

Milligan v New York Convention Ctr. Operating Corp.

2025 NY Slip Op 33840(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 155080/2021

Judge: Leslie A. Stroh

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

ADAM MILLIGAN, Plaintiff, - v - NEW YORK CONVENTION CENTER OPERATING CORPORATION, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, THE JACOB K. JAVITS CONVENTION CENTER OF NEW YORK, CITY OF NEW YORK, TURNER CONSTRUCTION CORPORATION Defendant. INDEX NO. 155080/2021 MOTION DATE 09/09/2025, 09/09/2025 MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 139, 140, 144

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 141, 142, 143, 145, 146

were read on this motion to/for JUDGMENT - SUMMARY

FACTUAL BACKGROUND

This Labor Law action arises out of a December 22, 2020 accident at the Jacob K. Javits Convention Center expansion project in Manhattan. Plaintiff commenced this proceeding alleging Defendants violated Labor Law §§ 240(1), 241(6), 241-a and 200. Plaintiff Adam Milligan was employed as a journeyman carpenter by Component Assembly Systems ("Component"), a subcontractor. He was assigned to perform overhead framing work in Stairwell 17-S06 between Levels 3 and 3M.

Plaintiff alleges that, in the absence of a scaffold or other elevation device, he was compelled to use an overturned mortar bucket to reach overhead studs. While doing so, he lost

his balance and fell, sustaining injuries to his ribs, shoulders, neck, and back, which ultimately required multiple surgeries (NYSCEF Doc. No. 110, at 89–94).

Defendants dispute this account, contending that Plaintiff simply misstepped on the stairs. A Workers' Compensation C-3 form filed shortly after the accident states "fell downstairs" as the cause of injury (NYSCEF Doc. No. 108). A contemporaneous Incident Investigation Report prepared by Lendlease Turner likewise records the accident as a stair fall (NYSCEF Doc. No. 109). Component's safety manager, Jordan Dudelson, affirmed that Plaintiff told him at the scene, "I missed a stair and fell" (NYSCEF Doc. No. 118, ¶6).

Defendant states that the medical records are similarly inconsistent. Physical therapist Maria Gonzalez, who treated Plaintiff, testified that during treatment Plaintiff described his injury as a stair fall. (NYSCEF Doc. No. 114). By contrast, physician assistant Laura Robinson, who also treated Plaintiff testified that Plaintiff reported falling from a bucket while performing overhead work (NYSCEF Doc. No. 115).

Conflicting issues of fact also exist with respect to the site safety documentation, in which the pre-task safety huddle sheet for December 22, 2020 indicates that "Baker Scaffold" was listed as available equipment (NYSCEF Doc. No. 112). Defendants rely on this to argue that proper devices were available. Plaintiff, however, testified that although scaffolds existed elsewhere on the Javits site, none were available to him at Stairwell 17-S06 when he requested one (NYSCEF Doc. No. 110, at 92–94).

Plaintiff commenced this action on May 25, 2021. After amendments to the caption and completion of discovery, Defendants filed Motion Sequence 002 on May 12, 2025, seeking summary judgment dismissing the complaint (NYSCEF Doc. Nos. 103, 119). On June 2, 2025, Plaintiff filed Motion Sequence 003, seeking summary judgment on liability under Labor Law §

240(1) (NYSCEF Doc. Nos. 120, 127). Both motions were fully submitted with oppositions (NYSCEF Doc. Nos. 122, 129, 130) and replies (NYSCEF Doc. Nos. 132, 133, 134, 137).

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]).

“Labor Law § 240(1) applies to both ‘falling worker’ and ‘falling object’ cases.” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68 [2001]). With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to ‘a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured.’” (Id. quoting *Rocovich v Consol. Edison Co.*, 78 NY2d 509, 514 [1991]).

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, plaintiff’s claim under Labor Law §241(6) is based on violation of Industrial Code located at 12 NYCRR 23-1.33 which is titled “Protection of persons passing by construction, demolition or excavation operations/”

Next, Labor Law §200 codifies the common law duty of an owner to provide construction workers with a safe place to work (*See Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876 (1993)). Labor Law §200 and common law claims fall under two categories: “those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed” (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 (1st Dept 2012)). Under the first group, the owner had to have either created the condition or have actual or constructive notice of it (*Id* at 144). In the second category, the owner or general contractor is liable if “it actually exercised supervisory control over the injury-producing work” (*Id*).

