

Ramos v West 107th St. Assoc.

2025 NY Slip Op 34634(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 158317/2020

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 39M

Justice

-----X

SERGIO TORRES RAMOS,

Plaintiff,

INDEX NO. 158317/2020

MOTION DATE 11/15/2024

MOTION SEQ. NO. 002

- v -

WEST 107TH STREET ASSOCIATES, METROPOLITAN
REALTY GROUP, LLC, LAWRENCE EXTERIOR
RESTORATION CORP.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

WEST 107TH STREET ASSOCIATES, METROPOLITAN
REALTY GROUP, LLC

Third-Party
Index No. 596147/2021

Plaintiff,

-against-

LJ RESTORATION CORP.,

Defendant.

-----X

WEST 107TH STREET ASSOCIATES, METROPOLITAN
REALTY GROUP, LLC

Second Third-Party
Index No. 595433/2023

Plaintiff,

-against-

LJ INSTALLATION CORP.

Defendant.

-----X

WEST 107TH STREET ASSOCIATES, METROPOLITAN
REALTY GROUP, LLC

Third Third-Party
Index No. 595296/2024

Plaintiff,

-against-

REPUBLIC SCAFFOLD & HOIST CORP

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion to/for

JUDGMENT - SUMMARY

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff, a construction worker, on October 2, 2020, when while performing work at 14 West 107th street, New York, New York (the premises), while dismantling a skybridge. The plaintiff fell 11 to 16 feet to the ground and lost consciousness.

Plaintiff moves, pursuant to CPLR 3212 for summary judgment against defendant West 107th Street Associates and Metropolitan Realty Group, pursuant to New York State Labor Law 240 (1) and (2).

BACKGROUND

At the time of the accident, West 107th Street Associates owned the premises and Metropolitan Realty Group LLC (Metropolitan) managed the property. Metropolitan hired Lawrence Restoration Corp as a contractor (Metropolitan tr at 15). Lawrence Restoration Corp entered into an agreement with LJ Restoration Corp as a subcontractor for certain renovations and improvements to the premises (NYSCEF DOC NO 15). Torres was later employed by LJ Installation Corp to dismantle the scaffolding at the premises.

Plaintiff's Deposition Testimony (NYSCEF DOC. NO 64, 65)

Plaintiff testified that on the date of the accident he was employed by LJ Installation (Torres tr at 14). He worked with four other men to remove the skybridge and on the date of the accident he wore his safety harness with attached safety line, removed it after his breakfast break and did not put his safety equipment back on when climbing up to the skybridge. Plaintiff stated that he "was passing a wooden plank to his co-workers when he lost balance and fell to the ground and when he hit the ground, he saw a junior beam and thought that beam was removed causing him to lose his balance" (Torres second tr at 222).

DISCUSSION

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once prima facie entitlement has been

established, in order to defeat the motion, the opposing party must “assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions” (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

The Skybridge and other devices for use of employees

Plaintiff Torres moves for partial summary judgment on liability against defendants West 107th Street Associates and Metropolitan Realty Group, pursuant to New York State Labor Law § 240(1) and (2).

Labor Law 240 (1) and (2) provides, in pertinent part as follows:

- (1) All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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.
- (2) Scaffolding or staging more than twenty feet from the ground or floor, swung or suspended from an overhead support or erected with stationary supports, except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein, shall have a safety rail of suitable material properly attached, bolted, braced or otherwise secured, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.

Labor Law § 240 (1) “imposes absolute liability on building owners and contractors whose failure to provide proper protection to workers employed on a construction site proximately causes injury to a worker” (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011] [internal quotation marks and citation omitted]). To prevail on a Labor Law 240 (1) cause of action, the plaintiff must establish that the statute was violated, and that the violation was a proximate cause of the plaintiff’s injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-289

[2003]). However, “[w]here a plaintiff’s own actions are the sole proximate cause of the accident, there can be no liability” (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

“[T]he single decisive question is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

Labor Law 240 (2) is implicated when a worker is injured due to an elevation-related hazard (*Bryant v General Elec. Co.*, 221 AD2d 687, 689, 633 NYS2d 410 [1995]). Moreover, liability under Labor Law 240 (2) is predicated upon the failure to provide safety rails on a scaffold more than twenty feet off the ground (Labor Law 240 (2); *Gaffney v BFP 300 Madison II, LLC*, 18 AD3d 403, 404, 795 NYS2d 579 [2005]; *Emmi v Emmi*, 186 AD2d 1025, 1025, 588 NYS2d 481 [1992]), when such violation is the proximate cause of plaintiff’s accident (*Pulsifer v Eastman Kodak Co.*, 219 AD2d 880, 880, 631 NYS2d 948 [1995]); (*Pietrowski v Are-East Riv. Science Park, LLC*, 86 AD3d 467, 468 [1st Dept 2011]).

Plaintiff contends he did not use his safety harness with the attached safety line on the ground level, when not working at a height and could not use it on the sidewalk bridge because there was no place to attach the safety line to (NYSCEF DOC NO 59).

The defendants counter stating plaintiff’s application is premised on the claim that he was not provided a safety device in the course of his work, dismantling the skywalk bridge which caused him to fall (NYSCEF DOC NO 75). And that the plaintiff arrived at the premises with his own safety belt with a safety line attached, wore it during the morning of the accident, took it off while on break for breakfast and doesn’t know why he climbed up to the sidewalk bridge without putting his safety equipment back on (NYSCEF DOC NO 75), (Torres tr at 39-40 & 220-221). Defendant further contends that the picture of the structure that plaintiff allegedly fell off of shows that plaintiff had locations to attach the safety line to.

[Whether plaintiff’s accident was caused by an independent Labor Law 240 (2) violation, namely the absence of safety rails on the scaffold, or ... solely by plaintiff’s negligence in failing to use the safety devices available to him, is a question of fact precluding summary judgment on plaintiff’s claim pursuant to Labor Law 240 (2)] (*Pietrowski v Are-East Riv. Science Park, LLC*, 86 AD3d 467, 468-469 [1st Dept 2011]).

Here, the defendants present triable issues of fact as to whether plaintiff’s failure to use his safety equipment was the proximate cause of his injuries and whether there were in fact positions

where plaintiff could have attached his safety line to. Plaintiff provided his own safety harness with a safety line attached, wore his safety equipment, took the safety equipment off for his break and failed to put his safety equipment back on prior to climbing up to the skybridge. There is no dispute as to plaintiff's safety harness and safety line being adequate for the work being performed and despite the safety equipment being readily available for plaintiff to use, plaintiff ultimately did not use the equipment with the knowledge he should have used his safety equipment.

Furthermore, the defendants assert the picture provided of the scaffold (NYSCEF DOC NO 66) clearly shows plaintiff had several locations to attach his safety line to. It is unclear which locations defendant is referring to where plaintiff could have attached his safety line to however, this assertion creates a material issue of fact better left for the finders of fact to decide.

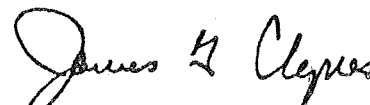
Accordingly, plaintiff is not entitled to summary judgment as there are triable issues of fact pertaining to whether plaintiff's choice to not using his safety equipment was the sole proximate cause of his injury and whether there were locations on the skybridge which plaintiff could have attached his safety line to.

CONCLUSION AND ORDER

It is hereby

ORDERED that the motion by Plaintiff pursuant to CPLR 3212 for partial summary judgment against defendants West 107th Street Associates and Metropolitan Realty Group is denied.

This constitutes the Decision and Order of the Court.



JAMES G. CLYNES, J.S.C.

12/1/2025
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<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