

Guivas v New Style Contrs., Inc.
2026 NY Slip Op 31490(U)
March 31, 2026
Supreme Court, Kings County
Docket Number: Index No. 530090/2021
Judge: Devin P. Cohen
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**Supreme Court of the State of New York
County of Kings**

Index Number 530090/2021
Seqs. 006, 007

Part LL1M

STEPHEN GUIVAS,

Plaintiff,

DECISION/ORDER

against

NEW STYLE CONTRACTORS, INC. AND J.H. ELECTRIC OF
NEW YORK, INC.,

Defendants.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: NYSCEF 111-156, 171-213.

Upon the foregoing papers, defendant J.H. Electric of New York Inc. (JH Electric)'s motion for summary judgment (Seq. 006) and defendant New Style Contractors, Inc. (New Style)'s motion for summary judgment (Seq. 007) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on September 28, 2022, while working at a construction site located at 65-30 Kissena Blvd., Flushing, NY 11367 (the premises). The following is undisputed: The premises were owned by non-party Dormitory Authority of the State of New York (DASNY). New Style was hired as the general contractor at the premises. JH Electric was sub-contracted to perform electrical work at the premises. Non-party Alpine was sub-contracted by New Style to perform HVAC work at the premises.

Plaintiff testified as follows: On the date of the incident, plaintiff was installing duct work at the premises (Guivas EBT at 124). Plaintiff was supposed to “suspend the duct” and his co-workers would weld behind him (*id.*). Plaintiff started in Room 200, and when he finished in that room, he was supposed to move on to Room 201 (*id.* at 124–125). There were materials and debris piled against the walls of the rooms (*id.* at 165). The trades were directed to push debris to the side of the room when they finished working (*id.* at 135–136). The material included “electrical pipes”; the plaintiff did not know if these were debris or were going to be used (*id.* at 166–167).

The plaintiff used an eight-foot A-frame ladder in Room 200 to hang the ducts (*id.* at 161–162). Plaintiff then brought the eight-foot ladder into Room 201, where there was already an-erected six-foot A-frame ladder (*id.*). Plaintiff used both ladders to perform his work in Room 201, which is the room where he allegedly fell (*id.* at 176). While stepping from the six-foot ladder onto the floor, plaintiff “felt the imprint of the pipe under [his] foot” and his leg went into the air, causing him to fall into a fire extinguisher stand (*id.* at 182). When plaintiff looked at what he had stepped on, he identified it as an “electrical pipe” that was underneath a piece of clear plastic (*id.* at 187). Plaintiff had observed an electrician working in Room 201 the day before, and testified that only electricians used these “electrical pipes” (*id.* at 153, 188). Andrew Isles, JH Electric’s representative, testified that the “piece of circular metal” in photographs of the location was the kind of metal conduit that was used by JH Electric at the site (Isles EBT at 35). Plaintiff’s co-worker, David Josephs, was also deposed. Mr. Josephs took photographs of the scene (Josephs EBT at 42). Mr. Josephs also identified the object that plaintiff slipped on as electrical conduit (*id.* at 58).

The daily work logs indicate that JH Electric workers had been performing conduit installation work in Room 201 on September 27, 2021, the day prior to plaintiff's alleged incident. Jeff Thomas, New Style's representative, testified that New Style would provide laborers to clean up at the premises (Thomas EBT at 17). The sub-contractors were required to place their waste into piles for the laborers to clean up (*id.* at 45–46). Mr. Thomas testified that he performed premises walkthroughs in the morning “very often,” but did not recall if he walked through the area where Alpine was going to work on September 28, 2022 (*id.* at 76). Mr. Thomas also claims he took photographs in the area where plaintiff's accident occurred in Room 201, but he was not a witness to the accident and does not explain how he knew where to photograph (*id.* at 132).

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]).

Labor Law § 240 (1)

Plaintiff withdrew his Labor Law § 240 (1) claim on February 13, 2025; therefore, defendants' motions are granted with respect to this claim without opposition (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

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 (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). The plaintiff does not oppose JH Electric's motion with respect to this claim. The plaintiff also does not oppose the motion with respect to the alleged violations of all alleged Industrial Code violations except Rules 23-1.7 (d) and 23-1.7 (e) (1) and (2). The unopposed portions of defendants' motions are granted.

With respect to Rules 1.7 (d) and (e), defendants argue that the rules are inapplicable to the facts. However, plaintiff's testimony is sufficient to, minimally, raise a question of fact as to whether a "foreign substance" or "tripping hazard" was present on the "floor" or "work area" where plaintiff was working (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 314 [2024] [plastic tarp is a "foreign substance" under the rule]). This is sufficient to raise an issue of fact as to whether Rules 23-1.7 (d) or 1.7 (e) (2) were violated. The plaintiff does not advance any argument that the incident occurred in a passageway; defendants' motions are therefore granted with respect to Rule 1.7 (e) (1).

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, defendants contend that they did not cause or create the dangerous condition. JH Electric contends that it had finished its work in the area, and New Style argues that its inspections did not reveal the condition. In opposition, plaintiff argues that JH Electric was

working in the area on the day prior to his accident, and there is therefore a question of fact as to whether JH Electric left the conduit behind and created the dangerous condition. Plaintiff also argues that New Style was supposed to clean up after the sub-contractors, and that there are issues of fact as to whether New Style had actual or constructive notice of the condition that caused his incident. This is true particularly in light of Mr. Thomas' testimony that he regularly performed walkthroughs of the premises, and the possibility that the condition was created the day prior to plaintiff's incident.

Therefore, both New Style and JH Electric's motions for summary judgment are denied with respect to plaintiff's Labor Law § 200 claim.

Contractual 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 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]). In light of the outstanding issues of fact regarding both New Style and JH Electric's potential negligence, both parties' motions are denied with respect to this claim.

Breach of Contract

"[A] party seeking damages for breach of an agreement to procure insurance naming it as an additional insured must demonstrate that a contract provision required that such insurance be procured naming it as an additional insured and that the provision was not complied with" (*Titov v. V&M Chelsea Prop., LLC*, 230 AD3d 614, 619 [2d Dept 2024]). The record contains a

certificate of insurance indicating that JH Electric procured coverage for New Style (see certificate CL2161202276). Therefore, JH Electric's motion is granted as to this claim.

Conclusion


JH Electric's motion for summary judgment (Seq. 006) is granted to the extent that plaintiff's Labor Law § 240 (1) and § 241 (6) claims, and New Style's claim for breach of contract, are dismissed as to JH Electric; the motion is otherwise denied.

New Style's motion for summary judgment (Seq. 007) is granted to the extent that plaintiff's Labor Law § 240 (1) claim and Labor Law § 241 (6) claim as predicated on all alleged Industrial Code violations except Rule 23-1.7 (d) and 1.7 (e) (2) are dismissed; the motion is otherwise denied.

This constitutes the decision and order of the court.

March 31, 2026

DATE



DEVIN P. COHEN
Justice of the Supreme Court