| **Stroub v 18th Highline Assoc., L.L.C.** |
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| 2025 NY Slip Op 34845(U) |
| December 15, 2025 |
| Supreme Court, New York County |
| Docket Number: Index No. 159546/2021 |
| Judge: Mary V. Rosado |
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

**PRESENT:** HON. MARY V. ROSADO — *Justice* **PART** **33M**

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ARTHUR STROUB,

Plaintiff,

- v -

18TH HIGHLINE ASSOCIATES, L.L.C., RELATED CONSTRUCTION LLC,THE RELATED COMPANIES, L.P.

Defendant.

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**INDEX NO.** 159546/2021

**MOTION DATE** 03/28/2024, 03/29/2024

**MOTION SEQ. NO.** 002 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 57, 59, 61, 63, 70, 71, 72, 74, 76, 78, 79
were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 60, 62, 64, 65, 66, 67, 68, 69, 75, 77, 80, 81, 82, 83
were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, and after a final submission date of October 16, 2025, motion sequences 002 ("Mot. Seq. 002") and 003 ("Mot. Seq. 003") are consolidated for disposition and decided as follows:

**A.** Plaintiff Arthur Stroub's ("Plaintiff") motion for summary judgment (Mot. Seq. 002) on his Labor Law § 240(1) claim against Defendants 18th Highline Associates, L.L.C., ("Highline") and The Related Companies, L.P. ("Related Co.") (collectively "Defendants") is denied.

**B.** Defendants' motion for summary judgment (Mot. Seq. 003) dismissing Plaintiff's Complaint is granted in part and denied in part.

## I. Background

On July 6, 2020, non-party Top Shelf Electric employed Plaintiff as an electrician at a construction project at 515 West 18th Street, New York, New York (the "Premises") (NYSCEF

Doc. 34 at 28; 59). Highline owned the Premises and Related Co. served as the general contractor. Plaintiff stepped on a piece of plywood which, according to him, allowed workers to cross a hole in the floor of the Premises. The plywood cracked and slid under Plaintiff's foot as Plaintiff stepped on it, causing Plaintiff to fall in the hole (NYSCEF Doc. 34 at 100-01; 129-30). Plaintiff claimed the hole was two to three inches deep (NYSCEF Doc. 34 at 104). Peter McLaren, employed by Related Co. and who was walking with Plaintiff at the time of his accident likewise testified Plaintiff was injured when the plywood he walked over broke (NYSCEF Doc. 36 at 36).

According to Mr. Timothy McNamara, Related Co.'s senior site safety manager, the plywood was covering a one-to-two-inch-deep trough where electrical conduits were placed (NYSCEF Doc. 35 at 18-19; 73-75). Mr. McNamara admitted that if the plywood had been properly secured, it should not have shifted (NYSCEF Doc. 35 at 89). Ian Felix, another Related Co. employee, testified that there was no hole in the floor, but plywood was covering dirt and gravel to allow a steady surface to place ladders or roll carts across (NYSCEF Doc. 37 at 32).

Photographs which Plaintiff claims depicts the "wooden bridge" prior to Plaintiff's accident, appear to depict a wooden plank over a trench between two slabs of concrete (NYSCEF Doc. 40). Plaintiff claims the photograph annexed to Exhibit J shows a worker repairing the "bridge." (NYSCEF Doc. 38). Plaintiff now moves for summary judgment on his Labor Law § 240(1) claim while Defendants move for summary judgment dismissing Plaintiff's Complaint.

## II. Discussion

### A. Plaintiff's Motion (Mot. Seq. 002)

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is denied. Viewing the facts in the light most favorable to the non-movant, there is an issue of fact as to whether the height differential between Plaintiff and the surface, which according to Defendants

was one to two inches, and according to Plaintiff was two to three inches, constitutes a *de minimis* elevation risk to which Labor Law § 240(1) does not apply (*see e.g. Cappabianca v Skanska USA Bldg., Inc.*, 99 AD3d 139, 146 [1st Dept 2012]). While "[t]here is no bright-line minimum height differential that determines whether an elevation hazard exists" (*Haskins v Metropolitan Transp. Auth.*, 227 AD3d 409 [1st Dept 2024], quoting *Brown v 44th St. Dev., LLC,* 137 AD3d 703, 703-704 [1st Dept 2016]), the facts of this case are distinguishable from precedent in that the Plaintiff here allegedly fell somewhere between one to three inches, while in prior cases granting summary judgment to falling workers, the height differential from which the workers fell is typically at least six inches (*see, e.g. DaSilva v Super P57, LLC*, 2025 NY Slip Op 06274 [1st Dept 2025] [fall from 3 to 4 ½ feet not *de minimis*]; *Palumbo v Citigroup Technology, Inc.*, 240 AD3d 455, 456 [1st Dept 2025] [fall from 10 ½ to 20 inches high was not *de minimis*]; *Haskins, supra* at 409 [1st Dept 2024] [fall into 2 to 2 ½ feet deep hole was not *de minimis*]; *Brown, supra* at 703-04 [1st Dept 2016] [fall 12 to 18 inches below was not *de minimis*]).

As held by the Court of Appeals, "the purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction worksite elevation differentials, and, accordingly, there will be no liability under the statute unless the injury producing accident is attributable to the latter sort of risk" *Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 603 [2009]). The application of the Labor Law § 240(1) must involve "a risk arising from a physically significant elevation differential" (*Nicometi v Vineyards of Fredonia,* LLC, 25 NY3d 90, 97 [2015] quoting *Runner, supra*). Because Plaintiff's "fall" caused him to land from a height of one to three inches, it is an issue of fact for the jury to decide whether that height differential constituted an elevation related risk.

**B. Defendants' Motion (Mot. Seq. 003)**

Defendants' motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part. Plaintiff does not oppose dismissal of his Labor Law §§ 241(6), 200, and common law negligence claims and thus those are dismissed as abandoned. For the same reason an issue of fact as to whether the height differential constitutes an elevation related hazard precludes Plaintiff from obtaining summary judgment on Labor Law § 240(1), so too does it preclude Defendants from obtaining summary judgment dismissing his Labor Law § 240(1) claim.

While Defendants rely on the expert affidavit of licensed engineer Peter Chen, that affidavit does not address whether the plywood was sufficient to guard against the allegedly hazardous height differential, instead merely stating that the plywood was not part of a scaffold and therefore could not constitute a violation Labor Law § 240 (*see* NYSCEF Doc. 56). But a Labor Law § 240 violation could arise from any inadequate safety device that failed to protect against an elevation related hazard – the safety device does not have to be part of a scaffolding system (*Palumbo v Citigroup Technology, Inc.*, 240 AD3d 455, 455-56 [1st Dept 2025] [failure to secure pallets approximately 10 ½ to 20 inches high resulted in Labor Law § 240(1) violation]). Moreover, Defendants' own witnesses admitted a properly secured plywood cover should not slip (NYSCEF Doc. 35 at 89).

The affidavit of bio-mechanist Carl Jewell is likewise insufficient to obtain summary judgment. Viewing the facts in the light most favorable to the non-movant, the opinions of both Mr. Jewell and Mr. Chen are non-dispositive because they are based on assumptions that are not in the record – namely the dimensions and size of the plywood which failed and caused Plaintiff to be injured. No witness testified as to the dimension or size of the plywood, although Mr. Jewell and Mr. Chen both based their assumptions on plywood that was 4 feet by 8 feet and ¾ inch thick.

There is also a dispute as to whether the wood was over gravel, as Plaintiff described the wood as covering a hole, Mr. McNamara claimed it was a trough for electrical conduits, and Mr. Felix claimed the plywood merely covered a floor strewn with rubble. The experts' selection of one witness' testimony from which to base their opinions in and of itself creates an issue of fact as to whether those experts' conclusions are speculative or based on incorrect assumptions (*see Cibrowski v 228 Thompson Realty, LLC*, 189 AD3d 428, 429 [1st Dept 2020]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment (Mot. Seq. 002) on his Labor Law § 240(1) claim is denied, and Defendants' motion for summary judgment (Mot. Seq. 003) dismissing Plaintiff's Complaint is granted to the extent that Plaintiff's Labor Law §§ 241(6), 200, and common law negligence claims are dismissed, but denied with respect to Plaintiff's Labor Law § 240(1) claim; 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.

12/15/2025
DATE

HON. MARY V. ROSADO, J.S.C.

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| CHECK ONE: | [ ] CASE DISPOSED | | [x] NON-FINAL DISPOSITION | | |
| | [ ] GRANTED | [ ] DENIED | [x] GRANTED IN PART | [ ] OTHER | |
| APPLICATION: | [ ] SETTLE ORDER | | [ ] SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | [ ] INCLUDES TRANSFER/REASSIGN | | [ ] FIDUCIARY APPOINTMENT | [ ] REFERENCE | |