

**Salmeron v DDG 532 W. 20th St., LLC**

2026 NY Slip Op 30282(U)

January 22, 2026

Supreme Court, New York County

Docket Number: Index No. 160022/2019

Judge: David B. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

-----X

JOSE LUIS SALMERON,  
  
Plaintiff,

- v -

DDG 532 WEST 20TH STREET, LLC, DDG  
DEVELOPMENT LLC, SHAWMUT WOODWORKING &  
SUPPLY, INC, D/B/A SHAWMUT DESIGN AND  
CONSTRUCTION,

Defendant.

-----X

DDG 532 WEST 20TH STREET, LLC, DDG DEVELOPMENT  
LLC

Plaintiff,

-against-

FITZCON CONSTRUCTION/REN CORPORATION

Defendant.

-----X

DDG 532 WEST 20TH STREET, LLC, DDG DEVELOPMENT  
LLC, SHAWMUT WOODWORKING & SUPPLY, INC, D/B/A  
SHAWMUT DESIGN AND CONSTRUCTION

Plaintiff,

-against-

ALUMA SYSTEMS CONCRETE CONSTRUCTION LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 180, 181, 182, 183,  
184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204,  
205, 206, 207, 208, 209, 224, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 253

were read on this motion to/for JUDGMENT - SUMMARY.

**INDEX NO.** 160022/2019  
**MOTION DATE** 03/11/2025,  
03/12/2025  
**MOTION SEQ. NO.** 006 007

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 596014/2021

Second Third-Party  
Index No. 595985/2022

The following e-filed documents, listed by NYSCEF document number (Motion 007) 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 225, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252

were read on this motion to/for

JUDGMENT - SUMMARY

Motion Sequence Number 006 and 007 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff construction worker on October 4, 2019, when, while working at a construction site located at 532 West 20th Street, New York, New York (the Premises), he fell from his elevated work area.

In motion sequence number 006, second third-party defendant Aluma Systems Concrete Construction, LLC (Aluma) moves, pursuant to CPLR 3212, for summary judgment dismissing the second third-party complaint as against it, and for conditional summary judgment in its favor on its counterclaims for contribution and common-law indemnification as against defendants/third-party plaintiffs/second third-party plaintiffs DDG 532 West 20th Street, LLC (DDG 532), DDG Development LLC (DDG Dev) (together the DDG defendants), Shawmut Woodworking & Supply, Inc. d/b/a Shawmut Design and Construction (Shawmut) (collectively, defendants).

In motion sequence number 007, plaintiff Jose Luis Salmeron (plaintiff) moves for partial summary judgment in his favor as to liability on his Labor Law § 240 (1) claims against defendants.

### **BACKGROUND**

At the time of the accident, DDG 532 owned the Premises, and hired Shawmut to provide construction management services for a project at the Premises that entailed the construction of a new apartment building (the Project). DDG 532 also hired DDG Dev as a general contractor for the Project, and DDG Dev hired third-party defendant Fitzcon Construction/Ren Corporation

(Fitzcon) to erect the Premises' superstructure.<sup>1</sup> Fitzcon in turn hired Aluma to provide concrete formwork for the superstructure. Plaintiff was employed by Fitzcon.

***Plaintiff's Deposition Testimony (NYSCEF Doc. No. 217, 218, 219)***

Plaintiff testified that on the day of the accident, he was a carpenter employed by Fitzcon (plaintiff's tr at 15). Plaintiff provided his own personal equipment, including a harness and "yo-yo" (the harness's lanyard/lifeline device) (*id.* at 24). His supervisors were Fitzcon employees named "Liam" and "Carlos" (*id.* at 19).

Plaintiff's work included constructing concrete walls (*id.* at 35). His coworker, "Ivan," worked with him every day (*id.* at 30). On the day of the accident, plaintiff and Ivan were assigned to finish the walls around an elevator shaft, and to pour cement (*id.* at 37). To do this work, plaintiff would "climb up on the forms that we were going to fill in . . . and then [he] would attach the yo-yo and the chain . . . to be able to have [his] hands free to be able to work" (*id.* at 39). The safety line attachment point was a part of the formwork (*id.* at 43 ["They have little irons in the forms that you can connect your equipment"]). Ivan would then pass plaintiff materials for him to install (*id.* at 56).

At the time of the accident, plaintiff was alone on the interior side of the under-construction elevator shaft. Ivan was on the exterior side of the elevator shaft, out of view (*id.* at 45). Plaintiff climbed approximately 10-feet above the temporary plywood flooring in the elevator shaft and clipped onto the formwork (*id.* at 46-47). Plaintiff then began working when the part of the formwork containing the safety clip broke off, causing plaintiff to fall (*id.* at 49; 51 ["[t]he metal where [he] was hooked" broke off]).

---

<sup>1</sup> Pursuant to decision and order dated February 1, 2023, defendants' default judgment motion was granted on default in favor of defendants and against Fitzcon on the third-party complaint for contractual and common-law indemnification (NYSCEF Doc. No. 101).

Plaintiff further explained that at the time of the accident, he was 10 feet above the platform, “standing on the metal on the forms” while he was “clipped to a metal that was in one of the forms and that’s what broke” (plaintiff’s second continued tr at 208). Plaintiff was standing with his “hands free” in order to perform his work when his tie-off point “ripped” from the form (*id.* at 210). He then fell from the formwork to the plywood platform below (*id.* at 222). Plaintiff did not see the metal break off (*id.* at 214 and 252); he “saw it when it was already on the floor” (*id.* at 214).

At his deposition, plaintiff was shown a photograph of a harness and yo-yo, both of which had duct tape on them. He confirmed that the equipment in the photograph was his (plaintiff’s continued tr at 95).

After the accident, plaintiff was able to stand up and, with Ivan’s assistance, remove his harness (plaintiff’s tr at 54). Ivan did not see plaintiff fall. Plaintiff spoke with Carlos and told him what happened, including that the tie-off point broke free (plaintiff’s second continuing tr at 258). He then walked to the safety supervisor’s office to report the accident (plaintiff’s tr at 61 and 74). Plaintiff testified that he became very dizzy while in the office (*id.* at 71). Plaintiff called an ambulance for himself (plaintiff’s second continued tr at 232). He waited outside for the ambulance to arrive (*id.* at 272).

***Deposition Transcript of Connor O’Byrne (DDG 532’s Owner’s Representative) (NYSCEF Doc. No. 220)***

Connor O’Byrne testified that on the day of the accident he was DDG 532’s owner’s representative for the Project. His duties included “monitoring the overall progress of the project . . . visiting the site weekly . . . reviewing payment applications, reviewing insurance and generally just monitoring the status of the project” (O’Byrne tr at 15).

According to O'Byrne, if an accident occurred, typically Shawmut would notify him by telephone and would also prepare an accident report. O'Byrne did not witness the accident (*id.* at 65). He recalled receiving a call about the accident, but he did not recall what date he received that call (*id.* at 63). The DDG defendants did not investigate the accident (*id.* at 67).

O'Byrne testified that he reviewed a video of "someone on 20th street as an ambulance arrived" but he did not know who the person in the video was (*id.* at 19). He also reviewed photographs that he described as depicting "photos of someone recreating an incident" (*id.* at 19). He further confirmed that the photographs were "a recreation" of the accident and that Shawmut's report referenced one of the recreation photographs (*id.* at 71). He did not know what the recreation entailed (*id.* at 71).

O'Byrne recalled that the Shawmut investigators were confused about the cause of the accident (*id.* at 72). O'Byrne did not have any independent knowledge of the accident or its cause (*id.* at 73).

***Deposition of Nicholas Coffelt (Aluma's Witness) (NYSCEF Doc. No. 241)***

Nicholas Coffelt testified that on the day of the accident he was the director of engineering for non-party BrandSafeway (Brand) (Coffelt tr at 9).<sup>2</sup> Aluma is a subsidiary company of Brand (*id.* at 9). His duties included overseeing Brand's North American forming and shoring divisions, which included Aluma.

Coffelt testified that Aluma provided the formwork for the Project (*id.* at 12), but did not manufacture it (*id.* at 42). Specifically, for the Project, it provided a "lite formwork system" (*id.*

---

<sup>2</sup> Coffelt's deposition testimony names Brand as "Branch Safeway" however, affidavits make clear that the company is properly named BrandSafeway (Ewing aff, ¶ 1; NYSCEF Doc. No. 182). For consistency, the court will use the defined term "Brand" throughout the decision.

at 15). He was unaware of any damaged or defective conditions in the material provided for the Project (*id.* at 26).

At the deposition, Coffelt was shown a photograph, and he testified that it depicted an “installation of [Aluma’s] lite system” (*id.* at 27). He identified one component of the lite system as “a climbing hook or a tie rod” designed to attach fall restraint systems (*id.* at 28). The forms are manufactured with the hooks included (*id.* at 28), and are permanent fixtures of the forms (*id.* at 31).

Coffelt testified that subsequent to the accident, Aluma was presented with a repair request. He did not know what was broken, how it broke, or what repairs were needed (*id.* at 20). He further testified that if there was a damaged piece of formwork, Aluma would be notified (*id.* at 32). When a client would return the forms to Aluma, Aluma would “verify that the formwork is fully operational” (*id.* at 41).

***Deposition Testimony of Frank Poma (Shawmut’s Assistant Superintendent)  
(NYSCEF Doc. No. 205)***

Frank Poma testified that on the day of the accident, he was Shawmut’s assistant superintendent for the Project (Poma tr at 8). Shawmut was the construction manager, “brought in on a consulting capacity” to the DDG defendants (*id.* at 13). His duties included general oversight of the Project, quality control and general safety (*id.* at 8).

Poma did not witness the accident and had no personal knowledge about it (*id.* at 21). He was familiar with a Shawmut accident report, from which he learned that plaintiff was working on formwork when he fell (*id.* at 21). Poma did not prepare a report (*id.* at 22).

Poma also testified that Fitzcon hired Aluma to provide formwork to facilitate Fitzcon’s concrete work (*id.* at 32). Aluma delivered the formwork to the Project and Poma “performed a

cursory review” of the formwork to make sure it was either new or in good condition (*id.* at 33).

If he saw any problems with the formwork, he would have notified Fitzcon (*id.* at 34).

Poma testified that he was unaware of any issues with the tie-off points on Aluma’s formwork (*id.* at 37). He further testified that Fitzcon never advised him of any problems with the forms (*id.* at 48).

Poma testified that 30 minutes after he learned of the accident, he went to the accident location, “looked at the general work area” and did not see “any hazards” (*id.* at 52). He was also shown several photographs, and testified that they depicted the accident location (*id.* at 70). He was not present when the photographs were taken, nor did he know when they were taken. Poma was not informed that any tie-off point broke (*id.* at 77).

At the deposition, Poma was shown a video, and testified that it depicted several Fitzcon employees (*id.* at 90-91). He did not identify plaintiff in the video.

### DISCUSSION

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must “assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions” (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). If there is any doubt as to the existence of a

triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

### ***Preliminary Procedural Issues***

#### ***Timeliness of Plaintiff's Motion (Motion Sequence Number 007)***

Defendants argue that the court should deny plaintiff's motion for summary judgment as untimely, as it was filed more than 120 days after the Note of Issue. Defendants also note that plaintiff offered no good cause for the delay (*see e.g. Brill v City of New York*, 2 NY3d 648 [2004]). A review of the record establishes that plaintiff's motion was uploaded to NYSCEF on the 121st day after the note of issue was filed – i.e. one day late. More specifically, it was filed at 12:03 a.m., three minutes past the deadline (*see* e-filing conformation notice; NYSCEF Doc. No. 252).

In the reply affirmation, plaintiff's counsel sets forth difficulties with uploading the subject motion to NYSCEF which caused the file to finish uploading three minutes late. While law office failure is insufficient to establish good cause for filing a late summary judgment motion (*see e.g. Quinones v Joan and Sanford I. Weill Med. Coll. & Graduate Sch. of Med. Sciences of Cornell Univ.*, 114 AD3d 472, 473-474 [1st Dept 2014]), plaintiff's counsel's explanation – that an issue arose with uploading files to NYSCEF – sets forth more than simple law office failure and establishes good cause for the de minimis delay.

Accordingly, the court will excuse the three-minute delay and consider plaintiff's motion on the merits.

#### ***The Labor Law § 240(1) Claim (Motion Sequence Number 007)***

Plaintiff moves for summary judgment in his favor on his Labor Law § 240(1) claim as against defendants.

Labor Law § 240(1), known as the Scaffold Law, requires “[a]ll contractors and owners and their agents” to “furnish or erect, or cause to be furnished or erected” scaffolds, hoists, ladders and “other devices which shall be so constructed, placed and operated as to give proper protection to a person” employed in construction work (Labor Law § 240[1]). :

This statute “imposes a nondelegable duty on owners and contractors to provide devices which shall be so constructed, placed and operated as to give proper protection to those individuals performing the work” (*Quiroz v Memorial Hosp. for Cancer & Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022] [internal quotation marks and citations omitted]). It “was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

The statute is violated when the plaintiff is exposed to an elevation-related risk while engaged in an activity covered by the statute and the defendant fails to provide a safety device adequate to protect the plaintiff against the elevation-related risk entailed in the activity or provides an inadequate one.

(*Jones v 414 Equities LLC*, 57 AD3d 65, 69 [1st Dept 2008]; *O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 33 [2017] [section 240 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”).

That said, not all workers injured at a construction site fall within the scope of protections of section 240(1), and “a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace” (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]; *Buckley v Columbia*

*Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 2007] [section 240(1) “does not cover the type of ordinary and usual peril to which a worker is commonly exposed at a construction site”). Instead, 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” (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Therefore, to prevail on a Labor Law § 240(1) claim, a plaintiff must establish that the statute was violated, and that this violation was a proximate cause of the plaintiff’s injuries (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]).

Initially, defendants do not challenge that they are proper defendants pursuant to Labor Law § 240(1).

Here, plaintiff’s accident occurred while he was working approximately 10 feet above the floor, while attached to a harness and safety line, and he fell when his tie-off point broke, causing him to fall to the floor below. Accordingly, as plaintiff’s testimony establishes that he was required to work from a height, fell from a height, and that a safety device – his safety line’s tie-off point – failed to sufficiently protect him while he was working in an elevated position, plaintiff has set forth, *prima facie*, evidence supporting his entitlement to summary judgment in his favor on his Labor Law § 240(1) claim (*O’Brien*, 29 NY3d at 33).

In opposition, defendants fail to raise a material question of fact. The fact that plaintiff was the sole witness to the accident is insufficient to raise a triable issue (*Rivera v 712 Fifth Ave. Owner LP*, 229 AD3d 401, 402 [1st Dept 2024] [“that plaintiff was the sole witness to the accident does not preclude a finding of summary judgment in his favor]).

Defendants also argue that questions of fact exist as to how the accident happened (*Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442 [1st Dept 2012] [“where credible evidence reveals differing versions of the accident, one under which defendants would be liable and another under which they would not, questions of fact exist making summary judgment inappropriate”]). However, defendants offer no evidence of a differing version of the accident that would not implicate a Labor Law violation.

While defendants are correct that “[w]here the injured worker’s version of the accident is inconsistent with either his own previous account or that of another witness, a triable question of fact may be presented” as to how the accident occurred (*Rodriguez v New York City Hous. Auth.*, 194 AD2d 460, 462 [1st Dept 1993]), they fail to set forth testimony or evidence that is inconsistent with plaintiff’s version of the accident.

To that end, defendants’ reliance on a printout of a Department of Buildings’ (DOB) complaint resolution form stating that the accident was caused by “worker error” (NYSCEF Doc. No. 243) is insufficient to raise a question of fact. The DOB form is unverified, how the author reached the conclusion of “worker error” is unstated, and no one substantiates the report’s accuracy. Similarly, the Shawmut incident report (NYSCEF Doc. No. 244), which states that “[i]t is not believed that the worker ‘fell’ to the platform” is based on speculation, as it relies on statements from individuals who did not witness the accident and who were not deposed as to how they came to that conclusion. Accordingly, these documents are insufficient to raise a bona fide issue as to how the accident occurred (*see e.g. Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]).

