Bastidas v Rybak Dev. & Constr. Corp.
2026 NY Slip Op 31450(U)
March 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 528668/2022
Judge: Devin P. Cohen
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
County of Kings

Index Number 528668/2022
Seqs. 001, 002

Part LL1M

YOEL BASTIDAS,

Plaintiff,

against

RYBAK DEVELOPMENT AND CONSTRUCTION CORP. AND 126 EAST 86 STREET DEVELOPMENT LLC,

Defendants.

RYBAK DEVELOPMENT AND CONSTRUCTION CORP. AND 126 EAST 86 STREET DEVELOPMENT LLC,

Third-Party Plaintiffs,

against

VLAD CONSTRUCTION, INC.,

Third-Party Defendant.

DECISION/ORDER

RYBAK DEVELOPMENT AND CONSTRUCTION CORP. AND 126 EAST 86 STREET DEVELOPMENT LLC,

Second Third-Party Plaintiffs,

against

VLAD INDUSTRIES INC. d/b/a VLAD CONSTRUCTION INC. AND UNITED SPECIALITY INSURANCE COMPANY,

Second Third-Party Defendants.

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 45–68, 70, 73–77.

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 001) and defendants' motion for summary judgment (Seq. 002) are decided as follows:

Factual Background and Procedural Posture

Plaintiff commenced this action to recover for damages he claims to have sustained on September 23, 2022, while performing work at 126 East 86th Street, New York, NY. It is undisputed that 126 East 86 Street Development LLC (186 East) was the owner of the premises and that Ryback Development and Construction Corp. (Ryback) was the general contractor. Ryback sub-contracted for Vlad Construction Inc. (Vlad) to perform, *inter alia*, excavation, concrete superstructure and foundation, and waterproofing work at the premises. Plaintiff was employed by Vlad.

It is undisputed that, on the date of the incident, plaintiff was stripping plywood forms from the ceiling using a crowbar. Plaintiff was standing on an A-frame ladder. While performing the work, the ladder fell over, and plaintiff fell to the floor.

The plaintiff testified as follows: One of the plastic feet of the ladder was partially missing (Bastidas EBT at 69). Both plaintiff and some of his co-workers had previously complained about the condition of the ladder to the foreman (*id.* at 70). While plaintiff was pulling on the crowbar to remove the form, the ladder "tipped . . . forward" and fell, causing the plaintiff to fall (*id.* at 90–91, 93).

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 N.Y.2d 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. Defendants' expert and counsel's characterization of the defect in the ladder as "trivial" is insufficient to rebut plaintiff's testimony that the ladder fell over, causing plaintiff to fall over (*see Melchor v Singh*, 90 AD3d 866 [2d Dept 2011]). Additionally, plaintiff did not provide or even select the ladder he was using to perform the form stripping work he was instructed to do. Plaintiff further testified that he had previously complained that the ladder was insufficient to perform his work. In light of the statutory violation which was a proximate cause of plaintiff's fall, he cannot have been the sole proximate cause (*Blake*, 1 NY3d at 290). Defendants' argument that plaintiff's fall from the second rung of the ladder was *de minimis* is unavailing (*cf. Cohen v Mem. Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 [2008] [the Court did not find that the second rung of a ladder is *de minimis*, but rather that plaintiff's fall was not caused by an inadequate safety device]; *see Latino v Nolan & Taylor-Howe Funeral Home*, 300

AD2d 631, 633 [2d Dept 2002] [standing atop 18-inch high workbench exposed plaintiff to elevation-related risk]). Additionally, plaintiff's "failure" to have another worker hold the ladder does not make him the sole proximate cause of the incident (*Zampko v Houghtaling*, 240 AD3d 943 [2d Dept 2025]).

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

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) a proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only moves on, and substantively opposes as to, the alleged violation of Rules 23-1.21 (b) (3) and (e), which govern the proper maintenance of ladders and ladder footings. The remaining Industrial Code provisions pleaded are, therefore, deemed waived (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]).

Plaintiff testified that the defective footing was a proximate cause of his accident as the ladder tipped in the direction of the defective foot. In opposition, defendants have failed to offer evidence sufficient to rebut plaintiff's testimony. Defendants' arguments that the rule does not apply to trivial defects and that plaintiff did not establish causation are incorrect. Therefore, plaintiff's motion is granted with respect to this claim, and defendants' motion is denied.

The court notes that defense counsel cites and discusses an apparently fabricated case in their affirmation in opposition to plaintiff's motion and memorandum of law in support of their motion: *Khan v Bank of New York*, 188 A.D.3d 573 (1st Dept 2020). This page of the reporter

contains the middle and end of *Martin Assoc., Inc. v Illinois Natl. Ins. Co.*, a First Department action involving breach of express and implied contracts. The court is unable to locate an action titled "Kahn v Bank of New York," and the only locatable case the court can find is captioned *Khan v City of New York*. That action is an Appellate Term, First Department case from 2012 that involved a petition to obtain Section 8 housing assistance payment from the New York City Housing Authority. On reply, defense counsel takes responsibility for this citation, identifying it as an editorial error caused by the review of multiple cases in preparing the motion. While the court notes counsel taking responsibility for the error, it is not clear how this citation came into existence given the lack of any analogous caption or reporter entry that could be relevant to this case.

Therefore, a hearing is scheduled for April 21, 2026, at 2:15pm, to further investigate the matter.

Labor Law § 200

The plaintiff did not move on and did not oppose defendants' motion for summary judgment on his Labor Law § 200 claim; therefore, this portion of defendants' motion is granted without opposition.

Conclusion

Plaintiff's motion for summary judgment (Seq. 001) is granted.

Defendants' motion for summary judgment (Seq. 002) is granted as unopposed with respect to plaintiff's Labor Law § 200 claim and Labor Law § 241 (6) claim as predicated on all Industrial Code violations alleged except 23-1.21. The remainder of the motion is denied. A

BASTIDAS -v- RYBAK DEVELOPMENT AND CONSTRUCTION CORP.

528668/22

sanctions hearing is hereby scheduled for April 21, 2026 at 2:15 pm.

This constitutes the decision and order of the court.

March 27, 2026
DATE

DEVIN P. COHEN
Justice of the Supreme Court