

Yunga v Tishman Constr. Corp. of NY

2026 NY Slip Op 30108(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 156821/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

LUIS ORTUNA YUNGA,

Plaintiff,

- v -

TISHMAN CONSTRUCTION CORPORATION OF NY, 561
HH LLC

Defendant.

-----X

INDEX NO. 156821/2022

MOTION DATE 12/23/2025

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 70, 71, 72, 73, 74, 75, 76, 77

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 78, 80, 81

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

Motion Sequence Numbers 002 and 003 are consolidated for disposition.

Plaintiff's motion (MS002) for partial summary judgment on his Labor Law § 240(1) claim is denied. Defendants' motion for summary judgment dismissing plaintiff's Labor Law §§ 200, 241(6) and negligence claims is granted in part and denied in part.

Background

This Labor Law action arises out of a construction accident in which plaintiff claims that, while standing on an unsecured A-framed ladder, the ladder moved which caused him to fall to the ground. Plaintiff worked as a welder for non-party Herbert Rose, Inc. (also known as Rosenwach Tank Co, LLC) and was hired to help build a water tank at the premises owned by 561 HH LLC. Plaintiff testified that he was alone at the time of the accident (NYSCEF Doc. No. 55 at 51). He was tasked that day to cut an angle with the grinder, which was located about 8 or

9 feet from the floor (*id.* at 40). Plaintiff explained he was on a ladder owned by his employer (*id.* at 42). He insisted that the “the ladder moved to my left and I lost my stability and I fell” (*id.* at 47). Plaintiff claimed he had no idea what caused the ladder to move (*id.*). He testified he was standing on a middle rung of the ladder when the accident happened (*id.* at 48). Plaintiff admitted that he had a harness but that it was too long and it would not have prevented the fall (*id.* at 55).

Defendants offer a different version of what occurred. They contend that plaintiff cut his hand with the grinder and that there was no ladder or fall from a ladder at all. They point to medical records from emergency care plaintiff received that day in which plaintiff makes no mention at all of a ladder or any of the back injuries he now claims were a result of the incident.

Labor Law §240(1)

“Labor Law § 240(1), often called the ‘scaffold law,’ provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed on the premises” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). “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” (*id.* at 501).

“[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough” (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

Plaintiff moves for summary judgment on his Labor Law § 240(1) claim on the ground that the uncontradicted evidence show that he was hurt because of the failure of the ladder to provide appropriate protection. He insists he was not afforded adequate safety devices and so he is entitled to summary judgment under this Labor Law provision.

In opposition, defendants claim that there is an issue of fact with whether or not he failed to use the appropriate safety device provided—the harness and lanyard. Defendants claim that plaintiff’s employer did not use ladders to do this type of work and, instead, used a planking system to allow access to the upper portions of the tank. They also claim that there is no evidence there ever was a ladder or that plaintiff fell off of anything. Defendants point to medical records that they claim show that plaintiff claimed injuries from slicing his right hand with the grinder. They argue that plaintiff did not assert any complaints that would be consistent with a fall until plaintiff sought medical attention almost a month after the accident for back pain.

In reply, plaintiff claims that the evidence produced by defendants do not create an issue of fact. They point out that the affidavit from his employer’s site safety supervisor (Mr. Rosenwach) is irrelevant because he did not witness the accident and that the Court should not credit the “statement” offered by plaintiff’s supervisor as he did not witness the accident.

The Court denies the motion based on the medical records uploaded on this motion (NYSCEF Doc. No. 75). They detail that plaintiff sought treatment on the day of the accident because “the grinding wheel fell down and hit him hard on the back of his fingers. It did not cut through the glove. He thought he was ok, but then he felt the warm wet feeling inside, and saw that he had cut his fingers. Came directly in. *Denies other trauma to rest of body or rest of hand*” (*id.*[emphasis added]). About a month later, he came in and complained about back pain (*id.*).

Plaintiff told the doctor “5 weeks ago had trauma where hand was cut (seen in this ed), but states he fell from 6 feet onto back at that time, not endorsed at prior visit” (*id.*).

Simply put, plaintiff’s admissions (and omissions) to the doctor raise questions about how the accident happened. Of course, it could be that plaintiff just forgot to mention falling off the ladder and it took a while for his back pain to materialize. On the other hand, a fact finder might think that this five-week delay in reporting that there was an unwitnessed fall is suspicious and conclude the accident happened a different way. In any event, the Court cannot grant summary judgment under these circumstances where plaintiff’s own statements to medical personnel right after his accident failed to mention anything whatsoever about a ladder or a fall from a ladder. Instead, they suggest a completely different accident and injury.

