Orellana v Monterey Owners Corp.
2025 NY Slip Op 35290(U)
December 11, 2025
Supreme Court, Queens County
Docket Number: Index No. 723561/2020
Judge: Anna Culley
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ANNA CULLEY IA Part 27
Justice

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DUBER GUILLEN ORELLANA,

Plaintiff,

-against-

MONTEREY OWNERS CORP.,

Defendant.

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Index Number 723561/2020

Motion Date October 22, 2024

Motion Seq. No. 2

The following numbered papers read on this motion by defendant for an order 1) Pursuant to Rule 3211 and Rule 3212 of the CPLR, granting defendant, Monterey Owners Corp., summary judgment and dismissing the plaintiff's Complaint.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	EF 39-71
Answering Affidavits - Exhibits	EF 73-87
Reply Affidavits	EF 89-91

Upon the foregoing papers, it is ordered that the motion is determined as follows:

On September 17, 2019, plaintiff, a laborer employed by nonparty New York Wonder Construction Corp., was allegedly injured when he fell from a bucket he was standing on while operating a drill against a building facade when the drill kicked back, causing him to fall off the bucket and landing onto the scaffolding. The accident occurred at 37-30 83rd Street in Queens, New York (the subject property). Defendant is the owner of the subject property.

Plaintiff subsequently commenced the instant action against defendant, seeking to recover damages for personal injuries sustained as a result of defendant's alleged violations of Labor Law §200, 240(1), and 241(6) and common-law negligence.

Defendant now moves for an order granting summary judgment in its favor dismissing plaintiff's Complaint.

In support of its motion, defendant submits, inter alia, the underlying pleadings, the verified bill of particulars, and deposition testimony transcripts of plaintiff and Amira Ghrawi, property manager for nonparty First Management, the building manager for the subject property at the time of the accident.

At the outset, the Court notes that defendant's arguments pertaining to plaintiff being collaterally estopped from bringing a claim against defendant as to the alleged accident, based on a decision in a related Workers' Compensation Board's decision, which dismissed plaintiff's claim against his employer finding, inter alia, that the alleged accident did not occur, is unavailing. As plaintiff notes in his opposition, and where defendant concedes as much in its reply, the Justice for Injured Workers Act explicitly holds that a "[determination by the [Workers' Compensation Board] shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrent, other than the determination of the existence of an employer employee relationship".

In turning to the remaining arguments set forth by defendant, summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974].) The party moving for summary judgment must present a prima facie case of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact, and the failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see* CPLR 3212 [b]; *Smalls v AJI Industries, Inc.*, 10 NY3d 733 [2008]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, once a prima facie showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution or tender an acceptable excuse for the failure to do so; mere expressions of hope are insufficient to raise a genuine issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

Labor Law §200

"Labor Law §200 codifies the common-law duty of an owner or contractor to provide employees with a safe place to work. Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work. General supervisory authority to oversee the progress of the work is insufficient to impose liability" (*Bulux v Moran*, 189 AD3d 761, 762-63 [2d Dept 2020][internal citations and quotations omitted]).

Here, the evidence in the record establishes that plaintiff's accident, as alleged, involves the manner in which the work was performed, and that defendant did not exercise any supervision or control over the method or manner of plaintiff's construction work while working for the nonparty contractor New York Wonder Construction.

In opposition, plaintiff fails to raise a triable issue of fact and rebut defendant's showing. Plaintiff's Affirmation in Opposition fails to substantively address defendant's argument on this issue. Having failed to rebut defendant's showing, summary judgment in defendant's favor and dismissal of plaintiff's Labor Law §200 claim is warranted. Thus, plaintiff's first and second causes of action are hereby dismissed.

Labor Law §241(6)

To recover under Labor Law §241(6), a plaintiff must demonstrate the violation of an Industrial Code provision, which sets forth specific, applicable safety standards, in connection with construction, demolition, or excavation work (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 393, 502-505 [1993]).

Based on the Complaint, plaintiff alleges violations of Industrial Code Provisions 12 NYCRR 23-1.7(b), 23-1.22(b)(2), 23-1.22(b)(4), and 23-1.22(c). Additionally, plaintiff's verified bill particulars alleges violations of Industrial Code provisions l2 NYCRR 23-1.21(b)(3) and 23-1.21(b)(4)(iv); and various OSHA Regulations.

Defendant has established that none of the Industrial Code Provisions cited to by plaintiff are applicable to the underlying accident. Additionally, it is well established that any alleged OSHA violations cannot form a basis for liability under Labor Law §241(6) (*see Marl v Liro Engrs. Inc.*, 159 AD3d 688, 689 [2d Dept 2018]). In any event, plaintiff fails to address said Provisions and OSHA Regulations in its opposition, and as such, he has abandoned reliance on them (*see Pita v Roosevelt Union Free Scho. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]; *Palomeque v Capital Improvement Servs., LLC*, 145 AD3d 912, 914 [2d Dept 2016]).

As such, the branch of the motion seeking summary judgment in its favor dismissing plaintiff's claims brought under Labor Law §241(6) is granted and plaintiff's fourth and fifth causes of action are hereby dismissed.

Labor Law §240(1)

"Labor Law §240(1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devises necessary to protect workers from risks inherent in elevated work sites" (*Claesen v VRD Contr., Inc.*, 241 AD3d 494, 496 [2d Dept 2025][citing *Escobar v Safi*, 150 AD3d 1081, 1082 [2d Dept 2017]). "Whether a plaintiff is entitled to recovery under Labor Law § 240 (1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies" (*Id.* at 497, citing *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). "The single decisive question is whether 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" (*Id* at 497, citing *Runner v New York Stock Exch., Inc.*, 13 NY2d 599, 603 [2009]). "Although comparative fault is not a defense to the strict liability of [Labor Law § 240 (1)], where the plaintiff is the sole proximate cause of his or her own

injuries, there can be no liability under Labor Law § 240 (1)" (*Lojano v Soiefer Bros. Realty Corp.*, 187 AD3d 1160, 1162 [2d Dept 2020]).

Here, based on the record before the Court, to include plaintiff's own deposition testimony, defendant met its prima facie burden of establishing its entitlement to summary judgment and dismissal of plaintiff's Labor Law §240(1) claim.

Plaintiff testified, inter alia, that the scaffolding was in proper, sturdy order; and that he was provided with adequate safety devices, to include a safety harness which he was wearing at the time of the accident, when he fell off a bucket that he stood on and landed onto the scaffolding. Similar to the aforementioned branches of the motion, plaintiff additionally fails to substantively oppose defendant's arguments with regard to this branch of the motion. As plaintiff has failed to rebut defendant's prima facie showing, summary judgment in defendant's favor and dismissal of plaintiff's Labor Law §240(1) claim is warranted.

As such, plaintiff's third cause of action is dismissed.

In sum, defendant's motion is granted, and the Complaint is dismissed. Any additional arguments raised by the plaintiff not specifically addressed herein, have been considered by the Court and are further without merit.

Accordingly, it is

ORDERED that defendant's motion for summary judgment dismissing plaintiff's Complaint is granted, and the Complaint is hereby dismissed.

Movant is not relieved from the applicable provisions of CPLR 2220 and 202.5-b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

The foregoing constitutes the decision and order of this court.

J. Culley

ANNA CULLEY, J.S.C.

Dated: December 11, 2025

FILED
12/15/2025 TA
COUNTY CLERK
QUEENS COUNTY