Supreme Court of the State of New York
County of Kings

Index Number 503528/2023
Seqs. 001 and 002

Part LL1M

WILLIAM SANCHEZ,

Plaintiff,

against

KEYSTONE WEST BROADWAY, LLC,

Defendant.

DECISION/ORDER

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 49–115, 118.

Upon the foregoing papers, defendant Keystone West Broadway, LLC (Keystone)'s motion to amend its pleadings (Seq. 001) and plaintiff's motion for summary judgment (Seq. 002) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained when he fell from a ladder on January 3, 2023 while working at a construction site located at 506 LaGuardia Place, New York, NY (the premises). It is undisputed that Keystone owned the premises. Plaintiff testified as follows: Plaintiff was hired by non-party Franklylofty to perform renovations at the site (Sanchez first EBT at 30). Plaintiff was working on finishing the installation of cables in the ceiling of the second floor prior to his accident (*id.* at 95, 97). Plaintiff was using a six-foot A-frame ladder (*id.* at 104). After working on the ladder for two to three minutes, the ladder fell, causing plaintiff to fall to the ground (*id.* at 105).

Analysis

Amendment

Generally, leave to amend pleadings pursuant to CPLR 3025 (b) is liberally granted. However, that general rule is limited by certain circumstances, and permission to amend is "committed to the broad discretion of the trial court" (*Vorobichik v Greenpoint Goldman SM, LLC*, 164 AD3d 866, 866 [2d Dept 2018]). Allegations of fraud must be pled "in detail," or "with particularity," whether as a cause of action or as a defense (CPLR 3016 [b]; *Matter of Clarke v Wallace Oil Co., Inc.*, 284 AD2d 492, 492–493 [2d Dept 2001]). "The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation . . . and damages" (*Eva Chen Fine Jewelry, Inc. v Recovery Racing IX, LLC*, 222 AD3d 840, 842 [2d Dept 2023]).

Here, defendant has failed to plead the elements of fraud with particularity. Although defendants identify statements from the plaintiff individually that they claim are false or misleading, defendants do not claim to have justifiably relied on any such misstatements. Indeed, the fact that defendants are actively litigating this matter "actually illustrates *a lack of reliance* on Plaintiffs' allegedly false assertions" (*Seaz v Excellent Bus Serv. Inc.*, 21-CV-6967 (TAM), 2025 WL 990247, at *8 [EDNY Apr. 2, 2025] [emphasis original]).

Mere allegations that a party or claim is what some might colloquially call a "fraud" does not equate to meeting the standard for pleading a legal cause of action. The Appellate Division, First Department has recently held that precisely this type of amendment is "patently devoid of merit" (*Breton v Dishi*, 234 AD3d 432 [1st Dept 2025]; *see also Linares v City of New York*, 223 NYS 3d 62 [1st Dept 2024]). Although there may now be a disagreement between the Appellate

Departments about amendment when there is concrete evidence indicating that an accident was staged, that is not the claim here (*Gimenez v Pepsi-Cola Bottling Company of New York, Inc.*, 234 AD3d 943 [2d Dept 2025]; *contra Anguisaca-Morales v St. Paul and St. Andrew United Methodist Church*, 238 AD3d 439 [1st Dept 2025]). Defendants' arguments in this case are based solely on speculation about plaintiff's associations and medical treatment, neither of which are adequate to support legal allegations of fraud.

Finally, the costs of investigation and defense are incidents of litigation, not equivalent to damages arising from detrimental reliance (*see Cerciello v Admiral Ins. Brokerage Corp.*, 90 AD3d 967 [2d Dept 2011]; *see also Hollander v Flash Dancers Topless Club*, 173 Fed Appx 15, 18 [2d Cir 2006]). Under the American Rule, cost shifting is not the ordinary practice in personal injury litigation, and defendants cannot seek to engage in impermissible fee shifting through inadequately pled claims of fraud (*see 214 Wall Street Associates, LLC v Medical Arts-Huntington Realty*, 99 AD3d 988 [2d Dept 2012]).

Therefore, defendant's motion to amend is denied. This decision is made based on the motions, papers, and arguments before the court, and does not reflect the court's assessment of any matters not currently at bar, including the merits of any pending action or any duly commenced outside claim for fraud.

Labor Law § 240 (1)

Labor Law § 240 (1) imposes a non-delegable duty on owners and general contractors to provide safety devices necessary to protect workers from gravity-related risks, including falling from an elevated work surface (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]). A plaintiff can obtain summary judgment even when he is the sole witness to the accident if his

testimony resolves all material questions of fact and is unrebutted by other admissible evidence (*see Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]).

Here, plaintiff's testimony is sufficient to establish that he was not provided with an adequate safety device and that, due to the statutory violation, he suffered harm. An owner is statutorily required to ensure that an individual performing qualified work has proper safety devices, including a ladder (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003]). The owner can be liable even if it did not exercise supervision or control the work (*id.*). Therefore, Keystone is subject to liability under Labor Law § 240 (1).

In opposition, defendants have failed to raise a triable issue of material fact. Unlike the cases cited by defendant in its opposition, the plaintiff testifies that the ladder he was using fell over. Plaintiff is not required to testify why it fell in order to obtain summary judgment under Labor Law § 240 (1) (*see Melchor v Singh*, 90 AD3d 866 [2d Dept 2011]). Defendant also contends that plaintiff may have been the sole proximate cause because he did not level the floor where he placed the ladder. This argument in unavailing. Although defense counsel claims that the plaintiff was tasked to level the floor, the testimony does not support that claim. Plaintiff merely testified that he had leveled other floors in the premises previously (Sanchez first EBT at 89). Furthermore, plaintiff testified that the area where he placed the ladder was flat (Sanchez second EBT at 23–24), did not testify that leveling this area of the floor was his responsibility, and ultimately testified that the ladder "gave out" and "failed" (Sanchez first EBT at 107). Defendant's sole proximate cause argument is based solely on allegations made by defense counsel and is unsupported by the record (*see Buzzetta v NYU Hospitals Center*, 241 AD3d 628, 629 [2d Dept 2025]).

Therefore, plaintiff's motion for summary judgment is granted.

Discovery Requests

Finally, defendant seeks permission to depose plaintiff's treating physicians. However, defendant has not provided any subpoena or other discovery related instruments seeking such depositions, and the court declines to pre-determine discovery requests that are not yet ripe in the absence of appropriate discovery instruments. Therefore, the motion is denied.

Conclusion

Defendant's motion to amend and for discovery (Seq. 001) is denied.

Plaintiff's motion for summary judgment on his Labor Law § 240 (1) (Seq. 002) is granted.

This constitutes the decision and order of the court.

December 23, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court