Reyes v Trustees of Columbia Univ. of the City of N.Y.
2026 NY Slip Op 31617(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 157715/2022
Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** *Justice*

PART 08

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INDEX NO. 157715/2022

MOTION DATE 01/20/2026

MOTION SEQ. NO. 005

JERSHON D. CARRASCO REYES,

Plaintiff,

- v -

THE TRUSTEES OF COLUMBIA UNIVERSITY OF THE CITY OF NEW YORK, HENRY RESTORATIONS LTD., ARCHITECTURE RESTORATION CONSERVATION, P.C. A/K/A ARC, PC,

Defendants.

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DECISION + ORDER ON MOTION

THE TRUSTEES OF COLUMBIA UNIVERSITY OF THE CITY OF NEW YORK, HENRY RESTORATIONS LTD.,

Third-Party Index No. 595816/2023

Third-Party Plaintiffs,

-against-

JIMCO RENOVATION CORP.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

INTRODUCTION

This labor law action arises from a workplace accident suffered by plaintiff Jershon D. Carrasco Reyes on December 8, 2021, when he was struck in the head by a falling brick while working on a project to repair the façades of several buildings owned by defendant Columbia University ("Columbia") including, as relevant here, two adjacent buildings located at 523 and 531 West 112th Street in Manhattan. Columbia hired defendant Henry Restorations Ltd. ("Henry") as the general contractor for the façade repair project. Henry itself performed the façade repair work at 531 West 112th Street and subcontracted Reyes' employer, third-party

defendant Jimco Renovation Corp. ("Jimco"),[1] to do the façade repair at 523 West 112th Street. Reyes now moves pursuant to CPLR 3212 for summary judgment as to liability against Columbia and Henry on his Labor Law §§ 240(1) and 241(6) claims and against Henry alone on his common-law negligence and Labor Law § 200 claims,[2] and pursuant to CPLR 3025 to amend his verified bill of particulars to allege a violation of Industrial Code § 23-1.7(a) as a predicate for the Labor Law § 241(6) cause of action. Columbia and Henry oppose the motion, except insofar as it seeks to amend the bill of particulars. The motion is granted in part.

DISCUSSION

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 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]). However, if the proponent fails to make out its prima facie case for summary judgment, its motion must be denied regardless of the sufficiency of the opposing papers (*Alvarez*, 68 NY2d at 324; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]).

I. LABOR LAW § 240(1)

"'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,

[1] The third-party action against Jimco was discontinued pursuant to a stipulation of discontinuance entered on September 5, 2025 (NYSCEF Doc. No. 159).

[2] Reyes voluntarily discontinued this action as against the third named defendant, Architecture Restoration Conservation, P.C. a/k/a ARC, PC, by stipulation of discontinuance entered on February 4, 2025 (NYSCEF Doc. No. 130).

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 the context of falling objects, the risk to be guarded against is the unchecked or insufficiently checked descent of the object"' (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept. 2024], quoting *Arnaud v 140 Edgecomb LLC*, 83 AD3d 507, 508 [1st Dept. 2011]).

In support of his motion Reyes submits, *inter alia*, his deposition transcript and that of Carl Reinke, Henry's Vice-President; photographs of the accident scene; and several signed incident reports prepared by Henry employees who witnessed the accident. These submissions demonstrate the following facts: at the time of the accident, Reyes was working on the ground in an enclosed, non-public courtyard formed by the two buildings located at 523 and 531 West 112th Street. Laborers for Henry were working on a suspended scaffold above the courtyard re-building a portion of the parapet wall on the roof of 531 West 112th Street. As the Henry laborers were raising their scaffold, the scaffold struck a brick that the Henry laborers had intentionally left protruding from the building's façade to allow them to "key-in" the newly rebuilt south facing parapet wall to the original east facing wall. The impact broke off the protruding portion of the brick, which fell to the ground approximately eight stories below and struck Reyes in the head. There was no horizontal netting under Henry's scaffold and no overhead netting or other protection to shield workers in the courtyard from falling objects. Reinke testified that no netting or overhead protection was provided in the courtyard because it was anticipated that no one would be in the courtyard when Henry was performing its work, but that if his men had been performing façade work on the public side of the building—i.e., on the building's sidewalk-facing façade—overhead protection would have been needed.

These submissions suffice to establish Reyes' *prima facie* entitlement to judgment as a matter of law on the issue of liability on his Labor Law § 240(1) claim, as they demonstrate that Reyes was struck by a brick that fell approximately eight stories from the exterior façade of a building actively undergoing repair and renovation, in the absence of any overhead netting or other such protective devices (*see Torres-Quito*, 227 AD3d at 116-18; *Garcia v SMJ 210 W. 18 LLC*, 178 AD3d 473, 473 [1st Dept. 2019]; *Hill v Acies Grp., LLC*, 122 AD3d 428, 429 [1st Dept. 2014]; *Mercado v Caithness Long Island LLC*, 104 AD3d 576, 576–77 [1st Dept. 2013];

see also Harsanyi v Extell 4110 LLC, 220 AD3d 528, 529 [1st Dept. 2023]; *Mayorquin v Carriage House Owner's Corp.*, 202 AD3d 541, 541–42 [1st Dept. 2022]).

Columbia and Henry fail to raise a triable issue of fact in opposition. Their contention that Labor Law § 240(1) is inapplicable to the facts of this case, because the brick that fell and struck Reyes was a permanent part of the subject building's façade that was not being worked on by Henry at the time of the accident, is unavailing. The incident reports prepared by the Henry employees performing the façade repair who personally witnessed the accident demonstrate that the brick was directly involved in their ongoing work and was intentionally left protruding from the building's façade as part of that work. In such circumstances, where exterior façade work is ongoing directly above the area where the plaintiff is working and the plaintiff's injury is proximately caused by the absence of any overhead protection, § 240(1) applies (*see Torres-Quito*, 227 AD3d at 116-18; *Garcia*, 178 AD3d at 473; *Mercado*, 104 AD3d at 576–77).

Therefore, the motion is granted to the extent it seeks summary judgment as to liability on the Labor Law § 240(1) cause of action.

II. LABOR LAW § 241(6)

Labor Law § 241(6) imposes a non-delegable duty on contractors and owners to ensure that "[a]ll areas in which construction . . . work is being performed" is "so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein . . . ." The scope of the duty imposed by Labor Law § 241(6) is defined by the safety rules set forth in the Industrial Code (*see Garcia v 225 E. 57th Owners, Inc.*, 96 AD3d 88, 91 [1st Dept. 2012], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-02 [1993]). Thus, to establish liability under this provision, a plaintiff must "specifically plead and prove the violation of an applicable Industrial Code regulation" (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept. 2007]).

Reyes moves to amend his verified bill of particulars to allege a violation of Industrial Code § 23-1.7(a) as a predicate for his Labor Law § 241(6) claim, and for summary judgment on the claim based on that alleged violation.

"Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit" (*MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499, 499 [1st Dept. 2010]; *see Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 365-66 [1st Dept. 2007]). "[L]eave to amend the pleadings to identify a specific, applicable Industrial Code provision may properly be granted, even after the note of issue has been filed, where the plaintiff makes a showing of merit, and the amendment involves no new factual allegations, raises no new theories of liability, and causes no prejudice to the defendant" (*D'Elia v City of New York*, 81 AD3d 682, 684 [2nd Dept. 2011] [internal quotation marks omitted]; *see Marte v Tishman Constr. Corp.*, 223 AD3d 527, 528 [1st Dept. 2024]). The proposed addition of an Industrial Code provision that is either insufficiently specific to support a Labor Law § 241(6) claim or inapplicable to the underlying facts is patently devoid of merit (*see Marte*, 223 AD3d at 529; *Rodriguez v Metropolitan Transp. Auth.*, 191 AD3d 1026, 1028 [2nd Dept. 2021]).

