

Brown-Seerattan v TF Cornerstone Inc.

2025 NY Slip Op 33875(U)

September 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 526053/2020

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 526053/2020
Seqs: 001, 002

Part LL1

DECISION/ORDER

JEREMY EUGENE BROWN-SEERATTAN,

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	<u>3-4</u>
Answering Affidavits	<u>5-6</u>
Replying Affidavits	<u>5-6</u>
Exhibits	<u> </u>
Other	<u> </u>

TF CORNERSTONE INC., 606 WEST 57 LLC, 606 WEST 57 (LIHTC) LLC, EE 57TH STREET SOUTH HOLDINGS LLC, GE 57TH STREET SOUTH HOLDINGS LLC, FADLING II LLC, SWALLOW II LLC, APPLEBY-SOUTH HOLDINGS, LLC, AND FOUR PLUS CORPORATION,

Defendants.

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 001) and plaintiff's motion for summary judgment (Seq. 002) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims he sustained on February 13, 2018 when he was struck by a falling object while working on a jobsite located at 606 West 57th Street, New York, NY (the premises). TF Cornerstone Inc. (TF Cornerstone) was a post-construction management entity that contends it had neither an ownership interest in the property nor had any active contracts during the construction phase of the project. 606 West 57 LLC (West 57) was the ground lessee of the premises. West 57 contracted with non-party TFC West 57 GC LLC (TFC GC) as the general contractor for the construction project at the premises. 606 West 57 (LIHTC) LLC (LIHTC) entered into a sub-lease with West 57 for certain units at the premises. EE 57th Street South Holdings LLC (EE 57), GE 57th Street South Holdings LLC (GE 57), Fadling II LLC (Fadling), Swallow II LLC (Swallow), Appleby-South

Holdings, LLC (Appleby) and Four Plus Corporation (Four Plus) hold partial ownership interests in the premises and are ground lessors of the premises located at 606 West 57th Street, New York, New York. Non-party TFC GC sub-contracted with Kings County Waterproofing (KCW) on December 19, 2016 as the joint sealant sub-contractor for the project. KCW employed the plaintiff.

On the date of the occurrence, it is undisputed that plaintiff was directed to go to the 29th floor set-back to stack KCW's aluminum cladding panels (Brown-Seerattan EBT at 51, 53). Plaintiff was instructed to stack these panels on top of four-by-fours with a partner (*id.* at 56, 60–61). The panels were approximately six feet by four feet. The incident report, prepared by TFC foreman Thomas McBride and authenticated by the testimony of TFC superintendent Christopher Steinmann, states that the panels weighed approximately fifty pounds each (incident report at 2; Steinmann EBT at 53). However, the incident report also says that plaintiff claimed he was lifting two panels, which would put the weight of the load at approximately one hundred pounds if the information in the report is accepted, *arguendo* (*id.*). Plaintiff initially testified that each panel weighed “approximately 150 to 200 pounds” (Brown-Seerattan EBT at 62); after looking at the report, plaintiff disagreed that the panels weighed fifty pounds but also conceded that he did not know the exact weight (*id.* at 86–87).

Plaintiff testified that, after stacking three or four panels of cladding, he noticed that one piece was “about to fall” so he told his partner to stop and reached out to fix the precarious piece of cladding (Brown-Seerattan EBT at 55). While plaintiff's hand was under the piece of cladding, “it moved and it fell off of the actual wood towards the ground, and that's when [his] hand was crushed by the actual cladding” (*id.* at 55–56). The bottom of the panel was approximately four inches off the ground when it fell (*id.* at 93).

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]).

The plaintiff does not oppose defendants' motion with respect to any claims against TF Cornerstone; therefore, that portion of defendants' motion is granted without opposition and all claims against TF Cornerstone are dismissed.

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 *Haines 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 and defendant agree that aluminum cladding fell approximately four inches onto plaintiff's hand. In *Castillo v Hawke Enterprises, LLC*, the Appellate Division, Second Department held that "where the [194lbs] cylinder fell only four inches but did so with such force as to crush the plaintiff's finger, there are triable issues of fact as to whether the elevation differential between the plaintiff and the falling object was de minimis" (222 AD3d 827, 829 [2d Dept 2023]). In light of the similarities between both the weight of the object and the distance it

travelled in this case and *Castillo*, both plaintiff's and defendants' motions are denied with respect to Labor Law § 240 (1).

Labor Law § 241 (6)

The plaintiff does not oppose defendants' motion with respect to Labor Law § 241 (6); therefore, that claim is deemed abandoned and dismissed (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

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.*)

Here, movant defendants contend that they did not supervise or direct plaintiff's work, that they were not present on site, and that only plaintiff's employer had authority to direct and control his work. Since the general contractor is not a party to this action, the court need not consider whether TFC GC had authority over plaintiff's work. In opposition, plaintiff does not advance an argument as to the means and methods, but instead argues that the stacked aluminum cladding constituted a dangerous premises condition. Plaintiff does not argue that there was a dangerous condition innate to the premises that caused the stack to become unlevel. Since the dangerous condition that plaintiff identifies was created during the course of plaintiff's work and was not one that existed for a sufficient amount of time for the owners to observe and remedy it,

defendants' motion is granted with respect to this claim (*see Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]).

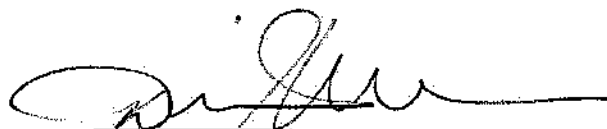
Conclusion

Defendants' motion for summary judgment (Seq. 001) is granted to the extent of dismissing plaintiff's Labor Law § 241 (6) and Labor Law § 200 claim; the motion is otherwise denied.

Plaintiff's motion for summary judgment (Seq. 002) is denied.

This constitutes the decision and order of the court.

September 25, 2025
DATE


DEVIN P. COHEN
Justice of the Supreme Court