

<b>Abreu v YWA-Amsterdam LLC</b>
2026 NY Slip Op 30352(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Index No. 162329/2019
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

FRANCISCO NUNEZ ABREU,
Plaintiff,

- v -

YWA-AMSTERDAM LLC, THE RINALDI GROUP LLC, THE
RINALDI GROUP OF NEW YORK LLC,
Defendant.

INDEX NO. 162329/2019

03/31/2023,
10/13/2023,
10/13/2023,
10/13/2023

MOTION DATE

MOTION SEQ. NO. 004 008 009
010

DECISION + ORDER ON MOTION

-----X

YWA-AMSTERDAM LLC, THE RINALDI GROUP OF NEW
YORK LLC

Plaintiff,

-against-

ROMERO ELECTRIC, LLC

Defendant.

-----X

YWA-AMSTERDAM LLC, THE RINALDI GROUP OF NEW
YORK LLC

Plaintiff,

-against-

PRIME STRUCTURE INC.

Defendant.

-----X

Third-Party
Index No. 595418/2020

Second Third-Party
Index No. 595126/2022

The following e-filed documents, listed by NYSCEF document number (Motion 004) 114, 115, 116, 117,
118, 119, 120, 121, 122, 123, 124, 125, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140,
141, 142, 143, 144, 145, 146, 147, 154, 155, 156, 157

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 008) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 296

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 266, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 286, 287, 297, 298

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 010) 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 267, 284, 285, 288, 289, 290, 291, 292, 293, 294, 295

were read on this motion to/for

JUDGMENT - SUMMARY

In this Labor Law action, plaintiff alleges that he was injured when the ladder he was on, suddenly moved from side to side, causing him to fall to the floor. The ladder then fell on top of him, and he lost consciousness. At the time of the accident, plaintiff was setting up electrical lines, as part of a construction project (“Project”) at 2420 Amsterdam Avenue, New York, NY (the “Premises”). Defendant YWA- Amsterdam LLC (“YWA”) owned the Premises. Defendant The Rinaldi Group of New York LLC<sup>1</sup> (“Rinaldi”) was the construction manager/general contractor for the Project. Rinaldi retained Third-Party Defendant, Romero Electric, LLC, (“Romero”) to work at the Premises as a subcontractor in connection with the Project. Plaintiff was employed by third-party defendant, Romero Electric, LLC (“Romero”), as an electrician’s helper.

On the day of the accident, Romero was working in the basement of the Project to install temporary lighting and water pumps. Plaintiff was instructed to set up an electrical line for carpenters to use in the basement, which required the use of a ladder. Plaintiff testified that in order to connect one wire, he had to disconnect another wire, causing the light in the basement to

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<sup>1</sup> Defendant The Rinaldi Group LLC was improperly named in the suit.

go out. As he was reaching to connect the second wire, the ladder suddenly moved from side to side, causing him fall to the concrete floor. The ladder then fell on top of him.

Plaintiff claims his fall from an unsecured ladder constitutes a Labor Law § 240 (1) violation. He moves for summary judgment pursuant to CPLR 3212 (motion sequence 4) as against YWA and Rinaldi, alleging that he was not provided with an adequately safe ladder<sup>2</sup>. Romero opposes, arguing that there are numerous questions of fact that preclude summary judgment, including how the accident occurred, whether the ladder was inadequate or defective pursuant to Labor Law 240 (1), and whether the ladder was the proximate cause of plaintiff's injury.

Second Third-Party defendant, Prime Structure Inc. ("Prime"), moves for summary judgment pursuant to CPLR 3212 (motion sequence 8) on all claims made against it by Second-Third Party plaintiffs, YWA and Rinaldi, including common law indemnification, contribution and contractual indemnification.

Third-Party defendant Romero moves for summary judgment, pursuant to CPLR 3212 (motion sequence 9), on plaintiff's Labor Law 240(1) claim. Romero also seeks summary judgment in its favor as against Third-Party plaintiff YWA and Rinaldi for common law indemnification and contribution.

YWA and Rinaldi move for summary judgment (motion sequence 10), pursuant to CPLR 3212, on plaintiff's Labor Law 240(1) claim. YWA and Rinaldi also move for summary judgment in their favor as against Third-Party defendant Romero for contractual and/or common law indemnification.

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<sup>2</sup> After filing the instant summary judgment motion, plaintiff discontinued his Labor Law § 200, common law negligence and Labor Law § 241(6) claims as against defendants YWA and Rinaldi (*see* NYSCEF Doc. No. 284).

### Labor Law § 240(1)

Labor Law § 240(1), also known as the Scaffold Law, provides, in relevant part:

All contractors and owners and their agents...in the erection, demolition, 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

(*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 1983]). “Labor Law § 240(1) imposes a nondelegable duty and absolute liability upon owners or contractors for failing to provide safety devices necessary for protection to workers subject to the risks inherent in elevated work sites who sustain injuries proximately caused by that failure” (*Jock v Fien*, 80 NY2d 965, 967-968 [1992] [citations omitted]). This statutory duty is not diminished by a plaintiff’s contributory fault (*see Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]), and is imposed regardless of whether the owner, general contractor, or statutory agent with the authority to control the work actually exercises supervision or control over the plaintiff’s work (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). “Proper protection” requires that the device must be appropriately placed or erected so that it would have safeguarded the employee (*see Bland v Manocherian*, 66 NY2d 452, 460 [1985]), and that the furnished device itself must be adequate to protect against the hazards entailed in the performance of the particular task to which the employee was assigned (*see Bland v Manocherian*, 66 NY2d at 461; *see also Klein v City of New York*, 89 NY2d 833, 834-835 [1996] [“Labor Law § 240 (1) requires that safety devices such as ladders be so ‘constructed, placed and operated as to give proper protection’ to a worker”]).

Here, plaintiff has established a prima facie entitlement to summary judgment. He testified that while standing on an A-frame ladder to complete an assigned electrical task, the

ladder suddenly shifted side-to-side, causing him to fall to the concrete floor. The ladder then fell on top of him, causing him to lose consciousness. Plaintiff's account demonstrates that the ladder failed to provide proper protection within the meaning of the statute (*see Hart v Turner Constr. Co.*, 30 AD3d 213, 214 [1st Dept 2006] [plaintiff met his prima facie burden through testimony that while he performed his assigned work, the eight-foot ladder on which he was standing shifted, causing him to fall to the ground]; *see Plywacz v 85 Broad St. LLC*, 159 AD3d 543, 544 [1st Dept 2018] ["It is well settled that failure to properly secure a ladder to insure that it remains steady and erect while being used, constitutes a violation of Labor Law § 240(1)" quoting *Schultze v 585 W. 214th St. Owners Corp.*, 228 AD2d 381, 381 [1st Dept 1996]; *see also Rodriguez v New York City Hous. Auth.*, 194 AD2d 460, 461 [1st Dept 1993] [Labor Law § 240 (1) violated where the ladder the plaintiff fell from "contained no safety devices, was not secured in any way and was not supported by a co-worker"]]).

Once a plaintiff has met this burden, the burden shifts to defendants to raise a triable issue of fact as to whether there was no statutory violation or whether plaintiff was the sole proximate cause of his accident (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 289 n 8 [2003]).

Romero opposes the motion, citing inconsistencies between plaintiff's deposition and contemporaneous records, including an incident report and hospital records, which indicate that plaintiff lost his balance or slipped. While the incident report and medical records describe the mechanism of injury differently, such discrepancies are not sufficient to defeat summary judgment. The statements, considered in the light most favorable to the non-moving party, can reasonably be interpreted as incomplete or generalized descriptions of the incident, especially given that plaintiff is not a native English speaker. Plaintiff consistently testified that the ladder

moved, causing his fall. The First Department has held that minor inconsistencies or alternative explanations that do not definitively rebut the plaintiff's testimony do not raise a triable issue of fact where there is otherwise clear evidence of an unsecured or unstable ladder (*see Rodriguez v New York City Hous. Auth.*, 194 AD2d 460, 462 [1st Dept 1993]).

Defendants also argue that plaintiff testified the ladder "felt secure" and was not defective. Even if the ladder had no visible defects and plaintiff stated it "felt secure," these facts do not negate the failure to secure the ladder to prevent it from moving while in use. "It is well settled that failure to properly secure a ladder constitutes a violation of Labor Law § 240(1)" (*Schultze v 585 West 214th Street Owners Corp.*, 228 AD2d 381, 381 [1st Dept 1996] [citations omitted]).

Contrary to defendants' argument, they have not presented a viable issue of fact as to whether plaintiff's conduct was the sole proximate cause of the accident. There is no evidence that plaintiff misused the ladder or disregarded instructions. Rather, the record shows that the accident occurred while plaintiff was performing assigned work using the equipment provided to him.

Therefore, plaintiff has shown that the ladder failed to provide adequate protection as required under Labor Law § 240(1), and that this failure was a proximate cause of his injuries. Defendants have failed to raise a triable issue of fact as to either the absence of a statutory violation or plaintiff as the sole proximate cause. Accordingly, plaintiff's motion for summary judgment (motion seq 4) on the Labor Law § 240(1) claim is granted as against defendants YWA-Amsterdam LLC and The Rinaldi Group of New York LLC.

Defendants YWA and Rinaldi's cross-motion and Third-Party Defendant Romero's motion for summary judgment (motion seq 9) dismissing plaintiff's Labor Law § 240(1) claim are denied.

### **Third-Party Actions**

In contractual indemnity, a party seeking indemnity must show that it is free from negligence but need not show that the proposed indemnitor is negligent (*Uluturk v City of New York*, 298 AD2d 233, 234 [1st Dept 2002]). "A party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances." (*Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82, 87-88 [1st Dept 2018], quoting *Drzewinski v Atlantic Scaffold & Ladder Company, Inc.*, 70 NY2d 774, 777 [1987]).

Common-law indemnification shifts responsibility from a party liable based upon its status to a party at fault (*Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 179 [1990]; *Picchione v Sweet Constr. Corp.*, 60 AD3d 510, 513 [1st Dept 2009]). "Thus, a party moving for summary judgment dismissing a common-law indemnification claim can meet its prima facie burden by establishing that the plaintiff's accident was not due to its own negligence" (*Cando v Ajay Gen. Contr. Co. Inc.*, 200 AD3d 750, 752 [2d Dept 2021] [citations omitted]).

#### **I. Motion Sequence 8- Prime Structure Inc.**

Second Third-Party defendant Prime moves for summary judgment dismissing all claims made against it by Second Third-Party plaintiffs YWA and Rinaldi, including common law indemnification, contribution and contractual indemnification. Prime performed concrete superstructure work at the Project and was impleaded by YWA and Rinaldi because plaintiff testified that there was the presence of debris left by Prime at the Premises.

The record supports that Prime did not cause plaintiff to fall off of his ladder, as plaintiff himself testified that he placed his ladder on a clean, flat surface and there was no debris in the area where he placed the legs of his ladder. Although there was concrete debris in the general area where plaintiff fell, no evidence has been presented that it caused the ladder plaintiff was on to move. Second Third-Party plaintiffs YWA and Rinaldi have failed to raise any triable questions of fact that would preclude Prime's entitlement to summary judgment as a matter of law.

## II. Motion Sequence 9- Romero

Third-Party defendant Romero's motion for summary judgment dismissing Third-Party plaintiffs' YWA and Rinaldi's indemnification and contribution claims is denied. Though plaintiff's injury did not result from Third-Party defendant Romero's negligence, as a matter of law under § 240(1), Romero may still be required to indemnify YWA and Rinaldi under the contract.

To the extent that Third-Party defendant Romero seeks common law indemnity or contribution from Third-Party plaintiffs YWA and Rinaldi, that claim is barred by Workers' Compensation Law § 11. Romero has not shown that plaintiff sustained a "grave injury," nor is there a written agreement predating the accident that provides for common-law indemnification (see Workers' Compensation Law § 11; *Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363, 367 [2005]). Therefore, Third-Party defendant Romero's motion for summary judgment as to common law contribution and indemnification is denied.

### III. Motion Sequence 10- YWA and Rinaldi

Having decided that YWA and Rinaldi are liable to plaintiff by operation of Labor Law § 240(1), YWA and Rinaldi are entitled to seek contractual indemnification from Third-Party defendant Romero, plaintiff's employer.

Pursuant to Section 12.2 of the Rinaldi-Romero contract, Romero agreed to indemnify and hold harmless YWA and Rinaldi from claims or damages "arising out of, in connection with or as a consequence of the performance of the Work" (Rinaldi-Romero contract, NYSCEF Doc. No. 235 at 23). Plaintiff was injured while performing work assigned to him as part of Romero's subcontract. Thus, summary judgment on YWA and Rinaldi's third-party claim for contractual indemnification against Romero is granted.

Third-Party plaintiffs YWA and Rinaldi's claim against Third-Party defendant Romero for failure to procure insurance is also granted.

Pursuant to Article 12.1 of the Rinaldi-Romero contract, Romero was to carry insurance that was primary to all other insurance, naming YWA-Amsterdam, LLC and The Rinaldi Group of New York, LLC as additional insureds (Rinaldi-Romero contract, NYSCEF Doc. No. 235 at 20-23). It was noted that Commercial General Liability Insurance was to be in the amount of \$5 million for bodily injury (*id.*).

Here, YWA and Rinaldi submit the denial of tender letter from Traveler's Insurance Company that denied coverage because YWA and Rinaldi were not named as additional insured under the policy (denial of tender from Traveler's, NYSCEF Doc. No. 246). Although Romero has provided a copy of the declarations page of its commercial general liability policy in opposition, it has failed to establish that it named YWA and Rinaldi as additional insureds as

required by Section 12.1 of the contract between Rinaldi and Romero (insurance declaration, NYSCEF Doc. No. 293).

Accordingly, Romero's failure to comply with its contractual obligation to procure and maintain insurance coverage for YWA and Rinaldi entitles YWA and Rinaldi to summary judgment in their favor on their third-party claim for breach of contract against Romero.

For the foregoing reasons, it is hereby

ORDERED that plaintiff Francisco Nunez Abreu's motion (motion sequence number 004), pursuant to Labor Law 240(1) and CPLR 3212, for summary judgment in his favor as to liability against defendants YWA-Amsterdam LLC and The Rinaldi Group of New York LLC is granted in its entirety; and it is further

ORDERED that Second Third-Party defendant Prime Structure Inc.'s motion (motion sequence number 008), pursuant to CPLR 3212, for summary judgment dismissing the Second Third-Party complaint and any and all cross claims against it is granted and the third-party complaint and all cross claims against it are dismissed; and it is further

ORDERED that the Third-Party defendant Romero Electric, LLC's motion for summary judgment, pursuant to CPLR 3212 (motion sequence 9) is denied in its entirety; and it is further

ORDERED that the part of defendants/third-party plaintiffs YWA-Amsterdam LLC and The Rinaldi Group of New York LLC's motion for summary judgment dismissing the third-party claims (motion sequence 10), pursuant to CPLR 3212, is granted; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

1/27/2026  
DATE

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION **J.S.C.**

APPLICATION:  GRANTED  DENIED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

*Leslie A. Stroth*  
**HON. LESLIE A. STROTH**