Orellana v 5541-1274 Fifth Ave. Manhattan LLC
2026 NY Slip Op 31216(U)
March 25, 2026
Supreme Court, New York County
Docket Number: Index No. 152497/2020
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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MILTON ALFREDO BARRERA ORELLANA,

Plaintiff,

- v -

5541-1274 FIFTH AVENUE MANHATTAN LLC,REIDY CONTRACTING GROUP LLC,H&L IRONWORKS CORP., LCD ELEVATOR, INC.,AKELIUS REAL ESTATE,

Defendant.

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INDEX NO. 152497/2020

MOTION DATE 03/14/2025

MOTION SEQ. NO. 009

AMENDED DECISION + ORDER ON MOTION

REIDY CONTRACTING GROUP LLC

Plaintiff,

-against-

H&L IRONWORKS CORP., LCD ELEVATOR INC.

Defendant.

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Third-Party
Index No. 595725/2020

5541-1274 FIFTH AVENUE MANHATTAN LLC

Plaintiff,

-against-

LCD ELEVATOR, INC., TOUCHSTONE CONTRACTING INC.

Defendant.

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Second Third-Party
Index No. 595899/2020

H&L IRONWORKS CORP.

Plaintiff,

-against-

TOUCHSTONE CONTRACTING INC.

Defendant.

----------X

Third Third-Party
Index No. 595319/2023

The following e-filed documents, listed by NYSCEF document number (Motion 009) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 296, 302, 307, 313, 342, 343, 344, 345, 346, 347, 351, 352, 356, 361, 367, 372, 377, 382, 383, 388, 396

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

Upon the foregoing documents, the motion is granted in part.

Background

This motion arises out of a Labor Law case involving an incident at a construction site located on a premises owned by defendants Akelius Real Estate Management LLC ("Akelius") 5541-1274 Fifth Avenue Manhattan LLC ("Fifth" or collectively with Akelius "Owners"). The general contractor for the project was defendant Reidy Contracting Group, LLC ("Reidy" or "GC"). Plaintiff was a bricklayer, employed by defendant Touchstone Contracting, Inc. ("Touchstone" or "Employer"). He was working on a scaffold on the day in question when an unsecured cinderblock or brick fell and injured him. Plaintiff was positioned beneath an elevator bulkhead above the rooftop. A plastic tarp had been placed on top of the bulkhead in order to protect the elevator from the weather, and it is alleged that the tarp was secured with cinderblocks and that on the day in question, a gust of wind blew one of the cinderblocks off the tarp onto Plaintiff.

Procedural Background

Plaintiff commenced this underlying proceeding in March of 2020, pleading claims against Owners and GC. Both defendants answered, and the GC filed a third-party complaint in September of 2020, pleading claims for indemnification and contribution against two sub-contractors on the site: H&L Ironworks Corp. ("H&L" or "Masonry Subcontractor") who was hired by Reidy and themselves sub-contracted Employer, and LCD Elevator, Inc. ("LCD" or "Elevator Subcontractor"), who was hired directly by Owners. Both H&L and LCD have answered the third-party complaint. Plaintiff has filed several verified bills of particulars in this

case.

In June of 2022, Plaintiff commenced a separate action against Akelius, which has since been consolidated with this action. In May of 2023, the GC filed a motion for summary judgment seeking dismissal of the labor law claims against them and contractual indemnity from H&L. A decision from this Court granted dismissal of the common law negligence, Labor Law § 200, and Labor Law 241(6) claims against the GC (the "December Order"). In dismissing the Labor Law 241(6) claim, the Court reasoned that it was undisputed that work was not being done overhead at the time of the accident and therefore "the movant has established that section 23-1/7(a) [of the Industrial Code] is inapplicable to the instant case." The December Order also noted that the GC had failed to meet their burden on establishing contractual indemnity because there were questions of fact going to whether LCD was responsible for the accident in question. The GC appealed the December Order, which was affirmed by the First Department. Plaintiff filed the Note of Issue in January of 2025.

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

In this motion, LCD moves for summary judgment in their favor, dismissing all claims and cross-claims asserted against them by all parties. They argue that because no-one knows for sure what caused the cinderblock that struck Plaintiff to fall, all claims against them should be dismissed. The motion is opposed by the Owners and Touchstone and partially opposed by Reidy. Plaintiff has not opposed the motion. At oral argument on this motion, it was confirmed that the portion of this motion seeking dismissal of Plaintiff's Labor Law §§ 200, 240(1), 240(2), 240(3) and 241(6) claims is unopposed. Therefore, that portion of this motion will be granted. The issue then becomes whether LCD has met their prima facie burden on the remainder of the motion.

In essence, LCD is arguing that because there are material questions of fact, they should be awarded summary judgment. Crucially, LCD has not submitted evidence proving conclusively that the cinderblock was not being used to secure a tarp covering their elevator work. Instead, they have pointed to the areas of confusion and conflicting testimony regarding the source of the cinderblock in the record and provided affidavits from their employees stating that they had not placed a cinderblock on the plastic sheeting in question. While this would suffice to oppose a motion for summary judgment (and indeed, a motion for summary judgment in this case has already been denied due specifically to questions of fact going to LCD's potential role in the accident), this does not establish a prima facie entitlement to summary judgment for LCD. Accordingly, it is hereby

ADJUDGED that the prior order on this motion dated March 9, 2026, is hereby amended as indicated below; and it is further

ADJUDGED that the motion is granted in part; and it is further

ADJUDGED that plaintiff Milton Alfredo Barrera Orellana's claims sounding in Labor Law §§ 200, 240(1), 240(2), 240(3) and 241(6) are hereby dismissed as against defendant LCD Elevator, Inc.

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3/25/2026
DATE

LYLE E. FRANK, J.S.C.

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