

**Alexandra v 17 Diamond St. LLC**

2025 NY Slip Op 34435(U)

October 31, 2025

Supreme Court, Kings County

Docket Number: Index No. 531839/2021

Judge: Devin P. Cohen

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Supreme Court of the State of New York  
County of Kings

Index Number 531839/2021  
Seq. 002

Part LL1M

**DECISION/ORDER**

JESSICA ALEXANDRA TAMAY PARRA,

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

Plaintiff,

**Papers Numbered**

against

Notice of Motion and Affidavits Annexed . . . . .	<u>1</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>

17 DIAMOND ST. LLC AND BROOKLYN AZ INC.,

Defendants.

17 DIAMOND ST. LLC,

Third-Party Plaintiff,

against

E&G CARPENTER CORP.,

Third-Party Defendant.

Upon the foregoing papers, defendants 17 Diamond St. LLC (Diamond) and Brooklyn AZ Inc. (Brooklyn) motion for summary judgment (Seq. 002) is decided as follows:

**Facts and Procedural History**

Plaintiff commenced this action to recover from damages she claims to have sustained on December 8, 2021 while working on a construction site located at 17 Diamond Street 138 Schaefer Street, Brooklyn, New York (the premises). The plaintiff alleges that while she was performing post-construction cleaning in an apartment on the third-floor of a newly constructed residential building, the ladder moved and she fell down. It is undisputed that Diamond owned the premises and that Brooklyn was the general contractor. Brooklyn sub-contracted with third-

party defendant E&G Carpenter Corp. (E&G) to perform “sheetrock repairs, painting & cleaning tasks” (sub-contract at Ex. A).

### **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, the plaintiff does not oppose defendants’ motion with respect to Labor Law § 241 (6); therefore, that portion of the motion is granted without opposition.

### **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 ladder) 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)]).

As an initial matter, the protections of Labor Law § 240 (1) apply when an individual is performing activity covered by the statute (*Joblon v Solow*, 91 NY2d 457, 465 [1998]). Work is covered if it is “incidental to” an enumerated task, like construction (see *Prats v Port Authority of NY & NJ*, 100 NY2d 878 [2003]). Moreover, cleaning may constitute covered work on its own. To determine whether specific cleaning work qualifies under the statute, four non-dispositive factors weigh on the determination: 1) routineness; 2) specialization of equipment or

expertise; 3) significance of elevation related risk; and 4) relationship to ongoing covered work (*Soto v. J. Crew Inc.*, 21 NY3d 562 [2013]).

Contrary to defendants' contention, it is not clear as a matter of law that plaintiff's work was not covered work under Labor Law § 240 (1). The plaintiff testified that her work required the use of an A-Frame ladder. Furthermore, defendants incorrectly characterize E&G's work as routine cleaning and maintenance. The sub-contract defined E&G's scope of work as including "sheetrock repairs, painting & cleaning tasks" (sub-contract at Ex. A). Since plaintiff contends that her work was undertaken in conjunction with an ongoing construction project, and in light of the evidence regarding the equipment that plaintiff was required to use, defendants' have failed to make out their prima facie burden on this claim, and their motion is denied as to plaintiff's Labor Law § 240 (1) claim.

#### **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.*)

Defendants contend that plaintiff's work was exclusive directed and controlled by her employer, and that there is no evidence of a dangerous condition that caused plaintiff's accident. In opposition, plaintiff argues that defendants' motion is premature because the defendants have not been deposed. Ultimately, plaintiff has demonstrated a reasonable likelihood that "facts essential to justify opposition may exist [concerning supervision and control at the site], but

cannot [now] be stated" (*Desena v City of New York*, 65 AD3d 562, 563 [2d Dept 2009]; see CPLR 3212 [f]). Therefore, defendants' motion is denied with respect to plaintiff's Labor Law § 200 claims.

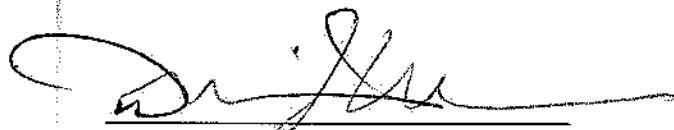
**Conclusion**

Defendants' motion for summary judgment (Seq. 002) is granted to the extent of dismissing plaintiff's Labor Law § 241 (6) claim; the motion is otherwise denied.

This constitutes the decision and order of the court.

October 31, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court

\*This order vacates and replaces the previously issued order *nunc pro tunc*, signed on March 24, 2025, which appears to have been lost in transit.