

<b>Santos v 509 W 34, L.L.C.</b>
2026 NY Slip Op 31511(U)
April 6, 2026
Supreme Court, New York County
Docket Number: Index No. 151210/2021
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 151210/2021

ADAILTON DE NOVAIS SANTOS,

Plaintiff,

MOTION DATE 07/11/2024, 07/12/2024

- v -

MOTION SEQ. NO. 004 005

509 W 34, L.L.C., TISHMAN SPEYER PROPERTIES, INC., TISHMAN SPEYER PROPERTIES, L.P., TURNER CONSTRUCTION COMPANY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 122, 124, 125, 126, 127, 128, 129, 131, 133, 135, 137, 139, 159

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, 130, 132, 134, 136, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 161, 162, 163, 164, 165

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff commenced this action after allegedly sustaining workplace injuries on January 4, 2021, as an employee of non-party Roger & Sons Corp. ("Roger & Sons"). On the date of the accident, Plaintiff was at a construction site at 509 West 34th Street, performing carpentry work for Roger & Sons by stripping wall forms and concrete. Plaintiff was transporting "walers" (large iron pieces, weighing 50 pounds each, made to hold concrete panels in place), and when he approached the area to set the waler down, he slipped on the ground, which allegedly was covered in ice, and fell backwards. Plaintiff states he landed with a hammer under him and a waler on top of him. Defendant 509 W 34, LLC ("509 W 34") was the owner of the building, Defendant Turner Construction Company ("Turner") was the general contractor of the project.

Defendants Tishman Speyer Properties, Inc. and Tishman Speyer Properties, LP (“Tishman”) acted as owner’s representative on site. Plaintiff, in his complaint, alleges violations of Labor Law §§ 240, 241(6), and 200, in addition to common law negligence.

In Motion Sequence 004, Plaintiff moves for partial summary judgment pursuant to CPLR § 3212, for his claims under Labor Law §§ 241(6) and 200. In Motion Sequence 005, Defendants 509 W 34, LLC, Turner Construction Company, Tishman Speyer Properties Inc., and Tishman Speyer Properties, LP (collectively, “Defendants”) move for summary judgment pursuant to CPLR § 3212 for Plaintiff’s claims under Labor Law §§ 240(1), 241(6), and 200, and assert that Plaintiff’s claims are not credible as a matter of law, given that the evidence and testimony submitted demonstrates the icy condition did not exist at the time of the accident. The Court addresses each in turn, below.

As an initial matter, Plaintiff only nominally opposes Defendants’ Motion for Summary Judgment as to the dismissal of Plaintiff’s Labor Law § 240(1) claim when Plaintiff writes, “Turner is a statutory agent subject to liability under Labor Law § 240(1)” (Plaintiff’s Opposition to Defendants’ Motion, NYSCEF Doc. No 142 at 10). Plaintiff does not substantively refute Defendants’ Motion for Summary Judgment as it pertains to Labor Law § 240(1).

“[T]he reach of Labor Law § 240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). Here, Plaintiff’s claims are not gravity-related because he did not fall from a height and was not struck by an improperly secured falling object. Rather, Plaintiff alleges that he slipped on ice on the ground, and that the waler he was carrying fell on top of him. This is not a scenario contemplated by Labor Law § 240(1). Therefore, and because Plaintiff does not substantively

refute Defendants' Motion for Summary Judgment as it pertains to Labor Law § 240(1), Defendants' Motion with respect to Labor Law § 240(1) is granted. Plaintiff's Labor Law § 240(1) claim is dismissed.

Moreover, Plaintiff only substantively opposes Defendants' Motion for Summary Judgment as to one New York Industrial Code violation, 12 NYCRR § 23-1.7(d). While Plaintiff states that "defendants failed to establish prima facie entitlement to summary judgment based on violations of NYCRR §§ 23-1.5(c); 23-1.7(b)(d)(e); 23-1.8(c); 23-1.30; 23-2.1(a)(b); 23-3.3(e)(f)(g) and enumerated OSHA regulations" (*id.* at 17), Plaintiff does not describe Defendants' alleged deficiencies in establishing its *prima facie* entitlement to same. The Court finds that Plaintiff has not sufficiently opposed Defendants' motion as to the following industrial code provisions under Plaintiff's Labor Law § 241(6) claim: NYCRR §§ 23-1.5(c); 23-1.7(b)(d)(e); 23-1.8(c); 23-1.30; 23-2.1(a)(b); 23-3.3(e)(f)(g) and enumerated OSHA regulations. As such, Defendants' Motion for Summary Judgment and Dismissal is granted as to the following Industrial Code Provisions under Plaintiffs Labor Law § 241(6) claim: NYCRR §§ 23-1.5(c); 23-1.7(b)(d)(e); 23-1.8(c); 23-1.30; 23-2.1(a)(b); 23-3.3(e)(f)(g). Plaintiff's Labor Law § 241(6) claims as to these provisions are dismissed. Plaintiff's Labor Law §241(6) claim as it pertains to Industrial Code 12 NYCRR § 23-1.7(d) is discussed below.

### LEGAL STANDARD

To prevail on a motion for summary judgment pursuant to CPLR § 3212, the movant must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant submits competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay

bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest” (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*see Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990]).

A viable claim under Labor Law § 241(6) requires that a violation of the Industrial Code is shown, where said violation is a proximate cause of the Plaintiff’s injury (*see Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501-02 [Ct App 1993]; *see also Ares v State*, 80 NY2d 959 [Ct App 1992]).

Labor Law § 200 codifies the common law duty of an owner to provide construction workers with a safe place to work (*See Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876, 877 [1993]). Labor Law § 200 and common law claims fall under two categories: “those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed” (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 133-144 [1st Dept 2012]). Under the first group, the owner had to have either created the condition or have actual or constructive notice of it (*Id.* at 144). In the second category, the owner or general contractor is liable if “it actually exercised supervisory control over the injury-producing work” (*id.*).

## DISCUSSION

*i. Plaintiff’s Labor Law § 241(6) claim*

Plaintiff moves for summary judgment on his Labor Law § 241(6) claim, alleging a violation of Industrial Code 12 NYCRR § 23-1.7(d), which reads,

Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface

which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.

Plaintiff argues that liability under 12 NYCRR § 23-1.7(d) attaches to Defendants because he alerted Roger & Sons, Plaintiff's employer, of the icy condition (Plaintiff's Motion, NYSCEF Doc. No. 90 at 13). Plaintiff states he told his Roger & Sons coworkers and his direct supervisor, Juan, about the icy conditions, and that Plaintiff was instructed to keep working. Thus, Plaintiff argues that Defendants were negligent in not remediating the icy conditions, as Roger & Sons, a link in the "chain of the construction project," had notice of the icy conditions and failed to remedy it.

Defendants counter that the open area in which Plaintiff's accident occurred is not a "floor, passageway, walkway, scaffold, platform or other elevated working surface" as contemplated by the Industrial Code § 23-1.7(d). Defendants cite to *Vieira v Tishman Constr. Corp.*, 225 AD2d 235 (1st Dept 1998) to state that "Q-decking specifically constitutes an 'open area' and therefore does not implicate § 23-1.7" (Defendants' Opposition, NYSCEF Doc. No. 124 at 11). Moreover, Defendants argue that it is impossible for the icy conditions to have existed on the day of the accident, given that the temperature that day was above freezing (*id.* at 7). Defendants also argue that they cannot be held liable because Plaintiff's very job on the site was to clear any ice or snow that might have been present. Defendants rely on *Gaisor v Gregory Madison Ave., LLC*, 13 AD3d 58, 60 (1st Dept 2004), which reads "plaintiff's section 241(6) claim... was properly dismissed since the snow on which plaintiff slipped was the very condition he was charged with removing."

Defendants submit a portion of the contract between Turner and Roger & Sons, which notes Roger & Sons' responsibilities to "[i]nclude snow and ice removal all work areas where

this Subcontractor is working” (NYSCEF Doc. Nos. 118, 125). Plaintiff did not reply to this argument. In light of the foregoing, the Court is bound by the First Department’s holding in *Gaisor*. Plaintiff’s Labor Law § 241(6) must be dismissed because it appears to be undisputed that the icy slipping hazards as predicated by the Plaintiff’s cited Industrial Code provision, 12 NYCRR § 23-1.7(d), were the very conditions that Plaintiff was charged with removing.

*ii. Plaintiff’s Labor Law § 200 claim*

Plaintiff moves for summary judgment on his Labor Law § 200 claim, based on Defendants’ roles as owner and general contractor, which imposes liability if the owner or general contractor created the dangerous condition or had actual or constructive notice of it. Defendants counter that the above-freezing weather on the day of the accident makes it impossible for ice to have been on the ground, and that they did not supervise or control Plaintiff’s work and did not have notice of the alleged dangerous conditions. Plaintiff submits the affirmation of Dr. Rawson L. Wood, based on “historical weather information,” to support the purported above-freezing weather conditions on the date of the accident (Dr. Wood Affirmation, NYSCEF Doc. No 119).

In his deposition, Plaintiff states that he informed his co-workers and his direct supervisor from non-party Roger & Sons about the icy conditions (Plaintiff’s deposition, NYSCEF Doc. No. 99 at 71-72). Defendants confirm, but note that Plaintiff, in his deposition, stated that he did not make a complaint to Defendants regarding the ice (NYSCEF Doc. No. 151 at 72). Plaintiff also states that Turner had the contractual authority to “supervise the performance of the Work by the Subcontractors and coordinate the schedule of the Work of all Subcontractors on the Project with the activities of the Owner...” (Plaintiff’s Memorandum of Law in Opposition, NYSCEF Doc. No. 142 at 15).

Defendants submit that a contract with non-party Roger & Sons shows that Roger & Sons was tasked with snow and ice removal at the project on the date of the incident (NYSCEF Doc. No. 117). Moreover, Defendants submit an affirmation of Roger & Sons' then-foreman, Manuel Portela, who affirmed that Plaintiff was specifically instructed to clear the snow and ice on the work areas on the day of the accident (NYSCEF Doc. No. 116). The above indicates that Defendants did not direct, supervise, or control Plaintiff's work, and did not provide tools, equipment or other materials to any subcontractor on the project (Defendants' Motion, NYSCEF Doc. No. 106 at 8-13). Moreover, Defendants submit that because Plaintiff only informed Roger & Sons co-workers and his direct supervisor about the icy conditions, and did not inform the anyone else (Plaintiff's Deposition, NYSCEF Doc. No. 110 at 71-72), the Defendants therefore did not have notice of the alleged icy condition (NYSCEF Doc. No. 106 at 13).

For the same reasons that Plaintiff's Labor Law § 241(6) claim fails, his Labor Law § 200 claim must fail (*see Gaisor*, 13 AD3d 58 at 60 [finding that plaintiff's Labor Law §§ 241(6) and 200 claims were properly dismissed after the plaintiff slipped on snow and ice, and he was tasked with the removal of snow and ice on the job site]). Moreover, there is no evidence that Defendants exercised supervisory control over the snow and ice removal. Plaintiff concedes that this is the case, writing "while Turner may not have exercised its authority to direct the snow and ice removal, Turner had the contractual authority to do so" (NYSCEF Doc. No. 142 at 15). Indeed, Plaintiff was tasked with ice removal (Portela Affirmation, NYSCEF Doc. No. 116), only reported the condition to Roger & Sons (Plaintiff's Deposition, NYSCEF Doc. No. 110 at 71-72), who was in charge of ice removal (Roger & Sons Subcontract, NYSCEF Doc. No. 117), and Plaintiff's deposition establishes that he only took direction from Roger & Sons (NYSCEF Doc. No. 110 at 36-37 [Plaintiff's deposition states that he took directions from Juan or

“someone else” in charge that day, but that both were from Roger & Sons]). As such, there is no evidence that Defendants had actual or constructive notice of an icy condition, or that Defendants exercised authority over Plaintiff’s work relating to the removal of the icy condition. While Defendants had the contractual authority to direct ice removal, it was Plaintiff and Plaintiff’s employer who exercised such authority. In light of the above, Defendants’ motion is granted in its entirety.

Accordingly, it is hereby

ORDERED that Plaintiff’s Motion for Summary Judgment is denied; and it is further

ORDERED that Defendants’ Motion for Summary Judgment is granted; and it is further

ORDERED that Defendants shall, within ten days of the date of this decision and order,

serve a copy, with notice of entry, upon Plaintiff; and it is further

ORDERED that Defendants shall, within ten days of the date of this decision and order,


serve a copy, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B)

and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to

enter judgment accordingly.

This constitutes the decision and order of the Court.

4/6/2026  
DATE

  
LESLIE A. STROTH, 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