Supreme Court of the State of New York
County of Kings

Index Number 523206/2021
Seqs. 003, 004

Part LL1M

DECISION/ORDER

HENRY RODRIGO INAMAGUA MOROCHO AND ROSA EDELMIRA INAMAGUA MOROCHO,

Plaintiff,

against

KINGS LOGISTICS CENTER 1 LLC, PROLOGIS, INC., SHAWMUT WOODWORKING & SUPPLY INC. d/b/a SHAWMUT DESIGN AND CONSTRUCTION, AND SHAWMUT DESIGN & CONSTRUCTION,

Defendants.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	3–4
Replying Affidavits	5–6
Exhibits	Var.
Other	

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 003) and plaintiff's motion for summary judgment (Seq. 004) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on August 19, 2021, while working at a construction site located at 150 East 52nd Street, Brooklyn, NY, when he fell from scaffolding that he was in the process of installing. The premises was owned by Kings Logistics Center 1, LLC and leased by non-party City Harvest. City Harvest hired Shawmut Woodworking & Supply d/b/a Shawmut Design and Construction (Shawmut) to perform renovations of the building. Shawmut sub-contracted with non-party Spring Scaffold, LLC (Spring Scaffold) to provide scaffolding at the premises. Spring Scaffold sub-sub-contracted with plaintiff's employer, Spring Safe and Sound (Spring), to install temporary stairs inside the building as part of the project.

Plaintiff testifies as follows: On the date of his accident, plaintiff was in the process of constructing a temporary staircase at the time of his accident (Morocho EBT at 129). Plaintiff had asked his foreman for a lifeline previously and was denied; instead, plaintiff was instructed tie off to "gears" and "rosettes" on the scaffold support beams (*id.* at 106–107). Plaintiff's tail-line was six feet long (*id.* at 118). Plaintiff had constructed two sets of stairs and had laid the first step of the third set (*id.* at 120–122). Plaintiff could not reach far enough to install the next step while tied off to the scaffold, so he unhooked his lanyard and attempted to tie off to another anchor point above him (*id.* at 122). While trying to reach that anchor point, plaintiff stepped on the stair he had most recently installed (*id.* at 142). The stair twisted, and plaintiff fell between thirteen and fourteen feet to the ground (*id.* at 170).

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 harness, tether, or lifelines) is the 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 *Haimes 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)]).

In support of their motions, defendants contend that the plaintiff was the sole proximate cause of his accident because he laid the step that failed to support him and unhooked himself while he was working at a height (Morocho EBT at 129–130). However, plaintiff testified that he requested a hanging lifeline multiple times, and that he was not able to remain tied-off to the scaffold and continue installing the steps (*id.* at 106–107, 111–112, 129–130). John Kennedy, representative of Shawmut, testified that workers "should have[] tied off to either a scaffold or a lifeline," and that there was no lifeline on the date of the accident (Kennedy EBT at 54–55).

Providing some safety devices does not absolve defendants of liability if other necessary safety measures are lacking (see *Felker v Corning, Inc.*, 90 NY2d 219, 224 [1997]). Since plaintiff requested a lifeline and testified that he could not perform his work without unhooking from the scaffold and re-attaching, he cannot have been the sole proximate cause of his accident (*Blake*,). The presence of a Section 240 (1) violation differentiates this case from *Melendez*, upon which defendants predicate their arguments (*Melendez v 778 Park Ave. Bldg. Corp.*, 153 AD3d 700 [2d Dept 2017]). Comparative fault is not a defense to a Labor Law § 240 (1) claim (*see Rocovich v Consol. Edison Co.*, 78 NY2d 509, 513 [1991]).

Therefore, plaintiff's motion for summary judgment is granted with respect to his Labor Law § 240 (1) claim; defendants' motion is denied.

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 (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff predicates his Labor Law § 241

(6) claim alleged violations of Rules 23-1.16 (b) and 1.16 (d); plaintiff does not advance substantive opposition to defendants' motion on the other alleged Industrial Code violations.

Although plaintiff testified that this tail line was greater than four feet long, in violation of Rule 23-1.16 (d), it is not clear that the extra two feet of tail line was a proximate cause of his accident. However, plaintiff's testimony does demonstrate that the lack of a hanging lifeline, in violation of Rule 23-1.16 (b), was a proximate cause of his accident. Defendants do not provide evidence to contradict this showing.

Therefore, plaintiff's motion for summary judgment is granted with respect to his Labor Law § 241 (6) claim as predicated on a violation of Rule 23-1.16 (b). Comparative fault considerations are moot given the court's ruling on defendants' liability under Labor Law § 240 (1). Defendants' motion is granted with respect to this dismissal of all alleged Industrial Code provisions except Rule 23-1.16 (b); the motion is otherwise denied.

Labor Law § 200

Defendants move for summary judgment on Labor Law § 200, and plaintiff does not include any opposition regarding this claim in his affirmation in opposition. Therefore, plaintiff's Labor Law § 200 claim is deemed abandoned and defendants' motion is granted with respect to this claim (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

Conclusion

Defendants' motion for summary judgment (Seq. 003) is granted with respect to plaintiff's Labor Law § 241 (6) claim as predicated on all alleged Industrial Code violations except 23-1.7 (b), and as to plaintiff's Labor Law § 200 claim; the motion is otherwise denied.

Plaintiff's motion for summary judgment (Seq. 004) is granted as to his Labor Law § 240 (1) claim and his Labor Law § 241 (6) claim as predicated on a violation of Rule 23-1.7 (b); 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