

**Millian v 626 Bushwick LLC**

2023 NY Slip Op 30293(U)

January 30, 2023

Supreme Court, New York County

Docket Number: Index No. 154210/2016

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

CHARLIE J. TRUJILLANO MILLIAN,
Plaintiff,

- v -

626 BUSHWICK LLC, CAYUGA CAPITAL MANAGEMENT,
LLC,

Defendant.

-----X

626 BUSHWICK LLC, CAYUGA CAPITAL MANAGEMENT,
LLC

Plaintiff,

-against-

RIDGELINE ASSOCIATES, INC.

Defendant.

-----X

INDEX NO. 154210/2016
MOTION DATE 12/22/2022
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595037/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 84, 87, 91, 93, 95, 98, 99, 101, 104, 105, 107, 110, 111
were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff commenced this action seeking damages allegedly incurred when he fell from an A-frame ladder when it shifted and caused him to fall approximately seven feet to the ground.

Plaintiff now moves for partial summary judgment as to liability. For the reasons stated below, Plaintiff's motion is granted.

### ALLEGED FACTS

Plaintiff alleges that he was injured on May 20, 2016, at approximately 10:30 am, while working in an apartment located on the fourth floor of a located at 626 Bushwick Avenue, Brooklyn, New York (Subject Premises). Plaintiff was working as an employee of non-party CCM Ventures Holding, LLC (CCM). CCM was the general contractor overseeing work that was being performed at the Subject Premises at the time of Plaintiff's accident.

On the day of his accident, Plaintiff was using an aluminum ladder and working alone to apply spackling and compound to patch up holes that had been put into sheetrock/walls by other subcontractors. Plaintiff was standing on the ladder and was patching a wall when the ladder wobbled and fell, leading to Plaintiff falling to the floor after striking his head against an installed cabinet in the kitchen area of the apartment.

The Premises is owned by 626 Bushwick LLC (Bushwick). Cayuga Capital Management, LLC (Cayuga) developed the Subject Premises through various affiliates, namely CCM. RAI was a carpentry subcontractor at the Premises.

The building had previously been a church, and ws being renovated into apartments. When Plaintiff arrived on the job site, the apartments did not have walls, they just had frames. The finished apartment building was intended to have five floors.

When Plaintiff arrived in the morning, he would check the apartments for patch work that needed to be performed that day. The Super of the company present that day, Willie or Willis provided Plaintiff the ladder he would use for his work. Plaintiff was never given any instructions or training concerning the use of ladders.

The ladder was an aluminum A-frame and was approximately 8-12 feet. Plaintiff acknowledged that safe practice required a co-worker to hold the ladder, but no one was provided to hold the ladder at this site.

Immediately before the accident, Plaintiff was performing patchwork. The distance between the floor and the ceiling was approximately twelve feet. At the precise time of the accident, Plaintiff was attempting to patch a hole approximately 8 or 9 feet in the above the ground. Plaintiff applied the first coat and was starting to do the second when he fell.

Plaintiff was standing on the second step from the top of the ladder. Plaintiff estimated he was seven feet above the ground.

Plaintiff testified that as he went up the ladder to the second from top, he was applying the material on the patch. While he was on the wall extending the material, he felt the ladder move to the left. The ladder fell to the left and caused him to fall. The ladder did not fall to the ground but instead was held up on an angle leaning against the cabinets.

### DISCUSSION

To prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial”

(*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). “[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]). “On a motion for summary judgment, the court’s function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact” (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] [“The court’s role, in passing on a motion for summary judgment, is solely to determine if any triable issues exist, not to determine the merits of any such issues”], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

***Plaintiff Has Established a Prima Facie Violation of Labor Law §240(1)***

§240(1) of the Labor Law, often referred to as the "Scaffold Law," provides that "all contractors and owners and their agents" engaged in the erection, demolition, repairing, or altering of a building or structure shall furnish, or erect, or cause to be furnished and erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and any other device which shall be so constructed so as to be placed and operated so as to give proper protection to a person so employed. *Sanatass v. Consolidated Investing Co., Inc.*, 10 N.Y.3d 333, 858 (2008); *Gordon v. Eastern Railway Supply, Inc.*, 82 N.Y.2d 555.

The purpose of this section is to protect workers by placing responsibility for worksite safety on the owner and general contractor, instead of the workers themselves. *Id.* §240(1) imposes absolute liability on owners, contractors and their agents for failing to provide the safety devices necessary for the protection to workers subject to the risks inherent in elevated worksites

who sustain injuries proximately caused by that failure. *Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509 (1991); *Torres v. Monroe College*, 12 A.D.3d 261 (1st Dept., 2004).

The "core premise" of our Labor Law § 240(1) jurisprudence is "that a defendant's failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability" *Wilinski v. 334 East 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, (2011).

Liability attaches if Plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential. *See Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 603 (2009); *DiPalma v. State*, 90 A.D.3d 1659 (4th Dept. 2012).

To prevail on a Labor Law §240(1) cause of action, the plaintiff must establish that the statute was violated, and that the violation was a proximate cause of his or her injuries. *Melchor v. Singh*, 90 A.D.3d 866 (2d Dept. 2011); *Rudnik v. Brogor Realty Corp.*, 45 A.D. 3d 828 (2d Dept., 2007).

Where an A-frame ladder shifts and fails to provide proper protection, a plaintiff has established a *prima facie* case. *See Laporta v. PPC Com., LLC*, 204 A.D.3d 538, 539, 165 N.Y.S.3d 283 (1st Dept. 2022); *Garces v. Windsor Plaza, LLC*, 189 A.D.3d 539 (1st Dept. 2020); *Wu v. 34 17th St. Project LLC*, 200 A.D.3d 508 (1st Dept. 2021); *Nieto v. CLDN NY LLC*, 170 A.D.3d 431, 432 (1st Dept. 2019).

In opposition to Plaintiff's *prima facie* showing, defendants failed to raise any triable issue of fact. Defendants argue that Plaintiff has failed to establish the ladder was defective. However, Plaintiff has no obligation to show that the ladder was defective, only that it failed to provide proper protection. *Howard v. Turner Const. Co.*, 134 A.D.3d 523, 524 (1st Dept. 2015);

Lin v 100 Wall Street Property LLC 193 AD3d 650 (1<sup>st</sup> Dept. 2021). Defendants’ reliance on Delahaye v Saint Anns School (40 AD3d 679) is misplaced because in that case the Court held inconsistencies in the record raised the issue of plaintiff’s credibility and therefore summary judgment was properly denied. No such inconsistencies are present in the record for this case.

Here, it is undisputed that Plaintiff fell from an inadequate ladder which shifted to the left and caused him to fall. Therefore, Plaintiff is entitled to summary judgment pursuant to Labor Law §240(1).

WHEREFORE it is hereby:

ORDERED that Plaintiff’s motion for partial summary judgment as to liability is granted; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that this constitutes the decision and order of this court.

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SABRINA KRAUS, J.S.C.

1/30/2023  
DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE