

Guzman v City of New York

2026 NY Slip Op 30316(U)

January 27, 2026

Supreme Court, New York County

Docket Number: Index No. 154903/2019

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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DAVID GUZMAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

Defendant.

-----X

INDEX NO. 154903/2019
MOTION DATE 08/07/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, Plaintiff's motion for summary judgment on his Labor Law §§ 240(1) and 241(6) claims against Defendants is denied.

I. Background

On June 1, 2018, non-party Defoe Corporation ("Defoe") employed Plaintiff as a metal lather on a construction site at on the north side of the Harlem River Drive and 127th Street, New York, New York (the "Premises") (NYSCEF Doc. 58 at 34; 41-42; 54). The Premises are owned by the City of New York, who contracted Defoe to reconstruct the northbound and southbound structures of the Harlem River Drive (NYSCEF Doc. 61 at 10-11; 22). Plaintiff's foreman instructed Plaintiff to walk to Harlem River Drive and 132nd Street to load piles of rebar onto a flatbed 18-wheeler truck (NYSCEF Doc. 58 at 56-61). To move the rebar onto the truck, the rebar was strapped to the back of a bucket attached to a Caterpillar backhoe so the backhoe could hoist the rebar onto the truck (id. at 62-68).

Plaintiff and his coworkers successfully loaded one pile of rebar and began loading another pile, which contained longer bars which were approximately forty feet long (NYSCEF Doc. 59 at 151-152). According to Plaintiff when this pile was lifted by the backhoe it hit another rebar pile and then moved quickly towards Plaintiff (*id.* at 151-152 and 176). As Plaintiff tried to avoid the swinging bundle, he tripped on the rebar on the floor, and then the hoisted bundle fell and pinned his right leg (*id.* at 177-179). However, according to Plaintiff's coworker, Stanley De Napoli, he observed Plaintiff trip over a rebar bundle laying on the ground but the bundle being hoisted never hit Plaintiff (NYSCEF Doc. 76). Plaintiff's other coworker, Patrick Horton, likewise testified that Plaintiff either lost his balance or tripped over a bundle of rebar laying on the ground (NYSCEF Doc. 75). Plaintiff now seeks summary judgment on the issue of his Labor Law § 240(1) and 241(6) claims against Defendants.

II. Discussion

A. Standard

“On a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial” (*Nellenback v Madison County*, --- N.E.3d ----, 2025 NY Slip Op. 02263 at *3 [2025] [internal quotations and citations omitted]). The movant's burden is heavy, and the facts must be viewed in the light most favorable to the non-movant (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]). “If the moving party fails to meet this initial burden, summary judgment must be denied ‘regardless of the sufficiency of the opposing papers’” (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). “It is not the function of a court deciding a summary judgment motion to

make credibility determinations or findings of fact” but rather the Court’s function is to identify material triable issue of fact or point to the lack thereof (*Vega, supra* at 505 [2012]).

B. Labor Law § 240(1)

Plaintiff’s motion for summary judgment on his Labor Law § 240(1) claim is denied. While Plaintiff established a *prima facie* Labor Law § 240(1) violation through his testimony that he was struck by a load of 40-foot-long rebar rods, which collectively weighed thousands of pounds, as they were being improperly hoisted (*see, e.g. Gove v Pavarini McGovern, LLC*, 110 AD3d 601, 602 [1st Dept 2013]), Defendants have raised triable issues of fact which require denying summary judgment as to Labor Law § 240(1).

Defendants’ contention that they are not proper Labor Law defendants is mistaken as Defendants’ witness admitted that New York City is the owner of the Harlem River Drive (NYSCEF Doc. 61 at 10-11; 22), and the New York City Department of Transportation contracted Defoe to carry out the construction work (*see* NYSCEF Doc. 62). Likewise, Defendants’ argument that Plaintiff’s version of events, namely a 40 foot long and over 1000-pound pile of rebar hitting him while being hoisted, does not trigger Labor Law § 240(1) is without merit (*see Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 605 [2009] [“elevation differential here involved cannot be viewed as de minimis, particularly given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent”]).

However, viewing the facts in the light most favorable to the non-movants, and considering there is conflicting testimony as to whether Plaintiff was hit by the hoisted rebar pile or merely tripped on rebar on the ground, the Court is constrained to deny summary judgment. Specifically, the affidavits of Patrick Horton and Stanley De Napoli raise issues of fact as to whether Plaintiff was struck by a load of rebar being hoisted or whether he merely tripped on rebar on the ground.

Credibility issues are further raised as Mr. Horton swears that Plaintiff's brother approached him and offered him money in exchange for Mr. Horton corroborating Plaintiff's version of the accident. While Plaintiff questions the signatures on the affidavits and questions why the affidavits were executed years after the telephonic statements annexed to the affidavits, these discrepancies only further raise credibility issues which cannot be determined on a motion for summary judgment (*see, e.g. Broughton v 553 Marcy Avenue Owners LLC*, 238 AD3d 536, 536-37 [1st Dept 2025] citing *Aspromonte v Judlau Contracting, Inc.*, 162 AD3d 484, 485 [1st Dept 2018]).

Although Plaintiff claims these affidavits violate CPLR 2309(c), the failure to include a certificate of conformity "is a mere irregularity, and not a fatal defect" and "[a]s long as the oath is duly given, authentication of the oath giver's authority can be secured later, and given nunc pro tunc effect if necessary" (*see Wager Estate of Cordaro v Rao*, 178 AD3d 434, 435 [1st Dept 2019] quoting *Matapos Tech. Ltd. v Compania Andina de Comercio Ltda*, 68 AD3d 672, 673 [1st Dept 2009]; *see also 769 East LLC v Ofori*, 226 AD3d 464, 465 [1st Dept 2024]). Issues of fact are further compounded by Greg Ackley Sr.'s statement (NYSCEF Doc. 73), which although hearsay, can be considered in opposition to the motion considering there is other admissible evidence relied on by Defendants (*see O'Halloran v City of New York*, 78 AD3d 536 [1st Dept 2010]). Therefore, the issue of whether Defendants violated Labor Law § 240(1) remains a fact question for the jury.

C. Labor Law § 241(6)

Plaintiff's motion for summary judgment under Labor Law § 241(6) is denied. On this motion, Plaintiff alleges uncontroverted evidence establishes violations of Industrial Code §§ 23-2.3(c), 23-9.4 (e)(1) & (h)(1) and (5). But those sections of the Industrial Code govern tag lines that must be used when steel is being hoisted and governs the operation of backhoes. Plaintiff was denied summary judgment under Labor Law § 240(1) because based on the conflicting versions

of events there is an issue of fact as to whether Plaintiff was hit by a load of rebar being hoisted or whether he simply tripped on rebar which was laying on the ground.¹ As there remains an issue of fact as to whether the hoisted rebar injured Plaintiff or whether Plaintiff was merely injured by rebar already on the ground, there remains an issue of fact as to to whether the failure to provide a tag line or the failure to properly operate the backhoe was the proximate cause of Plaintiff's injury. Therefore summary judgment regarding Plaintiff's Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 23-2.3(c), 23-9.4 (e)(1) & (h)(1) and (5) are denied.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied, and within ten days of entry, counsel for Defendants 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.

1/27/26
DATE


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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	

¹ Plaintiff did not seek summary judgment under his Labor Law § 241(6) claim predicated on an alleged violation of Industrial Code § 23-1.7(e), even though he alleged this section was violated in his Bill of Particulars.