

Staten v Lindsay Park Hous. Corp.

2025 NY Slip Op 34969(U)

December 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 521930/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 521930/2020
Motion Date: 10-20-2025
Mot. Seq. Nos.: 1-4

-----X
KHALIF DaQUAN STATEN ,

Plaintiff,

-against-

DECISION/ORDER

LINDSAY PARK HOUSING CORP., NEW YORK CITY
HOUSING DEVELOPMENT CORPORATION and
XINOS CONSTRUCTION CORP.,

Defendants.

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XINOS CONSTRUCTION CORP.,

Third-Party Plaintiff,

-against-

BP ELEVATOR CO. INC.

Third-Party Defendant.

-----X

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The following papers, which are e-filed with NYCEF as items 42-85, 90-91, 94-141,
were read on these motions:

In this action to recover damages for personal injuries involving a worksite accident,
under Motion Sequence #1, Defendant/Third-Party Plaintiff Lindsay Park Housing Corp.
("Lindsay") moves for an Order, pursuant to CPLR § 3212: (i) granting summary judgment in
favor of Lindsay dismissing the claim of Plaintiff Khalif DaQuan Staten ("Plaintiff") under
Labor Law § 240(1); (ii) granting summary judgment in favor of Lindsay dismissing Plaintiff's
Labor Law § 241(6) claim; (iii) granting summary judgment in favor of Lindsay dismissing
Plaintiff's Labor Law § 200 and common law negligence claims; (iv) granting summary
judgment in favor of Lindsay on its cross-claims against Defendant/Third-Party Plaintiff Xinos
Construction Corp. ("Xinos") for contractual indemnity; (v) granting summary judgment in favor
of Lindsay on its breach of contract claims against Third-Party Defendant BP Elevator Co. Inc.

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(“BP Elevator”) for failure to procure insurance; and (vi) for reasonable costs and attorney’s fees.

In Motion Sequence #2, Plaintiff moves for an Order pursuant to CPLR § 3212, granting summary judgment to Plaintiff on the issue of liability under Labor Law § 241(6) against Defendants.

In Motion Sequence #3, BP Elevator moves for an Order pursuant to CPLR § 3212, granting summary judgment in its favor dismissing the Third-Party Complaint against it in its entirety.

In Motion Sequence #4, Xinos moves for an Order pursuant to CPLR § 3212: (i) dismissing Plaintiff’s claims under the common law, Labor Law § 200, Labor Law § 240(1), and Labor Law § 241(6); and (ii) dismissing all claims against it for contractual indemnification, common-law indemnification, and breach of contract.

The motions are consolidated for disposition and decided as follows:

BACKGROUND

The Plaintiff, Khalif DaQuan Staten, an employee of BP Elevator, commenced this action to recover damages for personal injuries allegedly suffered as a result of an accident that occurred on March 4, 2020, at a construction project located at 29 Moore Street, Brooklyn, New York. Plaintiff brought this action against Lindsay, the property owner and manager of the premises, and Xinos, whom Lindsay hired to act as the General Contractor for the project. Xinos commenced a third-party action against BP Elevator, whom Xinos hired as a subcontractor to perform the elevator portion of the work. Although the Plaintiff also named The New York City Housing Development Corporation as a defendant, the action as asserted against it has been discontinued.

At his deposition, Plaintiff testified that he began working for BP Elevator four months prior to the date of the accident. He was not familiar with Xinos, had never spoken to anyone from Xinos, and never received any instructions from anyone employed by Xinos prior to the

accident. BP Elevator's work at the location involved modernizing and renovating the existing elevators as well as installing new ones.

On the day of the incident, Plaintiff was working with his partner, Sham God Whitaker ("Sham"), the person from whom he received all his daily instructions. BP Elevator stored its materials and equipment in a shanty near the roof level. To access the shanty, Plaintiff used an elevator that brought him directly to the roof level, where the elevator opened directly into the room.

The accident occurred around 8:30 a.m. That morning, Sham instructed him to begin work on the second elevator, which required him to carry equipment across the roof to the other side where the new elevator would be installed. Plaintiff testified that crossing the roof was the only way to reach the location where he had to work that day. The day of the accident was the first time he had physically stepped onto the roof surface.

Plaintiff testified he observed large puddles of water on the roof, which he stated resulted from rain the previous day. He estimated these puddles to be approximately one to two inches deep and stated they covered most of the roof. He claims he had no choice but to walk through the water.

At the time of the incident, the Plaintiff was carrying two elevator door tracks, holding one in each hand. Each metal track was seven to eight feet long and weighed 15–20 pounds. Plaintiff reached a doorway leading into Stairwell B. The steps in the stairwell, which he intended to descend, were made of concrete and appeared slick and shiny. When he took his first step inside the building onto the top landing with his right foot, he claims he immediately slipped and fell down the stairway, which he believed consisted of 17 to 18 steps. He testified that the cause of the fall was the presence of water on his shoes, which he claimed likely accumulated when he walked through the puddles on the roof.

Regarding control of the worksite, Xinos did not have a project supervisor at 29 Moore Street at the time of the accident because no work was being performed by Xinos at that location at that time.

The contract between Lindsay and Xinos required Xinos to indemnify, defend, and hold harmless Lindsay from claims related to injury caused by the Contractor's (including subcontractors') acts or negligence. BP Elevator agreed to defend and indemnify Xinos and Lindsay for bodily injury to the extent caused in whole or in part by the negligent acts or omissions of BP Elevator.

DISCUSSION

1. Labor Law § 240(1)

Labor Law § 240(1) does not apply where, as here, a plaintiff falls on a permanently installed stairway (see, *Monroe v. New York State Elec. & Gas Corp.*, 186 A.D.2d 1019, 1019, 588 N.Y.S.2d 483, 484; *Cliquennoi v. Michaels Group*, 178 A.D.2d 839, 577 N.Y.S.2d 550; *Barnes v. Park Cong. Church*, 145 A.D.2d 889, 536 N.Y.S.2d 224, *appeal dismissed* 74 N.Y.2d 650, 542 N.Y.S.2d 519, 540 N.E.2d 714; *Fiore v. MCT Constr. Corp.*, 112 A.D.2d 265, 491 N.Y.S.2d 713; *Ryan v. Morse Diesel*, 98 A.D.2d 615, 469 N.Y.S.2d 354). Plaintiff's counsel explicitly states in opposition that he does not oppose the dismissal of the § 240(1) claim. Accordingly, those branches of Motion Sequence #1 and Motion Sequence #4 for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim are granted.

2. Labor Law § 241(6)

"Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers" (*Wittenberg v. Long Is. Power Auth.*, 225 A.D.3d 730, 733, 207 N.Y.S.3d 145 [internal quotation marks omitted]). "To prevail on a cause of action alleging a violation of Labor Law § 241(6), a plaintiff must establish the violation of a specific and concrete provision of the Industrial Code, and that such violation was a proximate cause of his or her injuries" (*Bittrolff v. City of New York*, 237 A.D.3d 1024, 1026, 233 N.Y.S.3d 621 [internal quotation marks omitted]; see *Fonck v. City of New York*, 198 A.D.3d 874, 875, 156 N.Y.S.3d 308). Plaintiff predicates his 241(6) claim on a violation of Industrial Code § 23-1.7(d), which addresses "Slippery conditions" and provides: "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.” 12 NYCRR § 1.7(d) has been held to mandate a distinct safety standard and the kind of specificity required under Labor Law § 241(6) (see *Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 350; *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d at 503–505; *Beltrone v. City of New York*, 299 A.D.2d 306 [2d Dept 2002]; *Cameron v. City of Long Beach*, 297 A.D.2d 773 [2d Dept 2002]).

Plaintiff testified that he was compelled to walk through large puddles on the roof to access his work area, causing his boots to become wet, which led to him slipping on the stairwell landing. Lindsay's property manager observed wet boot tracks on the landing shortly after the incident. While Lindsay argues the stairs were not a work area, Plaintiff has raised a triable issue of fact that the roof and stairwell were integral parts of the worksite he was required to traverse. Since there are triable issues of fact as to whether 12 NYCRR § 1.7(d) was violated, whether such violation was a proximate cause of Plaintiff's injuries, and whether the violation constituted negligence, that branch of Motion Sequence #1 and Motion Sequence #4 for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim are denied.

Plaintiff's motion for summary judgment against the defendants on his claim pursuant to Labor Law 241(6) is denied. Plaintiff did not establish as a matter of law that 12 NYCRR § 1.7(d) was violated or that the violation was a proximate cause of the accident. Furthermore, a violation of the Industrial Code does not conclusively establish a defendant's liability as a matter of law under Labor Law 241(6). Such a violation only constitutes some evidence of negligence and reserves for a jury “the issue of whether the equipment, operation or conduct at the worksite was reasonable and adequate under the³ particular circumstances” (*Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 351, 670 N.Y.S.2d 816, 693 N.E.2d 1068; see *Long v. Forest--Fehlhaber*, 55 N.Y.2d 154, 160, 448 N.Y.S.2d 132, 433 N.E.2d 115; *Daniels v. Potsdam Cent. School Dist.*, 256 A.D.2d 897, 898, 681 N.Y.S.2d 852; *Seaman v. Bellmore Fire Dist.*, 59 A.D.3d 515, 516, 873 N.Y.S.2d 181, 182-83). This principle was recently reiterated by the Court of Appeals (see *Toussaint v. Port Auth. of New York & New Jersey*, 38 N.Y.3d 89, 93 n2, 188 N.E.3d 571, 573 (2022) [“Breach of a duty imposed by a regulation promulgated under Labor Law § 241(6) is merely some evidence of negligence....” (*Ross*, 81 N.Y.2d at 502 n. 4, 601 N.Y.S.2d 49, 618 N.E.2d 82)]; see also, *Mulhern v. Manhasset Bay Yacht Club*, 22 A.D.3d 470, 471, 803 N.Y.S.2d

90, 91). Thus, even if the record established that 12 NYCRR § 1.7(d) was violated and that the violation was a proximate cause of the accident, it would remain the province of the jury to determine if such conduct constituted negligence.

3. Labor Law § 200 and Common Law Negligence

“Labor Law § 200 is a codification of the common-law duty of owners, contractors, and their agents to provide workers with a safe place to work” (*Doto v. Astoria Energy II, LLC*, 129 A.D.3d 660, 663, 11 N.Y.S.3d 201; *see Agosto v. Museum of Modern Art*, 219 A.D.3d 674, 676, 194 N.Y.S.3d 568). “Where, as here, a plaintiff contends that an accident occurred because a dangerous condition existed on the premises where the work was being undertaken, a defendant moving for summary judgment dismissing causes of action alleging common-law negligence and a violation of Labor Law § 200 must make a prima facie showing that it neither created the dangerous condition nor had actual or constructive notice of its existence” (*Calle v. City of New York*, 212 A.D.3d 763, 765, 183 N.Y.S.3d 425; *see Agosto v. Museum of Modern Art*, 219 A.D.3d at 676, 194 N.Y.S.3d 568).

Here, the Defendants failed to demonstrate, prima facie, that they lacked actual and/or constructive notice of the allegedly dangerous condition on the premises—namely, the wet and slippery roof (*see Miller v. R.L.T. Properties, Ltd.*, 206 A.D.3d 648, 650, 169 N.Y.S.3d 127; *Toalongo v. Almarwa Ctr., Inc.*, 202 A.D.3d at 1131, 164 N.Y.S.3d 162) or that the condition constituted an ordinary and obvious hazard of the injured plaintiff’s employment (*see Kolari v. Whitestone Constr. Corp.*, 138 A.D.3d 1070, 1072, 31 N.Y.S.3d 525).

Since the defendants failed to meet their prima facie burden, those branches of Defendants’ motion for summary judgment dismissing the causes of action alleging common-law negligence and a violation of Labor Law § 200 are denied, regardless of the sufficiency of plaintiffs’ opposition papers (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642).

4. The Remaining Claims

Those branches of Lindsay’s motion (Motion Sequence #1) for summary judgment on its cross-claims against Xinos for contractual indemnity are denied. The indemnity provision

Lindsay relies upon is triggered by a finding that Xinos was negligent, and that Lindsay was free from negligence. Since there are triable issues of fact as to whether Lindsay had constructive notice of the alleged dangerous condition that plaintiff claims caused his accident, Lindsay did not establish its freedom from negligence as a matter of law. Furthermore, Lindsay did not establish Xinos' negligence as a matter of law.

Those branches of Lindsay's motion for summary judgment against Xinos and BP Elevator for failure to procure insurance are also denied, regardless of the sufficiency of the opposition papers, as Lindsay did not meet its initial prima facie burden of demonstrating that Xinos and BP Elevator failed to procure the insurance to which it claims entitlement.

BP Elevator's motion for summary judgment dismissing the claims against it for common law indemnity and common law contribution is granted. Since the Plaintiff was employed by BP Elevator and is not alleging a grave injury, these claims must be dismissed pursuant to the Workers' Compensation Law.

BP Elevator's motion for summary judgment dismissing the contractual indemnity claims is denied. There are triable issues of fact as to whether BP Elevator provided Plaintiff with a safe place to work.

Xinos' motion for summary judgment dismissing Lindsay's contractual indemnity claim is denied. As stated, the contractual indemnity provision in question is triggered by a finding of negligence against Xinos. For the reasons stated above, Xinos did not demonstrate its freedom from negligence as a matter of law.

Regarding Lindsay's cross-claims and third-party claims for indemnification, summary judgment is conditioned upon a finding of negligence. As there are triable issues of fact regarding whether Lindsay or Xinos were negligent in their maintenance of the premises, and whether BP Elevator was negligent in the performance of its work or supervision of the Plaintiff, a determination on indemnification is premature. The contracts require indemnification to the extent caused by the negligence of the parties. Since no determination of negligence has been made, and Labor Law and common law claims survive against the direct defendants, the motions

seeking summary judgment on contractual and common law indemnification must be denied at this juncture.

Accordingly, it is hereby

ORDERED that the branch of Lindsay’ motion (Seq. #1) seeking dismissal of Plaintiff’s Labor Law § 240(1) claim is granted, and the remainder of the motion is denied; and it is further

ORDERED that Plaintiff’s motion (Seq. #2) for summary judgment on liability is denied; and it is further

ORDERED that BP Elevator Co. Inc.’s motion (Seq. #3) for summary judgment dismissing the claims for common law indemnity and common law contribution is granted and is in all other respects denied; and it is further

ORDERED that the branch of Xinos Construction Corp.’s motion (Seq. #4) seeking dismissal of Plaintiff’s Labor Law § 240(1) claim is granted, and the remainder of the motion is denied.

This constitutes the decision and Order of the Court.

Dated: December 19, 2025.

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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