

**Espinoza v MIP One Wall St. Acquisition LLC**

2025 NY Slip Op 33284(U)

September 3, 2025

Supreme Court, New York County

Docket Number: Index No. 155682/2022

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER**

**PART**

*Justice*

-----X

JOSE L. ESPINOZA,

Plaintiff,

- v -

MIP ONE WALL STREET ACQUISITION LLC, J.T. MAGEN  
& COMPANY INC.,

Defendants.

-----X

MIP ONE WALL STREET ACQUISITION LLC, J.T. MAGEN &  
COMPANY INC.,

Third-Party Plaintiffs,

-against-

UNIVERSAL BUILDERS SUPPLY, LLC,

Third-Party Defendant.

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INDEX NO. 155682/2022

MOTION DATE 06/02/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595273/2024

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58

were read on this motion to/for JUDGMENT - SUMMARY.

This labor law action arises from a workplace accident suffered by plaintiff, Jose L. Espinoza, on June 24, 2022, while working at a construction project located at One Wall Street in Manhattan (the "Project"). The Project was owned by defendant MIP One Wall Street Acquisition LLC, which retained defendant J.T. Magen & Company Inc. ("JT Magen") to serve as general contractor. Espinoza was employed by third-party defendant Universal Builders Supply, LLC ("UBS"), a subcontractor hired to set up and dismantle the exterior scaffolding around the Project site. He was allegedly injured when he fell approximately 10 feet or more to the ground from atop scaffolding materials stacked on the surface of a flatbed truck. Espinoza now moves pursuant to CPLR 3212 for partial summary judgment as to liability on his Labor Law § 240(1) claim. Defendants oppose the motion. The motion is granted.

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*see Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]).

“Whether a plaintiff is entitled to recovery under Labor Law § 240(1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies” (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 63-64 [1st Dept. 2023], quoting *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). “[T]he single decisive question [in this connection] is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*id.* at 64, quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). “This single decisive question ‘center[s] around a core premise: that a defendant’s failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability” (*id.*, quoting *Wilinski*, 18 NY3d at 7).

In support of his motion, Espinoza submits, *inter alia*, JT Magen’s and UBS’s contracts for the Project, a pair of incident reports, and deposition transcripts for himself and each of the other parties’ witnesses. These submissions, in particular Espinoza’s testimony and that of his UBS foreman, Ernesto Medina, who witnessed the accident, establish the following facts: Espinoza was working as part of a team, overseen by Medina, dismantling and removing scaffolding materials from the Project site. Espinoza, alone, was tasked to receive and stack disassembled steel scaffolding posts, each one measuring 16-feet-long and weighing approximately 100-150 pounds, on the surface of a flatbed truck. He did this work by hand, grabbing the posts as they were handed up to him by his coworkers from the street below, securing them against his waist, maneuvering them onto the truck, and stacking them on top of each other on the flatbed. At the time of his accident, Espinoza was standing atop several layers of previously stacked scaffolding posts and other materials, approximately 7-8 feet above the

surface of the flatbed, which was itself approximately 4-5 feet above the ground. Espinoza was injured when he fell the 10 feet or more to the ground from atop the scaffolding materials stacked on the surface of the flatbed. Although Espinoza was wearing a safety harness at the time of the accident, there was no place on the truck where the harness could be secured, nor was he provided with any other safety devices to prevent him from falling.

Espinoza's testimony, corroborated by Medina, that "he fell from scaffolding materials stacked atop the surface of a flatbed truck, about 10 feet above the ground, and that he was not provided with a safety device that would have prevented his fall," as there was nowhere on the truck where the safety harness he was wearing could be secured, "[is] sufficient to establish his entitlement to partial summary judgment on his Labor Law § 240 (1) claim" (*Idona v Manhattan Plaza, Inc.*, 147 AD3d 636, 636 [1st Dept. 2017]; see *Agurto v One Boerum Dev. Partners LLC*, 221 AD3d 442, 443 [1st Dept. 2023]; *Myiow v City of New York*, 143 AD3d 433, 436-37 [1st Dept. 2016]; *Phillip v 525 E. 80th St. Condominium*, 93 AD3d 578, 578-79 [1st Dept. 2012]; see also *Naughton v City of New York*, 94 AD3d 1, 8 [1st Dept. 2012]).

Defendants, in opposition, submit no additional evidence of their own and fail to raise a triable issue of fact. The cases cited by defendants, in which a short fall from the surface of a flatbed truck was found not to constitute an elevation-related risk under Labor Law § 240(1), are inapposite, as Espinoza did not merely fall from the surface of the subject flatbed. Rather, he fell a much more significant distance from atop the scaffolding materials stacked on the back of the flatbed, a fact pattern the First Department has expressly and repeatedly held "constitutes precisely the type of elevation-related risk envisioned by the statute" (*Myiow*, 143 AD3d at 436, quoting *Naughton*, 94 AD3d at 8; see also *Agurto*, 221 AD3d at 443; *Idona*, 147 AD3d at 636; *Phillip*, 93 AD3d at 578-79).

Defendants' remaining arguments are similarly unavailing. Espinoza is not, as defendants contend, required to present expert testimony to make out his prima facie case (see *Ortega v City of New York*, 95 AD3d 125, 129-30 [1st Dept. 2012]). Nor may defendants rely on Espinoza's own purported role in causing his fall, as issues of comparative fault are not a defense to liability under Labor Law § 240(1) and defendants' own statutory violation in failing to provide adequate safety devices to prevent Espinoza's fall preclude a determination that Espinoza himself was the

sole proximate cause of his accident (*see Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]), *Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280, 290 [2003]). Similarly, in light of defendants’ statutory violation, any “possible discrepancies” between Espinoza’s testimony and the incident reports with regard to “[the] description of how or why he fell . . . are irrelevant” (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 291 [1st Dept. 2002]). Whether Espinoza simply “lost balance” or was “thrown off” the stacked scaffolding materials when the post he was holding struck the cabin of the truck is immaterial because, regardless of how the fall occurred, the absence of adequate safety devices was a proximate cause of his resulting injuries.

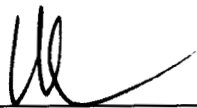
The court has considered defendants’ additional contentions, even if not specifically addressed herein, and finds them unavailing.

Accordingly, it is

ORDERED that plaintiff’s motion pursuant to CPLR 3212 for partial summary judgment as to liability on his second cause of action for violation of Labor Law § 240(1) is granted; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

9/3/2025			
DATE			LYNN R. KOTLER, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<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