Fuchs v Starbucks Corp.
2026 NY Slip Op 31482(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 161463/2019
Judge: Sabrina Kraus

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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INDEX NO. 161463/2019

GEORGE FUCHS,

Plaintiff,

MOTION DATE 12/08/2025, 01/08/2026

- v -

MOTION SEQ. NO. 007 008

STARBUCKS CORPORATION, G.D.C.L. HOLDINGS LLC, SHAWMUT WOODWORKING & SUPPLY, INC., T.G. NICKEL & ASSOCIATES, LLC, CONSIGLI & ASSOCIATES, LLC, 61 NINTH AVENUE DEVELOPMENT, LLC,

DECISION + ORDER ON MOTION

Defendants.

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STARBUCKS CORPORATION, G.D.C.L. HOLDINGS LLC, SHAWMUT WOODWORKING & SUPPLY, INC., 61 NINTH AVENUE DEVELOPMENT, LLC

Third-Party
Index No. 595927/2022

Plaintiffs,

-against-

GENERAL MECHANICAL INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 1, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 199, 201, 202, 203, 204, 205, 206, 207, 208, 210, 212, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 236, 239, 241, 245, 246, 247, 250, 252

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 1, 98, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 200, 209, 211, 213, 217, 232, 233, 234, 235, 237, 240, 242, 248, 249, 251

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

BACKGROUND

Plaintiff commenced this Labor Law action seeking damages for personal injuries sustained on a July 3, 2018, workplace accident.

FACTS

On April 3, 2017, Starbucks Coffee Company ("Starbucks") entered into an agreement with Shawmut Woodworking & Supply, Inc. ("Shawmut") for Shawmut to serve as the general contractor for the construction of a coffee roastery on 61 Ninth Avenue, New York, NY 10011 (the "Project") (NYSCEF Doc No. 180). On March 26, 2018, Shawmut entered into an agreement with General Mechanical, Inc. ("General Mechanical") for General Mechanical to serve as a subcontractor providing labor and materials on various aspects of the Project, including metalwork (*see* NYSCEF Doc No. 181, at 11). The subcontractor agreement provided that General Mechanical would indemnify and hold harmless Starbucks and Shawmut for claims arising out of the work of General Mechanical and any of its employees (*id.* at 4, ¶ (5)(P)).

The following information derives from Plaintiff's testimony (NYSCEF Doc No. 174).

On July 3, 2018, Plaintiff was working on the Project site under the employment of General Mechanical as a millwright journeyman. Plaintiff was tasked with installing steel support beams for ductwork on the Project. While Plaintiff and another worker were atop scaffolding, the two set out to lift a large steel beam (the "Beam") that was to be set into anchors in the ceiling of the building. The Beam was around six feet in length and 100 to 200 pounds. To lift the Beam, Plaintiff and the other worker laid dunnage onto the ground of scaffolding and placed a bottle jack on top of the dunnage.[1] The dunnage consisted of two-by-fours stacked on top of one another. The plan would be to manually insert the Beam into the ceiling anchors and set nuts to hold it in place once the two raised the Beam high enough with the jack (*id.* at 57).

After the two set up the dunnage and the bottle jack, they then placed the Beam vertically atop the jack and began to jack up the Beam. Plaintiff's coworker was pumping the jack while

[1] Dunnage is a term, usually applying to shipping, that refers to "loose materials used to support and protect cargo" (*see* Merriam-Webster.com Dictionary, dunnage [https://www.merriam-webster.com/dictionary/dunnage]).

Plaintiff stood by and stabilized the Beam with his hands. When the base of the beam was lifted to around the Plaintiff's waist height, the jack and the dunnage gabe out, and the Beam fell onto Plaintiff, striking his chest and shoulder.

Plaintiff testified that similar beams had been installed on the Project by hanging them from chain falls or securing them with a crane (*id.* at 58–59). Plaintiff nevertheless was not provided with any alternative instructions on how to install the Beam, nor did anyone tell him that alternative tools or equipment were available to have installed the Beam (*id.* at 80). Plaintiff also testified that the general foreman from General Mechanical specifically directed him and the other worker to install the Beam in this manner (*id.* at 58).

PENDING MOTIONS

On January 15, 2026, Plaintiff moved for summary judgment as against Starbucks, G.D.C.L. Holdings, LLC, and Shawmut on his Labor Law § 240(1) claim (NYSCEF Doc No. 171 [mot. seq. 007]).

On February 17, 2026, Starbucks, G.D.C.L. Holdings LLC, Shawmut and 61 Ninth Avenue Development LLC ("Defendants") moved for summary judgment (1) dismissing Plaintiff's claims under Labor Law §§ 200, 240(1) and 241(6) and for common-law negligence, (2) dismissing all of General Mechanical's counterclaims against Defendants and (3) granting summary judgment on their contractual indemnification claim against General Mechanical (NYSCEF Doc No. 186 [mot. seq. 008]).

The motions were fully briefed and marked submitted on March 31, 2026, and the Court reserved decision.

The Court grants Plaintiff's motion for summary judgment on Labor Law § 240(1) as Plaintiff established a *prima facie* case that the Beam should have been properly secured and that

the failure to secure it proximately caused his injuries, and the Court denies those portions of Defendants' motion seeking dismissal of that claim.

The Court also grants Defendants' motion for contractual indemnification as against General Mechanical.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where no material or 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 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" the plaintiff's claim fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When the 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]). While hearsay may be admissible in opposition to a motion for summary judgment, such hearsay must be coupled with other admissible evidence (*Rugova v Davis*, 112 AD3d 404, 404–05 [1st Dept 2013]). Further, "[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] [alteration in original]). 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]).

Plaintiff Establishes a Prima Facie Case that the Failure to Secure the Beam Proximately Caused His Injuries

Plaintiff argues that he is entitled to summary judgment on his Labor Law § 240(1) claim because the failure to properly secure the Beam caused his elevation-related injury.

Labor Law § 240(1) provides:

> 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.

Section 240(1) imposes "absolute liability" on owners, general contractors and their statutory agents when a breach of the statutory duty proximately causes injury (*Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 338 [2008]). A breach of the statutory duty occurs when a worker engaged in the statute's enumerated activities is injured due to the failure to provide that worker with an adequate safety device (*Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]). The parties do not dispute that Plaintiff was engaged in an enumerated activity as he was working on the construction of the roastery.

The statutory duty imposed by Labor Law § 240(1) applies to both "falling worker" and "falling object" cases (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). In falling object cases, 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 Beam was related to the effects of gravity as the weight of the Beam and the height from which it fell "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 the top of the Beam struck him after it tipped and fell from above him due to the sudden collapse of the makeshift dunnage-and-jack configuration establishes a *prima facie* case that the failure to properly secure the Beam for the purpose of the undertaking proximately caused his injury.

Neither Defendants nor General Mechanical, who separately filed opposition, raise any triable issues of fact. Defendants' citation of Nelson's testimony that he had no memory of Plaintiff working that day or no knowledge of the accident is insufficient to raise factual issue as a witness's testimony that they have no memory of an event does not rebut another witness's testimony affirmatively stating that they had personal knowledge of how the event occurred (*see Foy v Hurley*, 19 AD3d 138, 138 [1st Dept 2005] [*reversing the trial court's denial of summary judgment on the basis that the plaintiff's lack of recollection of an accident was insufficient to raise a triable issue of fact against the defendant's prima facie case*]; *see also Santarpia v First Fid. Leasing Group, Inc.*, 275 AD2d 315, 315 [2d Dept 2000] [*testimony as to the lack of*

memory of the details of an accident insufficient to raise a triable issue of fact rebutting inference of negligence]).

Defendants and General Mechanical also cite Plaintiff's medical and physical therapy records to attempt to raise an issue of fact. Plaintiff's Lenox Hill Hospital record does not contradict Plaintiff's recollection of the accident as it merely states that Plaintiff's back pain began after a "heavy lifting incident" without further description (NYSCEF Doc No. 202). Defendants also cite Plaintiff's physical therapy records which stated that Plaintiff's groin and thigh pain began on July 3, 2018, at work because Plaintiff "was on a scaffold that did not allow him enough [sic] for him to stand upright" (NYSCEF Doc No. 203, at 3). However, these records are not in admissible form as they are hearsay and they do not contain "a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician" under CPLR § 4518(c). Additionally, the foundation for their admissibility was not properly laid under CPLR § 4518(a) (*see* CPLR § 4518(a) [*requiring that the person creating the record testify that the record be made in the regular course of business and at or near the time of the accident*]). Defendants citation of Plaintiff's Professional Physical Therapy records that also state that Plaintiff's July 3, 2018, pain was caused by the onset of "heavy lifting" at work in "January 2018" (NYSCEF Doc No. 204) is similarly inadmissible as the records lack a certification under CPLR § 4518(c) and Defendants did not lay the grounds for admission under CPLR § 4518(a). Finally, as to all these documents, Defendants "provide no excuse for their failure to tender [them] in admissible form" (*Kristo v Board of Educ. of the City of NY*, 134 AD3d 550, 551 [1st Dept 2015]).

Defendants and General Mechanical also cite an email sent by John Nelson, a concept designer for Starbucks, on July 3, 2018, to other Starbucks and Shawmut employees that does not mention Plaintiff's accident but discusses the construction of a vestibule on the Project (NYSCEF Doc No. 207). The email's absence of mentioning Plaintiff's accident does not controvert whether or in what manner Plaintiff's accident occurred but it merely tends to show that Nelson was engaged in an unrelated discussion about work on the Project. Regardless, Nelson testified that he did not recall interacting with anyone from General Mechanical on his weekly walkthroughs of the Project anyway (NYSCEF Doc No. 175, at 91–92).

