

Fama v American Museum of Natural History

2025 NY Slip Op 34267(U)

November 7, 2025

Supreme Court, New York County

Docket Number: Index No. 157365/2022

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

INDEX NO. 157365/2022

JOSEPH FAMA,

Plaintiff,

MOTION DATE 05/27/2025, 08/21/2025

- v -

MOTION SEQ. NO. 001 002

THE AMERICAN MUSEUM OF NATURAL HISTORY,
AECOM, TISHMAN CONSTRUCTION CORPORATION OF
NEW YORK

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39,
40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 63, 64, 65, 66, 67,
68, 69, 70, 71, 72, 73, 74

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, motion sequences 001 and 002 are consolidated for
disposition and decided as follows¹:

- A. Plaintiff Joseph Fama's ("Plaintiff") motion for summary judgment ("Mot. Seq. 001") on
his Labor Law §§ 240(1) and 240(2) claims against Defendants The American Museum
of Natural History ("Museum of Natural History") and Tishman Construction Corporation
of New York ("Tishman") is granted in part and denied in part.
B. Plaintiff's motion seeking leave to amend his bill of particulars to assert causes of action
under Labor Law § 240(2) and Labor Law § 241(6) predicated on a violation of Industrial
Code § 23-5.1(J) is granted.

¹ Motion Sequence 001 was marked fully submitted on September 2, 2025 and Motion Sequence 002 was marked
fully submitted on September 19, 2025.

I. Background

On February 25, 2022, non-party COST of Wisconsin employed Plaintiff as a laborer at 415 Columbus Avenue (the “Premises”), New York, New York, also known as the Museum of Natural History (NYSCEF Doc. 39). Tishman was the “construction manager” at the Premises and was contracted to build a new addition to the museum (NYSCEF Docs. 41 at 54 and 42 at 13). Tishman subcontracted concrete work to COST of Wisconsin (NYSCEF Doc. 42 at 18).

Plaintiff was on the third story of a six-story high scaffold gathering construction materials when he tripped over debris and fell six feet down to the next level of the scaffold (NYSCEF Doc. 41 at 60-61; 69; 77). Plaintiff tried to grab a railing to stop his fall, but there were no railings on the scaffold where Plaintiff fell (NYSCEF Doc. 41 at 92). Now, Plaintiff moves for summary judgment on his Labor Law §§ 240(1) and 240(2) claims asserted against the Museum of Natural History and Tishman. He also seeks leave to amend his bill of particulars. Defendants oppose.

II. Discussion

A. Mot. Seq. 002

The Court first addresses Mot. Seq. 002 wherein Plaintiff seeks leave to amend his bill of particulars to allege a violation of Labor Law §§ 240(2) and 241(6) predicated on a violation of Industrial Code § 23-5.1(J). Leave to amend is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical Center*, 203 AD3d 462 [1st Dept 2022]).

There is no dispute that Plaintiff alleged a violation of Labor Law § 240 in his third supplemental verified bill of particulars dated October 4, 2023 (NYSCEF Doc. 22) nor is there any dispute that Plaintiff alleges in his Complaint that he fell from an improperly guarded scaffold (NYSCEF Doc. 1 at ¶ 90). Further, at his deposition Plaintiff specifically stated as he fell, he reached for a railing but there was none. Under these circumstances, Defendants cannot claim that they are surprised or prejudiced by Plaintiff amending his bill of particulars to specify the subsections of Labor Law § 240 that he claims were violated (*see, e.g. Goldman v Vanguard Constr. & Dev. Co., Inc.*, 236 AD3d 465, 466 [1st Dept 2025] citing *Latchuk v Port Auth. of N.Y. & N.J.*, 71 AD3d 560, 560 [1st Dept 2010]). Defendants have failed to show the proposed amendment is patently devoid of merit as there is testimony that the scaffold on which Plaintiff fell was missing guard rails and was six stories high, and Labor Law § 240(2) requires scaffolding more than twenty feet from the ground to have a safety rail attached.

Likewise, Plaintiff alleged a violation of Labor Law § 241(6) predicated on a violation of Industrial Code § 23-1.15 in his third supplemental verified bill of particulars dated October 4, 2023 (NYSCEF Doc. 22). That he now seeks leave to amend to allege in even greater detail a violation of subsection j of Industrial Code § 23-1.15 should come as no surprise to Defendants (*see, e.g. Miah v Pipe Dreams Realty V Corp.*, 214 AD3d 575, 576-77 [1st Dept 2023] citing *Schiff v ABI One LLC*, 155 AD3d 543, 543 [1st Dept 2017]). Nor is this proposed amendment devoid of merit as it applies to scaffolds which are higher than seven feet and require those scaffolds to be constructed with safety railings. Therefore, Plaintiff's motion seeking leave to amend his bill of particulars is granted.

B. Mot. Seq. 001

Plaintiff's motion for summary judgment on his Labor Law §§ 240(1) and 240(2) claims is granted in part and denied in part. Plaintiff met his *prima facie* burden of demonstrating a Labor Law § 240(1) violation through his uncontroverted testimony and the corroborating incident reports (NYSCEF Docs. 44-46), which establish he fell from the third story of a six-story scaffold due to the absence of a guardrail (*see, e.g. Perez v 1334 York, LLC*, 234 AD3d 455, 456 -57 [1st Dept 2025]; *Celaj v Cornell*, 144 AD3d 590, 590 [1st Dept 2016]; *Vail v 1333 Broadway Associates, L.L.C.*, 105 AD3d 636, 636-37 [1st Dept 2013]).

In opposition, Defendants fail to raise a triable issue of fact. Defendants' argument that Plaintiff's fall arose from an ordinary workplace hazard is without merit. Plaintiff testified he fell to a lower level of the scaffold because the scaffold lacked guardrails to break his fall. An inadequately constructed scaffold which is missing guardrails and fails to prevent a construction worker from falling multiple feet is precisely the hazard which Labor Law § 240(1) seeks to protect (*see also Ruiz v BOP 245 Park LLC*, 231 AD3d 683, 684 [1st Dept 2024]).

Defendants' argument that Plaintiff was a recalcitrant worker who refused to use safety harnesses is without merit as there is no evidence that Plaintiff disregarded an immediate and direct order regarding safety (*see e.g. Lemache v Elk Manhasset LLC*, 222 AD3d 591, 592 [1st Dept 2023]; *Pirozzo v Laight Street Fee Owner LLC*, 209 AD3d 596, 597 [1st Dept 2022] citing *Valdez v City of New York*, 189 AD3d 425 [1st Dept 2020]). Defendants' reliance on the affirmation of Bobby Lynch (NYSCEF Doc. 58), a supervisor employed by COST of Wisconsin, is insufficient. He fails to state Plaintiff was ever given a direct instruction to wear a harness, lanyard, or yoyo, nor does he state that Plaintiff disregarded an immediate or direct instruction regarding safety (*see, e.g. Vitucci v Durst Pyramid LLC*, 205 AD3d 441, 444 [1st Dept 2022]). Nor does Mr. Lynch

dispute that there was a missing guardrail on the scaffold where Plaintiff fell. Finally, Defendants fail to show Plaintiff was the sole proximate cause of the accident given the prima facie showing of a Labor Law § 240(1) violation (see, e.g. Quiroz v Memorial Hospital for Cancer and Allied Diseases, 202 AD3d 601, 604 [1st Dept 2022]). Therefore, Plaintiff's motion on his Labor Law § 240(1) claim is granted. In light of Plaintiff being granted summary judgment on his Labor Law § 240(1) claim, his motion for summary judgment on his Labor Law § 240(2) claim is denied as academic.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is granted as to the issue of liability on his Labor Law § 240(1) claim against Defendants The American Museum of Natural History and Tishman Construction Corporation of New York, and the motion for summary judgment on his Labor Law § 240(2) claim is denied as academic; and it is further

ORDERED that Plaintiff's motion seeking leave to serve an amended bill of particulars is granted, and the amended bill of particulars in the proposed form annexed to the moving papers (NYSCEF Doc. 65) shall be deemed served upon service of a copy of this order with notice of entry thereof; 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.

11/7/2025
DATE

Mary V Rosado Jose
HON. MARY V. ROSADO, J.S.C.

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