

Peralta v 55 Liberty Owners Corp.

2025 NY Slip Op 34161(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 151205/2022

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

-----X

CRISTHIAN ORLANDO MONTESDEOCA PERALTA,

Plaintiff,

- v -

55 LIBERTY OWNERS CORP., IN HOUSE GROUP, INC,
SKYLINE RESTORATION INC., and ONETEAM
RESTORATION INC.

Defendants¹.

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INDEX NO. 151205/2022

MOTION DATE 05/29/2025,
09/17/2025

MOTION SEQ. NO. 005 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 140, 141, 142, 143 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 189, 190, 191 were read on this motion to/for STAY.

Upon the foregoing documents, motion sequence 005 (“Mot. Seq. 005”) and motion sequence 006 (“Mot. Seq. 006”)² are consolidated for disposition and decided as follows:

- A. Plaintiff Cristhian Orlando Montesdeoca Peralta’s (“Plaintiff”) motion for summary judgment (“Mot. Seq. 005”) on his Labor Law § 240(1) claim asserted against Defendants 55 Liberty Owners Corp. (“55 Liberty”), Skyline Restoration Inc. (“Skyline”) and Oneteam Restoration, Inc. (“One Team”) is denied.

¹ The Court granted consolidation and ordered the caption amended in its Decision and Order dated August 24, 2023, however the docket does not reflect that the Court’s directives were followed, as the parties never served the consolidation order on the General Clerk’s office. Therefore, the caption was never amended, and the two actions remain unconsolidated on NYSCEF. As a courtesy, the Court uses the correct caption here.

² Motion Seq. 005 was marked fully submitted on August 25, 2025 and Mot. Seq. 006 was marked fully submitted on October 23, 2025. The two motions impact each other and therefore the alleged inconsistencies which Defendants point to in Mot. Seq. 006 are considered in Mot. Seq. 005.

B. 55 Liberty, Skyline, and One Team’s motion seeking an injunction, to vacate the note of issue, reopen discovery, and to grant leave to supplement opposition to Plaintiff’s motion for summary judgment (“Mot. Seq. 006”) is granted in part and denied in part.

I. Background

On January 19, 2022, CLMM Construction Corp. (“CLMM Construction”) employed Plaintiff as a cement laborer at 55 Liberty Street, New York, New York (the “Premises”) (NYSCEF Doc. 128 at 20-24). The Premises were owned by 55 Liberty, who contracted Skyline to serve as general contractor on façade and roof repair work (NYSCEF Doc. 131 at 21). Skyline subcontracted CLMM Construction (NYSCEF Doc. 130 at 12). One Team was also subcontracted by Skyline to perform façade work (NYSCEF Doc. 131 at 18).

Plaintiff alleged as part of his employment he carried cement to a scaffold outside the thirtieth floor of the Premises (NYSCEF Doc. 128 at 27-29). Plaintiff claimed he walked across a board connecting an interior staircase to the outdoor scaffold and fell when the board moved (NYSCEF Doc. 128 at 30-31; 44). Skyline’s employee, Jessie DiBenedetto, observed Plaintiff laying on the landing of the stairs on the 29th floor (NYSCEF Doc. 131 at 34). Plaintiff told Mr. DiBenedetto he lost his footing on the landing of a staircase and fell down the stairs (NYSCEF Doc. 131 at 36). Mr. DiBenedetto further testified workers were not supposed to walk on the board, they were merely supposed to put the cement materials on the board so that workers outside on the scaffold could pick it up from the scaffold (NYSCEF Doc. 131 at 41).

Plaintiff moves for summary judgment on his Labor Law § 240(1) claim against 55 Liberty, Skyline, and One Team, while 55 Liberty, Skyline, and One Team move for a stay of proceedings pending the completion of Plaintiff’s Worker’s Compensation proceeding, to vacate the note of issue, and to allow for further discovery. The motions are consolidated and decided as follows.

II. Discussion

A. Mot. Seq. 006

The Court first addresses 55 Liberty, Skyline, and One Team since it seeks an injunction preventing this case from proceeding, while also seeking to vacate the note of issue and compel further discovery. The branch of the motion seeking an injunction is denied. Instead of seeking a stay under CPLR 2201, 55 Liberty, Skyline, and One Team seek injunctive relief under CPLR § 6313. To establish entitlement to injunctive relief, a movant must show irreparable harm. Where a movant will sustain only monetary damages, there is no irreparable harm as a matter of law (*see Kingsbridge 2005, LLC v Wells Fargo Bank*, 226 AD3d 620 [1st Dept 2024]). Here, the only harm 55 Liberty, Skyline, and One Team will face is either paying money in a settlement or having a potential money judgment entered against them by a jury if this case goes to trial and returns a verdict in favor of Plaintiff. This is not irreparable harm sufficient for injunctive relief (*see also U.S. Re Cos., Inc. v Scheerer*, 41 AD3d 152, 155 [1st Dept 2007]). In the unlikely event this case goes to trial and reaches a verdict prior to the conclusion of the Workers' Compensation proceedings, the remedy is to move pursuant to CPLR 2221(e) and move to vacate the judgment.

