

**Lopez v 13-17 Laight NY LLC**

2025 NY Slip Op 34120(U)

October 27, 2025

Supreme Court, New York County

Docket Number: Index No. 152373/2020

Judge: Nicholas W. Moyne

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41M

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ALFREDO LOPEZ,

Plaintiff,

- v -

13-17 LAIGHT NY LLC,PAVARINI MCGOVERN, LLC,

Defendant.

INDEX NO. 152373/2020

MOTION DATE 01/28/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

This action arises from a construction accident that occurred on December 6, 2019. The plaintiff Alfredo Lopez was injured while working at a construction project located at 13-17 Laight Street. The incident occurred while he was cutting rebar on a shear wall, while operating a gasoline-powered demolition saw (referred to as a "Jackson Saw."), and working from an elevated position approximately 26 feet off the ground, secured by a lanyard and harness.

Prior to the accident, the Jackson Saw had been refilled by Ronald Ratliff, a fireguard who was employed by the plaintiff's employer, Regulator Construction Corp. ("Regulator"). Ratliff claims that he filled the saw with gasoline and ensured that the gas cap was securely affixed by twisting it until he heard it click shut. The saw was then pulled back up to the plaintiff's location using a rope, and the plaintiff used it for approximately two minutes without observing anything unusual or smelling gasoline. After about two minutes had passed, gasoline began to spill from the saw onto the plaintiff's right pant leg, causing it to ignite and catch fire. The plaintiff

observed the gas cap was open at the moment the gas spilled. After, throwing the saw to the ground, the plaintiff attempted to climb down the rebar wall but was forced to climb back up to detach his harness. Upon climbing down again, he fell approximately 13 feet (halfway down from his position) due to the pain and instability in his burning right leg.

Conflicting accounts exist regarding the cause of the accident. The plaintiff asserts that the accident was due to a damaged or defective gas cap that malfunctioned by not sealing properly and allowing gas to leak from the saw. An investigator hired by the defendants after the accident found heat damage on the gas cap and tank neck consistent with a faulty gas cap. An expert retained by the defendants disagrees and opines that the incident resulted from user error, either by the plaintiff, or Ratliff in failing to adequately tighten the gas cap. The defendants also maintain that the saw was in good working condition up until the time of the incident.

The amended complaint includes causes of action for Labor Law § 240(1), Labor Law § 241(6), Labor Law § 200, and common law negligence. The defendants are the owner, 13-17 Laight NY, LLC (“13-17 Laight”) and the general contractor, Pavarini McGovern, LLC (“Pavarini”). 13-17 Laight brought a third-party action against Regulator, the plaintiff’s employer.

The defendants now move for an order granting them summary judgment and dismissing the plaintiff’s amended complaint in its entirety. The plaintiff cross-moves for an order: (a) granting leave to amend the Bill of Particulars pursuant to CPLR § 3015 to assert a violation of 12 NYCRR § 23-1.5(c)(3); (b) granting partial summary judgment on the plaintiff’s Labor Law § 241(6) claim, predicated on this new violation; and (c) dismissing the defendants’ affirmative defenses related to comparative fault and/or culpable conduct.

The third-party action against Regulator Construction Corp. was discontinued by the defendants on October 30, 2024.

## **Discussion and Analysis**

### **I. Plaintiff’s Labor Law §240(1) Claim**

On a CPLR § 3212 motion, the facts must be viewed in the light most favorable to the non-moving party (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]). “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of

any material issues of fact” (*Saunders v J.P.Z. Realty, LLC*, 175 AD3d 1163, 1164 [1st Dept 2019], *quoting Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). However, once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action: mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Labor Law § 240(1), known as the “Scaffold Law” provides that, “[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.” The statute protects workers by imposing the responsibility for safety practices on those best situated to bear that responsibility (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500 [1993]), and mandating that the statute should “be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed” (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 101 [2015]). The statute imposes absolute liability on building owners and contractors whose failure to “provide proper protection to workers employed on a construction site” proximately causes injury to a worker (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

However, not every falling worker or object at a construction site gives rise to the extraordinary protections of Labor Law § 240(1) (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). There are two distinct sources of elevation-related risks, those cases involving a “falling worker” or a “falling object” (*Toefer v Long Is. R.R.*, 4 NY3d 399, 407 [2005]) In the case of a falling worker, the statute applies to accidents in which a scaffold or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or a person (see *Ross*, 81 NY2d at 501).

The defendants argue that the accident was fundamentally a fire-related incident, not an elevation-related risk contemplated by Labor Law § 240(1). They focus on the nature of the injury arguing that the underlying cause of the injury was gasoline leaking from a saw onto the plaintiff's leg, causing his pants to catch fire. The defendants maintain that the harness and lanyard both functioned as intended and were not intended to protect the plaintiff against being burned. They also claim there is no evidence that the plaintiff was injured by falling from a height since the plaintiff never fell to the ground, according to Mr. Ratliff's deposition testimony. They also contend that even if the plaintiff did fall to the ground, his own actions in choosing to unhook himself from the harness were the sole proximate cause of his fall.