Similarly, defendants’ reliance on a video that purportedly shows plaintiff leaving the worksite under his own power on the day of the accident does not raise an issue of fact as to how

the accident occurred and, moreover, the video is consistent with plaintiff's testimony that he left the work site on his own to wait for the ambulance.

Next, defendants' contention that plaintiff's medical records raise a question of fact is unavailing. Generally, entries made in medical records that are not "germane to the treatment or diagnosis of plaintiff's injuries" are not admissible and do not raise questions of fact as to how the accident occurred (*Benavides v City of New York*; 115 AD3d 518, 519 [1st Dept 2014]). In any event, a review of these documents (NYSCEF Doc. No. 246 [ambulance report] and 247 [triage notes]) establishes that, consistent with his testimony, plaintiff reported to both the ambulance crew and medical staff that he fell from a height (*id.*). Any discrepancy relating to the height of the fall is immaterial, as a fall from any heights is governed by the Labor Law (*see Sanchez v 1 Burgess Rd., LLC*, 195 AD3d 531, 531 [1st Dept 2021] ["Whether he fell about 6, 8, or 20 feet . . . is not dispositive, since the statute was violated under any version of the accident"]; *see e.g. Palumbo v Citigroup Technology, Inc.*, 240 AD3d 455, 456 [1st Dept 2025] [there "is no bright-line minimum height differential that determines whether an elevation hazard exists"]).

Given the foregoing, "in the absence of evidence controverting [plaintiff's] account of the accident or calling into question his credibility" defendants have failed to raise a question of fact sufficient to overcome plaintiff's prima facie entitlement to summary judgment (*Cafisi v L&L Holding Co., LLC*, 219 AD3d 1215, 1217 [1st Dept 2023]).

Thus, plaintiff is entitled to summary judgment in his favor on his Labor Law § 240(1) claim against defendants.

***Defendants' Second Third-Party Claim for Common-Law Indemnification and Contribution Against Aluma (Motion Sequence Number 006).***

Aluma moves for summary dismissal of defendants' second third-party common-law indemnification and contribution claims against it.

“To establish a claim for common-law indemnification, ‘the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident’” (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021], quoting *Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]).

Contribution “is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person” (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003] [internal quotation marks and citations omitted]).

*Additional facts relevant to this issue*

*The affidavit of Patrick Ewing (NYSCEF Doc. No. 182)*

Patrick Ewing states that he is senior counsel for Brand, with personal knowledge of the Fitzcon/Aluma contract for the Project (the Contract) (Ewing Aff, ¶ 1-2). He annexes a copy of the Contract (Ewing Aff, exhibit 1 [contained in NYSCED Doc. No. 182]), and states that the Contract is a vendor agreement for formwork and only required Aluma to supply and deliver formwork (*id.*, ¶ 8). Aluma had no workers on site at the Project (*id.*, ¶¶ 8 and 9).

According to Ewing, Aluma was not responsible to maintain the leased formwork while it was on-site (*id.*, ¶ 14).

A review of the Contract establishes that it is a vendor contract, which contains a terms and conditions page that includes a “Maintenance of Equipment” provision that requires Fitzcon to maintain the leased formwork (Contract, terms and conditions § 22).

Aluma argues that there is no evidence that it had any duty to plaintiff, as it, as the formwork vendor, was limited in its duties by its contractual arrangement with Fitzcon. It further notes that it did not have a physical presence at the Premises and relied on Fitzcon to inform it of any defects or necessary repairs.

Defendants argue that a question of fact exists as to whether Aluma was negligent under a products liability theory for a defectively designed and manufactured product. However, defendants did not allege products liability (either defective design or defective manufacturing), or any other claim beyond common-law indemnification on a general negligence theory. In any event, the record does not support a products liability claim. For example, there is no testimony or evidence establishing that the formwork was defective when it left Aluma’s control or that it was unreasonably dangerous (*see e.g. Fasolas v Bobcat of New York, Inc.*, 33 NY3d 421, 429 [2019] [“[A] defectively designed product is one which, at the time it leaves the seller’s hands, is in a condition not reasonably contemplated by the ultimate user and is unreasonably dangerous for its intended use”]).<sup>3</sup> Accordingly, this argument is unpersuasive.

Next, defendants argue that questions of fact remain as to whether Aluma had a duty of care towards plaintiff. Specifically, relying solely on *Espinal v Melville Snow Contractors, Inc.*, (98 NY2d 136, 140 [2002])<sup>4</sup>, they argue that Aluma, as the vendor of the formwork, had a third-

---

<sup>3</sup> Regarding defective manufacturing, the court notes that Aluma is not the designer or manufacturer of the formwork (*see* Coffelt tr at 42). Nor is there testimony or evidence that established that Aluma, as a vendor, was aware of any defects.

<sup>4</sup> Where a party enters into a contract to render services, it has assumed a duty of care “(1) where the contracting party, in failing to exercise reasonable care in the performance of his duties,

party duty of care to plaintiff, even though Aluma's contract was with Fitzcon. However, there is no evidence in the record establishing that Aluma entirely displaced Fitzcon's duty to maintain the subject equipment while onsite or that plaintiff detrimentally relied on Aluma in any way.

Defendants' reliance on an Aluma invoice is also misplaced (NYSCEF Doc. No. 236) as, while it is titled a "repair invoice," it was for cleaning services, not repair work.

Given the foregoing, Aluma has established that it maintained no duty towards plaintiff, and thus, cannot be held liable in negligence for plaintiff's accident. Therefore, as defendants cannot prove that Aluma "was guilty of some negligence that contributed to the causation of the accident" (*Pena*, 194 AD3d at 578), defendants are not entitled to common-law indemnification against Aluma. For the same reasons, as Aluma is not culpable for the accident, it did not contribute to the accident, defendants are not entitled to contribution from Aluma. Therefore, the second third-party claims against Aluma are dismissed.

***Aluma's Counterclaims for Contribution and Common-Law Indemnification Against Defendants (Motion Sequence Number 006)***

Aluma moves for summary judgment in its favor on its second third-party counterclaims for common-law indemnification as against defendants. As all claims against Aluma have been dismissed, its contribution and common-law indemnification counterclaims are moot. In any event, Aluma did not establish entitlement to judgment in its favor as it failed to establish that defendants were negligent.

The parties' remaining arguments were considered and found unavailing.

---

launche[s] a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties; and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely" (*Espinal*, 98 NY2d at 140 [internal quotation marks and citations omitted]).

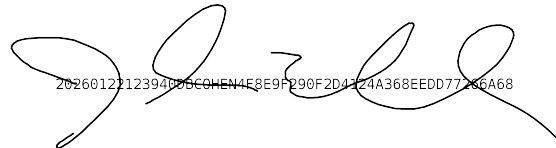
**CONCLUSION AND ORDER**

For the foregoing reasons, it is hereby

ORDERED that the motion of second third-party defendant Aluma Systems Concrete Construction, LLC, pursuant to CPLR 3212, for summary judgment (motion sequence number 006) is granted to the extent that the second third-party complaint is dismissed, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff's motion, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on his Labor Law § 240(1) claims against defendants defendants/third-party plaintiffs/second third-party plaintiffs DDG 532 West 20th Street, LLC, DDG Development LLC, and Shawmut Woodworking & Supply, Inc. d/b/a Shawmut Design and Construction is granted; and it is further

ORDERED that the parties are directed to appear for the previously-scheduled settlement conference on February 11, 2026 at 10 am, at 80 Centre Street, Room 106, New York, New York.



2026012212394006COHEN4E8E9F290F201424A368EEDD7786A68

**DAVID B. COHEN, J.S.C.**

**1/22/2026**

**DATE**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE