

**Criollo v G&L Realty Del. LLC**

2025 NY Slip Op 34319(U)

November 12, 2025

Supreme Court, New York County

Docket Number: Index No. 155696/2022

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

MELIDA LUCIA DOMINGUEZ CRIOLLO,

Plaintiff,

- v -

G&L REALTY DELAWARE LLC, PRAT ENTERPRISES CORP.,

PRATT CONSTRUCTION & RESTORATION INC.,

Defendant.

-----X

PRAT ENTERPRISES CORP.

Plaintiff,

-against-

SHALBRO CONSTRUCTION GROUP LLC, SAFECORE

DEVELOPERS LLC

Defendant.

-----X

G&L REALTY DELAWARE LLC

Plaintiff,

-against-

SHALBRO CONSTRUCTION GROUP LLC, SAFECORE

DEVELOPERS LLC

Defendant.

-----X

INDEX NO. 155696/2022

MOTION DATE 07/09/2025, 09/15/2025

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

Third-Party Index No. 595396/2023

Second Third-Party Index No. 595973/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 112, 113, 114, 115, 116, 117, 118, 119, 120, 129, 130, 131, 132, 133, 134, 137, 140, 178

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 003) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 174, 175, 176, 177

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, motion sequences 002 and 003 are consolidated for disposition and decided as follows<sup>1</sup>:

- A. Defendant Pratt Construction & Restoration Inc.'s ("Pratt Construction") motion for summary judgment ("Mot. Seq. 002") dismissing all claims and cross claims asserted against it, declaring that any indemnification obligations arising from sidewalk shed work were transferred to Third-Party Defendant Shalbro Construction Corp. ("Shalbro Construction") and seeking indemnification from Shalbro Construction is denied.
- B. Plaintiff Melida Lucia Dominguez Criollo's ("Plaintiff") motion for summary judgment ("Mot. Seq. 003") on her Labor Law § 240(1) claim against Defendants G&L Realty Delaware LLC ("G&L Realty"), Pratt Construction, and Defendant/Third-Party Plaintiff Prat Enterprises Corp. ("Prat Enterprises") is denied.

### **I. Background**

On July 5, 2022, Plaintiff was employed as a laborer who helped disassemble sidewalk sheds at 170 West 73<sup>rd</sup> Street (the "Premises") (NYSCEF Doc. 149 at 39-41).<sup>2</sup> The Premises was owned by G&L Realty (NYSCEF Doc. 152 at 20). G&L Realty retained Pratt to serve as general contractor for Local Law 11 work at the Premises (*id.* at 28-29; 30). Pratt assigned its contract with G&L Realty to Prat Enterprises (NYSCEF Doc. 153 at 13). The sidewalk shed construction, and disassembly was contracted by G&L Realty to Shalbro Construction, and that contract was later assigned to Pratt Construction (NYSCEF Docs. 158-159). Shalbro Construction retained Safecore as a subcontractor to dismantle the sidewalk shed (NYSCEF Doc. 155 at 24; 34).

<sup>1</sup> Motion Sequence 002 was marked fully submitted on September 11, 2025 and Motion Sequence 003 was marked fully submitted on October 16, 2025.

<sup>2</sup> Plaintiff testified she was employed by Shalbro Construction, but Amninder Singh, who owns Third-Party Defendants/Second Third-Party Defendant Safecore Developers LLC ("Safecore") testified Plaintiff was a Safecore employee (NYSCEF Doc. 155 at 13-14). She also claims she was employed as a "mechanic" but Safecore testified she was a helper and sidewalk flagger.

Plaintiff alleges she was removing nails from the sidewalk shed when she heard one of the boards on the shed crack and Plaintiff fell backwards (NYSCEF Doc. 149 at 51-53). Plaintiff alleges there was no foreman present on the date of her accident, and she was not provided with any safety devices (*id.* at 43). She claims her co-worker, Jose, told her to climb the sidewalk shed and dismantle it (*id.* at 47). However, according to Rajwimber Singh, the Safecore foreman at the time of the accident, he instructed Plaintiff that her role on the date of the accident was as a sidewalk flagger, and she did not need a harness because she was to remain on the sidewalk (NYSCEF Doc. 156 at 26; 56). He also alleges he trained Plaintiff on safety and specifically instructed her to wear a harness whenever she went up a scaffold, and he had harnesses at the Premises on the date of the accident (*id.* at 20; 24-25). Rajwimber's instructions were purportedly given in English, which Jose translated into Spanish for other workers (*id.* at 78-79). When Rajwimber saw Plaintiff on the sidewalk shed, he alleges he immediately told her to come down, and as she attempted to come down from the sidewalk shed, she fell (*id.* at 27).

In Mot. Seq. 003, Plaintiff moves for summary judgment on her Labor Law § 240(1) claim against G&L Realty, Pratt Construction, and Prat Enterprises, who each oppose Plaintiff's motion. In Mot. Seq. 002, Pratt Construction moves for summary judgment dismissing all claims and crossclaims asserted against them and seeks contractual indemnification from Shalbro Construction.

## II. Discussion

### A. Plaintiff's Motion (Mot. Seq. 003)

Viewing the facts in the light most favorable to the non-movants, Plaintiff's motion for summary judgment is denied. Sharply contrasting versions of the accident create issues of fact pertaining to credibility which cannot be resolved on a motion for summary judgment (*see, e.g.*

*Kolakowski v 10839 Associates*, 185 AD3d 427, 427 [1st Dept 2020] citing *Biaca-Neto v Boston Road II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1168 [2020]). Although Plaintiff claims there was no foreman or harnesses present, the sworn testimony of Rajwimber Singh contradicts this, as he claims he was present, he brought harnesses, he told all employees who climb the sidewalk shed to wear a harness, and he specifically told Plaintiff she was to remain on the sidewalk as a flagger (see, e.g. *Vargas v 1166 LLC*, 201 AD3d 614, 615 [1st Dept 2022]; see also *Batista v Manhattanville College*, 138 AD3d 572, 572 [1st Dept 2016]). Notably, no party submitted any testimony or an affidavit from “Jose”, who allegedly translated Mr. Singh’s instructions to Plaintiff, and who Plaintiff claims instructed her to climb the sidewalk shed without a harness.

The sharply contrasting versions of events leading up to Plaintiff’s accident, including the presence of a foreman, the availability of harnesses and safety lanyards, and whether Plaintiff was instructed to serve as a sidewalk flagger and remain on the ground, create unresolved issues of fact which must be determined by the jury and preclude summary judgment on Plaintiff’s Labor Law § 240(1) claim (see *Battle v NY Developers & Management, Inc.*, 193 AD3d 562 [1st Dept 2021]; *Straughter v Thor Shore Parkway Developers, LLC*, 199 AD3d 434 [1st Dept 2021]). Therefore, Plaintiff’s motion is denied (see also *Rivera v Suydam 379 LLC*, 216 AD3d 495, 496 [1st Dept 2023] citing *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39-40 [2004]; *Padilla v Touro College University System*, 204 AD3d 415, 416 [1st Dept 2022]).

#### **B. Pratt Construction’s Motion (Mot. Seq. 002)**

Pratt Construction’s motion for summary judgment is denied. As a preliminary matter, there is an issue of fact as to what Pratt Construction assigned to Prat Enterprises (see NYSCEF Doc. 160). The “assignment and assumption contract” references assignment of a façade restoration contract entered between G&L Realty and Pratt Construction on September 21, 2020,

but it does not reference the assignment of Pratt Construction's separate assumption of G&L Realty's contract with Shalbro Construction, which the parties all referenced as the "Shed Contract" (*see* NYSCEF Doc. 159). Moreover, Pratt Construction mistakenly argues that Shalbro Construction assumed all obligations pursuant to Pratt Construction's assumption of the Shed Contract, but the contract language states the opposite - specifically that "Pratt is obligated to assume all of Owner's [G&L Realty's] rights and obligations under the Shed Contract." Because Pratt Construction failed to establish it assigned its obligations under the Shed Contract to Pratt Enterprises, it remains an issue of fact as to whether Pratt Construction may be deemed a general contractor or statutory agent of G&L Realty with respect to the sidewalk shed for purposes of liability under Labor Law §§ 240(1) and 241(6), which precludes dismissal of those claims (*see, e.g. Santos v Condo 124 LLC*, 161 AD3d 650, 653 [1st Dept 2018] citing *Walls v Turner Constr. Co.*, 4 NY3d 861, 863-64 [2005]).

Moreover, while Shalbro Construction agreed to name Pratt Construction as an additional insured (NYSCEF Doc. 159 at ¶ 4), there is no indemnification clause in either the assumption contract or the underlying Shed Contract entered between Shalbro Construction and G&L Realty (*see* NYSCEF Doc. 158). Pratt Construction fails to identify under what contractual language they seek indemnification in its motion papers. Therefore, Pratt Construction's motion to the extent it seeks summary judgment declaring that "indemnification obligations were transferred to Shalbro" and seeking indemnification from Shalbro Construction is denied. Although Pratt Construction asks this Court to dismiss all crossclaims asserted against it based on the absence of Pratt Construction employees at the Premises, it does not specifically state what crossclaims this argument applies to, which is woefully insufficient to meet its heavy burden on summary judgment.

The alleged absence of Pratt Construction employees likewise precludes dismissal of Plaintiff's Labor Law § 200 claim. There is some evidence that Plaintiff's fall may have been caused by wood planks on the sidewalk shed that were broken, and some of the wooden planks may have been moved during façade work (NYSCEF Docs. 152 at 56 and 155 at 91). If a plank was broken or moved in a dangerous way, it may constitute a dangerous condition for which Pratt Construction could be held liable under Labor Law § 200 (see *Gutierrez v Turner Towers Tenants Corp.*, 202 AD3d 437, 438 [1st Dept 2022]; *DePaul v N.Y. Brush LLC*, 120 AD3d 1046, 1047 [1st Dept 2014]). Pratt Construction has failed to address dismissal of the Labor Law § 200 claim premised on a dangerous condition theory, and its alleged absence from the Premises does not dispel issues of fact as to constructive notice. Therefore, Pratt Construction's motion for summary judgment is denied in its entirety.

Accordingly, it is hereby,

ORDERED that Pratt Construction's and Plaintiff's motions for summary judgment are denied, and within ten days of entry, counsel for G&L Realty 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.

11/12/2025  
DATE

Mary V Rosado JAC  
HON/MARY V. ROSADO, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE