

**Ceveda v H Hotel LLC**

2025 NY Slip Op 33312(U)

September 5, 2025

Supreme Court, New York County

Docket Number: Index No. 161097/2021

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

DENIS CEVEDA,

Plaintiff,

- v -

H HOTEL LLC,CROSSCITY CONSTRUCTION CORP.,

Defendant.

-----X

H HOTEL LLC

Plaintiff,

-against-

US YUCHANG TRADING COMPANY CORPORATION

Defendant.

-----X

Third-Party  
Index No. 595505/2023

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, Plaintiff Denis Ceveda’s (“Plaintiff”) motion for summary judgment (“Mot. Seq. 004”) on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants H Hotel LLC (“H Hotel”) and Crosscity Construction Corp. (“CrossCity”) (collectively “Defendants”) is granted. Defendants’ motion for summary judgment (“Mot. Seq. 005”) dismissing Plaintiff’s Complaint is granted in part and denied in part.<sup>1</sup>

<sup>1</sup> Mot. Seq. 004 was marked fully submitted on June 16, 2025, while Mot. Seq. 005 was marked fully submitted on August 1, 2025.

## I. Background

On December 2, 2021, CrossCity employed Plaintiff as a carpenter at 58 West 39<sup>th</sup> Street, New York, New York (the “Premises”) when a 40–50-pound beam<sup>2</sup> fell on him (NYSCEF Doc. 86 at 34-35; 77; 82). H Hotel owned the Premises. CrossCity was the general contractor at the Premises (NYSCEF Doc. 87 at 11). CrossCity’s witness testified that the beam was not secured properly, which caused it to fall on Plaintiff (NYSCEF Doc. 87 at 28-29). In motion sequence 004, Plaintiff moves for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants. In motion sequence 005, Defendants move for summary judgment dismissing Plaintiff’s Complaint. The motions are consolidated for disposition and decided as follows.

## II. Discussion

### A. Plaintiff’s Motion (Mot. Seq. 004)

Plaintiff’s motion for summary judgment is granted. Plaintiff met his *prima facie* burden of establishing a Labor Law § 240(1) violation through his uncontroverted deposition testimony, and the testimony of CrossCity’s witness, Felix Lin, that an unsecured beam fell from a height and struck Plaintiff. The “beam was a load that required securing for the purposes of the undertaking” (*Fromel v W2005/Hines West Fifty-Third Realty, LLC*, 232 AD3d 513, 514 [1st Dept 2024]). Defendants’ witness admitted the beam was not secured, and that it should have been secured with tight wire (NYSCEF Doc. 87 at 28-29). Therefore, the burden shifts to Defendants to raise a material issue of fact.

The Defendants have failed to raise a material issue of fact. The mere fact that Plaintiff did not witness the beam fall and hit him is no bar to summary judgment (*Fromel, supra* at 514 citing

---

<sup>2</sup> Plaintiff specifically testified the beam was a Doka beam, which was 12-feet long and 15-20 feet high.

*Malan v SFJ Realty Group II LLC*, 213 AD3d 541, 542 [1st Dept 2023]). Defendants have not produced evidence impugning Plaintiff's credibility, and, if anything, Defendants' witness' testimony that the beam was unsecured buttresses Plaintiff's showing of a Labor Law § 240(1) violation. Nor does the incident report (NYSCEF Doc. 95) which is not signed by Plaintiff or any of Defendant's employees, raise an issue of fact since it corroborates Plaintiff's account a beam fell from a height and struck him. Thus, because Plaintiff met his *prima facie* burden of demonstrating a Labor Law § 240(1) violation, and Defendants failed to raise any material issues of fact in opposition, Plaintiff's motion for summary judgment is granted.

### **B. Defendants' Motion (Mot. Seq. 005)**

In light of the foregoing, Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is denied. Moreover, because Plaintiff is awarded summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim, Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim is denied as academic (*Pimentel v DE Frgt. LLC*, 205 AD3d 591, 593 [1st Dept 2022]). However, Plaintiff does not oppose dismissal of his Labor Law § 200 and common law negligence causes of action, therefore these claims are dismissed as abandoned.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants is granted; and it is further

ORDERED that Defendants' motion for summary judgment dismissing Plaintiff's Complaint is granted solely to the extent that Plaintiff's Labor Law § 200 and common law negligence claims are dismissed, and the remainder of Defendants' motion seeking dismissal of Plaintiff's Labor Law §§ 240(1) and 241(6) 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.

9/5/2025  
DATE

Mary V Rosado JSC  
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 type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	