

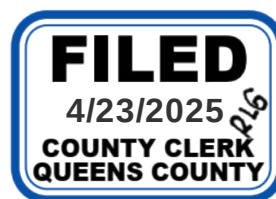
Tejeda v 150 Greenway Terrace LLC
2025 NY Slip Op 35539(U)
April 11, 2025
Supreme Court, Queens County
Docket Number: Index No. 711095/21
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35



-----X
JESUS A. ARAUJO TEJEDA

Index No.: 711095/21

Mot. Date: 1/7/25

Mot. Seq. 3

Plaintiff,

-against-

**150 GREENWAY TERRACE LLC, MBR
RESTORATION, LLC, and KAJ NY
CONSTRUCTION INC., ,
Defendants.**

-----X
150 GREENWAY TERRACE LLC,

Third-Party Plaintiff,

-against-

POLO 7, INC.,

Third-Party Defendant.

-----X
The following papers were read on this motion by plaintiff for an order, pursuant to CPLR 3212, granting plaintiff partial summary judgment against defendants 150 Greenway Terrace LLC (150 Greenway) and MBR Restoration, LLC (MBR) on his causes of action for violation of Labor Law §§ 240(1) and 241(6).

**PAPERS
NUMBERED**

Notice of Motion-Affidavits-Exhibits.....	EF 43-62
Memorandum of Law in Support.....	-----

Upon the foregoing papers, it is ordered that this motion by plaintiff is granted ,in part, and denied, in part, as set forth below.

As an initial matter, plaintiff's motion for a default judgment against defendant Kaj NY Construction Inc. was granted by this Court's Order, dated May 2, 2024, and

filed on May 4, 2022 (NYSCEF Doc. No. 25), with an inquest to determine damages to be held in abeyance until the trial or resolution of the action against the remaining defendants.

This action arises from a construction site accident, on April 2, 2021, at 150 Greenway Terrace, in Flushing, New York, Queens County. The premises were owned by 150 Greenway Terrace LLC (150 Greenway) and MBR Restoration, LLC (MBR) was the general contractor. Plaintiff alleges that, on that date, he was injured when he fell from a height while constructing a scaffold. Plaintiff alleges that the defendants violated Labor Law § 240(1) and § 241(6). The § 241(6) claim is predicated on Industrial Code § 23-1.16: “Safety belts, harnesses, tail lines and lifelines” and § 23-5.1 “General provisions for all scaffolds”.

It is well established that 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 demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). If the proponent succeeds, the burden shifts to the party opposing the motion, which then must show the existence of material issues of fact by producing evidentiary proof in admissible form (*see Id.*).

Plaintiff submits, *inter alia*, his deposition transcript, wherein he testified that he was injured while assembling scaffolding. More specifically, he was injured when the scaffolding collapsed, because a pin had not been placed in a “banana brace” used to secure the scaffold frames. As the plaintiff was climbing the outside of the scaffold, the scaffold collapsed, causing him to fall from approximately the height of the third or fourth floor and sustain injuries.

Plaintiff testified that, although he was wearing his safety harness, since he was climbing at the moment of the accident, the harness was not attached to anything. The harness was only attached once the workers reached the area where they intended to remain. This is corroborated by the deposition testimony of his co-worker. Plaintiff testified that, at this particular site, the workers did not have a rope to attach to while climbing the scaffold and that “you could not tie onto the scaffold”; [you] could only tie onto “[t]he lifeline.” Finally, the plaintiff testified that the scaffold itself also was

not complete and was not attached to the wall. He could not hook to the scaffold because “if the scaffold falls, you also fall, that’s why you have to hook onto the wall.”

Labor Law § 240 (1)

“Labor Law § 240 (1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites” (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374[2011]; *see Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 512 [1991]). To prevail on a Labor Law § 240 (1) cause of action, a plaintiff must establish that the statute was violated and that the violation proximately caused his or her injuries (*see Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39[2004]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 289 [2003]). The collapse of a scaffold or ladder for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute creates a presumption that the ladder or scaffold did not afford proper protection" (*Ramirez v Pace Univ.*, 230 AD3d 811, 812 [2d Dept 2024]; *Cruz v Roman Catholic Church of St. Gerard Magella in Borough of Queens in the City of N.Y.*, 174 AD3d 782, 783 [2d Dept 2019].)

Here, the plaintiff established, *prima facie*, that he was exposed to an elevation-related hazard within the ambit of Labor Law § 240(1) and that the unsecured scaffold was a proximate cause of his injuries (*see Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d 613, 614 [2d Dept 2024]; *Cruz v Roman Catholic Church of St. Gerard Magella in Borough of Queens in the City of N.Y.*, *supra*, 174 AD3d at 783).