Labor Law § 200 claims against a premises owner or contractor can arise from either the manner in which the work is performed or a dangerous or defective condition at the work site. (*Martinez v City of New York*, 73 AD3d 993 [2d Dept 2010]). For the former, the owner or contractor is liable only if it exercised supervision or control of the work that led to the injury. (*Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343 [1998]). Where the injury arises from a dangerous or defective condition, an owner or contractor is liable if they created the condition, or failed to remedy it when they had actual or constructive notice. (*Williams v McAlpine Contr. Co.*, 235 AD3d 521, 522 [1st Dept 2025]).

Plaintiff alleges a cause of action for Labor Law § 241-a in the complaint. Labor Law § 241-a provides that “Any men working in or at elevator shaftways, hatchways and stairwells of buildings in course of construction or demolition shall be protected by sound planking.” The statute is designed to “protect workers either from falling through the shaft for more than one story or from being hit from above by falling debris or other materials.” (*Sharp v Scandic Wall Ltd. Partnership*, 306 AD2d 39, 39 [1st Dept 2003]). The statute is designed to protect workers

“from falling through the shaft for more than one story...or from falling debris or other materials during construction, neither of which circumstance occurred here.” (*Nevins v Essex Owners, Corp.*, 259 AD2d 384, 385 [1st Dept 1999]) (internal citations omitted).

DISCUSSION

Labor Law § 200 and Common-Law Negligence

Here, Plaintiff’s claim is predicated on the means and methods of his work, specifically his being required to perform overhead framing in a stairwell without a scaffold. Defendants argue they had no supervisory control over Plaintiff’s work, which was directed solely by his employer, Component Assembly.

Defendants’ own submissions demonstrate a measure of supervisory authority. Turner superintendent Vincent Mazzella testified that as superintendent, he was responsible for three floors and the entire atrium section of the project. He confirmed that Pre-Task Plans (PTPs) were compliance measures required by local law and mandated for all subcontractors, which were submitted to and retained by the general contractor (NYSCEF Doc. No. 116). Mazzella further testified that if Turner observed a safety violation by Component employees, including Plaintiff, they had authority to stop work, order laborers to “stand down,” and address the issue with the subcontractor’s foreman. (*Id.* at 47).

This evidence raises a factual issue as to whether Defendants exercised sufficient supervisory control over the means and methods of Plaintiff’s work to support liability under § 200. Defendants’ reliance on general principles that “notice alone is insufficient” is unavailing where their own superintendent’s testimony reflects active authority to oversee and halt unsafe practices.

Accordingly, triable issues of fact preclude summary judgment on Plaintiff's § 200 and common-law negligence claims. Defendants' motion pursuant to Labor Law § 200 and common-law negligence is therefore denied.

Labor Law § 241(6)

Plaintiff alleges OSHA violations and Industrial Code § 23-1.33 as the predicates for liability pursuant to Labor Law § 241(6). Neither can sustain a § 241(6) claim.

OSHA provisions do not furnish a predicate for liability under § 241(6) (*see Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 349-350 [1998]). As such, any of Plaintiff's claims related to alleged noncompliance with OSHA provisions must be dismissed.

Industrial Code § 23-1.33, which governs sidewalk sheds and pedestrian protection, is expressly inapplicable in cities with populations over one million under Labor Law § 241(8). As the accident occurred in New York City, that provision cannot apply. Moreover, Plaintiff provides no opposition to the branch of Defendant's motion for summary judgment as it relates to Labor Law § 241(6). As such Plaintiff's claims pursuant to Labor Law § 241(6) are dismissed.

Labor Law § 241-a

The statute is designed to "protect workers either from falling through the shaft for more than one story or from being hit from above by falling debris or other materials" (*Sharp v Scandic Wall Ltd. Partnership*, 306 AD2d 39, 39 [1st Dept 2003]). In other words, it addresses the specific risks posed by unprotected vertical openings during building construction or demolition, and is not applicable here.

Here, Plaintiff's alleged injury could not have resulted in a fall of more than one-floor nor was it allegedly caused by falling debris. Plaintiff's alleged fall could only have been as high as the bucket or stairs he allegedly stood upon, far less than even one-story. Second, the alleged

accident was a fall from a bucket, and not from a falling object, which is otherwise contemplated for in Labor Law 240(1). In either scenario, Plaintiff was not working at or exposed to the type of open vertical hazard § 241-a was designed to address. He was not at risk of falling “through the shaft for more than one story” or from “falling debris or other materials” in a shaftway (*Nevins*, 259 AD2d 384 at 385). Moreover, Plaintiff fails to provide any opposition to Defendant’s motion seeking dismissal of the Labor Law § 241-a claim. As such, Plaintiff’s claims pursuant to Labor Law § 241-a are dismissed.

Labor Law § 240(1)

Plaintiff, at his 50-h hearing, alleged he was performing overhead framing from an overturned bucket due to the absence of a scaffold, and that he fell while doing so (NYSCEF Doc. No. 110). That account, if credited, establishes a prima facie violation of § 240(1), which imposes absolute liability where a worker is injured because an adequate safety device was not provided for an elevation-related hazard (*see Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 559 [1993]).

Defendants, however, have presented contemporaneous records and testimony reflecting a different mechanism of injury. The Workers’ Compensation C-3 form (NYSCEF Doc. No. 108) states that Plaintiff “fell downstairs.” The Lendlease Turner Incident Report (NYSCEF Doc. No. 109) likewise records the event as a stair misstep. Component’s safety manager, Jordan Dudelson, in his affidavit, testified that Plaintiff himself said, “I missed a stair and fell” (NYSCEF Doc. No. 118, ¶6). In addition, medical evidence is split: physical therapist Maria Gonzalez recorded a stair fall (NYSCEF Doc. No. 114), while physician assistant Laura Robinson noted Plaintiff described a bucket fall (NYSCEF Doc. No. 115).

This record presents two starkly conflicting versions of the accident: one in which Plaintiff fell from an inadequate makeshift device, squarely implicating § 240(1), and one in which he simply misstepped on a completed staircase, which would potentially put the alleged injury outside the scope of Labor Law § 240(1) for failing to be an elevated related risk. (*see Toefer v Long Is. R.R.*, 4 NY3d 399, 408 [2005]). As such, material facts remain which requires denial of summary judgment pursuant to Labor Law § 240(1).

Defendants also invoke the “sole proximate cause” defense, arguing that scaffolds were available on the Javits site, as reflected in the December 22, 2020 Pre-Task Plan (NYSCEF Doc. No. 112) and testimony from Turner supervisors that scaffolds were generally present (NYSCEF Doc. No. 137, at 89–92). To establish sole proximate cause, Defendants must prove that Plaintiff “knew both that [the safety devices] were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured.” (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 40 [2004]).

The record here is inconclusive. Plaintiff testified he requested a scaffold on the morning of the accident and was not provided one. (NYSCEF Doc. No. 110). No witness has established that a scaffold was actually available to Plaintiff in Stairwell 17-S06 at the time of his work. Proof that scaffolds are available generally on the worksite are insufficient to establish that Plaintiff was the sole proximate cause of the accident. (*Cherry v Time Warner, Inc.*, 66 AD3d 233, 238 [1st Dept 2009]). As such, Defendants have not established that Plaintiff is the sole proximate cause of the subject accident.

Accordingly, Defendants’ motion for summary judgment dismissing the § 240(1) claim is denied, and Plaintiff’s motion for summary judgment on liability is likewise denied.


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

Accordingly; it is hereby

ORDERED that Defendants' motion for summary judgment (Motion Sequence 002) is granted in part, to the extent that Plaintiff's causes of action under Labor Law 241(6), 241-a are dismissed and is otherwise denied as to Labor Law § 200, common-law negligence and § 240(1); and it is further

ORDERED that Plaintiff's motion for summary judgment (Motion Sequence 003) is denied in its entirety.

10/7/2025
DATE


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

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: