

**Brito v Assembly of Christian Churches, Inc.**

2026 NY Slip Op 31631(U)

April 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 535128/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 535128/2022  
Seqs. 002, 003

Part LL1M

CARLOS SURIEL BRITO,

Plaintiff,

against

ASSEMBLY OF CHRISTIAN CHURCHES, INC.,

Defendant.

ASSEMBLY OF CHRISTIAN CHURCHES, INC.,

Third-Party Plaintiff,

**DECISION/ORDER**

against

CONSTRUCTION LAB LLC,

Third-Party Defendant.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: NYSCEF 31-55, 59-68.

Upon the foregoing papers, plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim (Seq. 002) and defendant Assembly of Christian Churches, Inc. (ACC)' motion for summary judgment (Seq. 003) are decided as follows:

**Procedural Posture and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on October 28, 2022, while working at a construction site located at 24 Arlington Avenue, Brooklyn, NY (the premises). It is undisputed that ACC owned the premises, and contracted

with Construction Lab LLC (Construction Lab) to perform work at the premises. Construction Lab sub-contracted plaintiff's employer, Ice Age Mechanical, to perform HVAC work. Construction Lab has neither answered nor appeared, and a default judgment was entered against it on August 13, 2025.

The plaintiff testified as follows: On the date of the incident, plaintiff was employed by Ice Age as an air-conditioner "installer" (Brito EBT at 21). Plaintiff was installing an air-conditioner on the exterior of the premises (*id.* at 29–30). The whole job involved installing nine to ten compressors over the course of approximately one month (*id.* at 30). The installation process involved creating holes in the wall to run copper pipes, placing brackets, connecting the compressors to the piping, and then repairing the holes (*id.* at 31–32). Abel Elia Tejada Gonzalez, the pastor of ACC, testified that the decision to replace the HVAC system was made after the boiler stopped working and had to be removed (Gonzalez EBT at 15–16).

The plaintiff further testified: In order to perform the work, plaintiff used a six-foot A-frame ladder that belonged to his employer (*id.* at 51). While plaintiff was putting the screw into the cap to hold the compressor, "the ladder moved and [plaintiff] fell" to the ground (*id.* at 54). A photograph of the area where plaintiff was working depicts multiple air compressors attached to the walls and cracks running along the cement floor (*see also id.* at 66).

### 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 moved, 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, ACC has failed to raise a triable issue of material fact. Contrary to defendant’s contentions, there is no evidence here that plaintiff fell solely because he lost his balance (*contra Gaspar v Pace Univ.*, 101 AD3d 1073 [2d Dept 2012]). Here, the plaintiff testified that the ladder moved and wobbled “for no apparent reason . . . [therefore,] the plaintiff has established a violation” (*Cioffi v Target Corporation*, 188 AD3d 788 [2d Dept 2020]). ACC has not provided any evidence “that there was no statutory violation and the plaintiff’s own acts or omissions were the sole cause of the accident” (*Mora v 1-10 Bush Term. Owner, L.P.*, 214 AD3d 785, 786 [2d Dept 2023]).

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

**Labor Law § 241 (6)**

Only defendant moves on plaintiff’s Labor Law § 241 (6) claim. 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 (*Moscatti v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff only advances opposition with respect to the alleged violation of Rule 23-1.21 (b) (3) (iv), which requires removal of ladders that have “flaws or defects of material that may cause ladder failure.” Unlike Labor Law § 240 (1), Labor Law § 241 (6) requires the plaintiff to prove that he suffered harm due to the violation of a sufficiently specific section of the Industrial Code (see *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501–502 [1993]). While plaintiff’s testimony is sufficient to show that he was not adequately protected from an elevation-related risk, he does not identify in his opposition any testimony or evidence that would preserve a question of fact as to whether Rule 23-1.21 (b) (3) (iv) was violated. The plaintiff testified that the ladder had proper feet (Brito EBT at 54), that the spreaders worked (*id.* at 55), and did not identify any defect in the ladder before or after the accident that was a proximate cause of his fall.

Therefore, defendants’ motion is granted with respect to plaintiff’s Labor Law § 241 (6) claim.

#### **Labor Law § 200**

Only defendant moves on plaintiff’s Labor Law § 200 claim. Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work” (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Claims under this statute are evaluated under dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the

two (*id.*). Plaintiff only opposes defendant's motion with respect to the alleged dangerous condition of the cracks in the concrete slab where plaintiff was working.

ACC argues that plaintiff testified that the ladder was not set up on any of the cracks, and that even if the cracks constituted a dangerous condition, it was not a proximate cause of plaintiff's accident (Brito EBT at 66). However, plaintiff testified that he did not know what caused the ladder to move, and the presence of cracks indicate the possibility that the slab was a proximate cause of the ladder's movement.

Therefore, defendant's motion for summary judgment on plaintiff's Labor Law § 200 claim is denied.

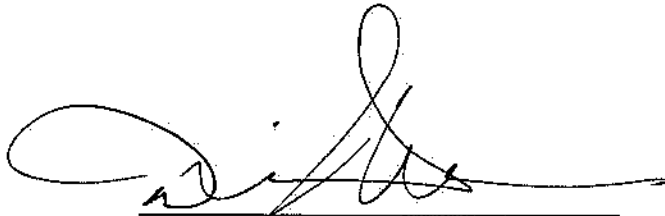
### **Conclusion**

Plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim (Seq. 002) is granted.

Defendants' motion for summary judgment (Seq. 003) is granted with respect to plaintiff's Labor Law § 241 (6) claim; the motion is otherwise denied.

This constitutes the decision and order of the court.

April 6, 2026  
DATE

  
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DEVIN P. COHEN  
Justice of the Supreme Court