

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Kingstone Ins. Co. v. Barranco

Kingstone Ins. Co., 2026 NY Slip Op 02639 (Supreme Court of the State of New York Appellate Division
Second Judicial Department 2026) · No. 2022-00623 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of the injured worker's Labor Law §§ 240(1) and 241(6) claims arising from a ladder fall at a one-family residence. The court held that Marina Fronshtein was protected by the homeowner's exemption and that claims against Marat Fronshtein were barred by the Workers' Compensation Law's coemployee exclusivity provision; the defendants' cross-appeal concerning amendment of their answer was dismissed as academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Paul Wooten, J.; Laurence L. Love, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 29, 2026
DOCKET	2022-00623
DISPOSITION	affirmed
PROCEDURAL POSTURE	Alejandro Perez Barranco appealed, and the defendants cross-appealed, from a judgment entered after the Supreme Court, Kings County, granted defendants summary judgment dismissing Labor Law §§ 240(1) and 241(6) claims and denied defendants leave to amend their answer to assert collateral-estoppel and res judicata defenses.
STANDARD OF REVIEW	On review of summary judgment, the court considers whether the movants established entitlement to judgment as a matter of law and whether the opposing party raised a triable issue of fact.
PRECEDENTIAL VALUE	published

PARTIES

Alejandro Perez Barranco v. Kingstone Insurance Company, Marat Fronshtein, Marina Fronshtein, et al.

TOPICS

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QUESTIONS PRESENTED

1. Whether Marina Fronshtein established entitlement to the homeowner's exemption from liability under Labor Law §§ 240(1) and 241(6).
2. Whether Marat Fronshtein was Barranco's coemployee acting within the scope of employment, such that the Workers' Compensation Law's exclusivity provision barred the Labor Law claims against him.
3. Whether defendants' cross-appeal concerning leave to amend the answer to assert collateral-estoppel and res judicata defenses remained justiciable after affirmance of the judgment.

HOLDINGS

1. A homeowner is protected by the exemption when the premises consist of a one- or two-family residence and the owner did not direct or control the work. Marina established those conditions, and Barranco failed to raise a triable issue of fact; summary judgment dismissing the claims against her was proper.
2. The Workers' Compensation Law provides the exclusive remedy for an injury caused by a coemployee acting within the scope of employment, absent a willful or intentional tort. Because Marat and Barranco were coemployees acting within the scope of employment, the claims against Marat were barred.
3. The cross-appeal concerning leave to amend the answer to assert collateral-estoppel and res judicata defenses was dismissed as academic in light of the affirmance of the judgment.

KEY QUOTATIONS

“In order for a defendant to receive the protection of the homeowner's exemption [from liability under Labor Law §§ 240(1) and 241(6)], the defendant must show that (1) the premises consisted of a one- or two-family residence, and (2) the owner did not direct or control the work being performed” ([*2])

“Workers' compensation qualifies as an exclusive remedy when both the plaintiff and the defendant are acting within the scope of their employment, as coemployees, at the time of injury” ([*2])

“a corporate principal's ownership of the premises does not negate the coemployee relationship” ([*2]-[*3])

FACTUAL BACKGROUND

On October 21, 2017, Alejandro Perez Barranco, an employee of LSM Electrical Contracting, Inc., allegedly fell from a ladder while working on the outside wall of a one-family residence in Brooklyn. Marina Fronshtein owned the residence with her husband, Marat Fronshtein, who owned LSM. Barranco alleged violations of Labor Law §§ 240(1) and 241(6).

PROCEDURAL HISTORY

Barranco commenced a personal-injury action after falling from a ladder while performing work at the defendants' one-family residence. The Supreme Court granted defendants summary judgment dismissing the Labor Law §§ 240(1) and 241(6) claims and denied defendants' motion under CPLR 3025(b) to amend their answer. The Appellate Division affirmed the judgment insofar as appealed from and dismissed the cross-appeal as academic.

DISPOSITION

affirmed

CASES CITED

- Cadena v. Kupferstein, 238 AD3d 973, 974
- Bartoo v. Buell, 87 NY2d 362, 367, 369
- Walsh v. Kenny, 219 AD3d 1555, 1556
- Chowdhury v. Rodriguez, 57 AD3d 121, 126-127
- Hicks v. Aibani, 157 AD3d 870, 871
- Miller v. Shah, 3 AD3d 521, 522
- Power v. Frasier, 131 AD3d 461, 462
- Maines v. Cronomer Val. Fire Dept., Inc., 50 NY2d 535, 543-544
- Macchirole v. Giamboi, 97 NY2d 147, 150-151
- McNulty v. Port Wash. Police Dist., 191 AD3d 659, 659-660
- Tikhonova v. Ford Motor Co., 4 NY3d 621, 624
- Heritage v. Van Patten, 59 NY2d 1017, 1019
- Youseff v. Malik, 112 AD3d 617, 619
- Roman v. Ainechi, 15 AD3d 562, 562
- Lozado v. Felice, 8 AD3d 633, 633-634
- Sojka v. Romeo, 293 AD2d 522, 523