

Acevedo v Galaxy Devs. LLC

2025 NY Slip Op 33846(U)

September 24, 2025

Supreme Court, Kings County

Docket Number: Index No. 506414/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 506414/2022
Seqs. 003

Part LL1M

DECISION/ORDER

MIGUEL ZURITA ACEVEDO,
Plaintiff,

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

against

Papers Numbered	
Notice of Motion and Affidavits Annexed	<u>1</u>
Order to Show Cause and Affidavits Annexed	<u> </u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

GALAXY DEVELOPERS LLC AND HARRISON REALTY II LLC,

Defendants.

GALAXY DEVELOPERS LLC AND HARRISON REALTY II LLC,

Third-Party Plaintiffs,

against

BWK CONTRACTING CORP.,

Third-Party Defendant.

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 003) is decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on March 2, 2022, when he was working on the premises located at 251 Wallabout Street, Brooklyn, NY (the premises). It is undisputed that Harrison Realty II LLC (Harrison) owned the premises and that Galaxy Developers LLC (Galaxy) was the general contractor for the "ground up development" of the premises. Galaxy sub-contracted with BWK Contracting Corp. (BWK) to perform masonry work at the premises; BWK employed the plaintiff.

Plaintiff was a helper whose responsibilities included mixing cement and providing materials to the masons on site (Acevedo EBT at 25–26). Plaintiff testified as follows: On the date of the incident, plaintiff mixed cement on the second floor and was ascending the permanent interior staircase to the third floor (*id.* at 32). The plaintiff was carrying a pail of cement on his shoulder (*id.*). While ascending the stairs, plaintiff tripped on “cables” that were on the stairs, causing him to fall backwards from the seventh or eighth step up (*id.* at 32, 57). Plaintiff did not know what the cables were for and had not observed them on his prior trips up and down the stairs (*id.* at 60–61).

Efriam Santiago, a project manager for BWK, testified that the masonry work being performed was on the exterior of the premises (Santiago at 44). Mr. Santiago did not speak to plaintiff on the day of the incident (*id.* at 67). Plaintiff’s foreman, Luis Miguel Pareja Cruz, testified that workers were using a pulley system on the exterior of the building to hoist materials, including buckets of cement, to the upper levels of the scaffold (Cruz EBT at 15, 26–27). Mr. Cruz variously testified that the plaintiff did not need to carry cement up the interior staircase (*id.* at 15–16), but also testified that plaintiff would need to use the interior stairs “when the other person that he was working with needed help” distributing cement (*id.* at 22–23). There is no testimony that plaintiff was instructed not to use the staircase.

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]).

As an initial matter, the plaintiff does not oppose defendants' motion with respect to his Labor Law § 240 (1) claim, Labor Law § 200 claim, and Labor Law § 241 (6) claim as predicated on the previously alleged Industrial Code violations except Rule 1.7 (e) (1) and (e) (2). Therefore, those portions of defendants' motion are granted without opposition (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

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 an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only advances arguments opposing summary judgment on his claim as predicated on Rule 1.7 (e) (1) and (e) (2).

Defendants contend that Rule 1.7 (e) (1) does not apply here because the plaintiff's accident did not occur in a passageway. However, a staircase can be considered a "passageway" as defined by the Rule, particularly where the staircase is the sole access to the work area (*see Dyskiewicz v City of New York*, 218 AD3d 546 [2d Dept 2023]; *see also Tolk v 11 West 42 Realty Investors, LLC*, 201 AD3d 491 [1st Dept 2022]). Based on the record before the court, there is minimally a question of fact as to whether the staircase constituted a passageway; therefore, defendants' motion is denied with respect to plaintiff's claim as predicated on this rule.

Additionally, defendants' own papers raise an issue of fact as to whether Rule 1.7 (e) (2), which governs tripping hazards in "work areas," applies. Defendants' contend that the staircase was not a passageway because it was part of an open work area; since defendants themselves raise this issue, there is also an open issue of fact as to whether the staircase constituted a

passageway or a work area. Therefore, defendants' motion is also denied with respect to plaintiff's claim as predicated on Rule 1.7 (e) (2).

Conclusion

Defendants' motion for summary judgment (Seq. 003) is granted as to Labor Law § 240 (1), Labor Law § 200, and § 241 (6) except as predicated on Rule 1.7 (e) (1) and (2); the motion is otherwise denied.

This constitutes the decision and order of the court.

September 24, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court