Guzman v Delta Air Lines, Inc.
2025 NY Slip Op 33761(U)
October 6, 2025
Supreme Court, New York County
Docket Number: Index No. 156237/2021
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

---X

WILMER GUZMAN, KARLA RODAS

Plaintiff,

- v -

DELTA AIR LINES, INC.,TURNER CONSTRUCTION COMPANY,

Defendant.

---X

INDEX NO. 156237/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for JUDGMENT - SUMMARY.

FACTUAL BACKGROUND

This case concerns an accident where a construction worker fell off a scissor lift while preforming fireproofing during the construction of the Headhouse Connector at La Guardia Airport, Terminal C, Concourse E. Delta Airlines ("Delta") owned the property located at La Guardia Airport, and it retained Turner Construction Company ("Turner") to provide work, labor, and services at the premises. Delta also retained Guzman's employer, Island International Enterprise ("Island"), to provide work, labor, and services (including fireproofing), at Concourse E.

Plaintiff Guzman alleges that Defendants failed to provide him with proper protection, failed to provide a safe place to work, failed to provide safety devices, and failed to provide adequate equipment to prevent plaintiff from suffering injuries. Plaintiffs claim that the scissor lift fell because of a piece of plywood on the floor. Defendants move to dismiss Plaintiffs' claims

based on the theory that his actions represented the sole proximate cause of the accident. Defendants state that there was no debris that caused the scissor lift to tip and instead argue that the lift fell because the length of the hose was too short, due to Guzman's own mistake. Defendants rely on Guzman's statement that he chose to use his "eye" to determine the length. They rely on the deposition of Miguel Camacho (Exhibit L), the superintendent from Turner who was not present at the time of the accident. However, Plaintiffs allege that the Defendants have not provided sufficient proof to establish that the hose was too short and caused the scissor lift to tip.

Plaintiffs brought claims for violations of Labor Law §200, §240(1), (2), (3), and §241(6) related to violations of the Industrial Code 12 NYCRR § 23-1.5, 23-1.7, 23-1.15, 23-1.16, 23-1.17, 23-1.30, 23-2.1, 23-7.1 and 23-9.6.

In Motion Sequence 002, Defendants move for Summary Judgment to dismiss Plaintiffs' Complaint in its entirety. Plaintiff cross-moves for summary judgment pursuant to Labor Law §240(1). Plaintiff conceded their claims pursuant to Labor Law §200, common law negligence claims, Labor Law §240(2) and (3), and all claims pursuant to Labor Law §241(6) predicated on alleged violations of Industrial Code located at 12 NYCRR § 23-1.5, 23-1.7, 23-1.15, 23-1.16, 23-1.17, 23-1.30, 23-2.1, 23-7.1. The only remaining claims for the Court to consider, therefore, are related to Labor Law § 240(1) and §241(6) pursuant to an alleged violation of Industrial Code located at 12 NYCRR §23-9.6(c)(3) and (e)(8).

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no

disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Labor Law §240(1) states "All contractors and owners and their agents…in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

The statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). "[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

"To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries. The burden then shifts to the defendant to raise a triable issue of fact" (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). "The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass

any and all perils that may be connected in some tangential way with the effects of gravity" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 (1992)). Here, Plaintiffs' claim under Labor Law §241(6) is based on violation of Industrial Codes 23-9.6(c)(3) and (e)(8) as follows:

i) 23-9.6(c)(3) & (e)(8);

> (c) Driving or moving of aerial basket truck.
>
> (3) Driving or moving the aerial basket truck while any person is elevated in the basket is prohibited.
>
> (e) Aerial basket operation.
>
> (8) Persons shall enter or leave an aerial basket only when such basket is resting on the ground or grade level or cradled in the traveling position. Persons shall stand clear of the path of the basket and boom when such basket is being lowered. Any movement of the vehicle while persons are elevated in the basket is prohibited.

DISCUSSION

Labor Law 240(1)

Defendants move for summary judgment dismissing Plaintiffs' claim under Labor Law § 240(1). Plaintiffs subsequently cross-moves for summary judgment finding that Defendants are liable for a violation of Labor Law §240(1).

