

Cabrera v Stagg Constr. LLC

2025 NY Slip Op 35168(U)

September 23, 2025

Supreme Court, Bronx County

Docket Number: Index No. 21491/2020e

Judge: Myrna Socorro

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E#006

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

-----X
Victorino Torres Cabrera,
Plaintiff,

-against-

Stagg Construction LLC, and BE Bronx
Builders LLC

Defendants,

-----X
Stagg Construction LLC,
Third-Party Plaintiff,

-against-

S.R. Interiors, Inc.,
Third-Party Defendant.

-----X
Stagg Construction LLC
Second Third-Party Plaintiff,

-against-

S.R. Interiors, Inc.,
Second Third-Party Defendant.

-----X
BE Bronx Builders LLC,
Third Third-Party Plaintiff,

-Against-

S.R. Interiors, Inc.,
Third Third-Party Defendant.

-----X
The following papers were read on this plaintiff's motion (Seq. No. 6) for **SUMMARY JUDGMENT** against Defendants which was orally argued and marked submitted on **August 28, 2024**.

Papers	NYSCEF Doc. #
Plaintiff's Notice of Motion for Summary Judgment, Affirmation in Support, Exhibits and Memorandum of Law	#100-114
Defendants' Affirmation in Opposition and Exhibits	#120-128
Plaintiff's Reply Affirmation	#131

According to Plaintiff, on the day of the accident on October 22, 2019, at the premises of 705 Bronx River Road, Yonkers, New York, Plaintiff Victorino Torres Cabera, an employee of SR Interiors Inc., (“SR”) was handing hooks of bricks to a mason named Juan. After handing off the bricks to Juan, Plaintiff turned around and stepped onto coffee-colored paper with his left foot. The paper was not secured to the floor causing Plaintiff’s left foot and leg to subsequently fall straight through the hole in the floor the paper had been covering. Plaintiff was wearing a safety harness given to him by SR.

Stagg Construction, LLC (“Stagg”) was the owner of the subject premises and Be Bronx Builders LLC (“Be Bronx”) was the general contractor for the project. SR was subcontracted by Be Bronx to conduct masonry work.

Plaintiff now moves pursuant to CPLR §3212 for summary judgment against Defendants Stagg and Be Bronx on the issue of liability pursuant to Labor Law §240(1).

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]; *Meredian 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 facie 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].

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, 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].

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 he fell through a floor opening that had unsecured covering, which served as a proximate cause of the accident. *See Broughton v 553 Marcy Avenue Owners LLC*, 238 AD3d 536, [1st Dept. 2025]; *Guaraca v. West 25th Street Housing Development Fund Corporation*, 226 AD3d 568 [1st Dept 2024]; *Rubio v New York Proton Management, LLC*, 192 AD3d 438 [1st Dept 2021]; *Alonzo v Safe Harbors of the Hudson House Dev. Fund Co., Inc.* 104 AD3d 446 [1st Dept 2013].

In opposition, Defendants assert that Plaintiff’s account of the accident is not credible due to inconsistencies between his deposition testimony and Plaintiff’s reports to medical providers, namely that the medical records state that Plaintiff slipped/tripped and fell onto the floor. This however is not inconsistent with Plaintiff’s deposition testimony that his left leg fell into the hole and his right arm, knee and hand hit the floor. Defendants also raise the pending federal Civil RICO action

against Plaintiff's law firm in support of their arguments, however the First Department has repeatedly rejected attempts by defendants to use the unproven allegations of fraud from pending Civil RICO actions. *See Broughton* at 537; *Angusiaca-Morales v St. Paul and St. Andrew United Methodist Church*, 238 AD3d 439, [1st Dept. 2025]; *Linares v City of New York*, 233 AD3d 479, [1st Dept. 2024]. Therefore, Defendants have failed to raise an issue of fact and rebut Plaintiff's *prima facie* entitlement to summary judgment. Accordingly, Plaintiff's motion for summary judgment on his labor Law §240(1) claim is **granted**.

Accordingly, it is hereby

ORDERED, that the motion for summary judgment by Plaintiff Victorino Torres Cabera on his Labor Law §240(1) claim against Defendants Stagg Construction LLC and BE Bronx Builders LLC, is **GRANTED**, and it is further

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: September 23, 2025



HON. MYRNA SOCORRO, J.S.C.