Lema v 329 LLC
2026 NY Slip Op 30219(U)
January 15, 2026
Supreme Court, Kings County
Docket Number: Index No. 514912/2020
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 15th day of January 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

SEGUNDO EDGAR CHAUCA LEMA,

Plaintiff(s),

-against-

THE 329 LLC, PARKVIEW BUILDERS LLC and J.A. REMODELING SERVICES LLC,

Defendant(s).

THE 329 LLC and PARKVIEW BUILDERS LLC,

Third-Party Plaintiffs,

-against-

HEVY CONTRACTORS LLC.,

Third-Party Defendant.

THE 329 LLC and PARKVIEW BUILDERS LLC,

Second Third-Party Plaintiffs,

-against-

J.A. REMODELING SERVICES LLC.,

Second Third-Party Defendant.

DECISION & ORDER
Index No.: 514912/2020

Return Date: 10/30/2025

Motion Seq.: 005 & 006

Recitation of the following papers as required by CPLR 2219(a):

		NYSCEF Papers Numbered
005	Notice of Motion and Supporting Documents	75-85
	Affirmation in Opposition	106
006	Notice of Cross-Motion and Supporting Documents	86-103
	Affirmation in Opposition	107
	Reply Affirmation and Supporting Documents	108-109

Upon the foregoing papers, the decision and order of the Court is as follows:

Introduction

This is an action for personal injuries sustained by plaintiff while working on a construction project on the property owned by defendant The 329 LLC (329). Parkview Builders LLC (Parkview) was hired as the general contractor who hired JA Remodeling Services LLC (JA Remodeling). JA Remodeling sub-contracted with Hevy Contractors LLC (Hevy), plaintiff's employer, to erect the steel framing and install the sheetrock.

Plaintiff has now moved this Court for summary judgment on the Labor Law § 240 [1] cause of action against 329, Parkview and JA Remodeling (MS 005). Defendants 329 and Parkview have moved for summary judgment dismissing plaintiff's complaint in its entirety (MS 006).

Plaintiff was allegedly struck by a 12-foot piece of a fully installed metal drywall ceiling framing system that fell from the ceiling. He contends that the metal framing was not an integral part of his work because he was only installing sheetrock. Therefore, based on defendant's failure to provide overhead protection or some other type of safety device, summary judgment under Labor Law § 240 [1] is warranted. Only 329 and Parkview have opposed plaintiff's motion arguing that plaintiff made inconsistent statements concerning how this unwitnessed accident occurred, and which body parts were involved. Therefore, they contend that it is a

question of fact for the jury whether he was struck by this piece of metal framing. Defendants also oppose the motion based on the arguments in their separate motion for summary judgment. Plaintiff's motion is denied.

In their motion for summary judgment, 329 and Parkview have moved to dismiss plaintiff's complaint in its entirety. They contend that under Labor Law § 200 and even accepting plaintiff's version of the accident, his injury occurred due to the means and methods of the work being performed. They argue that neither supervised nor controlled the work, thus this cause of action must be dismissed. Further, they suggest that there is no evidence in the record that either movant had notice of this alleged defective ceiling framing. As to Labor Law § 240 [1], the steel framing fell without warning and was not in the process of being hoisted, secured or lifted as the installation of the framing system was already completed. Therefore, they contend that this was an ordinary accident on the worksite as opposed to a gravity related accident. Additionally, and for these same reasons, the Labor Law § 241 [6] cause of action premised upon 22 NYCRR § 23-1.7 [a] must also be dismissed because the location of plaintiff's accident was not normally exposed to falling objects. Defendants' motion is denied as to the common law and Labor Law § 200 causes of action and granted as to the Labor Law § 240 [1] and § 241 [6] claims.

Facts

At the time of his accident, plaintiff was working on the 12th floor of the project. This was an open room without walls. It is undisputed that the metal framing on the walls and ceiling was already completed. Plaintiff was installing sheetrock with the tools and materials supplied by his employer, Hevy. After plaintiff returned from lunch, a piece of metal from the ceiling framing loosened, fell and struck him. He was taken from the project to the hospital.

