

Salazar v 862-866 Dekalb LLC

2025 NY Slip Op 33942(U)

October 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 524884/2018

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Motion Part 70 of the Supreme Court for the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11201, on the 10th day of October, 2025.

PRESENT: HON. WAVNY TOUSSAINT, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JUAN GATICA SALAZAR,

Index No.: 524884/2018

Plaintiff,

DECISION + ORDER

-against-

862-866 DEKALB LLC and EAST 148TH STREET
PROPERTIES LLC, each individually, and as TENANT
IN COMMON,

Defendants.

-----X
862-866 DEKALB LLC,

Third-Party Plaintiff,

-against-

R.L.C. HOME IMPROVEMENT INC.,
Third-Party Defendant.

-----X
The following papers numbered 1 to read herein:
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered

56-59

68-69

72

Upon the foregoing papers, plaintiff Juan Gatica Salazar (“Salazar”) moves (Seq. 05) for an order, pursuant to CPLR § 3212 granting summary judgment against defendants 862-866 Dekalb LLC (“Dekalb”) on the issue of liability pursuant to NY Labor Law § 240(1) and § 241(6) (via Industrial Codes § 23-1.7(b)(1)(i), § 23-1.22(c)(1), and § 23-1.7(f)), and dismissal of defendants’ affirmative defenses. Defendant opposes the motion.

BACKGROUND

On or about August 27, 2018, plaintiff Salazar allegedly stepped onto a piece of thin plywood covering a hole in the landing of a staircase at 862 Dekalb Avenue in Brooklyn, NY, and subsequently fell through it while carrying a heavy bag of cement up the stairs. Plaintiff alleges that he sustained serious and permanent injuries to his lumbar spine, left hip, left ankle, and left leg as a result of the fall.

On December 11, 2018, plaintiff commenced this action against 862-866 Dekalb LLC and East 148th Street Properties LLC (“East 148th Street”), each individually, and as tenants in common pursuant to the property’s deed. On October 8, 2019, a default judgment was granted against defendant East 148th Street. On November 13, 2019, defendant Dekalb commenced a third-party action against R.L.C. Home Improvement Inc (“R.L.C.”). R.L.C. failed to answer, and defendant Dekalb did not move for a default judgment motion.

PARTIES CONTENTIONS

Plaintiff’s Motion for Summary Judgment

Plaintiff argues that defendants are proper defendants under Labor Law §§ 240(1) and), § 241(6), asserting that § 240(1) imposes absolutely liability upon owners and contractors who fail to provide adequate safety devices, and § 241(6) imposes vicarious

liability on an owner or general contractor, regardless of fault, where a plaintiff establishes a violation of the applicable laws. Plaintiff contends that he has established a prima facie case under § 240(1), by showing that the collapse of a plywood covering constituted a failure to provide proper fall protection. Plaintiff also claims violations of Labor Law § 241(6) citing Industrial Codes § 23-1.7(b)(1)(i), § 23-1.22(c)(1), and § 23-1.7(f), arguing that the plywood was not a suitable cover for the opening, it lacked sufficient thickness, and it failed to provide a safe means of access between levels at the worksite.

Defendant's Opposition

In opposition, defendant argues that plaintiff failed to demonstrate any willful, contumacious conduct, bad faith, or prejudice to plaintiff to warrant striking the defendant's answer. Defendant further contends that plaintiff's motion should be denied based on inconsistencies in plaintiff's account of the incident, including conflicting deposition testimony, discrepancies with medical records, and statements made in his affirmation in support of his motion for summary judgment. Defendant asserts that these discrepancies include the date of the fall, the type and weight of the equipment he was carrying, and whether he fell into a hole. In connection with its opposition, defendant submitted copies of plaintiff Salazar's medical records which, notably, contained unredacted personally identifying information.¹

¹ By order dated May 15, 2025, the Court directed that the medical records be sealed pursuant to 22 NYCRR § 216.1 as they contained sensitive, personally identifying information (NYSCEF Doc. No. 76). This issue regarding the disclosure of unredacted medical records is addressed in greater detail later in this decision.

Defendant also cites plaintiff's hospital records to challenge his credibility, noting that while plaintiff claims to have fallen on September 3, his medical records state that he was injured on that date, and had been pinned by an object two days prior to his hospital visit. Moreover, defendant asserts that the provisions of the Industrial Code plaintiff cited are inapplicable as liability under § 241(6) cannot be imposed where the alleged dangerous condition—in this case, the condition of the landing—was an integral part of the construction work rather than a separate or distinct safety violation.

Plaintiff's Reply

In reply, plaintiff maintains that he has established prima facie entitlement to summary judgment through his testimony, an affirmation in support, and photographs demonstrating that Defendants violated Labor Law § 240(1) by covering a hole with an inadequate piece of plywood. Plaintiff argues that defendant's opposition relies on inadmissible hearsay contained in uncertified hospital records, which cannot raise a genuine issue of material fact. Even if considered, plaintiff contends that the records do not contradict the essential facts supporting liability. Plaintiff also argues he cannot be deemed the sole proximate cause of the incident, as he used a staircase directed by his supervisor. Further, plaintiff contends that he cited significant analogous case law in support of his Labor Law § 241(6) claim, including specific violations of the Industrial Code, while defendant failed to cite any relevant legal authority addressing the applicability of the statutes, instead offering only their own unsupported interpretation.

