

Quinonez v 2815 Atl. Holdings LLC

2025 NY Slip Op 33743(U)

September 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 527187/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 527187/2022
Seqs. 004, 005, 006

Part LL1

DECISION/ORDER

ROSA DIAZ QUINONEZ,

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>1-2</u>
Order to Show Cause and Affidavits Annexed.	_____
Answering Affidavits	<u>3-4</u>
Replying Affidavits	<u>5-6</u>
Exhibits	_____
Other	_____

2815 ATLANTIC HOLDINGS LLC, KEAP GARDENS
HOLDINGS LLC, AND SUNSHINE CONSTRUCTION USA
INC.,

Defendants.

2815 ATLANTIC HOLDINGS LLC, KEAP GARDENS
HOLDINGS LLC, AND SUNSHINE CONSTRUCTION USA
INC.,

Third-Party Plaintiffs,

against

CMG IMPROVEMENTS INC.,

Third-Party Defendant.

CMG IMPROVEMENTS INC.,

Second Third-Party Plaintiff,

against

SMART DESIGN INTERIOR INC.,

Second Third-Party Defendant.

Upon the foregoing papers, plaintiff's cross-motion to sever the third-party complaint

(Seq. 004),¹ defendants' motion for summary judgment (Seq. 005), and plaintiff's motion for summary judgment (Seq. 006) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages she claims she sustained on July 27, 2022, when she fell at a construction site while performing insulation work. It is undisputed that 2815 Atlantic Holdings LLC (Atlantic) and Keap Gardens Holdings LLC (Keap) were the owners of the premises, and that Sunshine Construction USA Inc. (Sunshine) was the general contractor. Sunshine contracted with CMG Improvements Inc.² (CMG) to perform work as the carpentry sub-contractor, and CMG employed the plaintiff. Plaintiff testified that on the date of her accident she was carrying insulation material on the site (Quinonez EBT at 21–22). While walking, plaintiff slipped on a piece of pipe that was on the floor (*id.*). Plaintiff fell into pipes that were leaning vertically against the wall, which then fell on top of her (*id.* at 22–23). No party inquired at her deposition, and plaintiff did not testify, that plaintiff's insulation work involved pipe of any kind.

Analysis

Severance

“The grant or denial of a request for severance is a matter of judicial discretion” (*Chiarello v Rio*, 101 AD3d 793, 797 [2d Dept 2012]). However, that “discretion should be exercised sparingly” because “where complex issues are intertwined . . . it would be better . . . to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time” (*Shanley v Callahan Industries, Inc.*, 54 NY2d 52 [1981]).

¹ This motion was a cross-motion filed in connection with two motions to strike the note of issue that are currently pending in the Central Compliance Part.

² Occasionally referred to in the record as “Hybrid CMG.”

Here, plaintiff contends that issue was not joined in the third-party action until after the note of issue was filed, and that allowing time for discovery to be completed in the third-party action would unduly delay the trial of plaintiff's personal injury action. Here, the third-party action "involve[s] common factual and legal issues," such that the "interests of judicial economy and consistency of verdicts" militate against severance (*Nieto v 1054 Bushwick Ave, LLC*, 219 AD3d 754 [2d Dept 2023]). To the extent that plaintiff's arguments are predicated on discovery in the third-party action, the parties' first appearance in the Jury Coordinating Part is October 20, 2025, and standards and goals is May 3, 2026. Moreover, there are pending motions to vacate the note of issue in the Central Compliance Part. Plaintiff's concerns about delay are not yet ripe. Therefore, severance is denied without prejudice to a new motion, if appropriate, when the issue is ripe.

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]).

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 is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis-Palmer HydroElec. Co.*, 81 NY2d 494, 500 (1993)]). In order to recover for an injury caused by a falling object, a plaintiff

must show that the object was being hoisted, secured, or required securing for the purpose of the undertaking (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259 [2001]).

Plaintiff contends that, after she slipped on a piece of pipe, she collided with some pipes that were vertically stacked against the wall and those pipes then fell on top of her. Plaintiff argues that she is entitled to summary judgment based on a “falling object” theory of liability under Labor Law § 240 (1). No party testified about the intended purpose of the pipes or identified that undertaking in which they were involved; therefore, the court cannot determine without speculation whether the pipes “required securing for the purpose of [that] undertaking” (*Outar v City of New York*, 5 NY3d 731, 732 [2005]). Additionally, there is no testimony about the size of the pipes, and therefore no evidence as to whether the plaintiff was exposed to a significant elevation-related risk (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1 [2011]). Therefore, both plaintiff’s and defendants’ motion are denied with respect to plaintiff’s 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 she 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 (*Moscatti v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only offers argument as to Rules 1.7 (d), 1.7 (e) (1) and (2), and Rule 2.1; therefore, defendants’ motion is granted as to the other code provisions’ alleged without opposition.

Rule 23-1.7 (d) governs slipping hazards, providing that: provides:

Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.”

Here, plaintiff testified that she slipped on a pipe, and that the pipe was a proximate cause of her fall. The pipe was a “foreign substance” on the floor (*see Bazdaric v Almah partners LLC*, 41 NY3d 310 [2024]). Notably, defendants do not provide any argument about this section in either their own motion for summary judgment or their opposition to plaintiff’s motion. Therefore, plaintiff’s motion for summary judgment is granted with respect to her Labor Law § 241 (6) claim as predicated on a violation of Industrial Code 23-1.7 (d).

Plaintiff also alleged a violation of Rule 1.7 (e) (2), which requires that “working areas” be kept free from, *inter alia*, “scattered materials” and “debris.” Although plaintiff testified that she “slipped,” this does not preclude a cause of action arising out of a violation of Rule 1.7 (e) (2) (*see Ruisech v Structure Tone Inc.*, 42 NY3d 1061, 1065 [2024], rearg denied, 43 NY3d 939 [2025]). Plaintiff testified that the pipe was in the middle of the floor she was walking across while working on the site, and defendants have failed to demonstrate that the pipe was neither debris nor scattered materials. Therefore, plaintiff’s motion is also granted with respect to her claim as predicated on a violation of Rule 1.7 (e) (2).

Plaintiff does not move, but does oppose dismissal of, Rules 1.7 (e) (1) and 2.1. Plaintiff’s raises a triable issue of fact as to whether plaintiff’s accident occurred in a passageway as required by Rule 1.7 (e) (1) and whether the pipes were being properly stored as required by Rule 2.1, since no party testified unequivocally as to these issues. Therefore, defendants’ motion is denied with respect to these code provisions.

Labor Law § 200

Defendants alone move for summary judgment on plaintiff’s Labor Law § 200 claim. 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]). Claims under this statute are evaluated under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the two (*id.*)

The plaintiff does not oppose substantively oppose the motion with respect to the owner, and the motion is therefore granted with respect to the owner. Sunshine contends that plaintiff only received supervision and instruction from her employer and that Sunshine cannot therefore be liable under Labor Law § 200. However, plaintiff argues that Sunshine's contract gave it authority over the means and methods at the site (*see* contract at § 9.2). Furthermore, Paul Plastini testified that Sunshine coordinated the trades at the site (Plastini EBT at 25). To the extent that the pipes on the floor may have constituted a dangerous condition, Mr. Plastini testified that Sunshine representatives walked the site, raising material issues of fact as to whether actual notice or constructive notice can be imputed to Sunshine (*id.* at 26). Therefore, Sunshine's motion is denied with respect to this claim.

Conclusion

Plaintiff's motion to sever (Seq. 004) is denied without prejudice to a new motion, if appropriate, when the issue is ripe.

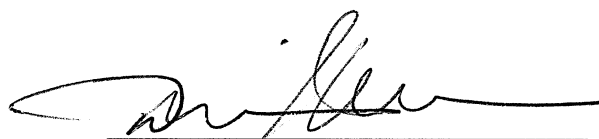
Defendants' motion for summary judgment (Seq. 005) is granted with respect to plaintiff's Labor Law § 200 claim against Atlantic and Keap, and plaintiff's Labor Law § 241 (6) claim as predicated on all Industrial Code violations except Rules 1.7 (d), 1.7 (e) (1) and (2), and Rule 2.1; the motion is otherwise denied.

Plaintiff's motion for summary judgment (Seq. 006) is granted with respect to her Labor Law § 241 (6) claim as predicated on Industrial Code 23-1.7 (d) and 1.7 (e) (2); the motion is otherwise denied.

This constitutes the decision and order of the court.

September 25, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court