

**Martinez v Real Bldrs. Inc.**

2025 NY Slip Op 35143(U)

December 17, 2025

Supreme Court, Bronx County

Docket Number: Index No. 24465/2020E

Judge: Matthew Parker-Raso

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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. MATTHEW PARKER-RASO PART 21

Justice

-----X

CARLOS CHAVEZ MARTINEZ,

Plaintiff,

- v -

REAL BUILDERS INC, 1414 CENTRAL AVENUE OWNER
REALTY LLC, 1414 CENTRAL AVENUE HOUSING
DEVELOPMENT FUND CORPORATION, BAYPORT
CONSTRUCTION CORP., BPRT CONSTRUCTION OF NY
LLC D/B/A BAYPORT CONSTRUCTION CORP,

Defendant.

-----X

INDEX NO. 24465/2020E

MOTION DATE

MOTION SEQ. NO. 145

DECISION + ORDER ON MOTION

Motion sequences 001, 004, and 005 in the above referenced matter, as well as all related
third-party actions, are decided in accordance with the annexed decision and order.
This constitutes the order of the Court.

Dated: 12/17/25

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

-----X

INDEX NO. 24465/2020E

CARLOS CHAVEZ MARTINEZ,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 145

- v -

REAL BUILDERS INC, 1414 CENTRAL AVENUE OWNER
REALTY LLC, 1414 CENTRAL AVENUE HOUSING
DEVELOPMENT FUND CORPORATION, BAYPORT
CONSTRUCTION CORP., BPRT CONSTRUCTION OF NY
LLC D/B/A BAYPORT CONSTRUCTION CORP,

DECISION + ORDER ON MOTION

Defendant.

-----X

REAL BUILDERS INC, 1414 CENTRAL AVENUE OWNER
REALTY LLC, 1414 CENTRAL AVENUE HOUSING
DEVELOPMENT FUND CORPORATION

Third-Party
Index No. 43475/2020E

Plaintiff,

-against-

BACHI & SON CORP.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 1) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 113, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 187, 196, 197, 200, 201, 209, 213

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 4) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 188, 192, 193, 194, 195, 198, 210, 211, 212, 214

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 5) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 186, 189, 191, 199, 202, 203, 204, 205, 206, 207, 208, 215

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral arguments held on June 30, 2025, the Decision and Order of this Court is as follows:

Plaintiff moves for partial summary judgment on the issue of liability on the Labor Law §240(1) cause of action against defendants Real Builders Inc. (“Real Builders”), 1414 Central Avenue Owner Realty LLC (“1414 Realty”) and 1414 Central Avenue Housing Development Fund Corporation (“1414 HDFC”), Bayport Construction Corp. (“Bayport”) and BPRT Construction of NY LLC d/b/a Bayport Construction Corp. (“BPRT”) (Motion Seq. 001).

Defendants/Second third-party defendants, Bayport and BPRT (jointly referred to hereinafter as the “Bayport defendants”) move for summary judgment dismissing the plaintiff’s complaint in its entirety and all cross-claims including those set forth in the second third-party complaint (Motion Seq. 004).

Defendants/Third-party plaintiffs/Second third-party plaintiffs Real Builders, 1414 Realty and 1414 HDFC move for summary judgment dismissing the plaintiff’s complaint and for summary judgment on Real Builders and 1414 Realty’s claims for contractual indemnification and breach of contract against Bayport, BPRT and Third-party defendant Bachi & Son Corp. (“Bachi”) (Motion Seq. 005).

#### Applicable Law and Analysis

The proponent of a motion for summary judgment must tender sufficient evidence in admissible form to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [NY 1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [NY 1985]). Once this showing has been made the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material facts which require a trial of the action (*Zuckerman v. City of New York*, 49 N.Y. 2d 557 [1980]). A mere conclusory assertion devoid of evidentiary facts, is insufficient to defeat a well-supported summary judgment motion as is reliance upon surmise, conjecture or speculation (*Grullon v. City of New York*, 297 A.D.2d 261 [1<sup>st</sup> Dep’t. 2002]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1<sup>st</sup> Dept. 1989]). It is well settled that issue finding, not issue determination, is the key to

summary judgment (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1<sup>st</sup> Dept. 1999]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [NY 1957]).

Initially, the Court notes that subsequently to the filing of the instant motions, plaintiff executed a stipulation of discontinuance against 1414 HDFC (NYSCEF Doc. No. 175). Moreover, 1414 HDFC submits an affidavit of its owner setting forth that it is not an owner of the premises and had no involvement in the construction taking place. No party presents evidence otherwise. Accordingly, all claims and cross-claims against 1414 HDFC are dismissed.

The Court further notes that plaintiff did not file opposition to the Bayport defendants' motion to dismiss the complaint as to those defendants (Motion Seq. 004). Moreover, after reviewing the record the Court further notes that plaintiff does not address the Bayport defendants' argument that they are not proper Labor Law defendants in any of their responsive papers. Real Builders, 1414 Realty, and 1414 HDFC do not oppose the branch of the motion seeking dismissal of the plaintiff's complaint against the Bayport defendants. Accordingly, the branch of the Bayport defendants' motion seeking dismissal of plaintiff's complaint is granted.

Labor Law § 240(1) imposes a duty upon owners and contractors to furnish proper safety devices and protection during construction and related activities. The failure to provide safety devices of the kind enumerated in the statute constitutes a per se violation and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure (*See Cherry v Time Warner, Inc.*, 66 AD3d 233, 235 [1<sup>st</sup> Dep't., 2009]).

Plaintiff established his entitlement to judgment as a matter of law on the issue of liability on his Labor Law § 240(1) claim as it is undisputed that the subject scaffold did not have railings or adequate anchor points for plaintiff to attach his harness to (*See Gomes v. Pearson Cap. Partners LLC*, 159 A.D.3d 480, 480–81 [1<sup>st</sup> Dep't., 2018]). Defendants' argument in opposition that plaintiff is the sole proximate cause of his accident because he was not permitted to use the scaffold is not persuasive. Plaintiff denied being told he was not allowed on the scaffold and further testified that he could not complete his job of framing the windows on the fifth floor without being outside. There is no evidence in the record to the contrary. Thus, plaintiff's allegedly being in an unauthorized area would have amounted only to comparative negligence, which is not a defense to a Labor Law § 240 (1) claim (*Dolcimascolo v. 701 7th Prop. Owner, LLC*, 232 A.D.3d 538, 539 [1<sup>st</sup> Dep't., 2024]).

Equally unavailing are defendants' arguments, regarding inconsistencies in plaintiff's reporting of the accident. Initially, the Workers' Compensation report does not create a question of fact as it does not have the certification of a translator indicating that plaintiff's words were accurately translated from Spanish (*See Mosquera v. TF Cornerstone Inc.*, 230 A.D.3d 1065, 1065 [1<sup>st</sup> Dep't., 2024]). Moreover, when confronted with said forms at his deposition, plaintiff denied completing them and testified that the signature appearing on the form was not his. Similarly, notations in uncertified hospital records do not rebut plaintiff's showing where no evidence was adduced that the information was properly translated for plaintiff and the disputed cause of plaintiff's injury was not germane to his diagnosis or treatment (*see Quispe v. Lemle & Wolff, Inc.*, 266 A.D.2d 95, 96, 698 N.Y.S.2d 652 [1st Dept. 1999]). Here, there is no dispute that plaintiff fell. The reason for him falling, whether stepping on wire netting or tripping over a brick, is not germane to treatment regarding the fall. As to the incident report from Bachi & Son Corp. ("Bachi"), no foundation has been laid for said report and Bachi is precluded from offering testimony or evidence on summary judgment. Moreover, any secondhand hearsay accounts of the accident, allegedly relayed to plaintiff's employer, are insufficient to defeat plaintiff's entitlement to summary judgment (*Berrones v. 130 E. 18 Owners Corp.*, 239 A.D.3d 500, 501 [1<sup>st</sup> Dep't., 2025]).

Defendant fails to raise an issue of fact in opposition. Regardless of whether plaintiff stepped on the edge of wire netting or tripped on a brick, the scaffold, which was 2 feet away from the building, lacked any protective device to prevent plaintiff from falling in the manner that he did. Accordingly, plaintiff's motion for summary judgment on the issue of liability as to the Labor Law § 240(1) cause of action is granted. The branch of defendants Real Builders, 1414 Realty and 1414 HDFC's motion to dismiss the §240(1) cause of action is denied.

