Sanchez v 450 Grand Ave. Owner LLC
2026 NY Slip Op 31000(U)
March 9, 2026
Supreme Court, Kings County
Docket Number: Index No. 514434/2023
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Index Number 514434/2023
Seqs. 002

Part LL1M

ALEXANDER PERALTA SANCHEZ,

Plaintiff,

against

DECISION/ORDER

450 GRAND AVENUE OWNER LLC, CITI BUILDERS NY LLC, BEST MECHANICAL PLUMBING, LLC, AND BEST MECHANICAL SERVICES, INC.,

Defendants.

BEST MECHANICAL PLUMBING,

Third-Party Plaintiff,

against

SHH MANAGEMENT INC.,

Third-Party Defendant.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 64–80, 83–111, 113–123.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 002) is decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on May 1, 2023, while working at a construction site located at 450 Grand Avenue, Brooklyn, NY.

Plaintiff testified as follows: On the date of the accident, plaintiff was instructed to install insulation on the third floor and to move plumbing pipes from the first floor to the basement

(which is also referred to as "the cellar") (Sanchez EBT at 32–33, 35). Plaintiff testified that the workers would carry the pipes from the truck to the first floor, with one worker holding each end (*id.* at 37). Plaintiff testified that the pipes were 20 feet long, approximately eight inches in diameter, and weighed 1000 pounds (*id.*).[1] Plaintiff and his co-workers were instructed to move the pipes into the basement via a ramp that was "pretty steep," and a rope was used to control the descent of the pipes (*id.* at 39). The rope was run through the length of the pipe and held by workers standing at the top of the ramp on the first floor (*id.* at 41). While lowering the first pipe, the rope broke and the pipe fell onto the plaintiff (*id.*).

Plaintiff's counsel includes a portion of indented text that reads as follows in his affirmation in support:

> *Q: What happened next?*
>
> *A: The rope broke, and the pipe came flying down and hit me.*
>
> *Q: Where did it hit you?*
>
> *A: On my right shoulder. It knocked me down. (Peralta EBT at pp. 98- 100.)*

However, while plaintiff does consistently testify that the "rope broke" and the pipe "fell on top of [him]" (Sanchez EBT at 39, 41, 42, 43, 44), the purported testimony plaintiff's counsel "cites" does not exist in the record.[2] Pages 98 to 100 of plaintiff's deposition covers plaintiff's treatment after the incident and does not involve any testimony about how plaintiff's accident occurred.

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[1] This weight appears extraordinary for the dimensions; however, this was plaintiff's testimony, and no errata sheet is attached.

[2] Merely as a representative example, the word "flying" appears only on page 89 and concerns plaintiff's hardhat "flying" off. This overlap with the pages cited by counsel deepens the court's concern that this "testimony" was either generated by generative artificial intelligence or otherwise fabricated.

Diego Silva, plaintiff's co-worker, provided an affidavit stating that a cast iron pipe that was being lowered down a ramp struck the plaintiff in his shoulder (Silva aff.). The affidavit is silent as to whether a rope was used. Albert Zarco, foreman of Best Mechanical Plumbing LLC, also provided an affidavit. Mr. Zarco contends that the pipe weighed 100 pounds, not 1000 pounds (Zarco aff. at ¶ 5). Mr. Zarco also claims that plaintiff's co-workers told Mr. Zarco that plaintiff was carrying the pipe "through the ramp from the first floor down to the cellar . . . [and while] walking backward, trip [sic] with a door, and fell down" (*id.* at ¶ 10). Mr. Zarco denied seeing a "frayed or snapped rope at the scene" when he arrived after learning that the accident had happened (*id.* at ¶ 8).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis-Palmer HydroElec. Co.*, 81 NY2d 494, 500 (1993)]). In order to recover for an injury caused by a falling object, a plaintiff must show that the object was being hoisted, secured, or required securing for the purpose of the undertaking (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259 [2001]).

Here, plaintiff's actual testimony is sufficient to satisfy his prima facie burden for summary judgment on his Labor Law § 240 (1) claim. Plaintiff identifies an object that was being hoisted and, due to a failure of the hoist, the object fell and struck the plaintiff. In opposition, defendants fail to raise a genuine issue of material fact. Both affidavits submitted concede that the plaintiff was struck by a falling object that was being hoisted. Mr. Zarco's affidavit, even if the hearsay statements contained therein are accepted as true for the limited purpose of opposing summary judgment, still depicts plaintiff as required to hoist and move the pipe down a ramp in unsafe conditions which resulted in plaintiff suffering "harm directly flowing from the application of the force of gravity to" the pipe (*Runner v New York Stock Exchange*, 13 NY3d 599, 604 [2009]). Where every available factual scenario constitutes a Labor Law § 240 (1) violation, the plaintiff is entitled to summary judgment even if his version of events is contested (*Keen v Tishman Construction Corporation of New York*, 233 AD3d 1001 [2d Dept 2024]).

However, the court must note the inclusion of what appears to be fabricated deposition testimony in plaintiff's counsel's affirmation in support. Notably, this is not the first recent instance in which this counsel has submitted fabricated testimony to the court. While the purported testimony provided would not change the outcome of the case if it were accepted (which was not the case in a previous submission), it is still substantially, materially fabricated. Therefore, a sanctions hearing is hereby scheduled for March 26, 2026, or a further date to be set by the court.

In the interest of not punishing the plaintiff individually for counsel's apparent misconduct, and in light of the fact that the court can exclude the fabricated testimony and still

reach the same conclusion, plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim is granted.

Conclusion

Plaintiff's motion (Seq. 002) is granted. An in-person sanctions hearing is scheduled on March 26, 2026, at 10:00am.

March 9, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court