

Lazo v AB Stable LLC

2025 NY Slip Op 33887(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 151984/2019

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

JOSE LAZO,

Plaintiff,

- v -

AB STABLE LLC, TISHMAN CONSTRUCTION CORPORATION,

Defendants.

-----X

INDEX NO. 151984/2019

MOTION DATE 01/14/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 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, 58, 59, 60, 61, 62

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

Plaintiff moves for partial summary judgment against defendants on his Labor Law 241(6) claim. Defendants oppose and cross-move for dismissal of plaintiff's Labor Law 241(6) claim and for judgment on their contractual indemnity claims against third-party defendant W5 Group LLC d/b/a Waldorf Demolition. Plaintiff opposes the cross-motion.

I. PERTINENT FACTS

Plaintiff was allegedly injured on May 1, 2018, while working on a construction project at the Waldorf Astoria, at 301 Park Avenue in Manhattan. The Waldorf is owned by defendant AB Stable LLC (Owner), and it contracted with defendant Tishman Construction Corporation (Tishman) to perform construction work at the hotel. Plaintiff was employed by demolition company and third-party defendant, Calvin Maintenance.

At the time of the accident, plaintiff was performing demolition work on a closet wall, which was made of cement blocks. He was instructed by his foreman to demolish only the

bottom part of the wall first, and then work towards the top. As he was removing the blocks, a piece of the wall fell from above him and struck him on his left hand, causing injury.

II. LABOR LAW 241(6)

Labor Law § 241(6) imposes a nondelegable duty on premises owners and contractors at construction sites to provide reasonable and adequate safety to workers. To establish a claim under the statute, a plaintiff must show that a specific, concrete, applicable Industrial Code regulation was violated, rather than a provision containing only generalized requirements for worker safety, and that the violation caused the complained-of injury (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 146 [1st Dept 2012] [internal citations omitted]; *Ross v Curtis-Palmer*, 81 NY2d 494 [1993]).

Plaintiff relies on a violation of Industrial Code 23-3.3(b)(3), which provides that “Walls, chimneys and other parts of any building or structure shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration.” Plaintiff also contends that defendants violated Industrial Code 23-3.3(b)(2), which provides that “Masonry shall not be loosened nor permitted to fall in such masses as to endanger the structural stability of any floor or structural support which such masonry may strike in falling.” For both subsections, plaintiff maintains that defendants violated the Code provisions by instructing him to work on the wall from bottom to the top, rather than top to bottom.

Defendants assert that plaintiff’s accident is not covered by the Labor Law as he was in the act of demolishing the wall when a block fell on his hand, and therefore, securing the wall would defeat the purpose of his work.

In *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, the plaintiff’s Labor Law claim was sustained as the pipes that fell on him had not been scheduled for demolition, and the Court

distinguished cases “where the objects that injured the plaintiffs were themselves the target of demolition where they fell.” (18 NY3d 1 [2011]). In such cases, the Court observed, “imposing liability for failure to provide protective devices to prevent the walls or objects from falling, when their fall was the goal of the work, would be illogical.” (*Id.* at 7).

As plaintiff’s task that day was to demolish the wall, he fails to demonstrate, *prima facie*, that his accident was caused by the absence of an applicable safety device (*see Maldonado v AMMM Props. Co.*, 107 AD3d 954 [2d Dept 2013] [Labor Law § 240(1) claim dismissed as glass pane which caused plaintiff’s injury was slated for demolition at time of injury and was thus not object that required securing for purposes of demolition]; *Garcia v 225 E. 57th St. Owners, Inc.*, 96 AD3d 88 [1st Dept 2012] [plaintiff’s accident not covered by Labor Law when the mirror he was loosening to remove from wall broke and injured him; “to guard, shore, or brace the mirror would have precluded the plaintiff from performing the task of removing the mirror”]).

Similarly, the cited Code provisions are not applicable when the accident occurs from the demolition itself (*see Majerski v City of New York*, 193 AD3d 715 [2d Dept 2021] [Code provisions, including 23-3.3(b)(3), “intended to guard against hazards caused by structural instability resulting from the progress of demolition; they do not apply to hazards caused by the actual performance of demolition work”]; *see also Vega v Renaissance 632 Broadway, LLC*, 103 AD3d 883 [2d Dept 2013] [as plaintiff was injured when he was removing pipes from ceiling during demolition work and pipe fell and hit his ladder, causing him to fall, Code provisions 23-3.3(b)(3) and (c) were inapplicable as hazard arose from plaintiff’s actual performance of demolition work itself]; *Smith v New York City Hous. Auth.*, 71 AD3d 985 [2d Dept 2010] [as

plaintiff's injury occurred as he was demolishing wall and trying to dislodge cinder blocks and several blocks fell on his foot, it was not covered by Labor Law 241(6)].

Plaintiff thus fails to establish his entitlement to partial summary judgment, and defendants are entitled to dismissal of plaintiff's Labor Law claim against them.

Given this result, defendants' cross-claims are dismissed as academic (*see Smith*, 71 AD3d at 988 [as Labor Law 241(6) claim should have been dismissed, court should have denied as academic summary judgment on cross-claim for contractual indemnity]).

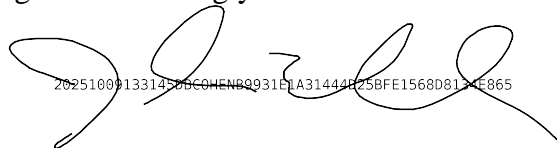
Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment is denied; it is further

ORDERED that defendants' cross-motion is granted to the extent of dismissing

plaintiff's complaint, and is otherwise denied; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.



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10/9/2025

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE