

**Fernandez v Lotus Residences LLC**

2025 NY Slip Op 34746(U)

September 17, 2025

Supreme Court, Bronx County

Docket Number: Index No. 31139/2019E

Judge: Matthew Parker-Raso

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. MATTHEW PARKER-RASO

PART 21

Justice

-----X

INDEX NO. 31139/2019E

SEGUNDO CHAVES FERNANDEZ,
Plaintiff,

MOTION DATE

MOTION SEQ. NO. 1

- v -

LOTUS RESIDENCES LLC, RIVERSIDE DEVELOPERS
USA, INC.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

LOTUS RESIDENCES LLC, RIVERSIDE DEVELOPERS USA,
INC.

Third-Party
Index No.

Plaintiff,

-against-

MAGELLAN CONCRETE STRUCTURES CORP

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 1) 39, 40, 41, 42, 43, 44,
45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 62

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing cited papers, the Decision and Order of this Court is as follows:

Motion sequence 001 is decided in accordance with the annexed decision and order.

This constitutes the order of the Court.

Dated: 9/17/25

Hon. [Signature]
MATTHEW PARKER-RASO J.S.C.

- 1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....
CASE DISPOSED IN ITS ENTIRETY
CASE STILL ACTIVE
GRANTED DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. MATTHEW PARKER-RASO PART 21

Justice

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SEGUNDO CHAVES FERNANDEZ,
Plaintiff,

- v -

LOTUS RESIDENCES LLC, RIVERSIDE DEVELOPERS
USA, INC.,

Defendant.

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LOTUS RESIDENCES LLC, RIVERSIDE DEVELOPERS USA,
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Plaintiff,

-against-

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Defendant.

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INDEX NO. 31139/2019E
MOTION DATE
MOTION SEQ. NO. 1

DECISION + ORDER ON
MOTION

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

Upon the foregoing cited papers, after oral argument held June 30, 2025, and for the reasons
set forth on the record by the Court on that date, it is hereby:

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability
as to the §240(1) and §241(6) causes of action is granted in part and denied in part as more fully
set forth hereinbelow.

Plaintiff's testimony establishes that he was performing work on a rebar team to create
columns that were between 15 and 18 feet high on the first floor of the premises (NYSCEF Doc.
No. 45 at pg. 65). Plaintiff testified that after the rebar team was done constructing the rebar, the
carpenters nailed two-by-fours over the columns to "close them" (id. at pg. 75-76). They also

nailed two-by-fours to the tops of the columns after they are created (id. at pg. 93). In addition to the two-by-fours used on the columns, plaintiff testified that the ceiling of the first floor was made up of two-by-fours that were connected to plywood (id. at pg. 91). Those two-by-fours were also installed by carpenters the day of plaintiff's accident (id. at pg. 91). That day, the carpenters were performing this type of work on both the first and second floor, which was still in the process of being built (id. at pg. 83). Plaintiff's testimony, as well as the video submitted as NYSCEF Doc. No. 49 and played for the Court at oral argument, further demonstrate that there were unsecured openings in the ceiling of the first floor/floor of the second floor large enough for two-by-fours to fall through.

Plaintiff testified that he was on the floor bending down getting ready to start a new column when he was struck in the head by a two-by-four (id. at pg. 83-84). Plaintiff denied seeing the two-by-four before it struck him but testified that his coworker advised him that it fell, "from up on the top" (id. at pg. 86) and allegedly confirmed to plaintiff that he saw it fall from the second floor (id. at pg. 89). When asked whether the two-by-four was material being used by carpenters on the second floor that fell to the first floor, plaintiff testified, "[t]hat is unknown" (id. at pg. 91). Plaintiff inspected what struck him afterwards and testified that it was a double two-by-four that still had nails attached to it (id. at pg. 104). Plaintiff testified that he supplied his own harness, hard hat, boots and chain and that the only protective equipment provided by his employer on site were yo-yos (id. at pg. 135-136). To reach the height of the ceiling as well as the tops of the columns, there were both ladders and pipe scaffolding in use (id. at pgs. 65 and 111).

In moving for summary judgment on his Labor Law § 240(1) claim, plaintiff's testimony, that coworkers were working with two-by-fours above him before the accident, is sufficient evidence to establish that the two-by-four, whether it was dropped or fell in some other manner, was material requiring securing (*See Pados v. City of New York*, 192 A.D.3d 596, 146 N.Y.S.3d 41 [1<sup>st</sup> Dep't., 2021]). The fact that plaintiff did not see the two-by-four or know where it fell from does not preclude partial summary judgment in his favor, as the testimony demonstrates that the two-by-four came from somewhere above plaintiff and was a proximate cause of his injuries (*See Humphrey v. Park View Fifth Ave. Assocs. LLC*, 113 A.D.3d 558, 559 [1<sup>st</sup> Dep't., 2014]). Moreover, a plaintiff's prima facie case in a Labor Law § 240(1) action involving falling objects

is not dependent on whether the plaintiff observed the object that hit him (*Malan v. FSJ Realty Group II LLC*, 213 A.D.3d 541, 542, 185 N.Y.S.3d 5 [1<sup>st</sup> Dep't., 2023]). Defendants' argument in opposition that plaintiff fails to establish that the two-by-four was in the process of being hoisted or secured is not persuasive. Falling object liability under Labor Law § 240 (1) is not limited to cases in which the falling object is in the process of being hoisted or secured (*Quattrocchi v. F.J. Sciamè Const. Corp.*, 11 N.Y.3d 757, 758–59 [2008]).

Notwithstanding the above, the branch of plaintiff's motion seeking partial summary judgment on liability as to the §241(6) cause of action premised on violations of §§23-1.5(c) and 1.7(a)(1) of the Industrial Code is denied.

Industrial Code§1.5(c)(3) is sufficiently specific to form a basis for liability in that it mandates a distinct standard of conduct of immediately repairing, restoring or removing damaged equipment from the jobsite (*See Becerra v. Promenade Apartments Inc.*, 126 A.D.3d 557, 558, 6 N.Y.S.3d 42, 43 [1<sup>st</sup> Dep't., 2015]). However, there is no testimony regarding damaged machinery or equipment in this case, therefore plaintiff fails to make a prima facie showing as to this section.

Industrial Code §1.7(a)(1) sets forth that, “[e]very place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection...”. Here, there is no testimony to establish that the area where plaintiff's accident took place was an area that was normally exposed to falling material. Moreover, while plaintiff's testimony establishes that he was struck by a two-by-four from above, it does not establish that the two-by-four came from the unsecured opening in the ceiling/floor. Labor Law § 241(6) requires that a plaintiff establish that the violation of the safety regulation was the proximate cause of the accident (*see Gonzalez v Stern's Dep't Stores*, 211 A.D. 2d 414 [1<sup>st</sup> Dep't., 1995]).

Based on the foregoing, it is hereby

ORDERED, that plaintiff's motion for summary judgment (Motion Seq. 001) is granted to the extent that plaintiff is granted summary judgment on liability as to the §240(1) cause of action only and the motion is otherwise denied; and it is further,

ORDERED, that the clerk enter partial judgment accordingly; and it is further,

ORDERED, that plaintiff serve a copy of this order with Notice of Entry on all parties within 30 days of the entry date hereof; and it is further

ORDERED, that the parties appear for a pre-trial conference in Part 21 on December 15, 2025 at 9:30 am.

This constitutes the decision and order of the Court.

Dated: 9/17/25

Hon. *M.P. Raso*  
MATTHEW PARKER-RASO J.S.C.

- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY     CASE STILL ACTIVE
- 2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
- 3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER     SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT     REFEREE APPOINTMENT