

**Maziarz v M&A Projects Restoration, Inc.**

2025 NY Slip Op 33878(U)

September 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 529400/2021

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings

Index Number 529400/2021  
Seq. 005, 006

Part LL1M

**DECISION/ORDER**

ANDRZEJ MAZIARZ A/K/A ANDRZEJ KRZYSZTOFIK,

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

Plaintiff,

against

M&A PROJECTS RESTORATION, INC., BOGDAN  
MALINOWSKI, AND WIOLETTA MALINOWSKI,

Defendants.

<b>Papers Numbered</b>	
Notice of Motion and Affidavits Annexed . . . . .	<u>1-2</u>
Order to Show Cause and Affidavits Annexed . . . . .	<u>      </u>
Answering Affidavits . . . . .	<u>2</u>
Replying Affidavits . . . . .	<u>3</u>
Exhibits . . . . .	<u>      </u>
Other . . . . .	<u>      </u>

M&A PROJECTS RESTORATION, INC., BOGDAN  
MALINOWSKI, AND WIOLETTA MALINOWSKI,

Third-Party Plaintiff,

against

COBALT MECHANICAL INC.,

Third-Party Defendant.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 005) and the Malinowskis' cross-motion for summary judgment (Seq. 006) are decided as follows:

**Facts and Procedural History**

Plaintiff commenced this action for damages he claims that he sustained on October 1, 2021, while performing work at a construction site located at 85-56 Sancho Street, Queens, NY. Defendant Bogdan Malinowski owned the premises. Mr. Malinowski contracted with M&A Projects Restoration Inc. (M&A) to serve as the general contractor; Mr. Malinowski is the president and sole owner of M&A. M&A sub-contracted with third-party defendant Cobalt Mechanical Inc. (Cobalt) to perform plumbing work at the site; Cobalt employed the plaintiff.

Plaintiff testified as followed: Plaintiff was installing waste piping between the first and second floor of the premises (Krzysztofik EBT at 65). At the time of his accident, plaintiff was attempting to take a photograph of the plumbing that connected the house to the septic tank (*id.* at 47–48). Plaintiff had been instructed to take these photos so Cobalt would know the pipe’s location in case of emergency (*id.*). While using the fall protection on the window opening to stabilize himself, the safety railing detached and plaintiff fell approximate twenty feet to the ground below (*id.* at 59, 63, 83). It is undisputed that M&A had installed the safety railing approximate six months previously. The accident was captured on video, which is attached to the moving papers. Defendants concede that “the plaintiff fell at the construction site when he was leaning against the railing placed to protect workers falling from an open area, which gave way, causing the plaintiff to fall to the ground” (aff. in opp. at ¶ 6).

### 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]).

As an initial matter, plaintiff incorrectly claims the Malinowskis’ cross-motion for summary judgment is procedurally defective under CPLR 2215. Although the Malinowskis were not a party against which plaintiff moved, CPLR 2215 only requires that a cross-motion be made “against a moving party”; the statute does not limit potential movants to the opponents of the initial motion. However, plaintiff is correct that the cross-motion is untimely. Since the Malinowskis have materially different defenses than M&A, including *inter alia* the homeowner

exemption, and therefore their motion is not made on substantively identical grounds, the Malinowskis' motion is denied as untimely (*Brill v City of New York*, 2 NY3d 648 [2004]).

### **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 safety railing or guardrail) 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)]).

The plaintiff's testimony that the safety railing failed and that its failure was a proximate cause of plaintiff's accident is sufficient to demonstrate his entitlement to summary judgment on his Labor Law § 240 (1) claim. In opposition, defendants fail to raise a triable issue of material fact. Even if Mr. Boguski's contention that plaintiff was on his lunch break is accepted as true *arguendo*, this is insufficient to demonstrate that plaintiff was not performing covered work (Stanislaw Boguski EBT at 100–101). The plaintiff was in his assigned working area and was exposed to the elevation risk posed by the window opening because of his involvement with the ongoing renovation project. Furthermore, although the video does not show plaintiff taking a picture at the moment he fell, it does not raise a viable alternative theory of the occurrence. Unlike *Keenan*, on which the defendant relies, there is no evidence of plaintiff misbehaving, fighting, or otherwise acting outside of his scope of work (*Keenan v Just Kids Learning Center*, 297 AD2d 708 [2d Dept 2002]). Instead, the video merely depicts plaintiff standing at a window from which he testified he was instructed to take photographs. Since defendants otherwise concede that the safety device failed, plaintiff's motion for summary judgment is granted.

**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 contends that defendants violated Rules 1.7 (b) (1) (i) (governing the proper covering of hazardous openings) and Rule 1.15 (governing proper hand railings). M&A does not oppose the applicability of these code provisions, but instead only argues that plaintiff was not performing covered work. As determined above, plaintiff was a covered worker at the time his accident occurred. In the absence of any other substantive arguments concerning plaintiff's Labor Law § 241 (6) claim, plaintiff's motion is granted.

**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]). Claims under this statute are evaluated under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the two (*id.*)

Plaintiff contends that M&A had, minimally, constructive notice of the dangerous condition since it installed the safety rail. This point is undisputed. Furthermore, M&A does not advance any substantive argument on plaintiff's Labor Law § 200 claim but instead continues to rely on the arguments that plaintiff was on his lunch break at the time of his accident, which the

court has previously rejected. Therefore, plaintiff's motion is also granted with respect to his Labor Law § 200 claim.

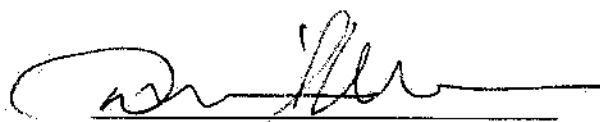
**Conclusion**

Plaintiff's motion for summary judgment (Seq. 005) is granted.

Defendants' cross-motion for summary judgment (Seq. 006) is denied.

This constitutes the decision and order of the court.

September 26, 2025  
**DATE**

  
**DEVIN P. COHEN**  
Justice of the Supreme Court