Guzman v Cornell Univ.
2026 NY Slip Op 30445(U)
February 5, 2026
Supreme Court, New York County
Docket Number: Index No. 157314/2022
Judge: Verna L. Saunders
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS** **PART 36**
Justice

----------X

JORGE ROBERTO GUZMAN,
Plaintiff,

- v -

CORNELL UNIVERSITY and WEILL MEDICAL COLLEGE OF CORNELL UNIVERSITY,
Defendants.

----------X

CORNELL UNIVERSITY and WEILL MEDICAL COLLEGE OF CORNELL UNIVERSITY,
Third-Party Plaintiffs,

-against-

KINGS GROUP NY CORP.,
Third-Party Defendant.

----------X

INDEX NO. 157314/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595669/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 69, 70, 71, 72, 73, 74, 78, 79, 80, 81, 82

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

In April 2022, defendants Cornell University, as owner of the property located at 455 East 69th Street (known as "Olin Hall"), and Weill Medical College of Cornell University (collectively, "Cornell" or "defendants"), as project manager, undertook to replace the roof at the premises to repair leaks. It is alleged that Related Services, Inc. ("Related"), as general contractor of the project (NYSCEF Doc. Nos. 64, *Llorente's EBT*; 65, *contract*), was tasked with hiring a scaffolding subcontractor to erect and dismantle a sidewalk shed (NYSCEF Doc. No. 64 at 31). Related hired third-party defendant Kings Group NY Corp. ("King") to perform said tasks. On April 25, 2022, plaintiff Jorge Roberto Guzman was allegedly struck by a falling beam while dismantling the sidewalk shed and this action ensued against defendants, seeking damages based on negligence (first and second causes of action) and various provisions of the Labor Law (third cause of action), including sections 200; 240(1); 240(2); 240(3); and 241(6). Plaintiff now moves, pursuant to CPLR 3212, for partial summary judgment on his Labor Law § 240(1) claim against Cornell on liability, arguing that there are no material issues of fact that defendants violated the Labor Law which proximately caused plaintiff's injuries (NYSCEF Doc. Nos. 47, *notice of motion*; 49, *summons and complaint*).

Plaintiff maintains that defendants' failure to regulate the descent of the heavy beam that struck him violates Labor Law § 240(1) because his injuries were caused by a falling object that required securing. Therefore, he maintains that partial summary judgment on this claim is

warranted (NYSCEF Doc. No. 48, *DeStefano aff*). In support of his application, plaintiff submits, *inter alia*, his own deposition testimony. At said deposition, plaintiff averred that, on the date of the accident, he was employed by JRG Service ("JGR"), a subcontractor of Kings, as a scaffold helper. He explained that, during the dismantling of the scaffold at the premises, he was tasked with transporting heavy beams measuring approximately ten (10) to twelve (12) feet to a truck. He was allegedly injured when a worker positioned above him dropped a heavy beam on him as plaintiff attempted to lower a beam from the top of the sidewalk shed down to the sidewalk. As testified to by plaintiff, he was standing on the sidewalk and receiving beams from a coworker positioned above him. The tip of a beam was on the ground, and plaintiff was standing in the middle of said beam. Plaintiff further attested that he was looking down, had the beam on his shoulders and was about to lift the beam to carry it away when he felt something impact his arm and face. Although plaintiff testified that he did not see the object that hit him, he later confirmed that he was struck by a beam falling from above. No hoisting equipment was used in the process of lowering the beams (NYSCEF Doc. Nos. 60-61, *plaintiff's ebt*).

Plaintiff also proffers a video, which he purports demonstrates work being performed within the scope of the work at the project, although he could not say how long after the accident the video was taken[1] and photos taken by plaintiff, including one taken after the accident (NYSCEF Doc. No. 63, *photos*).

In opposition to the motion, defendants argue that triable issues of fact remain that preclude summary judgment on plaintiff's Labor Law § 240(1) claim, arguing that the motion is premature under 3212(f). According to defendants, the depositions of site personnel, including those employed by JGR have not been conducted and the identities of the individuals present at the time of the incident remain unknown. They argue that, in the course of their investigation, they obtained an affidavit from Juan Martinez ("Martinez"), principal of JGR, as well as, an incident report prepared by JGR's foreman, "Kevin", from the date of the accident. Based on the report, which defendants annex to their opposition papers as exhibit A (NYSCEF Doc. No. 79), the accident occurred when "one of the guys pulled the junior [beam] that hit him on the front of the head." Defendants contend that this account contradicts plaintiff's version of events that the beam was not hoisted or that it was elevated; instead, they maintain that the report demonstrates that the beam struck plaintiff due to manual horizontal handling.

Defendants also argue that plaintiff's own admission that he did not see the beam undermines his claim that the injury resulted from a falling object. Additionally, they contend that there is no direct evidence of who dropped the beam, how far it fell or the circumstances of its descent. Addressing the video evidence proffered to the court, defendants state that "[r]ather than capturing a beam in free fall or any unregulated descent, the video depicts a controlled, systematic dismantling process in which a single worker at a time receives beams manually from a co-worker positioned above." This, argues defendant, is consistent with standard manual handoff procedures in sidewalk bridge dismantling operations. Inasmuch as the beam at issue was being handed from one worker to another during a sidewalk bridge dismantling operation, and was not suspended, hoisted, or stored for elevation, defendants claim that Labor Law § 240(1) is inapplicable to the facts here. They further posit that the video was created for

[1] The compact disc ("CD") plaintiff provided was not in a format compatible with the court's computer system and thus, was not viewed.

litigation purposes and was not a spontaneous recording, undermining plaintiff's credibility. Additionally, defendants argue that plaintiff's own testimony confirms that he did not see the beam fall and that he cannot identify its source, contradicting his assertion that his injuries were caused by an elevated-related risk (NYSCEF Doc. No. 78, *aff in opposition*).

In support of its opposition, defendants submit the witness statement affidavit of Martinez and an incident report relating to the April 25, 2023. In the witness statement, there is the following statement: "the attached affidavit is a copy of the employee accident report that was prepared by my employee Kelvin." However, this language is crossed out and initialed by "JM". Below the stricken language, Martinez stated, "the attached employee incident report is a copy of the report taken by my foreman [Kelvin] on April 26, 2025." The incident report, under details of incident, states that "[a]t 2 pm the guys are removing junior beam and one of the guys pull the junior that hit him on his front of the head and that moment the foreman call the ambulance and they take care of him". It further states that plaintiff was injured by "junior beam" and that the cause of the injury was "by person". The incident report is not signed. (NYSCEF Doc. No. 79).

In reply, plaintiff reiterates that he was injured when a coworker dropped a heavy beam on him as he stood on the sidewalk. As to the claim that the motion is premature, plaintiff argues that defendants have failed to show that there is evidence within the exclusive knowledge of plaintiff that would lead to discovery necessary to oppose the motion, because, when defendant was deposed in August 2024, the witnesses were made available to defendants. Moreover, plaintiff challenges the reliability of "Martinez's affidavit", claiming that the handwriting in the body of the statement is not Martinez's handwriting and that the statement indicating that the crossed-out reference to the report being "prepared by Kelvin" raises factual questions. Even if considered, plaintiff maintains that the incident report is not inconsistent with his version of events. Moreover, as to the argument that Labor Law § 240(1) does not apply to the manual handling of construction materials, plaintiff contends that this argument is against the case law set forth in the First Department (NYSCEF Doc. No. 80, *reply affidavit*).

In a motion for summary judgment, the movant bears the initial burden of presenting affirmative evidence of its *prima facie* entitlement to summary judgment, producing sufficient evidence to demonstrate the absence of any material issue of fact. (See *Sandoval v Leake & Watts Servs., Inc.*, 192 AD3d 91, 101 [1st Dept 2020]; *Reif v Nagy*, 175 AD3d 107, 124-125 [1st Dept 2019]; *Cole v Homes for the Homeless Inst., Inc.*, 93 AD3d 593, 594 [1st Dept 2012].) "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 Corp.*, 100 NY2d 72, 81 [2003].)

CPLR 3212(f) provides that "[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just." However, a party invoking CPLR 3212(f) must make an evidentiary showing to support its basis for further discovery.

Here, upon consideration of the arguments advanced, this court denies the motion as premature pursuant to CPLR 3212(f). This court notes that a note of issue in this case was filed on August 25, 2025, *after* the filing of the instant motion.[2] Plaintiff does not dispute that other individuals witnessed the accident and that their depositions were not conducted in this case; rather, he contends that defendants have known the identify of said individuals and have failed to take any steps to obtain discovery from them. Thus, inasmuch as it is undisputed by plaintiff that the depositions of eyewitnesses remain outstanding; that the instant motion was filed before completion of discovery and before the filing of the note of issue; and, since defendants have persuaded the court that the information to be elicited by said non-party witnesses may prove central to how the accident occurred, the motion is denied at this juncture, with leave to renew upon completion of discovery from non-party witnesses (see *Groves v Land's End Housing Co., Inc.*, 175 AD2d 733 [1st Dept 1991], citing CPLR 3212[f]; *Pastoriza v State*, 108 AD2d 605 [1st Dept 1985] [motion for summary judgment was premature in light of outstanding discovery and the opportunity to depose eyewitnesses and other witnesses]). Accordingly, defendants are hereby directed to complete all non-party depositions within sixty (60) days. This deadline shall not be adjourned without leave of court and failure to comply with said directive will amount to a waiver of said discovery. It is hereby

ORDERED that plaintiff's motion for partial summary judgment, pursuant to CPLR 3212, is denied as premature, with leave to renew upon competition of non-party discovery as set forth in this court's decision and order; and it is further

ORDERED that non-party discovery must be completed within sixty (60) days from the date of this decision and order; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order, with notice of entry, upon plaintiff

This constitutes the decision and order of this court.

February 5, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**

[2] A motion to vacate the note of issue is currently pending (motion sequence 003) in Part 19.