

Gomez v Brookfield Props. One WFC Co. LLC

2025 NY Slip Op 34699(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 151809/2024

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

JIMMY MEJIA GOMEZ,

Plaintiff,

- v -

BROOKFIELD PROPERTIES ONE WFC CO.
LLC, STRUCTURE TONE, LLC, TURNER CONSTRUCTION
COMPANY,

Defendant.

-----X

BROOKFIELD PROPERTIES ONE WFC CO. LLC

Plaintiff,

-against-

TULLA CONTRACTING CORP

Defendant.

-----X

INDEX NO. 151809/2024
MOTION DATE 06/05/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595462/2025

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34,
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69,
70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of October 1, 2025,
Plaintiff Jimmy Mejia's ("Plaintiff") motion for summary judgment on his Labor Law § 240(1)
claim is denied without prejudice with leave to renew after further discovery.¹ Defendant/Third-
Party Plaintiff Brookfield Properties One WFC Co. LLC's ("Brookfield") cross motion for
summary judgment dismissing Plaintiff's Labor Law §§ 241(6), 200 and common law negligence
claims is granted.

¹ Although Plaintiff's notice of motion states he is seeking summary judgment on his Labor Law § 240(1) and 241(6)
claims, Plaintiff's motion papers only proffer arguments in support of summary judgment on his Labor Law § 240(1)
claim.

I. Background

On January 26, 2024, Plaintiff was allegedly employed by Third-Party Defendant Tulla Contracting Corp. (“Tulla”) as a carpenter at 200 Liberty Street, New York, New York (the “Premises”) (NYSCEF Doc. 38 at 17; 41). Plaintiff was allegedly alone installing sheetrock on the 29th floor of the Premises using an old eight-foot A-frame ladder when Plaintiff claims the ladder started to move and Plaintiff fell (NYSCEF Doc. 38 at 51; 61; 64-65; 78). Plaintiff testified after he fell, employees employed by a Tulla subcontractor came to help him (NYSCEF Doc. 38 at 91). Plaintiff now moves for summary judgment on his Labor Law §§ 240(1) and 241(6) claims while Brookfield opposes and cross moves for summary judgment dismissing Plaintiff’s Labor Law §§ 241(6), 200, and common law negligence claims. Tulla opposes Plaintiff’s motion.

II. Discussion

Plaintiff’s motion is denied, without prejudice, as premature and with leave to renew upon further discovery. Although Plaintiff’s motion in chief may have established his *prima facie* entitlement to summary judgment under Labor Law § 240(1), credibility issues and CPLR 3212(f) preclude summary judgment at this time.

Only Plaintiff has been deposed, and Tulla, Plaintiff’s employer, was only recently impleaded and was not present at Plaintiff’s deposition. The accident was allegedly unwitnessed and the present record raises issues of fact as to Plaintiff’s credibility precluding summary judgment (*see e.g. Simpertegui v Carlyle House Inc.*, 227 AD3d 486 [1st Dept 2024]; *Gkoumas v Lewis Construction and Architectural Mill Work*, 233 AD3d 609 [1st Dept 2024]; *Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442 [1st Dept 2012]). Although Plaintiff testified he was working alone that day, this is directly contradicted by an affirmation submitted by a Tulla employee (*see* NYSCEF Doc. 38 at 60-61 *cf.* NYSCEF Doc. 71). Specifically, Shawn Getch,

Plaintiff's foreman and partner, testified he was with Plaintiff on the date of the accident, had gone downstairs briefly to use the bathroom, and within minutes was told Plaintiff fell. Moreover, although Plaintiff testified at his deposition he speaks very little English, according to Mr. Getch, Plaintiff speaks English clearly, and Plaintiff told him he simply lost his balance and fell off the ladder, with no mention of the ladder being defective or broken (NYSCEF Doc. 71). Mr. Getch states that he used the same ladder earlier that day and the ladder functioned properly and was neither old nor wobbly as claimed by Plaintiff. According to Calvin Bollar, Tulla's assistant project manager, Plaintiff declined medical attention, which is inconsistent with the magnitude of injuries Plaintiff is alleging. These credibility issues preclude summary judgment at this juncture (*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]).

Moreover, Defendant Brookfield is unable to properly oppose Plaintiff's motion pursuant to CPLR 3212(f) because it has not had the opportunity to depose Tulla's witnesses, namely Mr. Getch and Mr. Bollar, nor has Tulla had the opportunity to depose Plaintiff or Brookfield employees (*Rivera v Matiz Architecture, PLLC*, 217 AD3d 552, 554 [1st Dept 2023]). Neither party had an opportunity to subpoena the employees of Tulla's subcontractor that were allegedly in the same room as Plaintiff when he fell. The need for these depositions to flush out these issues of fact requires denial of Plaintiff's motion for summary judgment, without prejudice, with leave to renew upon further discovery.

Brookfield's cross motion for summary judgment dismissing Plaintiff's Labor Law §§ 241(6) and 200 claims, and Plaintiff's common law negligence claims is granted. Plaintiff has not filed any opposition to Brookfield's cross motion, therefore Plaintiff's Labor Law §§ 241(6) and 200 claims, and Plaintiff's common law negligence claims are dismissed as abandoned. Tulla's

procedural objections to Brookfield’s cross motion are unavailing, and Tulla fails to set forth any evidence that Brookfield exercised sufficient supervision or control over Tulla employees to give rise to a Labor Law § 200 or common law negligence claim against Brookfield (*see generally Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). Therefore, Brookfield’s cross motion is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment is denied, without prejudice, with leave to renew upon the completion of further discovery; and it is further

ORDERED that Brookfield’s cross motion for summary judgment dismissing Plaintiff’s Labor Law §§ 241(6), 200, and common law negligence claims asserted against it is granted; and it is further

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

<u>12/9/2025</u> DATE	<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" 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"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	