DISCUSSION

In motion for summary judgment, “the moving party must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 175 [2019]) quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Labor Law § 240(1)

Labor Law § 240(1) imposes a nondelegable duty on owners, general contractors, and their agents to provide the necessary safety devices to protect workers from risks inherent in elevated work (*McCarthy v Turner Const., Inc.*, 17 NY3d 369, 374 [2011]; *Cabrera v Provident Alpine Partners, L.P.*, 239 AD3d 814, 815 [2d Dept 2023]). However, the protections of § 240(1) do not extend to all gravity-related perils. Rather, the statute covers a “narrow class of special hazards”—those involving a failure of a safety device to protect against injuries directly resulting from the force of gravity acting on a person or object (*Gomez v Tilden Estates, LLC*, 2025 NY Slip Op 04706 1, 2 [2d Dept Aug. 20, 2025]).

To recover under § 240(1), “plaintiff must establish that the statute was violated, and that the violation was a proximate cause of the [plaintiff’s] injuries” (*Escobar v Safi*, 150 AD3d 1081, 1082 [2d Dept 2017] quoting *Allan v DHL Exp. (USA), Inc.*, 99 AD3d 828 [2d Dept 2012]). The pivotal inquiry is whether the injury resulted directly from the failure to provide adequate protection against a risk arising from a significant elevation differential (*Gomez, LLC*, 2025 NY Slip Op 04706 at 2). Importantly, courts have held that

the collapse of a plywood covering constitutes a violation of Labor Law § 240(1) (*Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d 613, 617 [2d Dept 2023]).

The Court finds that plaintiff has established prima facie that the hole in the landing presented an elevation-related hazard that § 240(1) was designed to protect against. Plaintiff's proof establishes that defendants covered a hole in the concrete slab of the third-floor landing with a thin piece of plywood. While carrying construction materials up the staircase at the direction of his supervisor, plaintiff stepped on the plywood, which collapsed beneath him and caused his leg to fall through the opening. Under these circumstances, defendant failed to provide a safe and adequate cover to protect against the fall hazard presented by the improperly covered hole, in violation of § 240(1).

Labor Law § 241(6)

“Labor Law 241(6) imposes a non-delegable duty on owners and contractors to ‘provide reasonable and adequate protection and safety’ for workers and to comply with the specific rules and regulations promulgated by the Commissioner of the Department of Labor (*Toussaint v Port Auth. of New York and New Jersey*, 38 NY3d 89, 93 [2022]). In *Toussaint*, the Court made clear that “only provisions of the industrial code mandating compliance with concrete specification give rise to a nondelegable duty under Labor Law 241(6)” (*Id.* at 94; *Mushkudiani*, 219 AD3d at 617).

Here, the claim under Labor Law, § 241(6) is predicated on alleged violations of Industrial Code § 23-1.7(b)(1)(i) pertaining to hazardous openings, § 23-1.22(c)(1) pertaining to platforms, and § 23-1.7(f) pertaining to vertical passages, including stairways, ramps, or runways as means of access. Plaintiff, through deposition testimony, affirmation,

and photographs, demonstrated that the plywood used to cover the hole plaintiff stepped on was not a “substantial cover” within the meaning of § 23-1.7(b)(1)(i) (Bonkoski v Condos Bros. Constr. Corp., 216 AD3d 612, 617 [2d Dept 2023]; Fuentes v 257 Toppings Path, LLC, 225 AD3d 746, 749 [2d Dept 2024]). However, the Court finds that § 23-1.22(c)(1) and § 23-1.7(f) are inapplicable, as the stairway landing does not constitute a platform, and a stairway was provided as a means of access.

Although defendant contends that the record is rife with inconsistencies, the purported inconsistencies cited are immaterial to the dispositive issues in this action. Minor variations in the plaintiff’s account—such as the type of equipment plaintiff carried—do not raise a genuine issue of material fact to impede on plaintiff’s entitlement to relief.

Sanctions

Plaintiff sought sanctions for defendant’s discovery non-compliance by failing to appear for depositions. It appears this issue was resolved as a Note of Issue was filed after the instant motion was submitted, which does not reflect any outstanding discovery. Any request for discovery sanctions is denied.

Moreover, the Uniform Rules for New York State Trial Courts 202.5(e) establishes that parties shall omit or redact confidential personal information (“CPI”). Under 22 NYCRR § 202.5(e)(1), CPI consists of taxpayer identification numbers (except the last four digits), an individual’s date of birth, full name of a minor, financial account numbers, and any documents or testimony in a matrimonial action protected by Domestic Relations Law § 235.

In opposition to the motion, defendant e-filed medical records containing plaintiff's personal information. Notably, plaintiff's submission had redacted such information. At oral argument, the Court directed defendant's counsel to submit a written explanation to the Court detailing the circumstances surrounding the disclosure of plaintiff's personally identifying information in the e-filed medical records, including plaintiff's date of birth on numerous pages. Defendant's counsel failed to comply with this directive. In light of the violation of court rules and non-compliance with the Court's order to provide an explanation, \$500.00 is to be paid by defense counsel to the Lawyer's Fund for Client Protection.

CONCLUSION

Accordingly, it is hereby,

ORDERED that the plaintiff's motion for summary judgment on the issue of liability as it relates to Labor Law § 240(1) and Labor Law § 241(6) (via Industrial Codes § 23-1.7(b)(1)(i)) is granted, and it is further

ORDERED that the plaintiff's motion for summary judgment on the issue of liability as it relates to Labor Law §241(6) (via Industrial Codes § 23-1.22(c)(1) and § 23-1.7(f) is denied, and it is further

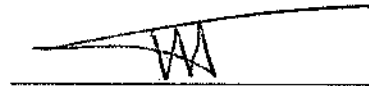
ORDERED that the defendant's affirmative defenses as to sole proximate cause and plaintiff's culpable conduct are hereby dismissed, and it is further

ORDERED that discovery shall continue as to the liability claims not addressed in the motion and on the issue of damages, and it is further

ORDERED that defense counsel is to pay \$500.00 to the Lawyer's Fund for Client Protection.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

Hon. Wavny Toussaint
J.S.C.