

Precilla v 2686-2690 Broadway LLC

2025 NY Slip Op 34039(U)

October 17, 2025

Supreme Court, New York County

Docket Number: Index No. 160450/2020

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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MARCOS A. REGATO PRECILLA,
Plaintiff,

- v -

2686-2690 BROADWAY LLC, ALBA SERVICES INC.
Defendant.

INDEX NO. 160450/2020
MOTION DATE 03/28/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of August 13, 2025, Defendant 2686-2690 Broadway LLC's ("Broadway") motion for summary judgment dismissing Plaintiff Marco A. Regato Precilla's ("Plaintiff") Complaint is denied. Plaintiff's cross-motion for summary judgment against Broadway on the issue of liability with respect to his Labor Law § 241(6) claim is denied. Defendant Alba Services Inc.'s ("Alba") cross motion for summary judgment dismissing Plaintiff's Complaint asserted against it is denied.

I. Background

On February 24, 2020, Plaintiff was working for non-party Shore Line Contracts ("Shore Line") as an asbestos removal worker at 2688 Broadway, New York, New York (the "Premises") (NYSCEF Doc. 65 at 35-36). Broadway owned the Premises (NYSCEF Doc. 87 at 12). Broadway contracted Alba to perform demolition work and contracted Shore Line to perform asbestos abatement (id. at 25; 31). Alba removed demolition debris by employing laborers who picked up

the debris with their hands, put it into buckets, and then brought it down stairs to a garbage truck in front of the Premises (NYSCEF Doc. 88 at 78).

Plaintiff testified he was walking down stairs when he felt his knee “going back and forth” and he fell (NYSCEF Doc. 64 at 58; 100). When asked if he slipped on anything, Plaintiff testified “I’m not sure. I might have.” (NYSCEF Doc. 65 at 109). Plaintiff claims he later learned from his coworker, Devine McKnight, that there were little concrete pieces on the stairs, but Plaintiff stated he did not see any debris on the stairs before or after he fell (NYSCEF Doc. 64 at 121-22). According to Amir Latif, Plaintiff’s co-worker, he was walking down the stairs with Plaintiff and saw him fall on debris consisting of sheetrock, cement and glass, which was common throughout the construction site due to poor cleaning practices and a lack of garbage bins (NYSCEF Doc. 71). Mr. McKnight testified he was present on the date of the incident, heard a loud noise as Plaintiff was walking down the stairs, and saw construction debris around where Plaintiff’s fell (NYSCEF Doc. 72). Broadway and Alba seek summary judgment dismissing Plaintiff’s Complaint. Plaintiff cross moves for summary judgment on his Labor Law § 241(6) claim asserted against Broadway.

II. Discussion

A. Standard

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce

evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

B. Broadway's Motion and Alba's Cross Motion

Viewing the facts in the light most favorable to the non-movant, Broadway's motion and Alba's cross motion are denied. Broadway argues that there is no evidence of any negligence or statutory violation that proximately caused Plaintiff's accident. But this ignores the two affidavits from Plaintiff's coworkers that Broadway submitted on its motion in chief (NYSCEF Docs. 71-72), who swore Plaintiff tripped and fell over construction debris on the stairs and that the Premises were strewn with garbage and debris due to ongoing demolition work (NYSCEF Docs. 71-72). Although Broadway argues that these affidavits should be disregarded because they contradict Plaintiff's testimony, this conflicting testimony creates a credibility issue which cannot be resolved on summary judgment (*see, e.g. Brielmeier v Legacy Yards Tenant, LLC*, 191 AD3d 499 [1st Dept 2021]; citing *Buckley v J.A. Jones/GMO*, 38 AD3d 461, 462 [1st Dept 2007]). Broadway sharpens this issue of fact through Plaintiff's testimony, where he testified that he has difficulties with his memory since he had a car accident in 2012 which "split [his] head open" (NYSCEF Doc. 64 at 40-41). When asked if he felt debris when he fell, he further testified "it just happened so quick... too fast to even remember" (NYSCEF Doc. 64 at 122).

Given this evidence, Broadway failed to meet its heavy burden of establishing Plaintiff was the sole proximate cause of his accident (*see, e.g. Keenan v Simon Property Group, Inc.*, 106 AD3d 586, 587 [1st Dept 2013] [presence of debris in work area precluded sole proximate cause defense]). Moreover, Broadway failed to offer any documentary or testimonial evidence from its own employees or that of its contractors in support of its motion to establish affirmatively it lacked notice of any debris. To show entitlement to summary judgment Defendants must do more than

point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]).

The uncertified medical records relied on by Broadway are inadmissible and cannot be used to meet its burden on summary judgment (*Charlton v Almaraz*, 278 AD2d 145 [1st Dept 2000]). Broadway's arguments that Industrial Code § 23-1.7(d) and (e) are inapplicable to the facts of this case are improperly raised for the first time on reply and may not be considered (*see, e.g. Indymac Bank, F.S.B. v Baroi*, 214 AD3d 414, 415 [1st Dept 2023] citing *Simon v FrancInvest, S.A.*, 192 AD3d 565, 569 [1st Dept 2021], *appeal dismissed*, 37 NY3d 1005 [2021]). Therefore, Broadway's motion is denied. Alba's cross motion incorporates and adopts Broadway's arguments. Because Broadway failed to establish its entitlement to summary judgment, Alba's cross motion similarly fails.

C. Plaintiff's Cross Motion

Plaintiff's cross motion for summary judgment on his Labor Law § 241(6) claim asserted against Broadway is denied. There is a triable issue of fact regarding whether Plaintiff tripped and/or slipped on debris giving rise to a violation of Industrial Code §§ 23-1.7(d) and (e). While Plaintiff's coworker submitted an affidavit stating he was walking with Plaintiff and saw him slip on debris, Plaintiff testified he was walking alone and could not remember whether there was any debris (NYSCEF Doc. 64 at 100; 113; 121-22). The discrepancies in the testimonial evidence raise issues of fact which must be resolved by a jury: specifically, whether there was debris present, and if there was, whether the debris caused Plaintiff to fall (*see, e.g. Ohadi v Magnetic Construction Group Corp.*, 182 AD3d 474, 475-76 [1st Dept 2020]).

There are further issues of fact as to whether the staircase where Plaintiff fell was a work area or passageway within the meaning of the Industrial Code. Issues of fact are further raised by

Plaintiff's testimony, since Industrial Code § 23-1.7(d) prohibits the existence of slip hazards, but Plaintiff testified the stairs were not slippery. Therefore, Plaintiff's motion is denied.

Accordingly, it is hereby

ORDERED that Broadway's motion and Alba's cross motion for summary judgment seeking dismissal of Plaintiff's Complaint are denied; and it is further

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 241(6) claim asserted against Broadway is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

10/17/2025
DATE

Mary V. Rosado, JSC
HON. MARY V. ROSADO, 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