

**Da Costa v JDS Constr. Group LLC**

2025 NY Slip Op 34996(U)

December 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 526379/2022

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23<sup>rd</sup> day of December, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
WELITON LAGARES DE MENEZES DA COSTA,

Plaintiff,

Index No.: 526379/2022

-against-

**SUPPLEMENTAL  
DECISION AND ORDER**  
(Mot. Seq. No. 2)

JDS CONSTRUCTION GROUP LLC, ELICC AMERICAS CORPORATION, 9 DEKALB OWNER LLC and 9 DEKALB FEE OWNER LLC,

Defendants.

-----X  
JDS CONSTRUCTION GROUP LLC, ELICC AMERICAS CORPORATION, 9 DEKALB FEE OWNER and 9 DEKALB FEE OWNER LLC,

Third-Party Plaintiffs,

-against-

TRADESMAN INTERNATIONAL, LLC,

Third-Party Defendant.

-----X  
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affirmation in Support/Statement of Material Facts/Exhibits.....	25 – 36
Affirmation in Opposition to Motion/Response to Statement of Material Facts/Exhibit.....	39 – 41
Reply Affirmation.....	48

Upon the foregoing papers, Defendants JDS CONSTRUCTION GROUP LLC, ELICC AMERICAS CORPORATION, 9 DEKALB OWNER LLC and 9 DEKALB FEE OWNER, LLC

(collectively, “Defendants”) move, pursuant to CPLR 3212, for summary judgment on the issue of liability as to Labor Law §§ 200 and 241 (6) to the extent it is predicated on Industrial Code Sections 23-1.7 (d), (e) (1) and (e) (2) (Mot. Seq. No. 2).<sup>1</sup> Plaintiff Weliton Lagares De Menezes Da Costa (“Plaintiff”) opposes the motion.

This matter involves an accident that occurred on May 10, 2021, at a construction site located at 9 Dekalb Avenue in Brooklyn, New York (the “Premises”). The Premises is owned by Defendant 9 Dekalb Fee Owner LLC. Defendant JDS Construction Group LLC (“JDS”) was the general contractor for the construction project. JDS hired Plaintiff’s employer Trident General Contracting LLC (“Trident”) to perform concrete work. On the date of the accident, Plaintiff testified that he was going down the stairs from the 47<sup>th</sup> floor to the 46<sup>th</sup> floor when he slipped and tripped on pieces of concrete, wood dust, and stones on the stairs. Plaintiff further testified that the stairs were wet.

In their motion, Defendants argue that Plaintiff’s Labor Law § 200 claim must be dismissed because they did not supervise, control or give direction as to the methods of Plaintiff’s work. Instead, Defendants assert that Trident maintained actual control while JDS provided only general oversight at the Premises. Moreover, Defendants assert that Trident caused the concrete and wood debris since it was hired to perform concrete work, including installation of cement stairwells, and was responsible for maintaining the cleanliness of the work area. In addition, Defendants contend that they had no notice of the alleged dangerous condition on the stairway and the log maintained by the site safety manager indicated that the stairs were cleaned of debris.

With respect to Labor Law § 241 (6) predicated on violations of Industrial Code §§ 23-1.7 (d),<sup>2</sup> (e) (1) and (2),<sup>3</sup> Defendants contend that they are inapplicable since the subject debris was an

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<sup>1</sup> Pursuant to an order dated November 12, 2025, this Court granted the portions of Defendants’ motion seeking summary judgment dismissing Plaintiff’s Labor Law § 240 (1) cause of action and Labor Law § 241 (6) cause of action to the extent it was predicated on Industrial Code Sections 23-1.7 (b), 23-2.1 (a) and (b), 23-1.16, and 23-1.7 (f) (*see* NYSCEF Doc No. 88). Thus, this decision will only address the remaining portions of Defendants’ motion.

<sup>2</sup> Industrial Code § 23-1.7 (d), which concerns slipping hazards, provides as follows:

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 23-1.7 [d]).

<sup>3</sup> Industrial Code § 23-1.7 (e), addressing tripping and other hazards, states that:

(1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

integral part of the work being performed. In support, Defendants cite to the deposition testimonies of Plaintiff and Defendants' witness Michael Jones. At his deposition, Plaintiff testified that he was making plywood forms for cement. Mr. Jones testified that these forms would be removed with hammers and crowbars, and that it was possible Trident's employees would use the stairs to transport required materials, such as wood.

In opposition, Plaintiff claims that the materials Plaintiff slipped on "were more likely than not the discarded leftovers of unnecessary materials" (NYSCEF Doc No. 39, ¶ 72). Plaintiff asserts that Defendants have not presented evidence demonstrating that the debris and material which caused Plaintiff to fall was caused by him or his coworkers. Since Defendants' sole argument as to the alleged Industrial Code violations was that the debris was integral to the work, Plaintiff contends that they have not established that Sections 23-1.7 (d), (e) (1) and (e) (2) do not apply. Concerning the issue of notice, Plaintiff argues that Defendants failed to meet their burden since they did not proffer evidence as to the last time the stairway was cleaned or inspected prior to the accident. Plaintiff contends that the log, which is unauthenticated and uncertified, does not indicate when or if the subject area was last cleaned or inspected.

In reply, Defendants argue that they did not receive any complaints regarding any hazards on the stairway. Defendants further note that Plaintiff did not complain of any hazardous conditions. Defendants also rely on the log to demonstrate that the stairs were free of debris. In arguing that Plaintiff's Labor Law § 241 (6) cause of action should be dismissed, Defendants maintain that the stairs were cleaned of debris. Defendants contend that even if there was debris on the stairs, that construction debris is not a foreign substance contemplated by Industrial Code § 23-1.7 (d). With respect to Industrial Code § 23-1.7 (e), Defendants argue that it is inapplicable because they established that Plaintiff's accident was the result of a slipping hazard, and not a tripping hazard. Defendants further argue that Plaintiff's deposition testimony supports their contention that the debris was produced as a result of the work he was performing.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact'" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], citing *Andre v Pomeroy*,

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(2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed (12 NYCRR 23-1.7 [e]).

35 NY2d 361, 364 [1974]; see *Sucre v Consolidated Edison Co. of N.Y., Inc.*, 184 AD3d 712, 714 [2d Dept 2020]). “The proponent for the summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact” (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce admissible evidence to establish the existence of material issues of fact which require a trial for resolution (see *Gesuale v Campanelli & Assocs.*, 126 AD3d 936, 937 [2d Dept 2015]; *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 494 [2d Dept 1989]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad*, 64 NY2d at 853; *Skrok v Grand Loft Corp.*, 218 AD3d 702 [2d Dept 2023]; *Menzel v Plotnick*, 202 AD2d 558, 558-559 [2d Dept 1994]).

The Court will first discuss Plaintiff’s Labor Law § 200 claim. “Labor Law § 200 is a codification of the common-law duty imposed on owners, contractors, and their agents to provide workers with a safe place to work” (*Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). “Cases involving Labor Law § 200 fall into two broad categories, namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]). Where, as here, a plaintiff alleges that his injuries result from an alleged dangerous premises condition, “an owner moving for summary judgment dismissing causes of action alleging common-law negligence and a violation of Labor Law § 200 has the initial burden of making a prima facie showing that it neither created the dangerous condition nor had actual or constructive notice of its existence” (*Costa v Sterling Equip., Inc.*, 123 AD3d 649, 650 [2d Dept 2014]). “To meet [their] initial burden on the issue of lack of constructive notice, the defendant[s] must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell” (*Gray v Lifetitz*, 83 AD3d 780, 780 [2d Dept 2011]).

Here, Defendants’ claim that they did not have notice is entirely conclusive. As an initial matter, the Court finds that the log is inadmissible since it was not authenticated or certified. However, assuming arguendo that it was admissible, the log does not indicate when the subject

stairway was last cleaned or inspected.<sup>4</sup> In failing to proffer evidence as to the last time the area was cleaned or inspected, Defendants did not meet their burden establishing entitlement to judgment as a matter of law.

The Court will next address the parties' arguments regarding Labor Law § 241 (6).<sup>5</sup> "Labor Law § 241 (6) imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in . . . all areas in which construction . . . work is being performed" (*Lopez v New York City Dept. of Envtl. Protection*, 123 AD3d 982, 983 [2d Dept 2014], *lv denied* 26 NY3d 905 [2015]). "As a predicate to a section 241 (6) cause of action, a plaintiff must allege a violation of a concrete specification promulgated by the Commissioner of the Department of Labor in the Industrial Code" (*Simmons v City of New York*, 165 AD3d 725, 729 [2d Dept 2018]). Industrial Code Sections 23-1.7 (d) and (e) do not apply "where the object that caused the plaintiff's injury was an integral part of the work being performed" (*Lopez v NY City Dept. of Envtl. Protection*, 123 AD3d 982, 984 [2d Dept 2014]).


Here, Defendants do not dispute that the alleged wood and concrete particles constitute debris. However, they argue that since Plaintiff and his coworkers were working with wood and concrete, the debris came from the work being performed. The Court finds Defendants' contention to be speculative and their reliance on certain testimony to be unpersuasive. Since Defendants did not establish that the integral to the work defense absolved them of liability, it is not necessary to consider the sufficiency of Plaintiff's opposition (*see Winegrad*, 64 NY2d at 853 [1985]).

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment (Mot. Seq. No. 2) is denied.

To the extent not specifically addressed herein, the parties' remaining contentions and arguments were considered and found to be without merit and/or moot.

This constitutes the decision and order of the court.

  
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Hon. Ingrid Joseph, J.S.C.  
**Hon. Ingrid Joseph**  
**Supreme Court Justice**

<sup>4</sup> While the log is dated May 10, 2021, it does not indicate at what time the inspection took place (*see* NYSCEF Doc No. 35).

<sup>5</sup> Defendants hung their proverbial hat on the "integral to the work" defense. Any arguments raised for the first time in reply will not be considered by this Court.