

**Mollaaliou v Blossveren**

2025 NY Slip Op 33847(U)

September 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 517895/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 517895/2022  
Seqs. 003–006

Part LLIM

**DECISION/ORDER**

\_\_\_\_\_  
ENTI MOLLAALIOU,  
Plaintiff,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

against

**Papers Numbered**

|  |             |
|--|-------------|
| Notice of Motion and Affidavits Annexed . . . . .    | <u>1-4</u>  |
| Order to Show Cause and Affidavits Annexed . . . . . | _____       |
| Answering Affidavits . . . . .                       | <u>5-8</u>  |
| Replying Affidavits . . . . .                        | <u>6-10</u> |
| Exhibits . . . . .                                   | <u>Var.</u> |
| Other . . . . .                                      | _____       |

JOSHUA BLOSVEREN, BRITTANY SUKIENNIK, AND  
CHATZI CONSTRUCTION INC.,

Defendants.

\_\_\_\_\_  
CHATZI CONSTRUCTION INC.,

Third-Party Plaintiff,

against

NION ELECTRIC CORP.,

Third-Party Defendants.

Upon the foregoing papers, third-party defendant Nion Electric Corp. (Nion)’s motion for summary judgment (Seq. 003), defendants Joshua Blosveren and Brittany Sukiennik (Owners)’s motion for summary judgment (Seq. 004) defendants/third-party plaintiff Chatzi Construction Inc. (Chatzi)’s motion for summary judgment (Seq. 005), and plaintiff’s cross-motion for summary judgment (Seq. 006) are decided as follows:

**Introduction and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on February 15, 2022, when he was working on the premises located at 119 Lincoln Place, Brooklyn, NY. Mr. Blosveren, the owner, moved into the premises in early 2021, and he contracted with Chatzi to perform renovations beginning in October 2021. Part of the renovation

work involved the cellar and sub-basement, which were connected by a wooden staircase (Nikolaos Chatzigeorgakis, owner of Chatzi, EBT at 40, 42).

Plaintiff testified as follows: Chatzi sub-contracted Nion to perform electrical work, and Chatzi directed Nion workers, including plaintiff (Mollaaliou EBT at 21, 92). On the date of the occurrence, plaintiff was instructed to run wire through a wall in the sub-basement (*id.* at 105). To access the sub-basement, plaintiff had to walk down wooden stairs while carrying two boxes which weighed approximately 35 pounds each (*id.* at 56). While descending the stairs, the second step from the bottom broke, causing plaintiff to fall forward and strike his head on the air conditioning duct above the stairs (*id.* at 50, 56, 58, 61, 64). Plaintiff has previously told Nikolaos that the stairs seemed weak and in disrepair (*id.* at 53). Plaintiff also complained to Nion three or four times about the stairs being broken (*id.* at 54).

### Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

#### **Labor Law § 240 (1)**

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute (*e.g.* a harness and lanyard) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]).

Plaintiff concedes that the homeowners are exempt from liability under this statute, but contends that Chatzi is liable under this statute. In support of their motion for summary judgment and in opposition to plaintiff's motion, Chatzi cites a series of decisions from the Appellate Division, Second Department indicating that falls from permanently affixed staircases do not constitute elevation-related risks as contemplated by Labor Law § 240 (1) (*Norton v Park Plaza Owners Corp.*, 263 AD2d 531 [2d Dept 1999] [fall due to a collapsed step properly dismissed]; *see also Castro v Wythe Gardens, LLC*, 217 AD3d 822 [2d Dept 2023]). Although not cited by the parties, that rule was reaffirmed again in *Verdi v SP Irving Owner, LLC*, 227 AD3d 932 (2d Dept 2024). The cases relied upon by plaintiff involved permanently affixed ladders, and therefore would have been insufficient to show that a fall from a permanent staircase was covered by the statute under Second Department jurisprudence (*see Jaimes-Gutierrez v 37 Raywood Drive, LLC*, 233 AD3d 761 [2d Dept 2024; *see also Esquivel v 2707 Creston Realty LLC*, 149 AD3d 1040 [2d Dept 2017])).

However, while the instant motions were *sub judice*, the Second department issued two decisions that appear to modify the rule about falls from permanent staircases (*see Cagua v Bushwick Holdings, LLC*, 238 AD3d 698, 700 [2d Dept 2025] ["Contrary to defendants' contention, the fact that the staircase on which plaintiff fell was constructed as a permanent structure does not remove it from the reach of Labor Law § 240 (1); *see also Gomez v Tilden Estates, LLC*, 2025 NY Slip Op 04706 [2d Dept Aug. 20, 2025] ["Moreover, under the circumstances of this case, the defendants failed to establish, prima facie, that the plaintiff was not entitled to the protections of Labor Law § 240(1) because the accident occurred on a permanent stairway."]). While these decisions do not explicitly overrule *Verdi* and its progeny, they do state a clear rule that this court is obliged to follow: The fact that a plaintiff fell from a

permanent staircase is not a dispositive factor in determining whether Labor Law § 240 (1) applies. Therefore, the dispositive question is whether the failure of a safety device was a proximate cause of the plaintiff's accident. It is undisputed that the step "collapsed" under plaintiff's feet (Mollaaliou EBT at 98). Since a collapse constitutes a failure which was a proximate cause of plaintiff falling to the floor of the sub-basement, plaintiff has demonstrated his entitlement to summary judgment on his Labor Law § 240 (1) claim against Chatzi; the claim is dismissed against the owner defendants.

