

<b>Buitrago v 600 Broadway Partners LLC</b>
2026 NY Slip Op 30178(U)
January 9, 2026
Supreme Court, New York County
Docket Number: Index No. 158678/2020
Judge: Verna L. Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

-----X

INDEX NO. 158678/2020

HENDERSON BUITRAGO
and LUISA GOMEZ,

MOTION SEQ. NO. 004

Plaintiffs,

- v -

DECISION + ORDER ON MOTION

600 BROADWAY PARTNERS LLC and
MJM ASSOCIATES CONSTRUCTION LLC,
Defendants.

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MJM ASSOCIATES CONSTRUCTION LLC,
Third-Party Plaintiff,

Third-Party
Index No. 595053/2021

-against-

KJE CONSTRUCTION SERVICES INC.,
Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 114, 115, 116, 117, 118, 119, 120, 122

were read on this motion to/for

SUMMARY JUDGMENT

In this action seeking damages based on violations of the Labor Law, plaintiffs Henderson Buitrago and Luisa Gomez move for an order pursuant CPLR 3212, granting them summary judgment on the issue of liability pursuant to Labor Law § 240(1) against defendant 600 Broadway Partners LLC ("Broadway") and defendant/third party plaintiff MJM Associates Construction LLC ("MJM"). Upon reading the foregoing papers, the motion is denied.

Plaintiffs bring this labor law action to recover for injuries plaintiff Henderson Buitrago ("plaintiff") allegedly sustained on October 11, 2019, while working at a construction site located at 600 Broadway Avenue, New York (the, "site"), which Broadway owned. He allegedly fell from an Occupational Safety and Health Administration ("OSHA") plank that shifted after being struck by a rafter. At the time of the accident, plaintiff Buitrago worked as a construction laborer for third-party defendant KJE Construction Services Inc. ("KJE"), a New York corporation that performed construction work including interior demolition, concrete work, and excavation. The project at the site, involved interior demolition and renovation of five floors in a six or seven story commercial building. MJM served as the general contractor, overseeing construction management. KJE was the subcontractor for the demolition work under a written AIA contract<sup>1</sup> with MJM dated September 2019 (NYSCEF Doc. No. 51). On October 11, 2019, at approximately 3:00 PM, plaintiff stood on an unsecured OSHA plank laid across two joists,

<sup>1</sup> An AIA contract is a standard form of agreement between a contractor and a subcontractor (AIA Document A401 by the American Institute of Architects).

approximately twelve (12) feet above the floor, removing screws from rafters and then loosening the rafters with a hammer before lowering them to the floor. Plaintiff successfully removed eleven (11) rafters when, during the removal of the final rafter, the rafter fell and struck the unsecured plank. The plank slid off the joists, causing plaintiff to fall twelve (12) feet to the floor below, with the plank striking his body.

Plaintiff appeared for an examination before trial on September 20, 2022 (NYSCEF Doc. No. 102) and on November 1, 2022 (NYSCEF Doc. No. 103). He testified that his duties during his work at the site included demolition and the removal of structural components. On the date of the accident, plaintiff was working on the third floor of the building. According to plaintiff, while he was in the process of removing the final rafter, the rafter fell due to gravity and struck the OSHA plank on which he was standing. Plaintiff stated that after the rafter struck the plank, the plank shifted or moved. According to plaintiff, as a result of the movement of the plank, he lost his footing and fell through the joists from the elevated work area to the level below. Plaintiff estimated that the fall was approximately fourteen (14) feet. Plaintiff further testified that after he landed on the ground, the OSHA plank also fell and landed on top of him. He claims that at the time of the accident, neither his employer nor defendants provided him with any fall-protection safety devices such as a harness, lifeline, or safety net. He further testified that none of them instructed him to use such devices in connection with the task he was performing. Plaintiff states that he previously owned his own harness and claims that it had expired six months prior to the date of the accident.

Milton Sonneberg ("Sonneberg") testified on behalf of defendant 600 Broadway (NYSCEF Doc. No. 104). He has been employed by ACHS Management Corp., which managed the building at 600 Broadway, for 21 years. On the date of the accident, he served as senior property and risk manager and, among other things, he managed the property in question along with other properties, oversaw insurance matters for the building, and handled tenant issues. He noted that he did not perform or supervise construction work or site safety and he was not present at the site during the renovation. Sonneberg understood that MJM Associates was the general contractor responsible for construction and site safety for the renovation, including safety practices by subcontractors and saw to the protection of the general public. Further, MJM hired the subcontractors, if any. Sonneberg identified Josh Posner ("Posner") as a project manager potentially authorized to act on behalf of 600 Broadway. Progress records were submitted by the general contractor to Posner, who forwarded them to accounts payable.

According to Sonneberg, he first became aware of the accident only after the lawsuit was filed. Once he learned of the claim, he notified the insurance company and tendered the claim to MJM. Sonneberg confirmed that ACHS did not hire any security or safety personnel for the 600 Broadway project in 2019 and that he believed it was MJM's responsibility under the AIA contract to do so. He was not aware of the identities of any demolition subcontractor or KJE Construction Inc. and he had no knowledge of their involvement with the project.

Jorman Rocha ("Rocha") testified on behalf of defendant MJM (NYSCEF Doc. No. 105). As of October 11, 2019, he worked as an estimator, responsible for collecting bids, evaluating scope of work, and budgeting for several projects. He had no specialized training in demolition, and his involvement at the 600 Broadway site was limited to reporting on progress of interior

demolition work, meeting subcontractors for bidding purposes, and performing approximately one or two site walkthroughs per week. During his site visits, Rocha walked through the floors to observe work progress but did not monitor means or methods of demolition or assess worker safety. He did not observe workers performing demolition during these walkthroughs, and he did not receive any safety complaints in October 2019. Rocha acknowledged that, if he had observed unsafe conditions, he had authority to notify and stop the work. He did not take any such action. Rocha asserted that MJM did not provide tools, safety equipment, or harnesses to KJE employees. According to Rocha, the responsibility for worker safety and equipment lay with KJE.

After the accident, Rocha went to the site and spoke with MJM superintendent Valentine Diaz and the KJE foreman. He learned from them that a worker had been injured while carrying timber. At that time, no MJM personnel were present at the site prior to Rocha's arrival.

Louis Pascuito ("Pascuito") testified on behalf of KJE (NYSCEF Doc. No. 106). He was the owner and president of KJE.<sup>2</sup> Pascuito confirmed that KJE was responsible for supplying labor, tools, equipment, and safety features for its employees, as well as, supervising and directing the work. KJE's work at the site consisted of interior demolition and concrete infills/patching. According to Pascuito, KJE employees were required to use safety harnesses when working at heights above six feet, and OSHA-compliant planks and scaffolds were provided. He further testified that KJE placed the harnesses for its employees in all their toolboxes. According to Pascuito, the OSHA planks are a necessary part of building scaffold, and the planks would not be used in any other manner. Pascuito testified that when OSHA planks are used inside a scaffold, the scaffold itself provides the safety support. To Pascuito's knowledge, the plank used in this instance was an OSHA-compliant scaffold plank. He testified that it was not normal for the employees to rest OSHA planks on ceiling joists in order to perform work at a height. He stated that the KJE foremen, Neph Conolly and Armando, were responsible for monitoring site conditions, reporting safety concerns, and conducting daily safety briefings and toolbox talks. Pascuito visited the site once or twice a week to review progress with the foremen. KJE controlled the means and methods of its employees' work, coordinated with MJM when necessary, and maintained records of daily work, including progress reports, sign-in sheets, and photos. Pascuito was not present at the site on the date of the plaintiff's accident and was informed of the incident by his foremen. He understood that the injured worker was a KJE laborer and that MJM was the general contractor overseeing the project.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact from the case (*see Aaron Manor Rehab. & Nursing Ctr., LLC v Zucker*, 42 NY3d 46, 57 [2024], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing by producing contrary evidence in admissible form, sufficient to require a trial of material factual issues (*see Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *see also DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party (*see SSBS Realty Corp. v Public Service Mut. Ins.*, 253 AD2d

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<sup>2</sup> KJE is no longer operating.

583, 585 [1st Dept 1998]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat a motion for summary judgment (*Siegel v City of New York*, 86 AD3d 452, 455 [1st Dept 2011]). Furthermore, since summary judgment is a drastic remedy, it should never be granted when there is any doubt as to the existence of a triable issue of fact (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

Labor Law § 240(1) imposes on owners, general contractors and their agents a nondelegable duty to provide safety devices to protect against elevation-related hazards on construction sites, and they will be absolutely liable for any violation that results in injury regardless of whether they supervised or controlled the work (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287–288, [2003]). Where use of such a safety device would defeat or be contrary to the purpose of the work, however, no liability will attach for the failure to provide such a device (*see Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139–140, [2011]).

Labor Law § 240(1) protects workers when gravity acts on materials they hoist or on a load they must secure to safely perform their work (*see Garcia v DPA Wallace Ave. I, LLC*, 101 AD3d 415, 416 [1st Dept., 2012] citing to *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 268–269, [2001]). Not every worker who falls at a construction site, and not any object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1) (*see Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). Causation must also be established. In *Duda v Rouse Constr. Corp.*, 32 NY2d 405, 410 (1973), the court held that the “plaintiff was obligated to show that the violation of section 240(1) was a contributing cause of his fall.”

Even when a worker is not “recalcitrant,” the court has held that there can be no liability under section 240(1) when there is no violation and the worker’s actions are the “sole proximate cause” of the accident (*see Blake v Neighborhood Housing Svc of New York City*, 1 NY3d 280, 290 [2003]). In *Weininger v Hagedorn & Co.*, 91 NY2d 958, 960 (1998), the court held that the “Supreme Court erred ... in directing a verdict in favor of plaintiff, at the close of his own case, on the issue of proximate cause” where “a reasonable jury could have concluded that plaintiff’s actions were the sole proximate cause of his injuries, and consequently that liability under [section] 240(1) did not attach.” “The controlling question, is not whether plaintiff was “recalcitrant”, but whether a jury could have found that his own conduct, rather than any violation of Labor Law § 240(1), was the sole proximate cause of his accident” (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]). A jury could find that plaintiff had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured (*id.*). This principle aligns with the Court of Appeals in *Blake* 1 NY3d 280 at 290, that held that if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation (*see Blake* 1 NY3d 280 at 291).

Here, plaintiffs contend that defendants’ failure to provide adequate safety devices, including a secured scaffold or harness, directly caused plaintiff’s injuries. According to plaintiffs, the movement of the unsecured plank initiated the chain of events leading to the fall, establishing proximate cause under Labor Law § 240(1). They note that comparative negligence

is not a defense to claims under Labor Law § 240(1). They argue that the “recalcitrant worker” defense fails because no adequate safety devices were provided, and plaintiff was not instructed to use alternatives.

Defendants in opposition contend that plaintiff’s decision to use an unsecured OSHA plank despite the availability of proper safety devices, was the sole proximate cause of his accident. Defendants note that the OSHA plank did not break or collapse under plaintiff. Rather, the unsecured plank only shifted after plaintiff struck a decorative rafter with a hammer. According to defendants, plaintiff’s KJE supervisor, did not instruct him to stand on an unsecured plank when he told him to remove the third-floor coverings. Defendants argue that plaintiffs have not established liability under Labor Law § 240(1) because here, adequate safety devices were available, but plaintiff did not use them. They contend that plaintiff’s decision to use the unsecured plank despite his alleged knowledge of the proper safety procedures and the availability of scaffolds and harnesses raises a triable issue of fact as to whether his conduct was the sole proximate cause of the accident.

In reply, plaintiffs assert that defendants did not demonstrate that adequate safety devices were available, that plaintiff knew of and was expected to use them, that plaintiff chose not to use them, or that their use would have prevented the accident. According to plaintiffs, when plaintiff’s supervisor instructed him to place the OSHA plank on the joists and use it for his work, he did not direct him to secure the plank. Plaintiffs argue that even if plaintiff’s failure to secure the plank constitutes comparative negligence, that is not a defense under Labor Law § 240(1). Plaintiffs note that the statutory violation arises from the failure to provide proper safety devices, and any alleged comparative negligence by plaintiff does not absolve the defendants. Plaintiffs further contend that defendants have produced no evidence that plaintiff was instructed to use a ladder, baker scaffold, or masonry scaffold for this specific task. Similarly, plaintiffs argue that while harnesses may have been present elsewhere on the jobsite, there is no evidence they were available or required for this specific task. Finally, plaintiffs maintain that any alleged failure to use a harness, constitutes contributory negligence, which does not bar recovery under Labor Law § 240(1).

The record before the court raises issues of fact that preclude summary judgment on plaintiffs’ Labor Law § 240(1) claim. As discussed above, the evidence is conflicting as to whether the accident resulted from the statutory violation or from plaintiff’s own conduct. In particular, there are factual disputes concerning whether adequate safety devices were available and whether plaintiff’s decision to stand on an unsecured plank was contrary to the established safety practices. The court also finds that issues of fact exist as to causation. The rafter that fell during the demolition work was not a load that required securing for the purpose of safely performing the work. Moreover, the evidence is not clear and does not support a single conclusion as to whether any alleged statutory violation was the sole proximate cause of the accident or whether plaintiff’s own actions were the sole proximate cause (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290–291 [2003]). Inasmuch as triable issues of fact exist, summary judgment is not appropriate (*see Tronlone v Lac d’Amiante Du Quebec*, 99 NY2d 647, 647 [2003]). For the forgoing reasons, it hereby

**ORDERED** that plaintiffs' motion for summary judgment pursuant to CPLR 3212 on the issue of liability under Labor Law § 240(1) is denied; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order, with notice of entry, upon all parties.

This constitutes the decision and order of the court.

January 9, 2026

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>
					REFERENCE