Supreme Court of the State of New York
County of Kings

Part LL1

ALFREDO VELASQUEZ,

Plaintiffs,

against

ROMA SCAFFOLDING, INC., CITY OF NEW YORK, NEW YORK CITY HOUSING AUTHORITY, AND TDX CONSTRUCTION CORP.,

Defendants.

Index Number 530248/2021
Seqs. 006, 007

DECISION/ORDER

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
Exhibits	
Other	

Upon the foregoing papers, defendant Roma Scaffolding, Inc. (Roma)'s motion to renew and re-argue (Seq. 006) and The City of New York, New York City Housing Authority (NYCHA), and TDX Construction Corp. (TDX)'s motion for summary judgment (Seq. 007) are decided as follows:

Procedural History and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on November 16, 2021, when he fell at a worksite while performing roof demolition. Plaintiff was employed by non-party San Sebastian Enterprise, LTD (San Sebastian) at the time of his accident. It is undisputed that plaintiff was using a machine called a "Roof Warrior" to remove the roof from a NYCHA-owned building. A Roof Warrior is a mobile, self-propelled machine that strips off old layers of roof materials. Plaintiff testified that he slipped on water that had been contained under the old roof layers. Both of plaintiff's feet slipped out from underneath him and the Roof Warrior fell on top of him when he braced himself against it.

[* 1]

Defendant NYCHA owned the premises. Roma was contracted to perform work at the premises and sub-contracted with plaintiff's employer. There was no precipitation on the date of the accident and no snow on the roof at the time of the accident. It had last rained two or three days before the date of the accident. It is undisputed that the water plaintiff slipped on was underneath the insulation and roofing materials plaintiff was removing; however, the record is not clear as to whether water was observable anywhere else on the roof (*see e.g.* Velasquez 50-h hearing at 53). The water plaintiff slipped on was exposed when the roofing materials were stripped by the Roof Warrior.

The court issued a prior decision on March 29, 2024 granting Roma's motion for summary judgment to the extent of dismissing plaintiff's Labor Law § 240 (1) claim and otherwise denying the motion. Now, Roma seeks renewal and re-argument,[1] while co-defendants move for summary judgment for the first time.

Analysis

Renewal and Re-Argument

To establish a basis for re-argument, defendant must show that this court overlooked or misapprehended a point of law or fact, without resorting to arguments different from those originally stated (*NYCTL 1998 1 Tr. v Rodriguez*, 154 AD3d 865, 865 [2d Dept 2017]; *Rodriguez v Gutierrez*, 138 AD3d 964, 966-67 [2d Dept 2016]). Such a motion must be made within thirty days of the notice of entry (CPLR 2221 [d] [3]). Roma's motion was not filed within 30 days of the notice of entry; therefore, re-argument is denied.

A party seeking renewal pursuant to CPLR 2221 (e) must provide a reasonable

[1] Contrary to counsel's contentions at oral argument, the moving papers clearly request relief under CPLR 2221 (a), which governs re-argument (*see e.g.* memo of law in supp. at 1).

justification for its failure to present the purportedly "new facts" in its prior motion (*Buongiovanni v Hasin*, 162 AD3d 736, 738 [2d Dept 2018]). "Renewal is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Verizon New York, Inc. v Supervisors of Town of N. Hempstead*, 169 AD3d 740, 742 [2d Dept 2019]).

Here, Roma chose the timing of its original motion for summary judgment, including the decision to file the motion before depositions. Allowing the defendant to renew the motion now would be tantamount to permitting successive motions for summary judgment, which is not contemplated by the CPLR (*Verizon New York, Inc. v Supervisors of Town of North Hempstead*, 169 AD3d 740 [2d Dept 2019]; *see also Oppenheim v Village of Great Neck Plaza, Inc.*, 46 AD3d 527 [2d Dept 2007]). Roma's only apparent reason for moving before depositions were completed is litigation strategy; that is not a sufficient justification for allowing an exception to the general rule (*see Vinar v Litman*, 110 AD3d 867 [2d Dept 2013]). Therefore Roma's request for renewal is also denied.

Summary Judgment

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]). As an initial matter, plaintiff has not opposed dismissal of his Labor Law § 240 (1) claim; therefore, defendants' motion is granted with respect to that 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) the 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]). A plaintiff cannot recover if his accident was caused by conditions that are integral to his work (*Salazar*, 18 NY3d 134 [2011]). Here, plaintiff alleges that his injury was caused by a violation of Industrial Code § 23-1.7 (d), which requires, *inter alia*, work areas to be kept free from slipping hazards, including water.

As an initial matter, TDX contends that it is not a proper Labor Law defendant. Plaintiff and co-defendant Roma contend that TDX is an agent of NYCHA. TDX's representative Raymond Leu testified that TDX had stop-work authority and coordinated the trades at the site (Leu EBT at 21–22, 24). Ravinder Gill, Roma's representative, provided corroborating testimony about TDX's authority (Gill EBT at 27). TDX has failed to demonstrate that, as a matter of law, it was not an agent of NYCHA and, by extension, a proper Labor Law defendant.

With respect to the alleged violation of Rule 1.7 (d), defendants contend that, based on post-accident photographs, there was no water on the roof and that the plaintiff slipped on demolition debris. Defendants alternatively contend that if plaintiff did slip on water, it was integral to the work plaintiff was performing at the time of his accident.

In opposition, plaintiff points to his unambiguous testimony that he slipped on water while removing the roof. Plaintiff also notes that Mr. Gill testified that the scope of the work to be performed at the premises did not involve water removal (Gill EBT at 63). Mr. Gill testified that it was Roma's responsibility to check the drains on the roof before work was performed, and that the last drain inspection was approximately six months before plaintiff's accident (*id.* at 53–

54, 56).

Plaintiff's testimony that he slipped on water and the evidence in the record about the provenance of that water are sufficient that the issue of whether plaintiff slipped on a "foreign substance" that was not integral to his work must be resolved by a finder of fact. Notably, plaintiff has not moved for summary judgment; the evidence must therefore be viewed in a light most favorable to the plaintiff when determining whether defendants have met their burden. Defendants have not done so here. Accordingly, defendants' motion is denied with respect to plaintiff's Labor Law § 241 (6) claim as predicated on an alleged violation of Industrial Code 23-1.7 (d) (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310 [2024]).

Labor Law § 200

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). In cases where a dangerous condition is at issue, liability may attach to a defendant if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident (*id.* at 61).

Defendants contend that, if plaintiff slipped on water underneath the roof material, that water constituted a latent condition and therefore cannot give rise to liability under Labor Law § 200. However, the actual practice of defendants to engage in drain testing belies their contention that a reasonable inspection would not have revealed the presence of pooled water (*see e.g. Alexandridis v Van Gogh Contracting Company*, 180 AD3d 969 [2d Dept 2020]). Since it was TDX's responsibility to report to NYCHA (Marius Naci, NYCHA representative, EBT at 20),

the question of constructive notice also extends to NYCHA and precludes summary judgment on plaintiff's Labor Law § 200 claim.

Indemnification Cross-Claims

Since NYCHA has failed to demonstrate as a matter of law that it is free from active negligence, its motion for summary judgment on its indemnification cross-claim and the indemnification cross-claims against it must be denied (*see Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]).

Conclusion

Defendant Roma's motion to renew and re-argue (Seq. 006) is denied.

Defendants NYCHA and TDX's motion for summary judgment (Seq. 007) is denied.

This constitutes the decision of the court.

September 15, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court