Almendares v City of New York

2026 NY Slip Op 30177(U)

January 15, 2026

Supreme Court, New York County

Docket Number: Index No. 158042/2017

Judge: Phaedra F. Perry-Bond

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

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REINEL ALMENDARES, and MIRNA ALMENDARES,

Plaintiffs,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, BALLET TECH FOUNDATION, INC, 890 BROADWAY CONDOMINIUM,

Defendant.

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INDEX NO. 158042/2017

MOTION DATE 11/01/2024

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195

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

Upon the foregoing documents, Plaintiff Reinel Almendares' ("Plaintiff") motion for summary judgment on his Labor Law § 240(1) claim against Defendant 890 Broadway Condominium ("890 Broadway") is granted. Defendant Ballet Tech Foundation, Inc.'s ("Ballet Tech") cross motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part. Defendant 890 Broadway's cross motion for summary judgment dismissing Plaintiff's Complaint is denied.

I. Background

On January 13, 2017, Nationwide Maintenance employed Plaintiff as a painter and plasterer at 890 Broadway, New York, New York (the "Premises") (NYSCEF Doc. 135 at 30). Lascelles Smith, Nationwide Maintenance's foreman, instructed Plaintiff to paint the walls and hallway of a fire stairwell on the Premises (*id.* at 40-41). Plaintiff was required to use an A-frame extension ladder to paint (*id.* at 42-43). Plaintiff painted the underside of the fire staircase while

standing near the top of the extension ladder, which was resting on paper covered stairs, when the ladder suddenly moved, causing Plaintiff and the ladder to fall to the bottom of the staircase (*id.* at 48; 51; 69).

Defendant 890 Broadway owns the Premises and is a commercial condominium consisting of four units, two of which are owned and occupied by Ballet Tech (NYSCEF Doc. 152). 890 Broadway's offering plan described the fire stairwell as a "common element to which [Ballet Tech] has access" (*id.* at 6). Section 7.1 of 890 Broadway's bylaws state "all arrangements for painting…[of] the Common Elements, whether located inside or outside a unit, shall be made or authorized by the Board of Managers. The cost of all such maintenance, repair, replacement, etc. authorized…shall be charged to the Unit Owners as a Common Expense…" (NYSCEF Doc. 153).

Maggie Christ, Ballet Tech's Executive Director, and a member of 890 Broadway's board of managers, testified that 890 Broadway contracted Nationwide Maintenance to paint the Premises' common area fire stairwell (NYSCEF Doc. 137 at 10-14). Ms. Christ testified that the building manager, Patrick Crossen, communicated with Nationwide Maintenance regarding the paint job (NYSCEF Doc. 137 at 19). Mr. Crossen received bids for the paint job and selected Nationwide Maintenance, with the approval of 890 Broadway (*id.* at 21). In this motion, Plaintiff seeks summary judgment on his Labor Law § 240(1) claim against 890 Broadway, while Ballet Tech and 890 Broadway cross move to dismiss Plaintiff's claims asserted against them.

II. Discussion

A. Plaintiff's Motion

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim against 890 Broadway is granted. 890 Broadway's witness admitted that it served as a management organization for the building, paid for Nationwide Maintenance's work, and employed Patrick

Crossen to coordinate Nationwide Maintenance's work at the Premises *(see* NYSCEF Doc. 184 at 12-13 and 17-19). This is sufficient to be considered an owner, statutory agent, or contractor for purposes of Labor Law § 240(1). Moreover, Plaintiff was engaged in work protected by Labor Law § 240(1), namely painting while on a ladder (*see, e.g. Nunez v SY Prospect LLC*, 226 AD3d 410 [1st Dept 2024]). Finaly, it is well established that a Labor law § 240(1) violation is established when ladder slips or shifts and causes a worker to fall (*see, e.g. Sanchez v MC 19 East Houston* LLC, 216 AD3d 443, 443 [1st Dept 2023]; *see also Castillo v TRM Contracting 626, LLC*, 211 AD3d 430, 430 [1st Dept 2022] citing *Panek v County of Albany*, 99 NY2d 452, 458 [2003]).

In opposition, 890 Broadway fails to raise a triable issue of fact. Although 890 Broadway claims that Plaintiff does not know what caused him to fall from a ladder, a worker is not required to identify the defect in the ladder to establish a Labor Law § 240(1) claim (*see Rodas-Garcia v NYC United LLC*, 225 AD3d 556, 556 [1st Dept 2024] quoting *Pinzon v Royal Charter Props., Inc.*, 211 AD3d 442, 443 [1st Dept 2022]). 890 Broadway's claim that the A-frame ladder was not defective is not supported by any evidence and relies on non-probative hearsay arguments made in an attorney's memorandum of law. In any event, the fact that the ladder suddenly moved and fell while placed on a staircase is sufficient to establish that the ladder was insufficient to protect Plaintiff from an elevation related hazard pursuant to Labor Law § 240(1) (*see also Estrella v GIT Indus., Inc.*, 105 AD3d 555 [1st Dept 2013]).

890 Broadway's argument that Plaintiff was the sole proximate cause of his accident is without merit as it is conceptually impossible for a Plaintiff to be the sole proximate cause where a Labor Law § 240(1) violation has been established (*Quiroz v Memorial Hospital for Cancer and Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022]). Moreover, Plaintiff's testimony establishes that the ladder fell because he was instructed to use it to paint despite the ladder placed on unsteady

footing – namely different stairs on a staircase. Plaintiff cannot be faulted for refusing to complete his work until he was provided with a safer device or a co-worker to hold the ladder steady (*see DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 47 [1st Dept 2014]). Plaintiff's conduct at most amounts to comparative negligence, which is no bar to summary judgment on his Labor Law § 240(1) claim (*Mederos for Sena v 147 Amsterdam LLC*, 230 NYS3d 98, 99 [1st Dept 2025]). Therefore, as Plaintiff met his *prima facie* burden of establishing a Labor Law § 240(1) claim, and 890 Broadway has failed to tender sufficient admissible evidence to raise a triable issue of fact, Plaintiff's motion for summary judgment is granted.

B. 890 Broadway's Cross Motion

890 Broadway's cross motion for summary judgment seeking dismissal of Plaintiff's Complaint is denied. In light of Plaintiff obtaining summary judgment on his Labor Law 240(1) claim against 890 Broadway, the cross motion to dismiss Plaintiff's Labor Law § 240(1) claim against 890 Broadway is denied. Moreover, because Plaintiff is entitled to summary judgment on Labor Law § 240(1), 890 Broadway's motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claims is denied as academic (*see Nyanteh v 590 Madison Avenue, LLC*, 238 AD3d 643, 643 [1st Dept 2025] citing *Pimentel v DE Frgt. LLC*, 205 AD3d 591, 593 [1st Dept 2022]).

To the extent 890 Broadway cross moved for summary judgment dismissing Plaintiff's Labor Law § 200 and common law negligence claims, this is denied as untimely (*see Filannino v Triborough Bridge and Tunnel Auth.*, 34 AD3d 280, 281-82 [1st Dept 2006]). The cross motion is untimely in that it was filed 134 days after the note of issue was filed on September 5, 2024. Moreover, the cross motion is distinct from Plaintiff's motion in that Plaintiff sought summary judgment on his Labor Law § 240(1) claim and requested no relief with respect to his Labor Law § 200 claim. Therefore, 890 Broadway's cross motion is denied.

C. Ballet Tech's Motion

Ballet Tech's motion for summary judgment is granted in part and denied in part. Viewing the facts in the light most favorable to the non-movants, there remains, at a minimum, a triable issue of fact as to whether Ballet Tech can be considered an owner, tenant, or general contractor pursuant to Labor Law § 240(1) and 241(6).

Specifically, the area where Plaintiff fell is defined by the condominium declaration as an "Office Area Common Element" (*see* NYSCEF Doc. 186 at § 4.29[c]). According to § 5.1 of the condominium declaration, Ballet Tech "shall be responsible for maintenance, repair, restoration, cleaning, operation and insurance of the Office Area Common Elements" (*id.* at § 5.1[a]). Moreover, the contract under which the painting was taking place states it was made by Ballet Tech and was signed by Maggie Christ, who served on 890 Broadway's board as well as Ballet Tech's executive director (*see* NYSCEF Doc. 154). The worker who oversaw Nationwide Maintenance's work, Mr. Crossen, was according to Ballet Tech's witness "essentially employed by both the condominium and Ballet Tech" (NYSCEF Doc. 137 at 19). Given these facts, there remains a triable issue of fact as to whether Ballet Tech is a proper Labor Law Defendant (*see, e.g. Coon v WFP Tower B Co. L.P.*, 220 AD3d 407, 408 [1st Dept 2023] citing *Scaparo v Village of Ilion*, 13 NY3d 864, 867 [2009] ["the term 'owner' is not limited to the titleholder of the property where the accident occurred and encompasses a person 'who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for his or her benefit'"]). Because the only argument set forth in favor of dismissing Plaintiff's Labor Law § 240(1) claim is that Ballet Tech is not a proper Labor Law defendant, Ballet Tech's motion to dismiss the Labor Law § 240(1) claim is denied.

However, Ballet Tech's cross motion to dismiss Plaintiff's Labor Law § 200 and common law negligence claims is granted. There is no evidence that Plaintiff was injured due to a dangerous condition on the premises, rather he was injured based on the means and methods by which he was instructed to paint the stairwell. Because there is no testimony establishing that Ballet Tech controlled the means and methods of Plaintiff's work, dismissal of his Labor Law § 200 and common law negligence claims is warranted (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]).

Plaintiff only opposes dismissal of his Labor Law § 241(6) claim to the extent Ballet Tech violated Industrial Code §§ 23-1.16 and 1.21(b)(4)(ii), therefore to the extent Plaintiff has alleged any other violations of the industrial code, those claims are dismissed as abandoned. Contrary to Ballet Tech's argument that Industrial Code § 23-1.16 is insufficiently specific to give rise to a Labor Law § 241(6) claim, the First Department has held otherwise (*Anderson v MSG Holdings L.P.*, 146 AD3d 401, 404-405 [1st Dept 2017]). However, this provision is not applicable to the facts of this case as there is no evidence that Plaintiff was ever provided with a safety belt, harness, tail line, or lifeline, which are the safety devices governed by Industrial Code § 23-1.16 (*see, e.g. Dzieran v 1800 Boston Rd., LLC*, 25 AD3d 336 [1st Dept 2006]). Therefore, the Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.16 is dismissed.

The motion for summary judgment dismissing the Labor Law § 241(6) claim predicated on a violation of Industrial Code §1.21(b)(4)(ii) is denied. This provision requires that "[a]ll ladder footings shall be firm. Slippery surfaces and insecure objects such as bricks and boxes shall not be used as ladder footings." Plaintiff testified that the ladder was resting on a paper covering that was placed over the stairs, which was used to prevent paint from falling on the stairs. Plaintiff testified that the ladder slipped off the step where it was placed, and due to how quicky the accident

happened, he could not tell if the ladder slipped due to lose paper (*see* NYSCEF Doc. 135 at 70-72). Based on this testimony, and in the absence of any affirmative evidence proffered by Ballet Tech that loose and slippery paper did not contribute to the accident, the Court is unable to grant Ballet Tech summary judgment dismissing the Labor Law § 241(6) claim predicated on a violation of Industrial Code §1.21(b)(4)(ii).[1]

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim asserted against 890 Broadway is granted; and it is further

ORDERED that 890 Broadway's cross motion for summary judgment dismissing Plaintiff's Complaint is denied; and it is further

ORDERED that Ballet Tech's cross motion to dismiss Plaintiff's Complaint is denied solely to the extent that Plaintiff maintains a viable Labor Law § 240(1) claim and Labor Law § 241(6) claim predicated on a violation of Industrial Code §1.21(b)(4)(ii), and the remainder of Plaintiff's claims against Ballet Tech are dismissed; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/15/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:		CASE DISPOSED		x	NON-FINAL DISPOSITION		
		GRANTED	DENIED	x	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

[1] Although the Defendants cite to *Cordova v 653 Eleventh Ave. LLC*, 190 A.D.3d 637 (1st Dept 2021), this case is distinguishable. In that case, there was photographic evidence demonstrating that the ladder was not placed on a slippery surface but on asphalt. That is not the case here, where all that was provided was evidence that the ladder was placed on a staircase covered in paper.