

**Vargas v Trustees of Columbia Univ. in the City of
N.Y.**

2025 NY Slip Op 35110(U)

February 20, 2025

Supreme Court, Bronx County

Docket Number: Index No. 34725-2019E

Judge: Myrna Socorro

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#1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 9

-----X
Guillermo Vargas,

Plaintiff

Index No. 34725-2019E

Motion seq #1

-against-

The Trustees of Columbia University in the
City of New York and Ideal Interiors Group LLC,
Defendant

DECISION & ORDER

Hon. Myrna Socorro, J.S.C.

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The following papers were read on this motion (Seq. No. 1) filed by plaintiff for **SUMMARY JUDGMENT** submitted after oral arguments on May 28, 2024.

Papers	NYSCEF Doc. No.
Notice of Motion, Affirmation in Support Memorandum of Law, Statement of Material Facts and Exhibits	# 27 - 38
Affirmation in Opposition, Memorandum of Law, Response to Statement of Material Facts and Exhibits	# 45 - 57
Reply Affirmation	# 59

This action arises out of an alleged incident on August 19, 2019, in which Plaintiff was injured after he came into contact with a live wire while working as a carpenter’s helper in a building located at 606 West 115th Street, New York County (“the subject premises”).

In support of his motion for summary judgment, Plaintiff submitted, *inter alia*, the deposition transcripts of Plaintiff and the director of commercial operations on behalf of Columbia, Jose Rosa (“Rosa”). Plaintiff contends that Columbia violated Labor Law §240(1) by failing to provide an adequate safety device to perform renovations on a drop ceiling. He further argues that Columbia is liable under Labor Law 241 § (6) predicated on a violation of Industrial Codes 12 NYCRR §23-1.13(b)(3) and (4) by failing to investigate and warn Plaintiff of a live wire and by failing to protect Plaintiff from said live wire.

According to Plaintiff, on the day of the accident, he was employed by a non-party contractor (Mamais) at a renovation project located at the subject premises (Plaintiff deposition TR- 7, 71-73, 116). It is undisputed that the building is owned by Columbia and Mamais performed work for Columbia at the subject premises

(NYSCEF Doc No. 3, Columbia's Answer). Plaintiff testified that he started working at the premises on August 15, 2019, and was tasked with helping Edwin Maldonado ("Maldonado"), a carpenter employed by Mamais (Plaintiff deposition TR-72). Both Plaintiff and Maldonado were supervised by Juan Carlos Casteneda, an employee of Mamais (*id.* at 72). Plaintiff testified that August 19, 2019, he and Maldonado were using A-frame ladders to remove and repair metal supports in a drop ceiling (*id.* at 93-94). Plaintiff further testified that on August 17, 18, and 19 of 2019, the superintendent came to the work site to inquire if electricity needed to be shut off (*id.* at 144). Plaintiff testified that on date of the accident, the superintendent of the building informed Maldonado that the electricity had been turned off in the room in which they were working (*id.*). Plaintiff testified that he told Maldonado about cables that were close to one of the metal supports, but that Maldonado assured him the cable had been de-energized and instructed Plaintiff to move the cable (*id.* at 150-151, 153). Plaintiff testified that immediately before the accident he was on his ladder holding a piece of the drop ceiling with his left hand while moving the cable with his right hand (*id.* at 165-166). Plaintiff testified that the wire touched a metal support for the drop ceiling resulting in a "spark", which caused Plaintiff to "drop on the floor" resulting in injuries (*id.* at 166-167, 174, 185-186).

Rosa testified that Columbia was not aware of any electrical issue in Plaintiff's workspace on August 19, 2019 (Rosa deposition TR-55). Rosa further testified that the superintendent, Amaury Perez, was authorized to turn off power in particular areas as needed (*id.* at 38).

In opposition, Columbia submitted, *inter alia*, the deposition transcripts of Rosa, and Plaintiff's coworker on the date of the accident, Maldonado, and the affidavit of expert engineer, Bernard P. Lorenz ("Lorenz"). Maldonado testified that on the date of the accident he and Plaintiff believed that there were no live wires in their workspace (Maldonado TR-72-73). Prior to the accident, he and Plaintiff were both on ladders (*id.* at 34). Maldonado saw Plaintiff get electrocuted by "very strong" sparks coming out of a piece of the drop ceiling where Plaintiff was working (*id.* at 29, 36-37, 75). Maldonado testified that Plaintiff got scared and hit his knee on one of the ladder's rungs (*id.* at 35). Maldonado noted that Plaintiff did not fall off the ladder, but instead walked down after he got shocked (*id.* at 35, 83-84).

In his affidavit, Lorenz averred that he inspected the site of the accident more than two years after the accident and noted that there were no physical indications of an electrical spark or arching on any part of the ceiling (Lorenz affidavit). Lorenz averred that when he touched the cable-at-issue he felt no shock (*id.*).

Summary Judgment Review

The court's function on a motion for summary judgment is issue finding rather than issue determination or credibility assessment (*Genesis Merchant Partners L.P. v Gilbride, Tusa, Last & Spellane LLC*, 157 AD3d 479 [1st Dept 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508 [1st Dept 2010]).

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact (*see* CPLR 3212 [b]; *Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, 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, 833 [2014]). If the movant fails to make such prima face showing then the motion must be denied regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY 2d 851 [1985]).\

Once the movant has made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY 2d 320 [1986]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004]).

Labor Law §240(1)

Labor Law §240(1) provides relevant in part that "[a]ll contractors and owners and their agents...in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure 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 failure to provide safety devices constitutes a negligence per se violation of the statute and subject owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident" (*Cherry v Time Warner, Inc.*, 66 AD3d 233 [1st Dept 2009]).

The Court of Appeals has held that "[n]ot 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). Rather, the liability 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" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001] citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

Here, this Court finds that conflicting evidence in the record raised triable issues of fact as to whether Plaintiff's accident occurred, and whether Columbia can be held liable under Labor Law §240(1) (*see Ruiz*

v Roosevelt Terrace Coop., Inc., 212 AD3d 487 [1st Dept 2023]; *see also Singh v New York City Hous. Auth.*, 211 AD3d 496, 497 [1st Dept 2022]). Plaintiff testified that he fell off the ladder after he came into contact with a live wire that had not been de-energized. In contrast, Plaintiff's coworker, Maldonado, testified that Plaintiff never fell, raising triable issues of fact as to whether Plaintiff's injuries were caused by a risk stemming from a physically significant elevation differential. Specifically, Maldonado testified that while he and Plaintiff were both standing on ladders, a spark occurred scaring Plaintiff, and causing him to hit his knee on a rung on the ladder. Maldonado further testified that Plaintiff did not fall, but instead walked down the ladder after his knee hit a rung of the ladder. Even assuming Plaintiff's accident involved a gravity-related risk within the ambit of Labor Law §240(1), triable issues of fact remain as to whether Plaintiff was provided an adequate safety device "so constructed, placed, and operated as to give proper protection" (Labor Law §240[1]; *see Hartigan v Gilbane Bldg. Co.*, 228 AD3d 487 [1st Dept 2024]). Based upon the inconsistent record evidence as to why and how his accident happened, Plaintiff failed to establish what safety device of a kind enumerated in the statute would have prevented his gravity related injury (*id.*). Accordingly, the branch of Plaintiff's motion seeking summary judgment pursuant to Labor Law §240(1) is denied.

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., Inc.*, 91 NY2d 343, 348 [1998] internal quotations omitted). The standard of liability under Labor Law §241(6) requires that a plaintiff allege that an owner or general contractor breached a specific rule or regulation containing a positive command (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). In addition, Labor Law §241(6) requires that a plaintiff establish that violation of a safety regulation was the proximate cause of the accident (*Gonzalez v Stern's Dept. Stores, Inc.*, 211 AD2d 414 [1st Dept 1995]).

In support of his Labor Law §241(6) claim, Plaintiff cites Industrial Codes 12 NYCRR §23-1.13(b)(3) and (4), therefore abandoning all other predicates not raised in his legal arguments and as such those claims are dismissed (*Burgos v Premiere Properties, Inc.*, 145 AD3d 506 [1st Dept 2016]; *see also 87 Chambers, LLC v 77 Reade, LLC*, 122 AD3d 540 [1st Dept 2014]).

Industrial Codes 12 NYCRR §23-1.13(b)(3) and (4) set forth specific responsibilities for an employer to undertake in connection with demolition around or near energized power lines and facilities. Specifically, Industrial Code 12 NYCRR §23-1.13(b)(3) requires an employer to first ascertain whether any work to be performed could have contact with any part of an electrical power circuit and, if so, such employer must

post and maintain warning signs as well as advise employees of the location of the possible hazards and any protective measures to be taken.

Here, the record is devoid of evidence that Columbia posted warning signs or notified Plaintiff that the subject conduit was energized, nor is there evidence that Columbia tried to protect Plaintiff from electrical shock by de-energizing, grounding, or guarding the circuit. In opposition, Columbia failed to raise a triable issue of fact that it complied with these provisions. Accordingly, Plaintiff established his *prima facie* entitlement to judgment on this predicate.

Industrial Code 12 NYCRR §23-1.13(b)(4) requires that no employer shall permit employees to work in such proximity to an electric power circuit or to undertake in connection with demolition around or near energized power lines and facilities unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding the circuit with effective insulation.

Here, both Plaintiff and Maldonado testified that Plaintiff was shocked by a live wire in their workspace. Columbia asserts that the affidavit of Lorenz demonstrated that there was no electrical spark. Given the nearly three year gap between the date of the accident and Lorenz's inspection, it is unclear whether the conditions he observed were consistent with the conditions immediately after the accident. In light of the foregoing, Columbia's submissions are insufficient to raise triable issues of fact.

Accordingly, Plaintiff has demonstrated his *prima facie* entitlement to summary judgment as to liability pursuant to Labor Law §241(6) by showing that Plaintiff came into contact with a wire that was not de-energized, resulting in a Plaintiff receiving an electric shock (*see DelRosario v United Nations Fed. Credit Union*, 104 AD3d 515, 516 [1st Dept 2013]).

Accordingly, it is hereby,

ORDERED, that Plaintiff's motion for summary judgment is **GRANTED TO AN EXTENT**, and it is further

ORDERED, that Plaintiff is **granted** and awarded summary judgment on the Labor Law §241(6) claim as predicated on Industrial Codes 12 NYCRR §23-1.13(b) (3) and (4), and it is further

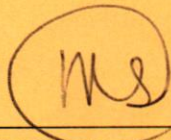
ORDERED, that Plaintiff is **denied** summary judgment on Labor Law §240(1) as there is a triable issue of fact; and it is further

ORDERED, that the Clerk of this Court is hereby directed to enter judgment accordingly, and it is further

ORDERED, that counsel for Plaintiff shall serve and file a copy of this Decision and Order with Notice of Entry upon all parties within fifteen (15) days of the date of this Decision and Order.

This constitutes the Decision and Order of this Court.

Dated: February 20, 2025

A handwritten signature in black ink, consisting of stylized initials 'MS', enclosed within a hand-drawn circle.

HON. MYRNA SOCORRO, J.S.C.