Aguila v TSTY Owner LLC
2026 NY Slip Op 31324(U)
March 27, 2026
Supreme Court, New York County
Docket Number: Index No. 153494/2021
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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GUSTAVO AGUILA,

Plaintiff,

- v -

TSTY OWNER LLC, JANUS PROPERTIES LLC, TSTY CREATE LLC, JANUS PROPERTY CO, LENDLEASE (US) CONSTRUCTION INC., LENDLEASE (US) CONSTRUCTION HOLDINGS INC.,

Defendants.

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INDEX NO. 153494/2021

MOTION DATE 01/28/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

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

This labor law action arises from a workplace accident suffered by plaintiff Gustavo Aguila on February 21, 2021, while he was working on a construction project at 450 West 126th Street in Manhattan. Defendant TSTY Owner LLC ("TSTY") owned the property and hired defendant Lendlease (US) Construction Inc. ("Lendlease" and, together with TSTY, "Defendants") as its general contractor for the project.[1] Lendlease subcontracted plaintiff's employer, non-party Arsenal Scaffold Inc. ("Arsenal"), to assemble, and later disassemble, an external hoist and loading dock platform. Plaintiff was allegedly injured when, while standing on exposed steel beams to receive disassembled components of the loading dock platform, he slipped and fell through a gap between two of the exposed beams. Plaintiff brought claims against Defendants for common-law negligence and violations of Labor Law §§ 200, 240(1) and 241(6). Plaintiff now moves pursuant to CPLR 3212 for partial summary judgment as to liability on his Labor Law § 240(1) claim. Defendants oppose the motion. The motion is denied.

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*see Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect*

[1] Plaintiff voluntarily discontinued this action as against the other three named defendants by Stipulation of Partial Discontinuance filed on June 24, 2021 (NYSCEF Doc. No. 10).

Hosp., 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). 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]).

"'Whether a plaintiff is entitled to recovery under Labor Law § 240(1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies'" (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 63-64 [1st Dept. 2023], quoting *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). "'[T]he single decisive question [in this connection] is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential'" (*id.* at 64, quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). "This single decisive question 'center[s] around a core premise: that a defendant's failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability'" (*id.*, quoting *Wilinski*, 18 NY3d at 7).

In support of his motion, plaintiff submits his deposition transcripts (NYSCEF Doc. Nos. 34-35, 37) and affidavit (NYSCEF Doc. No. 40); the deposition transcript of John Oderwald, the Lendlease site safety manager on the day of the accident (NYSCEF Doc. No. 36); a surveillance video recording of the accident (NYSCEF Doc. No. 39); and an expert affidavit from Kathleen Hopkins, a Certified Site Safety Manager (NYSCEF Doc. No. 29). These submissions establish the following facts: plaintiff was working in a team to disassemble the loading dock platform of an external hoist. The platform was comprised of wooden planks nailed to a series of crossing steel beams. Plaintiff's task was to receive the platform's disassembled components from his co-workers and load them into Arsenal's truck, which was parked adjacent to the loading dock platform. Some of the platform's wooden planks had already been removed, exposing the narrow steel beams beneath, which were approximately four feet above the ground. According to plaintiff, he was provided no safety equipment other than a hard hat and pair of gloves. Plaintiff further testified that he was instructed by his Arsenal foreman, Hans Xoy, to stand on the exposed beams while performing his work. As plaintiff was retrieving a disassembled component being pushed toward him by a co-worker, his left foot slipped off the exposed beam on which he was standing, causing him to fall into the gap between that beam and the next adjacent beam. Plaintiff grabbed ahold of one of the beams, preventing himself from falling to the ground four feet below, but nevertheless suffered injuries in the fall. According to plaintiff's expert, had Defendants provided a stable surface from which to work, such as a scaffold platform underneath the exposed beams, plaintiff would have been adequately protected from falling.

Plaintiff's submissions suffice to establish his prima facie entitlement to summary judgment as to liability on his § 240(1) claim. Plaintiff's evidence demonstrates that his injuries

were caused by the application of the force of gravity to his person when he slipped off the exposed beam on which he was required to perform his work, that the exposed beam was not an adequate safety device to protect him from falling while working at elevation, and that he was not provided with any other safety device that would have prevented his fall (*see Rivas*, 219 AD3d at 64; *Agurto v One Boerum Dev. Partners LLC*, 221 AD3d 442, 443 [1st Dept. 2023]; *Brown v 44 St. Dev., LLC*, 137 AD3d 703, 704 [1st Dept. 2016]; *Arrasti v HRH Const. LLC*, 60 AD3d 582, 583 [1st Dept. 2009]; *see also Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 524 [1985]).

Defendants, however, submit an affirmation from foreman Xoy (NYSCEF Doc. No. 49) in opposition, which raises triable issues of fact sufficient to defeat plaintiff's summary judgment motion. Contrary to plaintiff's testimony that Xoy instructed him to stand on the exposed beams to perform his work and that he was provided no fall protection, Xoy avers that he instructed plaintiff multiple times to work from a wooden platform adjacent to the exposed beams that had been constructed for the specific purpose of disassembling the loading dock (*id.* at ¶¶ 5, 10). Xoy claims that plaintiff ignored his instructions, chose instead to climb atop the exposed beams to perform his work, and did not heed Xoy's subsequent instructions to come down from the exposed beams and to work instead from the wooden platform constructed for plaintiff's use (*id.* at ¶¶ 8, 10, 12).

"Where a plaintiff's own actions [rather than any violation of § 240(1)] are the sole proximate cause of the accident, there can be no liability" (*Cahill v Triborough Bridge and Tunnel Authority*, 4 NY3d 35, 39 [2004], citing *Blake v Neighborhood Housing Services of New York City, Inc.*, 1 NY3d 280, 290-91 [2003]). Xoy's affidavit raises questions of fact as to whether the wooden platform constructed for use in disassembling the loading dock provided plaintiff a safe place from which to work, whether plaintiff was instructed to work from atop that platform and not from atop the exposed beams, and whether the sole proximate cause of plaintiff's injuries was his own conduct in choosing to work from atop the exposed beams despite his foreman's instructions to the contrary. It is open to the trier of fact to conclude that: plaintiff knew he had an adequate safety device available to him; that he decided against using it; and that, had he used it, he would not have been injured (*see Cahill*, 3 NY3d at 40; *Battle v NY Devs. & Mgmt., Inc.*, 193 AD3d 562, 563 [1st Dept. 2021]).

The court has considered plaintiff's additional arguments, even if not specifically addressed herein, and finds them unavailing. All supplementary evidence submitted by plaintiff for the first time on reply has not been considered (*see Kennelly v Mobius Realty Holdings LLC*, 33 AD3d 380, 381-82 [1st Dept. 2006], citing *Dannasch v Bifulco*, 184 AD2d 415, 417 [1st Dept. 1992]; *Azzopardi v American Blower Corp.*, 192 AD2d 453, 454 [1st Dept. 1993]).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is denied; and is it further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

3/27/2026
DATE

LYNN R. KOTLER, J.S.C.

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