

Macancela v First Presbyt. Church of Jamaica
2026 NY Slip Op 31364(U)
April 6, 2026
Supreme Court, New York County
Docket Number: Index No. 156100/2022
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 01M

Justice

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JOSE MACANCELA, KAROLINA ALTAMIRANO,

Plaintiff,

- v -

THE FIRST PRESBYTERIAN CHURCH OF JAMAICA, THE
BLUESTONE ORGANIZATION, INC., L.F. DRISCOLL
COMPANY, LLC, COMMUNITY HEALTHCARE NETWORK,
INC., FIRST JAMAICA 164 STREET HOUSING
DEVELOPMENT FUND CORPORATION, TOL
WORKFORCE, LLC, TOL LIHTC, LLC, TREE OF LIFE
MANAGER, LLC, BANTA HOMES CORP.,

Defendant.

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FIRST JAMAICA 164 STREET HOUSING DEVELOPMENT
FUND CORPORATION, COMMUNITY HEALTHCARE
NETWORK, INC., L.F. DRISCOLL COMPANY, LLC

Plaintiff,

-against-

LIVE WIRE ELECTRIC 1 LLC

Defendant.

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INDEX NO. 156100/2022
MOTION DATE N/A
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595576/2024

The following e-filed documents, listed by NYSCEF document number (Motion 003) 95, 96, 97, 98, 99,
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 123, 124, 125,
126, 127, 128, 129, 130, 131

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents and after oral argument on February 19, 2026, it is ordered
that plaintiffs' motion in this Labor Law action for summary judgment, pursuant to CPLR 3212,
for summary judgment on the issue of liability under Labor Law § 240(1) and Labor Law § 241(6)
against defendants First Jamaica 164 Street Housing Development Fund Corporation, Community

Healthcare Network, Inc., Tol Workforce, LLC, Tree of Life Manager, LLC, and L.F. Driscoll Company, LLC is determined as follows:

Plaintiffs commenced the instant action alleging plaintiff Macancela, an electrician employed by Live Wire Electric 1, LLC (“LWE”) was injured when he fell off the 17th rung of an unsecured 24-foot extension ladder that was situated on a ramp as he attempted to install cabling to a duct to provide power to the fire smoke dampener at a jobsite located at 89-46 164th Street, Jamaica, New York. Plaintiffs further allege that defendant First Jamaica 164 Street Housing Development Fund Corporation is the fee owner of the premises and that defendant Tol Workforce, LLC was the beneficial owner of the premises. It is undisputed that defendant Tree of Life Manager, LLC was the master tenant who leased the premises to defendant Community Healthcare Network, Inc. who contracted with defendant L.F. Driscoll Company, LLC (“L.F. Driscoll”) to serve as general contractor for the construction project, and that L.F. Driscoll engaged the services of LWE.

It is well established that “[t]he proponent of summary judgment must establish its defense or cause of action sufficiently to warrant a court’s directing judgment in its favor as a matter of law” (*Ryan v Trustees of Columbia Univ. in the City of N.Y., Inc.*, 96 AD3d 551, 553 [1st Dept 2012] [internal quotation marks and citation omitted]). “Thus, the movant bears the burden to dispel any question of fact that would preclude summary judgment” (*id.*). “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 Corp.*, 100 NY2d 72, 81 [2003]). “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], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339

[2011]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to raise an issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Labor Law § 240 (1)

Plaintiffs move for summary judgment under Labor Law § 240 (1), arguing that the defendants violated the statute when the unsecured and inadequate 24-foot ladder plaintiff Macancela was standing on moved, slid, and collapsed, causing his injury. Plaintiffs also assert that Macancela was not given safety devices to do his job and that even if he was given a harness, there was no place to tie off. In support of their motion, the plaintiffs rely on, among other things, the deposition transcripts of plaintiff Macancela and George Hauck on behalf of L.F. Driscoll, and the jobsite incident/accident report (*see* NYSCEF Doc. No. 107; NYSCEF Doc. No. 109; NYSCEF Doc. No. 115).

In opposition, defendants assert, *inter alia*, that the plaintiff Macancela was a recalcitrant worker and the sole proximate cause for his fall since there was a company policy that the ladder be held secure prior to ascending and there were co-workers readily available to secure plaintiff’s ladder. The crux of their opposition relies on the affirmations of Jose Duy and Vidal Urbina, foreman and employee of LWE (*see* NYSCEF Doc. No. 126; NYSCEF Doc. No. 127).

Labor Law § 240 (1), commonly known as the Scaffold Law, provides as follows:

“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) imposes absolute liability on owners, contractors, and their agents for any breach of the statutory duty which proximately causes an injury (*Rocovich v Consolidated*

Edison Co., 78 NY2d 509, 513 [1991]; *Haimes v New York Tel. Co.*, 46 NY2d 132, 136 [1978]). The duty imposed is “nondelegable and . . . an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). The “purpose of the statute is to protect workers by placing ultimate responsibility for safety practices on owners and contractors instead of on workers themselves” (*Panek v County of Albany*, 99 NY2d 452, 457 [2003]).

To prevail on a motion for summary judgment pursuant to Labor Law § 240 (a) (1), a plaintiff must show both that “the statute was violated and that the violation proximately caused his injury” (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]). Thus, plaintiff bears the initial burden of showing that there was an elevation-related risk and that the owner did not provide him with adequate safety devices (*Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 681 [2007]). Because the duty to provide safety devices pursuant to Labor Law § 240 (1) is absolute, contractors and owners who breach that duty are liable regardless of whether they actually exercised supervision or control over the work (*Blake*, 1 NY3d at 287) and whether plaintiff’s negligence contributed to the accident (*id.*).

Section 240 (1) “mandates that owners and contractors provide devices which shall be so constructed, placed and operated as to give proper protection to persons performing work covered by the statute” (*Rivera v 712 Fifth Ave. Owner LP*, 229 AD3d 401, 402 [1st Dept 2024], citing *Montalvo v J. Petrocelli Const., Inc.*, 8 AD3d 173, 174 [1st Dept 2004]). To establish liability under the statute, “[i]t is sufficient . . . that adequate safety devices to prevent the ladder from slipping or to protect the plaintiff from falling were absent” (*Rivera*, 229 AD3d at 402, citing

Montalvo, 8 AD3d at 174). In *Rivera*, the Court found the “plaintiff’s testimony that he was not provided with any other safety protection except an unsecured ladder,” which fell when a falling duct struck the plaintiff and the ladder, “established prima facie entitlement to judgment as a matter of law” (*Rivera*, 229 AD3d at 402 [citation omitted]).

The collapse of a ladder is prima facie proof of a violation of Labor Law § 240 (1) (*Melendez v 1595 Broadway LLC*, 214 AD3d 600, 601 [1st Dept 2023] [“Plaintiff made a prima facie showing that his injuries were proximately caused by a violation of Labor Law § 240(1) by submitting his testimony that the unsecured extension ladder that he was using to descend from a sidewalk bridge slid and collapsed under him”]; see *Garcia v Church of St. Joseph of the Holy Family of City of N.Y.*, 146 AD3d 524, 525 [1st Dept 2017] [“Plaintiff’s testimony that the ladder shifted as he descended, thus causing his fall, established a prima facie violation of Labor Law § 240(1)”]; see also *Vega v Rotner Mgt. Corp.*, 40 AD3d 473, 474 [1st Dept 2007] [“[P]laintiff satisfied his prima facie burden on the motion with his testimony that he fell to the ground when the unsecured 8 to 10-foot ladder on which he was standing shifted” (citation omitted)]; accord *Nelson v Ciba-Geigy*, 268 AD2d 570, 572 [2d Dept 2000] [“Whether the device provided proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff”]).

Here, plaintiff Macancela established his prima facie entitlement to summary judgment on his Labor Law § 240 (1) claim because the ladder he was provided was not secure and did not protect him from falling while he worked. Plaintiff’s testimony is largely supported by the testimony of George Hauck and the incident report. Plaintiff demonstrated that he was injured because defendant failed to furnish him with a proper safety device, which constitutes a prima facie violation of Labor Law § 240 (1) (see *McCarthy v Turner Constr. Inc.*, 52 AD3d 333 [1st

Dept 2008]; *Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289 [1st Dept 2002]; *Goreczny v 16 Ct. St. Owner LLC*, 110 AD3d 465 [1st Dept 2013]; *see also Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3 415 [1st Dept 2021]).

As plaintiff has demonstrated a prima facie violation of Labor Law §240 (1), the burden shifts to defendants to submit evidence sufficient to raise a triable issue of fact (see *Gallagher v New York Post*, 14 NY3d 83, 88 [2010]). Defendants have failed to meet this burden.

In opposition to the motion, defendants do not contest that ladder was unsecured or that plaintiff was not provided with any safety devices. Rather, defendants argue that plaintiff Macancela performed the work on his own despite a company policy not to ascend a ladder without it being secured or held steady by a co-worker and that he set up the ladder himself and not Jose Duy.

In order to demonstrate that the plaintiff was a recalcitrant worker, defendants must demonstrate that the plaintiff (1) had appropriate safety devices available, (2) knew that said devices were available and that he or she was expected to use them, (3) chose for no good reason not to use them, and (4) would not have been injured had he or she not made that choice (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]; *see Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1167-1168 [2020]).

The recalcitrant worker defense requires a showing that the injured worker refused to obey a direct and immediate order to use available safety devices (*Vitucci v Durst Pyramid LLC*, 205 AD3d 441, 444 [1st Dept 2022]; *Phillips v Powercrat Corp.*, 126 AD3d 590, 591 [1st Dept 2015]). The worker in *Cahill* was deemed recalcitrant, inasmuch as he disregarded specific instructions to use a safety line while climbing. Here, there is no evidence that plaintiff deliberately refused to use a safety device or instruction. Further, a general instruction or policy is insufficient to create a factual issue (*Tennant*, 237 AD2d at 734-735; *see Vitucci v Durst Pyramid LLC*, 205 AD3d 441, 444, [1st Dept 2022] [defendants did not show that “plaintiff deliberately refused to obey a direct and immediate instruction to use an available safety device . . . so as to invoke the recalcitrant worker defense”]).

Here, despite the affirmations referring to not ascending an unsecured ladder without a co-worker holding it as a specific instruction, it appears to be a general policy as there was no evidence presented as to when the instruction was given or who gave it. Moreover, co-workers do not constitute adequate safety devices under Labor Law § 240 (*see Iucaulano v City of New York*, 214 AD3d 535 [1st Dept 2023]). Thus, defendants' argument that it was the sole proximate cause and/or a recalcitrant worker fails. Likewise, defendants' argument that there is an issue of fact as to who set up the ladder or whether it has footings is also without merit inasmuch as there was no dispute as to whether plaintiff was expected to use that ladder that was unsecured and no dispute as to whether plaintiff was provided a harness or other adequate safety device. Accordingly, plaintiffs' motion concerning Labor Law § 240(1) is granted.

Labor Law § 241(6)

Labor Law § 241(6) provides, in pertinent part, that all areas where construction is being performed should provide reasonable and adequate protection and safety to persons employed or frequenting such areas. To prevail on a cause of action under § 241(6), however, a plaintiff must establish a violation of a specific safety regulation promulgated by the Commissioner of the Department of Labor (*see Lenard v 1251 Americas Assoc.*, 241 AD2d 391, 392 [1st Dept 1997], citing *Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 505 [1993]; *see also Kulis v Xerox Corp.*, 231 AD2d 922, 923 [4th Dept 1996]).

In opposition to the motion, defendants do not argue that these standards concerning ladders are not sufficiently specific. Instead the crux of their argument is, again, that plaintiff was the sole proximate cause for his accident. Specifically, as to 23-1.21(b)(4)(iv), defendants argue that plaintiff chose to perform the work without the ladder being held in place by a co-worker and thus, cannot recover under Labor Law § 241(6) for his own violation. Nevertheless, it is undisputed that the ladder was above 10 feet and that the upper end of the ladder was not secured against side slip such that plaintiff cannot be the sole proximate cause of his injury under that provision.

Accordingly, with respect to plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code (12 NYCRR) § 1.21(b)(1), (3)(i)-(iv), (4)(ii), (4)(iv), and 23-1.21(e)(2) and (3), plaintiff's motion is granted.

Accordingly, plaintiffs' motion is granted in its entirety.

This constitutes the decision and order of the Court.

4/6/2026

DATE

ADAM SILVERA, 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