Matthew v 50 HYMC Owner LLC
2026 NY Slip Op 30189(U)
January 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 530306/2021
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Part LL1M

Index Number 530306/2021
Seqs. 001, 002

KERT MATTHEW,

Plaintiff,

against

50 HYMC OWNER LLC, HUDSON YARDS CONSTRUCTION SPECIAL PROJECTS LLC, HUDSON YARDS CONSTRUCTION LLC, HUDSON YARDS CONSTRUCTION II LLC, HUDSON YARDS CONSTRUCTION II HOLDINGS LLC, CROSS COUNTRY CONCRETE LLC, CROSS COUNTRY CONSTRUCTION LLC, CROSS COUNTRY CONSTRUCTION OF NEW YORK LLC, CROSS COUNTRY CONSTRUCTION, DC, LLC, CROSS COUNTRY CONSTRUCTION, DK, L.L.C., THE RELATED COMPANIES, L.P., THE RELATED COMPANIES, INC., RELATED CONSTRUCTION, LLC, OXFORD PROPERTY GROUP LLC, ERY SOUTH RESIDENTIAL TOWER LLC, GILBANE BUILDING COMPANY, LEGACY YARDS TENANT GP LLC, LEGACY YARDS TENANT LLC, LEGACY YARDS TENANT L.P.,

Defendants.

DECISION/ORDER

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 49–70, 74–78.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 001) and defendants 50 HYMC Owner LLC (HYMC), Hudson Yards Construction II LLC (Hudson), and Gilbane Building Company (Gilbane)'s motion for summary judgment (Seq. 002) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on November 28, 2018, while working at the premises located at 415 10th Avenue a/k/a 50 Hudson Yards, New York, NY. Plaintiff previously discontinued without prejudice via stipulation against Hudson Yards Construction Special Projects LLC, Hudson Yards Construction LLC, Hudson Yards Construction II Holdings LLC, Cross Country Concrete LLC, Cross Country Construction LLC, Cross Country Construction of New York, LLC, Cross Country Construction, DC, LLC, Cross Country Construction DK L.L.C., The Related Companies, L.P., The Related Companies Inc., Related Construction LLC, Oxford Property Group LLC, ERY South Residential Tower LLC, Legacy Yards Tenant GP LLC, Legacy Yards Tenant LLC, and Legacy Yards Tenant LP (stipulation dated November 20, 2023). Therefore, the caption is amended as follows:

Kert Matthew,

Plaintiff,

-against-

50 HYMC Owner LLC, Hudson Yards Construction II LLC, and Gilbane Building Company,

Defendants.

It is undisputed that HYMC owned the premises, Gilbane was the general contractor, and Hudson was the executive construction manager. Hudson sub-contracted plaintiff's employer, non-party New Leaf, to build the concrete superstructure, for which New Leaf employees utilized Doka jacks.

Plaintiff testified as follows: Plaintiff and his co-worker, Dennis Edouard, were passing Doka jacks into the sub-cellar from the street level through a four-foot-wide opening in the floor (Matthew EBT at 79). Plaintiff was standing in the sub-cellar receiving jacks while Mr. Edouard lowered the jacks to plaintiff by hand from the floor located at street level (*id.*). The difference in elevation between the floors was between 12 and 15 feet (*id.* at 78). While walking to the area below Mr. Edouard in order to receive a beam, plaintiff was struck by a falling object (*id.* at 84). Plaintiff first heard the jack fall on the ground next to him, and then he was struck by the beam (*id.* at 93). After being struck, plaintiff observed the beam on the floor next to him (*id.* at 94). Plaintiff claims that Mr. Edouard subsequently told plaintiff that Mr. Edouard was passing a jack down when he "let go of the jack [and] it hit the beam," and that the beam then hit plaintiff (*id.*). Mr. Edouard said he was "sorry that the beam came on [plaintiff]" (*id.* at 96).

Plaintiff further testified that "beam was supposed to be secured and it was not secure (*id.* at 81–82). Although the first time that plaintiff saw the beam was on the floor after it struck him, plaintiff claims that the beam was next to Mr. Edouard and the floor opening before the jack struck the beam and the beam fell on his head (*id.*). The beam was six feet long and weighed between 20 and 30 pounds, and plaintiff claims it fell between 12 to 15 feet (*id.* at 99–100). Previously at the site, workers had used hoists, ropes, and chains to move materials, although here plaintiff testified "at the time we didn't need [them]" because it was a floor-level pass through that could be done by hand as long as the jacks were properly extended (*id.* at 103, 106).

A witness statement attributed to Mr. Edouard was contained in the accident report that plaintiff submitted along with his motion. Mr. Edouard's statement reads: "I was handing down some jack to Kirk [sic]. The [illegible] slipe [sic] through is [sic] hand and hit doka about 4ft long and hit im [sic] in his head." Mr. Edouard was not deposed.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis-Palmer HydroElec. Co.*, 81 NY2d 494, 500 (1993)]). In order to recover for an injury caused by a falling object, a plaintiff must show that the object was being hoisted, secured, or required securing for the purpose of the undertaking (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259 [2001]).

Here, plaintiff has made out his prima facie entitlement to summary judgment. Although there are multiple plausible accounts of how plaintiff's accident occurred contained in the record, plaintiff prevails on his Labor Law § 240 (1) claim under each of them (*see Keen v Tishman Construction Corporation of New York*, 233 AD3d 1001 [2d Dept 2024]). On plaintiff's account, the beam that struck him was placed near a floor opening where active work was being performed and was unsecured, despite the need to secure materials near a floor opening where workers are standing below during hoisting operations *see e.g. Outar v City of New York*, 286 AD2d 671 [2d Dept 2001], affd, 5 NY3d 731 [2005]; *see also Bornschein v Shuman*, 7 AD3d 476 [2d Dept 2004]). The beam fell from a height and struck the plaintiff, causing him harm.

Additionally, although the plaintiff did not see the beam before it fell, the plaintiff was able to identify the beam on the ground after it struck him and does not need to rely on hearsay evidence to establish what fell and the object's connection with the ongoing work (*contra Henriquez v Grant*, 186 AD3d 577 [2d Dept 2020]). Furthermore, plaintiff's testimony that testimony that Mr. Edouard apologized is unrebutted circumstantial evidence that the object that struck plaintiff was a beam Mr. Edouard interacted with (*see Rios v 474431 Assoc.*, 278 AD2d 399, 399 [2d Dept 2000]; *see also* PJI 1:70).

Defendants argue that the witness statement from Mr. Edouard provides an alternative account which either shows that plaintiff was struck by an object that traveled a *de minimis* distance or that plaintiff was the sole proximate cause of the incident. Mr. Edouard's account could be reasonably read, in a light most favorable to the defendants, as claiming that plaintiff was struck by a Doka jack that was being lowered to plaintiff and slipped through plaintiff's hands. This factual scenario would also constitute a violation of Labor Law § 240 (1). The jacks, which the parties estimate to weigh 100 pounds but the record only indicates were too heavy for one person to lift (Matthew EBT at 87), should have been transferred between floors via proper hoisting equipment. This proposition is true irrespective of plaintiff's layperson assessment that passing the material by hand should have been sufficient or "accepted industry standards," which are not defenses under the Labor Law (*see Cruz v Cablevision Sys. Corp.*, 120 AD3d 744, 747 [2d Dept 2014]). Additionally, since the plaintiff was performing the task with his co-worker, and there is no evidence that plaintiff individually selected the means and methods of performing the work, he cannot have been the sole proximate cause. Mere comparative fault, if any, is not a defense to liability under Labor Law § 240 (1) (*Ross*, 81 NY2d at 502 n. 4). Finally, in light of the weight of the object and the force it was capable of

"generating even over the course of a relatively short descent," it was not *de minimis* (*see Gutman v City of New York*, 78 AD3d 886, 887 [2d Dept 2010] [citing *Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 605 [2009]).

Therefore, plaintiff's motion for summary judgment on his Labor Law § 240 (1) is granted; defendants' motion is denied with respect to this claim.

Labor Law § 241 (6)

Labor Law § 241(6) requires that owners and contractors provide reasonable and adequate protection and safety to workers. Still, a defendant that is liable under Labor Law § 240 (1) may not necessarily be liable under Labor Law § 241 (6). The former imposes liability when plaintiff suffers harm due to any absence of an adequate safety device or the presence of an inadequate safety device. The latter requires the plaintiff to prove that he suffered harm due to the violation of a sufficiently specific section of the Industrial Code (see *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501–502 [1993]).

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Here, plaintiff's claim is predicated on the alleged violations of Rules 23-2.2 (a) and (b):[1]

> (a) General requirements. Forms, shores and reshores shall be structurally safe and shall be properly braced or tied together so as to maintain position and shape.
>
> (b) Inspection. Designated persons shall continuously inspect the stability of all forms, shores and reshores including all braces and other supports during the placing of concrete. Any unsafe condition shall be remedied immediately

[1] Since the plaintiff did not advance substantive argument as to the other alleged Industrial Code violations, they are deemed abandoned (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

Unlike plaintiff's claims under Labor Law § 240 (1), the multiple plausible accounts of how his accident occurred preclude summary judgment on his Labor Law § 241 (6) claim. In light of plaintiff's inability to identify the state of the beam prior to it striking him and Mr. Edouard's statement that plaintiff was struck by a falling Doka jack, and not by a piece of improperly secured formwork, both plaintiff and defendants have failed to eliminate all triable issues of material fact, and both parties' motions are denied with respect to plaintiff's Labor Law § 241 (6) claim.

Labor Law § 200

Defendants alone move for summary judgment on plaintiff's Labor Law § 200 claim. Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Claims under this statute are evaluated under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the two (*id.*)

Here, plaintiff's allegations and opposition adopt a "dangerous condition" theory of liability under Labor Law § 200. As an initial matter, the plaintiff does not oppose the motion with respect to HYMC; therefore, HYMC is granted summary judgment on plaintiff's Labor Law § 200 claim. With respect to Hudson and Gilbane, defendants argue that they did not have actual or constructive notice of the dangerous condition alleged, and that New Leaf employees alone caused or created any dangerous or defective condition. In light of the multiple accounts of the accident, the nature of the dangerous condition is not entirely clear from the record (*e.g.*,

but not limited to, improperly stored beams by the hole versus an improperly secured beam that had been installed and subsequently fell). Defendants do not provide any evidence regarding inspection, including records or testimony about regular practices. Defendants have failed to demonstrate that they did not, minimally, have constructive notice of a dangerous condition; therefore, Hudson and Gilbane's request for summary judgment on this claim is denied.

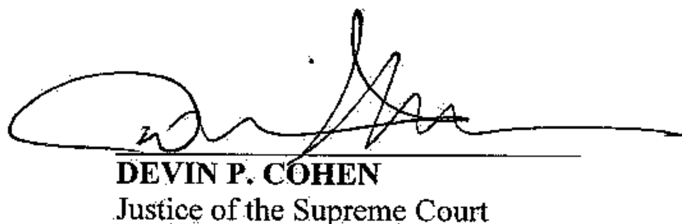
Accordingly, the motion is granted as to HYMC and denied as to Hudson and Gilbane.

Conclusion

Plaintiff's motion for summary judgment (Seq. 001) is granted to the extent of his Labor Law § 240 (1) claim; the motion is otherwise denied.

Defendants' motion for summary judgment (Seq. 002) is granted to the extent of dismissing plaintiff's Labor Law § 241 (6) claim as predicated on all alleged Industrial Code violations except Rules 23-2.2 (a) and (b),and dismissing plaintiff's Labor Law § 200 claim against HYMC; the motion is otherwise denied.

This constitutes the decision and order of the court.



January 12, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court