failed to oppose an alleged violation regarding Industrial Code § 23-2.1(a)(2).

Plaintiff's motion seeking summary judgment against defendant BSC on the issue of liability pursuant to Labor Law § 241(6) (Mot. Seq. 5) is denied, and Defendant BSC's motion for summary judgment against Plaintiff, dismissing Plaintiff's claim that BSC is liable § 241(6) (Mot. Seq. 6) is granted.

### **BSC is Not Liable Under Labor Law § 200**

In their motion for summary judgment (Mot. Seq. 6), BSC also argues that they are not liable under a theory of Labor Law § 200.

BSC has made a prima facie showing of entitlement for summary judgment on their Labor Law § 200 claim. BSC neither supervised, directed, or controlled Plaintiff's work (*NYSCEF Doc. No. 169* at 20-21, 23:6-14, 23-24:17-20). On the date of the alleged incident, Plaintiff's employer SPS was the only contractor working onsite (*NYSCEF Doc. No. 169* at 23-24, 35:12-14). Additionally, the Defendants were not physically present on the worksite on the date of the incident (*NYSCEF Doc. No. 169* at 26:4-13, 33:15-19, 34-35, 69:7-15). Plaintiff never saw or spoke with anyone any one from BSC at the site during the time of the project (*NYSCEF Doc. No. 182* at 42-23).

Therefore, BSC satisfied its prima facie burden of establishing its entitlement to judgment as a matter of law because it did not direct or control the means or methods of the plaintiff's work. Plaintiff does not allege or oppose an alleged violation regarding Labor Law § 200.

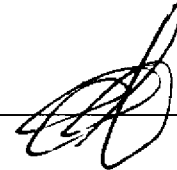
### **Conclusion**

Accordingly, it is hereby ordered:

**ORDERED** that Plaintiff's motion for summary judgment against defendant BSC Owner LLC ("BSC") under Labor Law § 241(6) (Mot. Seq. 5) is denied.

**ORDERED** that Defendant BSC's motion for summary judgment dismissing Plaintiff's complaint that under either a theory of Labor Law § 200 or § 241(6) (Mot. Seq. 6) is granted.

This constitutes the decision of the Court.



J.S.C.  
**STEVEN Z. MOSTOFSKY**