Judah Klein, a partner in 329 (the property owner) and an owner of Parkview (the general contractor), testified that he would be on the site one to three days a week. The actual work was performed by the subcontractors. Neither plaintiff nor his employer reported the accident to anyone on the project.

Legal Analysis

When deciding a summary judgment motion, the Court's role is solely to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.,* 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court views the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc*., 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

a) Labor Law § 240 [1]

It is well settled that Labor Law § 240 [1] "imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks" who engage in activities covered by the statute and who "suffered an injury as a direct consequence of a failure to provide adequate protection" against such risks (*Soto v J. Crew, Inc.,* 21 NY3d 562, 566 [2013] [internal citations omitted]).

However, Labor Law § 240 [1] does not "encompass all perils that may be connected in some tangential way with the effects of gravity. Rather liability [is] contingent upon the

existence of a hazard contemplated in section 240 [1] and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein. Moreover, section 240 [1] is not applicable unless the plaintiff's injuries result from the elevation-related risk and the inadequacy of the safety device." (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015] [internal citations omitted]). Labor Law § 240 [1] does apply to the usual and ordinary dangers that may exist at a construction site (See *Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 99).

Therefore, to prevail on a motion for summary judgment under this section of the Labor Law, the plaintiff must demonstrate at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking.

Here, it is undisputed that the installation of the steel ceiling framing was complete. Labor Law § 240 (1) does not automatically apply simply because an object fell and injured a worker. A loose ceiling beam is an ordinary risk that may exist at a construction site (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 99). At the time of plaintiff's accident, the beams were not in the process of being hoisted or secured. Labor Law § 240 (1) does not automatically apply simply because an object fell and injured a worker; the absence or inadequacy of a safety device of the kind enumerated in the statute" (*Romero v 2200 Northern Steel, LLC,* 148 AD3d 1066, 1067 [2d Dept 2017] [internal citations and quotations omitted]) is inapplicable. Therefore, plaintiff's motion for summary on Labor Law § 240 [1] is denied, and defendants' motion is granted, and this cause of action is dismissed as to as to defendant 329 and Parkview (*Romero v 2200 Northern Steel, LLC,* 148 AD3d 1067). It is also dismissed as to JA Remodeling per CPLR 3212 [b].

b) Labor Law § 241 [6]

"Labor Law § 241 [6] imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. A violation of an explicit and concrete provision of the Industrial Code by a participant in a construction project constitutes some evidence of negligence, for which the owner or general contractor may be held vicariously liable. To establish liability Labor Law § 241 [6], a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case" (*Bravo v 609 W. 56th Street Property, LLC,* 234 AD3d 735, 735-736 [2d Dept. 2025] [internal quotations and citations omitted]). Therefore, summary judgment pursuant to Labor Law § 241 [6] is a fact specific analysis because the statute is not self-executing since the predicate for liability is within varying rules, regulations or industry standards to determine defendants' negligence (*see Zimmer v Chemung County Performing Arts,* 65 NY2d 513, 523 [1985] [internal citations omitted]; and *Buckley v Columbia Grammar and Preparatory School,* 44 AD3d 263, 271 [1st Dept. 2007]).

Plaintiff's motion for summary judgment is denied and defendants' motion for summary judgment dismissing the Labor Law § 241 [6] cause of action is granted. This cause of action is dismissed as to defendant 329 and Parkview, and as to JA Remodeling per CPLR 3212 [b].

To prevail on summary judgment, plaintiff must establish that he "was engaged in a type of work which falls within the scope of Labor Law §241 (6), specifically, whether the injury occurred in an area in which construction, excavation or demolition work is being performed" (*Vernieri v Empire Realty Co.,* 219 AD2d 593, 595 [2d Dept. 1995] [internal quotations omitted]). The standard for determining whether plaintiff's work falls within the ambit of Labor Law § 241 (6) is predicated on 23 NYCRR § 1.7 [a] [1] & [2]. Once the predicate for liability is

established, the plaintiff "must [then] demonstrate that [his] injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case" (*Bravo v 609 W. 56th Street Property, LLC,* 234 AD3d 735-736). This section of the Industrial Code reads as follows:

> **23 NYCRR § 1-7 (a) Overhead hazards.**
> **(1)** *Every place where persons are required to work or pass that is normally exposed to falling material or objects* shall be provided with suitable overhead protection…
>
> **(2)** *Where persons are lawfully frequenting areas exposed to falling material or objects* but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas. (italics added).

Plaintiff's Labor Law § 241 [6] cause of action also fails because once the steel framing was complete, the 12th floor was no longer an area where he would be normally exposed to falling objects. Instead, plaintiff's accident occurred when an object unexpectedly fell on him. Under these facts, Labor Law § 241 [6] and the 23 NYCRR § 1.7 [a] [1] & [2] do not apply. (*Buckley v Columbia Gramar & Preparatory,* 44 AD3d 263, 271 [1st Dept 2007] and *Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 737 [2nd Dept 2023]).

c) <u>Labor Law § 200 and Common Law Negligence</u>

Labor Law § 200 only applies to owners, general contractors, or their agents and is a codification of their common-law duty to maintain a safe workplace (*Delaluz v Walsh,* 228 AD3d 619, 621 [2d Dept. 2024]). "An implicit precondition to [the] duty to provide a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition" *(id.* [internal citations and quotations omitted]). "A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has the "ability to control the activity which brought

about the injury" (*Guclu v 900 Eighth Avenue Condominium, LLC,* 81 AD3d 592, 593 [2d Dept. 2011]).

Similar to common law, an owner and general contractor may also be held liable "[W]here a plaintiff's injuries stem not from the manner in which the work was being performed, but, rather, from a dangerous condition on the premises, [an owner and/or general contractor] may be liable under Labor Law § 200 if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition" (*Banscher v Actus Lend Lease, LLC,* 132 AD3d 707, 709 [2d Dept. 2015]).

Plaintiff failed to establish that Mr. Klein or his agents controlled the means and methods of Hevy's installation of the steel ceiling framing. Further, there is no evidence in the record that Mr. Klein or his agents had actual notice or constructive notice that a ceiling beam was loose. Constructive notice may be established by evidence that "someone within the chain of the construction project was negligent in not exercising reasonable care, or acting within a reasonable time, to prevent or remediate the hazard," and that plaintiff's injury proximately resulted from such negligence (*Dyszkiewicz v City of New York,* 218 AD3d 546, 550 [2d Dept 2023]). The fact that the beam fell may establish negligence, but it does not establish notice to the owner and general contractor of its likelihood to fall. Accordingly, plaintiff's Labor Law § 200 and negligence causes of action are dismissed only as to the movants, 329 and Parkview.

The Court notes that it is not making any findings of fact or conclusions of law as to the notice of the alleged condition and the negligence of either co-defendant JA REMODELING SERVICES LLC, or third-party defendant HEVY CONTRACTORS, LLC (plaintiff's employer). Additionally, the Court is not making a finding of fact as to which of plaintiff's body parts were injured in this accident.

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on liability is DENIED (MS 005), and it is further

ORDERED that the motion for summary judgment dismissing the complaint in its entirety by defendants/third-party plaintiffs/second third-party plaintiffs THE 329 LLC and PARKVIEW BUILDERS LLC is GRANTED (MS 006), and it is further

ORDERED that plaintiff's Common Law Negligence, Labor Law §200, §240 [1] and § 241 [6] causes of action are dismissed as against ONLY defendants/third-party plaintiffs/second third-party plaintiffs THE 329 LLC and PARKVIEW BUILDERS LLC, and it is further

ORDERED that plaintiff's Labor Law § 240 [1] and § 241 [6] causes of action are dismissed as to defendant, JA REMODELING SERVICES, INC. per CPLR 3212 [b].

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 1/15/2026

For Clerks use only:
MG _____
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