Industrial Code § 23-1.7(a) requires, in pertinent part, that "[e]very place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection" (12 NYCRR § 23-1.7[a][1]). This provision is sufficiently specific to support a cause of action under § 241(6) (*see Clarke v Morgan Contracting Corp.*, 60 AD3d 523, 524 [1st Dept. 2009]; *Zuluaga v P.P.C. Const., LLC*, 45 AD3d 479, 480 [1st Dept. 2007]) and defendants do not show, or even contend, that they would be prejudiced by an amendment of the bill of particulars to assert a violation of this provision. Indeed, Reyes' bill of particulars already alleges that Columbia and Henry failed to "provide plaintiff with proper protection," such as safety netting or catch platforms, to "prevent plaintiff being struck by falling debris," and further "failed to warn that the area plaintiff was in was a falling object zone." As such, the addition of Industrial Code § 23-1.7(a)(1) to Reyes' bill of particulars "merely amplif[ies] and elaborate[s] upon facts and theories already set forth in the original bill of particulars and raise[s] no new theory of liability" (*Noetzell v Park Ave. Hall Hous. Dev. Fund Corp.*, 271 AD2d 231, 232 [1st Dept. 2000]).

However, as to the applicability of the provision to the underlying facts, Reyes' submissions fail to eliminate material issues of triable fact as to whether the enclosed courtyard in which Reyes was working when the accident occurred was an area "normally exposed to

falling material or objects." To be sure, Reinke's testimony that overhead protection would have been provided had Henry been performing its façade repair work on the public side of the building demonstrates that Henry's work involved some known risk of falling debris. Nevertheless, Reyes submits no evidence of any material or objects falling in the subject courtyard prior to his accident, and the mere fact that construction work was ongoing above the courtyard at the time of the accident is insufficient, standing alone, to establish *prima facie* that the courtyard was "normally" exposed to falling material or objects (see *Torres-Quito*, 227 AD3d at 117-18; *Peters v Structure Tone, Inc.*, 204 AD3d 522, 524 [1st Dept. 2022]; *see also Garcia*, 178 AD3d at 473; *Clarke*, 60 AD3d at 524; *Marin v AP-Amsterdam 1661 Park LLC*, 60 AD3d 824, 826 [2nd Dept. 2009]; *Roosa v Cornell Real Prop. Servicing, Inc.*, 38 AD3d 1352, 1354 [4th Dept. 2007]).

Therefore, the motion is granted to the extent it seeks leave to amend the bill of particulars to assert a violation of Industrial Code § 23-1.7(a), but the motion is denied to the extent it seeks summary judgment on the Labor Law § 241(6) claim.

III. COMMON-LAW NEGLIGENCE & LABOR LAW § 200

Reyes' motion is denied to the extent it seeks summary judgment against Henry as to liability on the common-law negligence and Labor Law § 200 claims. Initially, the motion is denied to the extent it seeks this relief because Reyes' notice of motion is deficient. Generally, a notice of motion must state the relief demanded and the grounds therefor (*see* CPLR 2214[a]). Reyes' notice of motion seeks summary judgment only as to the Labor Law §§ 240(1) and 241(6) claims. It does not specify that summary judgment is also sought as to liability on the common-law negligence and Labor Law § 200 claims, against whom this relief is sought, and the grounds therefor. "Although [Reyes'] supporting papers suppl[y] the missing information, a court is not required to comb through a litigant's papers to find information that is required to be set forth in the notice of motion" (*Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2nd Dept. 2018]). The court thus "decline[s] to grant relief not specifically requested in the notice of motion" (*Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443–44 [1st Dept. 2024]; *see Arriaga v Michael Laub Co.*, 233 AD2d 244, 245 [1st Dept. 1996]; *Caesar v Metro. Transportation Auth.*, 229 AD3d 601, 601–02 [2nd Dept. 2024]).

Further, even if the court were to exercise its discretion to consider the relief requested with respect to the common-law negligence and Labor Law § 200 claims (*see Caesar*, 229 AD3d at 601–02; *HCE Assocs. v 3000 Watermill Lane Realty Corp.*, 173 AD2d 774, 774–75 [2nd Dept. 1991]), summary judgment on these claims would nevertheless be denied.

Labor Law § 200 codifies the common law duty of owners and general contractors to provide workers with a reasonably safe place to work (*Comes v New York State Elec. And Gas Corp.*, 82 NY2d 876, 877 [1993]). There are two categories of personal injury claims under Labor Law § 200 and the common law: those arising from dangerous or defective conditions existing on the premises and those arising from the manner or means in which the work was performed (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-44 [1st Dept. 2012]). To demonstrate a *prima facie* case under the former category, plaintiff must prove that the owner or general contractor created the alleged dangerous or defective condition or had actual or constructive notice of it (*id.*). "Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work" (*id.*). Here, Reyes seeks summary judgment against Henry under both theories of liability but fails to establish his *prima facie* entitlement to judgment as a matter of law under either one.

Reyes argues that liability is established under the means and methods theory of liability because Henry allegedly failed to ensure that its workers employed known, necessary steps to avoid the scaffold from hitting the building. Reyes cites Reinke's testimony that he (Reinke) and another Henry employee supervised Henry's work at the project and had authority to stop work to address dangerous conditions. Reyes further cites Reinke's testimony that as Henry's scaffold rose, the length of the cable that was pulling it up would shorten, making it necessary for the laborers on the scaffold to kick out against the building to avoid the scaffold from impacting the building. However, Reyes submits no evidence to support his conclusory assertion that Henry's laborers negligently failed to employ this necessary "kick out" method while operating their scaffold.

As to Henry's alleged liability under the dangerous or defective conditions theory of liability, Reyes contends that Henry "created and had actual notice of a dangerous condition

consisting of exposed and protruding masonry"—i.e., the brick that Henry's laborers left protruding from the building façade as part of their work—"combined with active scaffold movement directly above an area where workers were present." However, Reyes submits no evidence to demonstrate that the brick left protruding from the façade, which was necessary for Henry to properly perform its work, was in any way inherently dangerous or defective. Nor, as just discussed, does Reyes submit evidence affirmatively demonstrating negligence in the operation of Henry's scaffold.

Therefore, the motion is denied to the extent it seeks summary judgment against Henry as to liability on the common-law negligence and Labor Law § 200 claims.

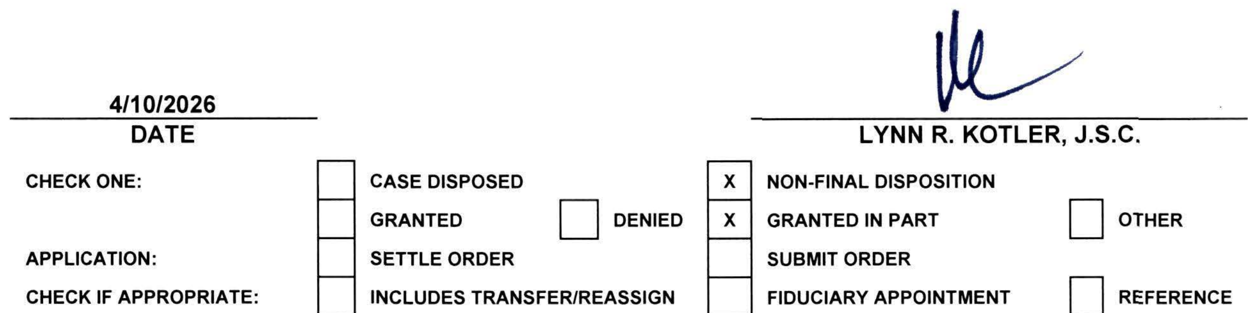
CONCLUSION

Accordingly, it is

ORDERED that plaintiff Jershon D. Carrasco Reyes' motion is granted to the extent it seeks leave to amend plaintiff's bills of particulars and to the extent it seeks summary judgment against defendants The Trustees of Columbia University of the City Of New York and Henry Restorations Ltd. as to liability on the third cause of action for violation of Labor Law § 240(1), and the motion is otherwise denied; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.



4/10/2026
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE