

<b>Gomez v Superpark Realty, LLC</b>
2026 NY Slip Op 30390(U)
February 2, 2026
Supreme Court, Kings County
Docket Number: Index No. 516488/2021
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2<sup>nd</sup> day of February 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

ARCADIO E. GOMEZ,

*Plaintiff(s),*

*-against-*

SUPERPARK REALTY, LLC, 451 TENTH AVENUE  
LLC and RELATED CONSTRUCTION LLC,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 516488/2021

Return Date: 10/16/2025

Motion Seq.: 003

*Recitation of the following papers as required by CPLR 2219(a):*

**NYSCEF  
Papers Numbered**

Notice of Motion & Supporting Documents.....	40-52
Affirmation in Opposition & Supporting Documents .....	54-63
Reply Affirmation & Supporting Documents .....	64-65

*Upon the foregoing papers, the decision and order of the Court is as follows:*

Plaintiff commenced this action to recover damages for personal injuries per Labor Law § 200, § 240 [1] and § 241 [6] and has now moved for an order granting summary judgment on Labor Law § 240 [1] only against the owner of the accident location, 451 Tenth Avenue, LLC, and the executive construction manager, Related Construction LLC.

On 6/17/2021, plaintiff was an employee of non-party Cross Country Construction LLC, that entered into a written agreement with Related Construction LLC to perform concrete superstructure work at that location. Plaintiff alleges that he was injured while attempting to position the 7,000 to 8,000-pound collar section of the crane that was being dismantled piece by piece. The load started to swing and sway, striking plaintiff in the chest and arm and knocking him into another section of the crane. In his verified bill of particulars, plaintiff alleges that he

sustained herniations of the cervical and lumbar spines, a fracture of his right 5<sup>th</sup> metacarpal, and tears of the bilateral rotator cuff and the right hip anterior femoroacetabular labrum,

It is defendants' position that there is a question of fact concerning the happening of this accident based on statements in plaintiff's C-2 Workers Compensation Form and his medical records, both of which contain a narrative that plaintiff's right hand was "caught" or "smashed" between the "column and section." Next, a completed C-3 Workers Compensation Form contains a different narrative, *to wit*: plaintiff was injured when he was lowering pipes from a pickup truck when it became unbalanced and pushed him. Lastly, Cross Country's safety manager submitted a report with another narrative: that the injury occurred as plaintiff was landing the crane when it swung and banged plaintiff's hand against another section of the crane. None of these reports document an injury to plaintiff's chest and arm. After a hearing at the Workers Compensation Board, the Administrative Judge disallowed any claim for body parts other than the right hand. This decision was upheld by the full Workers Compensation Board.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. A failure to demonstrate a *prima facie* entitlement to a summary judgment motion requires a denial regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], *citing Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]). The motion should also be denied if there are discrepancies between a party's pleadings, deposition testimony and statements in documentary evidence because their credibility is a question to be resolved by a jury (*Hine v Jafa Transportation, Inc.*, 97 AD3d 794, 795 [2d Dept 2012]).

While the general rule is that a party opposing the motion must make a showing of evidentiary proof in admissible form, under certain circumstances, "courts have recognized that proof which might be inadmissible at trial may, nevertheless, be considered in opposition to a motion for summary judgment" (*Carden v City of New York*, 82 AD3d 818, 819 [2d Dept 2011], citing *Guzman v Strab Construction Corp.*, 228 AD2d 645, 646 [2d Dept 1996]). "Rules of evidence should be guardedly and cautiously applied on an application for summary judgment, particularly where there are many exceptions to general rules and where the application of a rule of evidence or the exceptions thereto can best be determined upon evidence offered at a trial" (*Phillips v. Joseph Kantor & Co.*, 31 N.Y.2d 307, 311–312 [1972]).

Plaintiff's motion is denied (*Hine v Jafa Transportation, Inc.*, 97 AD3d 794, 795 [2d Dept 2012]). Although plaintiff met his initial burden on summary judgment, defendant came forward with evidence that there are conflicting versions of plaintiff's accident. (*Id.*; *Giuffrida v Citibank*, 100 NY2d 81 and *Alvarez v. Prospect Hospital*, 68 NY2d 324). Therefore, a jury must decide the manner in which the accident on 6/17/2021 happened and whether it was the proximate cause of the injuries other than those to his hand. (*Cameron v City of Long Beach*, 297 AD2d 774). The statements in the C-2 form, C-3 form, the safety manager's report and plaintiff's medical records are not considered for the truth of their content upon this motion for summary judgement, but rather, whether the statements were made and raise issues of fact and credibility requiring resolution by a jury (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175; *Carden v City of New York*, 82 AD3d 819, citing *Guzman v Strab Construction Corp.*, 228 AD2d 646).

The decision by the Workers Compensation Board cannot be considered by this Court when determining a motion for summary judgment on any issue other than the existence of an employer/employee relationship (WCL § 118-A;<sup>1</sup> *Nunez v CH Hous. Dev. Fund Corp.*, 234 AD3d 600, 600 [1<sup>st</sup> Dept 2025] and [has a retroactive effect and applies to injuries that occurred before its enactment on 12/30/22.]).

The Court has considered the parties' remaining arguments and finds same to be without merit.

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<sup>1</sup> Workers Compensation Law § 118-A. Effect of findings and determinations in subsequent proceedings. With respect to an action for a workers' compensation claim permissible under this chapter, no finding or decision by the workers' compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on liability under Labor Law § 240 [1] is DENIED.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', written over a horizontal line.

**Hon. Anne J. Swern, J.S.C.**

**Dated: 2/2/2026**