Likewise, the branch of the motion to vacate the note of issue is denied. As a preliminary matter, the motion to vacate the note of issue was not timely filed within 20 days of service of the note of issue as required by 22 NYCRR 202.21(e) (*see Adams v Legacy Carting Corp.*, 231 AD3d 422 [1st Dept 2024]). If there is new evidence and claims of injuries being asserted by Plaintiff that was not available to movants pre-note of issue, the remedy is to allow for limited post-note of issue discovery on the issue of Plaintiff's potential damages (*see Cabrera v Abaev*, 150 AD3d 588 [1st Dept 2017] [trial courts are authorized to exercise discretion in allowing post-note of issue discovery so long as neither party will be prejudiced]). Therefore, the parties are directed to appear

for a status conference to outline what discovery, if any, is needed related to the issue of damages. Accordingly, 55 Liberty, Skyline, and One Team's motion is denied except for the prong of the motion which seeks permission to conduct post-note of issue discovery, which is held in abeyance pending a status conference with the Court. The Court also grants the motion to the extent that the Court considers the additional documents submitted on this motion in its determination of Plaintiff's motion for summary judgment (Mot. Seq. 005).

B. Mot. Seq. 005

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is denied. Viewing the facts in the light most favorable to the non-moving parties, there are issues of fact as to how and where Plaintiff fell which preclude summary judgment (*see, e.g. Broughton v 553 Marcy Avenue Owners LLC*, 238 AD3d 536, 536-37 [1st Dept 2025] citing *Aspromonte v Judlau Contracting, Inc.*, 162 AD3d 484, 485 [1st Dept 2018]). While Plaintiff claims that 55 Liberty, Skyline, and One Team fail to offer admissible evidence in opposition, Plaintiff ignores his own submissions, which include a New York City Department of Buildings summons, which stated Plaintiff "lost his balance and fell...while standing on the stairs and passing materials" (NYSCEF Doc. 123). Likewise, Plaintiff submitted the deposition transcript of Mr. Dibenedetto, who testified he spoke Spanish with Plaintiff, and that Plaintiff stated immediately after his accident that he was "standing on the landing of the 30th floor staircase putting bags from the stairs onto the planks and fell down the stairs" (NYSCEF Doc. 131 at 34). Plaintiff allegedly told the Workers' Compensation doctor that Plaintiff fell from a ladder (NYSCEF Doc. 177).³ Meanwhile, at his deposition in this case, Plaintiff claims he fell due to a wood plank moving.

³ While this statement may be hearsay, hearsay evidence may be considered in opposition to summary judgment if it is not the only evidence relied on in opposition (*see O'Halloran v City of New York*, 78 AD3d 536, 537 [1st Dept 2010]).

Plaintiff's argument that Mr. DiBenedetto speculated as to the cause of Plaintiff's fall is without merit. Mr. DiBenedetto's testimony is based on what Plaintiff allegedly told him immediately after his accident. By submitting Mr. DiBenedetto's deposition transcript on his motion in chief, Plaintiff adopted the statements in it as accurate (*Gkoumas v Lewis Construction and Architectural Mill Work*, 233 AD3d 609, 609 [1st Dept 2024] citing *Rosa v 47 E. 34th St. [NY]*, *L.P.*, 208 AD3d 1075, 1079 [1st Dept 2022]).

"These contradictions raise credibility issues which cannot be resolved on a motion for summary judgment" (*see Campos v 68 East 86th Street Owners Corp.*, 117 AD3d 593, 594 [1st Dept 2014]; *see also Lopez v Actor's Studio, Inc.*, 110 AD3d 556, 556 [1st Dept 2013]). Therefore, Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is denied (*see also Simpertegui v Carlyle House Inc.*, 227 AD3d 486 [1st Dept 2024]; *Gkoumas, supra* at 609; *Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442 [1st Dept 2012]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is denied; and it is further

ORDERED that 55 Liberty, Skyline, and One Team's motion to enjoin the proceedings in this case until Workers' Compensation Board proceedings are completed, to vacate the note of issue, for leave to supplement its opposition to Plaintiff's motion for summary judgment, and to allow for certain damages discovery is denied, except that the Court considers the documents submitted in support of this motion in its Decision and Order on Plaintiff's motion for summary judgment, and the Court holds in abeyance the issue of further discovery until the parties can conference the issue with the Court; and it is further

ORDERED that the parties shall appear for a status conference on or before November 19, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York, unless the parties can stipulate to further discovery on the issue of Plaintiff's alleged injuries, in which case they shall submit a proposed status conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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.

10/31/2025
DATE

Mary V Rosado J.S.C.
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