

Ichapanta v East Side Home Stead, LLC

2025 NY Slip Op 35250(U)

November 18, 2025

Supreme Court, Bronx County

Docket Number: Index No. 812540/21E

Judge: Shawn T. Kelly

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: PART 24

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LUIS TIGSILEMA ICHAPANTA,
Plaintiff,

INDEX NO. 812540/21E

- v -

MOTION DATE _____

EAST SIDE HOME STEAD, LLC, TACONIC BUILDERS,
INC, JVA INDUSTRIES, INC.,

MOTION SEQ. NO. 6

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

EAST SIDE HOME STEAD, LLC
Plaintiff,

-against-

JVA INDUSTRIES, INC.

Defendant.

-----X

TACONIC BUILDERS, INC
Plaintiff,

-against-

JVA INDUSTRIES, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 6) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234, 235, 236, 241, 242, 243, 244

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

Defendant/Second Third-Party Plaintiff Taconic Builders, Inc., (herein "Taconic") moves pursuant to CPLR §3212 for summary judgment and dismissing Plaintiff's complaint, and any

and all counterclaims, cross claims and claims of any nature against it in their entirety and with prejudice; and for summary judgment against Second Third-Party Defendant JVA Industries, Inc (herein "JVA") finding that JVA is obligated to defend and indemnify Taconic pursuant to written contract, as well as to reimburse Taconic, for all fees, disbursements and costs incurred in the defense of this action; together with such other and further relief as this Court deems just and proper.

In motion sequence 003, Taconic moved for an Order pursuant to CPLR §3212 for summary judgment against JVA finding that JVA is obligated to defend and indemnify Taconic pursuant to written contract, as well as to reimburse Taconic for all fees, disbursements and costs incurred in the defense of this action; together with such other and further relief as this Court deems just and proper. This motion was denied with leave to renew on August 22, 2024 (NYSCEF Doc. No. 181).

Background

According to the plaintiff, on the day of the accident, he was employed by defendant/third-party defendant JVA as a carpenter at a construction site at a seven-story building, owned by East Side, located at 50 East 69th Street, New York, New York. Taconic Builders was retained by East Side to serve as general contractor on the project, which involved a conversion of a former commercial bank or medical building. The plaintiff testified that he was instructed by his foreman to bring sheets of plywood from the first floor to the third floor after they were delivered. The plaintiff testified there was no elevator and that he and his foreman would place the plywood onto a makeshift box lift in the elevator shaft to be hoisted up to the third floor where other workers would receive the plywood. He further testified that on one of the last trips up, he was instructed "to put in as much as possible" into the makeshift elevator-like

structure. The accident occurred when he attempted to walk away from the elevator shaft as the load was being lifted up, the makeshift lift suddenly and without warning collapsed causing sheets of plywood to fall and injure plaintiff. The plaintiff testified that he believed the makeshift lift "didn't resist the weight and the whole thing, everything came down." (NYSCEF Doc No. 222).

In support of its motion for summary judgment, Taconic submits documents including a sworn affidavit of Peter Kennedy (Taconic Builders superintendent), a sworn affidavit of Tom Ryan (president of Taconic Builders), and a copy of the subcontract between Taconic Builders and JVA. Pursuant to the Taconic Builders-JVA subcontract, Taconic Builders argues that JVA is obligated to defend and indemnify it and reimburse it for all fees, disbursements and costs incurred in the defense of this action.

Analysis

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion’s opponent to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). The evidence presented in a summary judgment motion must be examined in the “light most favorable to the party opposing the motion” (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 1st Dept 2010)) and bare allegations

or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Labor Law §200 and Common-Law Negligence

Labor Law §200 is a codification of the common law duty imposed upon an owner or general contractor to provide construction site workers with a reasonably safe place to work (*see Comes v NY State Elec. & Gas Coro.*, 82 NY2d 876 [1993]; *Lorabardi v. Stout*, 80 NY2d 290, 590 NYS2d 55, 604 NE2d 117 [1992]). Cases involving Labor Law §200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a worksite, and those involving the manner in which the work is performed (*Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323, 329 [2008]).

