

Campos v Sutton 58 Holding Co. LLC

2026 NY Slip Op 31515(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 158296/2021

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

INDEX NO. 158296/2021
MOTION DATE 10/04/2024, 10/04/2024
MOTION SEQ. NO. 002 003

ALTAMIRANO GITTMAN CAMPOS,
Plaintiff,

- v -

SUTTON 58 HOLDING COMPANY LLC, LEND LEASE
CONSTRUCTION

Defendant.

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 71, 73, 75, 76, 77, 80
were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 74, 78, 79
were read on this motion to/for JUDGMENT - SUMMARY

FACTUAL BACKGROUND

Plaintiff commenced this action on September 8, 2021, alleging injuries while working at the "Sutton Place Project," where he tripped on debris and fell while pushing an A-framed cart carrying unsecured cabinets. The cabinets fell on top of Plaintiff as he tripped. Plaintiff alleges common-law negligence, lost wages, and violations of Labor Law §§ 240(1), 241(6), and 200, against Defendants Sutton 58 Holding Company LLC ("Sutton"), the owner of the property where the accident took place, and Lend Lease Construction ("Lend Lease"), the general contractor for the construction project.

In Motion Sequence 002, Defendants move for summary judgment pursuant to CPLR § 3212(b) granting dismissal in full, or in the alternative, granting partial summary judgment against either Defendant, or any of Plaintiff's claims. In Motion Sequence 003, Plaintiff moves

for partial summary judgment on the issue of liability for the alleged Labor Law §§ 240(1) and 241(6) violations.

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]).

Labor Law § 240(1) states,

"All contractors and owners and their agents...in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

The statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury (*see Gordon v Eastern Railway Supply, Inc.*, 82 N.Y.2d 555 [1993]). "[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 N.Y.3d 1 [2011]).

A viable claim under Labor Law § 241(6) requires that a violation of the Industrial Code be 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

As an initial matter, Defendants move this Court to deny Plaintiff’s Motion for Summary Judgment for failure to comply with Uniform Court Rule 202.8-g by not submitting a Statement of Material Facts; and failure to comply with CPLR § 3212(b) by not submitting an Affidavit from Plaintiff. The Court is not persuaded by either of Defendants’ arguments.

Uniform Court Rule 202.8-g states that “the court *may* direct that there shall be annexed to the notice of motion a separate, short and concise statement... of the material facts” (emphasis added). The Court, in its discretion, did not direct Plaintiff to submit a statement of material

facts, therefore Plaintiff's motion is not defective for failing to comply with Uniform Court Rule 202.8-g.

Moreover, the Court is not persuaded by Defendants' cited case, *Tribbs v 326-338 E 100th LLC*, 215 AD3d 480 (1st Dept 2023), to argue that Plaintiff's failure to submit an Affidavit pursuant to CPLR § 3212(b) makes this motion procedurally deficient. In *Tribbs*, the Affidavit was not based on any personal knowledge, and other procedural defects persisted, including a non-verified complaint (215 AD3d at 480). Here, Plaintiff's attorney submitted an "affidavit based upon documentary evidence," namely, Plaintiff's Deposition, which is "sufficient to support a motion for summary judgment" (*Barclay's Bank of New York, N.A. v Smitty's Ranch, Inc.*, 122 AD2d 323, 324 [3rd Dept 1986]). In addition, the First Department has emphasized that there is a strong public policy that favors deciding cases on the merits (*Thomas Anthony Holdings LLC v. Goodbody*, 210 AD3d 547 [1st Dept. 2022]; *Picinic v. Seatrains Lines*, 117 AD2d 504, 508 [1st Dept. 1986]). As such, this Court disregards Defendants' arguments pursuant to Uniform Court Rule 202.8-g and CPLR § 3212(b), and considers Plaintiff's Motion below.

Labor Law § 240(1)

Defendants move for summary judgment dismissing Plaintiff's claim under Labor Law § 240(1), arguing that the statute is inapplicable, and that Plaintiff was the sole proximate cause of his injuries. Plaintiff moves for summary judgment finding that Defendants are liable for a violation of Labor Law § 240(1).

Plaintiff avers that the A-frame cart that he was pushing carried unsecured cabinets stacked two feet above the highest point of the cart, which fell onto Plaintiff when he tripped. Plaintiff states that these cabinets weighed between 70 to 170 pounds each, and that the only

safety mechanism to hold the unsecured boxes and/or cabinets in place was another employee, who is not an adequate safety device under Labor Law § 240(1) (NYSCEF Doc. No. 58, at 5 [Plaintiff's Motion for Summary Judgment]).

In response, Defendants state that summary judgment is improper because Plaintiff fails to establish an elevation risk and fails to "mention or reference which safety device should have been provided" (NYSCEF Doc. No. 78, at 6 [Defendants' Opposition to Plaintiff's Motion for Summary Judgment]). Defendants further state that the fall was caused by debris, not a cart defect, and that Plaintiff fails to specify how many cabinets that were on the cart (*id.*, at 6-7).¹

The Court finds that Plaintiff's papers and deposition testimony (Plaintiff's deposition transcript, NYSCEF Doc. No. 66) clearly explain that the cabinets weighed 70-170 pounds each, and that the cabinets were unsecured for two feet above the highest point of the cart. While Plaintiff does not detail the number of cabinets on the cart, such information is not required at present. The facts here are akin to that in *Touray v HFZ 11 Beach Street LLC*, 180AD3d 507 (1st Dept 2020) (an A-frame cart carrying cement boards that fell on plaintiff when he tried to free the cart's wheel from being stuck), and *Ali v Sloan-Kettering Inst. for Cancer Research*, 176 AD3d 561 (1st Dept 2019) (a 300-pound coil slipped off of a dolly onto plaintiff after the dolly wheel caught on something). In these cases, a loaded cart got stuck, resulting in the cart's contents falling and causing injury. The injuries in these cases were not the result of a faulty cart, as Defendants posit, but of unsecured cargo falling from a height above the cart.

Similarly, Plaintiff's injury in the instant matter was caused by unsecured, heavy cabinets that fell from 2 feet above an A-frame cart. When debris on the ground caused Plaintiff to trip, the unsecured cabinets caused injury to Plaintiff when they fell off of the cart. The cabinets fell

¹ Defendants also argue that Plaintiff failed to allege that cabinets were on the cart in its Bill of Particulars. The Court will consider the cabinets given that discovery has revealed that they are at issue.

off of the cart because they were not secured with a proper safety device. Moreover, even if the cabinets were less than two feet above the A-frame cart, courts have also clarified that Labor Law § 240(1) applies not only where an object falls from a great height, but also in cases where “the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent” is substantial enough that the “elevation differential involved cannot be viewed as de minimis.” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 605 [2009]); *see also Outar v City of New York*, 5 NY3d 731, 732 [2005]).

For the above reasons, Plaintiff’s Motion for Summary Judgment is granted with respect to his Labor Law § 240(1) claims, and Defendants’ Motion for Summary Judgment regarding Plaintiff’s Labor Law § 240(1) claims is denied.

As for proximate cause, the Court of Appeals has repeatedly held that “‘strict’ or ‘absolute’ liability is necessarily contingent on a violation of [Labor Law] section 240(1)” (*Blake v. Neighborhood Housing Services of New York City, Inc.*, 1 NY3d 280, 289 [2003]).

Defendants argue that Plaintiff is the sole proximate cause of his accident because he and his coworkers disregarded their supervisor’s instruction “to clean up after themselves” (NYSCEF Doc. No. 55, at 14). Defendants conclude that the failure to clean up the debris on the ground was the sole proximate cause of Plaintiff’s accident. Plaintiff counters that he is not the sole proximate cause of the accident. Plaintiff argues that Defendants’ failure to provide a safety device for the unsecured cabinets is at least a contributing factor to the injury, making it impossible for Plaintiff to be the sole proximate cause of the injury (NYSCEF Doc. No. 75, at 16).

Labor Law § 240(1) is a strict liability statute. Given that the Court finds, in granting Plaintiff’s Motion for Summary Judgment as to Labor Law § 240(1), that the cabinets fell

because they were improperly secured on the A-frame cart, Plaintiff cannot be the sole proximate cause of his accident. Defendants' Motion for Summary Judgment based on its allegations that Plaintiff was the sole proximate cause of his accident is denied.

Labor Law § 241(6)

Defendants move for summary judgment dismissing Plaintiff's claim under Labor Law § 241(6). Plaintiff moves for summary judgment finding that Defendants are liable for a violation of Labor Law § 241(6).

Defendants aver that the Industrial Code violations cited by Plaintiff are either inapplicable, unspecific, or were not violated based on the evidence (NYSCEF Doc. No. 55, at 15). Of the Industrial Code provisions discussed in Defendants' motion, Plaintiff only objects to the dismissal of two: §§ 23-1.7(e) and 23-2.1(a). Plaintiff's failure to oppose Defendants' motion as it relates to other provisions discussed by Defendants in their Motion deems any such opposition waived, and any claims based on those provisions are therefore, dismissed.²

Plaintiff alleges violations of Industrial Code §§ 23-1.7(e)(1) and (2), and 23-2.1(a)(1). Specifically, Plaintiff states that: he tripped due to construction debris that obstructed a passageway in violation of Industrial Code § 23-1.7(e)(1); that he tripped on pieces of plywood while pushing an A-cart through a working area in violation of Industrial Code § 23-1.7(e)(2); and that Defendants failed to store materials in a safe and orderly manner, thereby creating an obstruction in a pathway leading to Plaintiff's trip and fall, in violation of Industrial Code § 23-2.1(a)(1) (NYSCEF Doc. No. 58, at 17-21). Each is discussed in-depth, below.

² The waived provisions are: New York Industrial Code §§ 23-1.5(b), (c)(1), (2), and (3); New York Industrial Code §§ 23-1.7(a) and (d); New York Industrial Code § 23-1.8(c)(1), (2), (3), and (4); New York Industrial Code § 23-1.28; New York Industrial Code § 23-1.32; New York Industrial Code §§ 23-2.1(a)(2), and 23-2.1(b); New York Industrial Code § 23-2.2(a) and (b); New York Industrial Code § 23-3.2(b)(2) and (c); New York Industrial Code § 23-3.3(g); N.Y Multiple Dwelling Law §§ 77, 78, 80, and 83; New York City Administrative Code §§ 27-2005, and 27-128; and the Administrative Code and Charter of the City of New York.

New York Industrial Code § 23-1.7(e)(1) applies to tripping and other hazards in passageways, and it reads:

“Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.”

“Passageway” is not defined in the statute, rather, “passageway” has been interpreted by courts to mean “a defined walkway or pathway used to traverse between discrete areas as opposed to an open area” (*Venezia v LTS 711 11th Ave.*, 201 AD3d 493, 494 [1st Dep 2022] quoting *Quigley v Port Auth. of N.Y. and N.J.*, 168 AD3d 65, 67 [1st Dept 2018]).

Defendants argue that Industrial Code § 23-1.7(e)(1) is inapplicable because Plaintiff was not working in a “passageway” at the time of the accident, but “inside a residential condominium unit that was under active construction” (NYSCEF Doc. No. 55, at 18). Plaintiff counters that § 23-1.7(e)(1) applies because the accident location is a “passageway,” as Defendants were required to provide egress routes from the construction site (NYSCEF Doc. No. 75, at 17). Plaintiff does not allege how the accident site is a “passageway” within the judicial definition of the term. Instead, Plaintiff describes that the accident site was used “to transport an A-frame full of cabinets,” but does not describe the discrete traversal as contemplated by the court in *Venezia*.

At the very least, there is a question of fact as to whether Plaintiff was in a “passageway” when the accident occurred, especially when Defendants submit that the Plaintiff was “transporting materials on a cart from one area of the work site to another” (NYSCEF Doc. No. 55 at 11). This may fall under the judicial definition of passageway in *Venezia*, 201 AD2d at 494. For that reason, summary judgment as to Industrial Code § 23-1.7(e)(1) is denied for both parties.

New York Industrial Code § 23-1.7(e)(2) reads:

“Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with work being performed.”

There is no dispute between the parties that the term “working area” applies. Further, there is no dispute that Plaintiff tripped on pieces of plywood and/or flooring material. The Parties’ disagreement lies in what the pieces of plywood/flooring material should be called.

Defendants argue that the cut pieces of plywood/flooring material cannot be considered “debris” within the meaning of the statute, because they were “an integral part of the construction project” and cannot be described as “accumulated debris or scattered materials” under the statute’s language (NYSCEF, Doc. No. 78 at 10; NYSCEF Doc. No. 55, at 12).

Plaintiff counters that the cut pieces of plywood/flooring material are considered “debris” under the meaning of the statute, because the pieces were not an integral part of the project. Plaintiff states the “debris” was “not a part of the flooring... nor was it intended to be” (NYSCEF Doc. No. 75 at 18).

In the First Department, materials deemed an “integral part” of a construction project cannot be construed as accumulated debris (*Thomas v Goldman Sachs Headquarters, LLC*, 109 AD3d 421, 422 [1st Dept 2013]). However, an “integral part” of a project is one that is “purposefully installed” (*id.*). Defendants make no indication that the materials on the floor at the time of the accident were purposefully placed; to the contrary, Defendants state that the floor was covered in discarded material against the instruction of Plaintiff’s supervisor (NYSCEF Doc. No. 55, at 14-15). Defendants’ Motion for Summary Judgment as to § 23-1.7(e)(2) is denied because Defendants do not demonstrate that the cut pieces of plywood/flooring material were an “integral part” of the project.

The Court therefore finds that the circumstances at issue fall within the scope of Industrial Code § 23-1.7(e)(2). Given the Parties' agreement that the cut pieces of plywood/flooring material caused Plaintiff to fall, and that the material is considered "debris" on the floor in violation of Industrial Code § 23-1.7(e)(2), the Court grants Plaintiff's Motion for Summary Judgment with respect to liability for violating Labor Law § 241(6) based on this provision, and denies Defendants' Motion for Summary Judgment as to the same provisions.

Lastly, Industrial Code § 23-2.1(a) reads:

"(1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway, or other thoroughfare.

"(2) 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."

Plaintiff states that the material on the floor that caused the fall was due to Defendants' "failure to store materials in a safe and orderly manner" (NYSCEF Doc. No. 58, at 20). Defendants counter, arguing that the floor was not covered in "building materials" or "material piles," but that the accident was instead caused by "debris,... described as smaller, cut down pieces of flooring material" (NYSCEF Doc. No 78, at 9-11). Both parties agree, however, that Plaintiff tripped on pieces of plywood and/or other flooring material.

The First Department has found that "byproducts" of construction are "not a 'material pile' under Industrial Code § 23-2.1(a)(1)" (*Lourenco v. City of New York*, 228 D2d 577, 582 [1st Dept 2024]). As such, the Court finds that the debris at issue is not the same as "building materials" and/or "material piles" under Industrial Code § 23-2.1(a), because they were byproducts of construction, and would not be used for building. It follows that Industrial Code

§ 23-2.1(a) does not apply, making dismissal of this provision proper. The Court grants Defendants' Motion for Summary Judgment as to Labor Law § 241(6), specific to violations of Industrial Code § 23-2.1(a). Plaintiff's Motion for Summary Judgment pursuant to Labor Law § 241(6), as it relates to Industrial Code § 23-2.1(a), is therefore denied.

The Court hereby partially grants Plaintiff's Motion for Summary Judgment with respect to liability for violating Labor Law § 241(6), under Industrial Code § 23-1.7(e)(2). The Court partially grants Defendants' Motion for Summary Judgment and hereby dismisses Plaintiff's Labor Law § 241(6) violations as they are connected to Industrial Code § 23-2.1(a) and the other waived provisions outlined *supra*, n. 2. However, the Court denies both Parties' Motions for Summary Judgment regarding Industrial Code § 23-1.7(e)(1), as questions of fact remain.

Labor Law § 200 and Common Law Negligence

Defendants move for summary judgment to dismiss Plaintiff's claims under Labor Law § 200 and common law negligence. Defendants state that Labor Law § 200 does not apply because Defendants did not create or have notice of any dangerous conditions, if any existed, and because they did not supervise or control Plaintiff's work (NYSCEF Doc No. 55, at 22). Defendants state that Plaintiff failed to testify about Defendants' creation of the hazard and reiterate that the accident was caused by debris thrown on the floor by Plaintiff and his coworkers.

Defendants also state that they had no notice of the hazard because Plaintiff failed to allege that the debris was left over from the prior workday, when Defendants inspected the area (NYSCEF Doc. No. 55, 22-23). Defendants represent that the accident site was cleaned the night before the accident when they state, "[Defendants'] witness testified that [the accident site] was cleaned the night before, when all work was completed for the day" (NYSCEF Doc. No. 80 at

11). The Court finds insufficient evidence for Defendants' assertion. The cited exhibit merely states, "if there are floors that [Defendants] cleaned today[,] tomorrow they don't go back to clean those same floors" (NYSCEF Doc. No. 53, at 62). This fails to meet Defendants' prima facie burden to establish that they did not have notice of the alleged hazard, because it does not establish, as a matter of law, that Defendants inspected the site of the accident on the night before it happened. Rather, the testimony indicates that if an area was clean at the end of the day, then it was not cleaned the next day. This testimony does not establish the cleanliness of the specific accident site, making summary judgment improper.

The above indicates a question of fact as to whether Defendants were on notice of the condition, thereby making dismissal of Plaintiff's Labor Law § 200 and negligence claims improper.

Lost Wages

Defendants move for summary judgment to dismiss Plaintiff's lost wages claim. Defendants argue that Plaintiff's claim for lost wages must be dismissed because Plaintiff has not provided enough documentation to support lost wages with "reasonable certainty." Defendants state that Plaintiff's "uncorroborated deposition testimony," is insufficient to support a lost wage claim with "reasonable certainty."

Plaintiff counters that just because Defendants do not currently have relevant financial documents to detail Plaintiff's lost wages, it does not mean that said documents do not exist. Plaintiff states that his employment records have been subpoenaed, and that seeking dismissal at this time is premature, and that Plaintiff's lost wages are a question of fact to be later resolved.

This is too early a juncture to dismiss Plaintiff's lost wages claim, especially when Plaintiff has subpoenaed his employment records. The Court thereby denies Defendants' Motion for Summary Judgment as to Plaintiff's lost wages claim.

Accordingly, it is hereby

ORDERED that Defendants' Motion for Summary Judgment (Motion Sequence 002) is partially granted with respect to Plaintiff's Labor Law § 241(6) predicated on all cited statutory provisions—except for Industrial Code §§ 23-1.7(e)(1) and (2)—and those cited provisions are dismissed, and is denied in all other respects; and it is further

ORDERED that Plaintiff's Motion for Summary Judgment (Motion Sequence 003) is granted with respect to Labor Law §§ 240(1) and 241(6) predicated on Industrial Code § 23-1.7(e)(2), and is denied with respect to Industrial Code §§ 23-1.7(e)(1) and 23-2.1(a)(1).

The foregoing constitutes the decision and order of the Court.

4/6/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	