

**Young v New York Ladder & Scaffold Corp.**

2026 NY Slip Op 30490(U)

January 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 501558/2020

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS – PART 24

-----X  
SHEMMON YOUNG,

Mot. Seq. # 2 and 3

Plaintiff,

Index # 501558/2020

-against-

**DECISION and ORDER**

NEW YORK LADDER & SCAFFOLD CORPORATION  
and ANTHONY ALI,

Defendants.  
-----X

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion and Cross-Motion for Summary Judgment submitted on April 28, 2025.

Papers	Numbered
<b><u>Mot. Seq. #2</u></b>	
Notice of Motion and Affirmation .....	1&2 [Exh. 1-3]
Affirmation/Affidavit in Opposition.....	3 [Ehx. A-D];
Affirmation in Reply.....	4
<b><u>Mot. Seq. #3</u></b>	
Notice of Cross-Motion and Affirmation.....	5&6 [Exh. A-G]
Affirmation in Partial Opposition.....	7
Affirmation in Opposition.....	8
Affirmation in Reply on Cross-Claims.....	9

Plaintiff moves for an order pursuant to CPLR 3212 granting summary judgment against defendant, New York Lader & Scaffold Corporation, hereinafter “NY Ladder” on the issue of liability, and dismissing the affirmative defense of comparative negligence, and setting the matter down for trial on the assessment of damages. Defendant, Anthony Ali, cross-moves for summary judgment against plaintiff dismissing plaintiff’s negligence claim against Anthony Ali, and crossclaim for common law indemnification against co-defendant, NY Ladder, and dismissing all claims for indemnification against Anthony Ali. Defendant, NY Ladder, partially opposes co-defendant, Anthony Ali’s motion or summary judgment on his claim for indemnification against NY Ladder and dismissal of NY Ladder’s indemnification claim against Anthony Ali.

**Discussion**

While walking along the sidewalk in front of 11267 Fulton Street, Brooklyn, New York on December 17, 2019, the plaintiff, Shemmon Young was allegedly struck by a wood panel on his head and shoulder. At the time of the accident, defendant NY Ladder, was replacing paneling on

an adjacent sidewalk shed. At his deposition, the plaintiff testified that there were construction workers and a “watcher” on the street telling pedestrians whether it was safe to walk. Plaintiff also testified that he made contact with the “watcher” who acknowledged it was safe to walk, however, before reaching Ali’s Roti Shop, he heard hammering and someone scream “watch out,” and it was at that time, that a piece of wood came down and hit him on his head and shoulder.

Plaintiff argues that summary judgment on the issue of liability against defendant, NY Ladder, is warranted based on the theory of *res ipsa loquitur* which can be established if the following elements are met: (1) the event must be of a kind which ordinarily does not occur in the absence of someone’s negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; and (3) it must not have been due to any voluntary action or contribution on the part of plaintiff. In support of his motion for summary judgment, the plaintiff argues that the piece of wood fell to the sidewalk while NY Ladder was repairing a damaged panel. NY Ladder’s witness, Oscar Cuevas, who was at the job site when the accident occurred and whose job was to secure the area, testified that the wood plank fell while the workers were removing the damaged panel. Plaintiff argues that absent the negligence of NY Ladder, the accident would not have occurred. Plaintiff further argues that the accident was caused by an instrumentality within the exclusive control of defendant, NY Ladder, who was responsible for securing and coning off the area where pedestrians walk, and the wood plank was exclusively under the control of NY Ladder when it was caused to fall while repairs were being done. Lastly, plaintiff argues that as a pedestrian; while walking on a New York City public street, the accident was not the result of any voluntary action or contribution on his part, and there was nothing to prevent him from walking under the portion of the scaffold where he was struck by the wooden plank.

In opposition to plaintiff’s motion for summary judgment, defendant, NY Ladder, argues that summary judgment on the issue of liability under the theory of *res ipsa loquitur*, and dismissal of the affirmative defense of comparative negligence should be denied. NY Ladder argues that it had finished constructing the sidewalk shed but was called back to the site to make emergency repairs to the shed. Oscar Cuevas inspected the damage, observed that there was a partially dislodged hanging panel on the front side of the shed, as well as some of the shed’s steel components, as a result of a truck striking the shed which posed a serious risk to pedestrians. Mr. Cuevas testified that he staked out a safety perimeter with orange construction cones and bright yellow caution tape and stood guard to prevent pedestrians from entering the cordoned area. While two other workers were repairing the shed, dismantling the plank, it fell hit the Sprint store window, broke through the caution tape and struck the plaintiff. Mr. Cuevas testified that he did not see the plaintiff who was behind him when the incident occurred. NY Ladder argues that the plaintiff has failed to meet his burden of proof to establish liability under the theory of *res ipsa loquitur*. Defendant argues that the plaintiff does not establish that the incident occurred due to NY Ladder’s negligence because a truck struck the sidewalk shed causing the panel to dislodge, and there is insufficient evidence that NY Ladder had exclusive control/access to the instrumentality. Specifically, NY Ladder argues that the third-party contractors were working at the site before the accident occurred, and the truck caused the sidewalk shed damage which

dislodged the plank, as opposed to negligence of NY Ladder when the shed was installed in July. Defendant further argues that the arear was corded off with cones and caution tape to warn pedestrians to stay away from the construction zone, and he was standing within the cone area, and when the plank fell the plaintiff ignored the verbal warning to “watch out.”

In reply plaintiff argues that NY Ladder caused the accident by failing to remove or properly secure the wooden plank while it worked to repair the damaged panel that was hanging by a few nails. Plaintiff also argues that there were workers above and a “watcher” on the street telling pedestrians it was safe to walk, who upon eye contact with plaintiff told him it was safe to walk, and before reaching his destination, he hears someone scream “watch out,” and then felt the wooden plank strike him.

After careful review of the moving papers, opposition thereto and reply, the court finds as follows:

The granting of summary judgment on the theory of *res ipsa loquitur* is rarely exercised and would happen only when the plaintiff’s circumstantial proof is so convincing and the defendant’s response so weak that the inference of defendant’s negligence is inescapable. *See, Bonacci v. Brewster Service Stration, Inc.*, 54 Misc.3d 437, 44 N.Y.S.3d 845 (Westchester Co., 2016), citing *Morejon v. Rais Construction Company*, 7 N.Y.3d 203, 818 N.Y.S.2d 792 [2006]. Here, the court finds that the plaintiff has met the three-prong test in order to determine whether *res ipsa loquitur* applies. The plaintiff who was a pedestrian walking down the street was struck by the wooden plank that was being repaired by defendant, NY Ladder. NY Ladder’s argument that a third-party worked on the site, as well as the shed having been struck by a truck is unavailing. NY Ladder was at the time of the accident, the only party named herein working on the repair of the shed when the plaintiff was struck by the plank. In fact, NY Ladder was called to the site to repair the shed after it was struck by the truck, whereupon its own witness testified that he saw the risk the dangling plank posed to pedestrians, that he corded off the area with caution tape and cones while workers began the repair. It was during the repair by NY Ladder when the plank was unscrewed by NY Ladder’s workers causing it to fall, strike the Sprint store window, break through the caution tape and then strike the plaintiff. The defendant, NY Ladder’s arguments do not raise an issue of fact as to someone or something else being the cause of the plank falling. In addition, NY Ladder has not raised an issue of fact as to the work being under its exclusive control. The repairs were being done by NY Ladder, who had workers, and Oscar Cuevas on site at the time the accident occurred. Defendant, NY Ladder, does not address the plaintiff’s contention that he was told to proceed after making eye contact with the “watcher” who was there directing pedestrians to walk. In fact, Mr. Cuevas stated that he did not see the plaintiff because the plaintiff was behind him when the accident occurred. Defendants argue that the plaintiff ignored the verbal warning and therefore contributed to him being struck with the plank is also unavailing. After being directed to walk, plaintiff continued toward his destination when he was later struck by the falling plank.

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. *See, Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2<sup>nd</sup> Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action or tender an acceptable excuse for his failure and submission of a hearsay affirmation by counsel alone does not satisfy this requirement." *See, Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

The court finds that an inference of NY Ladder's negligence is inescapable, and defendant failed to raise an issue of fact which would preclude summary judgment from being granted as to liability.

Next, this court will address co-defendant, Anthony Ali's cross-motion for summary judgment for dismissal of plaintiff's negligence claim against him and an order granting defendant, Anthony Ali common law indemnification against co-defendant, NY Ladder and dismissing all cross claims for indemnification against Anthony Ali. NY Ladder only opposes those portions of co-defendant, Ali's motion which seek summary judgment on Ali's indemnification claims against NY Ladder and dismissal of NY Ladder's indemnification claims against Anthony Ali. Plaintiff opposes co-defendant, Anthony Ali's cross-motion for summary judgment dismissing plaintiff's negligence claims.

Generally, a landowner owes a duty of care to maintain his or her property in a reasonably safe condition, which is premised on the landowner's exercise of control over the property, as "the person in possession and control of property is best able to identify and prevent any harm to others." *See, Baek v. Red Cap Services, Ltd.*, 129 A.D.3d 752, 10 N.Y.S.3d 599 (2<sup>nd</sup> Dept., 2015). However, a landowner who has transferred possession and control over the property generally is not liable for injuries caused by dangerous conditions on the property. In the case at bar, co-defendant, Anthony Ali contracted with NYC Brownstone Consulting (hereinafter "Brownstone") to renovate his property, who in turn contracted with NY Ladder to install a sidewalk shed over the sidewalk where the construction work was happening. Although, the co-defendant, Ali knew the shed had been damaged, he did not have any possession and control over the property when the accident occurred. There is nothing in the record that establishes co-defendant, Ali, created the dangerous condition, nor having possession and control over the property at the time of accident. The court finds that an issue of fact has not been raised which would preclude summary judgment from being granted in co-defendant, Ali's favor as to dismissal of plaintiff's negligence claims against, Anthony Ali as owner of the subject property.

As to the co-defendant's cross claims for indemnification against NY Ladder and dismissal of NY Ladder's indemnification claims against Ali, the court finds that based upon its finding that NY Ladder's negligence is inescapable, co-defendant, Ali is entitled to summary judgment on its cross-motion for common law indemnification against NY Ladder and dismissal of NY Ladder's indemnification claims against Ali. In order to establish a claim for common-law indemnification, a party must " 'prove not only that [it was] not negligent, but also that the proposed indemnitor .. was responsible negligence that contributed to the

accident or, in the absence of any negligence, had the authority to direct, supervise, and control the work giving rise to the injury. See, *Shaughnessy v. Huntington Hosp. Ass'n*, 147 A.D.3d 994, 47 N.Y.S.3d 121 (2<sup>nd</sup> Dept., 2017). The court finds that the co-defendant, Anthony Ali established that it was not negligent, but also that NY Ladder had the authority to direct, supervise, and control the work giving rise to the plaintiff's injuries.

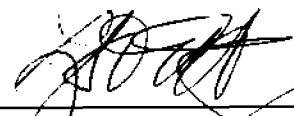
Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the issue of liability is granted, and it is

ORDERED, that co-defendant, Anthony Ali's cross-motion for summary judgment is granted in its entirety.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York  
January 30, 2026

  
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HON. LISA S. OTTLEY, J.S.C.  
HON. LISA S. OTTLEY

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