

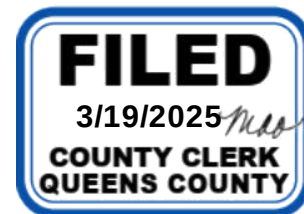
Cuba v 809 Broadway Holding LLC
2025 NY Slip Op 35624(U)
March 18, 2025
Supreme Court, Queens County
Docket Number: Index No. 714007/2019
Judge: Karina E. Alomar
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Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE KARINA E. ALOMAR
JUSTICE

IAS PART 23



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JOSE CUBA,

Plaintiff,

-against-

809 BROADWAY HOLDING LLC, REALTY,
DEVELOPMENT, LLC, 809 BROADWAY
CONDOMINIUM, FOUNDATIONS INTERIOR
DESIGN CORP., and ROCK GROUP NY CORP.,

Defendants.

-----X

FOUNDATIONS INTERIOR DESIGN CORP. and
809 BROADWAY HOLDING LLC,

Third-Party Plaintiffs,

-against-

FAÇADE 41, LLC,

Third-Party Defendants.

-----X

ROCK GROUP NY CORP.,

Second Third-Party Plaintiffs,

-against-

MAGA CONTRACTING CORP.,

Second Third-Party Defendants.

-----X

The following numbered papers 150 to 179 read on this: (1) motion by plaintiff for an order pursuant to CPLR §2221(d) to reargue the portion of this Court's order dated July 2, 2024, dismissing plaintiff's Labor Law §§240(1), 200 and common law negligence claims as against 809 Broadway Holding LLC and Foundations Interior Design Corp; and (2) defendant/second third-party plaintiff Rock Group NY Corp's cross-motion for an order pursuant to CPLR §2221(d) to reargue the portion of this Court's order dated July 2, 2024, granting plaintiff summary judgment as against Rock Group NY Corp

PAPERS	NUMBERED
Notice of Motion, Affidavit, Exhibits.....	EF No: 150 – 166
Affirmation of Opposition.....	EF No: 168 – 169
Affirmation in Reply.....	EF No: 170
Notice of Cross-Motion, Exhibit.....	EF No: 172 – 174
Oppositions to Cross-Motion, Exhibit.....	EF No: 176 – 178
Affirmation in Reply to Cross-Motion.....	EF No: 179

Upon the foregoing papers, it is hereby ordered that (1) plaintiff's motion for an order pursuant to CPLR §2221(d) to reargue the portion of this Court's order dated July 2, 2024, dismissing plaintiff's Labor Law §§240(1), 200 and common law negligence claims as against 809 Broadway Holding LLC and Foundations Interior Design Corp; and (2) defendant/second third-party plaintiff Rock Group NY Corp's cross-motion for an order pursuant to CPLR §2221(d) to reargue the portion of this Court's order dated July 2, 2024, granting plaintiff summary judgment as against Rock Group NY Corp, is decided as follows:

By way of background, defendant 809 Broadway was the owner of the premises, defendant Foundations was the construction manager/general contractor for the construction project, third-party defendant Fagade was a Foundations subcontractor and the metal panel fabricator and installer on site, and Fagade subcontracted a portion of its work to non-party, CW Metal Inc. Defendant Rock Group was hired by Foundations as the scaffolding erector/subcontractor at the construction project.

Plaintiff herein, Jose Cuba, a helper/laborer for CW Metals Inc., commenced the instant action alleging that he sustained personal injuries on March 17, 2019. The incident occurred during the construction of the premises located at a new 15-story, mixed used building at 809 Broadway, New York, New York, when during the course of his work, and as he was ascending a scaffolding stairway between the second and third floors of the exterior of the building, carrying a bucket filled with tools, weighing between ten to fifteen pounds and a twenty-five foot long coiled electrical cable in his right hand, the cable became entangled on the end of an allegedly improperly extended handrail, causing the plaintiff to be jerked back and fall on the scaffold platform of the second level, causing significant injuries.

Plaintiff alleges that defendant premises owner 809 Broadway, defendant construction manager/general contractor Foundations, and defendant scaffold erector Rock Group, each failed to provide a safe workplace for plaintiff, and failed to offer proper equipment and safety devices to prevent him from becoming caught on the handrail. Plaintiff alleges causes of action based on Labor Law 240(1) as against all defendants and against defendants Foundations and Rock Group pursuant to Labor Law 200 and common law negligence.

On July 2, 2024, this court issued an order, inter alia, dismissing plaintiff's Labor Law §§240(1), 200 and common law negligence claims as against 809 Broadway Holding LLC and Foundations Interior Design Corp, and granting summary judgment in favor of plaintiff on its Labor Law §240(1) and 200 claims as against Rock Group NY Corp.

A motion for leave to reargue is addressed to the sound discretion of the trial court and "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR 2221[d][2]; *Haque v Daddazio*, 84 AD3d 940, 942 [2d

Dept 2011]). It is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously determined, or to present arguments different from those originally presented to the court (*Mazinov v Rella*, 79 AD3d 979, 980 [2d Dept 2010] [internal quotations omitted]).

With respect to Labor Law §200, movants have failed to establish that this court overlooked or misapprehended matter of fact or law in determining the prior motion with respect to 809 Broadway Holdings LLC and Foundations Interior Design Corp. An implicit precondition to this duty to provide a safe place to work under Labor Law §200 is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition. (*Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]). In the previous motion the Court found that defendants 809 Broadway Holdings LLC and Foundations Interior Design Corp did not supervise or control plaintiff's work or have notice of the alleged dangerous condition. Moreover, general level of supervision is not enough to warrant holding defendants liable for plaintiff's injuries. (*LaRosa v Internap Network Servs. Corp.*, 83 AD3d 905, 909 [2011]). Thus, the court dismissed plaintiff's §200 claim as against 809 Broadway Holdings LLC and Foundations Interior Design Corp.

With respect to Labor Law §240 with respect to 809 Broadway Holdings LLC and Foundations Interior Design Corp. Plaintiff has failed to establish that this court overlooked or misapprehended matters of fact or law in determining the prior motion with respect to Foundations Interior Design Corp. It is well established that the duty imposed by §240(1) is non-delegable and that an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work." (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500 [1993]; *Rocovick*, 78 NY2d at 513.) However, the court found that Foundations Interior Design Corp was not a general contractor or agent. Foundation's role "was only one of general supervision, which is insufficient to impose liability under Labor Law §240(1)." (*Linkowski v City of New York*, 33 AD3d 971, 975 [2d Dept 2006]).

Plaintiff's branch of motion for leave to reargue the portion of this Court's order dated July 2, 2024, dismissing plaintiff's Labor Law §240(1) as against 809 Broadway Holding LLC is however granted in as much as 809 Broadway Holding LLC, as the owner, may not delegate his duty under Labor Law §240(1). Moreover, Rock Group NY Corp's motion for leave to reargue the portion of this Court's order dated July 2, 2024, granting summary judgment in favor of plaintiff's Labor Law §§200 and 240(1) claims as against Rock Group NY Corp is granted. Upon re-argument, defendant's 809 Broadway Holding LLC's motion to dismiss plaintiff's Labor Law §240(1) claims, and plaintiff's summary judgment motion on its Labor Law §240(1) claims, are denied in as much as this court found that there are issues of fact as to whether the handrail of the scaffold was a dangerous and defective condition.

Accordingly, it is hereby

ORDERED, that plaintiff's motion pursuant to CPLR §2221(d) for leave to reargue the portion of this Court's order dated July 2, 2024, dismissing plaintiff's Labor Law §§240(1), 200 and common law negligence claims as against 809 Broadway Holding LLC and Foundations Interior Design Corp is granted only as to its Labor Law §200 claim against 809 Broadway, Holding LLC, and it is further

ORDERED, that defendant Rock Group NY Corp's motion pursuant to CPLR §2221(d) for leave to reargue the portion of this Court's order dated July 2, 2024, granting summary against Rock Group NY Corp on plaintiff's Labor Law §200 and 240(1) claim is granted, and it is further

ORDERED, that plaintiff's motion pursuant to CPLR §3212 for summary judgment on its Labor Law §240(1) as against 809 Broadway Holding LLC is denied, and it is further

ORDERED, that plaintiff's motion pursuant to CPLR §3212 for summary judgment on its Labor Law §§200 and 240(1) claims as against Rock Group NY Corp is denied, and it is further

ORDERED, that plaintiff shall serve a copy of this order, with notice of entry, upon all parties within thirty days from the date of entry.

This constitutes the decision and order of the Court.

Dated: March 18, 2025



HON. KARINA E. ALOMAR, J.S.C.