It is well-settled that liability under Labor Law §240(1) can be established even in cases where the injured worker did not fall completely to the ground (*see Dominguez v. Lafayette-Boynton Hous. Corp.*, 240 AD2d 310 [1st Dept 1997]). So long as the injury arises from an elevation-related hazard, the statute applies wherever a safety device proves inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person, even if the worker never actually falls to the ground (*see id.* at 312). Plaintiff's counsel argues that the facts of this case are analogous to the facts cited in established case law where an inadequate safety device was found to constitute a violation of the statute, even though the worker did not fall.

Ultimately, the defendants are not entitled to summary judgment dismissing the plaintiff's Labor Law § 240(1) claim because there exists a triable issue of material fact regarding the cause of the injury and whether the safety devices provided proved inadequate to protect the plaintiff from an elevation-related hazard. There are two conflicting versions of the accident and resulting injury. The plaintiff testified that he was performing work (cutting rebar) about 26 feet off the ground. After gasoline spilled onto his right pant leg and caught fire, he initially climbed halfway down the rebar wall but realized his harness was still clipped to a "yo-yo". Because his leg was burning, he was forced to climb back up to 26 feet to detach the yo-yo. The plaintiff claims that the harness and lanyard were not long enough to allow him to get down the ground safely and quickly while his leg was on fire. A trier of fact could find that the need to climb down unhooked while burning demonstrates that the harness and lanyard provided were inadequate safety devices that were insufficient to allow the plaintiff to descend safely in an emergency situation.

According to the plaintiff, after detaching the yo-yo he attempted to climb down again but his injured leg lost strength ("just gave up"), causing him to fall about halfway down the rebar wall, approximately 13 feet, to the ground below. This fall resulted in gravity-related harm and injury, which is precisely the type of hazard Labor Law § 240(1) is designed to prevent. Under this version of events, the safety devices (harness and lanyard) would have proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to a person. However, the defendants assert that the plaintiff never fell to the ground and was standing directly below where the alleged incident occurred. The defendants also contend that if any fall occurred, it was solely due to the plaintiff's decision to unhook himself from the harness. They argue that the harness and lanyard were working as intended and that the injury resulted from a fire-related incident, a risk not contemplated by Labor Law § 240(1).

Summary judgment is inappropriate where there is a genuine issue of material fact. In this case, the contradictory evidence regarding whether the plaintiff fell (or whether the fall was caused by an inadequate safety device), combined with the dispute over whether the proximate cause was the defective safety device or the plaintiff's actions, creates a triable issue for a jury to decide. Specifically, the question of whether the safety device (the harness/lanyard system) was inadequate and whether that inadequacy was a proximate cause of the injury remains unresolved, making dismissal of the Labor Law § 240(1) claim improper at this stage. The defendants' argument that the accident was solely fire-related, and thus not an elevation hazard, is countered by the plaintiff's claim that the fire injury necessitated the descent, and the inadequate safety equipment caused the subsequent gravity-related fall. The plaintiff has set forth a version of events that if believed by a jury would demonstrate that the lanyard and harness were not adequate to protect him from harm during his attempted descent because they were not long enough to allow him to reach the ground safely. (see *Arias v 139 East 56<sup>th</sup> Street Landlord, LLC*, 212 AD3d 517 [1st Dept 2023]; *Stigall v State of New York*, 189 AD3d 469, 470 [1st Dept 2020]). The claim by the defendants that a longer lanyard and/or harness would be impractical and/or defeat the protective purpose of the lanyard is unsupported and conclusory (see *Lafroscia v MEPT 5th Ave., LLC*, 52 Misc3d 606, 610 [Sup. Ct. N.Y. 2016] [finding a violation of Labor Law §240(1) when the lanyard provided to the injured worker was not long enough to allow him to descend from ladder without unhooking his safety device]). Since a statutory violation is required for liability, if the plaintiff's

version is believed—that the inadequate harness system directly led to a fall from a height—then a violation of the statute and proximate cause exists, regardless of the initial cause of the accident.

The viability of the Labor Law § 240(1) claim depends on a factual determination as to whether the safety device (the harness/lanyard system) failed to provide adequate protection from the inherent risks of working at a height. Accordingly, the defendant's motion for summary judgment is denied as to the plaintiff's Labor Law §240(1) claim.

