

**Chavez v Help Sutter A Hous. Dev. Fund Corp.**

2025 NY Slip Op 35025(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 535131/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 535131/2022  
Seqs. 006; 007

Part LL1M

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MARIO CHAVEZ,

Plaintiff,

against

**DECISION/ORDER**

HELP SUTTER A HOUSING DEVELOPMENT FUND  
CORPORATION, HELP 515 BLAKE AVENUE HOUSING  
DEVELOPMENT FUND CORPORATION, NEIGHBORHOOD  
RESTORE HOUSING DEVELOPMENT FUND CORPORATION,  
HELP SUTTER A LLC, RUSSO DEVELOPMENT ENTERPRISES,  
INC., AND MONADNOCK CONSTRUCTION, INC.,

Defendants.

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As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 116-144, 147-157, 159.

Upon the foregoing papers, all defendants' motion for summary judgment dismissing plaintiff's complaint (Seq. 006) and plaintiff's motion for summary judgment on his Labor Law § 241 (6) claim (Seq. 007) are decided as follows:

**Procedural Posture and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on August 12, 2022, when he tripped on a protruding nail while working on an exterior scaffold at 515 Blake Avenue, Brooklyn, NY (the premises). Plaintiff withdrew his claims under Labor Law § 240(1) and Industrial Code §§ 23-1.5, 23-1.30, 23-1.31 and 23-1.32.

The following is undisputed: On the date of the accident, plaintiff was working on an exterior scaffold at approximately the fifth story of the building. Plaintiff was carrying a bucket of cement to his coworker, German Lopez, who was ten to fifteen feet away across the scaffold. While walking along the scaffold platform to Mr. Lopez, plaintiff tripped and fell.

The plaintiff testified that he tripped on a nail that was “protruding” out of the scaffold (Chavez EBT at 31). Plaintiff did not observe the nail prior to falling; he claims that saw the nail afterwards, and testified that the nail extended “approximately an inch” out of the scaffold (*id.*).

Defendants produced affidavits from Daniel Vivas, plaintiff’s foreman, and German Lopez, plaintiff’s co-worker who was present at the time plaintiff fell. Both affidavits are in Spanish and are accompanied by affidavits of translation. Mr. Vivas claimed that the nails were only protruding an eighth of an inch above the planks so that they could be more easily removed, and that this practice is the industry standard (Vivas aff. at ¶ 8). Mr. Vivas further claimed that he inspected the scaffold decks on the date of plaintiff’s accident and did not observe any nails that were raised more than an eighth of an inch (*id.* at ¶ 17). German Lopez, plaintiff’s co-worker, also signed an affidavit claiming that he observed a nail raised “about 1/8 inch” after the plaintiff fell (Lopez aff. at ¶ 23). Korey Jones, Monadnock’s superintendent, testified that the nails used were “Relancers,” which are “a double-head nail, [so a] quarter inch will always stick out” (Jones EBT at 55).

The record also contains four citations with OATH hearings from the Department of Buildings for the premises. Three of these relate to the safety of the subject scaffold and appear to have been dismissed only after Monadnock provided certificates of correction. The violations do not contain information about the height of the nail on which plaintiff claims to have tripped.

### 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]).

#### **Labor Law § 240 (1)**

The plaintiff withdrew his Labor Law § 240 (1) claim in his opposition papers; therefore, defendants' motion is granted on that claim without opposition.

#### **Labor Law § 241 (6)**

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered harm, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only advances arguments as to the alleged violations of 12 NYCRR 23-1.7 (e) (1) and (e) (2). Therefore, the remaining alleged code violations are deemed abandoned (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]). Also, plaintiff only seeks relief against Sutter Development, Sutter, and Monadnock.

A material issue of fact precludes both parties from obtaining summary judgment on plaintiff's claim as predicated on Rule 1.7 (e) (1) and (e) (2). Defendants' own expert, Shawn Rothstein, conceded that a vertical grade differential of "greater than or equal to one half inch" constitutes a tripping hazard (Rothstein aff. at ¶ 10). Plaintiff testified that the nail was sticking out one inch. Mr. Vivas and Mr. Lopez both contended that the nail was only sticking out 1/8th of an inch. The plaintiff does not address defendants' affidavits. In light of the conflicting

evidence about the height of the nail, there is a material issue of fact which preclude either party from prevailing on summary judgment in this case (see *Dowd v City of New York*, 40 AD3d 908, 911 [2d Dept 2007]).

### **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]), and claims are evaluated using a negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). “When an accident is alleged to involve defects in both the premises and the equipment used at the work site, a defendant moving for summary judgment with respect to causes of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability standards” (*Ramos v Kent & Wythe Owners, LLC*, 236 AD3d 693, 697 [2d Dept 2025]). Defendants move for summary judgment on Labor Law § 200; plaintiff does not.

Defendants argue that plaintiff was unable to identify the defect that he claims caused his accident when shown photographs of the subject scaffold and, if the nail is deemed a dangerous condition, then it was “trivial” and does not qualify under the statute. However, the defendants, including defendant owners, do not advance any argument on the issue of constructive or actual notice of the dangerous condition. Looking at the evidence in the light most favorable to the non-moving party on this claim (the plaintiff), one inch of nail raised above the plank would constitute a dangerous condition about which defendants could be found to have constructive notice. By failing to address the issue of notice, defendants have not resolved all issues of material fact and therefore are not entitled to judgment as a matter of law on this issue.

**Conclusion**

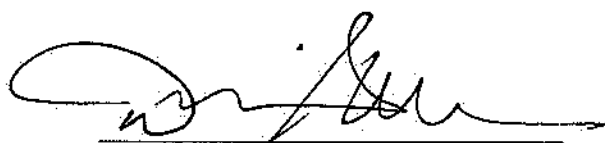
Defendants' motion (Seq. 006) for summary judgment is granted with respect to the dismissal of plaintiff's Labor Law § 240 (1) claim and Labor Law § 241 (6) claim as predicated on Industrial Code §§ 23-1.5, 23-1.30, 23-1.31 and 23-1.32 only; the motion is otherwise denied.

Plaintiff's motion for summary judgment (Seq. 007) is denied.

This constitutes the decision and order of the court.

December 11, 2025

**DATE**



**DEVIN P. COHEN**

Justice of the Supreme Court