A general contractor may be held liable under Labor Law §200 where they have control over the work site and the general contractor either created or had actual notice of the dangerous condition that caused the plaintiff to fall (*see Bridges v Wyandanch Community Dev. Corp.*, 66 AD3d 938 [2d Dept 2009]; *Murphy v Columbia University*, 4 AD3d 200 [1st Dept 2004]). “To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it” (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). “The notice must call attention to the specific defect or hazardous condition and its specific location, sufficient for corrective action to be taken” (*Mitchell v New York Univ.*, 12 AD3d 200, 201 [1st Dept 2004]). However, a “‘general awareness’ is legally insufficient to charge defendants with constructive notice of the specific condition that resulted in plaintiff's injuries” (*Solazzo v New York City Tr. Auth.*, 21 AD3d 735, 736 [1st Dept 2005], *affd* 6 NY3d 734 [2005]).

Defendants contend that as they did not give direction to Plaintiff, nor did they control the means and methods of Plaintiff's work or create the defective condition. In opposition, Plaintiff argues that Defendant, as the general contractor, had authority and exercised some supervisory control over the construction site. Plaintiff contends that Mr. Kennedy, Taconic Builders superintendent, ordered JVA's workers to stop working when he saw something was wrong with the hoist. Plaintiff also contends that Mr. Kennedy knew that it was Plaintiff's first or second day on the job and he reprimanded JVA's supervisor for having a "new guy" working unsupervised on the first floor. Additionally, Mr. Kennedy changed the way JVA hoists material after Plaintiff's accident.

Triable issues of fact remain as to whether Defendants' alleged control over the means and methods of Plaintiff's work. Accordingly, Defendants' motion for summary judgment as to Labor Law §200 and common-law negligence is denied (*Favaloro v Port Auth. of New York & New Jersey*, 191 AD3d 524, 525, 143 NYS3d 4 [2021]).

Labor Law §240(1)

New York Labor Law §240(1) states as follows:

All 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 statute is violated when the plaintiff is exposed to an elevation-related risk while engaged in an activity covered by the statute and the defendant fails to provide a safety device adequate to protect the plaintiff against the elevation-related risk entailed in the activity or provides an inadequate one" (*Jones v 414 Equities LLC*, 57 AD3d 65, 67 [1st Dept 2008] (citations omitted)). Thus, pursuant to Labor Law §240(1), owners and contractors have the duty

to provide safety equipment to protect workers from hazards related to elevating themselves or their materials at the work site (*Drew v Correct Manufacturing Corp.*, 149 AD2d 893, 540 NYS2d 575 [3d Dept 1989]; see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 618 NE2d 82 [1993] [“Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person]). The legislative intent behind Labor Law §240(1) is to place the “ultimate responsibility for safety practices at building construction jobs...on the owner and general contractor, instead of on workers, who are scarcely in a position to protect themselves from accident.” (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 520 [1985]).

Labor Law §240(1), commonly referred to as the “Scaffold Law, imposes a nondelegable duty upon all contractors and owners and their agents to provide safety devices necessary to protect a worker from risks inherent in elevated work sites, “regardless of whether they supervise or control the work. (*Ochoa v JEM Estate Co., LLC.*, 2024 NY App Div LEXIS 181, 2024 WL 172825). The statute is one of absolute liability upon owners, contractors and its agents who fail to provide or provide inadequate safety devices. To be successful on a motion for summary judgment pursuant to Labor Law §240(1), a plaintiff must establish that the statute was violated, and such violation was a proximate cause of plaintiff’s accident. (*Estrella v ZRHLE Holdings LLC.*, 218 AD3d 640 [2nd Dept 2023]; *Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 N.Y.3d 280, 286 [2003]; *Beckley v J.E. Levine Builder Inc.*, No. 153509/2020, 2025 WL 257194, at *2 [NY Sup. Ct. Jan. 21, 2025]). “There must be a foreseeable risk of injury from an elevation-related hazard to impose liability under the statute, as ‘defendants are liable for all normal and foreseeable consequences of their acts’” (*Ross*, 81 NY2d 494 at 74). A plaintiff must

demonstrate that the risk of injury from an elevation-related hazard was foreseeable, and that an absent or defective protective device of the type enumerated in the statute was a proximate cause of the injuries alleged (*Gordon v Eastern Ry Supply*, 82 NY2d 555, 562 [1993]).

“There is no bright-line minimum height differential that determines whether an elevation hazard exists.” (*Brown v 44 St. Dev., LLC*, 137 AD3d 703, 704 [1st Dept 2016]; *Thompson v St. Charles Condominiums*, 303 AD2d 152, 154 [1st Dept 2003]; *see also Arrasti v HRH Constr., LLC*, 60 AD3d 582, 583 [1st Dept 2009] [finding that 18 inches was sufficient to create an elevation hazard]; *Lelek v Verizon N.Y., Inc.*, 54 AD3d 583, 584, 863 NYS2d 429, 431 [1st Dept 2008] [noting that defendants were not relieved of liability under Labor Law §240(1) despite that the plaintiff’s fall was only 2 1/2 to 3 feet].) Rather, the relevant inquiry is whether the harm is one “directly flowing from the application of the force of gravity to an object or person.” (*Prekulaj v Terano Realty*, 235 AD2d 201, 202 [1st Dept 1997].)

While contributory and comparative negligence are not defenses under Labor Law §240(1), where plaintiff’s action is proven to be the sole proximate cause of the accident and resultant injury, no recovery can be afforded to plaintiff pursuant to Labor Law §240(1). (*Bascombe v West 44th St. Hotel, LLC.*, 124 AD3d 812 [2d Dept 2015]; *Roblero v Bais Ruchel High Sch., Inc.* 175 AD3d 1446 [2d Dept 2019]; *Ramnarine v Staten Island Supreme Ct.*, 82 Misc 3d 1204(A), 205 NYS3d 752 [2024]; *Cahill v Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 40 [2004]).

There are several material issues of fact regarding the circumstances that caused the accident. The contradictory versions of how the accident occurred preclude a finding of summary judgment for a violation of Labor Law §240(1).

Labor Law §241(6)

Labor Law §241(6) provides, “[a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to persons employed therein or lawfully frequenting such places.” Labor Law §241(6) places a non-delegable duty upon owners and general contractors, and their agents, to comply with the specific safety rules set forth in the New York State Industrial Code (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-02 [1993]). In order to prevail on a cause of action under Labor Law §241(6), a plaintiff must establish a violation of an implementing regulation which sets forth a specific standard of conduct (*see Ross*, 81 N.Y.2d at 501–504; *Ortega v Everest Realty LLC*, 84 AD3d 542, 544, 923 NYS2d 74, 77 [2011]).

In his Verified Bill of Particulars, Plaintiff alleges the following "including but not limited to" Part 23 Industrial Code violations as the basis for his Labor Law §241(6) claim: 1.5, 1.7, 1.11, 1.15, 1.16, 1.17, 1.31, 1.32, 2.1, 5.1-5.10, and 5.13. Plaintiff has failed to specify any subsection of these provisions and as such these allegations are deemed abandoned (*McLean v Tishman Constr. Corp.*, 144 AD3d 534, 535 [1st Dept 2016]; *Caminiti v Extell W. 57th St. LLC*, 166 AD3d 440, 441, 88 NYS3d 13 [2018]).

Further, Plaintiff’s attempt for the first time in opposition, to amend his bill of particulars to include allegations under Industrial Code sections 23-6.1(b), 23-6.1(c), 23-6.1(d), 23- 6.1(h), and 23-6.3(a) is improper and rejected.

Accordingly, Taconic’s motion for summary judgment is granted to the extent that Plaintiff’s Labor Law §241(6) claim is dismissed (*see Ng v NYU Langone Medical Ctr.*, 157 AD3d 549, 550 [1st Dept 2018]; *Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]; *Josephson LLC v Column Fin., Inc.*, 94 AD3d 479, 480 [1st Dept 2012]).

Contractual Indemnification

Taconic motion for summary judgment on its contractual indemnification claims against JVA is denied as moot. The issue was resolved pursuant to the Appellate Division’s November 6, 2025 decision (NYSCEF Doc. No. 247).

Conclusion


Accordingly, it is hereby

ORDERED that Taconic’s motion for summary judgment is denied as to Plaintiff’s Labor Law §200 and common law negligence claims; and it is further

ORDERED that Taconic’s motion for summary judgment is denied as to Plaintiff’s Labor Law §240(1) claim; and it is further

ORDERED that Taconic’s motion for summary judgment is granted to the extent that Plaintiff’s Labor Law §241(6) claim is dismissed; and it is further

ORDERED that the parties are to appear for an in person pre-trial conference on December 10, 2025, at 9:30am.

<u>11/18/2025</u> DATE	 SHAWN T. KELLY			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE