Bucur v Term Fulton Realty Corp.
2026 NY Slip Op 30308(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 150251/2020
Judge: Sabrina Kraus

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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COSTELLO BUCUR,

Plaintiff,

- v -

TERM FULTON REALTY CORP., 56 FULTON STREET LLC, BRAVO BUILDERS, LLC,

Defendants.

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INDEX NO. 150251/2020

MOTION DATE 10/07/2025, 10/07/2025, 10/07/2025

MOTION SEQ. NO. 002 003 004

DECISION + ORDER ON MOTION

TERM FULTON REALTY CORP., 56 FULTON STREET LLC

Plaintiffs,

-against-

CHOICE NEW YORK PROPERTY MANAGEMENT, LLC

Defendant.

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Third-Party
Index No. 595594/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 124, 127, 130, 133, 136, 140, 141, 146, 152

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 1, 23, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 128, 131, 134, 137, 139, 144, 147, 150, 151

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 1, 23, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 129, 132, 135, 138, 142, 143, 145, 148, 149

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

BACKGROUND

Plaintiff commenced this Labor Law action seeking damages for personal injuries he alleges were a result of his fall from a ladder while repairing a ceiling in a laundry room.

PENDING MOTIONS

On November 7, 2025, the parties made dispositive motions.

Plaintiff moved for partial summary judgment as to liability on his Labor Law 240(1) claim (mot. seq. 002); and

Term Fulton Realty Corp. ("Term") and 56 Fulton Street LLC ("Fulton") (collectively "Defendants") moved for summary judgment and dismissal of Plaintiff's complaint, or alternatively for summary judgment on its third-party claims against Choice New York Property Management, LLC ("Choice") (mot. seq. 003); and

Choice moved for summary judgment dismissing Defendants' third-party claims against it (mot. seq. 004).

On January 20, 2026, the motions were marked submitted and the Court reserved decision.

The motions are consolidated herein for disposition and determined as set forth below.

FACTS

Term is the owner of the premises ("Premises") known as 56 Fulton Street, New York, New York, pursuant to a deed dated July 9, 1987 (NYSCEF Doc No. 92). Term leased the Premises to Fulton for a term from November 17, 2014, through November 16, 2023 (NYSCEF Doc No. 93).

Fulton retained Choice to perform work and provide management and staffing service at the building pursuant to a management agreement dated March 17, 2017 ("Management Agreement") (NYSCEF Doc No. 84).

On the date of the accident, July 30, 2019, Plaintiff was employed by Choice as a repairman for the Premises. He had been employed in this position for approximately two years (NYSCEF Doc No. 85).

On the date of the accident, Plaintiff was working on the repair of a leak in the ceiling of the laundry room on the 23rd floor of the building. Plaintiff was standing on a six-foot ladder which was set on top of a sheet on top of a washing machine. The ladder and the sheet slipped off the washing machine and Plaintiff fell. There is a video of Plaintiff's fall.

Plaintiff had been in the subject laundry room to repair the roof due to a leak at least three-to-four times prior to July 30, 2019, as the scope of work required several days. The work Plaintiff was doing on July 30, 2019, began in June 2019. When Plaintiff first went to repair the leak, he plastered. Thereafter, he had to repair the plaster and then begin the process of painting. Plaintiff performed this work alone.

Plaintiff did not know whom the subject ladder belonged to and had never used that ladder before. When Plaintiff worked in the laundry room previously, he testified that he used a different ladder that was placed in the laundry room that was longer.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing

why" the plaintiff's claim must fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When the movant meets this initial burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to overcome a motion for summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [alteration in original]). Courts view the evidence in a light most favorable to the nonmovant, according the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

The Court grants Plaintiff summary judgment on his Labor Law § 240(1) claim

A violation of Labor Law § 240(1) caused Plaintiff's injuries

Plaintiff moves for summary judgment on his Labor Law § 240(1) claim. Defendants conversely move for summary dismissal of Plaintiff's complaint as against them. For the reasons set forth below, the Court grants Plaintiff's motion and denies that of the Defendants.

Labor Law § 240(1) provides:

> All contractors and owners and their agents . . . in the . . . repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

Section 240(1) imposes "absolute liability" on owners, general contractors and their statutory agents when "any breach of the statutory duty . . . has proximately caused injury" (*Sanatass v Consolidated Investing Co., Inc.*, 10 NY3d 333, 338 [2008]). The statutory duty is "nondelegable," (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]), and a

breach occurs when a defendant fails to give an adequate safety device to a worker engaged in the statute's enumerated activities (*Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]).