#### **Labor Law § 241 (6)**

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered harm, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only advances arguments concerning Rules 23-1.5 (c) (3) (proper maintenance of safeguards and equipment) and 1.7 (e) (tripping hazards). Therefore, defendants' motions are granted with respect to the remaining Industrial Code provisions (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

Rule 1.7 (e) governs the obligation to remediate tripping hazards in, *inter alia*, passageways. There is no substantive dispute that the staircase was the sole means of ingress and egress to the sub-basement, and therefore that the stairway constituted a passageway. Defendants argue that plaintiff did not trip due to an accumulation of dirt and debris (memorandum of law at 6); however, Rule 1.7 (e) also requires employers to remediate "any conditions which could cause tripping." However, since plaintiff testified explicitly that his foot was not "caught in the stair" when it broke, there is a question of fact about whether his accident

was caused by a tripping hazard (Mollailou EBT at 98). Both parties' motions are denied with respect to this claim.

That said, Rule 1.5 (c) (3) requires that safety equipment and devices be adequately and properly maintained. Predicated on the court's above determination that in this case that stairs were a safety device meant to protect plaintiff, and that the stair failed by collapsing, plaintiff has demonstrated his entitlement to summary judgment on his Labor Law § 241 (6) claim as predicated on Rule 1.5 (c) (3) against Chatzi.

### **Labor Law § 200**

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). "When an accident is alleged to involve defects in both the premises and the equipment used at the work site, a defendant moving for summary judgment with respect to causes of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability standards" (*Ramos v Kent & Wythe Owners, LLC*, 236 AD3d 693, 697 [2d Dept 2025]).

Plaintiff contends that the owners had actual or constructive notice of the dangerous condition since they owned the premises and the defect was visible. "A defendant has constructive notice of a defect when it is visible and apparent, and has existed for a sufficient length of time before the accident such that it could have been discovered and corrected" (*Titov v V&M Chelsea Prop., LLC*, 230 AD3d 614, 617–618 [2d Dept 2024]). Plaintiff testified that the steps "moved" and that some of them were cracked prior to the occurrence (Mollaaliou EBT at 53). Mr. Blosveren denied seeing defective stairs or seeing the stairs moving while walking

them and testified that the stairs were being replaced for cosmetic purposes (Blosveren EBT at 24, 26, 92). Mr. Chatzigeorgakis testified that he did not observe any damages on the stairs except for “squeaking and looks,” and denied that he was told about the alleged condition (Chatzigeorgakis EBT at 32, 91). This testimony is sufficient to raise a material issue of fact as to whether the owners’ had actual notice, or whether the condition was observable upon reasonable inspection sufficient to impute constructive notice to the owners. Therefore, plaintiff’s and defendants’ motions are denied with respect to the owners (*see Chuqui v Amna, LLC*, 203 AD3d 1018 [2022]).

With respect to the general contractor, plaintiff’s and Chatzi’s motions are academic in light of the foregoing determinations on Labor Law § 240 (1) and § 241 (6).

#### **Indemnification**

The right to contractual indemnification is established by the “specific language of the contract” (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). “In addition, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor” (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]).

The contract between the owners and Chatzi contains an indemnification provision which entitles the owner to contractual indemnification from Chatzi (contract at § 8.12). The sub-contract between Chatzi and Nion contains an indemnification provision which entitles Chatzi to indemnification for claims arising out of Nion’s negligence. Nicholas Nionakis, owner of Nion, surveyed the premises at least two times (Nionakis EBT at 129). In light of the issues of fact

concerning the owners', Chatzi's, and Nion' negligence, all parties' motions are denied as unripe with respect to the indemnification and contribution claims.

### **Breach of Contract**

“[A] party seeking damages for breach of an agreement to procure insurance naming it as an additional insured must demonstrate that a contract provision required that such insurance be procured naming it as an additional insured and that the provision was not complied with” (*Titov v V&M Chelsea Prop., LLC*, 230 AD3d 614, 619 [2d Dept 2024]). Here, the owners do not dispute that Chatzi procured insurance, but instead argue that the insurance carrier is not agreeing to indemnify the owners. The same is true of Chatzi's contention that Nion is liable for breach of contract. These arguments may be properly litigated in a declaratory judgment or other action; they do not amount of breach of contract. Therefore, Chatzi's and Nion's motions are granted with respect to the breach of contract claims against them.

### **Conclusion**

Nion's motion for summary judgment (Seq. 003) is granted with respect to the breach of contract claim against it; the motion is otherwise denied.

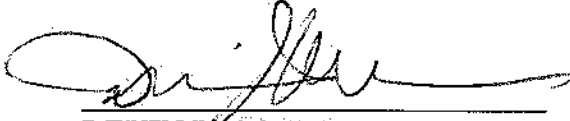
The owners' motion for summary judgment (Seq. 004) is granted with respect to plaintiff's Labor Law § 240 (1) and § 241 (6) claim; the motion is otherwise denied.

Chatzi's motion for summary judgment (Seq. 005) is granted with respect to plaintiff's Labor Law § 241 (6) claim as predicated on violations of all alleged Industrial Code violations except Rules 23-1.5 (c) (3) and 1.7 (e); the motion is otherwise denied.

Plaintiff's <sup>^</sup> motion for summary judgment (Seq. 006) is granted with respect to his claims under Labor Law § 240 (1) and § 241 (6) as predicated on a violation of Rule 1.5 (c) (3); the motion is otherwise denied.

This constitutes the decision and order of the court.

September 18, 2025  
**DATE**

  
DEVIN P. COHEN  
Justice of the Supreme Court