

Guzman v Apex Place Hous. Dev. Fund Corp.

2025 NY Slip Op 32449(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 154238/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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CARLOS GUZMAN,

Plaintiff,

- v -

APEX PLACE HOUSING DEVELOPMENT FUND
CORPORATION, APEX PLACE ASSOCIATES, L.P.,
MONADNOCK CONSTRUCTION, INC.

Defendant.

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INDEX NO. 154238/2021

MOTION DATE 05/17/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 168, 171, 172, 173, 174, 175, 176, 177, 178, 179, 181, 183 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of May 20, 2025, Plaintiff Carlos Guzman’s (“Plaintiff”) motion for partial summary judgment on the issue of liability with respect to his Labor Law §§ 240(1) and 241(6) claims against Defendant Apex Place Housing Development Fund Corporation (“Apex Place Housing”), Apex Place Associates, L.P., (“Apex Place Associates”), and Monadnock Construction, Inc. (“Monadnock”) is granted in part and denied in part.

I. Background

On February 23, 2021, non-party HDK Construction LLC (“HDK”) employed Plaintiff as a laborer at a construction site known as the “Apex Project” at 62-11 108th Street, Queens, New York (the “Building”). Plaintiff was attempting to enter a window when he slipped and fell through the window due to snow on the scaffold he was using (NYSCEF Doc. 135 at 92-94; 101-102; 109-110). Plaintiff fell four feet from the window to the floor of the Building (NYSCEF Doc. 135 at 121). It is alleged that a ladder was supposed to be adjacent to the window so workers could use

the ladder to reach the floor, but at the time of Plaintiff's accident, the ladder was three feet away from the window (NYSCEF Doc. 135 at 120).

Defendant Monadnock was the general contractor while Apex Place Associates and Apex Place Housing were the owners (NYSCEF Doc. 138 at 11-13). HDK was retained by Monadnock as a masonry subcontractor (NYSCEF Doc. 138 at 15). Monadnock's witness, Robert Hempfling, admitted snow accumulated at the top of the scaffold, but said it was HDK's responsibility to remove the snow (NYSCEF Doc. 138 at 28-29). Mr. Hempfling also admitted that if snow was on the scaffold, workers should not have been using the scaffold (NYSCEF Doc. 138 at 47-48). Plaintiff seeks partial summary judgment on the issue of liability with respect to his Labor Law §§ 240(1) and 241(6) claims against Defendants. Defendants oppose.

II. Discussion

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, there is no dispute that Plaintiff was engaged in work within the meaning of Labor Law §240(1), nor is there any dispute that Defendants are proper Labor Law defendants. Plaintiff met his burden of showing Defendants' liability under Labor Law § 240(1). The undisputed facts show there was no secured ladder available to descend from the elevated scaffold (*Ortiz v City of New York*, 224 AD3d 631, 631 [1st Dept 2024]). The violation of Labor Law § 240(1) is compounded by Defendants' requiring Plaintiff to exit the scaffold by climbing through a window, and failing to ensure the exit point of the scaffold was clear of snow (*Nechifor v RH Atlantic-*

Pacific LLC, 92 AD3d 514 [1st Dept 2012]; *Robinson v NAB Const. Corp.*, 210 AD2d 86, 86-87 [1st Dept 1994]). Finally, Plaintiff was injured because of Defendants' failure to provide him with an adequate safety device to break the fall from a height of four feet.

In opposition, Defendants fail to raise a material issue of fact. Defendants rely on Plaintiff's allegedly translated statements in an incident report and first aid treatment form to argue there is an inconsistency in Plaintiff's testimony regarding the presence of snow. However, the statements are hearsay and were allegedly translated from Spanish to English but there was never any translator's affidavit produced. Thus, the statements are insufficient to defeat summary judgment (*Nava-Juarez v Mosholu Fieldston Realty, LLC*, 167 AD3d 511 [1st Dept 2018]). Moreover, Plaintiff's deposition testimony is not inconsistent with the reports. The reports are silent as to the condition of the scaffold.

Defendants argument that there is an issue of fact as to whether Plaintiff contributed to his accident is no bar to summary judgment under Labor Law § 240(1) (*Rodriguez v City of New York*, 31 NY3d 312 [2018]). Where there is a prima facie violation, it is impossible for a plaintiff to be the sole proximate cause of his accident (*Suazo v 501 Madison-Sutton LLC*, 235 AD3d 513 [1st Dept 2025]). Nor does Defendants' expert, Shawn Rothstein, raise an issue of fact. Although Mr. Rothstein states Plaintiff should have been able to reach through the window and position the ladder to allow him to safely descend, Mr. Rothstein fails to address Plaintiff's testimony that because he slipped on snow, he had no opportunity to reach for or position the ladder. Moreover, Mr. Rothstein's opinion that the unsecured and freestanding ladder was safe to use while climbing through a window is contrary to First Department precedent (*Ranieri v Holt Const Corp.*, 33 AD3d 425 [1st Dept 2006]). Defendants' argument that Plaintiff's fall from a window four feet to the ground falls outside the purview of Labor Law § 240(1) is without merit (*Auriemma v Biltmore*

Theatre, LLC, 82 AD3d 1, 5 [1st Dept 2011] [fall into four-foot-deep open pit covered by Labor Law § 240[1]).

Thus, Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim is granted. Because Plaintiff is granted summary judgment on his Labor Law § 240(1) claim, his motion seeking summary judgment on his Labor Law § 241(6) claim is academic (*Perez v 1334 York, LLC*, 234 AD3d 455, 457 [1st Dept 2025]).

Accordingly, it is hereby,

ORDERED that Plaintiff Carlos Guzman’s motion for partial summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendant Apex Place Housing Development Fund Corporation, Apex Place Associates, L.P., and Monadnock Construction, Inc. is granted; and it is further

ORDERED that Plaintiff Carlos Guzman’s motion for partial summary judgment on the issue of liability with respect to his Labor Law § 241(6) claim against Defendant Apex Place Housing Development Fund Corporation, Apex Place Associates, L.P., and Monadnock Construction, Inc. is denied as academic; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/10/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE