

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Bacchus v. 676 East 179 LLC

Bacchus, 2026 NY Slip Op 02442 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 35204/20; Appeal No. 6452; Case No. 2025-03503 · Decided April 23, 2026

SUMMARY

The Appellate Division, First Department modified an order granting partial summary judgment on a Labor Law § 241(6) claim arising from injuries caused by an unguarded grinder. The court held that the claims predicated on Industrial Code §§ 23-1.5(c)(3) and 23-9.2(a) could proceed, but dismissed the claim predicated on § 23-1.5(c)(1) because that provision was not sufficiently specific.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kennedy, J.; González, J.; Pitt-Burke, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 23, 2026
DOCKET	Index No. 35204/20; Appeal No. 6452; Case No. 2025-03503
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order granting plaintiff partial summary judgment on portions of a Labor Law § 241(6) claim and denying defendant East 179's motion for summary judgment dismissing those portions.
STANDARD OF REVIEW	Review of the order on the law; summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and no triable issue remains. The court also reviewed an unpreserved purely legal argument because it was determinative without requiring new facts.
PRECEDENTIAL VALUE	published
PARTIES	676 East 179 LLC et al. v. Azfal Bacchus

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether plaintiff was entitled to partial summary judgment on the Labor Law § 241(6) claim predicated on Industrial Code §§ 23-1.5(c)(3) and 23-9.2(a) based on the visibly missing grinder safeguard and the employer's notice.
2. Whether defendant 676 East 179 LLC was entitled to summary judgment dismissing the Labor Law § 241(6) claim on the ground that it lacked notice of the missing safeguard.
3. Whether Industrial Code § 23-1.5(c)(1) is sufficiently specific to serve as a predicate for Labor Law § 241(6) liability.
4. Whether the appellate court could consider East 179's unpreserved legal argument concerning the specificity of Industrial Code § 23-1.5(c)(1).

HOLDINGS

1. Plaintiff was properly granted partial summary judgment on the Labor Law § 241(6) claim insofar as it was predicated on Industrial Code §§ 23-1.5(c)(3) and 23-9.2(a).
2. East 179 was not entitled to dismissal merely by showing that it lacked notice of the missing grinder safeguard.
3. Industrial Code § 23-1.5(c)(1) is not sufficiently specific to serve as a predicate for Labor Law § 241(6) liability.

KEY QUOTATIONS

“This provision is not sufficiently specific to serve as a predicate for Labor Law § 241(6) liability” ([*1])

“East 179, as the undisputed owner of the premises, was not entitled to dismissal by showing that it lacked notice of the missing safeguard.” ([*1])

FACTUAL BACKGROUND

Plaintiff was using a grinder that visibly lacked a safeguard when it suddenly kicked back and injured him while he was cutting parts of a commercial boiler. His supervisor, Rudy Peters, was present and supervising the work, and plaintiff testified that the unguarded grinder was the only tool available for the task. The evidence supported an inference that plaintiff's employer had notice of the missing safeguard and negligently permitted plaintiff to use the grinder.

PROCEDURAL HISTORY

Supreme Court, Bronx County, entered an order on or about May 19, 2025, granting plaintiff partial summary judgment on the Labor Law § 241(6) claim predicated on Industrial Code §§ 23-1.5(c)(1) and (3) and 23-9.2(a), and denying East 179's motion for summary judgment as to those portions of the claim. The Appellate Division modified the order by denying plaintiff summary judgment and granting East 179 summary judgment as to the § 23-1.5(c)(1) theory, and otherwise affirmed.

DISPOSITION

other

CASES CITED

- Viruet v. Purvis Holdings LLC, 198 A.D.3d 587, 588 (1st Dep't 2021)
- Nicholson v. Sabey Data Ctr. Props., LLC, 205 A.D.3d 620, 621 (1st Dep't 2022)
- Cabral v. Rockefeller Univ., 222 A.D.3d 474, 475 (1st Dep't 2023)
- Becerra v. Promenade Apts. Inc., 126 A.D.3d 557, 558-559 (1st Dep't 2015)
- Rizzuto v. L.A. Wenger Contr. Co., 91 N.Y.2d 343, 351 (1998)
- Gasques v. State of New York, 15 N.Y.3d 869, 870 (2010)
- Bank of N.Y. Mellon v. Arthur, 125 A.D.3d 492, 492 (1st Dep't 2015)

OPINION

PER CURIAM.

Bacchus v 676 E. 179 LLC - 2026 NY Slip Op 02442

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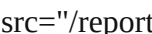


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Bacchus v 676 E. 179 LLC

2026 NY Slip Op 02442

April 23, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Azfal Bacchus, Plaintiff-Respondent,

v

676 East 179 LLC et al., Defendants-Appellants.

676 East 179 LLC et al., Third-Party Plaintiffs-Appellants,

Decided and Entered: April 23, 2026

Index No. 35204/20|Appeal No. 6452|Case No. 2025-03503

Before: Manzanet-Daniels, J.P., Kennedy, González, Pitt-Burke, Rosado, JJ.

Leon I. Behar, P.C., New York (Kyle Egan Djurovic of counsel), for 676 East 179 LLC,

appellant.

Chirico Law PLLC, Brooklyn (Vincent Chirico of counsel), for respondent.

Order, Supreme Court, Bronx County (Myrna Socorro, J.), entered on or about May 19, 2025, which, to the extent appealed from as limited by the briefs, granted plaintiff's motion for partial summary judgment on the Labor Law § 241(6) claim insofar as predicated on Industrial Code (12 NYCRR) §§ 23-1.5(c)(1) and (3) and 23-9.2(a) as against defendant 676 East 179 LLC (East 179), and denied East 179's motion for summary judgment dismissing the same portions of that claim, unanimously modified, on the law, to deny plaintiff's motion insofar as predicated on Industrial Code § 23-1.5(c)(1), grant East 179's motion as to that portion of the claim, and otherwise affirmed, without costs.

Supreme Court properly granted plaintiff partial summary judgment on the Labor Law § 241(6) claim insofar as predicated on Industrial Code §§ 23-1.5(c)(3) and 23-9.2(a).

It is undisputed that plaintiff was using a grinder that noticeably lacked a safeguard when it suddenly kicked back and injured him. Plaintiff submitted evidence supporting the inference that his employer had notice of the grinder's visibly missing safeguard (*see Viruet v Purvis Holdings LLC*, 198 AD3d 587, 588 [1st Dept 2021]), thereby satisfying the notice element of both Industrial Code provisions (*see Nicholson v Sabey Data Ctr.*

Props., LLC, 205 AD3d 620, 621 [1st Dept 2022]; *see also Cabral v Rockefeller Univ.*, 222 AD3d 474, 475 [1st Dept 2023]; *Becerra v Promenade Apts. Inc.*, 126 AD3d 557, 558-559 [1st Dept 2015]).

The record demonstrates that plaintiff's supervisor and owner of third-party defendant, Rudy Peters, was present and supervising plaintiff's work which required the use of the unguarded grinder to cut parts of the commercial boiler. Plaintiff testified that the unguarded grinder was the only tool available capable of performing this task.

East 179, as the undisputed owner of the premises, was not entitled to dismissal by showing that it lacked notice of the missing safeguard.

Rather, plaintiff's evidence established that his employer, a party within the construction chain, was negligent in permitting plaintiff to use the unguarded grinder in violation of the relevant Industrial Code provisions, thus establishing liability under Labor Law § 241(6) (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 351 [1998]).

The court should have dismissed the Labor Law § 241(6) claim insofar as predicated on Industrial Code § 23-1.5(c)(1).

This provision is not sufficiently specific to serve as a predicate for Labor Law § 241(6) liability (*see Gasques v State of New York*, 15 NY3d 869, 870 [2010]). Although East 179 raises this argument for the first time on appeal, we may consider it because it presents a purely legal question that is determinative without raising new facts (*see Bank of N.Y.*

Mellon v Arthur</i>, 125 AD3d 492, 492 [1st Dept 2015]).</p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: April 23, 2026</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>

PER CURIAM.

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