

Delcid v 301 E. 80th Realty LLC

2025 NY Slip Op 35157(U)

August 8, 2025

Supreme Court, Bronx County

Docket Number: Index No. 27330-2020E

Judge: Myrna Socorro

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This opinion is uncorrected and not selected for official publication.

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**Supreme Court of the State of New York
County of Bronx Part IA-9**

-----X
Jose Santos Delcid
Plaintiff

**Index No. 27330-2020E
Motion seq #2 and #3**

-against-

**301 East 80th Realty LLC,
CM & Associates Construction
Management LLC,
Defendants**

**DECISION & ORDER
Hon. Myrna Socorro, J.S.C.**

-----X
**301 East 80th Realty LLC,
CM & Associates Construction
Management LLC,
Third Party Plaintiffs**

-against-

**Quality Stone Corp.,
Third Party Defendant**

-----X
**301 East 80th Realty LLC,
CM & Associates Construction
Management LLC,
Second Third Party Plaintiffs**

-against-

**Quality Stone Supplies Corp.,
Second Third Party Defendant**

The following e-filed documents, listed by NYSCEF document number (Motion seq #2) #56-73; 91, 94, 96, 104-105, 107 and 111, and (Motion seq #3) #74-90, 92, 95, 97-103 and 106, both motions for summary judgment, which were orally argued and marked submitted on June 26, 2024.

According to the plaintiff, on the date of the accident on June 17, 2020: he was employed by Quality Stone Corp. ("Quality"); he was installing wall tile in the master bedroom of apartment 10C at 301 East 80th Street, New York, New York; he was using a four-foot stepladder, when it suddenly moved, which caused him to fall.

Defendant 301 East 80th Street 80th Street Realty LLC (“Realty”) owned the subject premises. Realty hired CM & Associates Construction Management LLC (“CM”) to do the construction work at the premises. CM subcontracted the interior stone/tile to Quality.

In motion sequence #2, Realty and CM (collectively “defendants”) move to dismiss plaintiff’s Labor Law §240(1), §241(6), and §200/common law negligence claims. As a preliminary matter, this Court notes that plaintiff does not oppose the branch of the motion that seeks to dismiss his Labor Law §241(6) and §200/common law negligence claims. Accordingly, said branch of the motion is **granted** as unopposed and plaintiff’s Labor Law §241(6) and §200/common law negligence claims are hereby dismissed.

As to Labor Law §240(1), defendants first argue that the claims should be dismissed because the subject stepladder was an adequate safety device as plaintiff testified that the stepladder was not defective and was in good condition. Furthermore, defendants argue that plaintiff was the sole proximate cause of his injuries as plaintiff told the emergency room doctor that he fell from the four-foot ladder when his foot got caught in the rungs of the ladder. Defendants aver that it was not until one year later during his deposition that plaintiff claimed that he fell because the stepladder moved.

Plaintiff opposes defendants’ motion to dismiss his Labor Law §240(1) claim. Plaintiff argues that the portions of the medical record entry which state how he fell are inadmissible hearsay because the method by which he fell is not germane to treatment. At a minimum, plaintiff argues that plaintiff’s testimony that the ladder moved raises an issue of fact.

In motion sequence #3, plaintiff moves for partial summary judgment as to liability with respect to his Labor Law §240(1). Defendants oppose the motion.

Summary Judgment

The court’s function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC*, 157 AD 3d 479; 699 NYS 3d 30 [1st Dept. 2018]; *Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD 3d 508; 894 NYS 2d 422 [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; 33 NYS 3d 853 [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 N.Y. Univ. Med. Ctr.*, 64 NY 2d 851; 487 NYS 2d 316 (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; 508 NYS 2d 923 [1986]; and *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 in part: “All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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 per se violation of the statute and subjects 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, 235 [1st Dept 2009] [citations and quotations omitted].

“Generally, admissions not germane to the treatment or diagnosis of a plaintiff’s injuries are not admissible under the business records exception to the hearsay rule... A hearsay entry in a hospital record as to the cause of an injury may be admissible at trial even if not germane to diagnosis, if the entry is inconsistent with a position taken at trial. However, there must be evidence that connects the party to the entry.” *Grant v New York City Tr. Auth.*, 105 AD3d 445, 446 [1st Dept 2013].

Upon a review of the motion papers, this Court finds that plaintiff established his *prima facie* burden of a Labor Law §240(1) violation through his testimony that the subject stepladder suddenly moved, which served as a proximate cause of the accident. *See Ping Lin v 100 Wall St. Prop. L.L.C.*, 193

AD3d 650 [1st Dept 2021]; *Merino v Continental Towers Condominium*, 159 AD3d 471 [1st Dept 2018]; *Wasilewski v Museum of Modern Art*, 260 AD2d 271 [1st Dept 1999]. “It is well settled that a statutory violation is established if a scaffold or ladder shifts, slips, or collapses, thereby causing injury to a worker.” *Castillo v TRM Contr. 626, LLC*, 211 AD3d 430 [1st Dept 2022] [citing *Panek v County of Albany*, 99 NY2d 452, 458 [2003]]. Contrary to defendants’ argument, plaintiff is not required to show that the ladder on which he was standing was defective. *See Montalvo v J. Petrocelli Const., Inc.*, 8 AD3d 173, 174 [1st Dept 2004].

In opposition to plaintiff’s motion and in support of their own motion, the Court finds that defendants have raised an issue of fact. As highlighted by defendants, plaintiff’s emergency room records indicate that plaintiff stated that his foot got caughed in the ladder and he fell down. At his deposition, Dr. Lee Donner, the doctor who treated plaintiff the emergency room right after the alleged incident, testified that the accident description contained in the records were accurate and that plaintiff made the statement. This contradicts plaintiff’s testimony at his deposition that the stepladder suddenly moved¹. Thus, even assuming *arguendo* that the statement was not germane to treatment or diagnosis, there is “evidence that connects the party to the entry” (*Grant, supra*). Therefore, plaintiff’s motion seeking summary judgment pursuant to Labor Law §240(1) and defendant’s branch of motion seeking dismissal of plaintiff’s Labor Law §240(1) are **denied**.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the court, it is hereby **denied**.

Accordingly, it is hereby

ORDERED, that defendant’s motion seq #2 is **GRANTED TO EXTENT** in that plaintiff’s labor Law §241(6) and §200/common law negligence claims are dismissed without opposition; and it is further

ORDERED, that plaintiff’s motion seq #3 is **DENIED**; and it is further

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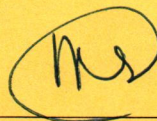
It appears from the papers submitted into evidence, that the plaintiff used an interpreter at the emergency room and at the deposition.

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

ORDERED, that plaintiff shall serve a copy of this order with notice of entry upon all parties within thirty (30) days of the date of this Decision and Order

This constitutes the decision and order of this court.

Dated: August 8, 2025



HON. MYRNA SOCORRO, J.S.C.