Rubio v Inwood NYC Holdings LLC

2026 NY Slip Op 31626(U)

April 7, 2026

Supreme Court, Kings County

Docket Number: Index No. 512443/2023

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 512443/2023
Seq. 002

Part LL1M

RAFAEL RUBIO and ANGEL CORONA MEDINA,

Plaintiff,

against

INWOOD NYC HOLDINGS LLC AND DII ENTERPRISES LLC,

Defendants.

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: 34–44, 59–64.

Upon review of the foregoing papers, plaintiffs' motion for summary judgment (Seq. 002) is decided as follows:

Plaintiffs commenced this action to recover for damages they claimed they sustained on April 3, 2023, while working on a construction site located at 4950 Broadway, New York, NY. Both plaintiffs were employed by MHD Construction Corp. (MHD). MHD was retained by DII Enterprises LLC (DII) and Inwood NYC Holdings LLC (Inwood), the owners of the premises.

It is undisputed that the plaintiffs were instructed to demolish a wall at the premises on the date of the accident. The plaintiffs testified as follows: To perform the work, Mr. Rubio climbed an A-frame ladder (Rubio EBT at 33; Medina EBT at 30). Mr. Medina was on the floor nearby shoveling concrete and debris from the demolition (Medina EBT at 37). Mr. Rubio testified that his work required a harness, but he did not ask for one that day because when he had previously asked he was told that he was not working "high up" enough to need a harness

(Rubio EBT at 41–42). While Mr. Rubio was striking the wall in front of him with a hammer, "the ceiling fell down and part of the other wall hit [him] and [he] fell off the ladder" (*id.* at 50). The falling ceiling and wall struck Mr. Medina on his arm and his knee (Medina EBT at 53–54).

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]).

Statutory Defendant Status

As an initial matter, defendant DII contends that it is not a proper Labor Law defendant because it was a retail management company, not an owner. Morris Dweck, a partial owner of DII, Inwood, and MHD, testified on behalf of DII (Dweck EBT at 15). Notably, Mr. Dweck signed the sub-contractor agreement between MHD and Mr. Medina. That agreement lists both Inwood and DII as "Owners" of the premises, despite Mr. Dweck's testimony that DII did not own any property. As a signatory, Mr. Dweck had actual knowledge of the contents of the contract wherein DII held itself out as an owner of the premises, and he cannot logically disavow them now. Furthermore, the work being performed in April 2023 involved construction and renovations to "fit [the premises] out for retail," apparently for the benefit of DII (*id.* at 16). There is sufficient evidence to establish that DII had an ownership interest in the premises or was a statutory agent of the owner with the authority to retain contractors and that enjoyed the benefit of the work, making DII a proper Labor Law defendant in this action (*see e.g.Sarata v Metro*

Transp. Auth., 134 AD3d 1089, 1090 [2d Dept 2015]; *see also Sanatass v Consolidated Investing Co., Inc.*, 10 NY3d 333 [2008]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure of a safety device enumerated by the statute (*e.g.* a ladder) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]).

Plaintiffs have made out their prima facie entitlement to summary judgment on their Labor Law § 240 (1) claims. Mr. Rubio's testimony that he was working on a ladder, and that the ladder was insufficient to protect him from falling when the ceiling and adjacent wall collapsed during the demolition work is sufficient to make out a claim under Labor Law § 240 (1) (*see Rivera v Dafna Const. Co., Ltd.*, 27 AD3d 545 [2d Dept 2006]). Additionally, plaintiffs' testimony that they were struck by foreseeable demolition debris from the adjacent wall and ceiling constitute separate Labor Law violations (*see e.g. Bornschein v Shuman*, 7 AD3d 476 [2d Dept 2004]).

In opposition, defendants provide an affidavit from MHD superintendent Wayne Jeffers. Since Mr. Jeffers was not immediately present at the scene, his post-accident observations would ordinarily be insufficient to rebut plaintiffs' testimony. An affidavit that is "vague regarding what instructions [plaintiffs] received" and "lack[s] personal knowledge" is insufficient to raise a triable issue of material fact (*Lopes v County of Suffolk*, 236 AD3d 883, 885 [2d Dept 2025]). Alone, Mr. Jeffers' affidavit would be insufficient to resist summary judgment.

However, in this case, the plaintiffs' own evidentiary submissions also provide some of the basis for defendants' arguments that there are triable issues of material fact. Mr. Rubio authenticated several photographs of the scene of the alleged incident (Rubio EBT at 120–126). Although post-accident photographs are also usually insufficient to rebut a plaintiff's prima facie showing of liability pursuant to Labor Law § 240 (1), several of these photographs are the visual equivalent to excited utterances. Mr. Rubio testified that his co-workers "showed up running" and that "Joseph" took photographs with his cellphone (*id.* at 125). These facially unmediated pictures were taken so closely in time that they still depict the plaintiffs lying on the ground, unattended and apparently in pain. The state of the plaintiffs in the photographs and Mr. Rubio's testimony indicate the scene as depicted in the photographs is unmodified. The remainder of the photographs were taken by Mr. Rubio after the accident and authenticated by him (*id.*). None of the admittedly contemporaneous photographs depict a ladder. When Mr. Rubio was asked where the ladder went when he fell, he testified that he did not know (Rubio EBT at 122). Although plaintiffs in Labor Law § 240 (1) cases are not ordinarily required to know what happened to the alleged instrumentality of their injury after the incident, here, plaintiffs' own photographs give credence to questions of fact about their account of how the accident happened. Additionally, the subsequent photographs taken by Mr. Rubio do not show the ceiling or an "adjacent wall" that allegedly collapsed during demolition, despite plaintiffs' testimony that it was the ceiling and the adjacent wall that collapsed onto them.

The photographs, the absence of information in plaintiffs' testimony, or Mr. Jeffer's affidavit might not individually be enough to resist summary judgment if submitted separately, when taken together a "trier of fact could draw conflicting inferences as to how the accident actually occurred, precluding an award of summary judgment" (*Godoy v Neighborhood*

Partnership Hous. Dev. Fund Co., Inc., 104 AD3d 646, 648 [2d Dept 2013]). When reviewed in conjunction with the contemporaneous photographs and in light of Mr. Jeffers' claim that he arrived "while plaintiffs . . . [were] laying on the floor," Mr. Jeffers claims that the plaintiffs were not provided with ladders and that none were present when he arrived carry additional weight (Jeffers aff. at ¶¶ 3, 14) (*see Nunez v City of New York*, 100 AD3d 724 [2d Dept 2012]). Even though plaintiffs can obtain summary judgment where there are multiple accounts of an accident, every admissible account must constitute a violation of the Labor Law (*see Keen v Tishman Construction Corporation of New York*, 233 AD3d 1001 [2d Dept 2024]). In this case, Mr. Rubio's theory of liability depends on the existence of a ladder, and the presence of a ladder has been called into question here. Additionally, the contemporaneous post-accident photographs depict both plaintiffs on the ground a meaningful distance away from the debris piles ostensibly generated by the material that fell onto them and from the portion of the wall that allegedly collapsed. The location of the plaintiffs raises questions further questions about their account of the happening of the accident.

In light of all of the evidence, there are fundamental questions of fact about the occurrence which warrant denial of plaintiffs' motion for summary judgment on their Labor Law § 240 (1) claim.

Labor Law § 241 (6)

Plaintiffs' Labor Law § 241 (6) claim is predicated on the alleged violation of 12 NYCRR 23-3.3 (b) (3), which reads: "Demolition of walls and partitions. Walls . . . and other parts of any building . . . shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration." In the statute, the "phrase 'by wind pressure or vibration,' does not attach to the words 'fall' or 'collapse,' but only to the

immediately preceding words, 'be weakened'" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 71 AD3d 538, 539 [1st Dept 2010], *affd as mod*, 18 NY3d 1 [2011]). Rule 23-3.3 (b) (3) would not apply if the "hazard arose from the plaintiff's actual performance of the demolition work itself, rather than from structural instability caused by the progress of the demolition" (*Vega v Renaissance 632 Broadway, LLC*, 103 AD3d 883 [2d Dept 2013]).

Here, there is a triable issue of material fact as to whether the collapse of the ceiling and adjacent wall was a result of the plaintiffs' performance of the work or a result of structural instability. Therefore, plaintiffs' motion for summary judgment is denied with respect to this claim.

Conclusion

Plaintiffs' motion for summary judgment (Seq. 002) is granted to the extent that DII is found to be a proper Labor Law defendant; the remainder of the motion is denied.

This constitutes the decision and order of the court.

April 7, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court