Caton v Turner + McKissack
2026 NY Slip Op 31350(U)
March 24, 2026
Supreme Court, Kings County
Docket Number: Index No. 517321/2022
Judge: Devin P. Cohen

Supreme Court of the State of New York
County of Kings

Index Number 517321/2022
Seqs. 001

Part LL1M

REYNOLD CATON,

Plaintiff,

against

TURNER + MCKISSACK, A JOINT VENTURE, TURNER CONSTRUCTION COMPANY, MCKISSACK & MCKISSACK, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, AND CITY OF NEW YORK,

Defendants.

TURNER + MCKISSACK, A JOINT VENTURE, TURNER CONSTRUCTION COMPANY, MCKISSACK & MCKISSACK, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, AND CITY OF NEW YORK,

Third-Party Plaintiffs,

against

JOHNSON CONTROLS INC.,

Third-Party Defendant.

JOHNSON CONTROLS INC.,

Second Third-Party Plaintiff,

against

CORPORATE ELECTRIC GROUP INC.,

Second Third-Party Defendant.

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this motion, by reference to the New York State Courts Electronic Filing System docket numbers: NYSCEF ## 36–52, 55–81.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 001) is decided as follows:

Factual Background and Procedural Posture

Plaintiff commenced this action to recover for damages he claims to have sustained on October 4, 2021 when he slipped and fell on construction debris at a construction site. The following is undisputed: The premises are owned by the City of New York. The New York City Economic Development Corporation (NYC EDC) and New York City Health and Hospitals Corporation (NYC HHC) retained Turner + McKissack (a joint venture comprised of defendants Turner Construction Company and McKissack & McKissack; hereinafter Turner) to renovate the Coney Island Hospital. Turner retained third-party defendant Johnson Controls Inc. (Johnson) to perform electrical work at the premises. Johnson retained plaintiff's employer, Corporate Electric Group (Corporate) to install a new fire alarm and control system at the premises. Plaintiff has been deposed; however, the depositions of defendants, third-party defendants, and non-party witnesses have not been conducted and the note of issue has not been filed.

Plaintiff testified as follows: On the date of the incident, plaintiff was required to enter shafts containing ductwork and machinery (plaintiff EBT at 38). In order to enter the shaft, plaintiff was required to "crouch" or "duck" into a cut-out in the wall (*id.* at 891, 134–135). As he was entering the shaft, plaintiff's foot "slipped and tripped" on some debris, causing him to fall to the ground and hit his knee (*id.* at 83). There were no lights in the shafts in the building because it was a new build (*id.* at 93). If plaintiff needed a light, his employer would provide one (*id.* at 94). The plaintiff authenticated photographs of the shaft which depict material on the

floor, which are contained in the record. The defendants provided photographs from an investigator, John Cochems, who took photographs of the shaft approximately four hours after plaintiff's accident (Cochems aff. at ¶ 4).

Analysis

Defendants contend that the motion is premature because it was filed before the depositions of defendants and third-party defendants were completed. A motion for summary judgment is premature where there is "an evidentiary basis . . . that discovery may lead to relevant evidence and that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the [moving party]" (*Gasis v City of New York*, 35 AD3d 533, 534 [2d Dept 2006]). Here, defendants argue that the depositions of the third-party and second third-party defendants are necessary to oppose plaintiff's motion for summary judgment, and that the motion should be denied.

Plaintiff contends that the failure to schedule defendants' and third-party defendants' depositions is defendants' own doing, and therefore does not warrant denial of plaintiff's motion. A review of the correspondence between counsel, included in the record, indicates that:

- Plaintiff's deposition was completed on March 13, 2025,
- Defendant Turner's deposition was scheduled for April 1, 2025, and then adjourned to July 1, 2025.
- On June 30, Turner's counsel provided over 1,000 pages of document discovery to plaintiff's counsel. Plaintiff's counsel canceled the deposition due to volume of discovery exchanged the evening before the deposition.
- Turner's counsel contacted all sides on July 7, indicating availability to proceed on July 24 or July 29, 2025. Third-party defendant Johnson claimed conflicts in July,

and plaintiff had conflicts with all August dates except August 22. There is no further correspondence or final resolution included in the record.

Where, as here, a prematurity argument is predicated on missing deposition testimony, the non-moving party must make an evidentiary showing that the depositions would be material to the resolution of the motion, and that the information is not within their control. Johnson and Corporate filed opposition to plaintiff's motion, and both parties effectively adopted defendants' moving papers without providing any evidence, including an affidavit from their clients, that would challenge plaintiff's testimony. In the absence of any evidence that the outstanding depositions would provide an alternative account to plaintiff's deposition testimony, and in light of the fact that the multiple adjournments of defendants' depositions were caused by the defendants, plaintiff's motion for summary judgment is not premature (*see e.g. Ramirez v Pace University*, 230 AD3d 811 [2d Dept 2024]).

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) a proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff's claim is predicated on violations of Rules 23-1.7 (e) (tripping hazards) and 23-1.7 (d) (slipping hazards).

Plaintiff has made out his prima face entitlement to summary judgment on this claim. Plaintiff testified that, while crawling into the shaft to perform his work, he "slipped and tripped on some debris" (Caton EBT at 83; *see also id.* at 134). This testimony is sufficient to demonstrate the presence of debris in either a work area or a passageway, or the presence of a "foreign substance," which caused the plaintiff to slip or trip (*see Bazdaric v Almah Partners*

LLC, 41 NY3d 310 [2024]). Plaintiff has made out his prima facie case that either Rule 23-1.7 (e) (1), 1.7 (e) (2), or 1.7 (d), or some combination thereof, were violated and that the violation was a proximate cause of his accident (*see e.g. Keen v Tishman Construction Corporation of New York*, 233 AD3d 1001 [2d Dept 2024]).

In opposition, defendants' and third-party defendants do not rebut plaintiff's prima facie showing that there was debris present in the shaft where he was instructed to work and that the debris caused him to fall. The photos of the shaft free of debris provided by defendants, purportedly taken approximately four hours after plaintiff's accident, do not raise an issue of fact because there is no testimony that these photos depict the shaft in substantially the same condition it was in when plaintiff fell. Plaintiff authenticated photographs of the shaft containing debris at his deposition, and that testimony is unrebutted. Defendants' contention, based on their expert affidavit, that the plaintiff should have used a light to survey the shaft before entering goes to the issue of comparative fault. Such arguments do not preclude awarding the plaintiff summary judgment, but are instead appropriately preserved for the time of trial (*Rodriguez v City of New York*, 31 NY3d 312 [2018]). The remainder of defendants' arguments appear to weigh solely on the issue of damages.

Labor Law § 200

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Claims under this statute are evaluated under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the two (*id.*)

Here, plaintiff's claim is predicated on an alleged dangerous condition. However, plaintiff does not advance a substantive argument with respect to the defendants, instead asserting mere legal conclusions that defendants negligently allowed debris to accumulate in the area which caused plaintiff's fall. In the absence of evidence about, *inter alia*, the provenance of the debris, the duration of time the debris existed, and other information about the condition, plaintiff's motion for summary judgment is denied as to this claim (*see e.g. Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]; *see also Quinonez v Brooklyn Hospital Center*, 235 AD3d 1020 [2d Dept 2025]).

Conclusion

Plaintiff's motion for summary judgment (Seq. 001) is granted to the extent of awarding him summary judgment on his Labor Law § 241 (6) claim, and the issue of comparative fault is preserved for the time of trial pursuant to *Rodriguez*. The motion is otherwise denied. The discovery portion of plaintiff's motion is denied without prejudice to a new motion filed in the appropriate part.

This constitutes the decision and order of the court.

March 24, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court