

Sanchez v Lendlease Turner

2025 NY Slip Op 35053(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 509873/2020

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 29TH day of December 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

HARLIN GOMEZ SANCHEZ,

Plaintiff,

-against-

LENDLEASE TURNER, A JOINT VENTURE, LENDLEASE (US) CONSTRUCTION LMB INC., TURNER CONSTRUCTION COMPANY, TVS NEW YORK, P.C., ROGER & SONS CONCRETE, INC., THE CITY OF NEW YORK, NEW YORK CONVENTION OPERATING AUTHORITY, THE NEW YORK CONVENTION CENTER OPERATING CORPORATION, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, EMPIRE STATE DEVELOPMENT CORPORATION, NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, TONAGE, INC. and C.B. CONTRACTING CORP.,

Defendant(s).

ROGER & SONS, CONCRETE, INC.

Third-Party Plaintiff,

-against-

TONAGE, INC.,

Third-Party Defendant.

DECISION & ORDER

Index No.: 509873/2020

Calendar No.: 19, 20 & 21

Motion Seq.: 004, 005 & 006

LENDLEASE TURNER, A JOINT VENTURE,
LENDLEASE (US) CONSTRUCTION LMB INC. TURNER
CONSTRUCTION COMPANY, TVS NEW YORK, P.C.,
ROGER & SONS CONCRETE, INC., THE CITY OF NEW
YORK, NEW YORK CONVENTION OPERATING
AUTHORITY, THE NEW YORK CONVENTION CENTER
OPERATING CORPORATION, NEW YORK
CONVENTION CENTER DEVELOPMENT
CORPORATION, EMPIRE STATE DEVELOPMENT
CORPORATION, NEW YORK STATE URBAN
DEVELOPMENT CORPORATION d/b/a EMPIRE STATE
DEVELOPMENT CORPORATION,

Second Third-Party Plaintiffs,

-against-

C.B. CONTRACTING CORP.,

Second Third-Party Defendant.

Recitation of the following papers as required by CPLR 2219(a):

	NYSCEF Papers Numbered
004	Lendlease/Turner, et al.'s Notice of Motion & Supporting Documents 173-197
	Roger's Affirmation in Opposition & Supporting Documents 228-231
	Tonage's Affirmation in Partial Opposition 273
	Plaintiff's Affirmation in Opposition 283
	Reply Affirmations & Supporting Documents 264-269, 276-279, 286
005	Roger's Notice of Motion & Supporting Documents 198-201
	Lendlease Turner, et al.'s Affirmation in Opposition & Supporting Documents 244-263
	Tonage's Affirmation in Partial Opposition 274
	Reply Affirmation & Supporting Documents 296-298
	Lendlease Turner, et al.'s Sur-Reply 300
006	Tonage's Notice of Motion & Supporting Documents 203-227
	Roger's Affirmation in Partial Opposition 232
	Lendlease Turner, et al.'s Affirmation in Opposition & Supporting Documents 236-243
	Reply Affirmations 275, 287

Upon the foregoing papers and after oral argument, the decision and order of the Court

is as follows:

This is an action for personal injuries commenced by plaintiff per Labor Law § 200, § 240 [1], § 241 [6] and violations of the Industrial Code. Except for Second Third-Party Defendant, C.B. Contracting Corp., all defendants have moved for an order per CPLR § 3212 dismissing this action, together with all crossclaims against them. Plaintiff has not opposed that portion of the motions seeking to dismiss his cause of action per Labor Law § 240 [1]. Plaintiff only opposes dismissal of his causes of action per Labor Law § 200 and § 241 [6] premised upon violations of Industrial Code 22 NYCRR § 23-1.7 [e] [2]. Plaintiff also has not opposed defendant/third-party defendant, Tonage, Inc.'s, motion for summary judgment.¹

It is alleged that plaintiff was injured when he fell over debris while working on a renovation project at the Jacob Javits Convention Center in Manhattan. The movants seek dismissal of plaintiff's complaint based on, *inter alia*, that plaintiff cannot identify the debris that is the proximate cause of his fall. In his bill of particulars, plaintiff alleges he fell on debris but during his first deposition, he was unable to identify what he tripped over without "speculation." At first, plaintiff testified that he fell over a non-descriptive pile of blocks, but then claimed he fell over pieces of broken concrete cinder blocks. During his continued deposition, plaintiff testified that he fell over a single cement block after viewing a photograph of the accident location. However, it is argued by defendants, that what plaintiff identified as a cement block was a piece of foam insulation. This testimony is also inconsistent with several different statements in plaintiff's medical records and Workers Compensation records that contain statements that he fell when he (1) became tangled with a metal wire and fell, (2) tripped over rods on the ground, (3) tripped over something on the floor, and (4) tripped over either rebar or some trash.

¹ After service of the third-party complaint against Tonage, Inc., plaintiff amended the summons and complaint to include Tonage as a direct defendant.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. A failure to demonstrate prima facie entitlement to a summary judgment motion requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court’s only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]). Moreover, a party’s credibility must be determined by a jury if there are discrepancies between their pleadings, documentary evidence and deposition testimony (*Hine v Jafa Transportation, Inc.*, 97 AD3d 794, 795 [2d Dept 2012]).

Motion Sequences 004 and 005 by the defendant/third-party defendant, Roger & Sons Concrete, Inc. (Rogers & Sons), and defendants/second third-party plaintiffs “Lendlease/Turner, et al.” are denied because plaintiff’s testimony concerning the proximate cause of his fall is a question of credibility for the jury (*Hine v Jafa Transportation, Inc.*, 97 AD3d 795).

Motion Sequence 006 by Tonage, Inc. is granted. Tonage was hired as a rebar sub-contractor by Roger & Sons, the concrete subcontractor. Tonage established as a matter of law that it was not working at the location where plaintiff fell. The parties in opposition did not come forward with evidence to establish a material question of fact as to any act of negligence on behalf of Tonage. (*Giuffrida v Citibank*, 100 NY2d 81 and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The arguments that third-party plaintiff and second third-party plaintiffs are entitled to contractual indemnification regardless of negligence on behalf of Tonage are without merit. The plain language of the rider to the contract provides that to be entitled to indemnification, a claim for damages must “directly or indirectly rise out of or result from the negligent acts or omissions of [Tonage], actions taken by [Tonage] outside the scope of the Work or [Tonage’s] scope of authority, or not in accordance with the specific instructions from the Contractor” (NYSCEF 237, pp.11 and 17).

The Court has considered the parties’ remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that Motion Sequences 004 and 005 for an order per CPLR § 3212 dismissing plaintiff’s Labor Law § 200 and § 241 [6] premised upon violations of Industrial Code 22 NYCRR § 23-1.7 [e] [2], are DENIED, and it is further

ORDERED that plaintiff’s Labor Law § 240 [1] cause of action is dismissed, and it is further

ORDERED that the branch of Motion Sequence 006 by defendant/third-party defendant, TONAGE, INC., for an order per CPLR § 3212 dismissing plaintiff’s complaint and all crossclaims is GRANTED, and plaintiff’s complaint and all crossclaims are dismissed only as to defendant TONAGE, INC., and it is further

ORDERED that the branch of Motion Sequence 006 by defendant/third-party defendant, TONAGE, INC., for an order per CPLR § 3212 dismissing the third-party action and all crossclaims is GRANTED, and the third-party action and all crossclaims are dismissed only as to defendant TONAGE, INC.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 12/29/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____