The parties do not dispute that Plaintiff was engaged in an enumerated activity as "plastering, skim coating and painting" on the interior of a building is protected by Section 240(1) (*see Aarons v 401 Hotel, L.P.*, 12 AD3d 293, 293–94 [1st Dept 2004]). Plaintiff's testimony also establishes that a longer ladder was available in the laundry room on other days of the job but that the longer ladder was not provided to him in the laundry room on the day of his accident. Plaintiff has thus made out a *prima facie* case that the failure to provide him with the longer ladder proximately caused his elevation-related injury.

Defendants fail in opposition to raise a triable issue of fact. Defendants cite the testimony of Pablo Reyes, a janitor at the Premises, who stated that prior to Plaintiff's accident he had seen one or two ladders in the storage area of the Premises (NYSCEF Doc No. 101, at 18–19, 35). Reyes also testified that he saw Plaintiff on the day of his accident as Plaintiff was setting up the tarp and subject ladder atop the washing machine and that Plaintiff answered affirmatively that he knew what he was doing after being asked by Reyes (*id.* at 47–48). Reyes's testimony about ladders possibly being available at the Premises is insufficient to establish that an appropriate safety device was actually available to Plaintiff and that Plaintiff knew this but refused to use it. Additionally, the remaining differences between Plaintiff's version of the events that day and Reyes' version may speak to comparative fault, but does not bar liability under Section 240(1) (*see DaSilva v Toll First Ave., LLC*, 199 AD3d 511, 512–13 [1st Dept 2021]).

Reyes's testimony surmising that a longer ladder was available on the Premises on the days prior to the accident thus constitutes "unsubstantiated allegations or assertions" as to

whether an adequate safety device was available to Plaintiff on the day of the accident (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016]).

Accordingly, the Court grants Plaintiff's motion for liability against Defendants on Labor Law § 240(1).

Plaintiff Was Not the Sole Proximate Cause Of His Accident

Defendants argue in opposition and in support of their own motion that they are not liable because Plaintiff was the sole proximate cause of his accident. The Court disagrees.

A defendant is not liable under Section 240(1) when the defendant demonstrates that (1) there was no statutory violation and (2) "the worker's actions . . . are the 'sole proximate cause' of the accident" (*Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280, 290 [2003]; *see also Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39–40 [2004]). Defendants argue at length that Plaintiff was negligent in failing to ask for a longer ladder and by placing the subject ladder on the tarp and washing machine, which alone caused his accident. However, this argument speaks only to Plaintiff's negligence and "comparative fault . . . is not a defense to a Labor Law § 240(1) claim" (*DaSilva*, 199 AD3d at 513). Further, "[t]he fact that plaintiff did not ask for a specific safety device prior to the accident is not dispositive and is not a prerequisite for recovery" (*Myiow v City of New York*, 143 AD3d 433, 436 [1st Dept 2016]).

For Defendants to succeed on this defense, they must provide evidence raising a triable issue of fact that a longer ladder was actually available to Plaintiff on the date in question, that Plaintiff knew this, and that Plaintiff's failure to use said ladder was the sole proximate cause of his accident (*see Blake*, 1 NY3d at 280). Defendants provide no such evidence. Defendants only reference portions of Plaintiff's testimony stating that a longer ladder was available to him on *other* days when Plaintiff was working on this task and that Plaintiff was provided with a longer

ladder on the *other* days when he asked for one. However, a longer ladder being available on other days does not establish that such a ladder was provided to Plaintiff on the date he was injured. Furthermore, Plaintiff's failure to ask for a longer ladder on the date in question is immaterial as Section 240(1) places the "ultimate responsibility for safety practices . . . where such responsibility actually belongs, on the owner and general contractor" (*Zimmer v Chemung County Performing Arts*, 65 Ny2d 513, 520 [1985]).

Finally, Defendants reliance on the Court of Appeals's holding in *Montgomery v Federal Express Corp.* is misplaced. *Montgomery* facts are distinguishable because the defendants had actually established that the plaintiff had an adequate ladder available to him and nevertheless chose to use an upside-down bucket for his elevation-related task (4 NY3d 805, 806 [2005]).

Accordingly, Defendants fail to defeat Plaintiff's motion, and they also fail to establish *prima facie* entitlement to summary judgment on the sole proximate cause defense as they cite no evidence that Plaintiff had a longer ladder available to him on the date of the accident.

The Defendants' motion for summary dismissal of Plaintiff's Labor Law § 241(6) and Labor Law § 200 and common-law negligence claims are denied as academic in light of granting Plaintiff summary judgment on his Labor Law § 240(1) claim.

The Parties Motions Pertaining to the Third-Party Action

Defendants move for summary judgment against Choice granting "all Third-Party claims" against Choice (NYSCEF Doc No. 96). Choice conversely moves for summary dismissal of Defendants' third-party complaint.

The Court Grants Defendants' Contractual Indemnification Claim.

Courts will enforce indemnification obligations in contracts "as long as the intent to assume such a role is 'sufficiently clear and unambiguous'" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007], quoting *Rodrigues v N & S Bldg. Contrs., Inc.*, 5 NY3d 427, 433 [2005]).

Courts strictly interpret indemnification contracts "to avoid reading into it a duty which the parties did not intend to be assumed" (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]).

The Management Agreement provides:

> Agent [Choice] agrees to indemnify, defend and hold Owner [Fulton] harmless its directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability, claim, demand, loss, out-of-pocket cost, actual damage, expense or cause of action (including without limitation, reasonable attorneys' fees and expenses) incurred by reason of any gross negligence or willful misconduct or fraud or professional errors *or malfeasance* by [Choice] or its respective agents or employees in the performance of the services hereunder.
>
> . . .
>
> In addition, [Choice] shall indemnify [Fulton] for claims brought by [Choice's] employees or their representatives which are made or brought by [Choice's] employees or their representatives *arising from, or in connection with, such employee's employment with [Choice]*, including, by way of description, but not by way of limitation, any claim arising out of, or related to any violation of applicable laws regulations, including without limitation, Title VII of the Civil Rights Act of 1964, as amended, and federal, state, or local law prohibiting discrimination in employment, and any common law claims, including claims for wrongful or retaliatory discharge; or arise out of or with respect to any "employee benefit plan" within the meaning of Section 3(3) of the Employee Income Security Act of 1974, as amended ("ERISA") that covers [Choice's] employees or employees of any person performing services for [Choice] in connection with this Agreement. (NYSCEF Doc No. 104, at 30 [PDF pagination] [emphasis and internal spacing added]).

Defendants argue that Plaintiff's action triggers Choice's indemnification obligation under either the italicized language of the first paragraph or the italicized language in the section paragraph. Choice argues in its moving papers and in opposition that Plaintiff's action falls under neither.

Plaintiff's action does not trigger the indemnification obligation under the language of the first paragraph as Plaintiff's action does not fall under any of the listed preconditions. Regarding malfeasance—the only term that Defendants put forward in their moving papers—the First Department defines it as "the unjust performance of some act which the party had no right, or

which [the party] had not contracted to do" (*Stokes v Stokes*, 23 AD 552, 557 [1st Dept 1897]). Defendants do not argue that Plaintiff's injuries arose from Plaintiff's or Choice's unjust performance of some activity not enumerated in the Management Agreement.

Defendants argue in the alternative that Plaintiff's Labor Law action falls under the language in the second paragraph of the indemnification provision which refers to "claims brought by [Choice's] employees . . . which are made or brought by [Choice's] employees . . . arising from, or in connection with, such employee's employment with [Choice]" (NYSCEF Doc No. 104). The Court holds that Plaintiff's claim falls under the plain language of this portion of the indemnification provision as Plaintiff's claim arose out of an accident that occurred while completing a task in the scope of his employment with Choice.

Choice argues in its moving papers and in opposition that the language following "claims . . . in connection with, such employee's employment"—which refers only to employment discrimination and retaliation claims—cabins the meaning of the indemnification provision to apply only to employment discrimination and retaliation claims. The Court disagrees.

The doctrine *expressio unius est exclusion alterius* provides that where a sophisticated contract drafter omits a term the court should not imply that term from the general language of the agreement (*Quadrant Structured Prods. Co., Ltd. v Vertin*, 23 NY3d 549, 560 [2014]). However, the Management Agreement expressly includes the phrase "including, by way of description, but not by way of limitation," preceding the list of employment discrimination claims (*see* NYSCEF Doc No. 104, at 30). This phrase directly evidences the parties' intent *not* to limit the claims to the employment discrimination claims listed in the second paragraph. Accordingly, the Court holds that the doctrine *expressio unius est exclusion alterius* does not

apply to this passage within the Management Agreement such that the general language of the second paragraph encompass Plaintiff's claim.

Equally unavailing is Choice's argument that language in the Agreement providing for Fulton's indemnification of Choice demonstrates that the parties did not intend for Choice to indemnify Fulton under the previous indemnification provision. The relevant portion of the Exclusive Management Agreement provides:

> Owner [Fulton] shall indemnify and save Agent [Choice], its directors, officers, employees, agents, representatives, successors and assigns harmless, except in cases of fraud, willful misconduct or gross negligence of [Choice], from:
>
> (i) All claims arising out of this Agreement in connection with the management and, where applicable, the leasing of the Property *and from liability for injuries suffered by third parties while on the Property* . . . .
>
> [Fulton] further agrees to reimburse [Choice] for court costs and other reasonable expenses, including reasonable attorney's fees, incurred by [Choice] in defending *any action brought against [Choice] for injury or damage claimed to have been suffered on the Property*, except such claims arising from fraud, willful misconduct or gross negligence of [Choice], its employees or agents or where [Choice] must indemnify [Fulton] pursuant to this Agreement. (NYSCEF Doc No. 104, at 30 [emphasis added]).

While this language uses slightly different phrasing than the preceding indemnification provision, it does not alter the meaning of the preceding indemnification provision. Rather, this passage only affirms that the two provisions may refer to overlapping claims as it states that Fulton will indemnify Choice except from "such claims . . . where [Choice] must indemnify [Fulton] pursuant to this Agreement" (*id.*).

Finally, the Court notes that the First Department in *Robinson v Great Performances/Artists As Waitresses* reasoned *in dicta* that an indemnification agreement containing the language indemnifying against "claims for wages and violation of the wage and hour federal and state laws, including but not limited to, laws pertaining to overtime wages"

could apply to claims under the Labor Law that do not relate to overtime wages (*see* 195 AD3d 140, 143–44 [1st Dept 2021]).

Accordingly, the Court grants Defendants' motion for contractual indemnification as against Choice, and the Court denies Choice's motion based on the same.

The Court Denies Defendants' Motion for Common-Law Indemnification and Contribution and Grants Choice's Motion for Dismissal of Said Claims

Choice moves for summary dismissal of Defendants' common-law indemnification and contribution claims as Plaintiff was employed by Choice and his recovery limited by the Workers' Compensation Law.

Workers' Compensation Law § 11 provides:

> An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

It is undisputed from the record that Plaintiff was employed by Choice during the accident and that Plaintiff did not suffer a "grave injury" enumerated under Workers' Compensation Law § 11 (*see* NYSCEF Doc No. 112, at 7–9 [Plaintiff's bill of particulars]).

The Court Dismisses Defendants' Failure-To-Procure Insurance Claim

Choice moves for summary dismissal of Defendants' breach-of-contract claim for failure to procure insurance. Defendants do not oppose this portion of Choice's motion. In support of its position, Choice produced its relevant policy agreement that fulfills the requirements of the Exclusive Management Agreement (*see* NYSCEF Doc No. 119 [insurance policy]; *see also*

NYSCEF Doc No. 120 [Exclusive Management Agreement]). Accordingly, the Court dismisses Defendants' breach-of-contract claim for failure to procure insurance.

The Court Denies Choice's Motion to Dismiss Defendants' Breach-Of-Contract Claim.

Defendants allege that Choice's failure to adhere to the Exclusive Management Agreement resulted in Plaintiff's injury, causing Defendants to suffer liability for said harm (NYSCEF Doc No. 23, at 8). Choice moves for summary dismissal of this claim, arguing in a conclusory manner that it adhered to the Exclusive Management Agreement and that "there is no evidence whatsoever that Choice breached its contractual obligations to Defendants . . . and/or that any breach resulted in damages" (NYSCEF Doc No. 122, at 5). However, Choice, as a third-party defendant, cannot meet its *prima facie* burden on summary judgment by "merely point[ing] to perceived gaps" in Term and Fulton's proof "rather than submitting evidence showing why" their claim must fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

The Court thus denies this portion of Choice's motion as Choice does not cite evidence demonstrating that it adhered to the Exclusive Management Agreement and that this adherence defeats Defendants' breach-of-contract claim. The Court also denies Defendants' motion as to this claim as the Defendants make no arguments in support of this claim in their moving papers.

CONCLUSION

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for partial summary judgment as to liability on his Labor Law 240(1) claim is granted (mot. seq. 002); and it is further

ORDERED that the motion of Term Fulton Realty Corp. and 56 Fulton Street LLC (mot. seq. 003) is granted to the extent of finding Defendants are entitled to contractual

indemnification against Choice New York Property Management, LLC, and is otherwise denied; and it is further

ORDERED that the motion of Choice New York Property Management, LLC (mot. seq. 004) is granted to the extent of dismissing Term and Fulton's common-law indemnification, contribution, and failure-to-procure-insurance claims as against it, and it is otherwise denied; and it is further

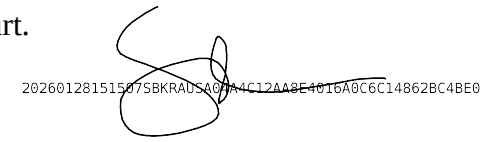
ORDERED that all other requests for relief are denied; and it is further

ORDERED that, the Clerk of the Court is directed to amend the caption to reflect that Bravo Builders, LLC, is no longer a party to the main action following the parties' September 6, 2024, stipulation of discontinuance as against Bravo (NYSCEF Doc No. 68); and it is further

ORDERED that, within twenty (20) days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



1/28/2026
DATE

SABRINA KRAUS, J.S.C.

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**