

**Guerrero v Z&J Mgt. LLC**

2025 NY Slip Op 34971(U)

December 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 525033/2017

Judge: Wayne P. Saitta

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At an IAS Part 29 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11021 on the 17th day of December 2025

P R E S E N T:

HON. WAYNE SAITTA, Justice

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MANNY GUERRERO, CALIXTO LEDUC,  
ANGEL PEREZ HERNANDEZ and GLENDON JOHN,

*Plaintiff,*

- AGAINST -

DECISION & ORDER

Index No.: 525033/2017

Motion Sequence: 13-18

Z&J MANAGEMENT LLC, 1294 PARK PLACE, LLC,  
TRIPLE C BUILDERS LLC, NEW STYLE  
DEVELOPEMNT INC. MARLY BUILDING  
MATERIALS INC., 1296 PARK PLACE PH LLC,  
TIGRE HOME IMPROVEMENT CORP., ARSENAL  
SCAFFOLD INC., MARLY BUILDING SUPPLY CORP.  
and MARLY INDUSTRIAL CORP.

*Defendants.*

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This action arises from injuries sustained by Plaintiffs MANNY GUERRERO and CALIXTO LEDUC on October 17, 2017, during a construction project involving adjacent buildings located at 1294 and 1296 Park Place in Brooklyn, where Plaintiffs were employed as laborers by Z&J Management LLC and fell from a temporary plywood platform on the roof of 1294 Park Place when the platform collapsed as pallets of concrete masonry units (“CMUs”) were being hoisted and unloaded onto the roof.

The buildings at 1294 and 1296 Park Place were owned by separate entities, 1294 PARK PLACE LLC (“1294 PARK”), the owner of 1294 Park Place, and 1296 PARK PLACE

PH LLC (“1296 PARK”), the owner of 1296 Park Place. The buildings were being renovated simultaneously under contracts with the general contractor, Z&J Management LLC.

Plaintiffs commenced this action asserting claims under Labor Law §§ 200, 240(1), and 241(6) against the two property owners (1294 PARK and 1296 PARK); the three related material-delivery companies whose crane delivered the CMU pallets (MARLY INDUSTRIAL CORP., MARLY BUILDING SUPPLY CORP., and MARLY BUILDING MATERIALS INC., collectively the “MARLY Defendants”); three subcontractors, TRIPLE C BUILDERS LLC, (“TRIPLE C”); TIGRE HOME IMPROVEMENT CORP. (“TIGRE,”); ARSENAL SCAFFOLD INC. (“ARSENAL”); and developer NEW STYLE DEVELOPMENT INC. (“NEW STYLE”).

The claims of Plaintiffs ANGEL PEREZ HERNANDEZ and GLENDON JOHN were dismissed by order of J Ruchelsman dated December 3, 2024. All claims and cross-claims against Defendant ARSENAL were also dismissed by order of J Sheares dated July 15, 2020. Neither defendants NEW STYLE nor TIGRE have appeared in this action

Various Defendants also asserted multiple cross-claims against each other for indemnification and contribution.

There are six related motions for summary judgment. Plaintiffs move for partial summary judgment on their Labor Law §§ 240(1) and 241(6) claims against Defendants 1296 PARK, 1294 PARK, and the MARLY Defendants.

Defendant 1296 PARK moves for summary judgment dismissing all of Plaintiffs’ claims, and all cross-claims against it.

Defendant Z&J moves for summary judgment dismissing all of Plaintiffs’ claims, and all cross-claims against it.

The MARLY Defendants move for summary judgment dismissing Plaintiffs' claims, as well as all cross-claims asserted against them.

The MARLY Defendants also move to convert their cross claims against Z&J into third party claims in the event that Plaintiffs' claims against Z&J are dismissed.

### **Defendant 1296 PARK**

#### **Labor Law §§ 240(1) and 241(6)**

As the owner of the adjacent property, Defendant 1296 PARK moves for summary judgment and asserts that it had no control or involvement in the work at 1294 Park Place. Plaintiffs contend that the work at both properties was part of a single, unified project, commonly referred to as "1294/1296", and that materials, labor, and supervision were shared between the two sites. Plaintiffs argue that, for that reason, Defendant 1296 PARK should be held liable as an owner under the Labor Law even though each property was separately owned and governed by distinct contracts and permits.

It is undisputed that Plaintiffs were working on a temporary platform constructed on the roof of 1294 Park Place, where the hoisting operation and staging of pallets took place entirely at 1294 Park Place, and that Defendant 1294 PARK, not Defendant 1296 PARK, held title to that parcel.

Although DOB inspectors issued violations to Defendant 1296 PARK for undermining the party-wall footing and for unbraced CMU walls on its side of the property line, those violations pertain to work on 1296 PARK's lot. None of the violations issued were related to the cause of the collapse at 1294 Park Place.

Labor Law §§ 240(1) and 241(6) impose absolute and vicarious liability on property owners for elevation-related accidents. This statutory liability is based on ownership of the property where the accident occurred, not from any active role in the construction.

Cases interpreting the scope of “owner” liability under Labor Law § 240(1) do not support extending this definition to the owner of an adjacent property such as Defendant 1296 PARK. In *Berner v Town of Cheektowaga*, 151 AD3d 1636 (4th Dept 2017), the plaintiff brought a § 240(1) claim after falling from a ladder while repairing a vacant home. The Town had contracted with the plaintiff’s employer to perform the work under its statutory authority, but the court held that “owner” includes only the titleholder of the accident site or a party with a property interest who “fulfilled the role of owner by contracting to have work performed for his or her benefit” (quoting *Farruggia v Town of Penfield*, 119 AD3d 1320, at 1321 [4th Dept 2014], lv denied 24 NY3d 906 [2014]). Since the Town held no title or property interest, it was held not to be an owner under § 240(1).

The same reasoning applies here: Defendant 1296 PARK had no ownership interest in 1294 Park Place, the location of the collapse.

Plaintiffs have identified no contract, easement, lease, or other property interest by which Defendant 1296 PARK “fulfilled the role of owner” for the work at 1294 Park Place, and no evidence that Defendant 1296 PARK retained or exercised authority to supervise or control the hoisting or loading activity on 1294 PARK’s roof. See *Scaparo v Village of Ilion*, 13 NY3d 864 (2009); *Copertino v Ward*, 100 AD2d 565 (2d Dept 1984); *Farruggia v Town of Penfield*, 119 AD3d 1320 (4th Dept 2014); *Berner v Town of Cheektowaga*, 151 AD3d 1636 (4th Dept 2017).

Accordingly, Defendant 1296 PARK is entitled to dismissal of the § 240(1) and § 241(6) claims against it.

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

Defendant 1296 PARK may not be held liable under Labor Law § 200 or common-law negligence for an accident that occurred entirely on the adjoining property at 1294

Park Place where it did not launch the force of harm. Labor Law § 200 codifies the owner's common-law duty to provide workers with a safe place to work.

However, Defendant 1296 PARK had no duty to maintain the adjoining building in a safe condition. The record contains no evidence that Defendant 1296 PARK owned, occupied, or controlled any portion of 1294 PARK's roof, or that it created the dangerous condition or controlled the work that caused the collapse.

Plaintiffs' assertion that the properties functioned as a combined jobsite does not establish the ownership, control, or supervisory authority required under § 200. Without evidence that Defendant 1296 PARK controlled the premises at 1294 Park Place or directed the injury-producing work, liability cannot be imposed under either the premises-condition or means-and-methods theory (see *Ortega v Puccia*, 57 AD3d 54, at 61–62 [2d Dept 2008]; *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, at 877 [1993]).

Accordingly, the Labor Law § 200 and common-law negligence claims against Defendant 1296 PARK must be dismissed.

### **Defendant Z&J**

Defendant Z&J, the Plaintiffs' employer, moves to dismiss all claims and cross-claims against it pursuant to Workers' Compensation Law § 11.

Plaintiffs, did not oppose Z & J motion to dismiss their claims so those should be dismissed.

### **PLAINTIFF'S MOTION**

Plaintiffs move for summary judgment against Defendant 1294 PARK, and the MARLY Defendants on their claims pursuant to §240(1) and §241(6).

**Defendant 1294 PARK****Labor Law § 240(1)**

Labor Law § 240(1) imposes absolute, vicarious liability on owners for elevation-related injuries where a safety device fails to provide proper protection, regardless of the owner's supervision or control (*Gordon v Eastern Ry. Supply, Inc.*, 82 NY2d 555, at 559–560 [1993]). Courts impose liability whenever the elevation device collapses or fails, without requiring proof of negligence or notice (*Gomez v City of New York*, 63 AD3d 511, at 512 [1st Dept 2009]).

Plaintiffs were working as laborers for Z&J Management on a temporary plywood platform built on the roof of 1294 Park Place to receive pallets of CMUs. Three pallets, each weighing roughly 1,800 to 2,000 pounds, had already been placed on the deck. As the fourth pallet was being lowered, several witnesses described the load as “coming down fast” and striking the platform, while others said the platform failed under the accumulated weight.

The accident occurred when the temporary plywood platform on the roof of 1294 Park Place collapsed.

The platform consisted of plywood sheets laid across joists and served as a landing surface for pallets of CMUs being hoisted by a truck-mounted crane operated by employees of the MARLY Defendants. Immediately afterward, the deck cracked and collapsed, sending GUERRERO and LEDUC through multiple floors to the cellar. A DOB inspector issued a violation that same day, noting excessive material loading on a partially constructed floor as one of the unsafe conditions observed at the site.

Whether the collapse resulted from a sudden impact of the fourth pallet being lowered too quickly or from overloading is immaterial: under Labor Law § 240(1), liability attaches whenever an elevation device fails to provide proper protection.

Defendant 1294 PARK argues that the collapse was unforeseeable, but foreseeability is not an element of § 240(1). None of the cases cited by Defendant involve or support foreseeability as a defense: *Gomez v City of New York*, 63 AD3d 511 (1st Dept 2009), imposes liability for the collapse of an elevation device without regard to foreseeability; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 (1998), concerns §§ 241(6) and 200; and *Hughes v Tishman Constr. Corp.*, 40 AD3d 305 (1st Dept 2007), addresses common-law negligence and means-and-methods supervision. None of these cases cited by Defendant limit the absolute liability imposed by § 240(1).

Because the temporary platform failed while being used as a safety device for elevated work, and because Defendant 1294 PARK was the owner of the property where the accident occurred, the statute applies, and Plaintiffs are entitled to summary judgment on their Labor Law § 240(1) claim against 1294 PARK.

#### **Labor Law § 241(6)**

Labor Law § 241(6) imposes a nondelegable duty on owners and contractors to comply with the Industrial Code's concrete and specific requirements. A plaintiff must show both a violation of a particular rule and that the violation was a proximate cause of the accident (see *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494 [1993]; *Misicki v Caradonna*, 12 NY3d 511 [2009]). The sections invoked here, 12 NYCRR 23-2.1(a)(2) and 23-8.1(f)(2)(i), have been recognized as sufficiently specific to support a § 241(6) claim (see *Hayden v 845 UN Ltd. Partnership*, 304 AD2d 499 [1st Dept 2003]; *Wein v East Side 11th & 28th, LLC*, 186 AD3d 1579 [2d Dept 2020]; *Marrero v 2075 Holding Co.*, 106

AD3d 408 [1st Dept 2013]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, at 350 [1998]).

By the time the collapse occurred, three pallets, each weighing between 1,800 and 2,000 pounds, had already been placed on the platform. As the fourth pallet was being lowered, several witnesses, including the signalman, said the load “came down fast” and struck the surface with a “hard” landing, while others described the descent as normal.

Immediately after the fourth pallet reached the platform, the plywood cracked along the joists and the deck gave way, which caused GUERRERO and LEDUC to fall through two levels to the cellar. A DOB inspector later issued a violation identifying excessive loading of a partially constructed floor and a failure to shore or brace the temporary decking. No evidence identifies any other cause, such as wind, debris, or a hidden defect unrelated to the hoisting or loading activity.

Plaintiffs cite two specific sections of the Industrial Code they assert were violated: Section 23-2.1(a)(2), Section 23-8.1(f)(2)(i).

Section 23-2.1(a)(2) prohibits storing materials on any floor or platform in an amount or weight that renders the structure unsafe.

Section 23-8.1(f)(2)(i) specifically bars any sudden acceleration or deceleration of a moving load during a hoisting operation. Here, the testimony described a hard landing moments before the platform failed, which aligns with the type of uncontrolled impact the section is intended to prevent.

The key point is that the platform failed while being used to receive and store multiple heavy pallets, and the record has established only two possible causes: either the platform was overloaded after the fourth pallet was added or the fourth pallet landed with excessive force. Either cause constitutes a violation of one of the above Industrial Code

provisions. A collapse caused by a sudden, uncontrolled landing violates § 23-8.1(f)(2)(i), while a collapse caused by cumulative weight violates § 23-2.1(a)(2).

Defendant 1294 PARK, as the owner of the accident site, is vicariously liable for violations of the Industrial Code. Since the record establishes that one of the two violations of the cited provisions was a substantial factor in causing the temporary platform to collapse, Plaintiff is entitled to summary judgment on their Labor Law § 241(6) claim against Defendant 1294 PARK.

**The MARLY Defendants**

**Labor Law § 240(1)**

Plaintiffs move for summary judgment on their claims pursuant to §240(1) against the MARLY Defendants and the MARLY Defendants move to dismiss Plaintiff's §240(1) claim against them.

The MARLY Defendants delivered the pallets of CMUs to the roof using a truck-mounted crane. Z&J, the general contractor, told the MARLY Defendants' crane operator where each pallet should be placed on the temporary plywood platform. Three pallets were on the deck when the fourth pallet was lowered. Witnesses disagreed on whether this last pallet came down fast, but the platform failed as soon as it landed. A DOB inspector later issued a violation for excessive loading on a partially built floor.

There are two possible causes of the collapse. The first is that the MARLY crane operator overloaded the platform beyond its capacity. The second is that the crane operator allowed the fourth pallet to descend too quickly.

If the cause of the collapse was overloading, that would not constitute a violation of §240(1) by the MARLY Defendants.

While the MARLY Defendants' employee hoisted the pallets onto the platform, they were not involved in constructing or maintaining the platform on the roof and therefore were not the owner's agent for purposes of § 240(1).

On the other hand, if the cause of the collapse was the rapid descent of the fourth pallet, that would constitute a violation of §240(1) by the MARLY Defendants.

The MARLY Defendants are liable for injury caused by the manner in which their crane operators hoisted the pallets. Labor Law §240(1) requires owners and contractors involved in hoisting operations to ensure that the safety devices used in hoisting "shall be so constructed, placed and operated as to give proper protection to a person so employed" (*Id.*).

The fact that the fourth pallet did not directly strike the Plaintiffs is not a bar to the application of § 240(1), (see *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, at 603–604; *Andresky v Wenger Constr. Co., Inc.*, 95 AD3d 1247, at 1248-1249 [2d Dept 2012]; *Treile v Brooklyn Tillary, LLC*, 120 AD3d 1335, at 1337–1338 [2d Dept 2014]).

The Court of Appeals in *Runner*, held, "Manifestly, the applicability of the statute in a falling object case such as the one before us does not under this essential formulation depend upon whether the object has hit the worker. The relevant inquiry, one which may be answered in the affirmative even in situations where the object does not fall on the worker, is rather whether the harm flows directly from the application of the force of gravity to the object." (*Runner* at 604).

