Campos v Brown Harris Stevens Residential Mgt., LLC
2025 NY Slip Op 33920(U)
October 10, 2025
Supreme Court, New York County
Docket Number: Index No. 161805/2018
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

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JAIME CAMPOS,

Plaintiff,

- v -

BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC,FIFTH & 67TH INC.,

Defendants.

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INDEX NO. 161805/2018

MOTION DATE 03/18/2024

MOTION SEQ. NO. 002 004

DECISION + ORDER ON MOTION

BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC, FIFTH & 67TH INC.

Plaintiff,

-against-

UNITED CONSTRUCTION WEATHERPROOFING COMPANY, INC.,

Defendant.

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Third-Party
Index No. 595369/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 86, 103, 110, 111, 112, 113, 114, 115, 116

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 104, 106, 107, 108, 109, 117, 118, 119, 120

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

In this labor law action, plaintiff seeks damages for injuries allegedly sustained on April 21, 2016, at 2 East 67th Street, New York, New York (the "Premises"). The Premises is owned by defendant/third-party plaintiff Fifth & 67th Inc. ("Fifth") and is managed by defendant/third party plaintiff Brown Harris Stevens Residential Management, LLC ("BHS"). Plaintiff was employed by third-party defendant Lineal Contracting Corp.

In motion sequence four, plaintiff moves pursuant to CPLR 3212 for an order granting him partial summary judgment on the issue of liability against BHS and Fifth for violations of Labor Law §§ 240(1) and 241(6).

At oral argument held on April 8, 2025, the parties advised that motion sequence two was now moot.

Plaintiff's Accident

The incident occurred on the roof of the Premises on April 21, 2016, at approximately 11:30 a.m. (NYSCEF 70). The Premises is an apartment building with nine floors (*id.*). Campos worked at the Premises since February 2016 as a mechanic, and his tasks included brickwork, pointing, and window caulking (*id.*).

The work on the Premises required suspending scaffolding that hung on the outside of the Premises and that could be raised or lowered using a motor (*id.*). There were three scaffolds in use on different sides of the Premises at the time of the incident, each containing a platform made of aluminum (*id.*). Campos and his coworker, known as Criollo, were instructed by a subcontractor's foreman on site to manually lift a fourth scaffolding platform up the outside of the Premises with ropes from the roof (*id.*).

The intended purpose was to raise the platform to the fifth floor of the Premises, where other workers would install the platform on pipe scaffolding located there (*id.*). Campos testified that he did not believe that manually lifting the scaffolding was correct and that a crane should have been used instead, but upon expressing these concerns was told that if he "wanted to work, that was the only thing that was for [him]" and that the order to manually lift the platform came from the subcontractor's owner and project manager (NYSCEF 57, 58).

Campos and Criollo were stationed on the roof and instructed to "throw some ropes toward the bottom of the building" to allow other workers to tie the rope to the scaffolding platform so that it could be lifted, as there were no motors or devices on the roof that could have been used to lift the platform (NYSCEF 70). The ropes used by plaintiff and Criollo were not attached to anything on the roof (*id.*). The platform was made of aluminum, weighed an estimated 350 pounds, and measured approximately 37 inches in length and two inches in width (*id.*). Campos was wearing gloves and a Bluetooth earpiece that allowed him to speak with a coworker who would advise Campos when the platform reached the fifth floor (*id.*).

A brick parapet wall spanned the side of the building where the platform was to be lifted. Both Campos and Criollo were wearing safety harnesses, but they were not attached to anything (NYSCEF 58). As per United's on-site foreman's instructions, Campos and Criollo threw long ropes over the parapet wall from the roof which other workers then tied to the bottom of the platform (NYSCEF 70).

As Campos and Criollo pulled on the ropes with their gloved hands to lift the platform, walking backward toward the center of the roof and away from the parapet wall, Criollo suddenly let go of his rope (NYSCEF 70). The additional weight on the rope Campos was holding pulled Campos forward toward the parapet wall (NYSCEF 70). As a result of holding the rope and supporting the weight on the platform by himself, Campos alleges that he suffered injuries to his back.

Discussion

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The

motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and by the pleadings and other proof such as affidavits, depositions and written admissions (*see* CPLR 3212 [b]). The movant's "failure to make a prima facie showing of entitlement to summary judgment requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013], *citing Vega v Restani Constr. Corp*., 18 NY3d 499, 503 [2012]).

Labor Law §240(1) provides that:

> 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 a nondelegable duty on owners and contractors to provide devices which shall be so constructed, placed and operated as to give proper protection to those individuals performing the work (*Quiroz v Mem. Hosp. for Cancer and Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022] [internal quotation marks and citations omitted]). The statute is "designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person*" and to "protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction worksite elevation differentials…" (*id.* at 501; *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

"In order to recover under section 240(1), the plaintiff must establish that the statute was violated and that such violation was a proximate cause of his injury" (*Barreto v Metro. Transp.*

Auth., 25 NY3d 426, 433 [2015] (internal citations omitted)). "The statute is violated when the plaintiff is exposed to an elevation-related risk while engaged in an activity covered by the statute and the defendant fails to provide a safety device adequate to protect the plaintiff against the elevation-related risk entailed in the activity or provides an inadequate one" (*Jones v 414 Equities LLC*, 57 AD3d 65, 69 [1st Dept 2008] (internal citations omitted)).

Here, plaintiff has shown that said defendants failed to provide him with an adequate safety device to prevent injury from manually lifting the scaffolding platform. The record establishes that plaintiff was merely provided with a rope to pull the scaffolding platform up the side of building and a safety harness that was not connected to anything. In addition, "it is sufficient to demonstrate that an injury was caused by an effort to prevent an object from falling" (*Lopez v Boston Properties Inc.*, 41 AD3d 259, 260 [1st Dept 2007]), which is precisely what happened as plaintiff suffered his injury as he continued to hold onto the rope supporting the scaffolding platform after Criollo released his rope.

Furthermore, plaintiff suffered injuries caused by a gravity-related risk, as there is a direct connection between plaintiff's injury and the force of gravity that caused the scaffolding platform to lower down the side of the building upon Criollo releasing his rope. Thus, plaintiff satisfied his burden of showing that defendants violated Labor Law 240(1) and that the violation caused his injury.

BHS and Fifth's attempts to raise credibility issues fail to raise any material issues of fact and are thus unavailing.

Since plaintiff is entitled to summary judgment on liability on his Labor Law § 240(1) claim, it is unnecessary to consider his Labor Law § 241(6) claim, as his damages are the same under either theory of liability and he may only recover once (*see Corleto v Henry Restoration*

Ltd., 206 AD3d 525, 526 [1st Dept 2022] [deeming issue of Labor Law § 241(6) claim academic after finding plaintiff entitled to partial summary judgment on Labor Law § 240(1) claim]; *Jerez v Tishman Constr. Corp. of N.Y.*, 118 AD3d 617, 617-618 [1st Dept 2014] [similar]). However, for the sake of completeness. the issues raised by the parties are considered.

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]).

While plaintiff alleges violations of six sections of the Industrial Code in his pleadings, he only specified §23-6.1(j)(1) as the basis for his §241(6) claim. Therefore, all other industrial code claims other than the §23-6.1 claim are deemed abandoned (*McLean v Tishman Constr. Corp.*, 144 AD3d 534, 535 [1st Dept 2016] (internal citations omitted); *Murphy v Schimenti Constr. Co., LLC*, 204 AD3d 573, 574 [1st Dept 2022].

Section 23-6.1 of the Industrial Code deals with the required features of material hoisting equipment, and provides as follows:

> Hoist brakes. Hoist brakes, capable of stopping and holding 150 percent of the rated capacity of the hoist, shall be provided for every material hoist. Each manually-operated material hoist shall be equipped with an effective pawl and ratchet capable of holding the rated load capacity when such a load is suspended. Each electric motor-driven material hoist shall be provided with a mechanical automatic motor brake or an electrical or mechanical device which will stop and hold 150 percent of the rated capacity of the hoist automatically in case of power failure.

As a preliminary matter, "the duty imposed by [Industrial Code 23-6.1(j)(1)] is sufficiently specific that its breach may serve as a ground for imposing liability pursuant to Labor Law § 241(6)" (*Carroll v Metro. Life Ins. Co.*, 264 AD2d 336, 337 [1st Dept 1999], citing *Mattison v Wilmot*, 228 AD2d 991, 993 [3d Dept 1996]).

Here, plaintiff argues that the manner in which he was ordered to lift the scaffolding platform required the use of a hoist brake mechanism, relying on an affidavit of Herman Silverberg, P.E., in which he states that such hoists and mechanisms should have been used and would have prevented plaintiff's injury.

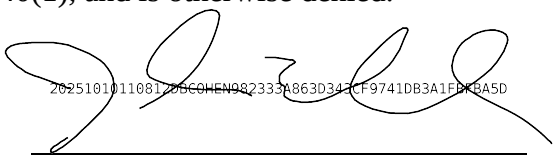
However, plaintiff fails to show that he used a manually-operated material hoist as described in Industrial Code §23–6.1. New York courts have recognized that "a material hoist is a mechanical device" (*Soles v Eastman Kodak Co.*, 162 Misc 2d 406, 409 [Sup Ct 1994], affd, 216 AD2d 973 [4th Dept 1995]; see also *Cardenas v Am. Ref-Fuel Co. of Hempstead*, 244 AD2d 377, 378 [2d Dept 1997], and that "[a]ll references to such equipment in 12 NYCRR 23–6.1 imply more than just a rope connected through the actual item that is being lifted" (*Smith v Homart Dev. Co.*, 237 AD2d 77, 80 [3d Dept 1997]). Here, the record establishes that the only equipment used to lift the scaffolding platform was rope that was tied to it, which is insufficient to trigger the Code.

Further, courts have held that section 23-6.1 applies only when a worker is injured while using a manually-operated hoist, not when a manually-operated hoist should have been used (*Hawkins v City of New York*, 275 AD2d 634, 635 [1st Dept 2000]; *see Soles v Eastman Kodak Co.*, 162 Misc 2d 406, 409 [Sup Ct 1994], *affd* 216 AD2d 973 [4th Dept 1995]). As no type of mechanical hoisting equipment was being used, the Code subsection does not apply (*see Aloi v Structure-Tone, Inc.*, 2 AD3d 375, 376 [2d Dept 2003] (internal citations omitted)).

Accordingly, it is hereby

ORDERED that defendant/third-party defendant/second third-party plaintiff's motion for summary judgment (seq. 002) is denied as moot; and it is further

ORDERED that plaintiff's motion for summary judgment (seq. 004) is granted to the extent of finding defendants liable under Labor Law §240(1), and is otherwise denied.



10/10/2025
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**