

**Ravel v 3480 Third Ave. Owner Realty LLC**

2025 NY Slip Op 34578(U)

June 30, 2025

Supreme Court, Bronx County

Docket Number: Index No. 29831-2019E

Judge: Myrna Socorro

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E#004 & #005

**Supreme Court of the State of New York  
County of Bronx Part IA-9**

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**Stalin Ravel, Aleiida Caraballo,**  
**Plaintiffs**

**Index No. 29831-2019E**

**Motion seq #4 and #5**

**-against-**

**DECISION & ORDER**  
**Hon. Myrna Socorro, J.S.C.**

**3480 Third Avenue Owner Realty LLC**  
**Brisa Builders Corp.,**  
**Defendants**  
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The following e-filed documents, listed by NYSCEF Document Nos. 55-93 were read on these motions for summary judgment which were orally argued on June 17, 2024.

According to the plaintiff, at the time of the accident on July 1, 2019: he was employed by Pillar Profession (“Pillar”) as a carpenter; the subject building had three floors above ground and a basement; the subject building was going to undergo demolition and then remodeling; plaintiff was instructed by Johanna to carry plywood upstairs to lay it down on the ground “wherever it looked like it was loose or unstable” so that workers who would come afterwards could do demolition work; plaintiff was on the second floor about to pass a piece of plywood through an opening to his co-workers who were on the third floor, when the floor collapsed and he fell from the second floor, through the first floor and into the basement; plaintiff had a safety harness in his personal tool kit at the site, however, he was not wearing it because there was nowhere to secure it to.

On February 11, 2020, plaintiffs discontinued the above captioned action as against defendant Brisa Builders Corp., without prejudice (NYSCEF Doc. #7).

It is undisputed that 3480 Third Avenue Owner Realty LLC (“Third Avenue”) owned the subject premises.

In motion sequence no. 4, defendant Third Avenue moves for summary judgment. First, Third Avenue argues that plaintiff’s complaint should be dismissed because Third Avenue is an alter ego of Pillar, plaintiff’s employer, and therefore protected by the Workers’ Compensation Law. They further argue that plaintiff’s Labor Law §240(1) claim should be dismissed since plaintiff’s accident occurred when a permanent floor collapsed underneath him and this was not foreseeable. As to Labor Law §241(6), Third Avenue argues that the claim should be dismissed as the violations alleged are inapplicable and/or not violated. Lastly, Third Avenue contends that plaintiff’s Labor

Law §200/common law negligence claim should be dismissed as the condition that caused plaintiff's accident was not created by them and they did not have notice of it.

Plaintiff opposes Third Avenue's motion and in motion sequence no. 5 moves for summary judgment on his Labor Law §240(1) claim. Plaintiff argues that Pillar operated as a separate and individual entity from Third Avenue and therefore his claims against Third Avenue are not barred by the Workers' Compensation Law. As to his Labor Law §240(1) claim, plaintiff argues that the subject building was in a severely dilapidated condition, rendering the collapse of the floor foreseeable. Plaintiff notes that he was tasked with identifying weak and decaying spots in the floor which would then be covered with plywood. He further notes that the plywood was being laid on the floor in order to create a safe path which future workers could traverse the site without fear of falling through the floor. Thus, it is plaintiff's position that the risk was foreseeable. As to Labor Law §241(6), plaintiff argues that there are triable issues of fact as predicated on Industrial Code §23-1.16(b). Lastly, plaintiff argues that there are questions of fact as to whether or not defendant had or should have had notice of the condition of the premises which precludes summary judgment on the Labor Law §200/common law negligence claim.

As a preliminary matter, the Court notes that in its opposition papers to plaintiff's motion sequence no. 5, Third Avenue argues that the Court should not entertain the motion as it was not made within the sixty days of the filing of the note of issue as required by this Court's Part Rules. However, as highlighted by plaintiff in his moving papers, this matter was assigned to Justice Suarez at the time of the filing of the note of issue on October 30, 2023. Thus, because Justice Suarez's Part Rules provided 120 days to file motions for summary judgment, this Court deems plaintiff's motion for summary judgment, which was filed on February 27, 2024, as timely made.

### **Summary Judgment**

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC*, 157 AD 3d 479; 699 NYS 3d 30 [1<sup>st</sup> Dept. 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD 3d 508; 894 NYS 2d 422 [1<sup>st</sup> Dept. 2010].

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. *See CPLR § 3212[b]; Friends of Thayer Lake LLC v. Brown*, 27 NY3d 1039; 33 NYS 3d 853 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]. The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving

party.” *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]. If the movant fails to make such prima face showing then the motion must be denied regardless of the sufficiency of the opposing papers *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY 2d 851; 487 NYS 2d 316 (1985).

Once the movant has made a prima facie showing, 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. *See Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY 2d 320; 508 NYS 2d 923 [1986]; and *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]).

Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment. *See Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004].

### **Alter Ego**

Third Avenue argues that it is the alter ego of plaintiff’s employer, Pillar, and therefore the Workers’ Compensation Law bars the action as against it. A review of the deposition of Kiumarz Geula (“Mr. Geula”), witness for Third Avenue, reveals the following: Pillar is a management company; Mr. Geula is 100% owner of Pillar; he is also the managing member of Third Avenue, with 50% ownership; both Pillar and Third Avenue share the same office address; he is responsible for scheduling and sending the workers, including plaintiff, to the site.

In *Ocana v Quasar Realty Partners L.P.*, 137 AD3d 566, 567 [1st Dept 2016], the Court found that although plaintiff’s employer was the general partner of defendant, they functioned as separate entities as the two entities “kept separate files and did not commingle funds.” Similarly, in *Soodin v Fragakis*, 91 AD3d 535, 536 [1st Dept 2012], the Court found that the two subject entities were not alter egos as they were “separately incorporated and maintained separate records; there is no evidence that their finances were integrated, that they commingled assets, or that the principals failed to treat the entities as separate and distinct.” Conversely, in *Karlo Morato-Rodriguez v Riva Const. Group, Inc.*, 88 AD3d 549 [1st Dept 2011], the Court found that owner/defendant “demonstrated that it and nonparty WTS Contracting Corp. are alter egos by establishing that they share a president and chief executive, an office manager and an office address, and were insured by the same liability and Workers’ Compensation policies” Also in *Carty v E. 175th St. Hous. Dev. Fund Corp.*, 83 AD3d 529 [1st Dept 2011], the Court found that plaintiff’s employer and owner/defendant “functioned as one company” as the record demonstrated “that, while the two entities have separate certificates of incorporation, they share a president and director of finance, financial management, administrative headquarters, an insurance policy, and a common purpose.”

Upon a review of the motion papers, this Court finds that Third Avenue has failed to demonstrate that Third Avenue and Pillar are alter egos. While both entities have one member in common and share an office address, this is insufficient to establish that both entities functioned as one. There is no evidence whatsoever that they share a common purpose, commingle funds, share financial management, or share insurance policies.

Accordingly, the branch of Third Avenue's motion seeking to dismiss plaintiff's complaint on the ground that it is the alter ego of plaintiff's employer is **denied**.

### **Labor Law §240(1)**

Labor Law §240(1) provides in part: "All 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 failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident." *Cherry v Time Warner, Inc.*, 66 AD3d 233, 235 [1st Dept 2009] [citations and quotations omitted].

The Court of Appeals has held 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], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993].

"A plaintiff in a case involving collapse of a permanent structure must establish that the collapse was 'foreseeable,' not in a strict negligence sense, but in the sense of foreseeability of exposure to an elevation-related risk." *Garcia v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 113 AD3d 494, 495 [1st Dept 2014]. "The issue of foreseeability in this context is relevant only with respect to whether the plaintiff was exposed to an elevation-related risk, and only where the elevation-related risk was not apparent from the nature of the work such that the defendant would

not normally be expected to provide the worker with a safety device to prevent the worker from falling.” *Jones v 414 Equities LLC*, 57 AD3d 65, 80 [1st Dept 2008].

The testimony of Mr. Geula establishes that: at the time of the subject accident, the premises were vacant for multiple years; the building had a partial roof and the insides were had been open to the elements since the purchase of the property; in preparation of constructing a school and prior to the demolition, Third Avenue sent a team of technicians to the site to prepare it for workers to go; this team included three people including plaintiff; plaintiff was the head carpenter; Johanna was the future construction manager for the project; plaintiff and his two co-workers were tasked with inspecting the property and reporting back with the status of the structure, advise whether the property was safe and if not safe, advise how they could secure the structure so that future workers for the construction project could perform work; Third Avenue provided plaintiff with plywood so that they could secure a path through the property so that the next team (i.e. the demolition company) could go perform work.

Upon a review of the deposition testimonies and the photographs submitted, this Court finds that plaintiff has established *prima facie* that the collapse of the floor was foreseeable. Plaintiff and his co-workers were sent to detect unstable portions of the building. As indicated above, plaintiff was specifically instructed by Johanna to place boards down “wherever it looked like it was loose or unstable”. The fact that Third Avenue instructed plaintiff and his co-workers to bring up plywood to lay on the ground wherever the floor felt weak, establishes plaintiff was exposed to an elevation-related risk due to the nature of the work. See *Mena v 485 Seventh Ave. Assoc. LLC*, 199 AD3d 420, 421 [1st Dept 2021]. Thus, plaintiff established his *prima facie* burden of a Labor Law §240(1) violation by showing that his injuries resulted from a gravity-related fall stemming from the failure of defendant to provide an adequate safety device to protect the plaintiff against the hazards associated with the performance of elevated work, a failure of which proximately caused his accident. In opposition, defendant has failed to raise a triable issue of fact or otherwise demonstrate *prima facie* that they provided the plaintiff with an adequate safety device to protect him from falling to comport with the statute.

Accordingly, defendant’s branch of motion to dismiss plaintiff’s Labor Law §240(1) claim is **denied** and plaintiff’s branch of motion for summary judgment on his Labor Law §240(1) claim is **granted**.

#### **Labor Law §241(6)**

Labor Law §241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety" to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed. *See*

*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]. The standard of liability under Labor Law §241(6), requires that a plaintiff allege that an owner or general contractor breached a specific rule or regulation containing a positive command. See *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]. In addition, Labor Law §241(6) requires that a plaintiff establish that a violation of a safety regulation was the proximate cause of the accident. See *Gonzalez v Stern's Dep't Stores*, 211 AD2d 414 [1st Dept 1995].

Plaintiff claims numerous violations of safety regulations in his bill of particulars. In their moving papers, moving defendants went through all the alleged Industrial Code provisions in plaintiff's bill of particulars in support of their argument that none of the provisions are applicable and/or not violated in this matter. In his opposition papers, plaintiff only addresses Industrial Code §23-1.16(b). Therefore, plaintiff has abandoned all other predicates not raised in his legal arguments, and as such those claims are dismissed to that extent. See *Burgos v Premier Props. Inc.*, 145 AD3d 506 [1st Dept 2016]; see also *87 Chambers, LLC v 77 Reade, LLC*, 122 AD3d 540 [1st Dept 2014].

Industrial Code §23-1.16(b) states:

Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline.

Plaintiff testified that at the time of the accident, even though he had a safety harness in his personal tool kit at the site, he was not wearing it because there was no secure tie-off point or secure anchorage to which the harness could be attached. Therefore, because it is undisputed that plaintiff was not wearing a safety harness at the time of the accident, Industrial Code §23-1.16(b) is inapplicable.

Accordingly, Third Avenue's branch of the motion seeking to dismiss plaintiff's Labor Law §241(6) claim is **granted**.

#### **Labor Law §200/Common Law Negligence**

Labor Law §200 applies to owners, general contractors, and their statutory agents (*Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 234AD3d 623 [1<sup>st</sup> Dept. 2025]). A subcontractor will be found to be statutory agent where they have been "delegated the supervision and control over the specific

work area involved or the work which [gave] rise to the injury (*id.*, quoting *Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189 [1<sup>st</sup> Dept. 2011]).

Labor Law §200 is a “codification of the common-law duty of owners and general contractors to provide workers with a reasonably safe place to work (*Jackson v Hunter Roberts Constr. LLC*, 205 AD3d 542 [1<sup>st</sup> Dept. 2022]). There are two branches of claims that can be made pursuant to Labor Law §200/common law negligence. Those two branches are those “arising from an alleged defect or dangerous condition existing on the premises or those arising from the manner in which the work was performed” (*Cappabianca v Skanska USA Bldg Inc.* 99 AD3d 139 [1<sup>st</sup> Dept. 2012]).

If a claim is based upon an “existing defect or dangerous condition . . . liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it.” *Cappabianca*, at 144. Proof is not required as to defendant’s supervision and control over plaintiff’s work. *See Licata v AB Green Bansevoort, LLC*, 158 AD3d 487 [1<sup>st</sup> Dept. 2018].

As testified by Kiumarz Geulam (NYSCEF Doc. #63 and #83), witness for defendant, that the building was vacant for several years (TR-20); they provided plywood to Pillar Profession to secure a step by step path through the property (TR-20); there was a partial roof and that the interior of the building had been open to the elements (TR-21). Therefore, this Court finds that Defendant therefore had constructive notice of the dangerous condition of the floors being rotted. Accordingly, Third Avenue’s branch of motion seeking summary judgment to dismiss plaintiff’s Labor Law § 200/common law negligence claim is **denied**.

Accordingly, it is hereby

**ORDERED**, that the motion (seq #4) by Third Avenue seeking to dismiss plaintiff’s Labor Law §240(1) and §200/common law negligence claims is **DENIED**; and it is further

**ORDERED**, that the motion by Third Avenue seeking to dismiss plaintiff’s Labor Law §241(6) claim is **GRANTED**; and it is further

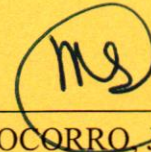
**ORDERED**, that the motion (seq #5) by plaintiff seeking summary judgment against defendant 3480 Third Avenue Owner Realty LLC on his Labor Law §240(1) claim is **GRANTED**; and it is further

**ORDERED**, that the Clerk of the Court is directed to enter judgment accordingly; and it is further

**ORDERED**, the counsel for plaintiff shall serve a copy of this order with Notice of Entry upon all parties within thirty (30) days of the date of this Decision and Order.

This constitutes the decision and order of this court.

Dated: June 30, 2025



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HON. MYRNA SOCORRO, J.S.C.