

**Guarin-Cardona v Helzen Assoc. LLC**

2025 NY Slip Op 33428(U)

September 15, 2025

Supreme Court, New York County

Docket Number: Index No. 150417/2021

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

WILLI GUARIN-CARDONA,
Plaintiff,

- v -

HELZEN ASSOCIATES LLC, WESTERMAN
CONSTRUCTION CO. INC., HAUSER & WIRTH US
PROPERTY LLC,

Defendant.

-----X

HAUSER & WIRTH US PROPERTY LLC
Plaintiff,

-against-

NIDETCH ELECTRIC CO., INC.

Defendant.

-----X

HELZEN ASSOCIATES LLC, WESTERMAN CONSTRUCTION
CO. INC., HAUSER & WIRTH US PROPERTY LLC

Plaintiff,

-against-

NIDETCH ELECTRIC COMPANY, INC.

Defendant.

-----X

INDEX NO. 150417/2021
MOTION DATE 04/18/2025
MOTION SEQ. NO. 003

DECISION + ORDER ON
MOTION

Third-Party
Index No. 595300/2024

Second Third-Party
Index No. 596075/2024

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of June 17, 2021, Plaintiff
Willi Guarin-Cardona's ("Plaintiff") motion for summary judgment on his Labor Law § 240(1)

claim against Defendants Hauser & Wirth US Property LLC (“Hauser & Wirth”) and Westerman Construction Co., Inc. (“Westerman”) (collectively “Defendants”) is granted.

On July 30, 2020, Third-Party Defendant/Second Third-Party Defendant Nidetch Electric Company, Inc. (“Nidetch”) employed Plaintiff as a mechanic at 542 West 22<sup>nd</sup> Street, New York, New York (the “Premises”) (NYSCEF Doc. 96 at 34; 40). He was alone, using a ladder in the mechanical room to install electrical tubing, when the ladder moved backwards causing Plaintiff to fall (NYSCEF Doc. 96 at 49-50; 82-84). According to Plaintiff, the braces used to lock the ladder appeared damaged (NYSCEF Doc. 96 at 95-96). The Premises were owned by Helzen Associates LLC and leased by Hauser & Wirth (NYSCEF Doc. 99 at 12-13). Westerman was the general contractor at the Premises (NYSCEF Doc. 96 at 36) and was overseeing the construction of an art gallery for Hauser & Wirth (NYSCEF Doc. 99 at 6). Westerman subcontracted electrical work to Nidetch (NYSCEF Doc. 99 at 17; 19-20). Plaintiff moves for summary judgment on his Labor Law § 240(1) claim against Defendants, and Defendants oppose.

Plaintiff’s motion is granted. There is no dispute that Defendants are proper Labor Law Defendants, nor is there any dispute that Plaintiff was engaged in work covered by Labor Law § 240(1). Plaintiff met his prima facie burden of demonstrating a Labor Law § 240(1) violation through his uncontroverted testimony that the unsecured ladder he was using suddenly moved backwards, causing him and the ladder to fall. It is well established that when an unsecured ladder shifts, slips, moves or collapses, a Labor Law § 240(1) violation is established (*Sanchez v MC 19 East Houston LLC*, 216 AD3d 443, 443 [1st Dept 2023]; *Castillo v TRM Contracting 626, LLC*, 211 AD3d 430, 430 [1st Dept 2022] citing *Panek v County of Albany*, 99 NY2d 452, 458 [2003]; see also *Hill v City of New York*, 140 AD3d 568, 569 [1st Dept 2016]). The burden now shifts to Defendants to raise a triable issue of fact.

In opposition, Defendants fail to raise an issue of fact. Defendants argue that there are credibility issues surrounding Plaintiff's testimony and that a question of fact exists regarding whether the ladder was broken prior to the incident (NYSCEF Doc. 103). However, Defendants failed to show any credibility issues. The alleged credibility issues deal with Plaintiff's testimony, given through a translator, where he claimed in one instance, he noticed the ladder's braces were broken as he was falling, and in another instance, he noticed the ladder's braces were broken after he fell. But this is immaterial because the fact that the ladder was unsecured and moved in and of itself constitutes a Labor Law § 240(1) violation (*Merino v Continental Towers Condominium*, 159 AD3d 471, 472-73 [1st Dept 2018]; *Plywacz v 85 Broad Street LLC*, 159 AD3d 543, 543-44 [1st Dept 2018]). The undisputed evidence shows that although Plaintiff was assigned an assistant to ensure the ladder was secured, at the time of his accident the foreman, Eric Escobar, pulled his assistant from him to work somewhere else, requiring the ladder to be used unsecured (NYSCEF Doc. 96 at 49-50; 80; 93-94). Moreover, Plaintiff was told that there were no harnesses available because they were being used by other workers (NYSCEF Doc. 96 at 95). Thus, whether the braces were broken before or after Plaintiff's fall is not an issue of fact as there were no safety devices available to prevent the ladder from moving as Plaintiff used it to work (*Picano v Rockefeller Ctr. N., Inc.*, 68 AD3d 425 [1st Dept 2009]). Therefore, Plaintiff's motion is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff Willi Guarin-Cardona's motion for summary judgment on his Labor Law § 240(1) claim against Defendants Hauser & Wirth US Property LLC and Westerman Construction Co., Inc. is granted; 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>9/15/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, 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"/> 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