Quintana v Ohel Children's Home & Family Servs., Inc.
2026 NY Slip Op 31410(U)
March 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 502431/2021
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Part LL1M

Index Number 502431/2021
Seqs. 003–006

ALVARO QUINTANA,

Plaintiff,

against

OHEL CHILDREN'S HOME AND FAMILY SERVICES, INC. AND RUBIN DEVELOPMENT AND CONSTRUCTION, INC.,

Defendants.

RUBIN DEVELOPMENT AND CONSTRUCTION, INC.,

Third-Party Plaintiff,

against

LIGHTEN UP ELECTRICAL SERVICE CORP.,

Third-Party Defendant.

OHEL CHILDREN'S HOME AND FAMILY SERVICES, INC.,

Third-Party Plaintiff,

against

LIGHTEN UP ELECTRICAL SERVICE CORP.,

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 78–104, 107–126, 128–136, 142–174.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 003), defendants/third-party plaintiff Rubin Development and Construction, Inc. (Rubin) and Ohel Children's Home and Family Services, Inc. (Ohel)'s motion for summary judgment (Seq. 004),

third-party defendant/second third-party defendant Lighten Up Electrical Service Corp. (Lighten Up)'s cross-motion for summary judgment (Seq. 005), and Lighten Up's second cross-motion for summary judgment (Seq. 006) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on February 25, 2018 while working at a construction site. It is undisputed that the premises where the accident occurred were owned by Ohel, and that Rubin was the general contractor. Rubin sub-contracted Lighten Up, and Lighten Up employed the plaintiff as an electrician.

The plaintiff testified as follows: The plaintiff was working with three employees of the general contractor to install landline cable on the date of his incident (Quintana EBT at 62). Plaintiff's supervisor, "Miguel," was also present at the site (*id.* at 39). Miguel directed the workers to erect a scaffold and ladders, and to place a pipe through the center of a wooden spool of cable (*id.* at 43–44, 52–53). Then, the workers were instructed to rest the pipe on the scaffold so that the spool "straddled" the scaffold, and workers could unwind the cable off of the spool (*id.* at 52–53). Plaintiff had never previously placed a spool on a scaffold like this (*id.* at 53). The scaffold was not secured, and "once [the workers] pulled the cabling along with the pipe . . . the weight made [the scaffold] more come towards [plaintiff's] neck" (*id.* at 64). The scaffold and the spool fell onto plaintiff (*id.* at 65).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the

non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Timeliness

As an initial matter, Lighten Up's cross-motions were filed 111 days after plaintiff filed the note of issue. Under the local and Labor Law part rules, motions for summary judgment must be filed within sixty (60) days after the note of issue (CPLR 3212; *Brill v City of New York*, 2 NY3d 648 [2004]). The papers do not contain a *Brill* argument and contain arguments that are not substantially identical issues to the primary motions (*cf. Grande v Peteroy*, 39 AD3d 590 [2d Dept 2007], *as amended* [Dec. 18, 2007]). Therefore, to the extent they raise issues not contained in the primary motions, Lighten Up's cross-motions are denied as untimely.

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 500 (1993)]). "The single decisive question [when assessing liability under Labor Law § 240 (1)] is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

Plaintiff has made out his prima facie entitlement to summary judgment on his Labor Law § 240 (1) claim. Plaintiff testified that a heavy object (the scaffold with the spool on top of it) fell on him, and the flow of gravity to the object caused him harm (*see Runner*, 13 NY3d at 604; *see also Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1 [2011]). To the extent

that the testimony indicates questions about whether another individual came to assist plaintiff after the scaffold tipped or allegations that plaintiff sustained a subsequent accident, these do not weigh on the issue of defendants' liability under Labor Law § 240 (1). Additionally, defendants' contentions the fact plaintiff did not report the accident and appeared at work the next day does not raise an issue of fact as to whether the accident occurred, nor does the fact that defendants have not identified by name any of the alleged witnesses.

Therefore, plaintiff's motion is granted with respect to his Labor Law § 240 (1) claim.

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 the alleged violation of Industrial Code § 23-2.1 (a) (2), which requires that

> Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge.

Defendants contend that this rule is inapplicable because the plaintiff admits the spool was in use, not being stored (citing *Zamajtys v Cholewa*, 84 AD3 1360 [2d Dept 2011]). However, the rule also prohibits placing materials and equipment "so close to any edge of a . . . scaffold as to endanger any person beneath such edge."

In light of the specific language of the rule, and the lack of sufficiently specific testimony to ascertain the placement of the spool at the time of the accident, both parties' motions are

denied with respect to Labor Law § 241 (6) as predicated on 12 NYCRR 23-2.1 (a) (2); defendants' motion is granted with respect to the other Industrial Code provisions.

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]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]).

The plaintiff does not seek summary judgment on this claim, and did not oppose the motion with respect to Ohel. However, plaintiff does oppose with respect to Rubin. Joseph Rubin, testifying on behalf of Rubin, acknowledges that it had a project manager on site and retained the authority to correct dangerous or hazardous conditions or unsafe practices (Rubin EBT at 22–23, 36–37, 55). In light of this testimony, plaintiff has raised a triable issue of fact as to whether Rubin had sufficient authority to direct the means and methods of plaintiff's work for liability to attach under Labor Law § 200.[1] Therefore, Rubin's motion for summary judgment on this claim is denied.

Indemnification

The right to contractual indemnification is established by the "specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). "In addition, a

[1] To the extent that Lighten Up included arguments in its second cross-motion for summary judgment which concern claims in the primary action, these arguments are barred by the rule against successive motions for summary judgment ((*Verizon New York, Inc. v Supervisors of Town of North Hempstead*, 169 AD3d 740 [2d Dept 2019]; *see also Oppenheim v Village of Great Neck Plaza, Inc.*, 46 AD3d 527 [2d Dept 2007]). A party cannot attempt to make serial summary judgment motions addressing the same action.

party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]).

As indicated by its sub-contract, Lighten Up owed an "arising out of or resulting from performance of the Subcontractor's [sic] Work" indemnification obligation to the Owner and the general contractor (AIA agreement at § 4.6). Plaintiff has effectively waived his direct negligence claims against Ohel, and there is no evidence in the record that Ohel was actively negligent; therefore, Ohel's motion for summary judgment on its contractual indemnification claim against Lighten Up is granted. However, in light of the triable issues of fact concerning Rubin's negligence indicated above, Rubin's motion for contractual indemnification is denied.

Since Lighten Up's cross-motion involving the common-law indemnification and contribution claims against it was untimely, and these arguments were not raised in the primary motions, Lighten Up's request for summary judgment on these claims is denied (*Brill*, 2 NY3d at 652).

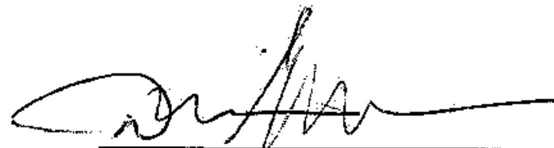
<u>Conclusion</u>

Plaintiff's motion for summary judgment (Seq. 003) is granted to the extent of awarding plaintiff summary judgment on his Labor Law § 240 (1) claim; the motion is otherwise denied.

Rubin and Ohel's motion for summary judgment (Seq. 004) is granted to the extent of dismissing plaintiff's Labor Law § 200 claim against Ohel and plaintiff's Labor Law § 241 (6) claim as predicated on all alleged Industrial Code violations <u>except</u> Rule 23-2.1 (a) (2) against both defendants. Ohel is also granted summary judgment on its contractual indemnification claim against Lighten Up. The motion is otherwise denied.

Lighten Up's cross-motions for summary judgment (Seq. 005; Seq. 006) are denied.

This constitutes the decision and order of the court.



March 26, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court