In opposition, the defendants fail to raise a triable issue of fact as the motion is unopposed. Accordingly, the branch of plaintiff’s motion for partial summary judgment against defendants 150 Greenway Terrace LLC and MBR Restoration, LLC on his cause of action for violation of Labor Law § 240(1) is **granted**.

Labor Law § 241(6)

Plaintiff also asserts a cause of action for violation of Labor Law § 241(6). Plaintiff moves for summary judgment on his Labor Law § 241(6) claim, predicated upon Industrial Code §§ 23-1.16 and 23-5.1

Labor Law § 241(6) imposes a non-delegable duty on owners, contractors, and their agents to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor (*White v Village of Port Chester*, 84 AD3d 946 [2d Dept 2011]). “[T]o establish liability under Labor Law § 241(6), a plaintiff must demonstrate that the defendant’s violation of a specific rule or regulation was a proximate cause of the accident” (*Creese v Long Is. Light. Co.*, 98 AD3d 708, 710 [2d Dept 2012], quoting *Seaman v Bellmore Fire Dist.*, 59 AD3d 515, 516 [2d Dept 2009]; see also *Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513 [1985]; *Eddy v John Hummel Custom Bldrs., Inc.*, 147 AD3d 16, 24 [2d Dept 2016]).

In order to support a cause of action, under Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable given the circumstances of the accident, and sets forth a concrete standard of conduct rather than a mere reiteration of common-law principals (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 [1993]; *Ares v State*, 80 NY2d 959, 960 [1992]).

Industrial Code § 23-1.16 Safety belts, harnesses, tail lines and lifelines, provides, in pertinent part:

(b) Attachment required...At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.

(e) Lifelines. Any hanging lifeline required by this Part (rule) shall be not more than 300 feet in length from the point of suspension to grade, building setback or other surface. Every hanging lifeline shall be securely attached to a sufficient anchorage. ... Lifelines shall be fabricated of wire rope at least five-sixteenths inch in diameter or first grade manila or synthetic fibre rope at least one-half inch in diameter with a breaking strength of not less than 4,000 pounds.

This section has been held to be sufficiently specific to sustain a claim, under Labor Law § 241(6) (*see Anderson v MSG Holdings, L.P.*, 146 AD3d 401, 404 [2d Dept 2017].)

Here, it is undisputed that, while plaintiff was provided with a safety harness, he was not provided with a proper place to which to tie off his harness. Therefore, the plaintiff is entitled to summary judgment as to liability, on the Labor Law § 241(6) claim, predicated on a violation of Industrial Code § 23-1.16 (b) (*see Id*, 146 AD3d at 405).

Finally, Industrial Code § 23-5.1 General provisions for all scaffolds, provides, in pertinent part:

(c) Scaffold structure.

(1) Except where otherwise specifically provided in this Subpart, all scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use.

(e) Scaffold planking.

(1) Except on needle beam and pole scaffolds, scaffold planks shall extend not less than six inches beyond any support nor more than 18 inches beyond any end support. Such six inch minimum requirement shall not apply when such planks are securely fastened in place. Scaffold planks shall be laid tight and inclined planking shall be securely fastened in place.

The Second Department has held that § 23-5.1 (c) is sufficiently specific to support a Labor Law § 241(6) cause of action (*see Debenedetto v Chetrit*, 190 AD3d 933 [2d Dept 2021]; as is § 23-5.1 (e)(1) (*see Klimowicz v Powell Cove Assoc., LLC*, 111 AD3d 605 [2d Dept 2013].) However, counsel for plaintiff fails to cite to any cases holding that the plaintiff is entitled to summary judgment for a § 241(6) cause of action, predicated upon violations of Industrial Code §§ 23-5.1 (c) and 23-5.1 (e)(1). As such, that branch of the motion is denied, despite the fact that it is unopposed.

Accordingly, it is

ORDERED that ordered that plaintiff's motion is granted, in part, and denied, in part, in that: it is

ORDERED that the branch of plaintiff's motion for partial summary judgment against defendants 150 Greenway Terrace LLC and MBR Restoration, LLC, on his cause of action for violation of Labor Law § 240(1) is **granted**, without opposition; and it is further

ORDERED that the branch of plaintiff's motion for partial summary judgment against defendants 150 Greenway Terrace LLC and MBR Restoration, LLC, on his cause of action for violation of Labor Law § 241(6), predicated on a violation of Industrial Code § 23-1.16 (b) is **granted**, without opposition; and it is further
:

ORDERED that the branch of plaintiff's motion for partial summary judgment against defendants 150 Greenway Terrace LLC and MBR Restoration, LLC, on his cause of action for violation of Labor Law § 241(6), predicated on a violation of Industrial Code §§ 23-5.1 (c) and 23-5.1 (e)(1), is **denied**; and it is further

ORDERED that any arguments or requests for relief not addressed herein have nonetheless been considered by the Court and are denied.

Dated: April 11, 2025



TIMOTHY J. DUFFICY, J.S.C.

