

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Sullivan v Flynn

2025 NY Slip Op 06773 · No. CV-24-1643 · Decided December 4, 2025

SUMMARY

The Appellate Division, Third Department reversed an order granting defendants summary judgment in a negligence and Labor Law § 200 action. The court held that factual questions remained as to whether a wooden construction brace placed in the middle of a kitchen constituted a dangerous condition and whether the worksite was maintained in a reasonably safe condition. The brace's open and obvious nature negated any duty to warn but did not, standing alone, eliminate defendants' duty to maintain a reasonably safe worksite.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Clark, J.P.; Powers, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 4, 2025
DOCKET	CV-24-1643
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing his complaint alleging common-law negligence and violations of Labor Law § 200.
STANDARD OF REVIEW	Summary judgment requires the movant to establish entitlement to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party, and summary judgment must be denied where a genuine question of fact remains.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Loren S. Sullivan v. Gerald R. Flynn et al.

TOPICS

- construction law
- negligence
- premises liability
- standard of review
- appellate procedure

PRACTICE AREAS

torts

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on plaintiff's common-law negligence and Labor Law § 200 claims on the ground that the wooden construction brace did not constitute a dangerous condition.
2. Whether the open and obvious nature of the brace and plaintiff's prior observation of it eliminated defendants' duty to maintain the worksite in a reasonably safe condition or defeated plaintiff's claim as a matter of law.

HOLDINGS

1. Defendants were not entitled to summary judgment because questions of fact remained as to whether placing the wooden brace in the middle of the kitchen constituted a dangerous condition and whether defendants maintained the worksite in a reasonably safe condition.
2. The open and obvious nature of the wooden brace did not, standing alone, eliminate defendants' duty to maintain the worksite in a reasonably safe condition; it negated only any duty to warn of the potentially dangerous condition.
3. Plaintiff's testimony that he had seen the brace before his fall did not defeat his claim as a matter of law; his prior knowledge could be considered by the jury in assessing comparative negligence.

KEY QUOTATIONS

“Labor Law § 200 (1) . . . codifies the common-law duty of a landowner and general contractor to furnish workers with a reasonably safe place to work” (at 1)

“the open and obvious nature of an allegedly dangerous condition does not, standing alone, necessarily obviate a [general contractor's] duty to maintain [the worksite] in a reasonably safe condition” (at 2)

“merely negated any duty that defendant[s] owed plaintiff to warn of [the] potentially dangerous condition[]” (at 2)

“Viewing the evidence in the light most favorable to plaintiff as the nonmoving party, a question of fact remains as to whether defendants' [worksite was] maintained in a reasonably safe condition. That question is for the trier of fact to resolve” (at 2)

FACTUAL BACKGROUND

Third-party defendants were building a new home and hired defendants to construct it. During construction, plaintiff visited the premises to measure the kitchen for custom cabinetry and tripped over a wooden brace extending diagonally from the ceiling to the floor in the middle of the kitchen, injuring his leg. Defendants had installed the brace and argued that it was necessary, customary, conspicuous, and open and obvious. Plaintiff submitted expert evidence asserting that placing the brace in the middle of the kitchen failed to provide a reasonably safe workplace.

PROCEDURAL HISTORY

Sullivan was injured after tripping over a wooden construction brace while visiting a residential construction site to measure a kitchen. He commenced an action against the general contractor defendants. After discovery, defendants moved for summary judgment, and Supreme Court, Warren County, granted the motion. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants' motion for summary judgment was reversed, and defendants' motion was denied, leaving the factual issues for resolution by the trier of fact.

CASES CITED

- England v Vacri Constr. Corp., 24 AD3d 1122 (3d Dept 2005)
- James v Marini Homes, LLC, 234 AD3d 1078, 1081 (3d Dept 2025)
- Edwards v State Univ. Constr. Fund, 196 AD3d 778, 780 (3d Dept 2021)
- MacDonald v City of Schenectady, 308 AD2d 125, 127 (3d Dept 2003)
- Coleman v Crumb Rubber Mfrs., 92 AD3d 1128, 1131 (3d Dept 2012)
- Finnigan v Lasher, 90 AD3d 1286, 1287 (3d Dept 2011)
- Barley v Robert J. Wilkins, Inc., 122 AD3d 1116, 1118 (3d Dept 2014)
- Wolfe v Staples, Inc., 224 AD3d 1126, 1127-1128 (3d Dept 2024)
- Hawver v Steele, 204 AD3d 1125, 1128 (3d Dept 2022)
- Harris Bay Yacht Club v Harris, 230 AD2d 931, 933-934 (3d Dept 1996)

OPINION

PER CURIAM.

Sullivan v Flynn (2025 NY Slip Op 06773) Sullivan v Flynn 2025 NY Slip Op 06773 Decided on December 4, 2025 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered:December 4, 2025 CV-24-1643 [*1]Loren S. Sullivan, Appellant, v Gerald R. Flynn et al., Respondents.

(And a Third-Party Action.) Calendar Date:October 17, 2025 Before:Clark, J.P., Pritzker, Powers and Mackey, JJ. Hacker Murphy LLP, Schenectady (Benjamin F. Neidl of counsel), for appellant. O'Connor, O'Connor, Bresee & First, PC, Albany (Samantha V. Vedder of counsel), for respondents. Pritzker, J. Appeal from an order of the Supreme Court (Robert Muller, J.), entered

September 4, 2024 in Warren County, which granted defendants' motion for summary judgment dismissing the complaint.

Third-party defendants (hereinafter collectively referred to as the homeowners) were building a new home and placed an order for custom kitchen cabinetry with plaintiff. The homeowners had contracted with defendants for the construction of the home. While construction was underway, plaintiff visited the premises to take measurements of the kitchen and tripped on a wooden construction brace running at a 45-degree angle from the ceiling to the floor that was in the middle of the kitchen, resulting in injuries to his leg.

Plaintiff thereafter commenced this action against defendants, asserting claims for common-law negligence and violations of Labor Law § 200 based upon allegations that defendants failed to maintain the premises in a safe condition and failed to warn plaintiff about the dangerous nature of the brace. Defendants answered and asserted various affirmative defenses, including that plaintiff's injuries were caused by his own culpable conduct.

[FN1] Following discovery, defendants moved for summary judgment dismissing the complaint arguing, among other things, that the brace was necessary and customary in home construction and was not inherently dangerous. Plaintiff opposed, relying on an expert affirmation asserting, among other things, that because defendants placed the brace in the middle of the kitchen, they did not provide a safe workplace.

Following oral argument, Supreme Court granted defendants' motion, concluding that defendants did not have a duty to warn, and any failure by defendants to maintain a safe premises was not a substantial factor in causing plaintiff's injuries because the brace was readily observable and any hazard it posed was inherent in the prevailing circumstances. Plaintiff appeals.

We reverse. "Labor Law § 200 (1)... codifies the common-law duty of a landowner and general contractor to furnish workers with a reasonably safe place to work" (*England v Vacri Constr. Corp.*, 24 AD3d 1122, 1124 [3d Dept 2005] [citations omitted]; see *James v Marini Homes, LLC*, 234 AD3d 1078, 1081 [3d Dept 2025]). "Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed.

[As relevant here, u]nder the first category, a general contractor may be held liable in common-law negligence and under Labor Law § 200 if it created the dangerous condition or had control over the work site and actual or constructive notice of the dangerous condition" (*Edwards v State Univ. Constr. Fund*, 196 AD3d 778, 780 [3d Dept 2021] [internal quotation marks and citations omitted]).

Inasmuch as it is not disputed that defendants created the condition as they installed the wooden brace in the middle [*2]of the kitchen floor, the issue presented on appeal distills to whether this

constituted a dangerous condition.

Here, defendants failed to meet their prima facie burden as questions of fact remain as to whether defendants maintained the worksite in a reasonably safe condition, precluding summary judgment. In support of their argument that the installation of the wooden brace in the middle of the kitchen did not constitute a dangerous condition, defendants presented an affidavit of David Rubin, a former CEO of a general contracting firm with 45 years of experience in the field of general construction.

Rubin reviewed, among other things, photographs of the worksite and observed there were two-by-four wooden braces set up throughout the home that were "necessary and fundamental to the construction process." He explained that the brace plaintiff tripped over was "conspicuous and not hidden from sight, and indeed, plaintiff had already seen that particular brace prior to his incident."

Ultimately, he opined that neither the use nor the placement of the brace was negligent as it was necessary to support the structure at that stage of construction. Although Rubin placed great emphasis on the fact that the brace was open and obvious and that plaintiff saw it prior to his fall, this Court has repeatedly held that "the open and obvious nature of an allegedly dangerous condition does not, standing alone, necessarily obviate a [general contractor's] duty to maintain [the worksite] in a reasonably safe condition" (*MacDonald v City of Schenectady*, 308 AD2d 125, 127 [3d Dept 2003]; see *England v Vacri Constr.*

Corp., 24 AD3d at 1124). Rather, the readily observable nature of the wooden brace "merely negated any duty that defendant[s] owed plaintiff to warn of [the] potentially dangerous condition[]" (*England v Vacri Const. Corp.*, 24 AD3d at 1124 [internal quotation marks, ellipsis and citation omitted]; see *Coleman v Crumb Rubber Mfrs.*, 92 AD3d 1128, 1131 [3d Dept 2012]).

[FN2] Nor does plaintiff's testimony at his deposition that he saw the wooden brace prior to his fall defeat his claim as his "previous knowledge of a defective condition, if any, may be considered by a jury in assessing comparative negligence" (*Finnigan v Lasher*, 90 AD3d 1286, 1287 [3d Dept 2011]; see *Barley v Robert J. Wilkins, Inc.*, 122 AD3d 1116, 1118 [3d Dept 2014]).

Accordingly, "[v]iewing the evidence in the light most favorable to plaintiff as the nonmoving party, a question of fact remains as to whether defendants' [worksite was] maintained in a reasonably safe condition. That question is for the trier of fact to resolve" (*Wolfe v Staples, Inc.*, 224 AD3d 1126, 1127-1128 [3d Dept 2024] [internal citation omitted]; see *Hawver v Steele*, 204 AD3d 1125, 1128 [3d Dept 2022]; *Barley v Robert J. Wilkins, Inc.*, 122 AD3d at 1118).

We have examined plaintiff's remaining contentions and, to the extent not specifically addressed herein, find them without merit. Clark, J.P., Powers and Mackey, JJ., [*3]concur. ORDERED that the order is reversed, on the law, with costs, and motion denied. Footnotes Footnote 1: Defendants also filed a third-party complaint against the homeowners. Footnote 2: Plaintiff's argument relative

to defendants' duty to warn of an allegedly dangerous condition has been waived as plaintiff's attorney, in his affirmation in opposition to defendants' summary judgment motion, stated that "[p]laintiff does not argue that a warning was required" and then specified that the duty breached was defendants' "duty to maintain a safe workplace" (see *Harris Bay Yacht Club v Harris*, 230 AD2d 931, 933-934 [3d Dept 1996]).

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-appellate-division-third-department-appellate-division-of-the-supreme-court-of-the-state-of/2025/sullivan-v-flynn-efqsbk7w>