Moreover, Defendants and General Mechanical cite payroll timecards which state that Plaintiff was at work on July 2, 2018, and not July 3, 2018 (NYSCEF Doc Nos. 205), testimony from Ronald Hubacka, which stated that Plaintiff was not at work on July 3, 2018 (NYSCEF Doc No. 177, at 48) and also Plaintiff's unemployment insurance documents which similarly state that Plaintiff's effective date of coverage was July 2, 2018 (NYSCEF Doc Nos. 206, 207). Whether Plaintiff's accident occurred on July 2, 2018, or July 3, 2018, does not warrant denial of summary judgment as this is a "minor, immaterial inconsistenc[y] in [Plaintiff's] testimony" that does not bear upon how the accident actually occurred (*see Robinson v NAB Constr. Corp.*, 210 AD2d 86, 87 [1st Dept 1994] [*reversing denial of summary judgment on Labor Law § 240(1) on the basis that minor inconsistencies existed in plaintiff's testimony*]).

The Court thus grants Plaintiff's motion for summary judgment as to Labor Law § 240(1) "even though he was the sole witness to his accident" as Plaintiff establishes a *prima facie* case that the failure to properly secure the Beam caused his injury and the Defendants and General Mechanical fail to cite evidence in opposition "controverting his account of the accident or calling into question his credibility" (*Cafisi v L&L Holding Co., LLC*, 219 AD3d 1215, 1217 [1st

Dept 2023], quoting *Rivera v Suydam 379 LLC*, 216 AD3d 495, 496 [1st Dept 2023] [*affirming summary judgment for plaintiff on Labor Law § 240(1)*] [internal quotations omitted]).

In light of Plaintiff's entitlement to summary judgment on section 240(1), the Court denies Defendants' motion for summary dismissal of Plaintiff's section 240(1) claim, and Defendants' motion for summary dismissal of Plaintiff's other claims is academic.

The Court Grants Defendants' Motion for Contractual Indemnification

Courts will enforce an indemnification obligation "as long as the intent to assume such a role is sufficiently clear and unambiguous" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007] [internal quotations omitted]). Indemnification contracts are "strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]).

Paragraph (5)(P) of the Subcontractor Agreement reads:

> To the full extent permitted by applicable law, Subcontractor [General Mechanical] agrees to defend, indemnify and hold harmless Owner [Starbucks], the Architect/Engineer, Contractor [Shawmut] and anyone else required by the Contract Documents, from and against any and all claims, damages or loss (including attorney's fees) arising out of or resulting from any work of and caused in whole or in part by any act or omission of Subcontractor or those employed by it, or working under those employed by it at any level, regardless of whether or not caused in part by a party indemnified hereunder. (NYSCEF Doc No. 196, at 5).

This paragraph is sufficiently clear and unambiguous for General Mechanical to assume an obligation to indemnify Defendants. Further, the Court holds that liability from Plaintiff's accident triggers this indemnification obligation as Plaintiff was employed by General Mechanical when his accident occurred and General Mechanical's failure to provide him with an adequate safety device to secure the Beam proximately caused his injury.

In opposition to Defendants' motion, General Mechanical does not contest the validity of the indemnification provision. Defendants only argue that John Nelson's testimony raises issues

of fact as to whether General Mechanical's work was actually the cause of Plaintiff's accident. However, Nelson's testimony that another subcontractor named "Veyko," and not General Mechanical, was performing metalwork on the Project on the accident date is mere speculation as Nelson's testimony was based on his reading of the previously referenced email (NYSCEF Doc No. 207). The email stating that Veyko could have been one subcontractor working on the Project does not disprove that General Mechanical and Plaintiff could have also been working on the Project on that day. Further, and as stated above, Nelson testified that he did not remember having interacted with any employees from General Mechanical.

Accordingly, the Court grants Defendants' motion for contractual indemnification as against General Mechanical. [2]

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of Plaintiff (mot. seq. 007) is granted in its entirety; and it is further

ORDERED that the motion of Starbucks, G.D.C.L. Holdings LLC, Shawmut and 61 Ninth Avenue (mot. seq. 008) is granted to the extent that they are entitled to contractual indemnification from General Mechanical, but the motion is otherwise denied; and it is further

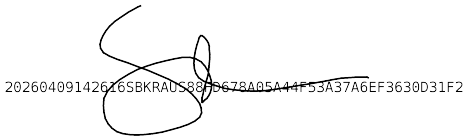
ORDERED that all other requests for relief are denied; and it is further

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

[2] Although Defendants seek dismissal of General Mechanical's counterclaims in their notice of motion, Defendants do not specify in their moving papers what these counterclaims are, and General Mechanical's answer does not appear to contain any counterclaims (*see* NYSCEF Doc No. 98).

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.



4/9/2026
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**