

Prado v BP Cyrus LLC

2025 NY Slip Op 35098(U)

August 29, 2025

Supreme Court, Bronx County

Docket Number: Index No. 22777/2020E

Judge: Ashlee Crawford

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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. ASHLEE CRAWFORD

PART 21

Justice

GUTIERREZ PRADO, EDISON

Plaintiff,

- v -

BP CYRUS LLC

Defendant.

INDEX NO. 22777/2020E

MOTION DATE 01/18/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

Plaintiff's motion for partial summary judgment is decided in accordance with the attached memorandum decision and order.

DATE

8/29/25

ASHLEE CRAWFORD, J.S.C.

[Handwritten signature of Ashlee Crawford]

CHECK ONE:

Form with checkboxes for Case Disposed, Granted, Settle Order, Includes Transfer/Reassign

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

Denial checkbox

DENIED

Form with checkboxes for Non-Final Disposition, Granted in Part, Submit Order, Fiduciary Appointment

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

Other checkbox

OTHER

Reference checkbox

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 21

-----X
EDISON GUTIERREZ PRADO,

Plaintiff(s),

-against-

**DECISION AND ORDER
ON MOTION**

Index No. 22777/2020E

Motion Seq. No. 001

BP CYRUS LLC, DREAMYARD CYRUS HOUSING
DEVELOPMENT FUND CORPORATION,
and HOME BUILDERS 1 L.P.,

Defendant(s).

-----X
BP CYRUS LLC, DREAMYARD CYRUS HOUSING
DEVELOPMENT FUND CORPORATION,
and HOME BUILDERS 1 L.P.,

Third-Party Plaintiff(s),

-against-

EUROCRAFT CONTRACTING, LLC,

Third-Party Defendant(s).

-----X
BP CYRUS LLC, DREAMYARD CYRUS HOUSING
DEVELOPMENT FUND CORPORATION,
and HOME BUILDERS 1 L.P.,

Second Third-Party Plaintiff(s),

-against-

EUROCRAFT CONTRACTING, LLC,

Second Third-Party Defendant(s).

HON. ASHLEE CRAWFORD

Plaintiff Edison Gutierrez Prado moves pursuant to CPLR § 3212 for partial summary judgment as to liability on his Labor Law §§ 240 (1) and 241 (6) claims asserted against defendants BP Cyrus LLC (“BP Cyrus”) and Home Builders 1 L.P (“Home Builders”).

According to plaintiff, on January 17, 2020, he was standing on an unsteady, unsecured ladder while working at a construction site, when a piece of fencing struck the ladder, causing the ladder to collapse and plaintiff to fall about seven feet to the ground. Before the accident occurred, plaintiff was removing metal fencing along the perimeter of the construction site along with his supervisor, Carlos, and another worker. BP Cyrus owned the premises where the accident occurred, and Home Builders was the general contractor who subcontracted plaintiff’s employer, third-party defendant Eurocraft Contracting, LLC (“Eurocraft”), to perform demolition work.¹

Discussion

In support of his motion for summary judgment, plaintiff submits, inter alia, copies of the pleadings, his deposition transcripts, and the subcontractor agreement between Eurocraft and Home Builders. Plaintiff argues that BP Cyrus and Home Builders failed to provide him with adequate safety devices and allowed him to work on an unsteady ladder in violation of Labor Law §§ 240 (1) and 241 (6). As to his Labor Law § 240(1) claim, plaintiff argues that (1) he was instructed to use an old, worn down, unsecured ladder, which was inadequate to protect him from elevation-related hazards, and (2) there is no evidence that he was the sole proximate cause of his injuries. As to his Labor Law § 241 (6) claim, plaintiff argues that BP Cyrus and Home Builders violated Industrial

¹ The first third-party action against Eurocraft by defendants BP Cyrus, Home Builders, and Dreamyard Cyrus Housing Development Fund Corporation (together, “defendants”) was discontinued (NYSCEF Doc. No. 30). Defendants commenced a second third-party action against Eurocraft by filing a summons and complaint on February 7, 2024 (NYSCEF Doc. No. 52).

Code [12 NYCRR] §§ 23-1.21 (b) (4) (ii) and (e) (3), and that such violations proximately caused plaintiff's injuries.

In opposition, BP Cyrus and Home Builders submit, inter alia, a sworn affidavit of Rudy Hernandez, an employee of Eurocraft, and uncertified medical records. They argue inter alia that (1) plaintiff is not entitled to summary judgment on his Labor Law § 240 (1) claim as the proximate cause of the accident was not an elevation related risk; and (2) plaintiff is not entitled to summary judgment on his Labor Law 241(6) claim as Industrial Code Sections 23-1.21 (b) and (e) were not violated.

In reply, plaintiff urges this court to reject (1) the affidavit by Rudy Hernandez as defendant failed to name him as a witness during discovery; and (2) the proffered medical records as inadmissible, or alternatively, to find they are insufficient to establish a triable issue of fact.

A party seeking summary judgment “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]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (*id.*). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]).

I. Labor Law § 240 (1)

Labor Law § 240 (1) provides in relevant part that where a building is being erected, contractors and owners “shall furnish or erect, or cause to be furnished or erected for the

performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.” “The statute imposes upon owners, contractors and their agents a nondelegable duty that renders them liable regardless of whether they supervise or control the work” (Barreto v Metropolitan Transp. Auth., 25 NY3d 426, 433 [2015]). “[W]here an accident is caused by a violation of the statute, the plaintiff’s own negligence does not furnish a defense; however, where a plaintiff’s own actions are the sole proximate cause of the accident, there can be no liability” (*id.* [internal quotation marks omitted]). “Thus, in order to recover under section 240 (1), the plaintiff must establish that the statute was violated and that such violation was a proximate cause of his injury” (*id.*). Labor Law § 240 (1) is to be liberally construed so as to accomplish its legislative purpose of protecting workers (Stoneham v Joseph Barsuk, Inc., 41 NY3d 217, 221 [2023]; Rocovich v Consolidated Edison Co., 78 NY2d 509, 513 [1991]).

“Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1)” (Narducci v Manhasset Bay Assoc., 96 NY2d 259, 267 [2001]). “[L]iability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*id.*, citing Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]).

The Court finds that plaintiff demonstrated his prima facie entitlement to judgment on his Labor Law § 240(1) claim. Plaintiff has established that, at the time of the accident, he was standing on an unsteady, twelve-foot A-frame ladder, provided by his employer, removing fencing approximately seven feet off the ground. While plaintiff stood on the seventh rung of the ladder, the fencing hit the ladder. The fencing pushed the ladder, causing the ladder and plaintiff to fall.

Once plaintiff meets his prima facie burden, defendants must submit evidentiary proof in admissible form to raise a material issue of fact (Zuckerman, 49 NY2d at 562). The Court declines plaintiff's invitation to reject the Hernandez affidavit. Plaintiff has not included his discovery demands or defendants' responses in the motion record. Assuming Rudy Hernandez and "Carlos" are different people, the Court cannot determine, on this record, whether BP Cyrus and Home Builders failed to disclose a potential witness. Further, plaintiff did not seek to preclude BP Cyrus and Home Builders from offering an affidavit in response to summary judgment motion prior to filing this motion. To the extent plaintiff argues that it was compelled to file note of issue on January 11, 2024, plaintiff could have moved to extend the time to file note of issue. Accordingly, the Court will consider the affidavit (cf. Reyes v Bruckner Plaza Shopping Center LLC, 173 AD3d 570, 570-571 [1st Dept 2019]).

Ultimately, the affidavit does not raise a triable issue of fact. It provides that plaintiff fell from the second rung of an 8-foot high A-frame ladder after he missed a step (NYSCEF Doc. 60). The affidavit is silent as to the condition of the ladder (id.). It fails to rebut plaintiff's testimony that the ladder was unsteady and fell, causing plaintiff to fall.

The Court rejects the medical records proffered by BP Cyrus and Home Builders in opposition as inadmissible hearsay. "Hearsay is not admissible unless it falls within an exception to the hearsay rule" (Guide to NY Evid rule 8.01, Admissibility of Hearsay, <https://nycourts.gov/judges/evidence/8-HEARSAY/ARTICLE-8-RULES.pdf> [last accessed Oct 22, 2024]). Under CPLR § 4518, "any writing or record . . . made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act,

transaction, occurrence or event, or within a reasonable time thereafter.” Further, “[h]ospital records fall within the business records exception when they reflect acts, occurrences or events that relate to diagnosis, prognosis or treatment or are otherwise helpful to an understanding of the medical or surgical aspects of the particular patient's hospitalization” (People v Ortega, 15 NY3d 610, 617 [2010][citation omitted]). “Where details of how a particular injury occurred are not useful for purposes of medical diagnosis or treatment, they are not considered to have been recorded in the regular course of the hospital's business” (id.).

BP Cyrus and Home Builders have failed to establish that the medical records qualify under the business records exception to the rule against hearsay. Further, the statement that “the other employee pulled the fence causing the patient to fall off the ladder” is not germane to treatment or diagnosis. Therefore, the medical records are inadmissible hearsay and are not considered on this motion. Even if the Court would consider the medical records, the statements in the records do not refute plaintiff's deposition testimony that he fell on a worksite as a result of an elevation-related risk.

In further opposition, defendants question whether a piece of fence struck the ladder and claim the plaintiff stepped onto another ladder lying on the floor, citing to a non-existent exhibit. Further, neither deposition transcript states that the other ladder was lying on the ground, causing plaintiff to fall. Regardless, the Court is unpersuaded that plaintiff provided inconsistent statements about the circumstances of the accident (Ping Lin v 100 Wall St. Prop. L.L.C., 193 AD3d 650, 652 [2021]).

Plaintiff has met his prima facie burden under Labor Law § 240(1). It is undisputed that BP Cyrus and Home Builders, as owner and general contractor, are subject to the nondelegable duties imposed by the statute. Further, plaintiff proved that the ladder afforded insufficient protection from

falls while he was engaged in a covered activity, and that his injuries were proximately caused by a violation of Labor Law § 240 (1) (see Pinzon v Royal Charter Props., Inc., 211 AD3d 442, 443 [1st Dept 2022]; Ping Lin, 193 AD3d at 651; Sacko v New York Hous. Auth., 188 AD3d 546, 546-547 [1st Dept 2020]).

II. Labor Law § 241 (6)

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, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed” (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 348 [1998]. “[T]o state a claim under [Labor Law] section 241 (6), plaintiff must allege that defendant violated an Industrial Code regulation that sets forth a specific standard of conduct and is not simply a recitation of common-law safety principles” (Toussaint v Port Auth. of N.Y. & N.J., 38 NY3d 89, 94 [2022] [internal quotation marks and citation omitted]). Labor Law § 241 (6) requires that a plaintiff establish that a violation of a safety regulation was the proximate cause of the accident (Gonzalez v Stern's Dept. Stores, 211 AD2d 414, 415 [1st Dept 1995]).

Plaintiff cites Industrial Code § 23-1.21 (b) (4) (ii) (ladder footings) and (e) (3) (stepladder footing) to support his Labor Law § 241 (6) claim, thereby abandoning all other predicates not raised in his legal arguments (87 Chambers, LLC v 77 Reade, LLC, 122 AD3d 540, 542 [1st Dept 2014]).

Plaintiff alleges the violation of sufficiently specific Industrial Code provisions (see Hart v Turner Const. Co., 30 AD3d 213, 214 [1st Dept 2006]). Industrial Code § 23-1.21 (b) (4) (ii) provides that “[a]ll ladder footings shall be firm. Slippery surfaces and insecure objects . . . shall not be used

as ladder footings.” Industrial Code § 23-1.21 (e) (3) requires that “[s]tanding stepladders shall be used only on firm, level footings.”

Plaintiff testified that his supervisor placed the ladder on a sidewalk, which was in “bad condition” (NYSCEF Doc. 48 [Plaintiff 8/16/22 EBT at 71:15-18, 77:11-13). Plaintiff further testified that the “rubber shoes” at the bottom of the ladder were unstable and would move no matter how his supervisor set them up (id. at 71:22-72:5).

There is an issue of fact as to whether subsection (e) (3) was violated. Although plaintiff testified that the sidewalk where the ladder was placed was in “bad condition,” he does not specify that the area directly under the ladder was unlevel (id. at 77). Further, plaintiff testified that he “would check the ladder to make sure it was level and sturdy as possible before going up” (id. at 71:12-14).

Plaintiff’s testimony that the ladder footings were unstable is un rebutted. Further, plaintiff’s testimony presents sufficient proof that the violation of Industrial Code § 23-1.21 (b) (4) (ii) proximately caused plaintiff’s injuries. Thus, the Court grants summary judgment for plaintiff on the Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.21 (b) (4) (ii).

For the foregoing reasons, it is hereby

ORDERED that plaintiff’s motion for partial summary judgment as to liability under Labor Law §§ 240 (1), and 241 (6) as predicated on a violation of Industrial Code § 23-1.21 (b) (4) (ii), asserted against defendants BP Cyrus LLC and Home Builders 1 L.P., is GRANTED; and it is further

ORDERED that issues of fact preclude summary judgment as to liability on plaintiff’s claim under Labor Law § 241 (6) as predicated on a violation of Industrial Code § 23-1.21 (e) (3); and it is further

ORDERED that the remaining parties shall appear for a pre-trial conference to be calendared by the Clerk of the Court.

This constitutes the decision and order of the Court.

ENTER:



HON. ASHLEE CRAWFORD, A.J.S.C.

Dated: Bronx, New York
August 29, 2025