Jimenez v 1926 Ocean Parkway, LLC
2026 NY Slip Op 31122(U)
March 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 515141-2020
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 23rd day of March 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

ERMEL E. JIMENEZ,

Plaintiff(s),

-against-

1926 OCEAN PARKWAY, LLC, M.N.C. GENERAL CONTRACTORS CORP., R & S PLUMBING AND HEATING INC. and LORRAINE BETESH,

Defendant(s).

M.N.C. GENERAL CONTRACTORS CORP.,

Third-Party Plaintiff,

-against-

PHS CONTRACTING, INC.,

Third-Party Defendant(s).

DECISION & ORDER
Index No.: 515141-2020

Calendar No.: 21 & 22

Motion Seq.: 5 & 6

Return Date: 12/11/2025

Recitation of the following papers as required by CPLR 2219(a):

		NYSCEF Papers Numbered
005	Notice of Motion and Supporting Documents	107-121
	Affirmation in Opposition and Supporting Documents	146
	Reply Affirmation and Supporting Documents	150-152
006	Notice of Cross-Motion and Supporting Documents	126-145
	Affirmation in Opposition and Supporting Documents	148-149
	Reply Affirmation and Supporting Documents	153-154

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff commenced this action to recover damages for personal injuries arising from a work-related accident. The accident happened when he fell 25 to 30 feet from the roof of the property owned by 1926 Ocean Parkway LLC because his "lock and vest system" [harness]

failed. In the complaint, plaintiff alleges four causes of action, *i.e.,* common law negligence and Labor Law §§ 200, 240 [1] and 241 [6].

Plaintiff has moved this Court for an order per CPLR § 3212 granting summary judgment on his claims under Labor Law §§ 240 [1] and 241 [6] and Industrial Code 12 NYCRR §§ 23-1.16 [b] and 12 NYCRR 23-1.24 [b] against the general contractor, M.N.C. General Contractors Corp. ("MNC") (MS #5). Defendants, 1926 Ocean Parkway LLC and Lorraine Betesh, have cross-moved for summary judgment dismissing the complaint against them because 1) 1926 Ocean Parkway LLC is entitled to the protections of the residential "homeowner's exemption" under the Labor Law and 2) Lorraine Betesh is not the owner of the property[1] (MS #6). Both motions are granted.

The following facts are undisputed: Plaintiff's employer, third-party defendant PHS Contracting Inc. ("PHS"), provided him with the harness that failed on the day of the accident and there were no additional safety devices in place to prevent plaintiff's fall. PHS was a subcontractor hired by MNC to perform roofing services on a single-family residence (*See* MNC's Counter Statement of Material Facts (NYSCEF 149). PHS has not appeared in this action.

DISCUSSION

It is well settled that Labor Law § 240 [1] "imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks" who engage in activities covered by the statute and "suffered an injury as a direct consequence of a failure to provide adequate protection" against such risks (*Soto v J. Crew, Inc.,* 21 NY3d 562, 566 [2013] [internal citations omitted]). The protections of

[1] After the service of the cross-motion, plaintiff discontinued the action against these defendants. However, MNC did not execute the stipulation.

Labor Law § 240 (1) extend only to a narrow class of special hazards to prevent accidents in which a protective device "proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person"* (*Gomez v Tilden Estates*, 241 AD3d 791, 793 [2d Dept 2025] [*italics added*]). This absolute and vicarious liability is imposed on an owner and general contractor for the negligence of a subcontractor, even in the absence of control or supervision of the worksite (*Rizzuto v L.A. Wenger Contr. Co.,* 91 NY2d 343, 348-350 [1998]).

The plain language of Labor Law § 241 [6] also "imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in [ ] all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.,* 91 NY2d 343, 348-350 [1998]). This absolute liability is imposed on an owner and general contractor for the negligence of a subcontractor, even in the absence of control or supervision of the worksite by the owner and general contractor (*id.*). Therefore, an owner and general contractor can be vicariously liable for the negligent acts of others when someone in the chain responsible employees at the project created or had actual or constructive notice of the alleged hazardous condition that proximately caused plaintiff's injuries (*Cavedo v Flushing Commons Property Owner, LLC,* 217 AD3d 562).

However, Labor Law § 241 [6] is not self-executing. To impose liability, plaintiff must establish a violation of the Industrial Code (*Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494, 505 [1993]). Here, plaintiff has alleged that MNC is vicariously liable for violations of Industrial Code §§ 12 NYCRR 23-1.16 [b] [Safety Belts, Harnesses, Tail Lines and Lifelines] and 12 NYCRR 23-1.24 [b] [High and Steep Roofs]. Industrial Code 12 NYCRR § 23-1.16 [b] dictates that such devices shall be "so arranged that if the user should fall such fall shall not

exceed five feet." Industrial Code 12 NYCRR § 23-1.24 [b] dictates that in addition to the use of safety harness, scaffolding should be installed to prevent falls where work is being performed on a roof without parapet walls exceeding five feet.

a) Plaintiff's Motion

Plaintiff has established as a matter of law violations of Labor Law § 240 [1], Labor Law § 241 [6] and Sections 12 NYCRR 23-1.16 [b] and 12 NYCRR 23-1.24 [b] of the Industrial Code.

MNC's argument that a question of fact exists whether plaintiff was contributorily negligent under Labor Law § 240 [1] is patently devoid of merit because the law is clear that contributory negligence is not a defense to the absolute liability imposed by the statute (*Keen v Tishman Constr. Corp. of N.Y.,* 233 A.D.3d 1001, 1003 [2nd Dept 2024]). Moreover, MNC's sole proximate cause argument is also devoid of merit because once the harness failed, there were no additional safety devices in place to prevent his fall from almost 30 feet above ground (*Blake v Neighborhood Housing Services of New York City, Inc.,* 1 NY3d 280, 290-291 [2003] ["It is conceptually impossible for a statutory violation…to occupy the same ground as a plaintiff's sole proximate cause for the injury."]). Therefore, plaintiff has also established violations of the Industrial Code based on this failure to provide an adequate safety harness and additional safety devices.

b) 1926 Ocean Parkway, LLC and Lorraine Betesh's Motion

The law is clear: corporate ownership of a property, in and of itself, does not preclude application of the homeowner exemption in Labor Law §§ 240 [1] and 241 [6] (*Argueta v Hall & Wright, LLC,* 230 AD3d 1200 [2nd Dept 2024]).

The purpose of the homeowner's exemption is "to protect residential homeowners lacking in sophistication or business acumen from their failure to recognize the necessity of insuring against the strict liability imposed by the statute[s]." The exemption was not intended to insulate one-or two-family houses that are used purely for commercial purposes. Therefore, the determination of whether the owner may invoke the exemption "turns on whether the site and purpose of the work was connected to the owner's residential use of the property." (*Id*. at 1203 [internal citations omitted]). However, this exemption will be forfeited if the owners exercised direction and control of the injured plaintiff's work (see *Ortega v Puccia,* 57 AD3d 54, 59 [2nd Dept 2008]; *Kolakowski v Fenney*, 204 AD2d 693 [2nd Dept 1994]). The testimony establishes that the owners did not direct or control the work, and once the construction was completed, the property was used as a single-family residence. Therefore, they are entitled to the residential exemption from liability and dismissal of the Labor Law §§ 240 [1] and 241 [6] causes of action.

As to Labor Law § 200 and common law negligence, the testimony also establishes that the owners did not have the authority to supervise or control plaintiff's work on the roof and did not exercise any such authority. Moreover, the owners did not provide plaintiff with the defective safety harness and could not have actual or constructive notice of same. Therefore, the owners have demonstrated as a matter of law that they are entitled to summary judgment dismissing these causes of action as well. (*Ortega v Puccia,* 57 AD3d 61; *Chowdhury v Rodriguez,* 57 AD3d 121 [2d Dept 2008]).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on liability under Labor Law §§ 240 [1] and 241 [6] and Industrial Code §§ 12 NYCRR 23-1.16 [b] and 12 NYCRR 23-1.24 [b] is GRANTED (MS #5), and it is further

ORDERED that this action shall proceed to trial on the issue of damages only against M.N.C. GENERAL CONTRACTORS CORP., and it is further

ORDERED, that the motion by defendants, 1926 OCEAN PARKWAY, LLC AND LORRAINE BETESH for summary judgment per CPLR § 3212 dismissing plaintiff's complaint and all crossclaims against them is GRANTED in its entirety (MS #6), and it is further

ORDERED that the clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 3/23/2026