

<b>Pierre v Hudson Riv. Park Trust</b>
2026 NY Slip Op 30559(U)
February 5, 2026
Supreme Court, New York County
Docket Number: Index No. 161110/2021
Judge: Verna L. Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 161110/2021

PAULNER PIERRE, Plaintiff,

MOTION SEQ. NO. 005

- v -

HUDSON RIVER PARK TRUST, SUPER P57 LLC, RXR PIER 57 MT LLC, RXR REALTY LLC, RXR CONSTRUCTION SERVICES LLC, GOOGLE LLC, and STRUCTURE TONE, LLC,

DECISION + ORDER ON MOTION

Defendants.

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HUDSON RIVER PARK TRUST, SUPER P57 LLC, RXR PIER 57 MT LLC, RXR REALTY LLC, and STRUCTURE TONE, LLC Third-Party Plaintiffs,

Third-Party Index No. 595003/2023

-against-

EGG ELECTRIC INC. Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151, 152, 153

were read on this motion to/for SUMMARY JUDGMENT

This is an action to recover damages for personal injuries allegedly sustained by an expeditor on April 13, 2021, when, while working at a construction site located at Pier 57 in Manhattan, New York, he was struck on the head by a falling light fixture.

In Mot Seq. 005, plaintiff Paulner Pierre moves, pursuant to CPLR 3212, for summary judgment in his favor on his Labor Law § 240(1) and § 241(6) claims against defendants Hudson River Park Trust ("HRPT"), Super P57 LLC ("Super P57"), RXR Pier 57 MT LLC ("RXR Pier 57"), RXR Realty LLC ("RXR Realty"), Google LLC ("Google"), and Structure Tone, LLC ("Structure Tone") (NYSCEF Doc. Nos. 126-146). Plaintiff also seeks dismissal of defendants' affirmative defenses predicated on sole proximate cause, and an award of costs and attorneys' fees. Defendants oppose the motion (NYSCEF Doc. Nos. 148-149), to which plaintiff submits a reply (NYSCEF Doc. No. 153).

On the day of plaintiff's accident, the premises at Pier 57 in Manhattan was owned by HRPT. Super P57, Google, and RXR Pier 57 were lessees of the property. Structure Tone, pursuant to a base subcontract with Egg Electric, Inc. ("Egg"), was hired to perform construction

services at the site. Defendants commenced a third-party action against Egg, plaintiff's employer, on January 4, 2023.

Plaintiff testified that on April 13, 2021, at approximately 10:00 A.M., he was working as an expeditor at the construction project on the third floor of Pier 57 in Manhattan. He had been employed at the project for approximately two weeks. Plaintiff was working with his co-worker, Claudio Urgiles ("Urgiles"). Both were wearing hard hats and regular work uniforms. Prior to the accident, plaintiff and Urgiles placed boxes on a pallet, loaded the pallet onto a pallet jack, and transported the materials from the first floor to the third floor via elevator. As plaintiff and Urgiles exited the elevator on the third floor, they encountered Dean Harry ("Harry"), an Egg employee, who was standing on a ladder. "I was coming from the first floor to the third floor, coming out to the elevator. And there's a big open area, clear area, and with Claudio in the back, hand on top of the box, and I was in the front pulling the – pulling the handle." (NYSCEF Doc. No. 137 at 60, *plaintiff's ebt*). According to plaintiff, the pallet jack never physically touched the ladder. "I stopped by the ladder with the pallet jack, took one foot behind me. And I was about one foot close to – to the ladder, and I stopped. And Dean tried to get off the ladder without secur[ing] the lamp – the fixture" (*id*). Pierre testified the ladder was a "12-foot ladder," not an extension ladder, but a "A-frame ladder" (*id* at 62). The ladder was positioned in the passageway where plaintiff and Urgiles needed to move the pallet jack. Pierre described the fixture as "a big light fixture" and, when pressed further, he testified "[i]t was, like, about three foot. Yeah, three foot light fixture" (*id* at 73). When asked what Harry was doing on the ladder before the accident happened, Pierre said "[h]e was installing the light fixture" (*id* at 75). When asked where the light was before it fell, Pierre replied "[o]n the top of the ladder" (*id* at 68). Pierre testified that the subject light fixture "wasn't attached to nothing, just fall down like that. I heard the noise and fall on my head" and that it "slid on the ladder" and fell onto his head (*id* at 71). Pierre denied any contact between himself or the pallet jack and the ladder. Pierre denied authoring the incident report's statement about pallet jack contact. When asked "[d]id you write that part?" regarding the language stating the pallet jack hit the ladder, Pierre responded: "Oh, no" (*id* at 72).

Urgiles testified through a translator. Both expeditors were assigned to moving the pallet jack. He testified: "[b]ecause it's always two people that are needed. It's always two people used" (NYSCEF Doc. No. 146 at 68, *Urgiles ebt*). Urgiles described how the two men worked. "He was driving the jack and I was pushing it" (*id* at 26). Urgiles testified that he did not see the pallet jack hit the ladder, though he suspected there was contact. "No... I was standing in the rear and that's why I didn't see any of that" (*id* at 31). Urgiles was asked whether the light fixture was fully installed when the accident occurred or what held it in the air. He replied "[n]o. It was not yet installed, that's why it fell. I think it might've been on top of the ladder but – no. No, I don't remember. I have no idea" (*id* at 36). When defense counsel asked about inconsistencies in his testimony regarding if there was contact with the ladder, Urgiles said "[a]ll I know is that the light – the light fixture hit the man on the head. That's all. But everything – everything that I wrote down is how things happened. That's all I remember" (*id* at 32). When plaintiff's counsel asked if pallet jack hitting a metal ladder would usually make a sound he replied "Yes. If you hit it hard but not if you hit it in a soft way..." (*id* at 93-94).

John Reilly (“Reilly”), Structure Tone’s safety manager, testified that he prepared an incident report based on information from others and that he did not witness the accident. “Did I witness? No” (NYSCEF Doc. No. 139 at 47, *Reilly ebt*). Upon learning of the accident, Reilly testified “[w]hen I found out, I started to get the paperwork, called Marion up, and tried to get statements from people” (*id* at 47). To find out what happened Reilly said “I believe I contacted Marion. When there’s an incident, he tried to take people back to the shanty, get the facts” (*id* at 49). When asked if Reilly spoke with Harry he testified “Dean wouldn’t give a statement” (*id* at 51). When asked the same about speaking with the plaintiff, Reilly replied “Not that I recall. I don’t think he gave a statement” (*id*). Reilly explained that Urgiles’ witness statement was written by him because the expeditor does not speak or write in English. When asked how he understood the witness, Reilly testified “[i]t was translated by Gil Colon, the superintendent of Egg” (*id* at 54). Reilly’s report states that plaintiff hit the ladder with the pallet jack, causing the light fixture to fall. Specifically, Reilly’s report reads: “[a]s Paulner was moving the pallet, he hit the ladder which Dean was using to install the light fixtures. And the light fixture fell off striking Paulner on the head” (*id* at 55). Reilly was asked: “Did you learn where Mr. Pierre was positioned as they were moving the pallet jack?” Reilly responded: “I don’t recall” (*id* at 56-57). Reilly could not recall whether Claudio mentioned what part of the pallet hit the ladder, what kind of ladder Dean was on, the color of the ladder, or the material of the ladder (*id* at 57). Reilly acknowledged that his information came from the report, not from his own observation (*id* at 38). When asked if he learned where the plaintiff was struck from interviewing Urgiles, Reilly testified “I think I found that out in Twenty-Four Hour Report” (*id* at 59).

In his affirmation, Anthony Corrado (“Corrado”) specifically stated that “Harry should have secured the light fixture, and according to the photographs in Appendix-B showing properly secured fixtures elsewhere on the project, this could have been accomplished using tie wire, plastic zip ties, or similar temporary securing methods commonly used in the industry and on this project” (NYSCEF Doc No. 145 at 10). Furthermore, Corrado identified how a two-handed task like installing light fixtures could have complied with OSHA regulations. “Instead of a ladder, the defendant should have provided a Baker scaffold or similar platform with guardrails” (*id* at 10).

In opposition to the motion, defendants argue that summary judgment is not warranted because plaintiff’s injuries were not the direct result of an elevated-related risk contemplated by the statutes since the alleged injury was not as a result of an object that was improperly hoisted or secured at the time of accident. They further posit that the light fixture did not require securing for purposes of the undertaking. According to plaintiff, providing a protective device of the type enumerated in Labor Law § 240(1) was neither necessary nor expected because plaintiff’s injuries were not a foreseeable consequence of the failure to provide such protective devices. Additionally, there is an issue of fact as to whether the plaintiff was the sole proximate cause of the accident through the use of the pallet jacket. Addressing the Labor Law § 241(6) claim, defendants contend, in sum and substance, that the Industrial Code § 23-1.7(e)(1) is inapplicable to the facts of this case (NYSCEF Doc. No. 149, *memo of law in opp*).

In reply, plaintiff states, inter alia, that defendants are liable under Labor Law § 240(1) because he was exposed to a gravity-related risk and that there was a failure to provide any fall protection, causing his injuries. This failure to properly secure the light fixture, argues plaintiff,

is not an ordinary risk of the jobsite. He further contends that there is no requirement to provide what enumerated device would have protected him from a gravity-related injury where, as here, no safety devices were provided. As to the Labor Law § 241(6), plaintiff avers that defendants fail to raise an issue of fact sufficient to defeat that branch of the motion inasmuch as they proffer no expert opinion to support their contention that Industrial Code § 23-1.7(e)(1) is inapplicable to the facts (NYSCEF Doc. No. 153, *aff in reply*).

Summary judgment is a drastic remedy that should only be granted when there are no triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The movant bears the initial burden of establishing entitlement to summary judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once the movant makes a prima facie showing, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (*id* at 562). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

Plaintiff moves for summary judgment in his favor as to liability on the Labor Law § 240(1) claim against defendants.

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

“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.”

“Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001] [citations omitted]). Labor Law § 240(1) imposes absolute liability upon owners and general contractors where a worker’s injuries are the direct consequence of a failure to provide adequate protection against elevation-related hazards (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 n 4 [1993]). The statute is designed to protect workers from gravity-related hazards and must be liberally construed to accomplish the purpose for which it was framed (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]). Not every worker who falls at a construction site is afforded the protections of Labor Law § 240(1). Instead, liability “is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). Therefore, to prevail on a section 240(1) claim, a plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff’s injuries (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

Initially, HRPT is the owner of the Premises, and Super P57, RXR Pier 57, Google, and Structure Tone are proper parties under the Labor Law.

There is no dispute that plaintiff was engaged in construction work at the time of the accident. Plaintiff was struck by a light fixture that fell from an A-frame ladder (either 8 feet or 12 feet tall, depending on the testimony). Being struck by a falling object constitutes an elevation-related injury within the realm of Labor Law § 240(1) (*Narducci v Manhasset Bay Assoc.*, 96 NY2d at 268). The fact that plaintiff was not himself working at elevation is immaterial; the statute protects workers struck by falling objects, as well as, workers who fall from heights (*Rocovich*, 78 NY2d at 514).

Plaintiff was struck by a falling object that was inadequately secured. Whether the fixture fell due to gravity alone or was dislodged by contact with the pallet jack, defendants violated § 240(1) because the fixture required securing to prevent it from falling and injuring workers below (see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). The fixture's placement on a ladder rung, unsecured by rope, tie wire, or other device, created an elevation-related hazard that the statute was designed to prevent (see *Rocovich*, 78 NY2d at 514).

The three-foot light fixture positioned unsecured on a ladder rung required securing for purposes of Labor Law § 240(1). A fixture left in a position where it could fall, whether by gravity alone or by being dislodged through incidental contact, is precisely the type of object that must be secured. The First Department has consistently held that objects at an elevation which pose a risk of falling must be adequately secured to protect workers below (see *Rutkowski v New York Convention Ctr. Dev. Corp.*, 146 AD3d 686, 686 [1st Dept 2017] [light fixture fell from ladder]; see also *Narducci*, 96 NY2d at 268). The fact that the fixture was only temporarily placed on the ladder does not exempt it from the statute's protections. Temporary placement creates the very hazard the statute addresses, an object precariously positioned at elevation without adequate securing devices. Furthermore, the existence of conflicting accounts regarding the mechanism by which the light fixture fell does not preclude summary judgment for plaintiff. The First Department has held that "the fact that the parties offered different versions of plaintiff's accident makes no difference with respect to defendants' liability under Labor Law § 240(1). "Under either version, defendants have failed to secure an area at a construction site from which a fall could occur, thereby exposing the injured worker to an elevation related risk" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001]; see *Cashbamba v 1056 Bedford LLC*, 168 AD3d 638, 639 [1st Dept 2019]; *Iuculano v City of New York*, 214 AD3d 535, 536 [1st Dept 2023]; ). This principle applies here.

Under plaintiff's version, the fixture slid off the ladder due to gravity when Harry descended, and no securing devices (rope, tie wire, or other means) were provided. This establishes a clear § 240(1) violation. Under defendants' version, the pallet jack made contact with the ladder, causing the unsecured fixture to fall. This also establishes a § 240(1) violation. A fixture that can be dislodged by incidental contact during normal work activities is precisely the type of object that requires securing. The statute does not protect only against falls caused solely by gravity; it protects against falls caused by inadequate safety devices, regardless of whether the immediate trigger is gravity or workplace contact. If the fixture had been properly

secured with rope, tie wire, or other devices, it would not have fallen whether the pallet jack contacted the ladder or not.

Defendants' sole proximate cause defense fails as a matter of law. Even where a statutory violation is established, defendants may avoid liability by demonstrating that plaintiff's own conduct was the sole proximate cause of the accident (see *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290 [2003]). However, a plaintiff cannot be the sole proximate cause of an accident when acting in concert with a co-worker as part of their assigned duties (see *Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433-434 [2015]). Here, plaintiff and Urgiles were working together as a team to transport materials using the pallet jack. Plaintiff was steering while Urgiles was positioned behind the pallet jack. This was their assigned task. When two workers are engaged in joint action to accomplish a work assignment, neither can be the "sole" proximate cause of an accident arising from that work.

Moreover, even if plaintiff were working alone, defendants have failed to establish the sole proximate cause defense. To establish this defense, defendants must show that adequate safety devices were available, plaintiff knew they were available and was instructed to use them, plaintiff failed to use or misused the device for no good reason, and such failure was the sole proximate cause (see *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]). Here, there is no evidence that tie wires, zip ties, or other securing devices were provided to plaintiff or that he was instructed to secure the fixture. Plaintiff's work assignment was to transport materials, not to install lighting fixtures. Thus, the failure to secure the fixture was defendants' responsibility, not plaintiff's.

Defendants cannot transform their own failure to secure an elevated object into plaintiff's sole proximate cause by arguing that plaintiff should have avoided the area entirely. The statute does not require workers to cease their assigned duties because of safety hazards created by defendants' failures. Reilly's testimony that "around a ladder should be a controlled-access zone; you don't come by with a pallet jack if someone is on the ladder" (*Reilly, tr at 71*) demonstrates that defendants recognized the hazard but failed to implement appropriate safety measures. This recognition of the hazard undermines any argument that plaintiff's conduct was reckless or the sole cause of the accident. Thus, plaintiff is entitled to summary judgment in his favor on the Labor Law § 240(1) claim against defendants.

Plaintiff also moves for summary judgment in his favor on the Labor Law § 241(6) claim against defendants.

Labor Law § 241(6) provides, in pertinent part, as follows:

"All contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

\* \* \*

(6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide

reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.”

Labor Law § 241(6) “imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed” (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998] [internal quotation marks omitted]; see also *Ross*, 81 NY2d at 501–502). Importantly, to sustain a Labor Law § 241(6) claim, it must be shown that defendant violated a specific, “concrete” implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id* at 505). Additionally, plaintiff must establish that the violation was a proximate cause of the accident (see *Gonzalez v Stern’s Dep’t Stores*, 211 AD2d 414, 415 [1st Dept 1995]).

Plaintiff seeks summary judgment on his § 241(6) claim predicated on a violation of Industrial Code § 23-1.7(e)(1), which provides:

“Passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which constitute a hazard shall be removed or covered.”

Plaintiff argues that the ladder obstructed the passageway, requiring him and Urgiles to maneuver the pallet jack around it, and that this constitutes a violation of § 23-1.7(e)(1). Defendants argue that § 23-1.7(e)(1) addresses tripping hazards such as dirt, debris, and sharp projections, not obstructions that interfere with overhead clearance.

Industrial Code § 23-1.7(e)(1) is sufficiently specific to support a Labor Law § 241(6) claim (see *Ross*, 81 NY2d at 505 [1993]). However, the regulation does not apply to the circumstances of this accident. Section 23-1.7(e) is titled “Tripping and other hazards.” Subdivision (e)(1) specifically addresses passageways and requires that they be kept free from “accumulations of dirt and debris” and “any other obstructions or conditions which could cause tripping.” (12 NYCRR 23-1.7[e][1]). The Court of Appeals has applied this regulation to objects on walking surfaces that workers could trip over (see *O’Sullivan v IDI Constr. Co., Inc.*, 7 NY3d 805, 806 [2006]; *Ruisech v Structure Tone Inc.*, 42 NY3d 1061, 1063 [2024]). Here, plaintiff was not injured by tripping over an obstruction in a passageway. Rather, he was struck by a falling object from above. The regulation’s plain language addresses horizontal obstructions that cause tripping, not falling object hazards. Accordingly, because Industrial Code § 23-1.7(e)(1) is inapplicable to plaintiff’s factual allegations, plaintiff has failed to establish entitlement to summary judgment on his § 241(6) claim. Based on the foregoing, it is hereby

**ORDERED** that plaintiff Paulner Pierre’s motion (Mot. Seq. 005), pursuant to CPLR 3212, for summary judgment pursuant to Labor Law § 240(1) against defendants Hudson River Park Trust, Super P57 LLC, RXR Pier 57 MT LLC, RXR Realty LLC, Google LLC, and Structure Tone, LLC is granted; and it is further

**ORDERED** that plaintiff's motion for summary judgment in his favor as to liability on the Labor Law § 241(6) claim predicated upon an alleged violation of Industrial Code § 23-1.7(e)(1) is denied and the claim is hereby dismissed; and it is further

**ORDERED** that plaintiff's request for dismissal of defendants' affirmative defenses predicated on sole proximate cause is granted; and it is further

**ORDERED** that plaintiff's request for costs and attorneys' fees is denied.

February 5, 2026

HON. VERNA L. SAUNDERS, JSC

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