

**Aguirre v Bayard Holdings LLC**

2025 NY Slip Op 30637(U)

February 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 531170/2021

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 531170/2021  
Seq. 003

Part LL1

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

\_\_\_\_\_  
JUAN G. VILLA AGUIRRE,

Plaintiff,

against

BAYARD HOLDINGS LLC AND HEARTFELT  
TOWNHOUSE BUILDERS LLC,

Defendants.

\_\_\_\_\_  
HEARTFELT TOWNHOUSE BUILDERS LLC,

Third-Party Plaintiff,

against

PRIME STRUCTURE INC.,

Third-Party Defendant.

\_\_\_\_\_  
BAYARD HOLDINGS LLC,

Second Third-Party Plaintiff,

against

SEGUE SERVICES INC. AND VMS CONSULTING, INC.,

Second Third-Party Defendants.

<b>Papers Numbered</b>	
Notice of Motion and Affidavits Annexed . . . . .	<u>1</u>
Order to Show Cause and Affidavits Annexed. . . . .	<u>2</u>
Answering Affidavits . . . . .	<u>3</u>
Replying Affidavits . . . . .	<u>Var.</u>
Exhibits . . . . .	<u>Var.</u>
Other . . . . .	<u>    </u>

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 003) is decided as follows:

### **Procedural Posture**

Plaintiff commenced this action to recover for injuries he claims to have sustained when he was struck by falling wood at a project located at 146 or 150 Bayard Street. Bayard Holdings LLC (Bayard) owned the premises. Heartfelt Townhouse Builders LLC (Heartfelt) was the general contractor. Pursuant to plaintiff's prior motion, sequence 002, Justice Leon Ruchelsman issued an order striking Heartfelt's answer on June 3, 2024. On September 16, 2024, Justice Ruchelsman denied Heartfelt's motion to vacate the June 3, 2024 order. At the time that this motion was made, issue had not been joined in the second-third party action, and the plaintiff noted that the pleadings for the third-party action were not attached for this reason (aff. in supp. at 2 n. 3).

### **Factual Background**

The plaintiff testified as follows: Plaintiff was working as a carpenter for a new construction project on the date of his accident and had been working on the same project for multiple months (Villa EBT at 38, 42–43, 45).<sup>1</sup> On the date of the accident, plaintiff was installing a jack in the basement of the premises as part of the process of constructing a staircase (*id.* at 62–64, 66–67, 147). While performing this work, two pieces of connected 3x4 wood fell onto the plaintiff from a jack that was already installed, striking him in the back of the head and knocking him unconsciousness (*id.* at 56, 65–66, 79–87, 106–107, 149, 164). The wood should have been secured in place with nails (*id.* at 81). Plaintiff observed the 3x4s on the floor next to the jack when he regained consciousness (*id.* at 64–65). Plaintiff did not install the jack from which the wood fell (*id.* at 81–82).

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<sup>1</sup> Plaintiff testified that his primary surname is Villa (Villa EBT at 7); the court will therefore use that name throughout.

### 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]).

#### **Labor Law § 240 (1)**

Liability under Labor Law § 240 (1) is "absolute" where the failure of a safety device enumerated by the statute is the proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). "To prevail on a motion for summary judgment in a section 240 (1) 'falling object' case, the plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking" (*Henriquez v Grant*, 186 AD3d 577, 577 [2d Dept 2020]).

Here, the plaintiff established his prima facie entitlement to summary judgment. Plaintiff testified that he was performing covered work when he was struck by a falling object (boards) which required securing, ordinarily with nails. Plaintiff denied that he constructed the jack from which the wood fell (Villa EBT at 81-82).

In opposition, defendants fail to raise an issue of triable fact. Defendants' contentions about procedural deficiencies in the papers are unavailing, as issue had not yet been joined in the second third-party action and, in any event, plaintiff attached the second third-party pleadings on reply (*Scarsella v Liberty Coca-Cola Beverages, LLC*, 2024 N.Y. Slip Op. 05469 [2d Dept. Nov.

6, 2024]; *see also Flushing AV Laundromat, Inc. v Qu*, 229 AD3d 516, [2d Dept. 2024]). On the merits, defendants' arguments omit "required for securing for the purpose of the undertaking" from its articulation of the Labor Law § 240 (1) standard, which is the relevant language in the case. Moreover, plaintiff's testimony is not based solely on his co-worker's hearsay, as the plaintiff himself testified to the condition of the wood. Finally, defendant's argument that plaintiff failed to provide an expert to opine about whether the wood should have been secured fails on its face, irrespective of the fact that an expert was not necessary for plaintiff to make out his prima facie entitlement to summary judgment under Labor Law § 240 (1). The plaintiff attached an expert affidavit from Nicholas Bellizzi, P.E., stating that the wood required securing (Bellizzi aff. at ¶ 25).

Therefore, plaintiff's motion is granted.

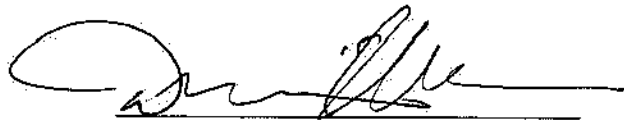
### **Conclusion**

Plaintiff's motion for summary judgment (Seq. 003) is granted.

This constitutes the decision and order of the court.

February 11, 2025

**DATE**



**DEVIN P. COHEN**

Justice of the Supreme Court