

**Nunez v Trustees of Columbia Univ.**

2025 NY Slip Op 33386(U)

September 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 500469/2020

Judge: Anne J. Swern

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.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2<sup>nd</sup> day of September 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

GUILLERMO NUNEZ,

*Plaintiff,*

*-against-*

TRUSTEES OF COLUMBIA UNIVERSITY,

*Defendant.*

TRUSTEES OF COLUMBIA UNIVERSITY,

*Third-Party Plaintiff,*

*-against-*

FK GENERAL CONTRACTORS, INC.,

*Third-Party Defendant.*

**DECISION & ORDER**

Index No.: 500469/2020

Calendar No.: 30

Motion Seq.: 003

*Recitation of the following papers as required by CPLR 2219(a):*

	<b>Papers Numbered</b>
Notice of Motion and Supporting Documents (NYSCEF 52-64).....	1, 2
Affirmation and Supporting Documents (NYSCEF 80-83) .....	3
Reply Affirmation (NYSCEF 84) .....	4

*Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:*

Plaintiff commenced this action to recover damages for personal injuries sustained in the course of his employment with third-party defendant. Plaintiff was performing renovation and re-plastering work due to a water leak in the bathroom ceiling of an apartment within Columbia University’s premises located at 432 West 120<sup>th</sup> Street, New York, New York. It is plaintiff’s

testimony that the A-frame ladder shifted causing him to fall. Therefore, plaintiff has moved for an order per CPLR § 3212 granting summary judgment on his Labor Law § 240 [1] cause of action.

In opposition to the motion, defendant argues that the ladder itself was not defective or inadequate for the work being performed in the bathroom; plaintiff gave conflicting testimony concerning why the ladder shifted; and since the accident was unwitnessed, his credibility must be weighed by a jury. (*Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]). In reply, plaintiff argues, *inter alia*, that the fact the accident is unwitnessed is insufficient to deny summary judgment where there is no “bona fide challenge to the plaintiff’s credibility nor to a material fact concerning the manner in which the accident occurred” (*Melchor v Singh*, 90 AD3d 866 [2d Dept 2011]).

### LAW & ANALYSIS

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept 2002]), or the accident is unwitnessed (*Woszczyzna v BJW Assoc*, 31 AD3d 754, 755 [2d Dept 2006]).

The motion is denied. Plaintiff's reliance on *Melchor v Singh*, 90 AD3d 866 is misplaced. In *Melchor*, plaintiff testified the plastic top of the ladder "wasn't any good." The feet of the ladder were "old and warn." Therefore, the ladder was supported by small blocks placed at the bottom of the ladder to prevent it from moving (*Melchor v Singh*, 90 AD3d 867-868). Therefore, the Appellate Division held that since plaintiff demonstrated that the ladder was defective and the defect was the proximate cause of accident, summary judgment was not precluded because the accident was unwitnessed (*id.* at 869). Here, plaintiff has not demonstrated, as a matter of law, that the ladder was defective or inappropriate for the work being performed. Therefore, as this is an unwitnessed accident, summary judgment is denied (*Woszczyzna v BJW Assoc*, 31 AD3d 755).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order per CPLR § 3212 granting summary judgment on his Labor Law § 240 [1] cause of action is denied.

This constitutes the decision and order of the Court.

ENTER:



---

**Hon. Anne J. Swern, J.S.C.**  
**Dated: 9/2/2025**

For Clerks use only:

MG \_\_\_\_\_

MD \_\_\_\_\_

Motion seq. # \_\_\_\_\_