

Portillo v 24-16 Queens Plaza Prop. Owner LLC
2026 NY Slip Op 30378(U)
February 2, 2026
Supreme Court, New York County
Docket Number: Index No. 156748/2019
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

ADAN PORTILLO,

Plaintiff,

- v -

24-16 QUEENS PLAZA PROPERTY OWNER
LLC,P8/SILVERBACK 24-16 QPS OWNER LLC,

Defendant.

-----X

24-16 QUEENS PLAZA PROPERTY OWNER LLC,
P8/SILVERBACK 24-16 QPS OWNER LLC

Plaintiff,

-against-

USA INTERIORS, LLC

Defendant.

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INDEX NO. 156748/2019

MOTION DATE 01/13/2025,
02/05/2025

MOTION SEQ. NO. 002 003

DECISION + ORDER ON
MOTION

Third-Party
Index No. 595867/2019

The following e-filed documents, listed by NYSCEF document number (Motion 002) 95, 96, 97, 98, 99,
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 112, 113, 114, 115,
116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 139, 140

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, motion sequences 002 and 003 are consolidated for
disposition and decided as follows:

- A. Plaintiff Adan Portillo's ("Plaintiff") motion for summary judgment ("Mot. Seq.
002") on his Labor Law § 240(1) claim against Defendants/Third-Party Plaintiffs 24-
16 Queens Plaza Property Owner LLC ("Queens Plaza") and P8/Silverback 24-16
QPS Owner LLC ("Silverback") (collectively "Defendants") is granted.

B. Defendants' motion for summary judgment ("Mot. Seq. 003) dismissing Plaintiff's Complaint is granted in part and denied in part.

I. Background

On June 22, 2019, Third-Party Defendant USA Interiors LLC ("USA Interiors") employed Plaintiff as a laborer at a construction project at 24-16 Queens Boulevard, Queens, New York (the "Premises") (NYSCEF Doc. 101 at 41; 55-56). Silverback owned the Premises (NYSCEF Doc. 136). Queens Plaza, through its general contractor, retained USA Interiors to perform drywall installation (NYSCEF Doc. 105). Plaintiff was instructed to move six hundred pieces of sheetrock using an A-frame cart (NYSCEF Doc. 101 at 60; 71; 73). Plaintiff was moving an A-frame cart holding fourteen pieces of sheetrock¹ when the A-frame cart lost balance, and the cart and sheetrock fell on him (*id.* at 83; *see also* NYSCEF Doc. 102 at 119; 126-127).

USA Interior's foreman instructed Plaintiff to complete the task quickly, which is why the A-frame cart was holding fourteen pieces of sheetrock, even though Plaintiff and his coworkers knew that many pieces of sheetrock would overload the A-frame cart (NYSCEF Doc. 103 at 213-219). According to Plaintiff, the cart was overloaded with sheetrock and the route he was required to take was uneven, which caused the cart to fall (NYSCEF Doc. 102 at 127). An investigation report, the cart hit the edge of a curb which caused the weight of the frame to shift and fall on top of Plaintiff (NYSCEF Doc. 108). Now, Plaintiff moves for summary judgment on his Labor Law § 240(1) claim, while Defendants move to dismiss Plaintiff's Complaint.

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¹ Each piece of sheet rock weighed 70 to 75 pounds individually, making the total load over 900 pounds (NYSCEF Doc. 103 at 213-214).

II. Discussion

A. Plaintiff's Motion (Mot. Seq. 002)

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted. Plaintiff established a *prima facie* Labor Law § 240(1) violation through his uncontroverted testimony that while transporting over 900 pounds of sheetrock on an overloaded A-frame cart, the sheetrock and cart tipped over onto him, causing his injuries (*Nyanteh v 590 Madison Avenue, LLC*, 238 AD3d 643, 643 [1st Dept 2025] citing *Touray v HFZ 11 Beach St. LLC*, 180 AD3d 507, 507 [1st Dept 2020]). The burden now shifts to Defendants to raise a triable issue of fact.

In opposition, Defendants fail to raise a triable issue of fact. Defendant's argument that Plaintiff's reliance on an accident investigation report is misplaced is insufficient to defeat summary judgment because even without the accident report, which buttresses Plaintiff's testimony, there is no testimony or evidence contradicting Plaintiff's testimony which would raise an issue of fact. Moreover, the accident report, which was authored by Defendants' agents, can be deemed admissible as a statement against interest. Defendants' argument that the accident did not involve an elevation related risk is without merit considering the weight and size of the load which fell onto Plaintiff (*Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 605 [2009]; *see also Nyanteh, supra*).

Defendants' argument that the accident was not caused by a defect in a safety device is insufficient given the uncontroverted evidence that the A-frame cart was insufficient to carry the load of over 900 pounds of sheetrock in a safe manner (*see also Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 409 [1st Dept 2013]). Defendants have proffered no countervailing testimony indicating that the A-frame cart was sufficient to carry over 900 pounds of sheetrock over the bumpy path that Plaintiff was required to take, and a Plaintiff is not required to identify the defect

with the safety device to establish a Labor Law § 240(1) violation (*see Rodas-Garcia v NYC United LLC*, 225 AD3d 556, 556 [1st Dept 2024]).² Thus, there being no issues of fact, Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted.³

B. Defendants' Motion (Mot. Seq. 003)

Defendants' motion for summary judgment is granted in part and denied in part. Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is denied in light of this Court granting Plaintiff summary judgment on his Labor Law § 240(1) claim against Defendants. Based on the foregoing, Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim is academic (*Pimentel v DE Frgt. LLC*, 205 AD3d 591, 593 [1st Dept 2022]). Plaintiff does not oppose dismissal of his Labor Law § 200 and common law negligence claims, therefore summary judgment dismissing those claims is granted without opposition (*see Linares v Massachusetts Mutual Life Ins. Co.*, 225 AD3d 520, 521 [1st Dept 2024] citing *Sancino v Metropolitan Transp. Auth.*, 184 AD3d 534, 535 [1st Dept 2020]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim as asserted against Defendants is granted; and it is further

ORDERED that Defendants' motion for summary judgment is granted solely to the extent that Plaintiff's Labor Law § 200 and common law negligence claims are dismissed, without opposition, and the remainder of Defendants' motion for summary judgment is denied; and it is further

² In any event, Plaintiff repeatedly testified that he and his coworkers believed the A-frame cart was overloaded but were required to proceed to meet the foreman's deadlines.

³ Defendants did not raise the issue of whether Queens Plaza is a proper Labor Law Defendant. Nonetheless, even if Queens Plaza relinquished its ownership interest at the time of the accident, based on the record before the Court, contractually it remained the principal of the general contractor, which makes it a proper Labor Law § 240(1) defendant (*see* NYSCEF Doc. 105).

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/2/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

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