Campos v Gramercy 1860, LLC
2026 NY Slip Op 31218(U)
March 26, 2026
Supreme Court, New York County
Docket Number: Index No. 155351/2020
Judge: Sabrina Kraus
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. SABRINA KRAUS** **PART** **57M**

Justice

——————————————————————X

INDEX NO. 155351/2020

MOTION DATE 01/09/2026

MOTION SEQ. NO. 007

DENIS CAMPOS,

Plaintiff,

- v -

GRAMERCY 1860, LLC, DHC CONTRACTING INC., and FIVE HORSEMEN CONSTRUCTION INC.,

Defendants.

DECISION + ORDER ON MOTION

——————————————————————X

DHC CONTRACTING INC.

Plaintiff,

-against-

Third-Party
Index No. 595444/2022

PERFORMANCE MASTER INC.

Defendant.

——————————————————————X

FIVE HORSEMEN CONSTRUCTION INC.

Plaintiff,

-against-

Third-Party
Index No. 595820/2023

PERFORMANCE MASTER INC.

Defendant.

——————————————————————--X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 1, 14, 43, 122, 128, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 209, 214

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

BACKGROUND

Plaintiff commenced this action pursuant to the Labor Law seeking damages for personal injuries alleged suffered on June 12, 2020, against Gramercy 1860, LLC ("Gramercy"), Five Horsemen Construction, Inc. ("Five Horsemen") and DHC Contracting, Inc. ("DHC").

On February 18, 2026, Five Horsemen moved for summary judgment (1) dismissing Plaintiff's claims arising under the Labor Law and for negligence and (2) granting their claims for common-law indemnification, contractual indemnification and breach of contract as against DHC together with attorneys' fees (NYSCEF Doc No. 154 [mot. seq. 007]).

On February 18, 2026, Plaintiff cross-moved for partial summary judgment as to liability on his causes of action under Labor Law §§ 200, 240(1) and 241(6) (NYSCEF Doc No. 182 [mot. seq. 007]).

On March 25, 2026, the motion and cross-motion were fully briefed and marked submitted. The motion and cross-motion are granted to the extent set forth below.

FACTS

Gramercy owned property located at 327 East 22nd Street, New York, NY 10010 (the "Property"). On November 9, 2017, Gramercy entered into an agreement with Five Horsemen for Five Horsemen to serve as the general contractor for the ground-up construction of an eleven-unit luxury condominium (the "Project") (NYSCEF Doc No. 164). In March 2019, Five Horsemen entered into an agreement with DHC for DHC to serve as a subcontractor on the Project (NYSCEF Doc No. 166). This subcontractor agreement provided that DHC would indemnify Five Horsemen against claims arising out of the acts or omissions of DHC or DHC's subcontractors in their completion of the Project (*id.* at 6–7). DHC's representative testified that

DHC subcontracted with Plaintiff's employer, Performance Master, Inc. ("Performance Master") to perform interior work on the Project (NYSCEF Doc No. 167, at 31–32).

The following information derives from Plaintiff's testimony (NYSCEF Doc No. 169).

On June 12, 2020, Plaintiff was working on the seventh floor of the Project for Performance Master. Plaintiff was involved in carrying heavy metal rods up a ladder from the seventh floor to the area above where the elevator would be constructed. Plaintiff was standing on a temporary staircase or ladder (the "Ladder") that had a railing going up the left side. A worker below Plaintiff would hand him a heavy metal rod and Plaintiff would then pass the rod to the worker standing above him. Plaintiff estimated these rods to be greater than ten feet long. At one point, Plaintiff was handed a rod (the "Rod") which he attempted to pass to the worker above him. Due to the weight of the Rod, Plaintiff had to hold onto the railing of the Ladder with his left hand. As Plaintiff passed the Rod to the worker above him, the worker lost control of the Rod, and the Rod struck Plaintiff in the chest. Plaintiff then fell off the right side of the ladder and landed on the concrete floor below, hitting his head. The Rod then fell on top of Plaintiff and hit him on his left shoulder.

RELEVANT PROCEDURAL HISTORY

On June 23, 2021, the Court (Kelly, J.S.C.) granted Plaintiff's motion for a default judgment as against Gramercy (NYSCEF Doc No. 14).

On October 15, 2021, Five Horsemen filed an answer to Plaintiff's complaint. The answer contained cross-claims against DHC for contractual and common-law indemnification, but it did not contain a demand for an answer from DHC (Case No. 156758/2021, NYSCEF Doc No. 11 [*pre-consolidation*]).

On November 21, 2022, the Court granted the motion of DHC for a default judgment as against Performance Master (NYSCEF Doc No. 43).

On June 11, 2025, the Court granted the motion of counsel for DHC to withdraw, staying the action for forty (40) days so DHC could appear by new counsel (NYSCEF Doc No. 122).

On August 18, 2025, DHC failed to appear at a status conference, and new counsel for DHC had not filed a notice of appearance. The Court then issued an order striking DHC's answer to Plaintiff's complaint, finding DHC in default and directing DHC's damages to be determined at trial (NYSCEF Doc No. 128).

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's initial burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing why his claims fail" (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When a movant meets this burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to defeat summary judgment" (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [internal

quotations omitted]). Courts view the evidence in a light most favorable to the nonmovant and accord the nonmovant with "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

The Court Grants Plaintiff's Motion for Summary Judgment for Liability on Labor Law § 240(1) as Against Five Horsemen and Denies that Portion of Five Horsemen's Motion

Labor Law § 240(1) provides:

> All contractors and owners and their agents . . . in the erection . . . 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.

Section 240(1) imposes absolute liability on owners, general contractors and their statutory agents when any breach of the statutory duty proximately causes injury (*Sanatass v Consolidated Investing Co., Inc.*, 10 NY3d 333, 338 [2008]).

Plaintiff argues that he was injured both due to his falling off the Ladder and also due to the Rod striking him before and after his fall. Section 240(1) imposes a statutory duty in both "falling worker" and "falling object" cases (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). In falling object cases, the Court of Appeals explains, the relevant hazards are:

> those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured. (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]).

The hazard posed by the Rod was related to the effect of gravity as the weight of the Rod and the height from which it fell above Plaintiff "created a significant, harmful force, even over the course of a relatively short descent, that warranted securing for the purpose of the undertaking" (*see Cruz v PMG Constr. Group LLC*, 236 AD3d 402, 403 [1st Dept 2025]).

To establish falling object liability under Section 240(1), a plaintiff must show that (1) the plaintiff was struck by a falling object, (2) the object required securing for the purpose of the undertaking and (3) the lack of adequate protection failed to shield against the falling of such object which proximately caused their injuries (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept 2024], citing *Mayorquin v Carriage House Owner's Corp.*, 202 AD3d 541, 541–42 [1st Dept 2022]). Plaintiff's testimony that "he was struck by the [Rod] constitutes a prima facie showing that the appropriate safety device was not used" as he testified that his coworker dropped it onto him because his coworker could not handle its weight (*see Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288 [1st Dept 2008] [*holding that a plaintiff established falling object liability under Labor Law § 240(1) when he testified that a ladder he was working on was struck by an unsecured pipe*]). After Plaintiff hit the ground, the Rod also bounced off the ground and struck him again on his left shoulder which is another falling object-related injury cognizable under Section 240(1) (NYSCEF Doc No. 169, at 49).

In "falling worker" cases, a plaintiff is entitled to summary judgment when the failure to provide the plaintiff with an adequate safety device proximately causes a fall-related injury (*Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 338 [2008]). Prior to starting work, Plaintiff testified that he was only provided with gloves and not with a harness, lanyard or other safety device that would have prevented him from falling off the Ladder (NYSCEF Doc No. 169, at 70–71). Plaintiff has thus made out a *prima facie* case that the failure to provide him with an adequate safety device caused his fall-related injury.

In opposition, Five Horsemen fails to raise an issue of fact rebutting either Labor Law violation through a showing that there was no statutory violation. Five Horsemen argues that two post-accident reports and an emergency room record—all unsworn—raise an issue of fact

because they state that Plaintiff fell off the Ladder due to his being dizzy from dehydration (NYSCEF Doc Nos. 170–72). While accident reports that are supported by sworn testimony are admissible to oppose a plaintiff's account of an accident on summary judgment (*see Biaca-Neto v Boston Rd. II Hous. Development Corp.*, 176 AD3d 1, 4–5, 6 [1st Dept 2019]), these two "unsworn accident report[s]" relied upon by Five Horsemen to show an inconsistency in Plaintiff's account of the accident are "insufficient to raise an issue of fact" as the reports are "inadmissible hearsay" and Five Horsemen provides "no excuse for their failure to tender the report in admissible form" (*see Kristo v Board of Educ. of the City of N.Y.*, 134 AD3d 550, 551 [1st Dept 2015] [*reversing the denial of plaintiff's motion for summary judgment on Section 240(1)*]).[1]

Equally unavailing is the argument that the Ladder was not defective because it had been nailed to the ground. The "falling worker" portion of Plaintiff's Section 240(1) claim is based upon the failure to provide Plaintiff with a safety device to prevent *him* from falling. The First Department's decision in *Kosavick v Tishman Construction Corporation of New York* is on point, which held that the plaintiff was entitled to both "falling worker" and "falling object" liability when the plaintiff was struck by a falling pipe and "he then *either* fell from the ladder . . . or the ladder itself failed" (50 AD3d 287, 288 [1st Dept 2008] [emphasis added]). Plaintiff testified that he was provided with neither a harness nor a lanyard prior to his fall, so the adequacy of the ladder on which he stood is inconsequential to his Section 240(1) claim.

Moreover, Five Horsemen argue in support of its own motion and in opposition to Plaintiff's that they were neither a contractor nor a statutory agent but a construction manager

[1] Five Horsemen incorrectly argues that Plaintiff's medical records contradict his testimony (NYSCEF Doc No. 155, at 9). Plaintiff's medical records actually mirror his testimony, stating that Plaintiff was "struck by metal bar" when "[p]assing long metal beam to higher floor when lost grip" and the beam "fell striking him on left shoulder" after which he "[s]ubsequently fell onto his right side and struck his head" (NYSCEF Doc No. 172, at 3).

and thus cannot be liable under Section 240(1). Section 240(1) imposes liability upon "[a]ll contractors and owners and their agents" engaged in the enumerated tasks (Labor Law § 240(1)). Five Horsemen argue that testimony from the representative of DHC indicates that DHC could have been a general contractor for the Project as DHC also hired a subcontractor (NYSCEF Doc No. 167, at 126). DHC's representative also testified that it would supervise work of Performance Master, Plaintiff's employer (*id.* at 130–31). While this tends to show that DHC could have been *another* culpable contractor on the site, the plain language of Section 240(1) imposes liability upon more than one general contractor stating, "*All* contractors and owners and their agents" (Labor Law § 240(1)). Five Horsemen cites no controlling authority holding that there may only be one entity held liable as a general contractor for a single accident, and the statute may nevertheless impute liability onto more than one owner or statutory agent for a single accident (*see Hernandez v Port Auth. of N.Y. & N.J.*, 241 AD3d 1069, 1069 [1st Dept 2025] [*affirming summary judgment against more than one owner of building for a single accident*]).

Further, the testimony of Five Horsemen's representative that Five Horsemen was a construction manager rather a general contractor is insufficient to prove that Five Horsemen was not the general contractor as the witness stated that he did not know the specific definition of a general contractor and that there was no general contractor on the Project (NYSCEF Doc No. 165, at 23–24).

Plaintiff establishes on his own motion that Five Horsemen was the general contractor on the Project. The AIA contract between Gramercy and Five Horsemen labels Gramercy as the owner and Five Horsemen as the contractor for the ground-up construction of an eleven-story luxury condominium (*see* NYSCEF Doc No. 164, at 1). Article 9 of that contract authorizes Five Horsemen to hire subcontractors for the completion of the work which is the essence of a general

contractor's duties (*id.* at 6–7). The AIA agreement between Five Horsemen and DHC also labels Five Horsemen as the contractor and DHC as subcontractor (NYSCEF Doc No. 166, at 1). Plaintiff thus establishes that Five Horsemen is a proper Labor Law defendant as Five Horsemen was the general contractor of the Project, and Five Horsemen's evidence cited in support of its own motion and in opposition to Plaintiff's raises no issue of fact.

The Court need not address Five Horsemen's argument that it was not a statutory agent in light of the finding that it was a general contractor.

Accordingly, the Court grants Plaintiff's motion for summary judgment seeking liability for Labor Law § 240(1) as against Five Horsemen and the Court denies that portion of Five Horsemen's motion.

The Court need not address Five Horsemen's arguments for summary dismissal of Plaintiff's common-law negligence and Labor Law §§ 200, 241(6) claims in light of granting summary judgment to Plaintiff for Labor Law § 240(1).

The Balance of Five Horsemen's Motion

The Court Grants the Motion to Dismiss Plaintiff's Claims Under Labor §§ 240(2), 240(3)

The Court grants Five Horsemen's motion for summary dismissal of Plaintiff's claims under Labor Law §§ 240(2) & 240(3) as Plaintiff abandoned those claims "by failing to oppose the parts of [Five Horsemen's] motion that sought summary judgment dismissing those claims" (*see Josephson LLC v Column Fin., Inc.*, 94 AD3d 479, 480 [1st Dept 2012]).

The Court Grants the Motion for Contractual Indemnification as Against DHC

Section 4.7.1 of the Five Horsemen's agreement with DHC states:

> To the fullest extent permitted by law, the Subcontractor [DHC] shall indemnify and hold harmless the Owner [Gramercy], its lender, Contractor [Five Horsemen], parties reasonably named by the Owner and Contractor, Architect, Architect's consultants, and agents, partners, members and employees of any of them, together with their respective successors and assigns, from and against claims, damages,

> losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death . . . caused by the . . . acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.7. (NYSCEF Doc No. 166, at 6–7).

The Court holds that the language imputing an indemnification obligation onto DHC for Five Horsemen's liability under Labor Law § 240(1) is "sufficiently clear and unambiguous" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007]). Performance Master was DHC's subcontractor on the Project (NYSCEF Doc No. 167, at 31). Performance Master was also responsible for providing Plaintiff with an adequate safety device as Plaintiff testified that a foreman for Performance Master gave him gloves but no other equipment before starting his work (*see* NYSCEF Doc No. 169, at 17, 29, 32–33). The Court thus holds that Five Horsemen's liability for Plaintiff's accident triggers DHC's indemnification obligation, and DHC filed no opposition to Five Horsemen's motion.

In light of Five Horsemen's entitlement to contractual indemnification from DHC, Five Horsemen's claim for common-law indemnification is academic.

The Court Denies the Motion for Breach of Contract

Five Horsemen further argues that DHC breached their agreement because DHC failed to procure commercial general liability insurance and name Five Horsemen as an additional insured. However, Five Horsemen fails to meet its *prima facie* burden as it cites no evidence that DHC failed to procure commercial general liability insurance. The Court thus denies Five Horsemen's motion for summary judgment as to breach of contract.

CONCLUSION

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for partial summary judgment as to liability on his Labor Law § 240(1) claim against Five Horsemen is granted, and the balance of the motion is e denied; and it is further

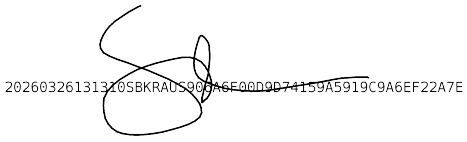
ORDERED that Five Horsemen's motion for summary judgment (mot. seq. 007) is granted to the extent that Plaintiff's Labor Law § 240(2) & 240(3) claims are dismissed and that Five Horsemen's claim for contractual indemnification as against DHC is granted, but it is otherwise denied; and it is further

ORDERED that all other requests for relief are denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



3/26/2026
DATE

SABRINA KRAUS, J.S.C.

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