

# **HOME REMODEL INJURY CASE**

## **EXPERT QUALIFICATIONS:**

1) As demonstrated by my Curriculum Vitae, attached hereto as Exhibit 1, having served as a Lead Construction Superintendent in the construction industry for 38 years I have expertise in construction industry standards and practices. Additionally, as a Licensed NYC Site Safety Coordinator I have expertise in good and accepted construction safety practices as well as all federal laws, New York State laws and New York State Industrial Code regulations pertaining to the construction industry and construction site safety.

## **MATERIALS REVIEWED AND OCCURRENCE OF PLAINTIFF'S ACCIDENT:**

2) I have reviewed the plaintiff's deposition transcript of July 29, 2022 I have also reviewed plaintiff's affidavit with an attached photograph which states that the angle grinder depicted in the photograph is similar to the grinder involved in the subject incident, except that it did not have a handle or guard on it at the time of the incident.

3) Accordingly, I have learned that plaintiff's incident occurred on December 22, 2016 at approximately 1:30 pm

4) At the time of his incident, the Plaintiff was employed by XXX doing construction work, specifically a bathroom remodel for the premises of XXX

5) The Plaintiff was using a corded electric angle grinder which was equipped with a wood cutting blade while attempting to remove the old plywood from the floor in order to put new boards in their place at the time of the incident. The desired tool to cut the plywood floor boards, a reciprocating saw, commonly referred to as a Sawzall, was unavailable to Plaintiff as it was brought to another job site by his employer.

6) The corded electric angle grinder given to Plaintiff was equipped with a blade in excess of 7 inches with teeth for cutting wood. Further, it had no guard or handle attached to the grinder at the time of the incident.

7) Plaintiff was bent over with both hands on the angle grinder at the time of the incident. Being left handed, he had his left hand closer to the blade and began cutting the plywood. After approximately a minute of cutting a 3 foot section, the blade jammed on the plywood causing a kickback (when the wood binds against the blade, causing the blade to move away from its present location very rapidly). The kickback caused the Plaintiff to lose control of the grinder, and the blade cut his thumb, index finger and middle finger, among other injuries.

## **APPLICATION OF LABOR LAW 241(6):**

It is my opinion, that the Defendants failed to ensure compliance with, and thus were in violation of The State of New York Labor Law 241(6) relating to being required to provide a work site that was to be constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the Plaintiff and support the Plaintiff's cause of action under Labor Law 241(6) and Industrial Code Rule provisions of the State of New York.

8) The owner of this premises violated good and accepted construction safety practice by allowing the use and operation of an angle grinder in a manner contrary to the intended use prescribed by the grinder's manufacturer.

9) Without a handle, it was far more likely that the plaintiff would lose control of the grinder and suffer from an injury in the event of a kickback. The handle is required to provide a proper two-hand hold, which improves stability and control over the tool and prevents injury in the event of a kickback, or other circumstances which would make the tool move from its intended course. As such, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the absence of a handle was a substantial contributing factor and proximate cause of Plaintiff's injuries. This was also a violation of section 23-1.5 (c)(3) of the New York Industrial Code, as further described below.

10) An angle grinder is intended for surface work, such as grinding, sanding, brushing or polishing. Uses like cutting wood, or the cutting into any material, is not recommended to be performed with this tool. An angle grinder lacks the proper base and gripping surfaces needed to keep the tool positioned in a manner that can minimize the possibility of the tool jamming and kicking back. Further, the high RPM (revolutions per minute) at which a grinder operates makes it much more difficult to control as opposed to the lower RPM of a portable hand-operated saw. As such, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the use of the grinder as a wood cutting saw was a substantial contributing factor and proximate cause of Plaintiff's injuries and a violation of section 23-1.5 (c)(3) of the New York State Industrial Code, as further described below.

11) Since Plaintiff was using the angle grinder to cut plywood flooring, for all intents and purposes, the tool was functioning as a portable hand-operated saw, most commonly known as a circular saw. The grinder had a fixed-position "on-off" switch, which required the user to physically move the switch in order to start and stop the tool's operation. However, portable hand-operated saws should always have a trigger type switch to start and stop the tool. A trigger switch operates as a "cut off" switch in the event a person loses control of the tool, as Plaintiff did in this instance, and serves to prevent or minimize injury

by causing the tool to stop operating. This is particularly important with portable hand-operated saws, which tend to travel, or "run", at rapid speeds because the blade operates as a wheel, propelling the tool forward. As such, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the use of the grinder as a hand-operated saw, without being equipped with a trigger switch, was a substantial contributing factor and proximate cause of Plaintiff's injuries and a violation of section 23-1.10(b)(1) of the New York State Industrial Code, as further described below.

12) Additionally, a proper guard must always be over the blade of any hand-operated tool that bears one. This is specifically intended to protect a person against contact with the blade, which can happen extremely quickly in the event of kickback. The use of a blade in excess of 7" likely necessitated the removal of the guard to accommodate a blade of this size in this instance. As such, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the use of the grinder (or a handheld saw as this tool was being used at the time of the incident) without a blade guard, was a substantial contributing factor and proximate cause of Plaintiff's injuries and a violation of section 23-1.5 (c)(3) of the New York State Industrial Code, as further described below.

13) It is my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, that the owner of the premises violated good and accepted construction safety practice by allowing the use and operation of an angle grinder in a manner contrary to the intended use prescribed by the grinder's manufacturer. Specifically, the grinder should not have been used with a wood cutting blade, or to cut wood in general. Further, the blade guard and handle should always be present on the tool, regardless of the purpose for which it is used, as evidenced by OSHA regulation codified at 29 CFR 1926.302(e)(11) which states that "All tools shall be used with the correct shield, guard or attachment recommended by the manufacturer."

#### **APPLICATION OF NEW YORK'S INDUSTRIAL CODE TO PLAINTIFF'S ACCIDENT:**

14) Industrial Code § 23-1.5(c) states as follows: (1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.

(3) All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged."

In my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the Defendant violated this provision by allowing the Plaintiff to use an angle grinder for wood cutting, without a blade guard and without a handle, for the reasons detailed above.

15) Industrial Code § 23-1.10(b)(1), which relates to hand tools, states:

(1) Power shut-off requirements. Electric and pneumatic hand tools shall be disconnected from power sources and the pressure in hose lines shall be released before any adjustments or repairs are made except for the replacement of bits in electric drills. Before disconnecting any air hose, the air shall be shut off. Every electric and pneumatic hand tool shall be equipped with a cut-off switch within easy reach of the operator.

Since the Plaintiff was required to use the electric angle grinder as a portable hand-operated saw as detailed above, it should function and have the protections of a saw. These saws should always have a trigger type switch for reasons previously mentioned. When applying this provision to the present circumstances, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the home owner violated this provision because the fixed "on-off" type switch was neither the proper cut off switch, nor did it constitute a switch that was

"within easy reach" of the operator. There is no opportunity to operate an "on-off" switch in the event of a tool kickback, thereby depriving the Plaintiff of any access to a cut-off switch at all, much less one within easy reach.

16) Accordingly, in my professional opinion, based on my experience and training in the construction industry, with a reasonable degree of certainty, the aforesaid conduct of the Defendant and his concomitant departures from good and accepted construction site safety practice were substantial contributing factors and proximate causes of Plaintiff's incident and injuries.