

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

6994

STEVEN APONTE,
Plaintiff-Appellant,

Index No. 34327/19
Case No. 2025-03265

-against-

298 EAST VILLAGE OWNER LLC, et al.,
Defendants-Respondents,

ROCK GROUP NY CORP., et al.,
Defendants.

298 EAST VILLAGE OWNER LLC, et al.,
Third-Party Plaintiffs-Respondents,

-against-

LIQUID GOLD SELF LEVELING, LLC, et al.,
Third-Party Defendants-Respondents.

Pollack, Pollack, Isaac & DeCicco, LLP, New York (Jillian Rosen of counsel), for
appellant.

Fuchs Rosenzweig, PLLC, New York (Anthony J. Loman of counsel), for 298 East Village
Owner LLC, and OTL Enterprises, LLC, respondents.

Brody Law Group, PLLC, New York (Magdalene P. Skountzos of counsel), for Liquid
Gold Self Leveling, LLC, respondent.

Pillinger Miller Tarallo, LLP, New York (Steven H. Kaplan of counsel), for Premier
Ironworks, Inc., respondent.

Order, Supreme Court, Bronx County (Myrna Socorro, J.), entered on or about
January 30, 2025, which, to the extent appealed from as limited by the briefs, denied
plaintiff's motion for summary judgment on the issue of liability on his Labor Law §

240(1) cause of action as against defendants 298 East Village Owner LLC and OTL Enterprises, LLC, and granted third-party defendant Premier Ironworks, Inc.'s cross-motion for summary judgment dismissing the Labor Law § 241(6) claim insofar as predicated on Industrial Code (12 NYCRR) §§ 23-1.7(e)(2), 23-2.1(a)(1), and 23-2.1(a)(2) as against 298 East Village Owner and OTL Enterprises, unanimously reversed, on the law, without costs, plaintiff's motion granted, and Premier's motion denied as academic.

Plaintiff testified at his deposition that on the day of the accident he observed an unmarked A-frame dolly loaded with 10 to 15 sheets of metal, each one about eight by five feet and vertically stacked on the dolly's platform. The highest point of the metal sheets was about six to seven feet above the floor. Plaintiff estimated that the dolly and metal sheets together weighed 100 to 200 pounds. After allegedly being told to move the dolly on his own, despite the materials belonging to another trade group working at the site, plaintiff pulled the dolly towards him. After he had moved the dolly one or two feet, both the dolly and the metal sheets tipped over and struck him, knocking him to the ground. The metal sheets were not secured to the dolly.

Plaintiff demonstrated prima facie entitlement to summary judgment on his Labor Law § 240(1) cause of action. Based on plaintiff's testimony as well as the testimony of OTL Enterprises' principal that an unsecured load of material on a dolly was unsafe because the material could fall, plaintiff established that the metal sheets required securing (*see Brito v City of New York*, 238 AD3d 508, 508-509 [1st Dept 2025]; *Spero v 3781 Broadway, LLC*, 214 AD3d 546, 546-547 [1st Dept 2023]; *see also Nyanteh v 590 Madison Ave., LLC*, 238 AD3d 643, 643 [1st Dept 2025]; *Touray v HFZ 11 Beach St. LLC*, 180 AD3d 507, 507 [1st Dept 2020]). Unlike in *Kuylen v KPP 107th St., LLC* (203 AD3d 465, 465 [1st Dept 2022]), the material that fell here was elevated

on a dolly such that the elevation differential was not de minimus but rather was sufficient for the load of metal sheets to generate a significant amount of force and was a proximate cause of plaintiff's injuries.

Plaintiff's conduct of moving another subcontractor's loaded dolly that was in the way of his work after an unnamed site supervisor allegedly directed him to do so was in the scope of plaintiff's employment and was not the act of a volunteer falling outside the ambit of Labor Law § 240(1) (*cf. Nelson v E&M 2710 Clarendon LLC*, 129 AD3d 568, 570 [1st Dept 2015]). Plaintiff's conduct in moving the dolly was at most comparative negligence, which is not a defense to a Labor Law § 240(1) claim (*see Simon v 4 World Trade Ctr. LLC*, 242 AD3d 530, 532 [1st Dept 2025]).

Premier's challenges to plaintiff's account as physically impossible and inconsistent with the statements in the affidavit of OTL Enterprises' superintendent regarding his observations of the area after the accident are insufficient to raise an issue of fact as to plaintiff's credibility as the sole witness or the conclusion that the metal sheets were not properly secured (*see Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 409-410 [1st Dept 2013]).

Inasmuch as we are granting plaintiff's motion for summary judgment under Labor Law § 240(1), the parties' arguments regarding the Labor Law § 241(6) claim are

academic (*see DaSilva v Super P57, LLC*, 247 AD3d 645, 646 [1st Dept 2026]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being more prominent and the last name "Rojas" following in a similar style.

Susanna Molina Rojas
Clerk of the Court