

Wilson v JP Morgan Chase Bank, NA

2025 NY Slip Op 34063(U)

October 21, 2025

Supreme Court, New York County

Docket Number: Index No. 159752/2022

Judge: Richard G. Latin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

KAYTON WILSON, YANEISHA WILSON

Plaintiff,

- v -

JPMORGAN CHASE BANK, NA, TISHMAN
CONSTRUCTION CORPORATION OF NEW YORK,

Defendant.

-----X

INDEX NO. 159752/2022

MOTION DATE 03/07/2025,
03/03/2025

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 62, 63, 64, 65, 66

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 57, 58, 59, 60, 61, 67

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

Upon the foregoing documents, plaintiffs Kayton Wilson and Yaneisha Wilson’s motion pursuant to CPRL 3212 for an order granting partial summary judgment under Labor Law § 241(6) (NYSCEF # 26) and defendants JP Morgan Chase Bank (“JPMC”) and Tishman Construction Corporation of New York’s (“Tishman”) motion pursuant to CPLR 3212 for an order granting summary judgment dismissing plaintiffs’ Labor Law §§ 240(1), 241(6), 200 and common-law negligence claims (NYSCEF # 36) are determined as follows:

Background

Plaintiff Kayton Wilson alleges that on November 3, 2022 at around 7:10am, Kayton tripped and fell on a shim plate and broke his right wrist during construction work at the property of 270 Park Avenue, New York, NY (NYSCEF # 31 at 58; NYSCEF # 37 at 2-3). JPMC was the owner of premises (*see id.* at 3). Property owner JPMC hired general contractor Tishman to serve

as the construction manager in connection with the construction of the property (*see id.*). Plaintiff was hired by subcontractor NYC Constructors LLC (“NYCC”) as a welder and was instructed by his foreman to build a platform by NYCC (NYSCEF # 31 at 25, 41; NYSCEF # 37 at 3,6).

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 §§ 241(6) and 240(1)

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]).

Plaintiffs’ failure to respond to defendants’ assertions to dismiss Labor Law §§ 240(1) and 241(6) predicated on industrial codes 12 NYCRR §23-1.5(a), 12 NYCRR §23-1.5(b), 12 NYCRR §23-1.5(c)(1), 12 NYCRR §23-1.5(c)(2), 12 NYCRR §23-1.5(c)(3), 12 NYCRR §23-1.7(a)(1), 12 NYCRR §23-1.7(a)(2), 12 NYCRR §23-1.7(b)(1), 12 NYCRR §23 1.7(b)(2), 12 NYCRR §23-

1.7(c), 12 NYCRR §23-1.7(d), 12 NYCRR §23-1.7(e)(1), 12 NYCRR §23-1.7(f), 12 NYCRR §23-1.7(g), 12 NYCRR §23-1.7(h), 12 NYCRR §23-1.30, 12 NYCRR §23-2.1(a)(1), 12 NYCRR §23-2.1(a)(2), 12 NYCRR §23-2.1(b) and Article 1926 of OSHA are 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 also Murphy v Schimenti Constr. Co., LLC*, 204 AD3d 573, 573 [1st Dept 2022]; NYSCEF # 67). Thus, the only remaining cause of action against defendants is the alleged violation of Labor Law §241(6) predicated on Industrial Code § 23–1.7(e)(2) as asserted in plaintiffs' "Reply Affirmation in Further Support" (NYSCEF # 67).

Industrial Code § 23–1.7(e)(2) provides:

(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.

Defendants aver that a single shim plate, which plaintiff tripped and fell, does not constitute an accumulation of debris under Industrial Code § 23–1.7(e)(2) (NYSCEF # 56 at 12). Defendants also assert the term "sharp projections" does not constitute a sharp projection, nor is it "clearly defined or distinct" (*id.*; *see Lenard*, 241 AD2d at 392).

Industrial Code § 23–1.7(e)(2)

Industrial Code § 23–1.7(e)(2)’s protection will apply where the object on which plaintiff tripped was not an integral part of the work he was performing (*see Rossi v 140 W. JV Mgr. LLC*, 171 AD3d 668 [1st Dept 2019] [holding that cables from elevator shaft demolition was not an integral part of the work performed by plaintiff, and thus constituted as “debris”]; *see also Sternkopf v 395 Hudson New York, LLC*, 227 AD3d 579, 581 [1st Dept 2024] [finding discarded carpeting constituted “debris” that was not integral to the work being performed at the accident site]; *see also Pereira v New School*, 148 AD3d 410, 412 [1st Dept 2017] [finding the rebar on which plaintiff tripped was not integral to the work he was performing]; *see also Canning v Barney's New York*, 289 AD2d 32, 35 [1st Dept 2001] [finding plaintiff was injured from falling over “debris” that had been allowed to accumulate, and the location was a “floor” where plaintiff was required to “pass” in the course of his work]; *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]).