If the crane operator did not properly control the descent of the fourth pallet and that was the cause of the collapse, then the operator's actions violated §240(1).

As it has not yet been determined whether the collapse was caused by overloading or the descent of the fourth pallet, both Plaintiffs' motion for summary judgment on their claim pursuant to §240(1) and the MARLY Defendants' motion to dismiss the §240(1) claim against them must be denied.

**Labor Law § 241(6)**

Plaintiffs move for summary judgment on their claims pursuant to §241(6) against the MARLY Defendants and the MARLY Defendants move to dismiss Plaintiffs' § 241(6) claim against them.

Pursuant to Labor Law § 241(6), the MARLY Defendants can be liable as a contractor if they violated any specific Industrial Code provision that was a proximate cause of the platform's collapse (see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, at 501-502 [1993]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, at 351-352 [1998]).

The record shows that the MARLY Defendants' crane operator alone controlled the hoist, the descent of the pallet, and the manner in which the load was landed. The record also indicates that MARLY's operators are responsible for inspecting the landing area before lowering materials. Z&J's role in sequencing deliveries and selecting landing locations does not negate the MARLY Defendants' direct authority over the injury-producing phase of the hoisting operation. These facts establish that the MARLY Defendants exercised the requisite control over the hoisting activity, and MARLY is therefore a statutory agent within the meaning of § 241(6) (see *Mejia v Unique Dev. Holding Corp.*, 188 AD3d 574 [1st Dept 2020]).

Plaintiffs allege violations of §§ 23-2.1(a)(2), and 23-8.1(f)(2)(i), each of which has been recognized as sufficiently specific to support a § 241(6) claim (*Wein v East Side 11th*

& 28th, LLC, 186 AD3d 1579 [2d Dept 2020]; *Marrero v 2075 Holding Co.*, 106 AD3d 408 [1st Dept 2013]; *Hayden v 845 UN Ltd. Partnership*, 304 AD2d 499 [1st Dept 2003]).

It has not been determined whether the collapse was caused by overloading or by the descent of the fourth pallet. There was no evidence presented of any other cause of the collapse.

However, as discussed above, either cause would constitute a violation of the Industrial Code.

Whether the cause of the collapse was overloading or the rapid descent of the fourth pallet, either would constitute a violation of the Industrial Code on the part of the MARLY Defendants.

Therefore, Plaintiffs are entitled to summary judgment on their claim pursuant to §241(6) against the MARLY Defendants, and the MARLY Defendants' motion for summary judgment dismissing the §241(6) claim against them must be denied.

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

The MARLY Defendants move to dismiss Plaintiffs' Labor Law § 200 and common-law negligence claims against them.

Plaintiffs' claims are that the MARLY Defendants' crane operator was negligent in not ensuring that the platform onto which he was loading the pallets was strong enough to handle the weight and that the operator negligently landed that last pallet onto the roof platform with too much force.

Labor Law § 200 imposes liability only where a defendant exercised authority over the manner in which the work that led to the injury was performed. Under *Ortega v Puccia*, 57 AD3d 54, at 61–62 (2d Dept 2008), premises liability requires proof that the defendant created the hazard or had actual or constructive notice of it.

Although Z&J's foreman directed the laborers and selected the landing locations, the MARLY Defendants' operator controlled the hoisting equipment, executed the landings, and was responsible for inspecting the landing area before lowering materials.

It has not been established whether the collapse was caused by the MARLY Defendants' crane operator dropping the fourth pallet too forcefully or by overloading the platform.

If the cause was the descent of the fourth pallet there is a question of fact if MARLY's operator was negligent in not properly controlling the descent of the pallet.

If the cause was overloading the platform, whether the operator was negligent in failing to properly inspect the platform or recognize that the structure was being overloaded cannot be resolved as a matter of law.

Therefore, the MARLY Defendants' motion to dismiss the §200/common law negligence claims against them must be denied.

### **Cross-Claims**

Several defendants asserted cross-claims for common-law indemnification, contractual indemnification, and failure to procure insurance.

Defendant 1296 PARK asserted common-law indemnification, contractual indemnification, and failure-to-procure-insurance cross-claims against all other defendants.

Defendant Z&J asserted common-law indemnification, contractual indemnification, and failure-to-procure-insurance cross-claims against all other defendants.

The MARLY Defendants asserted common-law indemnification, contractual indemnification, and failure-to-procure-insurance cross-claims against all other defendants.

Defendants 1296 PARK, Z&J, and the MARLY Defendants each move to dismiss all the cross-claims against them.

As a preliminary matter, because Defendant 1296 PARK is being dismissed from the action since it is not liable for the collapse, the cross-claims asserted by it, and asserted against it, should be dismissed as moot.

Although Defendant Z&J moved to dismiss all cross-claims against it, its moving papers dealt only with the Workers' Compensation Bar to Plaintiffs' claims. While plaintiffs are barred from suing their employer, the Workers' Compensation Law allows co-defendants to assert cross claims where a plaintiff has suffered a grave injury as defined by the law.

The MARLY Defendants argue that their cross-claims against Z&J for common-law indemnification and contribution are still viable because there is a question as to whether at least one of the Plaintiffs suffered a grave injury.

In its moving papers, Z&J has failed to establish that there is no question of fact as to whether the Plaintiffs suffered a grave injury and, therefore, it has not met its burden to dismiss the MARLY Defendants' cross-claims for common-law indemnification and contribution against Z&J

Similarly, although no contract requiring Z&J to indemnify the MARLY Defendants or procure insurance to cover the MARLY Defendants has been submitted, Z&J has not demonstrated that there is no such contract. Therefore, it has not met its

burden to dismiss the MARLY Defendants' cross-claims for contractual indemnification and failure to procure insurance.

Because it has not yet been determined whether the MARLY Defendants' crane operator was negligent by either overloading the platform or by allowing the fourth pallet to descend too quickly, the MARLY Defendants' request to dismiss Z&J's cross-claims against them must be denied at this stage.

WHEREFORE, it is hereby ORDERED that Plaintiff's motion for partial summary judgment under Labor Law § 240(1) is granted as against Defendant 1294 PARK; and it is further,

ORDERED that Plaintiffs' motion for partial summary judgment under Labor Law § 240(1) as against the MARLY Defendants is denied; and it is further,

ORDERED that Plaintiffs' motion for partial summary judgment on its claims pursuant Labor Law § 241(6) against Defendant 1294 PARK, is Granted; and it is further,

ORDERED that Plaintiffs' motion for partial summary judgment on its claims pursuant Labor Law § 241(6) against the MARLY Defendants, is Granted; and it is further,

ORDERED that the MARLY Defendants' motion for summary judgment to dismiss Plaintiffs' claims against them pursuant to Labor Law § 240(1) § 241(6) and Labor Law § 200/common-law negligence is Denied; and it is further,

ORDERED that the MARLY Defendants' motion to dismiss the cross-claims of Defendant 1294 PARK asserted against them is Denied; and it is further,

ORDERED that the MARLY Defendants' motion to dismiss the cross-claims of Defendant Z&J asserted against them is Denied; and it is further,

ORDERED that Defendant 1296 PARK's motion for summary judgment is granted, and all claims and cross-claims against 1296 PARK are dismissed; and it is further,

ORDERD that Defendant Z&J's motion to dismiss Plaintiffs' claims against it is granted and all Plaintiffs' claims against Z&J are dismissed; and it is further,

ORDERD that Defendant Z&J's motion to dismiss the MARLY Defendants' cross claims against it is denied; and it is further

ORDERED that all cross-claims by Defendants 1296 PARK are dismissed as moot; and it is further,

This constitutes the Decision and Order of the Court.

E N T E R:



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JSC

HON. WAYNE SAITTA  
J.S.C.