## II. Plaintiff's Labor Law §241(6) Claim

The defendants have moved pursuant to CPLR § 3212 for summary judgment and a dismissal of the plaintiff's claims under Labor Law §241(6). Plaintiff has cross-moved for an Order: (a) granting leave to amend the Bill of Particulars pursuant to CPLR § 3015 to assert a violation of 12 NYCRR § 23-1.5(c)(3); (b) granting partial summary judgment on Labor Law § 241(6) predicated on this new violation; and (c) dismissing the defendants' affirmative defenses related to comparative fault/culpable conduct.

The plaintiff originally alleged violations of Industrial Code sections 23-1.7, 23-1.8, 23-1.13, 23-1.14, 23-1.16, 23-1.17, 23-1.25, 23-1.30, and 23-9.2. As Plaintiff failed to oppose dismissal of these specific claims, those claims are deemed abandoned and must be dismissed (*see Sancino v Metro. Transp. Auth.*, 184 AD3d 534 [1st Dept 2020]; *Josephson LLC v Column Fin., Inc.*, 94 AD3d 479, 480 [1st Dept 2012]).

The remaining Labor Law § 241(6) claim is now predicated solely upon the newly asserted violation of 12 NYCRR § 23-1.5(c)(3). The plaintiff seeks leave to amend his Bill of Particulars, filed after the Note of Issue (September 30, 2024), to introduce 12 NYCRR § 23-1.5(c)(3) as a predicate for his Labor Law § 241(6) claim. That industrial code provision governs the condition and required maintenance or removal of safety equipment and safeguards used on a job site. It states:

All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged.

This provision is considered sufficiently specific to support the imposition of liability under Labor Law §241(6) (*see Becerra v Promenade Apartments*

*Inc.*, 126 AD3d 557, 558-559 [1st Dept 2015]; *Gonzalez v United Parcel Service*, 249 AD2d 210, 211 [1st Dept 1998]).

Leave to amend a bill of particulars may properly be granted, even after the note of issue has been filed, provided the plaintiff makes a showing of merit, and the amendment involves no new factual allegations, raises no new theories of liability, and causes no prejudice to the defendant (see *Marte v Tishman Construction Corporation*, 223 AD3d 527, 529 [1st Dept 2024]; *Harris v City of New York*, 83 AD3d 104, 111 [1st Dept 2011]). Amendment to assert a specific section of the Industrial Code is appropriately permitted in the absence of unfair surprise or prejudice even where a note of issue has been filed (see *Marte*, 223 AD3d at 528; *Walker v Metro-North Commuter R.R.*, 11 AD3d 339, 341 [1st Dept 2004]).

Defendants object, arguing the motion is made at the "23rd hour" and that the plaintiff has failed to show good cause for its delay in seeking leave to amend. The defendants also contend that they would be prejudiced by allowing the late amendment because they have not had the opportunity to question the plaintiff regarding the elements of Industrial Code 23-1.5(c)(3). There is no requirement that the plaintiff show good cause for the delay in seeking amendment under these circumstances. Mere lateness is not a barrier to the amendment where the plaintiff is not seeking to assert a new theory of liability and in the absence of prejudice to the other side (see *Cioffi v S.M. Foods, Inc.*, 178 AD3d 1015, 1016 [2d Dept 2019]). Furthermore, the plaintiff persuasively argues that the factual predicate for the proposed amendment, mainly the allegation that the gasoline-powered demolition saw malfunctioned because the gas cap was not properly affixed after refueling, was known to the defendants since the date of the accident. This theory of liability relates to defective equipment that the defendant's own investigator, Michael Cariello personally inspected. Mr. Cariello concluded that the gas cap was not properly sealed and further noted fire damage inside the gasoline tank container neck and on the underside of the gas cap. This evidence, also provided in discovery, establishes the merits of the proposed amendment given that the code provision mandates that equipment shall be kept sound and operable or immediately removed from the job site if damaged. Given that the underlying facts of the equipment malfunction were fully explored by both sides during discovery, the delay alone, absent specific prejudice, is

insufficient to deny the proposed amendment (*see Tuapante v LG-39, LLC*, 151 AD3d 999, 1000 [2d Dept 2017]).<sup>1</sup>

The plaintiff seeks partial summary judgment on liability, arguing that the undisputed evidence shows the saw was defective and violated § 23-1.5(c)(3). The defective condition of the saw (damaged gas cap/improperly sealed cap) was the proximate cause of the gasoline spill and subsequent fire. The defendants oppose, arguing that a triable issue of fact exists as to the cause of the spill—namely, whether it was due to a mechanical defect in the saw or to user error (such as improper use or failure to secure the cap properly). The expert retained by the defendants suggested user error, and the employee responsible for refueling, Ronald, Ratliff, insists that he did not overfill the saw and that he properly secured the cap. This is in contrast to the report of the investigator who found that the cap was defective and/or not properly sealed. The conflict between the evidence of the saw's defective condition (per the investigator's findings) and the potential for user error (per Ratliff's and defense expert testimony) creates a material issue of fact as to whether the industrial code regulation was violated and whether such violation was the sole proximate cause of the accident. Since genuine issues exist regarding whether the accident was proximately caused by a defective condition or by user error, liability cannot be determined as a matter of law. Accordingly, both the defendants' motion to dismiss the Labor Law § 241(6) claim predicated on section 23-1.5(c)(3) of the Industrial Code and the plaintiff's cross-motion for partial summary judgment on the same claim are denied.

### **III. Plaintiff's Labor Law 200 And Common-Law Negligence Claims**

The defendants move to dismiss the Labor Law § 200 and common law negligence claims, arguing that the injury arose from the means and methods of the plaintiff's work, which were solely controlled by his employer, Regulator. The defendants also assert they did not create or have notice of the alleged dangerous condition of the Jackson Saw. The plaintiff testified at his deposition that he received all instructions from Regulator.

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<sup>1</sup>Plaintiff also has retained an expert, Professor Walter Konon, who opines that the presence of fire damage inside the container neck and on the underside of the cap proves the cap malfunctioned, demonstrating that the saw was not in proper working condition. Information regarding Professor Konon's expert opinion was exchanged during discovery.

Labor Law 200 is a codification of common law negligence and imposes a duty upon owners and contractors to provide workers with a safe place to work (see *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]). Causes of action involving Labor Law 200 fall into two categories - where a worker is injured by a dangerous or defective condition and those arising from the means and methods by which the work is performed (see *Cook v Orchard Park Estates, Inc.*, 73 AD3d 1263, 1264 [1st Dept 2010]). Where the injury was caused by the manner and means of the work, including the equipment used, the owner or the general contractor is liable if it actually exercised supervisory control over the injury-producing work (see *Cappabianca*, 99 AD3d at 144).

Here, all of the contributing causes of the accident directly arose from the manner and means in which the plaintiff was performing his work. The plaintiff claims that Regulator, which exclusively supervised him, furnished him with a defective Jackson Saw which had a gas cap that was either faulty or not properly secured. There is no evidence that the defendants had any supervisory control over the work being performed. The gasoline-powered saw involved in the accident was owned by Regulator. Ratliff, a Regulator employee, was solely responsible for filling the saw with gasoline and ensuring the cap was secure. Alfonso Comello, Regulator's concrete safety manager, was responsible for the safety of all Regulator employees at the project. Under these undisputed facts, the defendants cannot be found to have exercised any supervision and/or control over the injury-causing work, particularly given that the saw was supplied to the plaintiff by his employer (see *Williams v River Place II, LLC*, 145 AD3d 589, 590 [1st Dept 2016]). Accordingly, the claims based on Labor Law §200 and common-law negligence should be dismissed.

#### **IV. Culpable Conduct/ Comparative Fault**

The plaintiff seeks the dismissal of the defendants' affirmative defenses related to comparative fault and culpable conduct.

The defendants argue that there is evidence suggesting user error, and that issues of proximate cause and comparative negligence are typically reserved for the jury. For a Labor Law § 241(6) violation, the plaintiff's comparative negligence may serve to diminish the damages recoverable, and thus the defense should not be dismissed.

Since the Court has found material issues of fact regarding proximate cause and the role of potential user error in the accident, the issue of the

plaintiff's culpable conduct remains relevant to determining the apportionment of fault should the Defendants be found liable under Labor Law §§ 241(6).

**Conclusion**

Based on the foregoing, it is hereby:

ORDERED that the branch of Plaintiff's cross-motion seeking leave to amend the bill of particulars to allege a violation of 12 NYCRR § 23-1.5(c)(3) is GRANTED; and it is further

ORDERED that the branch of Defendants' motion seeking dismissal of the Labor Law § 241(6) claims predicated upon 12 NYCRR §§ 23-1.7, 23-1.8, 23-1.13, 23-1.14, 23-1.16, 23-1.17, 23-1.25, 23-1.30, and 23-9.2 is GRANTED; and it is further

ORDERED that the branches of Defendants' motion for summary judgment seeking dismissal of the claims predicated upon Labor Law §§ 240(1) and 241(6) (as predicated on § 23-1.5(c)(3)) are DENIED; and it is further

ORDERED that the branch of Defendants' motion for summary judgment seeking dismissal of the claims predicated upon Labor Law §200 and common-law negligence is GRANTED

ORDERED that the remaining branches of Plaintiff's cross-motion seeking partial summary judgment on Labor Law § 241(6) liability and dismissal of Defendants' affirmative defenses are DENIED.

The foregoing constitutes the Decision and Order of the Court.



10/27/2025  
DATE

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NICHOLAS W. MOYNE, J.S.C.

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| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED                           | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                          |
|                       | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                            | <input type="checkbox"/> SUBMIT ORDER  |
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