

**Herrero-Sanchez v Sela Ryerson LLC**

2025 NY Slip Op 32529(U)

July 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 529337/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings  
Part LL1M

Index Number 529337/2022  
Seqs. 002, 003

**DECISION/ORDER**

DANIEL HERRERO-SANCHEZ,

Plaintiff,

against

SELA RYERSON LLC AND ATLAS BUILDERS LLC,

Defendants.

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

**Papers Numbered**

Notice of Motion and Affidavits Annexed . . . . . 1-2  
Order to Show Cause and Affidavits Annexed: . . . . . 2-3  
Answering Affidavits . . . . . 4-5  
Replying Affidavits . . . . . Var  
Exhibits . . . . . Var  
Other . . . . .     

Upon the foregoing papers, plaintiff’s motion for summary judgment (Seq. 002) and defendants’ motion for summary judgment (Seq. 003) are decided as follows:

Plaintiff commenced this action to recover for damages he claims to have sustained on September 17, 2022, while performing construction work on the premises located at 29 Ryerson Street, Brooklyn, NY. Plaintiff was employed by non-party KM Builders Corp., a sub-contractor retained by Atlas Builders LLC. It is undisputed that Sela Ryerson LLC owned the premises and Atlas was the general contractor. It is further undisputed that, while performing taping work, plaintiff fell from a six-foot high Baker scaffold. Plaintiff testified that a scaffold support gave way, causing him to fall to the ground (Herrero-Sanchez EBT at 38–39). Plaintiff did not know who provided the scaffold (*id.* at 25–26, 38–39). Plaintiff’s testimony is un rebutted.

Defendants provide a purported affirmation from Kelly D. Scott, P.E. However, the affirmation is unsigned, and therefore inadmissible (*Huntington Crescent Country Club v M&M Auto & Marine Upholstery, Inc.*, 256 AD2d 551 [2d Dept 1998]).

### 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)**

“The collapse of a scaffold . . . for no apparent reason . . . creates a presumption that the . . . scaffold did not afford proper protection (*Pai v Nelson Senior Housing Development Fund Corporation*, 232 AD3d 822 [2d Dept 2024]). Additionally, Labor Law § 240 (1) imposes a non-delegable duty on owners and general contractors to furnish adequate safety devices (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]). Therefore, defendants' arguments that they neither provided the scaffold nor supervised the work are, therefore, either irrelevant or detrimental to avoiding liability under Labor Law § 240 (1). Since the scaffold collapsed, defendants' arguments that harnesses and guardrails were unnecessary are unavailing. Plaintiff's motion is granted and defendants' motion is denied as to Labor Law § 240.

#### **Labor Law § 241 (6)**

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only substantively opposes defendants' motion with respect to Industrial Code 23-1.5 (e) (3).

Defendants' motion is therefore granted as to all Industrial Code provisions except Rule 23-1.5 (c) (3).

Rule 23-1.5 (c) (3) reads: “[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged.” Here, plaintiff testified that the scaffold collapsed. There is, therefore, a question of fact as to whether the scaffold was not kept in sound and operable condition, and therefore whether the statute was violated. Defendants' motion is denied with respect to this Industrial Code provision, as the only argument defendants advance is that the subject code provision is insufficiently specific (defendants memorandum of law at 11). This contention is incorrect (*see Perez v 286 Scholes St. Corp.*, 134 AD3d 1085 [2d Dept 2015]).

#### **Labor Law § 200**

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work” (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). Where a ladder or scaffold is borrowed or supplied by the owner, the court should assess liability under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]). Otherwise, liability for dangerous or defective equipment is analyzed under the “supervision and control” standard established by *Ortega* (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]).

Defendants assert, without citation to the record, that KM Builders supplied and maintained the subject scaffold. However, plaintiff testified that he did not know who provided the scaffold. Mr. Alexandrov, defendants' witness, could not recall whether Atlas had provided any safety equipment to any of the sub-contractors, and there is not otherwise evidence that the

scaffold did not belong to the owner or the general contractor. Furthermore, Mr. Alexandrov testified that Atlas' representative Mr. Vujak "had the authority to provide direction to the subcontractors [sic] carrying out the work" (Alexandrov EBT at 33, 40-41). Therefore, defendants' have failed to make out their prima facie entitlement to summary judgment on plaintiff's Labor Law § 200 claim, and their motion is denied.

**Conclusion**

Plaintiff's motion for summary judgment (Seq. 002) is granted.

Defendants' motion for summary judgment (Seq. 003) is granted solely to the extent of plaintiff's Labor Law § 241 (6) claims as predicated on violations of Industrial Codes other than Rule 23-1.5 (c) (3); the motion is otherwise denied.

This constitutes the decision and order of the court.

July 3, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court