

**Leonard v City of New York**

2025 NY Slip Op 33067(U)

July 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 525592/2021

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings

Index Number 525592/2021  
Seq. 003, 004

Part LL1M

**DECISION/ORDER**

DAVID LEONARD,

Recitation, as required by CPLR §22.19 (a), of the papers considered in the review of this Motion

Plaintiff,

**Papers Numbered**

against

Notice of Motion and Affidavits Annexed . . . . .	<u>1-2</u>
Order to Show Cause and Affidavits Annexed . . . . .	<u>  </u>
Answering Affidavits . . . . .	<u>2-3</u>
Replying Affidavits . . . . .	<u>  4</u>
Exhibits . . . . .	<u>Var.</u>
Other . . . . .	<u>  </u>

CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF EDUCATION, NEW YORK CITY  
BOARD OF EDUCATION, AND NEW YORK CITY  
SCHOOL CONSTRUCTION AUTHORITY,

Defendants.

Upon the foregoing papers,<sup>1</sup> plaintiff’s motion for summary judgment (Seq. 003) and defendants’ cross-motion for summary judgment (Seq. 004) are decided as follows:

**Introduction and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on April 27, 2021, when he was struck by a falling cement block at a construction site. Plaintiff testified as follows: On the date of the accident, plaintiff was working for non-party Padilla as a bricklayer (Leonard 50-h at 16). Padilla was sub-contracted to perform exterior masonry work at the premises known as Public School 17 (*id.* at 22). “Manny” was plaintiff’s superintendent (*id.* at 25). Plaintiff was working on an elevated aluminum platform, or “outrigger,” adjacent to or slightly below the loading deck of the scaffold (Leonard EBT at 37). Manny and another worker were unloading cinderblocks off of a hi-low onto the loading deck at the time of plaintiff’s

<sup>1</sup> Defendants’ affirmation in further support of their cross-motion has not been considered, as reply affirmations on cross-motions are not contemplated by CPLR 2215 and defendants’ did not seek express permission to file supplemental briefing.

accident (*id.*). Plaintiff testified that his shoulder was level with the loading deck (*id.* at 40). While facing the wall, plaintiff heard a sound “like blocks falling onto the scaffold” (Leonard 50-h at 34). Multiple blocks fell, and one struck the plaintiff in the arm and shoulder, pushing him against the wall (*id.* at 34; Leonard EBT at 43). The blocks weighed approximately sixty to seventy pounds (Leonard 50-h at 47).

An incident report was generated when plaintiff’s foreman, Manny, explained the accident to “Didi,” the supervisor at the site (Leonard 50-h at 40; Leonard EBT at 46). Plaintiff testified that the supervisor was trying to “get [plaintiff] to change [his] story of what happened,” and then plaintiff “filled out the accident report with the supervisor” and “reviewed the accident report” (Leonard EBT at 46). The incident report states that “[Manny] and Robert Mucius were unloading concrete blocks onto the scaffold deck, when removing the straps on the top blocks one fell to the deck and rolled over hitting David Leonard on his right upper arm above the elbow.”

### **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 or absence of a safety device enumerated by the statute is a proximate cause of the plaintiff’s accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v.*

*New York Tel. Co.*, 46 NY2d 132, 136 (1978) and *Ross v Curtis-Palmer HydroElec. Co.*, 81 NY2d 494, 500 (1993)]. In order to recover for an injury caused by a falling object, a plaintiff must show that the object was being hoisted, secured, or required securing for the purpose of the undertaking (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259 [2001]).

Here, plaintiff contends that the object that fell and struck him required securing because he was working below the area where the blocks were being unloaded. In opposition, and in support of their own motion, defendants contend that the object did not require securing and, if it did, that the height differential between the plaintiff and the loading dock was *de minimis*.

The plaintiff is correct that whether the object was being unloaded (*Escobar v Safi*, 150 AD3d 1081 [2d Dept 2017]) or hoisted (*Kretowski v Braender Condominium*, 57 AD 3d 950 [2d Dept 2008]), Labor Law § 240 (1) applies. However, plaintiff has not demonstrated that the concrete block fell more than a *de minimis* height before striking him. Plaintiff testified that, while standing on the outrigger, the loading dock was level with his shoulder. If the block first fell to the deck and then struck plaintiff, the height differential between the plaintiff and the block may well have been *de minimis*. If the block fell from the top of the newly delivered pallet, then the height difference is likely akin to the five-and-a-half feet in *Outar* and sufficient to implicate Labor Law § 240 (1) (*Outar v City of New York*, 5 NY3d 730 [2005]). Although counsel contends that the block fell five-and-a-half feet or more, there is no evidence cited in the record to support this contention. In the absence of admissible evidence in the record as to whether the block fell from the loading dock or from the pallet, both parties' motions for summary judgment on this issue must be denied.

**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]). Only defendants move for summary judgment on this claim.

Defendants contend that they did not direct or control the means and methods of plaintiff’s work (aff. in opp. and in supp. of cross-motion at para. 29; memorandum of law *passim*). However, this incorrectly describes the standard. A party must merely have authority to direct or control the work, irrespective of whether that authority is actually exercised (*Ortega*, 57 AD 3d at 62 n. 2). Since the defendants’ arguments exclusively address the exercise of supervision and control, and not the authority to do so, their motion must be denied.

**Conclusion**

Plaintiff’s motion for summary judgment (Seq. 003) is denied.

Defendants’ cross-motion for summary judgment (Seq. 004) is denied.

This constitutes the decision of the court.

July 8, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court