Labor Law §241(6) is a "hybrid" statute, as the first sentence, "reiterates the general common-law standard of care," while the second sentence imposes a nondelegable duty with respect to compliance with rules of the Commissioner which contain "specific, positive command[s]" (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 503-504 [1993]). Thus, an owner or general contractor, "is vicariously liable without regard to [their] fault," and, "even in the absence of control or supervision of the worksite," where a plaintiff establishes a violation of a specific and applicable Industrial Code regulation (*Rizzuto v. L.A. Wenger Contr. Co., Inc.*, 91 N.Y.2d 343, 348-350 [1998]).

Regarding Labor Law §241(6), plaintiff only opposes dismissal of Industrial Code §§ 5.1(j) and 5.3(e) as predicates to the claim. Accordingly, all other sections plead in the bill of particulars are dismissed as abandoned. The Court finds that §5.1(j) and §5.3(e) are applicable to the facts of this case as § 5.1(j) requires safety railings for all scaffold platforms and § 5.3(e) requires safety railings specifically for all metal scaffolds (See *Macedo v. J.D. Posillico, Inc.*, 68 A.D.3d 508, 510 [1<sup>st</sup> Dep't., 2009]). Defendants submit no evidence that there was no violation of either section. Accordingly, the branch of defendants' motion to dismiss the Labor Law §241(6) claim premised on a violation of Industrial Code §§ 5.1(j) and 5.3(e) is denied.

Section 200 of the Labor Law codifies an owner's or general contractor's common-law duty of care to provide construction site workers with a safe place to work (*Perrino v. Entergy Nuclear Indian Point 3, LLC*, 48 A.D.3d 229, 230 [2008]). Claims for personal injury under the statute and the common law fall into two broad categories: (1) those arising from an alleged defect or dangerous condition existing on the premises and (2) those arising from the manner in which the work was performed (*see Cook v. Orchard Park Estates, Inc.*, 73 A.D.3d 1263, 1264 [2010]). Where the injury was caused by the manner and means of the work, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work (*Foley v. Consolidated Edison Co. of N.Y., Inc.*, 84 A.D.3d 476, 477 [2011]). Where the accident was caused by a defective premises condition, rather than the method or manner in which work was performed, liability depends on whether the owner or contractor created or had actual or constructive notice of the hazardous condition (*See Bayo v. 626 Sutter Ave. Assoc., LLC*, 106 A.D.3d 648, 648 [1<sup>st</sup> Dep't., 2013]).

Here, plaintiff's testimony establishes that he only received directions from his employer Bachi and further that he purchased his own additional tools. Additionally, the testimony of Bayport's witness establishes that it was Bayport, not Real Builders or 1414 Realty, that had the duty to inspect and maintain the scaffold everyday. In light of the above, the branch of defendants' motion for summary judgment dismissing the §200 and common law negligence causes of action is granted.

Turning to the third-party claims against Bayport. The Bayport defendants do not oppose dismissal of their counterclaims for common-law indemnification and contribution against Real Builders, 1414 Central, and the HDFC; their crossclaim for contractual indemnity against Real Builders and 1414 Central; or the affirmative defenses of failure to state a cause of action and

failure to sue necessary and indispensable parties that were raised against Real Builders, 1414 Central, and the HDFC. Accordingly, those branches of defendants' motion are granted and said claims and defenses are dismissed.

“A party is entitled to full contractual indemnification provided that the ‘intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances.” (*Drzewinski v Atlantic Scaffold & Ladder Co., Inc.*, 70 NY2d 774, 777 [1987]). Where an entity is held strictly liable based solely on its status as owner of the premises, the owner is entitled to contractual indemnification where such has been agreed to between the parties.” (*Velez v Tishman Foley Partners*, 245 AD2d 155, 156 [1<sup>st</sup> Dep't., 1997]). To obtain conditional relief on a claim for contractual indemnification, the one seeking indemnity must establish that it was free from any negligence and may be held liable solely by virtue of statutory or vicarious liability (*Spielmann v 170 Broadway NYC LP*, 187 AD3d 492, 494 [1st Dept 2020]).

The contract between Real Builders and BPRT identifies 1414 Realty as the owner of the premises and sets forth that the subcontractor [BPRT] will indemnify and hold harmless the owner [1414 Realty] and the contractor [Real Builders] from and against claims “arising out of or resulting from performance of” the work...only to the extent caused by the negligent acts or omissions of the subcontractor [BPRT] (NYSCEF Doc. 160 at pg. 8-9). The Court finds that plaintiff's accident arose out of Bayport's work and further that it was caused at least in part due to the negligence of Bayport. Bayport fails to raise any material issues of fact as to the negligence of Real Builders or 1414 Realty. It is undisputed that Bayport built the scaffold, and according to Bayport's witness, it was Bayport's scaffolding foreman's responsibility to ensure that unauthorized employees were not permitted to use the same. The witness further testified that Bayport conducted daily inspections and maintenance of the scaffold and did not take any action to prevent employees from accessing the incomplete scaffold. Accordingly, the indemnification agreement was triggered and any inconsistencies in the language between the underlying contract and the additional insurance agreement is moot. However, as there has yet to be a finding as to the extent of the culpability of the parties, including Bachi, conditional indemnification is appropriate (*Hartrum v. Montefiore Hosp. Hous. Section II Inc.*, 237 A.D.3d 429, 433 [1<sup>st</sup> Dep't., 2025]).

The branch of defendants' motion seeking summary judgment on contractual claims against Bachi is denied. The contract exchanged in discovery is not signed nor has it been authenticated by any witness. Since there is no signed copy of the contract between the parties in the record before the Court, contractual claims cannot form the basis on which to grant summary judgment" (*Clarke v American Truck & Trailer Inc.*, 171 AD3d 405, 406 [1<sup>st</sup> Dep't., 2019]). Notwithstanding the above, defendants have made a prima facie showing of entitlement to indemnification pursuant to the common law. To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence, but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Priestly v Montefiore Med. Ctr.*, 10 AD3d 493, 495, [1<sup>st</sup> Dep't., 2004]). As discussed above, no party has raised a material issue of fact as to the negligence of either Real Builders or 1414 Realty. On the other hand, there is evidence of negligence on behalf of Bachi. Plaintiff, who was a Bachi employee, and was only instructed by other Bachi employees, was permitted to do work on an allegedly incomplete scaffold, which he was not authorized to be on when he was injured.

All claims for breach of contract for failure to procure insurance are denied as premature as defendants fail to establish the element of damages.

Based on the foregoing, it is hereby

ORDERED, that plaintiff's motion for summary judgment on liability on the Labor Law §240(1) cause of action is granted and the clerk is directed to enter judgment accordingly (Motion Seq. 001); and it is further,

ORDERED, that the Bayport defendants' motion to dismiss the complaint and third-party complaint is granted only to the extent of dismissing the plaintiff's complaint as against the Bayport defendants (Motion Seq. 004); and it is further,

ORDERED, that the branch of Real Builders and 1414 Realty's motion for summary judgment dismissing plaintiff's Labor Law §240(1) cause of action is denied; and it is further,

ORDERED, that the branch of Real Builders and 1414 Realty's motion for summary judgment dismissing plaintiff's Labor Law §241(6) cause of action predicated on violations of Industrial Code §§5.1(j) and 5.3(e) is denied and all other predicates are dismissed as abandoned; and it is further,

ORDERED, that the branch of Real Builders and 1414 Realty’s motion for summary judgment dismissing the Labor Law §200 and common law causes of action is granted; and it is further,

ORDERED, that the branches of Real Builders and 1414 Realty’s motion for indemnification against Bachi and Bayport are granted as set forth hereinabove; and it is further,

ORDERED, that the branches of Real Builders and 1414 Realty’s motion seeking the dismissal of certain affirmative defenses is granted; and it is further,

ORDERED, that the claims for breach of contract for failure to procure insurance are denied; and it is further,

ORDERED, that the 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 February 23, 2026 at 9:30 am.

This constitutes the Decision and Order of the Court.

Dated: 12/19/25

Hon.   
**MATTHEW PARKER-RASO J.S.C.**

- |                              |  |   |
|------------------------------|--|---|
| 1. CHECK ONE.....            | <input type="checkbox"/> CASE DISPOSED IN ITS ENTIRETY | <input checked="" type="checkbox"/> CASE STILL ACTIVE |
| 2. MOTION IS.....            | <input type="checkbox"/> GRANTED                       | <input type="checkbox"/> DENIED                       |
|                              | <input checked="" type="checkbox"/> GRANTED IN PART    | <input type="checkbox"/> OTHER                        |
| 3. CHECK IF APPROPRIATE..... | <input type="checkbox"/> SETTLE ORDER                  | <input type="checkbox"/> SUBMIT ORDER                 |
|                              | <input type="checkbox"/> FIDUCIARY APPOINTMENT         | <input type="checkbox"/> REFEREE APPOINTMENT          |
|                              | <input type="checkbox"/> SCHEDULE APPEARANCE           |   |