

**Zhiminaicela v Terminal Fee Owner LP**

2025 NY Slip Op 33889(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 155221/2022

Judge: Richard G. Latin

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. RICHARD G. LATIN PART 46M**

*Justice*

-----X

EDISON ZHIMINAICELA,

Plaintiff,

- v -

TERMINAL FEE OWNER LP, L&L NORMANDY TERMINAL  
PROPERTY MANAGER LLC, L&L NORMANDY TERMINAL  
DEVELOPMENT MANAGER LLC, NEW LINE  
STRUCTURES & DEVELOPMENT LLC

Defendant.

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**INDEX NO.** 155221/2022

**MOTION DATE** 02/13/2025,  
02/14/2025

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 47, 49, 51, 59, 60, 61, 62

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 50, 52, 53, 54, 55, 56, 57, 58, 63, 64

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

In this Labor Law action, defendants Terminal Fee Owner LP, L&L Normandy Terminal Property Manager LLC, L&L Normandy Terminal Development Manager LLC and New Line Structures & Development LLC move pursuant to CPLR 3212 for an order granting summary judgment to dismiss plaintiff Edison Zhiminaicela’s verified complaint and claims under Labor Law §§ 240(1), 241(6), and 200 (NYSCEF # 19). In response, Zhiminaicela moves for summary judgment on his Labor Law § 241(6) claim (NYSCEF # 34).

**Background**

Zhiminaicela was employed by Structure Tech New York (“Structure Tech”) as a carpenter at a construction site located 261 11<sup>th</sup> Avenue, New York NY 10001, which was owned by Terminal Fee Owner LP, where L&L Normandy Terminal Property Manager LLC was the general

contractor (NYSCEF # 1; NSYCEF # 1 at 21; NYSCEF # 21 at 1). Plaintiff was tasked with moving different-sized jacks across the third floor and clearing nails and small pieces of wood from the existing walls (NYSCEF # 21 at 1; NYSCEF # 39 at 53). Plaintiff was carrying a jack on his shoulder through an opening in a pre-existing brick wall to move it to the other side of the floor (*id.* at 2). Plaintiff walked through the opening and tripped on a small piece of rusted rebar protruding from the floor (*see id.*).

### **Discussion**

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

### **Liability Under Labor Law § 240(1)**

Plaintiff's failure to respond to defendants' assertions to dismiss on claims under Labor Law §§ 240(1) is deemed abandoned (*see Romano v New York City Tr. Auth.*, 213 AD3d 506, 508 [1st Dept 2023] [dismissing plaintiff's Labor Law § 241(6) claim as abandoned since plaintiff did not oppose NYCTA/MTA's arguments for dismissal of those claims]; *see Murphy v Schimenti Constr. Co., LLC*, 204 AD3d 573, 573 [1st Dept 2022]). Therefore, defendants' summary judgment claims to dismiss the Labor Law §§ 240(1) claim is granted.

## Liability Under Labor Law 241(6)

Labor Law § 241(6) provides, in pertinent part, that all areas where construction is being performed should provide reasonable and adequate protection and safety to persons employed or frequenting such areas. To prevail on a cause of action under § 241(6), however, a plaintiff must establish a violation of a specific safety regulation promulgated by the Commissioner of the Department of Labor (*see Lenard v 1251 Americas Assoc.*, 241 AD2d 391, 392 [1st Dept 1997], citing *Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 505 [1993]; *see also Kulis v Xerox Corp.*, 231 AD2d 922, 923 [4th Dept 1996]).

Plaintiff claims Industrial Code §§ 23–1.7(e)(1) and (2) were violated (NYSCEF # 45 at 3-5). Industrial Code §§ 23–1.7(e)(1) and (2) provides:

*“Tripping and other hazards*

(1) *Passageways.* All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

(2) *Working areas.* The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.”

*Industrial Code § 23–1.7(e)(1)*

Subsection (1) applies not only when a hazard directly causes a worker to trip or slip, but also under the circumstances of this case, where an object being pushed by plaintiff allegedly became stuck on an obstruction, causing it to tip over and injure plaintiff (*see Kaufman v Capital One Bank (USA) N.A.*, 188 AD3d 461, 462 [1st Dept 2020], citing *Sancino v Metro. Transportation Auth.*, 184 AD3d 534 [1st Dept 2020] [finding a section 23-1.7 (e) (1) claim concerning debris in passageways is viable because the area where the accident occurred was a passageway for the purposes of that provision]). Moreover, a doorway constitutes a passageway within the meaning

of the regulation (*see McCullough v One Bryant Park*, 132 AD3d 491, 492 [1st Dept 2015]). In contrast, an open area does not constitute as a “passageway” (*Lenard*, 241 AD2d at 392; *see also Lech v Castle Vil. Owners Corp.*, 79 AD3d 819, 820 [2d Dept 2010] [holding a sidewalk bridge is not a passageway]; *see also Amaya v Purves Holdings LLC*, 194 AD3d 536, 537 [1st Dept 2021] [holding a hallway does not constitute a passageway when it is considered more of a work area because it was “where he was actively applying a plaster compound to the sheetrocked walls”]; *see also Gallina v Mta Capital Constr. Co.*, 193 AD3d 414 [1st Dept 2021] [holding a storage room is not a passageway]).

Defendants aver that Industrial Code §§ 23–1.7(e)(1) does not apply because plaintiff injury did not arise from a “passageway” (NYSCEF # 22 at 8). Rather, defendants assert the opening is a working area (*see id.*). In addition, defendants assert Industrial Code §§ 23–1.7(e)(1) and (2) do not apply because the “exposed rebar (or anchor bolt) was a byproduct of and consistent with ongoing work being done by Plaintiff’s employer” (NYSCEF # 55 at 5). Plaintiff responds that the injury arose from a “passageway” (NYSCEF # 45 at 4).

Plaintiff testified in his deposition that the area which he was injured was an open doorway with no door (NYSCEF # 39 at 57).

“Q. Was there an alcove or a doorway of some kind that you were going through?

A. There was an open door. It didn’t have the doors itself, but just the frame.”

Mr. Lawlor: Doorway.

Q. So it was a doorway without a door; is that correct?

A. It was a wall where they had the sign like the entrance for a door” (*id.*).

In addition, plaintiff testified that “I’m looking forward and walking, and as I was going through the door, I tripped as I entered” (*id.* at 65). Plaintiff stated he tripped on a “small rigger sticking out of the floor about four inches, more or less” (*id.* at 66-67).

Here, the record demonstrates that there are no triable issues of fact as to whether plaintiff's injury arose from a "passageway" as prescribed in Industrial Code §§ 23–1.7(e)(1). The injury arose inside a closed area in a building, and the injury did not arise from work focused on that area (*see Amaya*, 194 AD3d at 537). Rather, plaintiff was simply transporting jacks to different locations in the construction area and had passed through the alleged doorway when the injury occurred (NYSCEF # 39 at 65).

Thus, plaintiff's motion for summary judgment on his Labor Law 241(6) claim based on Industrial Code § 23–1.7(e)(1) is granted, and defendants' motion is denied.

*Industrial Code § 23–1.7(e)(2)*

In regards to Industrial Code §§ 23–1.7[e][2]'s term of "sharp projections," the *Lenard* court has defined to "include any projection that is 'sharp' in the sense that it is clearly defined or distinct" (*Kaufman*, 188 AD3d at 462, quoting *Lenard*, 241 AD2d at 393).

the accident occurred in an area "where persons work or pass" (*id.*).

Defendants aver the injury producing condition was a "byproduct of and consistent with the work being done by Plaintiff's employer" (NYSCEF # 55 at 8-9).

However, defendants' argument is misplaced because the area which contained the exposed rebar itself was not under construction (it was a byproduct) nor did the exposed rebar constitute an integral part of the work being performed (*see Lenard*, 241 AD2d at 392; *see also Lech*, 79 AD3d at 820-21; *see also Lois v Flintlock Const. Services, LLC*, 137 AD3d 446, 448 [1st Dept 2016] [holding the plastic tarp on which plaintiff slipped was not an integral part of the work being performed by the plaintiff at the time of the accident]).

Moreover, the exposed rebar, which tripped plaintiff, constitutes a "sharp projection" within the meaning of this subsection as clearly defined or distinct (*see Kaufman*, 188 AD3d at

462; *see also Gervasi v FSP 787 Seventh LLC*, 228 AD3d 459, 460 [1st Dept 2024] [holding that a steel pin or nail left partially embedded in the floor was a “sharp projection” that violated Industrial Code § 23–1.7(e)(2) in that it was “clearly defined or distinct”]). Thus, the exposed rebar that allegedly caused plaintiff to fall clearly comes within this definition, as a distinct object jutting out from the rest of the floor's surface (*see Lenard*, 241 AD2d at 394).

Accordingly, plaintiff demonstrated his entitlement to summary judgment on his Labor Law § 241(6) cause of action that exposed rebar embedded in the floor was a “sharp projection” that violated Industrial Code § 23–1.7(e)(2).

**Conclusion**


In view of the above, it is

ORDERED that plaintiff’s motion for summary is granted as to the Labor Law § 241(6) claim; and it is further

ORDERED that defendants’ motion for summary judgment to dismiss plaintiff’s complaint is granted solely to the extent that plaintiff’s Labor Law §§ 240(1) claim is dismissed, and the motion is denied in all other respects; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on defendants within 14 days of the order being uploaded onto NYSCEF.

This constitutes the decision and order of the court.

<p style="text-align: center;"><u>10/9/2025</u> DATE</p>	 <hr style="border: 0; border-top: 1px solid black;"/> RICHARD G. LATIN, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE