

**Velez v Boricua Vil. Hous. Dev. Fund Co., Inc.**

2012 NY Slip Op 31222(U)

May 4, 2012

Supreme Court, New York County

Docket Number: 105708/2010

Judge: Saliann Scarpulla

Republished from New York State Unified Court  
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: SALIANN SCARPULLA  
J.S.C.  
*Justice*

PART 19

Index Number : 105708/2010  
**VELEZ, ALEXIS**  
vs.  
**BORICUA VILLAGE HOUSING**  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

Motion to/for \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 5/4/2012  
which disposes of motion sequence(s) no. 001

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

## FILED

MAY 09 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/4/12

Saliann Scarpulla  
SALIANN SCARPULLA  
J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X  
ALEXIS VELEZ,

Plaintiff,

- against-

Index No.: 105708/2010

Submission Date: 03/07/2012

BORICUA VILLAGE HOUSING DEVELOPMENT  
FUND COMPANY, INC., BORICUA VILLAGE D, LLC,  
KNICKERBOCKER CONSTRUCTION, LLC and  
KNICKERBOCKER CONSTRUCTION II, LLC,

----- X  
Defendants.

**FILED**

MAY 09 2012

NEW YORK  
COUNTY CLERK'S OFFICE

For Plaintiff:

Block, O'Toole & Murphy, LLP  
One Penn Plaza, Suite 5315  
New York, NY 10119

For Defendants:

Pillinger Miller Tarallo, LLP  
570 Taxter Raod, Suite 275  
Elmsford, NY 10523

Papers considered in review of this motion for summary judgment:

Aff in Support . . . . . 1  
Aff in Opposition . . . . . 2  
Reply Aff . . . . . 3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, plaintiff Alexis Velez (“Velez”) moves for summary judgment on the issue of liability against defendants Boricúa Village Housing Development Fund Company, Inc. (“Boricua Village Housing”), Boricua Village D, LLC (“Boricua Village D”), Knickerbocker Construction, LLC (“Knickerbocker Construction”) and Knickerbocker Construction II, LLC (“Knickerbocker Construction II”) (collectively “defendants”).

This action arises from injuries Velez sustained on March 11, 2010 while working on a project (the “project”) to build an apartment building at 507 East 161st Street (the “premises”). At the time of the accident, Velez was employed by AMJ Ironworks (“AMJ”) as a welder. Knickerbocker Construction II, the project’s general contractor, subcontracted with AMJ to perform iron work on the project.<sup>1</sup> Boricua Village Housing and Boricua Village D owned the premises.

At his deposition, Velez testified that the accident occurred while he was ascending a ladder on the roof of the premises. Earlier that day, AMJ had assigned Velez to place railings around the edge of the roof. Velez testified that immediately before the accident, his foreman directed him to assist a co-worker in taking measurements inside an elevator shaft that extended 14 or 15 feet off the roof.

The only way to access the top of the elevator shaft was with the upper piece of a two-piece extension ladder. Velez testified that as he neared the top of the ladder, it slipped out from under him, causing him to fall. According to Velez, no one was holding the bottom of the ladder when the accident occurred, though a coworker and his foreman were also on the roof.

---

<sup>1</sup> Knickerbocker Construction and Knickerbocker Construction II are sister companies.

Velez commenced this action in April 2010, pleading causes of action under common law negligence and various state and federal statutes, including Labor Law §§ 240 and 241.

Velez now moves for summary judgment, arguing that defendants are liable under Labor Law § 240(1) because no one secured the ladder as Velez climbed it. Velez further argues that defendants' failure to secure the ladder was a violation of part 12 of the New York Industrial Code, and thus a violation of Labor Law § 241(6). In opposition, defendants argue that Velez was not involved in a construction activity at the time he was injured and therefore defendants are not liable under the Labor Law.

### **Discussion**

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

Velez has made a *prima facie* showing of entitlement to summary judgment on the Labor Law § 240(1) cause of action against Boricua Village Housing, Boricua Village D and Knickerbocker Construction II. Owners and general contractors are required under Labor Law 240(1) to provide protections against "elevation-related hazards" for workers

engaged in the “construction, repair, demolition, painting and alteration of a building or structure.” *Jamil v. Concourse Enters.*, 293 A.D.2d 271, 273 (1<sup>st</sup> Dept. 2002).

Here, the parties do not dispute that Boricua Village Housing and Boricua Village D owned the premises, or that Knickerbocker Construction II was the project’s general contractor. Nor do the parties dispute that Velez fell because a ladder slipped out from under him, which constitutes a *prima facie* violation of Labor Law § 240(1). *See Jamil*, 293 A.D.2d at 273.

Defendants argue that the Labor Law is inapplicable because Velez was taking measurements when he was injured, which does not constitute a construction activity under the Labor Law. However, Velez worked as a welder with the subcontractor responsible for iron work on a construction project. Further, Velez was injured while this construction was ongoing. Accordingly, the Labor Law applies to his accident “despite the fact that the particular job being performed at the moment [he] was injured did not in and of itself constitute construction.” *Covey v. Iroquois Gas Transmission Sys. L.P.*, 218 A.D.2d 197, 199 (3d Dept. 1996); *see also Campisi v. Epos Contr. Corp.*, 299 A.D.2d 4, 6-7 (2d Dept. 2002).<sup>2</sup>

However, Velez is not entitled to summary judgment as to Knickerbocker Construction. The Labor Law applies only to owners, general contractors and their

---

<sup>2</sup>Because the Court holds that Boricua Village Housing, Boricua Village D and Knickerbocker Construction II are liable under § 240(1), it does not address whether they are also liable under § 241(6).

agents, *see Rodriguez v. New York City Hous. Auth.*, 194 A.D.2d 460, 461 (1<sup>st</sup> Dept. 1993), and Velez has presented no evidence that Knickerbocker Construction was either the owner, general contractor or agent on the project.

In accordance with the foregoing, it is hereby

ORDERED that plaintiff Alexis Velez's motion for summary judgment on the issue of liability is granted as to defendants Boricua Village Housing Development Fund Company, Inc., Boricua Village D, LLC, and Knickerbocker Construction II, LLC, and is otherwise denied; and it is further

ORDERED that plaintiff Alexis Velez shall file and serve a note of issue for trial on the issue of damages within thirty (30) days of the date of this order; and it is further

ORDERED that the Clerk is directed to place this matter on the appropriate calender for an assessment of damages.

This constitutes the decision and order of the Court.

Dated: New York, New York  
May 4, 2012

**FILED**

ENTER: MAY 09 2012

NEW YORK  
COUNTY CLERK'S OFFICE  
*Saliann Scarpulla*  
Saliann Scarpulla, J.S.C.