Here, Plaintiff alleges that he fell when the scissor lift on which he was performing fireproofing work tipped over. This type of fall constitutes the very sort of elevation-related hazard the statute was designed to prevent. Defendants contend that Guzman's own

miscalculation in estimating the length of hose required for the work caused the hose to run taut and pull the lift forward, tipping it. They further argue that no corroborating evidence supports Guzman's testimony that the lift was destabilized by a piece of wood on the floor. Defendants rely on the principle that where a plaintiff's own conduct is the sole proximate cause of the accident, liability does not attach (see *Barreto v. Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]). Defendants fail to provide sufficient proof to support their claim that Guzman's conduct was the sole proximate cause of the tipping of the scissor lift and his fall.

Plaintiff has established prima facie that the scissor lift, a safety device within the meaning of the statute, failed to provide him with proper protection against the elevation-related hazard of falling. In the context of accidents involving scissor lifts, the First Department has held that plaintiffs are entitled to summary judgment when "the scissors lift did not prevent plaintiff from falling...unless the actions of plaintiff or his coworker was the sole proximate cause of the accident. (*Kash v McCann Real Equities Developments, LLC*, 279 AD2d 432 [1st Dept 2001]). Here, Defendants do not adequately prove that Plaintiff was the sole proximate cause of the accident, and Plaintiff has adequately shown that the tipping of the scissor lift was the cause of the alleged injuries. Moreover, to the extent that Defendants allege comparative negligence on the part of Plaintiff, such is not a defense to a § 240(1) claim (*Barreto*. at 428).

Accordingly, Defendants motion for summary judgment dismissing Plaintiffs' § 240(1) is denied and Plaintiffs' cross-motion for summary judgment as to Labor Law §240(1) claim is granted.

Labor Law § 241(6) pursuant to 12 NYCRR § 23-9.6

Plaintiff has withdrawn all Labor Law § 241(6) claims except the alleged violation of 12 NYCRR § 23-9.6, which governs aerial baskets. Defendants move for summary judgment,

arguing both that a scissor lift does not fall within the regulatory definition of an aerial basket and that Guzman's own negligence in misjudging the hose length was the sole proximate cause of the accident.

Section 23-9.6 regulates "aerial baskets," defined in § 23-1.4(b)(2) as "a vehicle-mounted, power-operated device with an articulating or telescoping work platform designed for use at elevated working positions." The appellate courts are divided as to whether a scissor lift qualifies as an aerial basket. The Fourth Department has held that scissor lifts fall within the regulation (see *Karcz v. Klewin Bldg. Co.*, 85 AD3d 1649 [4th Dept 2011]), while at least one trial court in this Department has concluded they do not (see *McGill v. Whitney Museum of Am. Art*, 2024 NY Misc LEXIS 6939 [Sup Ct, NY County 2024]).

Issues of fact remain as to whether the scissor lift operated by Plaintiff qualifies as an "aerial basket" within the meaning of § 23-9.6, and whether any regulatory violation proximately caused the accident. Defendants' argument that Guzman's own negligence was the sole cause of the accident has already been refuted.

Accordingly, Defendants' motion for summary judgment dismissing Plaintiffs' Labor Law § 241(6) claim predicated on 12 NYCRR § 23-9.6 must also be denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that the branch of Defendant's motion for summary judgment dismissing Plaintiffs' claims pursuant to Labor Law §200, common law negligence claims, Labor Law §240(2) and (3), and all claims pursuant to Labor Law §241(6) predicated on alleged violations of the Industrial Code located at 12 NYCRR § 23-1.5, 23-1.7, 23-1.15, 23-1.16, 23-1.17, 23-

1.30, 23-2.1, 23-7.1 is granted, and such claims are dismissed as Plaintiff has abandoned those claims; and it is further

ORDERED that the branch of Defendant's motion for summary judgment dismissing Plaintiffs' claims pursuant to Labor Law §240(1) and §241(6) predicated on alleged violations of the Industrial Code located at 12 NYCRR §23-9.6 are denied; and it is further

ORDERED that Plaintiffs' cross motion for summary judgment pursuant to Labor Law §240(1) is granted.

The foregoing constitutes the decision and order of the court.

10/6/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION	
	[ ] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[X] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE