

Cruz v Lendlease Turner
2026 NY Slip Op 30587(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 158428/2020
Judge: James G. Clynnes
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

-----X

MARIANO CRUZ,

Plaintiff,

- v -

LENLEASE TURNER, A JOINT VENTURE BETWEEN
LENLEASE (US) CONSTRUCTION LMB, INC. AND
TURNER CONSTRUCTION COMPANY, LENLEASE (US)
CONSTRUCTION LMB, INC., TURNER CONSTRUCTION
COMPANY, NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION, NEW YORK
CONVENTION CENTER OPERATING CORPORATION,
NEW YORK STATE URBAN DEVELOPMENT
CORPORATION DBA EMPIRE STATE DEVELOPMENT
CORPORATION, TISHMAN CONSTRUCTION
CORPORATION,

Defendants.

-----X

LENLEASE TURNER, A JOINT VENTURE BETWEEN
LENLEASE (US) CONSTRUCTION LMB, INC. AND
TURNER CONSTRUCTION COMPANY, LENLEASE (US)
CONSTRUCTION LMB, INC., TURNER CONSTRUCTION
COMPANY, NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION, NEW YORK
CONVENTION CENTER OPERATING CORPORATION, NEW
YORK STATE URBAN DEVELOPMENT CORPORATION DBA
EMPIRE STATE DEVELOPMENT CORPORATION, TISHMAN
CONSTRUCTION CORPORATION

Plaintiffs,

-against-

CELTIC SHEET METAL, INC., CREATIVE CONSTRUCTION
SERVICES CORP.

Defendants.

-----X

INDEX NO. 158428/2020
MOTION DATE 08/02/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party
Index No. 595464/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 90, 94,
95

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

Upon the foregoing documents, it is ordered that Plaintiff Mariano Cruz's motion for an Order granting partial summary judgment on the issue of liability in plaintiff's favor and against defendants on the plaintiff's claims relating to Labor Law 240 (1), 241 (6), 200 and common law negligence and setting this matter down for an inquest and/or immediate trial solely on the issue of damages and the cross-motion by Defendant/Third-Party Defendant Celtic Sheet Metal, Inc. (Celtic) for summary judgment in its favor and dismissal of the Plaintiff's Complaint and the Third-Party Complaint against it are decided as set forth below.

In this personal injury action, Plaintiff seeks recovery against defendants for violations of sections 200, 240 (1) and 241 (6) of the New York Labor Law (Labor Law) and common-law negligence. The statement of facts is as follows: On October 12, 2019, plaintiff, an employee of non-party EJ Electric Installation Company (EJ), was working at the Jacob K. Javits Convention Center, New York, New York (Center). EJ was one of the subcontractors hired by defendant/third-party plaintiff Lendlease Turner, a joint venture between Lendlease (US) Construction LMB, Inc. and Turner Construction Company (Lendlease Turner), the main contractor and construction manager of the construction project (project). Defendant/third-party plaintiff New York Convention Center Development Corporation (New York Convention) is the owner of the Center.

In the course of his work, plaintiff tripped, slipped and fell on debris, dust and sludge on the fifth-floor passageway. Prior to this fall, Plaintiff was carrying a 5-inch wide unsecured electrical metal tubing (EMT) pipe which weighed 140 pounds. The EMT pipe also fell, crushing his left arm as it laid on a concrete floor. The debris included dirt, dust, concrete debris, sheetrock debris, sludge and pencil rod debris. As a result of the fall, plaintiff claims that he can no longer do construction work due to a permanently injured arm.

Plaintiff is moving for summary judgment on the issue of liability, because he contends that there are no issues of fact as to the proximate cause of his injury. He contends that he did not contribute to events leading up to the accident and the resultant injuries. He further seeks a scheduled inquest to ascertain damages resulting from defendants' actions.

Most of the defendants brought a third-party action against two third-party defendants, Celtic and Creative Construction Services Corp. (Creative), seeking indemnification/contribution and damages for failure to procure insurance. While Celtic is bringing a cross motion to dismiss the main and third-party claims, Creative's separate motion for summary judgment and dismissal of all claims against it was granted by Decision and Order dated July 10, 2025.

In support of his motion, Plaintiff argues that he was not provided with any protective devices to secure the EMT pipe he was carrying. Plaintiff also argues that the passageway floor was not adequately cleaned up and constituted a dangerous condition. Plaintiff's submission includes the following evidence: a Notice of Claim filed by plaintiff prior to the commencement of this action, and his 50-H transcript; deposition testimony from plaintiff; deposition testimony from Christopher Seniuk (Seniuk), safety manager for Lendlease Turner; logbook entries, photographs and an Investigation Report from Seniuk; deposition testimony from Tobin Varghese (Varghese), representing Lendlease Turner; deposition testimony from Hansen James (James), representing Creative; deposition testimony from Conor Murphy (Murphy), representing Celtic; deposition testimony from Matt Marangelli (Marangelli) representing EJ; and a copy of EJ's subcontractor agreement with Lendlease Turner.

In his deposition, plaintiff testified that on the day of the accident, he was carrying the EMT pipe on his left shoulder, holding it with his left hand and guiding it with his right hand. He was planning to install the pipe in the ceiling. He suddenly lost his footing on the floor, slipped and tripped before falling on the floor, with the pipe crushing his left arm. He stated that workers came to him and that he was eventually transported by an ambulance to the nearby hospital for emergency treatment.

Seniuk identified himself as working for Lendlease Turner, then explained the events of that day. He took photographs of the accident scene and later wrote an investigation report. He testified that the debris-ridden floor was a hazard, that workers like plaintiff should be protected from such a condition, and that it was the responsibility of a construction manager like Lendlease Turner to prevent such hazards at the workplace.

Varghese was the electrical superintendent of Lendlease Turner. He had no personal knowledge of the accident. He stated that Lendlease was the construction manager of the project and he was responsible for reviewing the project schedule and ensuring that the electrical work took place according to schedule in a safe manner. He stated that debris on the passageway was a hazard and that Lendlease Turner was responsible for the regular cleaning of the area. Varghese confirmed the photographs and report by Seniuk regarding the debris on the passageway.

The deposition testimony from James and Murphy indicates that they were not responsible for cleaning the passageway and that they were not involved in events leading up to the accident. Testimony from Marangelli, representing plaintiff's employer, indicates that he was present at the time of the accident, that he saw the debris on the passageway and that the plaintiff wounded and on the floor. He described the floor as a hazard to workers at the time.

Based on the evidence, plaintiff argues that he is entitled to summary judgment with respect to liability. He insists that it is uncontested that the passageway floor was in a dangerous condition with a tripping and slipping hazard, and that defendants' representatives admitted the floor was a hazard. Plaintiff contends that the Labor Law statutes are applicable to the owner and general contractor of the project, who have a non-delegatory duty to maintain a safe workplace. Plaintiff also contends that these defendants violated 12 NYCRR 29-17 (d) of the Industrial Code in causing or allowing a slippery hazard; and violated 12 NYCRR 23-1.7 (e) (1) and (e)(2) of the Industrial Code in causing or allowing a tripping hazard. Plaintiff contends that they violated common-law negligence in breaching their duty of due care.

The opposition to this motion consists of an affirmation from defendants' counsel. The counsel affirms that there are issues of fact as to the proper condition of the passageway floor at the time of the accident, the alleged presence of pencil rod debris and other debris and whether those who testified that they witnessed the area are reliable. Plaintiff argues in reply that this issue is minor, if not irrelevant. Plaintiff also argues that a lawyer's affirmation is insufficient evidence to oppose a motion for summary judgment.

“It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues” (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). “The substantive law governing a case dictates what facts are material, and ‘[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). “To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor” (*Kershaw v Hospital for Special Services*, 114 AD3d 75, 81 [1st Dept 2013]). “Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial” (*Id.* at 82).

In Reply, plaintiff states that defendants’ evidence is insufficient. Plaintiff is correct. An attorney’s affirmation against a motion for summary judgment is without probative value in the absence of additional admissible evidence (*see Ramnarine v Memorial Ctr. for Cancer and Allied Diseases*, 281 AD2d 218, 220 [1st Dept 2001]). Defendants have not supplemented the affirmation with other evidence in admissible form. The affirmation shall not be considered. Nevertheless, plaintiff must make a cause for summary judgment with his evidence. Otherwise, the motion will not be granted, even in the absence of opposition (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Plaintiff asserts the claim that defendants violated sections 200, 240 (1) and 241 (6) of the Labor Law. Section 200 codifies the common-law duty to provide a safe workplace. Section 240 (1) provides that the owner and general contractor of a construction worksite are absolutely liable if their conduct was the proximate cause of plaintiff’s injuries. Here, plaintiff must prove that (1) he is a member of the class of workers that the statute was designed to protect, (2) the statute was violated, and (3) the breach of duty imposed by the statute was a proximate cause of plaintiff’s injuries. Section 241 (6) imposes a non-delegable duty upon owners and general contractors to provide reasonable and adequate protection and safety to construction workers.

The court finds that Lendlease Turner and New York Convention have violated the Labor Law statutes. This is based upon the deposition testimony of plaintiff, Seniuk and Varghese and the report written by Seniuk. The condition of the passageway floor prior to the accident was a genuine hazard and the aforesaid defendants had a duty to maintain a safe workplace for workers like plaintiff.

Regarding the Industrial Code, plaintiff made out a case for summary judgment. 23-1.7 (d) refers to slippery conditions (*see Luciano v New York City Hous. Auth.*, 157 AD3d 617 [1st Dept 2018]), just as 23-1.7 (e) (1) and (e) (2) refers to tripping conditions. Plaintiff has demonstrated that the passageway was in both a slippery and tripping condition.

Common-law negligence is slightly more complex. Plaintiff is required to show that a dangerous condition on the premises was a result of defendants creating the condition or having prior actual or constructive notice of the condition and failing to remedy it within a reasonable time (*see Haseley v Abels*, 84 AD3d 480, 482 [1st Dept 2011]). In this case, the court has found defendants liable for violations of the Labor Law. Violation of a statute which provides a specific duty is negligence per se, specifically when defendants' conduct was the proximate cause of plaintiff's injuries (*see Elliot v City of New York*, 95 NY2d 730 [2001]).

The court finds that plaintiff is entitled to partial summary judgment on his claims for liability against defendants. The rest of this decision will concern Celtic's cross motion, which is unopposed.

Celtic identifies itself as a company in the business of making and installing sheet metal items. It executed a subcontract with Lendlease Turner to perform sheet metal work for the project. Celtic relies on the deposition testimony of plaintiff, Seniuk, Varghese and its representative Murphy and submits its subcontract agreement with Lendlease Turner. Celtic acknowledges that Lendlease Turner was the general contractor and was responsible for maintaining a safe worksite. Murphy testified that Celtic workers were not in the vicinity of the passageway at the time of the accident as their work was not tied to the work done by the electrical workers.

Celtic argues that the Labor Law provisions are inapplicable because the statutes only apply to owners and general contractors and Celtic was a subcontractor. Celtic contends that a subcontractor can only be liable if it had the authority to control or supervise plaintiff's work. Celtic avers that at no time did it control or supervise plaintiff's work at the project. In its subcontract agreement with Lendlease Turner, Celtic cites Article 12, which allows Lendlease Turner to seek indemnification from Celtic in the course of any work performed by Celtic. Article 11 provides that Celtic is required to procure additional insurance for liability incurred during the course of Celtic's work. Celtic contends that since this action involves work that was unrelated to any work performed by Celtic, it is not obligated to indemnify and procure additional insurance to any defendant.

The court finds that Celtic has made out a case for summary judgment. Based on the evidence, Celtic is only required to indemnify Lendlease Turner for any liability for bodily injury caused by, arising out of, resulting from, or occurring in connection with Celtic's performance of the work. Celtic is only required to procure the insurance under similar circumstances. Celtic has shown that the accident and resultant injuries afflicting plaintiff have no connection with Celtic's work on the date of the accident. Celtic is also dismissed from the main action as it is not liable for common-law negligence or Labor Law violations in connection with plaintiff's accident.

Accordingly, it is

ORDERED that plaintiff Mariano Cruz's motion for partial summary judgment on liability in favor of plaintiff and against the defendants, except defendants/third-party defendants Celtic Sheet Metal, Inc. and Creative Construction Services Corp. is granted; and it is further

ORDERED that an inquest to ascertain damages against defendants LENDLEASE TURNER, A JOINT VENTURE BETWEEN LENDLEASE (US) CONSTRUCTION LMB, INC. and TURNER CONSTRUCTION COMPANY, LENDLEASE (US) CONSTRUCTION LMB, INC., TURNER CONSTRUCTION COMPANY, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK CONVENTION CENTER OPERATING CORPORATION, NEW YORK STATE URBAN DEVELOPMENT

CORPORATION dba EMPIRE STATE DEVELOPMENT CORPORATION and TISHMAN CONSTRUCTION CORPORATION shall be scheduled at a later date; and it is further

ORDERED that the cross-motion by defendant/third-party defendant Celtic Sheet Metal, Inc. for summary judgment in its favor is granted and the Complaint and Third-Party Complaint and all claims and cross claims against Celtic Sheet Metal, Inc., are as against said defendant/third-party defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant/third-party defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

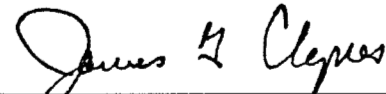
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

2/17/2026

DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE