

Chacha v Pride Lodging LLC

2025 NY Slip Op 35187(U)

July 7, 2025

Supreme Court, Bronx County

Docket Number: Index No. 32090-2019E

Judge: Myrna Socorro

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E#003 & E#004

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

-----X
Ana Chacha,
Plaintiff

**Index No. 32090-2019E
Motion seq #3 and #4**

-against-

Pride Lodging LLC,
Defendant

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

-----X
Pride Lodging LLC,
Third Party Plaintiff

-against-

Sunny Builders NY Corp.,
Third Party Defendant
-----X

The following e-filed documents, listed by NYSCEF Doc. Nos 63-75; 77-89; 93-101; and 103-124 were read on these motion seq #3 and #4, both which were orally argued and marked submitted on October 18, 2024.

Plaintiff Ana Chacha moves pursuant to CPLR §3212 (Seq. #3) for partial summary judgment as to liability on her Labor Law §240(1) claim. Defendant/third-party plaintiff Pride Lodging LLC cross-moves pursuant to CPLR §3212 for dismissal of plaintiff's Labor Law §240(1) and §241(6) claims. Pride moves pursuant to Uniform Rules for Trial Courts (22 NYCRR) §130-1.1(a) (Seq.#4) for sanctions against plaintiff, and plaintiff cross-moves for the same relief against Pride. The motions are decided as follows:

This action arises out of a construction accident on October 5, 2019, at the building located at 1275 Pugsley Avenue, Bronx, New York (the premises). Pride owns the premises and hired PHG Construction, which is not a party to the action, as the general contractor for the construction of a new building at the premises. Price also subcontracted certain excavation and foundation work to third-party defendant Sunny Builders NY Corp. (Sunny). Plaintiff worked for Sunny as a construction site cleaner. On the day of the accident, plaintiff had been clearing debris on the second floor when she was instructed to head outside to work as a flagger. As she walked towards the steps, she was struck by a falling piece of metal rebar, which had been temporarily installed to hold up the floor above her while other workers poured concrete.

Plaintiff (Seq. #3) argues she is entitled to summary judgment as to liability on her Labor Law §240(1) claim because she was struck from above by the unsecured rebar. She also argues that Pride's cross-motion should be dismissed as untimely. In opposition, and in support of its cross-motion, Pride argues that its cross-motion seeks nearly identical relief as the motion, and therefore the court should hear it. Pride also argues that plaintiff is not a covered worker under Labor Law §241(6), that none of the Industrial Code provisions cited by plaintiff are applicable to her accident, and that the metal rod was not being hoisted and did not need to be secured for purposes of plaintiff's work. Finally, Pride argues that issues of fact exist about the accident that preclude summary judgment.

Pride (Seq. #4) argues that plaintiff should be sanctioned for "highly improper and irrelevant personal attacks" (notice of motion, NYSCEF Doc. #03). Plaintiff cross-moves for the same relief, arguing that Pride has engaged in "grossly unprofessional misconduct" (notice of cross-motion, NYSCEF Doc. #113).

Summary Judgment Review

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility (*Genesis Merchant Partners L.P. v Gilbride, Tusa, Last & Spellane, LLC*, 157 AD3d 479, 481 [1st Dept 2018]; *Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [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 (CPLR 3212 [b]; *Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [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] [citation omitted]). 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 New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [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 requiring a trial (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381, 383-384 [2004]).

Timeliness of Pride's Cross-Motion

Plaintiff argues that Pride's cross-motion is untimely. In this regard, this court's part rules require parties to move for summary judgment within 60 days after the filing of the note of issue. Plaintiff filed the note of issue on November 27, 2023 (NYSCEF Doc. #32), and the 60-day period expired on January 26, 2024, the day on which plaintiff filed its motion. Pride's cross-motion is untimely because it was made on March 19, 2024, after the time do so expired, and Pride offers no explanation for its delay. However, where an untimely cross-motion seeks "nearly identical" relief as the initial motion, a court may consider it even in the absence of good cause for the delay (*Filannino v Triborough Bridge and Tunnel Auth.*, 34 AD3d 280, 281 [1st Dept 2006]).

Pride argues that its cross-motion raises nearly identical relief because plaintiff seeks summary judgment on its Labor Law §240(1) claim and Pride seeks dismissal of plaintiff's Labor Law §240(1) and §241(6) claims. The court will consider Pride's cross-motion to the extent it seeks dismissal of the §240(1) claim, as plaintiff sought partial summary judgment on that claim. In the absence of good cause for its failure to timely move, however, the court denies that branch of Pride's motion to dismiss the §241(6) claim, as plaintiff did not move with respect to that claim (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 89-90 [1st Dept 2013] ["We are concerned that the respect for court orders and statutory mandates and the authoritative voice of the Court of Appeals are undermined each time an untimely motion is considered simply by labeling it a 'cross motion' notwithstanding the absence of a reasonable explanation for its untimeliness"]).

Because the court denies the branch of Pride's cross-motion with respect to Labor Law §241(6) as untimely, the court need not address Pride's additional arguments that plaintiff is not covered by §241(6), or that plaintiff fails to cite an applicable Industrial Code provision.

Plaintiff's Labor Law §240(1) Claim

Plaintiff moves for summary judgment on the issue of liability under Labor Law §240(1). Pride opposes the motion, and cross-moves to dismiss Plaintiff's Labor Law §240(1) claim. Labor Law §240(1) applies to workers employed in the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" (*Stoneham v Joseph Barsuk, Inc.*, 41 NY3d 217, 220 [2023], citing *Dahar v Holland Ladder & Mfg. Co.*, 18 NY3d 521 [2012]). If an employee is engaged in an activity covered by section 240(1), "contractors and owners" must "furnish or erect" enumerated safety devices "to give proper protection" to the employee. 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] [internal citations and quotations omitted]).

However, “[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]). While Labor Law § 240(1) applies to both “falling worker” and “falling object” cases, the hazard from one type of case cannot be transferred to give rise to liability for the other, because the different risks arise from different construction practices (*Narducci*, 96 NY2d at 268). The hazard posed by working at an elevation is that, without adequate safety devices such as ladders and scaffolds, a worker could be injured in a fall (*id.*). By contrast, falling objects are associated with the failure to use a different type of safety device, such as a rope or pulley, to secure the object (*id.*).

Therefore, to prevail in a “falling worker” case, “a plaintiff must establish that there is a safety device of the kind enumerated in section 240(1) that could have prevented his fall” (*Cutaia v Bd. of Managers of 160/170 Varick Street Condominium*, 38 NY3d 1037, 1038 [2022], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 340 [2011] [internal quotations omitted]). Liability may only be imposed where the “plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [internal quotations omitted]).

On the other hand, to prevail in a “falling object” case, “the plaintiff must demonstrate that at the time the object fell, it either was being “hoisted or secured” (*Narducci*, 96 NY2d at 268) or “required securing for the purposes of the undertaking” (*Outar v City of New York*, 5 NY3d 731, 732 [2005]). A plaintiff must also show that a lack of overhead protection failed to shield the plaintiff against the falling object, and therefore proximately caused an injury (*Torres Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept 2024]).

There can be no liability under section 240(1) when the worker’s actions are the sole proximate cause of the accident (*Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280, 290 [2003]). It is “conceptually impossible for a statutory violation (which serves as a proximate cause for a plaintiff’s injury) to occupy the same ground as a plaintiff’s sole proximate cause for the injury. Thus, if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation” (*id.*).

Here, plaintiff establishes prima facie that she suffered a “falling object” injury. Plaintiff testified that while walking towards a flight of stairs, she was struck from above by a piece of metal rebar that fell over from where it had been installed to hold up cement pours on the upper floor (plaintiff

5/10/22 EBT NYSCEF Doc. #3 TR:60-67, 72-73). In opposition, Pride argues that the metal rod was not being hoisted and did not need to be secured for purposes of plaintiff's work. As the Court of Appeals has previously held, "liability under Labor Law §240 (1) is not limited to cases in which the falling object is in the process of being hoisted or secured" (*Quattrocchi v F.J. Sciamè Const. Corp.*, 11 NY3d 757, 758-59 [2008]). The rebar should have been appropriately secured to avoid its "unchecked or insufficiently checked descent" (*Arnaud v 140 Edgecomb LLC*, 83 AD3d 507, 508 [1st Dept 2011]), and it is undisputed that it was not properly secured.

Pride's reliance on *Narducci* in opposition is unavailing, as the plaintiff in *Narducci* was struck by a completed window that was "part of the pre-existing building structure as it appeared before work began" (96 NY2d at 268; *see also Fabrizi v 1095 Ave. of Americas, L.L.C.*, 22 NY3d 658, 663 [2014] [holding that "the compression coupling, which plaintiff claims was inadequate, is not a safety device constructed, placed and operated as to give proper protection from the falling conduit"]). Here, plaintiff testified that the rebar was installed temporarily to support the ceiling and would eventually have been removed for Sunny to use on other jobs (plaintiff 5/10/22 EBT TR:66-67).

Pride also points to several inconsistencies in plaintiff's testimony about events surrounding the accident. As a general matter, one may not oppose summary judgment simply by pointing to holes in the moving party's proof (*see Bryan v 250 Church Assoc., LLC*, 60 AD3d 578 [1st Dept 2009]). Moreover, to create a triable issue of fact regarding plaintiff's claim, Pride must submit evidence contradicting plaintiff's version of how the accident happened (*e.g. Bradley v Ibex Constr., LLC*, 54 AD3d 626, 627 [1st Dept 2008]). Pride does not submit any evidence regarding the happening of the accident.

Further, this Court finds that the fact that plaintiff's counsel is the subject of a federal lawsuit involving several entities allegedly falsifying construction accident claims is irrelevant to this proceeding.

Accordingly, plaintiff's motion for summary judgment as to liability on her Labor Law §240(1) claim is **granted**. That branch of Pride's cross-motion for dismissal of the claim is **denied**.

Sanctions

The parties move and cross-move for sanctions based on assertions that counsel have each made about each other's conduct in this case. The court may sanction parties and counsel for "frivolous conduct" (Uniform Rules for Trial Cts [22 NYCRR] §130-1.1 [a]). As relevant here, "conduct is frivolous if . . . (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or

to harass or maliciously injure another; or (3) it asserts material factual statements that are false” (*id.* at §130-1.1 [c]). A request for sanctions is committed to the court’s discretion (*e.g. FX Funding LLC v Fox RX Inc.*, 201 AD3d 519, 519-520 [1st Dept 2022]).

The court observes that the vast majority of the parties’ asserted frivolous conduct involves matters unrelated to this action. Such material cannot be the basis of sanctions in this case (*e.g. Curtis v Tabak is Tribeca, LLC*, 144 AD3d 509, 510 [1st Dept 2016] [holding that “the fact that (plaintiff) has been sanctioned before is not alone a basis for imposing sanctions against him in this case”]). Relevant solely to this case, the parties assert that Pride’s reference to the above-mentioned federal lawsuit against plaintiff’s counsel, and plaintiff’s counsel’s response thereto, are frivolous and in violation of the Rules of Professional Conduct regarding professional decorum.

The court finds that the parties have both engaged in conduct that can be deemed arguably frivolous but the Court declines to grant sanctions at this time. However, the court directs that counsel to confine themselves to the issues relevant to this case, and to abide by the rules governing decorum to each other and before the court. Further conduct by the parties or counsel in violation of these directives may result in sanctions.

Accordingly, Pride’s motion for sanctions is **denied**. Plaintiff’s cross-motion for sanctions is also **denied**.

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

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment (Seq. #3) as to liability on her Labor Law §240(1) claim is **GRANTED**; and it is further

ORDERED that defendant’s cross-motion for summary judgment dismissing plaintiff’s Labor Law §240(1) and §241(6) claims is **DENIED**; and it is further

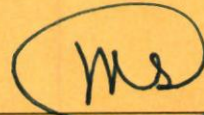
ORDERED that defendant’s motion for sanctions (Seq. #4) is **DENIED**; and it is further

ORDERED that plaintiff’s cross-motion for sanctions is **DENIED**; and it is further

ORDERED that the movants of each motion shall serve a copy of this order with notice of entry upon all parties within thirty (30) days from the date of this Decision and Order.

This constitutes the decision and order of the court.

Dated: July 7, 2025



HON. MYRNA SOCORRO, J.S.C.