

Ayala v Trans World Equities Co., L.P.

2026 NY Slip Op 30275(U)

January 22, 2026

Supreme Court, New York County

Docket Number: Index No. 154432/2021

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

ARTEMIO AYALA,

Plaintiff,

- v -

TRANS WORLD EQUITIES CO., L.P., SKYLINE
RESTORATION INC.,

Defendant.

-----X

SKYLINE RESTORATION INC.

Plaintiff,

-against-

NY MANPOWER CONSTRUCTION INC,

Defendant.

-----X

INDEX NO. 154432/2021
MOTION DATE 07/07/2025
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595090/2022

The following e-filed documents, listed by NYSCEF document number (Motion 004) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151

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

Upon the foregoing documents, the motion is granted, and the cross-motion is denied.

Background

Plaintiff was hired in early 2021 to perform cement work on a 24-story building in Manhattan owned by defendant Trans World Equities Co. (“Trans World”). On April 27, he was directed to prepare cement for the project. The team leader directed Plaintiff to use a mixing drill from defendant Skyline Restoration, Inc. (“Skyline”, collectively with Trans World “Defendant”)’s on-site toolbox. The foreman issued Plaintiff a mixing drill and power extension cord from the toolbox. This drill had a special attachment specifically designed to mix cement

but was missing a stabilizing handle. The only other drill available in the toolbox was also missing the stabilizing handle. When Plaintiff informed the team leader about the missing handle, he alleges that he was told that as it had been issued by the foreman, he should use the drill and to place his right hand where the handle should be in a specific manner. He alleges that he used the drill in accordance with these instructions, and when he did so, his hand kept slipping down the drill due to the movement of the drill. His hand then got caught on the drill extension, and he was seriously injured.

Plaintiff filed this underlying proceeding in May of 2021. Defendants have answered and filed a third-party complaint against Plaintiff's employer, NY Manpower Construction Inc. A default judgment has been entered against NY Manpower. Discovery and depositions have taken place, and Plaintiff now moves for summary judgment. Defendants oppose and cross-move for summary judgment.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Plaintiff is moving for summary judgment on their Labor Law § 241(6) claim and for leave to amend the bill of particulars. They argue that Defendants violated several provisions in the Industrial Code and therefore are liable under the Labor Law. Defendants oppose, and cross-move for summary judgment dismissing the complaint. They argue that 1) they did not supervise or control Plaintiff's work and 2) the allegations of Industrial Code violations are inapplicable to the facts or too general to sustain a claim. For the reasons that follow, the motion for leave to amend the bill of particulars and for summary judgment on the issue of § 241(6) liability is granted, and the cross-motion for summary judgment dismissing the complaint is denied.

Plaintiff's Motion for Leave to Amend the Bill of Particulars Is Granted

In their motion, Plaintiff also moves for leave to amend the bill of particulars in order to allege a violation of 12 NYCRR § 23-1.5(c)(1), which as addressed above imposes a duty on owners and contractors to keep equipment in a safe working condition. He argues that this subsection works closely with § 23-1.5(c)(3), which requires damaged safety equipment to be removed from a job site and which was alleged in the bill of particulars. Therefore, Defendants were already on notice of the same conduct and cannot claim surprise or prejudice. Leave to amend the bill of particulars, even after the filing of a note of issue, is to be freely given in the absence of unfair surprise or prejudice. *See Gjeka v. Iron Horse Transp., Inc.*, 151 A.D.3d 463, 464 [1st Dept. 2017]. Here, the Court finds that there is no unfair surprise or prejudice and therefore the leave to amend should be granted.

Labor Law § 241 Standard

Plaintiff has moved for summary judgment on the §241(6) claim. Under Labor Law §241(6), owners and contractors must arrange construction sites “as to provide reasonable and adequate protection and safety to the persons employed therein” and must comply with the

relevant regulations promulgated by the Commissioner of the Department of Labor. As this duty is nondelegable, a plaintiff is not required to show that owners and contractors “exercised supervision or control over his worksite in order to establish his right of recovery.” *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 502 [1993]. In order to state a claim, a plaintiff must allege a violation of an Industrial Code provision that mandates “compliance with concrete specifications” as opposed to a general safety standard. *Id.*, at 505. Additionally, a plaintiff must establish that the Industrial Code violation was a proximate cause of their injury. *See, e.g., Lema v. 1148 Corp.*, 242 A.D.3d 579, 580 [1st Dept. 2025].

Plaintiff’s Prima Facie Showing Under Labor Law § 241(6) Is Met Here

Plaintiff argues that Defendants violated 12 NYCRR § 23-1.5(c)(1) and (3). These sections require that employers do not permit employees to use “equipment which is not in good repair and in safe working condition”, and that “[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged.” These sections have been held to be sufficiently specific to support a § 241(6) claim. *See, e.g., Becerra v. Promenade Apts. Inc.*, 126 A.D.3d 557, 558 [1st Dept. 2015]. As addressed above, Plaintiff was required to use a mixing drill that was missing the stabilizing arm. Plaintiff has provided the affidavit of an expert, Mr. Fuchs, opining that failing to use the drill with the stabilizing side handle for mixing did not “conform to manufacturer requirements or generally good and accepted industry practice.” He further opined that the drill in question violated Industrial Code provisions § 23-1.5(c)(1) and (3), and that the accident occurred because of the lack of a safety handle. Accordingly, Plaintiff has met the burden of showing prima facie entitlement to summary judgment on the § 241(6) claim.

Defendants Fail to Rebut Prima Facie Showing

In their opposition, Defendants argue that Plaintiff failed to establish a prima facie entitlement to summary judgment. They argue that there was no requirement to use the side handle in order to use the drill, as the relevant manual only states that the side handle “should” be used, not “must” be used. But they fail to establish that this is a necessary predicate to finding that the side handle is a safety device, or that the drill was in safe working condition without the handle. As the manual states that the side handle “should” be used, and Plaintiff has submitted an expert affidavit stating that the use of the side handle is industry practice and part of the manufacturer’s requirements, Plaintiff has established a prima facie case that failure to have the side handle attached meant that the drill was not in a safe working condition. That a drill is technically capable of being operated without the side handle that it “should” have, does not mean that it is safe to be so used.

Furthermore, Defendants cite to a Second Department case in support of their contention that a safety device must be required for use in order to provide for § 241(6) claim. *Zaino v. Rogers*, 153 A.D.3d 763, 764 [2nd Dept. 2017]. But this case from another department is distinguishable, as there the court denied § 241(6) liability because there was another provision of the Industrial Code explicitly stating that the safety device in question was not required for use, and this more specific provision controlled over the provision regarding safe equipment. *Id.* *Zaino* does not, therefore, stand for the proposition that a plaintiff must show that a safety device is “required” in order to establish a violation of the Industrial Code. Defendants have pointed to no provision in the Industrial Code stating that the side handle at issue is not required for use, therefore *Zaino* does not bar this claim.

Defendants also argue that the side handle is not a safety device because there is nothing stating so in the manual and the drill was not defective without the handle. But the Court notes that the manual clearly states that the side handle is used in order to reduce the chance of injury. The Court does not find Defendants' argument that a device must totally eliminate all chance of injury in order to be a safety device persuasive. Nor does it find the argument persuasive that a piece of equipment must be defective without the side handle in order for the side handle to be considered a safety device.

Defendants argue that Plaintiff was the sole proximate cause of the accident, as he might have been operating the drill at an unsafe speed. But this argument is conclusory and speculative and fails to rebut the prima facie case established by Plaintiff. They also argue that he erred in using the drill with his hands placed as they were and should have placed them higher. But as Plaintiff was using the drill in accordance with the directions given him by the team leader and placed his hands in an attempt to compensate for the lack of a stabilizing handle, this argument also fails.

Defendants' Cross-Motion to Dismiss the Labor Law § 200 Claim and Common Law Negligence Claim Fails to Satisfy Burden

Defendants have cross-moved for summary judgment in their favor, dismissing the Labor Law § 200 claim on the grounds that they did not exercise supervision or control over the Plaintiff's activities. They argue that "no evidence exists that establishes" that any of their agents directly supervised or controlled Plaintiff's work. They point to Plaintiff's testimony in support of this argument. In opposition, Plaintiff argues that they have evidence showing that Defendants supervised the project and provided the tools used that led to his injuries. He also argues that Defendants have failed to establish a prima facie entitlement to summary judgment. Plaintiff is

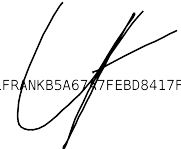
correct. While an absence of evidence showing that Defendants exercised supervision or control over Plaintiff’s activities would defeat a summary judgment motion brought by Plaintiff on these claims, it does not satisfy the movant’s burden. Defendants would need to tender evidence in admissible form that they did not exercise supervision or control, and pointing to absences or weaknesses in Plaintiff’s factual record on this matter does not establish prima facie entitlement to summary judgment dismissing the Labor Law § 200 or common law negligence claims.

Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that plaintiff Artemio Ayala is awarded summary judgment as to liability on his Labor Law § 241 claim, with damages to be determined at trial; and it is further

ADJUDGED that the cross-motion is denied.


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1/22/2026
DATE

LYLE E. FRANK, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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