

Logrono v City of New York

2025 NY Slip Op 35072(U)

October 15, 2025

Supreme Court, Bronx County

Docket Number: Index No. 23399/202E

Judge: Mary Ann Brigantti

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 25

-----X

LUZ MARIA INTRIAGO LOGROÑO,

Plaintiff,

- against -

THE CITY OF NEW YORK, et al.,

Defendants.

-----X

XINOS CONSTRUCTION CORP.

Third-Party Plaintiff,

- against -

C.P. & SONS OF NEW YORK CORP.,

Third-Party Defendant.

-----X

The following papers numbered 53 to 82 were read on this motion (Seq. No. 2) for SUMMARY JUDGMENT noticed on June 27, 2025 and duly submitted as Nos. on the Motion Calendar of June 27, 2025

Table with 2 columns: Document Description, NYSCEF Doc. No.
Rows: Notice of Motion – Exhibits and Affidavits Annexed (53-74, 82), Answering Affidavit (79), Reply Affidavit (80)

This motion is decided in accordance with the accompanying memorandum decision.

Dated: October 15, 2025

Hon. [Signature]
Mary Ann Brigantti, J.S.C.

- 1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....
CASE DISPOSED IN ITS ENTIRETY X CASE STILL ACTIVE
GRANTED x DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

LUZ MARIA INTRIAGO LOGRONO,

DECISION and ORDER
Index No. 23399/2020E

Plaintiff,

- against -

THE CITY OF NEW YORK, RIVERBAY
CORPORATION, AND XINOS CONSTRUCTION
CORP. ,

Defendants.

-----X

XINOS CONSTRUCTION CORP.

Third-Party Plaintiff,

- against -

C.P. & SONS OF NEW YORK CORP.,

Third-Party Defendant.

-----X

HON. MARY ANN BRIGANTTI,

Upon the foregoing papers, the Plaintiff LUZ MARIA INTRIAGO LOGRONO (“Plaintiff”) moves for an order granting partial summary judgment on liability against defendants Riverbay Corporation (“Riverbay”) and Xinos Construction Corp. (“Xinos”, together with Riverbay the “Corporate Defendants”).

FACTUAL BACKGROUND

This Court issued a Decision and Order on June 16, 2025 in this motion, requiring that Plaintiff file statement of material facts pursuant to the rules of Part IA-25 and 22 NYCRR 202.8-g(a) by June 24, 2025, and that Defendants were to file a corresponding statement of material facts on June 26, 2025 (NYSCEF Doc. No. 81). On June 18, 2025, Plaintiff provided their statement of material facts (NYSCEF Doc. No. 82 [“Plf. SOF”]). Defendants did not provide any statement of facts in opposition. Accordingly, the following facts are deemed

undisputed for the purposes of this motion.

Plaintiff alleges that on August 14, 2019, she was injured while working at a construction site located at 4100–4120 Hutchinson River Parkway, part of Co-Op City in the Bronx (Plf. SOF at para. 1). The property was owned by Riverbay Corporation, which had retained Xinos Construction Corp. to perform construction work at the site (*id.* at paras. 2-3). Xinos, in turn, subcontracted a portion of the work to C.P. & Sons of New York Corp., the plaintiff’s employer (*id.* at paras. 4-5). Xinos was responsible for safety procedures and provided the safety plan for the project (*id.* at para. 6). Plaintiff was employed as a construction assistant and had been assigned to mix cement and deliver it to workers on scaffolds (*id.* at paras. 7-9). Plaintiff was inside a first-floor storage area (the “Storage Room”) of the building they were working on (“Building 30”) on the day of the accident, which was used to store tools in equipment (*id.* at para. 10). Heavy rain caused the crew to abandon their tools and materials inside the Storage Room the previous day, so as not to get them wet (*id.* at para. 14). When work resumed the day after, Plaintiff was carrying a bag of cement mix out to the yard “like a baby,” which blocked her view, but tripped the cord of a hammer drill (the “Drill Cord”) which had been left near the doorway of the Storage Room (the “Doorway”) (*id.* at paras. 12-13, 16-17). Plaintiff testified that she had not been instructed to clean the area before beginning her cement-mixing duties, and that she did not see the cable before falling (*id.* at para. 15). XINOS was told after the accident that a worker from C.P. & SONS tripped on a bag of cement (*id.* at para. 18).

PARTIES’ CONTENTIONS

A. Plaintiff’s Contentions in Support

Plaintiff asserts that doorway at the Premises constituted a “passageway,” with the storage room a “working area” so as to invoke Industrial Code § 23-1.7(e)’s provision mandating these areas be free of tripping hazards. Plaintiff argues that New York State Labor Law (“Labor Law”) § 241(6) imposes a non-delegable duty on owners and contractors to maintain safe worksites and, accordingly, the Corporate Defendants are liable regardless of any exercise of supervision or notice of the hazard. Plaintiff states that the facts demonstrate, conclusively, the Corporate Defendants violated Industrial Code § 23-1.7(e). Plaintiff states any argument she is responsible for her injury based upon her responsibility for cleaning the site fails as she testified she was directed to begin mixing cement immediately, and asserted she was not cleaning at the time of the underlying incident.

B. Corporate Defendants' Contentions in Opposition

The Corporate Defendants oppose the motions arguing that triable issues of fact preclude summary judgment. Corporate Defendants state that Plaintiff's comparative negligence, and certain other circumstances surrounding the accident, raise factual disputes that are inappropriate for resolution on motion and must be determined by the jury at trial. Corporate Defendants emphasize that Plaintiff was the only witness to her accident and assert that she admitted her own employer, C.P., left tools in the storage room prior to her fall.

The Corporate Defendants state that, while Labor Law §241(6) imposes a nondelegable duty, the comparative negligence of Plaintiff remains a valid defense, and that, in fact, Plaintiff's own submissions show triable issues of fact regarding her own conduct. They further argue that any violation of industrial code provisions constitute mere evidence of negligence, and not negligence *per se*. Defendants state that the storage room and doorway do not meet the definitions of "passageway" or "working area" to invoke the provisions of Industrial Code § 23-1.7(e). Lastly, they argue that the uncertainty regarding the cord upon which Plaintiff purportedly trip further demonstrates factual issues precluding summary judgment.

C. Plaintiff's Contentions in Reply

Plaintiff asserts that it has met its requisite prima facie demonstration on summary judgment and that Corporate Defendants have failed to raise any triable issue of fact. Plaintiff argues that the claims of comparative negligence which form the basis of Defendants' opposition are legally insufficient to defeat the motion for summary judgment. Such an argument, along with what Plaintiff describes as speculative factual disputes, are insufficient to overcome her showing of liability under Labor Law §241(6). Plaintiff requests, given the lack of factual disputes, that this Court grant the instant motion.

LEGAL STANDARD

The Court's function on a motion for summary judgment is issue finding rather than issue determination (*Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]; see also *Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]). The motion must be supported by evidence in admissible form (see *Zuckerman v City of New York*,

49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (see CPLR 3212). The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 NY3d 824 [2014]; see also *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). A moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case—the defendant must affirmatively demonstrate the merit of his or her defense (see *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 462 [1st Dept 2016]).

A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *Medina v Fischer Mills Condo Assn.*, 181 AD3d 448, 449 [1st Dept 2020]). Once a movant meets its burden, the burden shifts to the party opposing the motion proof in admissible form sufficient to establish the existence of material issues of fact (*Vega v Restani Constr. Corp.*, 18 NY3d at 503, quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even ‘arguable’” (*De Paris v Women's Natl. Republican Club, Inc.*, 148 AD3d 401, 403-404 [1st Dept 2017], quoting *Gibson v. American Exp. Isbrandtsen Lines, Inc.*, 125 AD2d 65, 74 [1st Dept 1987]; see *Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). In other words, “[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992])

DISCUSSION

“Under Labor Law § 241 (6), all contractors and owners must provide workers engaged in “construction, excavation or demolition work” with “reasonable and adequate protection and safety” in areas where such work is being performed. The duty to comply with this section is nondelegable and contractors and owners who contract for but who do not supervise or control said work may still be held liable for injuries on the premises (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]). However, Labor Law § 241 (6) is not self-executing (*id.*). “In order to establish liability under Labor Law § 241 (6), a plaintiff must demonstrate that

the defendant's violation of a specific rule or regulation [promulgated by the Commissioner of the Department of Labor], was a proximate cause of the accident" (*Mercado v TPT Brooklyn Assoc., LLC*, 38 AD3d 732, 733 [2007], *citing Ross*, 81 NY2d 494; *see also Capuano v Tishman Const. Crop.*, 98 AD3d 848 [1st Dept 2012]).

12 NYCRR 23-1.7 (e) provides as follows:

(e) Tripping and other hazards.

(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.

(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

An examination of the pertinent caselaw in New York State demonstrates that whether a storage area constitutes a "passageway" or "working area" under the industrial code is, generally speaking, a fact-specific inquiry. For example, the First Department affirmed a wire mesh storage area was not a passageway nor working area (*Dachille v Metropolitan Life Ins. Co.*, 262 AD2d 149 [1st Dept 1999]). Conversely, the First Department modified a lower court ruling, and reinstated a Labor Law § 241(6) claim based on 12 NYCRR 23 § 23-1.7(e), where there was an issue of fact as to whether a storage area constituted a "passageway" or "working area" as opposed to a mere storage room. Based on the facts on record, the Court finds that there is a triable issue of fact as to whether the Storage Room constitutes a "working area."

However, the Court finds the doorway between the Storage Room and the rest of Building 30 is a "doorway [that] constitutes a passageway within the meaning of the regulation" (*McCullough v. One Bryant Park*, 132 AD3d 491, 492 [1st Dept 2015]). Corporate Defendants argue that the storage room was in an outdoor shanty such that any doorway would not be a passageway pursuant to Industrial Code. However, Corporate Defendants fail to submit any evidence raising an issue of fact as to where the accident occurred, and, in fact, the deposition testimony of Michael Douglas for Riverbay states that there was no shanty and, in fact, the Corporate Defendants gave their contractors "a couple of rooms in [Building 30], on the first

floor” (NYSCEF Doc. No. 70, 20:14-23).

As the Doorway constitutes a passageway under Industrial Code, the failure to keep that Doorway free of obstructions was a violation of 12 NYCRR 23 § 23-1.7(e)(1). However, this is not conclusive on the issue of negligence, but merely “some evidence of negligence.” (*Rizzuto v L.A. Wenger Constr. Co.*, 91 NY2d 343 at 351 [1998]) The Court finds that “[t]he issue of whether the . . . operation or conduct at the worksite was reasonable or adequate under the particular circumstances’ is more appropriately left for resolution by a jury” (*Marshall v Glenman Indus. & Comm. Contractor Corp.*, 117 Ad3d 1124, 1127 [3d Dept 2014], quoting *Rizzuto*, 81 NY2d at 351; see also *Rochez v. 222 East Broadway Property Owner, LLC*, No. 150769/2020, 2024 WL 3415760, at *4 [Sup. Ct., New York County July 11, 2024] [“Here, a violation of these provisions would constitute some evidence of negligence and thereby reserve for resolution by a jury”])

CONCLUSION

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for partial summary judgment is denied.

This constitutes the Decision and Order of this Court.

Dated: October 15, 2025

E N T E R



Mary Ann Brigantti, J.S.C