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| Zhinin v RP1185 LLC |
| 2026 NY Slip Op 31894(U) |
| May 4, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 155134/2020 |
| Judge: Phaedra F. Perry-Bond |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

LUIS ZHININ,

Plaintiff,

- v -

RP1185 LLC, LENDLEASE (US) CONSTRUCTION LMB INC., DOKA USA, LTD.,

Defendant.

-----X

DOKA USA, LTD.

Plaintiff,

-against-

ROGER & SONS CONCRETE, INC.

Defendant.

-----X

INDEX NO. 155134/2020
MOTION DATE 06/18/2025
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

Third-Party
Index No. 596039/2020

The following e-filed documents, listed by NYSCEF document number (Motion 005) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 181, 184, 185, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, Defendants RP 1185 LLC and Lendlease (US) Construction LMB Inc.'s ("Lendlease") (collectively "Lendlease Defendants") motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part. Plaintiff Luis Zhinin's ("Plaintiff") cross motion for summary judgment on the issue of liability with respect to his Labor Law §§ 200, 240(1), 241(6) and common law negligence claims is denied.

I. Background

Defendant RP 1185 LLC owns the property located at, 1185 Broadway, New York, New York (the “Premises”) (NYSCEF Doc. 164 at 13). Defendant RP 1185 LLC contracted Lendlease to oversee the construction of a hotel at the Premises (*id.* at 18). Lendlease retained Third-Party Defendant Roger & Sons Concrete (“Roger & Sons”) to construct the hotel’s superstructure out of concrete. On June 10, 2020, Roger & Sons employed Plaintiff as a carpenter at the Premises (NYSCEF Doc. 161 at 19; 30; 51). Plaintiff was required to assemble and secure Doka system panels¹ (*id.* at 61-62). Plaintiff stood on a ratchet to tighten a bolt on the Doka panel, but in doing so, Plaintiff slipped off the ratchet and injured his groin (NYSCEF Doc. 162 at 226). Plaintiff’s foreman, Francisco Ribeiro, testified he taught Roger & Sons’ carpenters, including Plaintiff, how to use the ratchet and instructed the carpenters to move the ratchet using their hands (NYSCEF Doc. 166 at 56-57).

Now, Plaintiff sues Defendants for personal injuries allegedly caused due to violations of the New York Labor Law and Defendants’ negligence. The Lendlease Defendants move for summary judgment dismissing Plaintiff’s Complaint. Plaintiff cross moves for summary judgment on the issue of liability with respect to Plaintiff’s Labor Law §§ 200, 240(1), 241(6) and common law negligence claims.

II. Discussion

A. Lendlease Defendants’ Motion

The Lendlease Defendants’ motion for summary judgment dismissing Plaintiff’s Complaint is granted in part and denied in part.

¹ The Doka system panel was used to create a form into which concrete would be poured. Once the concrete set, a wall would be formed and the Doka system panel would be disassembled.

The motion for summary judgment dismissing Plaintiff's Labor Law § 200 and common law negligence claims is granted. "Where a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises" (*see Villanueva v 114 Fifth Avenue Associates LLC*, 162 AD3d 404, 406 [1st Dept 2018]). Here, Plaintiff was not injured due to a defect on the Premises but was instead injured from the means and methods by which he was required to assemble the Doka system panel. Plaintiff's argument that the ratchet he used was a "dangerous condition" is without merit, as it was not "inherent" to the Premises, but rather a tool provided to Plaintiff by his employer. Therefore, Plaintiff's Labor Law § 200 and common law negligence claims fall into the "means and methods" bucket. The Lendlease Defendants may only be held liable if they exercised supervisory control over the injury-producing work (*see Velez v LSG 105 W. 28th, LLC*, 236 AD3d 617, 618 [1st Dept 2025]; *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143 [1st Dept 2012]).

However, the undisputed testimony shows the Lendlease Defendants did not exercise sufficient supervision and control over the means and methods by which the Doka system panel was assembled. Mr. Ribeiro, Plaintiff's foreman, testified that he instructed Roger & Sons' employees on what tasks to complete and how, and he testified that he supervised Plaintiff and others. Meanwhile, the Lendlease Defendants testified they relied on the subcontractors, which each specialized in their own trade, to instruct employees on the means and methods through which they are to complete tasks. The general supervision over site safety is insufficient to impose liability pursuant to Labor Law § 200 and common law negligence (*see Palumbo v Citigroup Technology, Inc.*, 240 AD3d 455, 456-457 [1st Dept 2025]; *Ruisech v Structure Ton Inc.*, 208 AD3d 412 [1st Dept 2022] citing *Singh v 1221 Ave. Holdings, LLC*, 127 AD3d 607, 608 [1st Dept

2015] [authority to stop any work perceived to be unsafe, without more, constitutes a general level of supervision that is not sufficient to impose liability under Labor Law § 200]).

The motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is also granted. To recover under Labor Law § 240(1), a Plaintiff must show his injuries were proximately caused by some gravity related risk and the failure to provide an adequate safety device to protect him or her from the gravity related risk. Neither the absence of a safety device nor gravity were the proximate causes of Plaintiff's accident. Rather, the undisputed testimony established Plaintiff's own kinetic energy generated by stepping onto and slipping off the ratchet is what caused him to fall and the rather to hit his groin (*see, e.g. Bucci v City of New York*, 223 AD3d 453 [1st Dept 2024] [kinetic energy, not gravity caused worker's injuries]; *Quishpi v 80 WEA Owner, LLC*, 145 AD3d 521, 522 [1st Dept 2016]; *Joseph v City of New York*, 143 AD3d 489, 489 [1st Dept 2016]; *Medina v City of New York*, 87 AD3d 907, 909 [1st Dept 2011]).

The motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim is granted in part and denied in part. Plaintiff withdrew his Labor Law § 241(6) premised on alleged violations of industrial codes §§ 23-1.8(c); 23-1.10(a); 23-1.15; 23-1.30; 23-2.2; and 23-3.3. Therefore these claims are dismissed as abandoned.

The Labor Law § 241(6) claim predicated on an alleged violation of Industrial Code § 23-1.16 is also dismissed. That section states during use of a harness, the harness "shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline." But Plaintiff testified that the harness was not anchored or attached "because [he] had safety netting on the outside, so we did not need it" (*see* NYSCEF Doc. 204 at 106). Moreover, there is no evidence that the failure to anchor or attach his harness was a proximate cause of Plaintiff's injury. There is no testimony indicating that

if only Plaintiff was able to tie off his harness, he would not have slipped from the wrench and hurt his groin (*see, e.g. Ortega v Trinity Hudson Holding LLC*, 176 AD3d 625, 626 [1st Dept 2019]; *Barreto v Metropolitan Transp. Auth.*, 110 AD3d 630, 633 [1st Dept 2013] [where cited Industrial Code violations did not proximately cause accident, summary judgment dismissing 241(6) claim predicated on those industrial code violations is appropriate]).

The Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.22 is dismissed as that provision governs platforms used to transport vehicular and pedestrian traffic, and the “platform” of the Doka ratchet was not used to transport any traffic (*see Sotarriba v 346 West 17th Street LLC*, 179 AD3d 599, 601 [1st Dept 2022] citing *Dzieran v 1800 Boston Road, LLC*, 25 AD3d 336, 338 [1st Dept 2006]).

The Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(d) is also dismissed. There is no testimony that the ratchet on which Plaintiff was standing contained any slip hazards could serve as a violation of Industrial Code § 23-1.7(d). Plaintiff did not testify there was grease on the ratchet he slipped from, but to the extent Plaintiff’s counsel argues that grease on the Doka platform was a violation Industrial Code § 23-1.7(d), Plaintiff’s own testimony made it clear the grease was required to prevent cement from sticking to the platform (*see* NYSCEF Doc. 204 at 107-108). Therefore, the grease was integral to the work at hand and was not a violation of Industrial Code § 23-1.7(d) (*see, e.g. Ruisech v Structure Ton Inc.*, 208 AD3d 412 [1st Dept 2022]; *Singh v 1221 Ave. Holdings, LLC*, 127 AD3d 607 [1st Dept 2015]; *Zieris v City of New York*, 93 AD3d 479 [1st Dept 2012]). The Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.27(e) is dismissed. That section governs the use of “jacks” but a ratchet, which is a type of wrench, is not a “jack” – instead it is a tool used to loosen or tighten bolts, nuts, and screws.

However, the motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.5(c)(3) is denied. Viewing the facts in the light most favorable to the non-movants, it remains an issue of fact as to whether the ratchet Plaintiff was required to use was damaged or in good working order considering Plaintiff believed he was required to step on the ratchet to apply additional force in order to get the ratchet to work.

B. Plaintiff's Cross Motion

Plaintiff's cross motion for summary judgment on his Labor Law §§ 200, 240(1), 241(6), and common law negligence claims is denied. The Court granted the Lendlease Defendants summary judgment dismissing Plaintiff's Labor Law §§ 200, 240(1), and common law negligence claims, therefore the cross motion for summary judgment with respect to these claims is denied as moot. Moreover, the Court granted the Lendlease Defendants summary judgment dismissing Plaintiff's Labor Law § 241(6) claims except for the Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.5(c)(3). Therefore, Plaintiff's motion for summary judgment on his Labor Law § 241(6) is likewise denied. The same issues of fact that preclude the Lendlease Defendants from obtaining summary judgment dismissing Plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.5(c)(3) preclude Plaintiff from obtaining summary judgment on the issue of liability with respect to that claim.

Accordingly, it is hereby,

ORDERED that the Lendlease Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied solely to the extent that Plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-1.5(c)(3) survives, and the motion is otherwise granted, and all other claims Plaintiff asserted against the Lendlease Defendants are dismissed; and it is further

ORDERED that Plaintiff's cross motion for summary judgment is denied; and it is further ORDERED that within ten days of entry, counsel for the Lendlease Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/4/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE