Hernandez v Artlife 173-175 Mcguinness LLC
2026 NY Slip Op 31792(U)
April 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 519356/2023
Judge: Anne J. Swern
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.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 20th day of April 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

JEISON QUINTERO HERNANDEZ,

Plaintiff,

-against-

ARTLIFE 173-175 MCGUINNESS LLC and B.O.S.S.,

Defendants.

ARTLIFE 173-175 MCGUINNESS LLC and B.O.S.S.,

Third-Party Plaintiffs,

-against-

S & H KITCHENS,

Third-Party Defendant.

S & H KITCHENS,

Second Third-Party Plaintiff,

-against-

SHH MANAGEMENT INC. d/b/a SPARKLEENING,

Second Third-Party Defendant.

DECISION & ORDER

Index No.: 519356/2023

Calendar No.: 39

Motion Seq.: 001

Return Date: 03/05/2026

Recitation of the following papers as required by CPLR 2219(a):

	NYSCEF Papers Numbered
Notice of Motion and Supporting Documents	34-47
Affirmations in Opposition and Supporting Documents	51-58
Reply Affirmation and Supporting Documents	59
Court Notice and Letter to Court	60-61

Upon the foregoing papers, the decision and order of the Court is as follows:

Jeison Quintero Hernandez, ("plaintiff) commenced this action to recover damages under Labor Law §§ 200, 240 [1] and 241 [6] and common law negligence for personal injuries sustained when he fell off a ladder on 6/21/2023. The accident occurred at the property known as 173 McGuinness Boulevard, Brooklyn, New York. Plaintiff has moved for summary judgment per CPLR § 3212 on the Labor Law § 240 [1] cause of action against the property owner, defendant Artlife 173-175 Mcguinness LLC ("Artlife") and the general contractor, defendant B.O.S.S. Associates, Inc. ("B.O.S.S."). The motion is granted.

Artlife contracted B.O.S.S. for the ground-up construction of an eight-story, multiunit residential building at 173 McGuinness Boulevard. B.O.S.S. subcontracted the installation of kitchen cabinets and counter [tops] and bathroom vanities and medicine cabinets in boxes ("boxes") to third-party defendant S&H Kitchens ("S&H"). S&H sub-subcontracted the delivery of these boxes to plaintiff's employer, the second third-party defendant, SHH Management Inc. d/b/a Sparkleenings ("SHH"). SHH took delivery of the boxes from a container ship at the Port of Newark and transported them to the jobsite.

Plaintiff testified that he was working with a co-worker, Juan Carlos Zapil ("Juan") on the day of the accident. The supervisor, "Doamaro," instructed them to stack the units/boxes in each apartment for installation work on the seventh floor and provided them with a six-foot aluminum A-frame ladder to stack the boxes. Plaintiff had previously used this ladder on different jobsites but constantly complained to his supervisor that it was deteriorated and unstable due to its "very worn" rubber footing.

Plaintiff contended that his co-workers offloaded the boxes from the delivery truck and delivered them to the seventh floor. Plaintiff and Juan used a dolly to move the boxes inside the

apartments. The weight of the boxes varied from 50 to 250 pounds. The boxes were stacked in "layers" eight feet high – the heavier ones on the bottom and the lighter ones on top. Before the accident happened, plaintiff had "layered" the boxes five "levels" high. He climbed up and down the ladder approximately four times before his accident.

The ladder collapsed when plaintiff was on the fourth rung of the ladder carrying a 50-pound box. Plaintiff fell backwards off the ladder; the ladder and box fell on top of him and he landed on a box of tiles.[1] When Doamaro arrived, Juan told him what happened to plaintiff. Doamaro did not call EMS. Instead, Doamaro and Juan carried plaintiff to "the" car; Doamaro and another individual transported plaintiff to a clinic.

Mike Saratovsky, the project manager for B.O.S.S. testified that Ray Aurora, the on-site superintendent, informed him of plaintiff's accident. Ray did not witness the accident but stated that plaintiff "tripped over a box and fell." Mike did not know the source of Ray's information. Further, S&H completed an accident report using B.O.S.S.'s form. However, he did not know who completed the form and provided the following narrative, "Lifted cabinet alone while told not to do alone fell on his back on tiles that was on the floor piled there [sic]." Mike, plaintiff and the witness who testified on behalf of S&H, Moshe Mittelman, all testified that they did not know who completed B.O.S.S.'s accident report. Likewise, they did not know an individual by the name of "Chani G," who was listed as the contact person in the report. The report is unsigned.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence

[1] In support of the motion, plaintiff has submitted an affidavit from Juan, dated 1/8/2025, corroborating his testimony.

to demonstrate the absence of any material issue of fact. Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324). However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], *citing Alvarez v Prospect Hospital,* 68 NY2d 324). "An accident report is admissible only if the proponent establishes the trustworthiness of each participant in the chain producing them, from the initial declarant to the final entrant (*Hochhauswer v Electric Ins. Co.,* 46 AD3d 174, 179-180 [2d Dept 2007], *citing Matter of Leon RR,* 48 NY2d 117, 122 [1979]).

It is well settled that Labor Law § 240 [1] "imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks" who engage in activities covered by the statute and "suffered an injury as a direct consequence of a failure to provide adequate protection" against such risks (*Soto v J. Crew, Inc.,* 21 NY3d 562, 566 [2013] [internal citations omitted]). "[T]he extraordinary protections of Labor Law § 240 (1) extend only to a narrow class of special hazards, and do not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity" (*Gomez v Tilden Estates*, 241 AD3d 791, 793 [2d Dept 2025] [internal quotations omitted]). "[T]he statute was designed to prevent accidents in which a protective device "proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person"*" (*id.* at 793).

"Delivery of equipment is a covered activity if the equipment is being delivered to an active construction site or is being readied for immediate use" (*Shaw v Scepter, Inc.,* 187 AD3d

1662, 1663-1664 [4th Dept 2020] [internal citations omitted]; *Serrano v TED Gen. Constr.,* 157 AD3d 474, 475 [1st Dept 2018]). However, the "delivery of equipment is not a covered activity if it is being delivered to an inactive construction site and is merely being stockpiled for future use" (*Shaw v Scepter, Inc.,* 187 AD3d 1663-1664).

Here, plaintiff satisfied his burden of proof that the defective ladder was a violation of Labor Law § 240 [1] and it was the proximate cause of his injury while engaging in a work activity contemplated by the statute (*Serrano v TED Gen. Constr.,* 157 AD3d 475). According to the testimony of S&H's witness, this was an active construction site as installation teams were assigned to the job site on the date of plaintiff's accident. The kitchen cabinets and bathroom vanities were being delivered and made ready for immediate use on an active construction site. Plaintiff satisfies both standards. (*Id.*). This prima facie entitlement to summary judgment was unrebutted by defendants through admissible evidence. The witnesses produced by B.O.S.S. and S&H could not identify the initial declarant through the final declarant who prepared the accident report. The report constitutes inadmissible hearsay. (*Hochhauswer v Electric Ins. Co.,* 46 AD3d 179-180). Further, neither witness was present on the job site and their respective testimony concerning what they were told by other declarants also constitutes inadmissible hearsay.

Defendants' argument that plaintiff's motion is premarture because further discovery is necessary from plaintiff's employer is misplaced. To defeat a motion for summary judgment as premature, defendants "must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (*Maurice v Donovan,* 235 AD3d 633, 635 [2d Dept 2025] *citing Yonghong Xia v Zhao Xian Zeng*, 219 AD3d 914, 915 [2d Dept 2023]). Defendants cannot meet either criterium because plaintiff's employer, the third-party and second third-party defendant,

has not appeared in this action and neither third-party plaintiff has sought a default judgment against SHH. The first third-party action was commenced on 5/28/2024 and the second third-party action was commenced on 7/24/2025. There mere hope that plaintiff's employer *might* appear in this action and provide discovery that may lead to relevant evidence is pure speculation in light of the fact that the only witness to this accident, Juan, has submitted an affidavit in support of the motion corroborating plaintiff's testimony (*id*.). It is also noted that B.O.S.S. produced Mike, the project manager for the court-ordered deposition instead of Ray, the onsite supervisor on the day of plaintiff's accident who informed Mike of the accident.

The Court has considered the parties' remaining arguments and found same to be either without merit or of no probative value.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order of summary judgment on the issue of liability on the Labor Law § 240 [1] cause of action is GRANTED, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 4/20/2026