Oliveira v Mepa Realty LLC
2026 NY Slip Op 30412(U)
February 4, 2026
Supreme Court, New York County
Docket Number: Index No. 151534/2023
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

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JESIEL BARBOSA OLIVEIRA,

Plaintiff,

- v -

MEPA REALTY LLC,TAVROS HOLDINGS LLC,WAYFINDER PM LLC,BROADWAY CONSTRUCTION GROUP LLC,

Defendant.

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INDEX NO. 151534/2023

MOTION DATE 12/18/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

MEPA REALTY LLC, TAVROS HOLDINGS LLC, BROADWAY CONSTRUCTION GROUP LLC

Plaintiff,

-against-

CONCRETE COURSES CONCEPTS CORP.

Defendant.

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Third-Party
Index No. 595714/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

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

Plaintiff's motion for summary judgment is granted as described below.

Background

This Labor Law action involves plaintiff's claims for damages arising out of an accident at a construction site. Plaintiff was a construction helper for third-party defendant Concrete Courses Concepts Corp. ("Concrete Courses") (NYSCEF Doc. No. 61 at 31). He explained that he was told what to do each day by his supervisor Mauricio (*id*. at 40). On the day of the

accident, he was tasked with transporting DOKA beams from the 6th floor to the 7th floor (*id*. at 52). Plaintiff testified that he was disassembling the DOKA beams to be transported up to the 7th floor while standing on a ladder (*id*. at 57 -58). He claimed "On that day I was on the ladder holding a DOKA. I was on a six feet ladder, six-foot ladder. On the fifth rung holding the DOKA and the two other ones were down there removing the pole" (*id*. at 58).

Plaintiff would turn the poles in order to loosen the DOKAs and then lower them to a coworker below (*id*. at 60-61). For one specific beam, the two poles supporting the DOKA were removed and the DOKA still couldn't come down "because it was nailed" (*id*. at 65). He contends that the accident happened while "I was holding the DOKA and [it] . . . wouldn't turn loose. Maquina [a coworker] hit the DOKA with a piece of DOKA and the DOKA turned loose" (*id*. at 62). When his coworker hit the beam "The DOKA started coming down. The ladder moved, fell and turned and I fell with the ladder" (*id*. at 68-69). He explained that he was then struck by the DOKA in the chest after he had fallen off the ladder (*id*. at 75).

Plaintiff moves for summary judgment on his Labor Law §§ 240(1) and 241(6) claims.

In opposition, defendants claims that the hazard plaintiff encountered, a loosened DOKA beam, had nothing to do with an elevation differential sufficient to grant liability under Labor Law § 240(1). They contend that the beam did not fall because of the lack of a safety device but because a co-worker struck the DOKA beam. Defendants maintain that the accident was not caused by an inadequate safety device.

In reply, plaintiff emphasizes that the beam required securing prior to being dislodged and that it was foreseeable the beam might fall if it was not properly secured. He contends that this type of beam has to be secured while there are workers performing tasks below. Plaintiff

also insists he entitled to summary judgment based on the unsecured ladder that wobbled and fell over while he was working on it.

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]).

The Court grants this branch of the motion. The work plaintiff was performing, removing the DOKA beams, required that the beams to be secured and so plaintiff is entitled to summary judgment based on the falling object (*Diaz v Raveh Realty, LLC*, 182 AD3d 515, 516, 120 NYS3d 776(Mem) [1st Dept 2020] [granting plaintiff summary judgment where he was hit by falling plywood that was dropped by coworkers]).

Moreover, plaintiff is also entitled to summary judgment under Labor Law § 240(1) because it was an unsecured ladder that moved and caused him to fall (*Rodas-Garcia v NYC United LLC*, 225 AD3d 556, 556, 207 NYS3d 473 [1st Dept 2024]). To the extent that

defendants contend that plaintiff was at fault in their affirmative defenses, those claims (which sound in comparative negligence) do not compel the Court to deny the instant motion (*id*.).

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 moves for summary judgment on this claim premised on Industrial Code section 23-1.7(a)(1). This section provides that:

> "Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. Such overhead protection shall consist of tightly laid sound planks at least two inches thick full size, tightly laid three-quarter inch exterior grade plywood or other material of equivalent strength. Such overhead protection shall be provided with a supporting structure capable of supporting a loading of 100 pounds per square foot."

"A cause of action alleging a violation of Labor Law § 241(6) predicated upon a violation of Industrial Code 12 NYCRR 23–1.7(a)(1) requires the plaintiff to demonstrate that the area in which the plaintiff was injured was one where workers are normally exposed to falling objects" (*Flores v Fort Green Homes, LLC*, 227 AD3d 672, 674, 210 NYS3d 455 [2d Dept 2024] [internal quotations and citations omitted]).

The Court grants this branch of plaintiff's motion as well. Plaintiff testified that he and his coworkers were tasked with removing beams from the ceiling. That suggests that this was an area in which they would be exposed to falling objects. Defendant did not raise a material issue of fact in opposition to this part of plaintiff's motion. Instead, it argues in conclusory fashion that "The worksite is not a place normally exposed to falling material or objects and the alleged injury was caused in the performance of the actual work of the plaintiff and not the result of any structural instability" (NYSCEF Doc. No. 70, ¶ 31). Removing heavy items from the ceiling above raises the possibility of falling objects.

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment as to liability on his Labor Law §§ 240(1) claim and Labor Law 241(6) claim premised on section 23-1.7(a)(1) and to dismiss defendant's affirmative defenses is granted.

2/4/2026
DATE

ARLENE P. BLUTH, J.S.C.

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