Although not dispositive by itself, the Court observes that the affidavit from the safety supervisor at plaintiff’s employer contends that they “did not use, provide, or have any A-frame ladders on the Project as it was unnecessary for its work” (NYSCEF Doc. No. 71, ¶ 12). Instead, they used a planking system with harnesses (*id.* ¶ 9).

Labor Law § 241(6)

“The duty to comply with the Commissioner’s safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6). . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles” (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). “The regulation must also be applicable to the facts and be the proximate cause of the plaintiff’s injury” (*Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

“Section 241(6) subjects owners and contractors to liability for failing to adhere to required safety standards whether or not they themselves are negligent. Supervision of the work, control of the worksite, or actual or constructive notice of a violation of the Industrial Code are not necessary to impose vicarious liability against owners and general contractors, so long as some actor in the construction chain was negligent” (*Leonard v City of New York*, 216 AD3d 51, 55-56, 188 NYS3d 471 [1st Dept 2023]).

Plaintiff seeks recovery under Industrial Code sections: 23-1.5, 23-1.7, 23-1.8(c), 23-1.10, 23-1.12; 23-1.15(a-e), 23-1.16(a-f), 23-1.21(a-f), and 23-1.32.

Plaintiff clarifies in his papers that that he relied upon section 23-1.5(c), which states that “No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.”

The Court severs and dismisses plaintiff’s claim based on this Industrial Code section because there is no evidence that plaintiff’s claimed injuries happened due to an issue with the grinder. He testified that he did not have any issues with the grinder (NYSCEF Doc. No. 55 at 41). Instead, he claimed that when he fell off the ladder the grinder hit the wall, the disk broke and that it then cut his hand (*id.* at 49). In other words, there is no basis to find that an issue with the grinder caused plaintiff’s injuries. The discussion about the presence of the improper size blade in the grinder is, in this Court’s view, irrelevant because, again, plaintiff claims the accident happened when the ladder shifted, he fell, and the grinder hit the wall.

The Court dismisses plaintiff’s claim based on section 23-1.8 (a section in which employers are supposed to provide personal protective equipment) because plaintiff was provided with equipment (he admits he was given a harness) and he did not identify what other equipment he should have been given.

Section 23.1.10 is also severed and dismissed because, as noted above, the issue with the grinder happened, according to plaintiff, after he fell. That means that this section, which concerns proper utilization of hand tools, is not applicable to the circumstances here.

The Court dismisses 23-1.12 as it does not apply to grinders (*Opalinski v City of New York*, 110 AD3d 694, 696, 972 NYS2d 320 [2d Dept 2013]).

Although defendants mentioned that plaintiff cited to section 1.15, they did not make any arguments about why it should be dismissed and so this claim remains.

Section 1.16(b) provides that “Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. 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.”

The Court denies summary judgment on this provision because plaintiff’s account is that although he was given a harness it was too long to prevent his fall off of an eight foot ladder and so it did not conform with the requirements of this Industrial Code section

Plaintiff did not address sections 23-1.7, 23-1.10, 23-1.17, 23-1.21, and 23-1.32 and so those claims are severed and dismissed.

Labor Law § 200 and Negligence

Labor Law § 200 “codifies landowners’ and general contractors’ common-law duty to maintain a safe workplace” (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). “[R]ecover against the owner or general contractor cannot be had unless it

is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control” (*id.* [internal quotations and citation omitted]).

“Claims for personal injury under this statute and the common law fall under two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed” (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-44, 950 NYS2d 35 [1st Dept 2012]). “Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it” (*id.* at 144).

The Court severs and dismisses this claim on the ground that plaintiff’s work was controlled by his own employer. That is, plaintiff was working at the direction of his supervisor (Mr. Paracha) and that his employer provided him with the tools to do the job. Plaintiff admitted that the grinder and the ladder belonged to his employer.

Plaintiff’s insistence that defendant Tishman exhibited supervisory authority over the job site does not save this cause of action. “[G]eneral supervisory authority does not rise to the level of supervision or control necessary to hold the general contractor liable for plaintiff’s injuries under Labor Law § 200” (*Griffiths v FC-Canal, LLC*, 120 AD3d 1100, 1101, 992 NYS2d 518 [1st Dept 2014] [internal quotations and citation omitted]).

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment on his Labor Law § 240(1) claim is denied; and it is further

ORDERED that defendants' motion for summary judgment is granted only to the extent that plaintiff's Labor Law § 200 claim is severed and dismissed and the following Industrial Code sections of his Labor Law § 241(6) claim are dismissed: 23-1.5, 23-1.7, 23-1.8, 23-1.10, 23-1.12, 23-1.16, 23-1.17, 23-1.21, and 23-1.32 .



1/12/2026

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE