

Valim v Extell Hudson Waterfront LLC

2025 NY Slip Op 33262(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 160330/2022

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

-----X

WILIAM RODRIGUES VALIM,

Plaintiff,

- v -

EXTELL HUDSON WATERFRONT LLC, EXTELL
MANAGEMENT SERVICES INC, PLATINUM DEVELOPERS,

Defendant.

-----X

EXTELL HUDSON WATERFRONT LLC, PLATINUM
DEVELOPERS

Plaintiff,

-against-

SANDSTONE STRUCTURES LLC, MAIN LINE CONTRACTOR
CORP.

Defendant.

-----X

INDEX NO. 160330/2022

MOTION DATE 11/26/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595989/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, and after a final submission date of June 3, 2025, Plaintiff Wiliam Rodrigues Valim’s (“Plaintiff”) motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants Extell Hudson Waterfront LLC (“Extell”) and Platinum Developers (“Platinum”) (collectively “Defendants”), and his Labor Law § 200 claim against Platinum, and seeking dismissal of Defendants’ affirmative defenses of comparative negligence and culpable conduct is granted in part and denied in part.¹ Defendants’

¹ Defendant Extell Management Services Inc. was dismissed without prejudice (NYSCEF Doc. 15).

cross motion seeking dismissal of Plaintiff's Labor Law §§ 240(1), 241(6), and 200 claims is denied.

I. Background

Third-Party Defendant Sandstone Structures LLC ("Sandstone") employed Plaintiff as a carpenter at 159 Alexander Street, Yonkers, New York (the "Premises") (NYSCEF Doc. 44 at 45; 47; 55). Extell owned the Premises (NYSCEF Doc. 40). Sandstone was contracted by Platinum, the general contractor (NYSCEF Doc. 45 at 11). On October 7, 2022, Plaintiff used an eight-foot A-frame ladder to erect exterior walls at the Premises, but was unable to place the ladder safely due to an improperly installed railing (NYSCEF Doc. 44 at 64; 82; 92-93). Plaintiff requested a lift or scaffold, but his supervisor told him that equipment was unavailable and to continue using the ladder (NYSCEF Doc. 44 at 74; 88-89; 96-97; 99-100). Plaintiff ascended the ladder approximately six feet off the ground when the ladder toppled over (NYSCEF Doc. 44 at 94-95). Now, Plaintiff moves for summary judgment on his Labor Law §§ 240(1) and 200 claims, and seeks dismissal of Defendants' affirmative defenses alleging comparative negligence and culpable conduct. Defendants cross move for summary judgment dismissing Plaintiff's Labor Law §§ 240(1), 241(6), and 200 claims.

II. Discussion

Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim is granted. Defendants are proper Labor Law defendants and Plaintiff was engaged in work covered by Labor Law § 240(1). Plaintiff met his *prima facie* burden of establishing a Labor Law § 240(1) violation through his uncontroverted testimony that after asking for a scaffold or lift to complete his work, he fell from an unsecured ladder, which toppled over and could not be placed safely due to an improperly installed railing (*Castillo v TRM Contracting*

626, LLC, 211 AD3d 430, 430 [1st Dept 2022]; *Rom v Eurostruct, Inc.*, 158 AD3d 570, 570 [1st Dept 2018]). Therefore, the burden shifts to Defendants to raise a triable issue of fact (*see also Hoxhaj v West 30th HL LLC*, 195 AD3d 503, 503-04 [1st Dept 2021]; *Howard v Turner Const. Co.*, 134 AD3d 523 [1st Dept 2015]).

The only opposition submitted by Defendants is that Plaintiff was the sole proximate cause of his accident. However, where a plaintiff has established a *prima facie* violation of a Labor Law § 240(1) violation, it is impossible for the plaintiff to be considered the sole proximate cause of his accident (*Quiroz v Memorial Hospital for Cancer and Allied Diseases*, 202 AD3d 601 [1st Dept 2022]). Platinum's witness admitted a scaffold or lift would be appropriate for Plaintiff's work, and that a ladder should not be used if an impediment prevented the safe placement of a ladder (NYSCEF Doc. 45 at 88; 91). Moreover, Plaintiff complained about the conditions he was required to work in, and he cannot be faulted for following his supervisor's instructions to continue working regardless of the adequacy of the safety devices or impediment caused by the railing (*DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 47 [1st Dept 2014]). Plaintiff's conduct at most amounts to comparative negligence, which is no bar to summary judgment on his Labor Law § 240(1) claim (*Mederos for Sena v 147 Amsterdam LLC*, 230 NYS3d 98, 99 [1st Dept 2025]). Therefore, 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 entitled to summary judgment on his Labor Law § 240(1) claim, Defendants' affirmative defenses of comparative negligence and culpable conduct are dismissed, as these defenses are inapplicable to offset damages flowing from a Labor Law § 240(1) claim. Plaintiff's motion for summary judgment on his Labor Law § 200 claim is denied as academic (*Carchipulla v 6661 Broadway Partners, LLC*, 95 AD3d 573, 574 [1st Dept 2012]). In view of the

foregoing, Defendants' cross motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is denied. Defendants' cross motion for summary judgment dismissing Plaintiff's Labor Law §§ 241(6) and 200 claims are academic given Plaintiff's entitlement to summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants (*Perez v 1334 York, LLC*, 234 AD3d 455, 457 [1st Dept 2025]; *see also Fanning v Rockefeller Univ.*, 106 AD3d 484, 485 [1st Dept 2013]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is granted in part and denied in part; and it is further

ORDERED that Plaintiff's motion for summary judgment is granted with respect to the issue of liability on his Labor Law § 240(1) claims against Defendants, and is granted to the extent that Defendants' affirmative defenses alleging comparative negligence and culpable conduct are dismissed, and Plaintiff's motion for summary judgment is otherwise denied as academic; and it is further

ORDERED that Defendants' cross motion for summary judgment dismissing Plaintiff's Labor Law §§ 240(1), 241(6), and 200 claims is denied; 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.

	<u>9/2/2025</u> DATE	<u>Mary V Rosado, J.S.C.</u> HON. MARY V. ROSADO, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE