

Bennett v 100 Malcolm X LLC
2026 NY Slip Op 31183(U)
March 24, 2026
Supreme Court, Kings County
Docket Number: Index No. 513835/2020
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 24th day of March 2026

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

FABIAN MONROY BENNETT,

Plaintiff(s),

-against-

100 MALCOLM X LLC, MANHATTAN D ENTERPRISES CORP. and IMPACT BUILDERS CORP.

Defendant(s).

DECISION & ORDER

Index No.: 513835/2020

Calendar No.: 27, 28 & 29

Motion Seq.: 4, 5 & 6

Return Date: 12/18/2025

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

**NYSCEF
Papers Numbered**

004	Manhattan D Enterprises Corp.’s’ Notice of Motion and Supporting Documents.....	93-99
	Affirmation in Oppositions	154-155
	Reply Affirmations and Supporting Documents.....	158-161
005	Impact Builders Corp.’ Notice of Motion and Supporting Documents	101-123
	Affirmations in Oppositions and Supporting Documents.....	146-156
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006	Plaintiff’s Notice of Cross-Motion and Supporting Documents.....	124-142
	Affirmations in Opposition and Supporting Documents	150-157
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Upon the foregoing papers, the decision and order of the Court is as follows:

Introduction

This is an action for personal injuries sustained by plaintiff when he fell from the roof of 100 Malcolm X Boulevard, Brooklyn, New York (the “premises). At the time of the accident, he was an employee of Franklin Orellana, a non-party to this action.

Defendant Manhattan D Enterprise Corp. moved for summary judgment per CPLR § 3212 dismissing all claims against it arguing that it was never on the job site and was hired only to obtain scaffolding permits for another company on the job site. All parties except for the owner signed a stipulation of discontinuance. However, on the return date of the motion, the owner withdrew its opposition to Manhattan D's motion. Therefore, this motion is granted. (MS #4).

Defendant Impact Builders Corp. ("Impact") has also moved for summary judgment per CPLR § 3212 dismissing plaintiff's complaint and all crossclaims against it arguing that it was not the general contractor and was hired solely for the purpose of obtaining three construction permits, and the necessary supporting engineering report. The motion is denied because there is conflicting testimony that demonstrates a triable issue of fact whether Impact was the general contractor. (MS#5).

Plaintiff has moved for summary judgment on his Labor Law § 240 [1] and § 241 [6] causes of action, and violations of Industrial Code 12 NYCRR § 23-1.7 [b] [1] [i] [hazardous openings]¹ and 12 NYCRR § 23-1.16 [b] [attachment required for safety belt or harness].² Plaintiff has established as a matter of law violations of the Labor Law and Industrial Code based on the uncontroverted evidence that plaintiff was working without lanyards, lifelines, or tie-off points and there was no scaffolding or safety nets to prevent him from falling to the ground

¹ **12 NYCRR § 23-1.7 Protection from general hazards.**

[b] [1] [i] Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part

² **12 NYCRR § 23-1.16 Safety belts, harnesses, tail lines and lifelines.**

[b] Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.

below. Therefore, plaintiff's motion is granted in its entirety as against the owner, 100 Malcolm X LLC. The motion is granted on the issues of the statutory violations and proximate cause as against Impact Builders Corp., but denied on the issue of whether Impact was the general contractor. (MS #6).

Facts

It is undisputed that on 6/11/2020, plaintiff was removing plywood from the roof and installing new roof beams on an open, four-story rooftop that did not have guardrails, parapet, scaffolding, safety nets, lifelines, or anchorage points. Plaintiff and other workers on the roof were wearing harnesses, but lanyards, lifelines, or tie-off points were not supplied. They were all working on the roof "untethered." There was also no scaffolding or safety nets around the building. Plaintiff was prying up plywood within roughly 30 inches of the roof's edge, when a brick under his foot broke away and he fell from the roof to the backyard below, sustaining serious life-altering injuries.

Jacob Haimoff is the sole principal of 100 Malcolm X LLC, a single member LLC. Haimoff testified that he hired Impact as the general contractor pursuant to a verbal agreement that was not reduced to a written contract:

"They were brought on as general contractors. Their job was to oversee the work, making sure that, you know, everything was performed right, making sure that we're up to code, that the work is conducted up to code, and making sure that we can, you know, sign off on the job when it's completed. That's pretty much what was needed from the GC (General Contractor)." (NYSCEF 133, p.31).

He further testified that Impact oversaw all work at the jobsite and if they observed work being performed in an unsafe manner, Impact "absolutely had the ability to stop the work" and would respond to any safety violations issued (*id.* at 61-62). Franklin Orellana provided an affidavit in support of defendant Manhattan D Enterprises, Inc.'s motion for summary judgment

(MS #4). In the affidavit, he stated that he was hired by Impact to perform work at the job site. Mr. Orellana stated that he would see Aryeh Assouline, the owner of Impact, at the job site at least three to four times per week. However, Mr. Orellana's primary point of contact at Impact was Yaakov Bloom.

Aryeh Assouline disputes that Impact was the general contractor on the site because he was only hired for the purpose of obtaining three construction permits, and the supporting engineering reports for the permits. Mr. Assouline also testified that he is the sole owner and employee of Impact and did not employ Yaakov a/k/a Jacob Bloom. He further points to Haimoff's testimony that Yaakov or "Jacob" was an employee of the owner, 100 Malcolm X LLC (NYSCEF 133, p.40-42).

Discussion

a) Labor Law § 240 [1]

It is well settled that Labor Law § 240 [1] "imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks" who engage in activities covered by the statute and "suffered an injury as a direct consequence of a failure to provide adequate protection" against such risks (*Soto v J. Crew, Inc.*, 21 NY3d 562, 566 [2013] [internal citations omitted]). "[T]he extraordinary protections of Labor Law § 240 (1) extend only to a narrow class of special hazards, and do not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity" (*Gomez v Tilden Estates*, 241 AD3d 791, 793 [2d Dept 2025] [internal quotations omitted]). "[T]he statute was designed to prevent accidents in which a 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*" (*id.* at 793).

b) Labor Law § 241 [6]

The plain language of 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 [] all areas in which construction, excavation or demolition work is being performed” (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348-350 [1998]). This absolute liability is imposed on an owner and general contractor for the negligence of a subcontractor, even in the absence of control or supervision of the worksite (*id.*). Therefore, an owner and general contractor can be vicariously liable for the negligent acts of others when someone in the chain of responsible employees at the project created or had actual or constructive notice of the alleged hazardous condition that proximately caused plaintiff’s injuries (*Cavedo v Flushing Commons Property Owner, LLC*, 217 AD3d 562).

c) Impact’s Motion (MS#5) and Plaintiff’s Motion (MS #6)

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. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion 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]).

Here, plaintiff has established as a matter of law that the violations of Labor Law § 240 [1] and § 241 [6] causes of action, and violations of Industrial Code 12 NYCRR § 23-1.7 [b] [1] [i] [hazardous openings] and 12 NYCRR § 23-1.16 [b] [attachment required for safety belt or harness] were the proximate cause of his injuries. Therefore, summary judgment is granted in its entirety as against the owner, 100 Malcolm X LLC, as it had the non-delegable duty of reasonable care to provide reasonable and adequate protection and safety of workers on the job site (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 348-350).

However, as to Impact, there is a triable question of fact whether it was the general contractor with the same non-delegable duty. Jacob Haimoff testified that he had a verbal contract with Aryeh Assouline for Impact to be the general contractor. Aryeh Assouline has emphatically denied this material issue of fact. Thus, a jury must assess their credibility to resolve question of whether Impact was the general contractor. (*Cameron v City of Long Beach*, 297 AD2d 774). Therefore, plaintiff's motion for summary judgment against Impact is denied

only on the question of whether Impact was the general contractor. Impact's motion for summary judgment dismissing this action and all crossclaims against it is also denied.

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

Accordingly, it is hereby

ORDERED that defendant MANHATTAN D ENTERPRISE CORP. motion for summary judgment per CPLR § 3212 dismissing plaintiff's complaint and all crossclaims against it is GRANTED in its entirety (MS #4), and it is further

ORDERED that defendant IMPACT BUILDERS CORP.'s motion for summary judgment per CPLR § 3212 dismissing plaintiff's complaint and all crossclaims against it is DENIED in its entirety (MS #5), and it is further

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on his Labor Law § 240 [1] and § 241 [6] causes of action, and violations of Industrial Code 12 NYCRR § 23-1.7 [b] [1] [i] [hazardous openings] and 12 NYCRR § 23-1.16 [b] [attachment required for safety belt or harness] is GRANTED in its entirety as against the owner 100 MALCOLM X LLC (MS #6), and it is further

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on his Labor Law § 240 [1] and § 241 [6] causes of action, and violations of Industrial Code 12 NYCRR § 23-1.7 [b] [1] [i] [hazardous openings] and 12 NYCRR § 23-1.16 [b] [attachment required for safety belt or harness] is GRANTED as against IMPACT BUILDERS CORP. on the issues of statutory violations and proximate cause (MS #6), and it is further

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on his Labor Law § 240 [1] and § 241 [6] causes of action, and violations of Industrial Code 12 NYCRR § 23-

1.7 [b] [1] [i] [hazardous openings] and 12 NYCRR § 23-1.16 [b] [attachment required for safety belt or harness] as to IMPACT BUILDERS CORP. on the issue of whether IMPACT BUILDERS CORP. was the general contractor is DENIED, (MS #6), and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:



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

Dated: 3/24/2026