In contrast, (e)(2)’s protections will not apply to injuries arising from objects that are an integral part of plaintiff’s work (*see O’Sullivan v IDI Const. Co., Inc.*, 7 NY3d 805, 806 [2006] [rejecting plaintiff’s Labor Law § 241(6) based on 12 NYCRR 23–1.7(e)(1) and (2) because the electrical pipe or conduit that plaintiff tripped over was an integral part of the construction]; *see also Thomas v Goldman Sachs Headquarters, LLC*, 109 AD3d 421, 422 [1st Dept 2013] [finding the protective covering had been purposefully installed on the floor as an integral part of the renovation project, thus it cannot be construed as accumulated debris or scattered materials]; *see also Alvia v Teman Elec. Contr., Inc.*, 287 AD2d 421, 423 [2d Dept 2001] [finding plaintiff was

not entitled to Industrial Code § 23–1.7(e)(2)’s protections because the material he tripped on was material used in the actual task he was performing]).

Here, there is a question of fact on whether the metal plate which plaintiff tripped constitutes “debris” (*see Rossi*, 171 AD3d at 668). Moreover, plaintiff testified that the metal plate was the type of material he would specifically see at this job site (NYSCEF # 31 at 48). Plaintiff testified it was material that was associated with another group of workers known as the “bolt up gang,” and stated that

“I’m assuming they used it, because when you look on the column, it looks like those are the things that they use, because the plate has holes in it, and looked like it goes where the column is” (*id.* at 48-49).

Plaintiff further testified he is in the “welding gang” (*id.* at 50). Thus, there is a question of fact on whether or not the metal plate was an integral part of the work plaintiff was performing as a welder (*see Sternkopf*, 227 AD3d at 581).

In addition, there is a question of fact on whether a single metal plate had “accumulated” at the construction site (NYSCEF # 31 at 50). Plaintiff testified that both welders like himself and the bolt gang are not permitted to leave material on the construction site (*see id.*). Plaintiff stated:

“I know if they leave their material all over the place, then it will get addressed, because it happens when I’m in the welding gang. If we leave our stuff all over the place, the foreman would tell us this is not acceptable, but it’s coming from the boss or he sees it, so I know more than likely it’s the same thing that happens with the bolt gang” (*id.*).

Thus, because material was found at the construction site, there is also a question of fact on whether the metal plate can be deemed as “accumulated” under Industrial Code § 23–

1.7(e)(2). Accordingly, both plaintiffs' and defendants' motions for summary judgment under Labor Law §241(6) predicated on Industrial Code § 23-1.7(e)(2) are denied.

Labor Law § 200 / Common Law Negligence

Labor Law § 200 is a codification of the common-law duty of a landowner to provide workers with a reasonably safe place to work (*see Lombardi v Stout*, 80 NY2d 290, 294-95 [1992]; *see also Allen v Cloutier Const. Corp.*, 44 NY2d 290, 299 [1978]). It is settled law where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under section 200 of the Labor Law (*see Lombardi*, 80 NY2d at 295).

General contractor Tishman's safety manager Mark Porter testified he was responsible for enforcing safety at the worksite where plaintiff was injured (NYSCEF # 29 at 9). Porter testified he would conduct "[d]aily walkthroughs, site inspections, site audits, walkthroughs throughout the day, engaging with the men, [and] engaging with the foremen" (*id.*). Porter further testified that in accordance to Tishman's Site Specific Safety Plan, "all materials shall be stored or stacked in a way that does not present a tripping hazard" (*id.* at 30; NYSCEF # 32 at 3-29). Here, there is a question of fact on whether Tishman had notice of the metal plate in relation to the construction work condition that caused plaintiff's injury. While Tishman's motion for summary judgment is denied for its Labor Law § 200 and common law negligence claims, JPMC's motion is granted. JPMC demonstrated it had no notice, and plaintiff failed to create a question of fact on whether owner JPMC exercised supervisory control over the construction (*see Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876, 877 [1993]).

Conclusion

In view of the above, it is

ORDERED that plaintiff’s motion for partial summary judgment pursuant to the Labor Law § 241(6) claim is denied; and it is further

ORDERED that defendant JPMC’s motion for summary judgment to dismiss plaintiff’s Labor Law §§ 240(1), 200, and common law negligence claims are granted and defendant Tishman’s motion for summary judgment to dismiss plaintiff’s Labor Law § 240(1) claim is granted and Labor Law §§ 241(6), 200, and common law negligence claims are denied.

This constitutes the decision and order of the court.

10/21/2025

DATE



RICHARD G. LATIN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: