

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

O'Brien v. Tectonic Bldrs. Inc.

2025 NY Slip Op 06656 (App. Div. 1st Dep't 2025) · No. Index No. 150670/19; Appeal No. 5256; Case No. 2025-00321 · Decided December 2, 2025

SUMMARY

The Appellate Division, First Department modified an order denying Kevin O'Brien partial summary judgment on his Labor Law § 241(6) claim. The court held that a damaged plywood ramp constituted both a passageway and a working area under Industrial Code § 23-1.7(e)(1) and (2), and that the raised ramp edge was a proximate cause of the injury. The court rejected the integral-to-the-work defense and held that comparative negligence did not defeat the statutory claim.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; Kapnick, J.; Mendez, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Index No. 150670/19; Appeal No. 5256; Case No. 2025-00321
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from an order denying his motion for partial summary judgment on his Labor Law § 241(6) claim.
STANDARD OF REVIEW	The Appellate Division reviewed the denial of partial summary judgment on the law, based on undisputed evidence concerning the ramp and the alleged Industrial Code violations.
PRECEDENTIAL VALUE	Published
PARTIES	Kevin O'Brien v. Tectonic Builders Inc., et al.

TOPICS

construction law

personal injury

summary judgment

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the damaged ramp constituted a passageway under Industrial Code § 23-1.7(e)(1) and a working area under § 23-1.7(e)(2).
2. Whether the raised edge of the ramp was an obstruction or tripping condition under § 23-1.7(e)(1) and a sharp projection under § 23-1.7(e)(2).
3. Whether the integral-to-the-work defense or plaintiff's alleged failure to lift his foot higher defeated plaintiff's Labor Law § 241(6) claim.

HOLDINGS

1. Plaintiff was entitled to partial summary judgment because the ramp was a passageway and working area, its raised two-to-three-inch nose was both an obstruction or tripping condition and a sharp projection under the cited Industrial Code provisions, and the condition proximately caused plaintiff's injury.

KEY QUOTATIONS

“The integral to the work defense does not apply here because the damaged ramp could have been repaired and made safe without preventing the work from continuing” ([*1])

“Any comparative negligence on the part of plaintiff does not defeat his claim under Labor Law § 241(6)” ([*1])

FACTUAL BACKGROUND

Kevin O'Brien, a marble-floor finisher, was injured during a store renovation project when he tripped on the raised front edge of a plywood ramp leading to a bathroom. The ramp served as a passageway and had been damaged the previous day when a heavy mechanical lift partially compressed it, raising its lower edge two to three inches above the cement floor. The ramp was not repaired before O'Brien's accident the next morning.

PROCEDURAL HISTORY

Supreme Court, New York County, denied plaintiff's motion for partial summary judgment. The Appellate Division unanimously modified the order to grant the motion to the extent based on violations of Industrial Code § 23-1.7(e)(1) and (2), and otherwise affirmed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order was modified to grant plaintiff's motion for partial summary judgment insofar as predicated on violations of 12 NYCRR 23-1.7(e)(1) and (2), while otherwise affirming the order. The opinion does not state further specific remand instructions.

CASES CITED

- Fitzgerald v. Marriott Intl., Inc., 156 A.D.3d 458, 458-459 (1st Dep't 2017)
- Lenard v. 1251 Ams. Assoc., 241 A.D.2d 391, 393-394 (1st Dep't 1997)
- Kaufman v. Capital One Bank (USA) N.A., 188 A.D.3d 461, 462 (1st Dep't 2020)
- Bazdaric v. Almah Partners LLC, 41 N.Y.3d 310, 320-321 (2024)
- Maldonado v. Hines 1045 Ave. of the Ams. Invs. LLC, 227 A.D.3d 502, 503 (1st Dep't 2024)
- Rodriguez v. City of New York, 31 N.Y.3d 312, 324 (2018)
- Bucci v. City of New York, 223 A.D.3d 453, 455 (1st Dep't 2024)

OPINION

PER CURIAM.

O'Brien v Tectonic Bldrs. Inc. (2025 NY Slip Op 06656) O'Brien v Tectonic Bldrs. Inc. 2025 NY Slip Op 06656 Decided on December 02, 2025 Appellate Division, First 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 02, 2025 Before: Renwick, P.J., Scarpulla, Kapnick, Mendez, JJ. Index No. 150670/19|Appeal No. 5256|Case No. 2025-00321| [*1]Kevin O'Brien, Plaintiff-Appellant, v Tectonic Builders Inc., et al., Defendants-Respondents.

[And Other Third-Party Actions] Burdzy Rybak Law, New York (Steven Aripotch of counsel), for appellant. Nicolini, Paradise, Ferretti & Sabella, PLLC, Jericho (John J. Nicolini of counsel), for respondents. Order, Supreme Court, New York County (Lyle E. Frank, J.), entered November 26, 2024, which denied plaintiff's motion for partial summary judgment on his Labor Law § 241(6) claim, unanimously modified, on the law, to grant the motion insofar as predicated on violations of Industrial Code (12 NYCRR) § 23-1.7(e)(1) and (2), and otherwise affirmed, without costs.

On January 9, 2019, plaintiff Kevin O'Brien, a marble-floor finisher, was working on a store renovation project at 650 Madison Avenue in Manhattan. Plaintiff injured his shoulder, including a fracture and torn labrum when he tripped on the front edge of a makeshift ramp (at its low end) when heading to a bathroom.

The ramp was four feet wide made of plywood construction, and was utilized in an adjacent, vacant retail space that served as a staging area for the workers' tools and equipment. The adjacent retail space had bi-level flooring, with one level slightly elevated above the rest of the flooring by 12 to 16 inches.

To reach a stairway that led down to a basement bathroom beneath the staging retail space, plaintiff, as well as the other workers, used the ramp as a passageway. The ramp was predominantly installed to accommodate the movement of moderately heavy equipment, from the storage space to the retail space under renovation, but if a worker did not wish to step up the 12-to-16- inch height differential unaided, the ramp provided the alternative for ascending to the higher floor area.

According to Tectonic's project superintendent, the ramp, which was built by laborers, was damaged a day prior to plaintiff's accident, when a heavy mechanical lift was moved over the ramp, which caused it to collapse partially in height, causing the higher end of the ramp to no longer being flush with the upper floor level, and the nose of the ramp at its lower end to be lifted two to three inches higher off the cement floor than before the lift compressed the wooden ramp.

The accident occurred the next morning before any repair was ever done. Based upon this undisputed evidence, plaintiff's motion for partial summary judgment on his Labor Law § 241(6) claim should have been granted. The ramp on which plaintiff tripped constituted a passageway under Industrial Code § 23-1.7(e)(1) and a working area under section 23-1.7(e)(2) (see *Fitzgerald v Marriott Intl., Inc.*, 156 AD3d 458, 458-459 [1st Dept 2017]).

The two to three inch raised nose of the damaged ramp amounted to an "obstruction[] or condition[] which could cause tripping" (12 NYCRR 23-1.7[e][1]). The raised nose of the ramp also constituted a "sharp projection[]" within the meaning of section 23-1.7(e)(2), as the projection hazard was clearly defined and distinct from the surrounding floor surface (see *Lenard v 1251 Ams.*

Assoc., 241 AD2d 391, 393-394 [1st Dept 1997]; *Kaufman v Capital One Bank [USA] N.A.*, 188 AD3d 461, 462 [1st Dept 2020]). The facts here establish that the hazard was a proximate cause of plaintiff's injury. The integral to the work defense does not apply here because the damaged ramp could have been repaired and made safe without preventing the work from continuing (see *Bazdaric v Almah Partners LLC*, 41 NY3d 310, 320-321 [2024]; *Maldonado v Hines 1045 Ave. of*

Invs. LLC, 227 AD3d 502, 503 [1st Dept 2024]). Defendants' argument that plaintiff was the sole proximate cause of his accident by not lifting his foot higher to step onto the damaged, raised ramp is unavailing. Any comparative negligence on the part of plaintiff does not defeat his claim under Labor Law § 241(6) (see *Rodriguez v City of New York*, 31 NY3d 312, 324 [2018]; *Bucci v City of New York*, 223 AD3d 453, 455 [1st Dept 2024]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 2, 2025

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