

Andrade v 120 Fulton Invs. LLC
2026 NY Slip Op 30317(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Index No. 156501/2018
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 65M

Justice

-----X

ADRIAN ANDRADE

Plaintiff,

- v -

120 FULTON INVESTORS LLC,
CP V TS FULTON OWNER, LLC

,
and TIME SQUARE CONSTRUCTION, INC.,

Defendants.

-----X

CP V TS FULTON OWNER, LLC

Third-Party Plaintiff,

-against-

U.S. CRANE & RIGGING, LLC

Third-Party Defendant.

-----X

CP V TS FULTON OWNER, LLC

Second Third-Party Plaintiff,

-against-

NYC CRANE HOIST & RIGGING LLC

Second Third-Party Defendant.

-----X

CP V TS FULTON OWNER, LLC

Third Third-Party Plaintiff,

-against-

STEVEN TOULIOUPOLOS ,
SUSAN DISTASIO

,
ANDREW MEROLA

INDEX NO. 156501/2018

MOTION DATE 09/28/2025,
10/10/2025

MOTION SEQ. NO. 006 007

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595374/2019

Third-Party
Index No. 595664/2021

Third-Party
Index No. 596191/2025

Third Third-Pary Defendants..

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 259, 261, 262, 263, 264, 265, 266, 271, 272

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 251, 252, 253, 254, 255, 256, 257, 258, 260, 267, 268, 269, 270

were read on this motion to STRIKE PLEADINGS.

Plaintiff Adrian Andrade (“plaintiff”) moves pursuant to CPLR § 3212 for summary judgment on the issue of liability under Labor Law § 240(1) against defendant CP V TS Fulton Owner, LLC (“defendant”), and pursuant to CPLR § 3211(b) to dismiss defendant’s affirmative defenses alleging comparative fault and sole proximate cause.

Defendant separately moves, pursuant to CPLR § 3042(b), to strike plaintiff’s Eighth Supplemental Bill of Particulars, served after the filing of the note of issue, on the ground that it impermissibly asserts new theories of liability without leave of court. Plaintiff cross moves for leave to amend/supplement with his Eighth Supplemental Bill of Particulars and to conform plaintiff’s Eighth Supplemental Bill of Particulars to the proof

BACKGROUND AND PROCEDURAL HISTORY

This Labor Law action arises from an incident on January 11, 2018, during the disassembly of a derrick crane¹ atop a newly constructed building located at 118 Fulton Street, New York, New York. Plaintiff, a crane rigger employed by a subcontractor, alleges that he was injured when he fell approximately seven feet from an elevated turntable component while the component was being hoisted by a spider crane.

The action was commenced by summons and complaint filed July 13, 2018. Defendant answered on October 1, 2018. Discovery proceeded, including plaintiff’s deposition on liability on March 4, 2021, and the deposition of plaintiff’s foreman, Aiden Doherty (“Doherty”), on August 20, 2024. A note of issue certifying the completion of discovery was filed on July 31, 2025.

On September 19, 2025, after the filing of the note of issue, plaintiff served an Eighth Supplemental Bill of Particulars asserting numerous alleged violations of Industrial Code provisions under Labor Law § 241(6) and theories concerning the manner in which the turntable was hoisted and controlled.

¹ A derrick crane is a powerful lifting machine designed to stay in one place while moving extremely heavy loads. Unlike standard mobile cranes that use their own weight for balance, a derrick is anchored directly to the ground or a structure, making it incredibly stable.

Plaintiff thereafter moved for summary judgment on Labor Law § 240(1), and defendant separately moved to strike the Eighth Supplemental Bill of Particulars. Plaintiff responded to defendant's motion by cross moving for leave to amend/supplement with his Eighth Supplemental Bill of Particulars and to conform plaintiff's Eighth Supplemental Bill of Particulars to the proof.

ARGUMENTS

Plaintiff contends that the undisputed evidence establishes a violation of Labor Law § 240(1) as a matter of law, asserting that he was exposed to an elevation-related risk without adequate fall protection and that the sudden hoisting of the turntable while he was atop it caused his fall. Plaintiff further argues that even under the version of events testified to by foreman Doherty, liability attaches because the turntable constituted an uncontrolled load that moved toward him during hoisting. Plaintiff seeks dismissal of defendant's affirmative defenses as legally insufficient.

Defendant argues that summary judgment must be denied because the record contains materially conflicting versions of how the accident occurred. Defendant relies on Doherty's testimony that plaintiff was not standing on the turntable, that the load did not swing uncontrollably, and that plaintiff instead tripped over his own lanyard while standing on the roof deck. Defendant further points to multiple inconsistent accident descriptions contained in plaintiff's incident reports and medical records.

As to its separate motion, defendant argues that the Eighth Supplemental Bill of Particulars improperly asserts new theories of liability and new Industrial Code provisions after the filing of the note of issue, without leave of court, in violation of CPLR § 3042(b) and controlling appellate precedent. Plaintiff cross moves for leave to amend/supplement with his Eighth Supplemental Bill of Particulars and to conform plaintiff's Eighth Supplemental Bill of Particulars to the proof.

DISCUSSION

A. Plaintiff's Motion for Summary Judgment Under Labor Law § 240(1)

A motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the [c]ourt as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn

from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010])[internal quotation marks and citation omitted].

Labor Law § 240(1) imposes absolute liability upon owners and contractors for elevation-related injuries where the statute is violated and the violation is a proximate cause of the worker’s injuries (*see Zimmer v County of Chemung*, 65 NY2d 513, 520–521 [1985]). To establish a prima facie entitlement to summary judgment, a plaintiff must demonstrate both a statutory violation and that the violation was a proximate cause of the accident (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287–289 [2003]).

Where a plaintiff establishes that he fell from an elevated height due to the absence or inadequacy of a safety device of the kind enumerated in the statute, a prima facie case is made (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603–604 [2009]). A defendant may defeat summary judgment by raising a triable issue of fact as to whether no statutory violation occurred or whether the plaintiff was the sole proximate cause of the accident (*Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554–555 [2006]).

Here, plaintiff’s testimony that he was standing atop the turntable approximately seven feet above the roof surface when the crane operator began hoisting the load without adequate fall protection is sufficient to establish a prima facie violation of Labor Law § 240(1) (*see Navarro v Joy Constr. Corp.*, 241 AD3d 446, 447 [1st Dept 2025]; *Byrnes v RP1185 LLC*, 238 AD3d 660, 661 [1st Dept 2025]).

However, the inquiry does not end there. Where the record contains conflicting, credible versions of the accident—one of which would impose liability and one of which would not—summary judgment must be denied (*Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442–443 [1st Dept 2012]; *Buckley v J.A. Jones/GMO*, 38 AD3d 461, 462–463 [1st Dept 2007]).

Foreman Doherty testified that plaintiff was not on the turntable when the hoisting began, that the turntable did not swing uncontrollably, and that plaintiff instead tripped over his own lanyard while standing on the roof deck. Doherty further testified that the movement of the turntable was minimal, standard, and horizontal in nature. Under this version of events, plaintiff would neither be a falling worker nor struck by a falling object, and the accident would not flow from the application of the force of gravity within the meaning of Labor Law § 240(1) (*Gasques v State of New York*, 15 NY3d 869, 870 [2010]; *Bucci v City of New York*, 223 AD3d 453, 454 [1st Dept 2024]; *Martinez v 342 Prop. LLC*, 128 AD3d 408, 409 [1st Dept 2015]).

This case is therefore distinguishable from those in which differing accounts nonetheless establish liability under any version of events (*see Singh v City of New York*, 191 AD3d 547, 548–549 [1st Dept 2021]; *Navarro*, 241 AD3d at 446–447). Here, the competing accounts are not minor discrepancies but materially different narratives bearing directly on whether a statutory violation occurred. Credibility determinations and the resolution of these factual disputes are matters for the trier of fact and may not be resolved on summary judgment (*Ferrante v American Lung Assn.*, 90 NY2d 623, 631 [1997]).

Accordingly, plaintiff's motion for summary judgment on the issue of liability under Labor Law § 240(1) is denied.

Plaintiff's motion to dismiss defendant's affirmative defenses is granted only to the extent that those defenses allege comparative negligence or culpable conduct, which are not cognizable defenses to a Labor Law § 240(1) claim (*see Buran v Coupal*, 87 NY2d 173, 181 [1995]). Defendant's affirmative defense alleging sole proximate cause, however, remains viable in light of the factual disputes discussed above (*see Robinson*, 6 NY3d at 554–555).

B. Defendant's Motion to Strike the Eighth Supplemental Bill of Particulars

A bill of particulars may be used to amplify the allegations of a pleading, but it may not be used to assert new theories of liability or causes of action not previously pleaded (*Castleton v Broadway Mall Props., Inc.*, 41 AD3d 410, 411 [2d Dept 2007]). Pursuant to CPLR § 3042(b), a party may amend a bill of particulars once as of right prior to the filing of the note of issue; thereafter, amendment requires leave of court.

Here, plaintiff served the Eighth Supplemental Bill of Particulars after the filing of the note of issue, without leave of court, asserting for the first time numerous Industrial Code provisions and theories concerning the hoisting and control of the turntable. These allegations were not specifically enumerated in the complaint or in any prior bill of particulars.

The Appellate Division, First Department, has consistently held that such post-note of issue amendments asserting new theories of liability are improper and must be stricken (*Silber v Sullivan Props., L.P.*, 182 AD3d 512, 512–513 [1st Dept 2020]; *Cintron v New York City Tr. Auth.*, 77 AD3d 410, 411 [1st Dept 2010]; *Matias v W. 16th Realty LLC*, 197 AD3d 1043, 1044–1045 [1st Dept 2021]). Moreover, where the proponent of the amendment offers no affidavit of merit and no reasonable excuse for the delay, striking the amended pleading may be warranted (*Stovall v Lenox Hill Hosp.*, 200 AD3d 570, 571 [1st Dept 2021]; *Quinones v Long Is. Jewish Med. Ctr.*, 230 AD3d 1257, 1258–1259 [2d Dept 2024]).

That said, CPLR § 3025(b) and (c) embody a liberal amendment policy, mandating that amendments (and by analogy supplemental bills) be allowed “freely...absent prejudice or surprise.” It is well-settled that while a supplemental bill of particulars may be utilized to amplify or elaborate upon allegations set forth in the complaint, it cannot be employed to supply essential allegations of a cause of action that were not originally pleaded (*Pattera v. Arc Dev., LLC*, 136 AD3d 474, 475 [1st Dept 2016]). Indeed, an amendment that introduces a wholly new theory of liability or a cause of action not previously interjected into the proceedings is improper, particularly where the plaintiff fails to provide a reasonable excuse for the delay (*Licht v. Trans Care NY, Inc.*, 3 AD3d 325 [1st Dept 2004]). Such limitations ensure the integrity of the notice requirements and prevent unfair surprise at trial. Consequently, the dispositive inquiry here is whether the proposed supplemental particulars represent a permissible elaboration of existing claims or an impermissible attempt to inject a novel theory of liability into the litigation.

A review of plaintiff's complaints shows that Labor Law § 241(6) and general negligence were already alleged, including broadly that plaintiff lacked safe means of access and adequate

fall protection while working on the turnstile. The new supplement does *not* alter the bases of liability – it does not add a different statutory section or a new category of injury. Instead, it spells out the precise Industrial Code regulations under Labor Law § 241(6) that plaintiff claims were breached, and gives further description of the accident dynamics (e.g. use of a tagline, hoisting steps, and lack of an anchor point). These are factual amplifications of the accident scenario, not new causes of action. For example, in *Alami v. 215 E. 68th St., L.P.*, the Appellate Division, Second Department, held that a bill of particulars “may be used to amplify the allegations in a complaint” but “may not be used to supply allegations essential to a cause of action that was not pleaded” (88 AD3d 924, 925-926 [2d Dept 2011]). Here, all the theories in the supplement (the code violations, safety procedures, etc.) fall squarely within the scope of the original § 241(6) and negligence claims. They simply identify which safety regulations were at issue and how the accident occurred – a classic amplification. Indeed, such filings simply identify the specific safety regulations at issue or the mechanics of an accident, which constitutes a classic amplification. As such, the supplement merely adds factual detail and statutory specifics to plaintiff’s existing Labor Law § 241(6) theory.

In contrast, courts typically strike supplemental bills of particulars only when they introduce entirely new claims, a circumstance not present here. In *Matias v. West 16th Realty LLC*, the Appellate Division, First Department, affirmed striking supplemental bills that alleged new injuries and economic damages—such as optic atrophy and hearing loss—years after the note of issue was filed because they “expanded not only on the extent of the continuing disability, but on the very nature of the injuries” (197 AD3d 1043, 1043 [1st Dept 2021]).

Unlike *Matias*, Plaintiff’s injuries and liability theories remain unchanged; the current filing merely elucidates the particulars of their onset. Similarly, in *Silber v. Sullivan Props., L.P.*, the court properly denied an amendment that sought to introduce new building-code theories of liability for the first time in opposition to a summary judgment motion (182 AD3d 512, 513 [1st Dept 2020]). Here, no new substantive theory outside of Labor Law § 241(6) is asserted. Instead, the supplement simply identifies the specific Industrial Code subdivisions governing crane safety that fall under the existing umbrella of § 241(6).

Defendant argues it will be prejudiced by the late amendment. But no prejudice or surprise is shown. Importantly, the supplement was served before any trial date and prior to dispositive motion, even though after the note of issue. No trial date has been scheduled in this matter, nor does it appear that one will be set in the near future. In the interim, the court seeks to explore the possibility of settlement with the parties during the extended period that is likely to elapse before a trial date is assigned. Under these circumstances, no prejudice results.²

In addition, the foreman’s deposition on August 20, 2024 – taken by both sides – alerted all parties to the factual scenario (grounds-level fall over a lanyard) and the possible tie-off issues. Defendant was present at that deposition and thus had notice of these factual details well before the supplement. By promptly amending after learning this information, plaintiff gave defendant a

² It is also notable that, subsequent to the filing of the instant motions, plaintiff moved to sever a third-party action brought by defendant CP V TS Fulton Owner, LLC against Steven John Touliouplos, M.D., Susan DiStasio, D.O., and Andrew A. Merola, M.D. That motion has not yet been submitted and must be reconciled and resolved before any trial date can be set in this matter, further undermining any claim of prejudice.

fair opportunity to address them. CPLR § 3043(b) explicitly contemplates supplemental bills to cover continuing aspects of damages or disabilities without court leave, recognizing that evidence may develop after certification. And CPLR § 3025(c) broadly allows pleadings to “conform to the evidence” at any stage, absent undue prejudice.

The timing here does not constitute an “eve of trial” surprise. While discovery is technically concluded upon the filing of a note of issue, the court maintains the discretion to reopen discovery or permit limited further inquiry when an amendment justifies such relief. The Appellate Division, Second Department, underscored this principle in *Fortunato v. Personal Woman’s Care, P.C.*, where it reversed the striking of a supplemental bill of particulars served after the case had been certified for trial (31 AD3d 370, 371 [2d Dept 2006]). In that matter, the court held that a claim for future lost earnings was not a new cause of action or injury, but rather a “continuing special damage” that could be asserted as a matter of right under CPLR § 3043(b) (31 AD3d at 371). Because the supplement was not served on the eve of trial and the defendants failed to show prejudice, the amendment was deemed proper (*id.*). Here, as in *Fortunato*, the supplemental details are a continuation of the theories already pleaded and do not result in unfair surprise or prejudice. Similarly, here the supplement does not expand the universe of inquiry beyond the original accident. Any additional discovery needed (for example, clarification about tie-off anchorage or code compliance) is minimal and can easily be accommodated without disruption of the schedule.

The Appellate Division, Second Department, has specifically reaffirmed that such amendments should be “freely given” unless they are palpably insufficient or patently devoid of merit or are sought on the eve of trial (*Singh v. Rosenberg*, 32 AD3d 840, 842 [2d Dept 2006]).

Here, the supplement was not served at the literal eve of trial; trial has not been scheduled, and plaintiff filed it in response to information obtained in discovery. Defendant has made no showing of any concrete prejudice from allowing these additions. To the contrary, forbidding the supplement would risk unfair surprise at trial when plaintiff is barred from explaining the very accident facts elicited in testimony. One purpose of the bill of particulars is to narrow issues and prevent surprise, and in this instance the supplement better apprises the defense of exactly what plaintiff will prove.

On balance, permitting the supplemental bill of particulars best serves justice. Plaintiff’s new allegations merely elaborate on the accident and identify specific safety rules already implicated. They do not create a new cause of action but amplify the existing Labor Law § 241(6) and negligence claims. No unfair surprise or prejudice will result; indeed, denying the supplement would prejudice plaintiff’s ability to present his case consistent with the evidence and would reward defendant’s belated complaint about tactics. For these reasons – in light of the liberal amendment policy in CPLR § 3025, the amplification-versus-new-claim distinction, and equitable factors favoring adjudication on the merits – defendant’s motion to strike is denied. Plaintiff shall serve an amended bill of particulars containing the allegations of the Eighth Supplemental Bill of Particulars.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment on the issue of liability under Labor Law § 240(1) is denied; and it is further

ORDERED that plaintiff’s motion pursuant to CPLR § 3211(b) is granted solely to the extent of striking defendant’s affirmative defenses alleging comparative negligence and culpable conduct, and is otherwise denied; and it is further

ORDERED that defendant CP V TS Fulton Owner, LLC’s motion to strike plaintiff’s Eighth Supplemental Verified Bill of Particulars is denied; and it is further

ORDERED that plaintiff is permitted to serve an amended (supplemental) bill of particulars conforming to the allegations in his Eighth Supplemental Bill of Particulars; and it is further

ORDERED that no relief is granted to defendant on its request to preclude evidence, given that the supplement was properly permitted; and it is further

ORDERED that the parties shall appear for a settlement conference on Wednesday, February 11, 2026. The conference will take place at the same time (9:30 AM) previously designated for the hearing of the motions decided herein, at the courthouse located at 80 Centre Street, New York, NY 10013, in Room 308.

This constitutes the decision and order of the court.

01/27/2026
DATE

HASA A. KINGO, J.S.C.

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