

**Singh v Beach 90th St. Realty Corp.**

2025 NY Slip Op 34222(U)

July 25, 2025

Supreme Court, Queens County

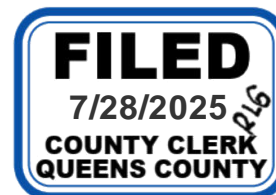
Docket Number: Index No. 704767/2019

Judge: Leonard Livote

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: PART 33



-----X

NIRMAL SINGH, HARDEEP SINGH,  
Plaintiff,

INDEX NO. 704767/2019

- v -

MOTION DATE 03/16/2024

BEACH 90TH STREET REALTY CORPORATION, KTC  
DESIGN GROUP INC., SPLEN CONSTRUCTION INC.,

MOTION SEQ. NO. 005

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

KTC DESIGN GROUP INC.  
Plaintiff,

Third-Party  
Index No.

-against-

HARROW CONSTRUCTION & MANAGEMENT SERVICES  
INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141

were read on this motion to/for JUDGMENT - SUMMARY

The above-numbered papers were read on this motion by plaintiff NIRMAL SINGH (“Nirmal”) only against defendants BEACH 90<sup>th</sup> STREET REALTY CORPORATION, (“Beach 90”), KTC DESIGN GROUP, INC. (“KTC”) and SPLEN CONSTRUCTION, INC. (“Splen”) (collectively, “Defendants”) for an Order pursuant to CPLR § 3212 granting summary judgment only as to

Defendants' negligence, together with such other, further and different relief as this Court deems just, proper and equitable.

Upon the foregoing papers, the motion is determined as follows:

This is an action commenced by plaintiffs Nirmal and Hardeep Singh ("Hardeep") alleging that they were injured on a work site located at 90-02 Rockaway Boulevard, County of Queens, on or about January 4, 2019, when a scaffold they were standing on, while painting an exterior wall, collapsed causing both to fall approximately eight feet and causing a wooden plank and gallon of paint to fall on them. Plaintiffs were construction workers employed by nonparty Harrow Construction and Management Service ("Harrow"), a subcontractor. Harrow was hired by Beach 90, the owner of the site. KTC and Splen were general contractors. Plaintiffs Nirmal and Hardeep commenced the action together but are represented by different attorneys.

The within action was discontinued as against KTC pursuant to a stipulation dated January 21, 2025. Splen has not answered, however no request for a default judgment has been made.

In the instant motion (Motion Sequence 005), Nirmal seeks partial summary judgment on the issue of liability of his Labor Law § 240(1), § 241(6) and § 200 causes of action. Nirmal alleges he and Hardeep were standing on a wooden platform, consisting of three (3) wooden planks each placed horizontally over a

pipe scaffold, and when both were standing about a foot apart on the wooden planks, the planks lifted from each side causing both to fall onto the ground, approximately eight feet below, and also causing one of the planks and a bucket of paint to fall on Nirmal. Nirmal alleges Tarik Kahn (“Kahn”), the owner of Harrow, was who prepped, or tied, the wooden planks to the subject pipe scaffold.

KTC and Beach 90 both opposed the instant motion. However, in light of the discontinuance of the action against KTC, which occurred after submission of this motion, only the opposition of Beach 90 will be considered.

On a motion for summary judgment, the proponent 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 (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Summary judgment is a drastic remedy that should be granted only if no issues of fact exist and the movant is entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d at 324).

As to Labor Law § 240(1), that section “imposes upon owners and general contractors, and their agents, a non-delegable duty to provide safety devices

necessary to protect workers from risks inherent in elevated work sites” (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]). Labor Law § 240(1), requires that:

“[a]ll contractors and owners 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” (Labor Law § 240(1); *Rocovich v Consolidated Edison Co.*, 78 NY2d at 512).

Labor Law § 240(1) imposes absolute liability on general contractors and owners, however, the statute is limited to a narrow class of dangers, namely those “special hazards” presenting “elevation-related risks” (*Nicomenti v Vineyards of Fredonia, LLC*, 25 NY3d 90, 96-97 [2015]). Therefore, “[absolute] liability may...be imposed under the statute only where the plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation risk” (*O’Brien v Port Auth. Of N.Y. & N.J.*, 29 NY3d 27, 33 [2017]; *see also Blake v Neighborhood Hous. Servs. Of NY City, Inc.*, 1 NY3d 280 [2003]).

“To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must prove that the defendant violated the statute and that such violation was a proximate cause of his or her injuries” (*Lopes v County of Suffolk*, 236 AD3d

883, 884 [2d Dept 2025]; quoting *Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 728 [2d Dept 2020]). “Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat [the] plaintiff’s motion for summary judgment only if there is a plausible view of the evidence-enough to raise a fact question-that there was no statutory violation and that [the] plaintiff’s own acts or omissions were the sole cause of the accident” (*Lopes v County of Suffolk*, 236 AD3d at 884; quoting *Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d at 289; *Masmalaj v New York City Economic Dev. Corp.*, 197 AD3d 1292 [2d Dept 2021]).

Here, Nirmal testified that on the date of the accident, he and Hardeep were instructed by Kahn to use the subject scaffold, and that he believed it was Kahn who had prepped or tied off the wooden planks to the pipe scaffold. Nirmal testified that he and Hardeep climbed the side of the scaffold and onto the wooden planks, that they lifted the paint buckets by rope up to the level where they were standing on the wooden planks and began to work. Nirmal further testified that they both worked on opposite sides of the scaffold and gradually moved closer towards the middle of the scaffold when suddenly the wooden planks lifted at the side and caused him to fall about eight feet below, and that one wooden plank and paint bucket fell on top of him.

In opposition, Beach 90 argues that there are triable issues of fact because Nirmal was inconsistent between his deposition testimony and accident description as noted on various medical records. Beach 90 points to Nirmal's testimony where he testified that he fell off a scaffold while painting the exterior wall of the subject building. However, Beach 90 argues that in his medical records, Nirmal stated the accident happened in a different way, once stating that his injuries were due to tripping and falling at work, then stating that he had placed his foot on a block and the block turned over causing his ankle to roll over, and lastly that he was injured while carrying a 40 pound bag of cement and he tripped and fell causing him to twist his ankle.

The court's function on this motion for summary judgment is issue finding rather than issues determination (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; get 2<sup>nd</sup> dept). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 4 NY2d 223 [1978]). When the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*see Phillips v Joseph Kantor and Co.*, 31 NY2d 307 [1972]; *Stone v Goodson*, 8 NY2d 8 [1960]).

Here, Beach 90's counsel made reference, in his affirmation to the opposition, to certified medical records from St. John's Episcopal Hospital and

Jamaica Hospital. However, the records appear to be uncertified. The court considers the possible oversight by Beach 90's counsel to be minimal in comparison to the possible issues of fact presented by the differing accounts of the accident allegedly told by Nirmal (*see Zavlanova v Jetro Cash and Carry Enterprises, LLC*, --AD3d--, 2025 NY Slip Op 04121 [2d Dept 2025]; *Brower v Staten Island University Hospital*, 233 AD3d 1019 [2d Dept 2024]). Conflicting accounts of how the accident occurred raise an issue of fact that precludes the granting of summary judgment (*see Hobbs v MTA Capital Construction*, 159 AD3d 544 [1st Dept 2018]; *King v Villette*, 155 AD3d 619 [2d Dept 2017]). As there remain apparent triable issues of fact, Nirmal has failed to establish entitlement to summary judgment of his Labor Law § 240(1) claim.

As to Labor Law § 241(6), that section imposes “a non-delegable duty of reasonable care upon owners and contractors to ‘provide reasonable and adequate protection and safety’ to person employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed” (*Rizzuto v L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343, 348 [1998]; *Shewprasad v KSK Construction Group, LLC*, 231 AD3d 762 [2d Dept 2024]; *Lopez v New York City Dept. of Environmental Protection*, 123 AD3d 982, 983 [2d Dept 2014]). “To establish liability under Labor Law § 241(6), a plaintiff or a claimant must demonstrate that his [or her] injuries were proximately caused by a violation of an

Industrial Code provision that is applicable under the circumstances of the case” (*Shewprasad v KSK Construction Group, LLC*, 231 AD3d at 763; quoting *Flores v Fort Green Homes, LLC*, 227 AD3d 672 [2d Dept 2024]). “The predicate Industrial Code section must ‘set forth specific safety standards’” (*Zaino v Rogers*, 153 AD3d 763, 772 [2d Dept 2017]; quoting *Hricus v Aurora Contractors, Inc.*, 63 AD3d 1004 [2d Dept 2009]). “The rule or regulation alleged to have been breached must be a specific, positive command and be applicable to the facts of the case” (*Rau v Bagels N Brunch, Inc.*, 57 AD3d 866, 868 [2d Dept 2008]; *Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616 [2d Dept 2008]).

Nirmal seeks summary judgment on the issue of liability of his Labor Law § 241(6) claim. As discussed above, this Labor Law § 241(6) claim is only as against Beach 90 and Splen, although the court notes Splen has not answered, appeared or opposed the motion. Beach 90 has submitted an opposition.

In his moving papers, Nirmal alleges violations of Industrial Codes § 23-1.7(b) and 5.3. In his bill of particulars, he specifically lists: 23-1.7(b)(1)(i); (ii); and (iii[a-c]) as well as 23-5.3(b); (d)(1)(i-iii); (d)(2) (i-vii); (d)(3); (e); (f); (g)(1-3); (h)(1-2). Beach 90 opposes and argues Nirmal failed to specify, in the moving papers, which subsection of Industrial Code § 23-5.3 was purportedly violated.

Section 23-1.7(b)(1) of the Industrial Code “applies to safety devices for hazardous openings, and not to an elevated hazard” (*Forschner v Jucca Co.*, 63 AD3d 996, 999 [2d Dept 2008]; *Rau v Bagels N Brunch, Inc.*, 57 AD3d at 868).

Here, the testimony by Nirmal and evidentiary submission demonstrate that Nirmal fell from an elevated scaffold and not an opening. Thus, Industrial Code § 23-1.7(b)(1), which regulates the covering of hazardous openings, is inapplicable.

