

**Gonzalez-Ortega v Roosevelt Is. Operating Corp.**

2025 NY Slip Op 34291(U)

November 13, 2025

Supreme Court, New York County

Docket Number: Index No. 153124/2021

Judge: Denis Reo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENIS REO PART 65

Acting Justice

-----X

MANUEL GONZALEZ-ORTEGA,
Plaintiff,

- v -

ROOSEVELT ISLAND OPERATING CORPORATION,
ROOSEVELT ISLAND ASSOCIATES, NORTH TOWN
PHASE III HOUSES INC., WESTVIEW OWNERS CORP.,
WV PRESERVATION PARTNERS, LLC, RIVERWALK 8
HOUSING DEVELOPMENT FUND CORPORATION,
RIVERWALK 8, LLC, RIVERWALK 8 AFFORDABLE, L.P.,
GRC MANAGEMENT, LLC, CITY OF NEW YORK, NEW
YORK STATE URBAN DEVELOPMENT CORPORATION,
EMPIRE STATE DEVELOPMENT CORPORATION,

Defendant.

-----X

ROOSEVELT ISLAND ASSOCIATES, GRC MANAGEMENT,
LLC

Plaintiff,

-against-

JS MAINTENANCE OF NY INC.

Defendant.

-----X

INDEX NO. 153124/2021
MOTION DATE 07/29/2025, 07/29/2025, 07/29/2025, 07/29/2025
MOTION SEQ. NO. 007 008 009 010

DECISION + ORDER ON MOTION

Third-Party
Index No. 596129/2021

The following e-filed documents, listed by NYSCEF document number (Motion 007) 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 219, 223, 227, 231, 233, 237, 238, 255, 256, 257

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 008) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 220, 224, 228, 232, 234, 243, 244, 245, 246, 247, 258

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 191, 192, 193, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 221, 225, 229, 235, 239, 240, 253

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 010) 194, 195, 196, 210, 211, 212, 213, 214, 215, 216, 217, 218, 222, 226, 230, 236, 241, 242, 248, 249, 250, 251, 252, 254 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Plaintiff Manuel Gonzalez-Ortega (“Plaintiff”) brings various claims against defendants premised upon negligence and violations of Labor Law §§200, 240(1) and 241(6). In response, defendants bring claims and cross claims against each other for indemnity, contribution and breach of contract. Motion Seq. 007, 008, 009 and 010 are decided in accordance with this Decision and Order.

### **Procedural Posture**

Plaintiff commenced the within action against Roosevelt Island Operating Corporation (RIOC), Roosevelt Island Associates (RIA), North Town Phase III Houses, Inc., Westview Owners Corp., WV Preservation Partners, LLC, Riverwalk 8 Housing Development Fund Corporation, Riverwalk 8, LLC, Riverwalk 8 Affordable, L.P., GRC Management, LLC (GRC), City of New York (City), New York State Urban Development Corporation and Empire State Development Corporation.

On December 20, 2021, RIA and GRC commenced a third-party action against Plaintiff’s employer, JS Maintenance of NY, Inc. (“JS Maintenance”), for contractual indemnity, common law indemnity, contribution, and breach of agreement to secure liability insurance. JS Maintenance never appeared in the action and while RIA and GRC moved for a default judgment in accordance with CPLR §3215, their motion was denied because it did not contain an affidavit of merit. (NYSCEF Doc. No. 126). Therefore, the third-party action against JS Maintenance was voluntarily discontinued by RIA and GRC by notice dated July 28, 2022. Since the voluntary discontinuance was filed, RIA and GRC have not pursued any claims against JS Maintenance.

Plaintiff has also discontinued claims against various defendants. WV Preservation Partner, LLC, Westview Owners Corp, Northtown Phase III Houses Inc. were dismissed from the action by stipulation of discontinuance dated November 22, 2021 (NYSCEF Doc. No. 55) while Plaintiff's claims against New York State Urban Development Corporation and Empire State Development Corporation were discontinued by stipulation dated February 28, 2023. (NYSCEF Doc. No. 137).

The Court also dismissed claims against various defendants. Riverwalk 8 Housing Development Fund Corporation, Riverwalk 8, LLC, and Riverwalk 8 Affordable, L.P., were dismissed from the action by order of the court dated July 28, 2022. (NYSCEF Doc. No. 128).

Plaintiff continues to pursue its claims of negligence and violations of the Labor Law against the remaining defendants RIOC, RIA, GRC and the City ("Defendants"). Now, Defendants and Plaintiff all move for summary judgment on the issue of liability pursuant to Labor Law §§200, 240(1) and 241(6). (Motion Seq. 007, 008 and 009). In addition, RIA and GRC seek to dismiss RIOC and City's claims of contractual indemnification, common law indemnity, contribution, and breach of contract for failure to procure insurance (Motion Seq. 007) while RIOC and City seek summary judgment on their claims against RIA and GRC for the same. (Motion Seq. 010).

### **Background**

Plaintiff was employed by JS Maintenance, a contractor retained to perform demolition-related cleanup at 20 River Road, Roosevelt Island (the "building"). On September 9, 2020, while Plaintiff was disposing of a mirror into a dumpster outside the building, the mirror shattered and lacerated Plaintiff's right forearm. Plaintiff had been working on the ground floor of the building

with his co-worker, Carlos, prior to the accident. Plaintiff testified that all instructions on site came from his employer's foreman, Gustavo Morales.

Gloves were provided to Plaintiff, however, he was not wearing them at the time of the incident. Plaintiff was not provided with any other equipment to assist in moving the mirror to the dumpster that was outside on the ground level, nor did he state what other safety equipment would be necessary to safely complete the job except the use of a bucket. The mirror that Plaintiff was moving was approximately five feet high and weighed 12 pounds. In order to remove it to the dumpster Plaintiff held one side of the mirror while Carlos held the other. Plaintiff had safely carried other mirrors out to the open dumpster in front of the building before the incident in the same fashion. When questioned during his deposition about the accident, Plaintiff stated the following:

Q: So immediately before the incident, was the mirror partially in the trash container already?

A: We were already inside. I don't know what happened back then. I was with my colleague but we never placed the mirror on the floor.

Q: So placing items into the trash container, you would have to open the door to the trash container, correct?

A: It was already open.

Q: But when you would place items in there, would you have to lift them overhead, slide them in, or something else?

A: It was through the front of the door.

...

Q: So when you were placing the mirror that allegedly caused your injuries, did you have to lift that mirror above you?

A: No. No. No. No.

(Plaintiff Tr. Pgs. 48-50)

Furthermore, during his deposition plaintiff confirmed that he was not operating at any elevated height when he testified:

Q: When you were removing the mirrors, were you working on any scaffold?

A: No.

Q: Were you working at a height when removing the mirror?

A: Not me. My only duty – my only work was to demolish. I didn't do that.

...

Q: Did any objects fall from above you – above your person while you were removing the mirror to dispose of it in the trash container?

A: No.

(Plaintiff Tr. Pgs. 70-71)

Plaintiff also confirmed that he was not utilizing a hoist to lift the mirror when he testified:

Q: Did you use any material hoist during the performance of moving the mirror to dispose of it into the trash container?

A: No, just normal activity of lifting the mirror. We lifted up with the help of my colleague, and we took it out of the building and then we placed it in the trash container. I don't know how it broke but yeah, it was just the regular activity of lifting it up and taking it outside. We didn't lift it up with any sort of equipment, just by ourselves.

(Plaintiff Tr. Pg. 74)

When questioned about how he traveled from the worksite to the dumpster Plaintiff stated:

Q: How would you get from where you picked up the mirror to the container, how would you get there?

A: Walking.

Q: Did you have to exit the building or was it inside the building?

A: To go out.

Q: Did you have to take any stairs in order to go out?

A: No.

(Plaintiff Tr. Pgs. 137-138).

When further questioned about where he was working Plaintiff explained:

Q: On what floor did [Gustavo] tell you to go work?

A: There were no floors, there were no floors, there were no stairs. We just have to walk in there. I don't know how you call it.

(Plaintiff Tr. Pgs. 108-109).

As Plaintiff and Carlos were placing the mirror into the dumpster, it broke. Plaintiff was unsure how it broke and testified “[w]ell Carlos was in front of me, I was coming from behind, and he pretty much have to go a little bit more deeper into the container so that we can dispose of it, but then I don't know how it broke. I just don't know, I don't know.” (Plaintiff Tr. Pg. 56).

Plaintiff commenced this action alleging common-law negligence and violations of Labor Law §§200, 240(1), and 241(6). Plaintiff originally asserted that his Labor Law §241(6) claim was based on alleged violations of numerous Industrial Code provisions, including 12 NYCRR §§ 23-1.5 (general safety), 1.7(a) (overhead hazards), 1.8(a)-(d) (personal protective equipment),

2.1(a)(b) (housekeeping), 2.3(a)-(e) (structural steel assembly), 3.3(a)-(h) (demolition operations), 6.1(a)-(k) (hoisting equipment), and 6.2(a)-(e) (ropes for hoists). (NYSCEF Doc. No. 174, ¶ 35; NYSCEF Doc. No. 246, ¶¶ 38-42).

In response to defendants' motions for summary judgment bearing motion sequence numbers 007 and 009, Plaintiff severely curtailed his claims by expressly withdrawing his claims for common-law negligence and Labor Law §200. In addition, Plaintiff relinquished his reliance on Industrial Code §§ 23-1.5, 23-1.7, 23-1.8, 23-2.1, 23-2.3, 23-6.1, and 23-6.2 (NYSCEF Doc No 237 at 4; NYSCEF Doc No 253, City/RIOC Reply at 3). Now, Plaintiff proceeds against defendants on only two statutory theories: (i) Labor Law §240(1); and (ii) Labor Law §241(6) premised upon 12 NYCRR §23-3.3(e).

### Analysis

#### ***Common Law Negligence and Claim Pursuant to Labor Law §200***

As noted above, Plaintiff in his opposition to motion sequence numbers 007 and 009 states that he “withdraws his claims against [defendants] under common law negligence, Labor Law §200, and Industrial Code §§23-1.5, 23-1.8, 23-1.7, 23-2.1, 23-2.3, 23-6.1, and 23-6.2. Plaintiff maintains his claims against [defendants] under Labor Law §240(1) and Labor Law §241(6) as predicated by violations of Industrial Code §23.3.3.” (NYSCEF Doc. No. 237, ¶4 and Doc. No. 239, ¶4). As Plaintiff withdrew his claims brought under common law and Labor Law §200, they are hereby dismissed as abandoned. (*See generally Brown v Z-Live, Inc.*, 238 AD3d 658 [1st Dept. 2025] [“[p]laintiff's negligence claims must be dismissed as abandoned due to plaintiff's failure to oppose their dismissal during motion practice”]). Defendants' motions for summary judgment dismissing Plaintiff's claims for common law negligence and claims brought pursuant to Labor Law §200 are therefore GRANTED in their entirety.

***Plaintiff's Claim Pursuant to Labor Law §240 (1)***

Plaintiff's entitlement to recover under Labor Law §240(1) "requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies" (*Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1,7 [2011]). Liability under Labor Law §240(1) is not limited to falls from height but also encompasses falling objects. The Court of Appeals in *Wilinski* explained that, "the reach of Labor Law §240(1) is 'limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured'" (*Id at 7*; quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

In order "[t]o recover under section 240(1), the plaintiff must demonstrate that a violation of section 240(1) proximately caused his or her injury" (*Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d 613, 614 [2d Dept 2023] [internal quotation marks omitted]). It is important to note that "[n]ot every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law 240(1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein." (*Narducci v. Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). More specifically, "Labor Law §240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder 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 person." (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]).

Notably, Labor Law §240(1) does not apply where an item is not being hoisted or lifted or in a situation where a securing device like those listed in Labor Law §240(1) would not have been foreseeable or necessary. (*Quattrocchi v FJ Sciame Constr. Corp.*, 44 AD3d 377, 382 [1st Dept 2007]). Likewise, Labor Law §240(1) does not apply where there is no “falling object” or “falling worker” and “the accident did not otherwise flow from the application of the force of gravity.” (*Martinez v 342 Property LLC*, 128 AD3d 408, 409 [1st Dept 2015]).

The protections provided by Labor Law §240(1) only apply to a discrete number of hazards and are not designed to protect against matters that simply involve the law of gravity. Here, Plaintiff concedes that he was not on a scaffold at the time of the accident nor was he working at an elevated height. Rather, Plaintiff seeks Labor Law §240(1) protection on the allegation that that the mirror was allegedly being “hoisted” before it shattered. While Labor Law §240(1) liability may attach to items being hoisted, that is clearly not plaintiff’s testimony in this case.

The evidence in this matter demonstrates that the 12-pound mirror was only elevated because it was in Plaintiff and his co-worker’s hands and being carried into the dumpster. The mirror was not being hoisted over the side of the dumpster. Additionally, the mirror did not fall on Plaintiff from an elevated height. The mirror broke for an unknown reason, and plaintiff’s injury, while tangentially related to the effects of gravity, was not caused by the type of elevation related hazards encompassed by the statute. (*See Gasques v State of New York*, 59 AD3d 666, 667 [2d Dept. 2009]).

For the reasons stated herein and the facts established in this matter Plaintiff’s motion for summary judgment on Labor Law §240(1) claim must be DENIED and defendants motion for summary judgment dismissing Plaintiff’s Labor Law §240(1) claim must be GRANTED.

***Plaintiff's Claim Pursuant to Labor Law §241(6)***

Labor Law §241(6) was designed “to protect workers engaged in duties connected to the inherently hazardous work of construction, excavation or demolition” (*Nagel v D & R Realty Corp.*, 99 NY2d 98, 101 [2002]). As relevant here, Labor Law §241 states: “[a]ll contractors and owners[,] when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements: ... (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.”

To succeed on a claim brought pursuant to Labor Law §241(6), Plaintiff must demonstrate that Defendants violated a sufficiently specific Industrial Code provision set forth in 12 NYCRR Part 23. (*See Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 503). The standard violated must be specific in nature and not a general recital of common law principals. (*See Maldonado v Townsend Ave. Enterprises*, 294 AD2d 207, 208 [1st Dept 2022] [insufficiently specific or inapplicable violations of the Industrial Code shall result in in the dismissal of Labor Law §241 [6] claims).

While Plaintiff initially cited numerous provisions of the Industrial Code as a predicate for Labor Law §241(6) liability, he now relies solely upon 12 NYCRR §23-3.3(e). 12 NYCRR §23-3.3(e) from the section entitled “Demolition by Hand” states that “[w]here the demolition of any building or other structure is being performed by hand, debris, bricks and other materials shall be removed as follows: (1) By means of chutes constructed and installed in compliance with this Part (rule); (2) By means of buckets or hoists; or (3) Through openings in the floors of the building or other structure in compliance with this section.”

Courts have found that 12 NYCRR §23-3.3(e) is sufficiently specific to serve as the predicate for liability pursuant to Labor Law §241 (6). (*Gonzalez v. Marine Midland Bank, Inc.*, 259 AD2d 999 [4th Dept 1999]). However, while 12 NYCRR §23-3.3(e) may be sufficiently specific to uphold liability pursuant to Labor Law §241(6), it still must apply to the facts of the case.

The First Department has held that 12 NYCRR §23-3.3(e) governs the removal of debris from a *height, not from a ground level*. (*Freitas v New York City Transit Auth.*, 249 AD2d 184, 185 [1st Dept 1998]). In *Freitas*, plaintiff was pushing a dumpster full of construction debris away from a construction site when it tipped over and injured plaintiff. In dismissing a Labor Law §241(6) claim predicated on 12 NYCRR §23-3.3(e) the First Department in *Freitas v New York City Transit Auth.*, 249 AD2d at 185 stated that “[12 NYCRR §23-3.3(e)] obviously applies to debris being removed from a height to the ground and does not apply in the present situation where debris on the ground was being collected.” The court went on to find that the use of a “bucket,” “hoist”, or “chute” to remove debris from a ground level worksite would be “inappropriate” under the facts of the case (*Id.* at 185).

Like in *Freitas*, Plaintiff in this case was removing a five-foot mirror from the building’s ground level to a ground level dumpster. The Plaintiff did not traverse any steps when removing the mirror. The use of a “chute,” “hoist,” “bucket,” or “opening in the floor of the building” to remove the mirror from this worksite would be impossible because a “chute,” “hoist,” “bucket” or “opening in the floor of the building” all require gravity to operate effectively. Here, gravity was not a factor as the mirror was being transported horizontally, not vertically. Like in *Freitas*, the vertical removal provisions stated in 12 NYCRR §23-3.3(e) would have been inappropriate under the facts of this case.

Plaintiff cites *Jackson v. Williamsville Cent. School Dist.*, 229 AD2d 985 (4th Dept 1996) for the proposition that “Industrial Code §23-3.3(e) contains specific directives that are sufficient to sustain a cause of action under Labor Law §241(6);” however, while the court in *Jackson* discusses the applicability of 12 NYCRR §23-3.3(e) to demolition, it specifically found that the rule was inapplicable to the facts of the case and insufficient to support liability pursuant to Labor Law §241(6). Plaintiff in *Jackson* was injured while removing a piece of boiler plate up steps from a boiler room to a decontamination chamber on the first floor of a school. The Fourth Department stated in *Jackson* that “[p]laintiff concedes that two of the three methods [set forth in 12 NYCRR §23-3.3(e)] do not apply, but asserts that Defendants violated the regulation by failing to use the third method, i.e., buckets or hoists. We disagree. The only way to remove the pieces of boiler plate from the school building was to carry them manually up the stairway to the decontamination chamber; the use of buckets or hoists as required by section 23-3.3 (e) (2) was not possible.” (*Id.*) Assuming that the First Department’s holding in *Freitas* does not apply to the facts of this case, Plaintiff still cannot succeed in establishing liability because breaking and carrying a five-foot mirror that weighed 12 pounds in a bucket is not feasible and creates a myriad of other health hazards. Two workers carrying the mirror was safer and more effective than shattering the mirror, picking up the shards and placing them in a bucket for removal.

As 12 NYCRR §23-3.3(e) is inapplicable to the facts of this case and is the only basis for upholding liability pursuant to Labor Law §241(6), Plaintiff’s motion for summary judgment on his Labor Law §241(6) claim is DENIED and Defendants motion for summary judgment to dismiss Plaintiff’s Labor Law §241(6) predicated upon 12 NYCRR §23-3.3(e) is GRANTED.

***Claims for Indemnity and Contribution***

As Plaintiff's claims for liability pursuant to Labor Law §200 and common law negligence were withdrawn and Plaintiff's claims for liability pursuant to Labor Law §§240(1) and 241(6) are dismissed pursuant to this order, Plaintiff has no further claims and therefore, Defendants' claims and cross claims for contribution and indemnification are moot.

**Conclusion**

Accordingly it is

ORDERED that Roosevelt Island Associates and GRC Management, LLC's motion for summary judgment dismissing Plaintiff's complaint (Mot. Seq. 007) is GRANTED; and it is further

ORDERED that Roosevelt Island Associates and GRC Management, LLC's motion for summary judgment dismissing the City of New York and Roosevelt Island Operating Corporation's cross claims for contribution, common-law indemnification, and breach of contract (Mot. Seq. 007) is DENIED as moot; and it is further

ORDERED that Plaintiff's motion for summary judgment against the City of New York, Roosevelt Island Associates, and GRC Management, LLC on the issue of liability under Labor Law §§241(6) (Mot. Seq. 008) is DENIED; and it is further

ORDERED that City of New York and Roosevelt Island Operating Corporation's motion for summary judgment dismissing Plaintiff's complaint (Mot. Seq. 009) is GRANTED; and it is further

ORDERED that City of New York and Roosevelt Island Operating Corporation's motion for summary judgment (Mot. Seq. 010) is DENIED as moot; and it is further

ORDERED that all relief not specifically addressed in this order is hereby DENIED.

*Denis Reo*

11/13/2025

DATE

DENIS REO, A.J.S.C.

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CASE DISPOSED

GRANTED

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NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE