

Beltre v Raven Hall Moderate LLC

2025 NY Slip Op 34966(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 510108/2021

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 12th day of December 2025.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
JOSE MIGUEL BELTRE,

Plaintiff,

Index No. 510108/2021

-against-

Cal. No. 1 MS 2

RAVEN HALL MODERATE LLC AND WEST 20TH
CONSTRUCTION LLC,

Decision and Order

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 2

78-103

Plaintiff's motion seeking an order pursuant to CPLR 3212 granting plaintiff partial summary judgment on liability against defendants pursuant to Labor Law 241(6) and setting the matter down for an immediate trial on damages pursuant to CPLR 3212(c) is decided as follows:

This is an action to recover for injuries sustained by plaintiff, Jose Miguel Beltre, while working on the "seventh-floor setback roof" of defendant Raven Hall Moderate LLC's building located at 2006 Surf Avenue in Brooklyn, New York. Plaintiff was employed by non-party Veneer Restoration & Maintenance, Inc. ("Veneer"), a subcontractor responsible for caulking and

waterproofing the exterior of the building. Defendant West 20th Construction LLC acted as general contractor for certain renovation work at the property.

According to plaintiff, the testimony, video and photographs show that the rooftop setback was covered in snow and ice from the previous day's snowfall. Plaintiff alleges that he slipped and fell while moving a scaffold counterweight, fracturing his finger, tearing his shoulder and injuring his neck in the fall. In the instant motion, plaintiff argues that he is entitled to summary judgment on his claim under Labor Law 241(6), which is premised on a violation of section 23-1.7(d) of the Industrial Code, which provides that elevated working surfaces be kept free of snow, ice and other slipping hazards, or be remedied with sand. Plaintiff contends that, here, nothing was done to remove the snow and ice prior to his fall in violation of the Industrial Code. Plaintiff proffers his testimony stating, among other things, that the area that he was working on "was completely frozen" (Ex. G at 29:10-11) and "[t]he complete area where you step outside and open the door there was ice on the floor" (*id.* at 30:4-6); as he was disassembling the scaffold, he was removing the weights, which weighed between 50 to 55 pounds (*id.* at 31:2-4) and needed to be moved approximately 15 feet across the roof (*id.* at 33:2-5); while holding a weight in his hand, he walked approximately four feet and slipped and fell (*id.* at 34:2-5).

As to the area where he fell, plaintiff represents that his counsel took a screenshot of the area where the accident occurred (see Ex. K). Further, plaintiff testified that he fell "[w]here the weights are in the middle but on the other side in the background" (Ex. G at 51:14-15). Plaintiff further testified that he fell "[w]here the gable is in the middle" (*id.* at 53:7-8).

In opposition to plaintiff's motion, defendants argue that plaintiff has not met his prima facie burden because he relies exclusively on his own testimony that his assigned work area was slippery and caused his fall. Defendants contend that the court should disregard plaintiff's

proffered video clip of the work area because plaintiff has not established when the video was taken, only claiming that the video was recorded prior to the accident. Defendants point out that no witness has testified as to the accuracy or fairness of the conditions shown as the condition which allegedly caused plaintiff's slip and fall. Moreover, defendants argue that plaintiff's deposition testimony regarding the floor being slippery is, at best, ambiguous, since he describes the work area as "frozen" which could mean that the surface was freezing cold to the touch, rather than frozen over with ice, among other interpretations.

In addition, defendants argue that plaintiff's testimony fails to establish that he fell within his work area. In support, defendants state that the deposition testimony of plaintiff's foreman, Mieczyslaw Przystuplak ("Mikey"), reveals that plaintiff was instructed to take the weights off the scaffold "and put them down" at his "feet" (Ex. C, 9-10). Further, that the foreman described the work area as "clean and dry" and that "[a]t that place the conditions were good to work" (*id.* at 11, 17, 22). Moreover, defendants contend that, should the foreman's testimony be credited by a jury, plaintiff's contention that he slipped in a place away from the assigned, dry area removes the Industrial Code from play as plaintiff was not in the safe area he was supposed to be working in.

Finally, even if the court finds that defendants violated Labor Law 241(6), defendants submit issues of fact exist as to proximate cause and plaintiff's comparative negligence given the evidence that plaintiff did not follow the instructions given to him by his foreman to simply lay the weights down at his feet. In this regard, defendants argue that a jury may properly find that plaintiff's failure to follow his foreman's directive to place the weight at his feet and his unilateral decision to walk with the weight despite his awareness of ice in his path, proximately caused his accident, thus making plaintiff liable, in whole or in part, for his own accident.

In reply, plaintiff states that the issue of comparative fault is not a basis to deny a motion for summary judgment. If the court finds triable issues on comparative fault, plaintiff asserts that would be an issue for the jury to decide during the damages trial. Plaintiff also contends that he is not solely relying on his testimony or the video as evidence of the roof's icy condition since the foreman, Mikey, also testified that only a small portion of the roof was "clean" and that the area where plaintiff deposited the weights was "not as clean" and had some ice. In any event, plaintiff contends that his video was properly authenticated by the person who took the video (himself) and that he testified that the video was taken before the accident and that the video shows the area of the accident, which has not been refuted.

Discussion

Industrial Code 12 NYCRR § 23-1.7(d) provides that:

"Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

This provision is sufficiently specific to support a claim under Labor Law 241(6) (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 350-51 [1998]).

Here, plaintiff makes a prima facie showing of his entitlement to summary judgment on his Labor Law 241(6) claim by demonstrating a violation of 12 NYCRR § 23-1.7(d), and that such violation was a proximate cause of his injuries. Plaintiff established there was snow and ice on the roof where he was working that caused him to slip and fall while performing a task assigned to him by his supervisor (*see Song v CA Plaza, LLC*, 208 AD3d 760, 762 [2d Dept 2022]). Defendants' opposition fails to meaningfully dispute the presence of ice and snow on the roof where plaintiff was working. To the extent defendants contend that plaintiff slipped in an area

away from the assigned, dry area designated by his supervisor, an award of summary judgment would not be precluded since plaintiff need not demonstrate the absence of his own comparative fault (*see Carlos Rodriguez, v City of New York*, 31 NY3d 312, 323 [2018]). Accordingly, plaintiff's motion seeking partial summary on his Labor Law 241(6) claim to the extent that it is predicated on a violation of 12 NYCRR § 23-1.7(d) is granted.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.