Industrial Code § 23-5.3 governs general provisions for metal scaffolds. Industrial Code § 23-5.3(b) titled “Special approval required” pertains to the requirement for special approval for a metal scaffold erected after June 1, 1972. Nirmal failed to submit any testimony or evidence pertaining to the subject scaffold, therefore Nirmal has failed to establish a violation of Industrial Code § 23-5.3(b).

Industrial Code § 23-5.3(d) titled “Minimum uniform live loads” provides, in relevant part, that “metal scaffold shall be designed and constructed to support the dead loads, such as platforms, frames, safety railings and other members.” Here, there are issues of fact pertaining to the planks of wood on the scaffold that Nirmal alleges were tied by Kahn, or whether they were improperly designed or constructed, sufficient to impose vicarious liability on Beach 90 and Splen.

Further, Industrial Code § 23-5.3(e), which regulates the safe construction and installation of safety railings, is inapplicable because at no time did Nirmal claim that he was caused to fall due to inadequate railings.

Industrial Code § 23-5.3(f), which regulates the access to and egress from certain metal scaffolds, is also inapplicable here because Nirmal did not claim to have been deprived of such and instead testified that he ascended to the wooden plank base level through the side of the scaffold.

Industrial Code § 23-5.3(g) regulates the use of footings for scaffolds. Industrial Code § 23-5.3(h) regulates the use of tie-ins to secure scaffolds to wooden plans. As previously stated, Nirmal testified that he believed Kahn was the individual that prepped the subject scaffold and tied off the wooden planks as the footing for the scaffold. His testimony and submissions, however, fail to demonstrate the absence of triable issues of fact as to whether the alleged violation of Industrial Code § 25-5.3(g) and (h) was a proximate cause of his injuries, sufficient to impute liability on Beach 90 and Splen. As such, Nirmal has failed to establish prima facie entitlement to summary judgment on his Labor Law § 241(6) claim (*see Canales v Rye Neck Union Free School District*, 238 AD3d 836 [2d Dept 2024]; *see also Giraldo v Highmark Independent, LLC*, 226 AD3d 874 [2d Dept 2024]).

As to Labor Law § 200 and common-law negligence, Labor Law § 200 is a codification of the common-law duty imposed upon an owner or general contractors to provide construction site workers with a safe place to work” (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; Labor Law § 200). “Where such a claim arises out of alleged defects or dangers arising from a subcontractor’s methods or material, recovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505 [1993]; *Chavarria v Bruce Nagel & Partners Architects, P.C.*, 230 AD3d 1286 [2d Dept 2024]). Alternatively, “[w]here a premises condition is at issue, property owners may be held liable for a violation of Labor Law § 200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident” (*Ortega v Puccia*, 57 AD3d 54 [2d Dept 2008]; *Azad v 270 5th Realty Corp.*, 46 AD3d 728 [2d Dept 2007]).

Here, Nirmal asserts that Defendants are liable for violation of Labor Law § 200 and common-law negligence under both theories. He argues that the subject scaffold was a dangerous condition and that defendants had at a minimum constructive notice of the defect of the scaffold. Nirmal, however, makes no showing on how either Beach 90 or Splen had constructive notice of a defect. In fact, Nirmal


testified he did not know who owned the scaffolds and also recalls being rushed by Kahn to finish the work even though the wooden planks were not tied or secured to the scaffold. This raises issues of fact as to any constructive notice the Defendants may have had of the alleged defective scaffold sufficient to defeat the motion for summary judgment (*see Miller v Shah*, 3 AD3d 521 [2d Dept 2004]; *Kolakowski v Feeney*, 204 AD2d 693 [2d Dept 1994]).

Nirmal also argues that under the theory of methods and manner of the work, Defendants had authority to supervise his work. Even with the theory of means and method of the work, Nirmal failed to testify or demonstrate with evidence as to any supervisory authority Beach 90 or Splen personnel had over his work while he was at the work site. “A defendant has the authority to supervise or control the work for the purposes of Labor Law § 200 when the defendant bears the responsibility for the manner in which the work is performed” (*Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 670 [2d Dept 2018]); quoting *Ortega v Puccia*, 57 AD3d at 62). “[M]ere general supervisory authority at a work site for the purposes of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200” (*Poulin v Ultimate Homes, Inc.*, 166 AD3d at 670; quoting *Ortega*, 57 AD3d at 62). As such, Nirmal has failed to establish entitlement to summary judgment of his Labor Law § 200 and common-law negligence claims (*see*

*Ricottone v PSEG Long Island, LLC*, 221 AD3d 1032 [2d Dept 2023]; *Mushkudiani v Racanelli Construction Group, Inc.*, 219 AD3d 613 [2d Dept 2023]).

Accordingly, it is

ORDERED that Nirmal’s motion for summary judgment (Motion Sequence 005) only as to Defendants’ negligence is denied in its entirety, and it is further ORDERED that Nirmal shall serve notice of entry within 30 days of the date of this Order.

<u>7/25/2025</u> DATE		 LEONARD LIVOTE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE

