| **Ortega v South Conduit Prop. Owner LLC** |
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| 2026 NY Slip Op 31448(U) |
| March 26, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 517992/2022 |
| Judge: Devin P. Cohen |
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**Supreme Court of the State of New York**
**County of Kings**

**Index Number 517992/2022**
Seqs. 003–005

Part LL1M

MARTIN ORTEGA,

Plaintiff,

against

SOUTH CONDUIT PROPERTY OWNER LLC AND MARCH ASSOCIATES CONSTRUCTION INC.,

Defendants.

**DECISION/ORDER**

SOUTH CONDUIT PROPERTY OWNER LLC AND MARCH ASSOCIATES CONSTRUCTION INC.,

Third-Party Plaintiffs,

against

RACEWAY INTERIOR CORP.,

Third-Party Defendant.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this motion, by reference to the New York State Courts Electronic Filing System docket numbers: NYSCEF 50–74, 78–91, 95–102.

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 003), defendants/third-party plaintiffs' motion for default judgment against Raceway Interior Corp. (Raceway) (Seq. 004), and plaintiff's motion for summary judgment (Seq. 005) are decided as follows:

**Factual Background and Procedural Posture**

Plaintiff commenced this action to recover for damages he claims to have sustained on April 29, 2022 while working at a construction site located at 130-24 Conduit Avenue, Jamaica, NY 11430 (the premises). It is undisputed that South Conduit Property Owner LLC (South Conduit) owned the premises and that March Associates Construction Inc. (March) was the

general contractor. March sub-contracted Raceway to perform work at the premises; Raceway employed the plaintiff as a carpenter.

The plaintiff testified as follows: On the date of the incident, plaintiff was performing framing work at the premises (Ortega EBT at 23, 25). This work involved the use of a ladder (*id.* at 54). The ladder was already present at the site, and plaintiff was instructed to use it by his foreman (*id.* at 54). While plaintiff was standing on the ladder to insert screws into the ceiling, the ladder fell to the right and plaintiff fell to the floor (*id.* at 68, 70–71). Plaintiff was working alone at the time of his accident (*id.* at 67). Neither Christopher Petracca from South Conduit nor Luigi Miscioscia from March knew where the ladder came from or had actual knowledge about the incident (Petracca EBT at 24; Miscioscia EBT at 22).

**Analysis**

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

**Labor Law § 240 (1)**

Liability under Labor Law § 240 (1) is "absolute" where the failure of a safety device enumerated by the statute (*e.g.* a ladder) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 500 (1993)]).

Plaintiff's testimony that he was working on an A-frame ladder which fell, causing plaintiff to fall and sustain harm, is sufficient to make out his prima facie entitlement to summary judgment on his Labor Law § 240 (1) claim (*see Pai v Nelson Housing Dev't Fund Corp.*, 232 AD3d 822, 825 [2d Dept 2024]). In opposition, defendants have failed to raise a triable issue of material fact. The fact that plaintiff's accident was unwitnessed does not preclude summary judgment on a Labor Law § 240 (1) claim (*Rivera v Dafna Const. Co., Ltd.*, 27 AD3d 545 [2d Dept 2006]). Plaintiff's testimony that he did not provide the ladder and was directed to use the available ladder by his foreman is unrebutted; therefore, he cannot have been the sole proximate cause of the accident (*see e.g. Moran v 200 Varick St. Assoc., LLC*, 80 AD3d 581, 582 [2d Dept 2011]). Finally, the fact that defendants did not provide the ladder and did not supervise the work is irrelevant, since the duty under Labor Law § 240 (1) to provide adequate safety equipment is nondelegable (*see Ross*, 81 NY2d at 500).

Therefore, plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim is granted.

**Labor Law §§ 240 (2), 240 (3), 241 (6), and 200**

The plaintiff does not oppose defendants' motion with respect to these statutes; therefore, defendants' motion is granted without opposition as to these claims.

**Default Judgment**

The third-party plaintiffs have failed to provide proof in admissible form of the merits of their third-party claim against Raceway. The third-party pleadings are not client-verified, no affidavit of merit is attached to the moving papers, and both deponents for the third-party plaintiffs denied knowledge of Raceway's role at the site (Petracca EBT at 19; Miscioscia EBT

at 16). Therefore, third-party plaintiff's motion for default judgment is denied (CPLR 3215 [f]; *see Knudsen v Green Machine Landscaping, Inc.*, 223 AD3d 792 [2d Dept 2024]).

**Conclusion**

South Conduit and March's motion for summary judgment (Seq. 003) is granted to the extent of dismissing plaintiff's Labor Law §§ 240 (2), 240 (3), 241 (6), and 200 claims; the motion is otherwise denied.

South Conduit and March's motion for default judgment against Raceway (Seq. 004) is denied.

Plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim (Seq. 005) is granted.

This constitutes the decision and order of the court.

March 26, 2026
**DATE**

**DEVIN P. COHEN**
Justice of the Supreme Court