

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

Bustamante v. BSD 370 Lexington, L.L.C.

Bustamante, 2026 NY Slip Op 01180 (Supreme Court of the State of New York Appellate Division Second
Judicial Department 2026) · No. 2024-07704 · Decided March 4, 2026

SUMMARY

The New York Appellate Division, Second Department modified an order denying the plaintiff summary judgment in a personal-injury action arising from a Baker scaffold collapse. The court granted summary judgment on liability under Labor Law § 240(1) and under Labor Law § 241(6) predicated on 12 NYCRR 23-5.18(b), while affirming denial of relief based on the other cited Industrial Code provisions.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Paul Wooten, J.; Helen Voutsinas, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 4, 2026
DOCKET	2024-07704
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff appealed from an order denying his motion for summary judgment on liability under Labor Law §§ 240(1) and 241(6).
STANDARD OF REVIEW	On a summary-judgment motion, the plaintiff had to make a prima facie showing of entitlement to judgment as a matter of law; the burden then shifted to the defendants to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Melvin J. Bustamante v. BSD 370 Lexington, L.L.C., other defendants

TOPICS

- construction law
- personal injury
- appellate procedure
- standard of review
- torts

PRACTICE AREAS

construction law

personal injury

torts

appellate procedure

summary judgment

QUESTIONS PRESENTED

1. Whether the plaintiff was entitled to summary judgment on liability under Labor Law § 240(1).
2. Whether the plaintiff was entitled to summary judgment under Labor Law § 241(6) based on alleged violations of 12 NYCRR 23-5.1(b), 23-5.1(c)(2), 23-5.18(b), and 23-1.7(e)(2).
3. Whether comparative negligence could defeat the plaintiff's Labor Law § 240(1) claim after he established a statutory violation and proximate causation.

HOLDINGS

1. The plaintiff was entitled to summary judgment on liability under Labor Law § 240(1) because he established that the defendants violated the statute and that the violation was a proximate cause of his fall, and the defendants failed to raise a triable issue of fact.
2. Once the plaintiff established a Labor Law § 240(1) violation and that the violation was a proximate cause of the accident, comparative negligence, if any, was not a defense to liability under that statute.
3. The plaintiff was entitled to summary judgment on liability under Labor Law § 241(6) insofar as the claim was predicated on 12 NYCRR 23-5.18(b), because he established prima facie that the manually propelled scaffold lacked safety railings and the defendants failed to raise a triable issue of fact.
4. The plaintiff was not entitled to summary judgment on the portions of his Labor Law § 241(6) claim predicated on 12 NYCRR 23-5.1(b), 23-5.1(c)(2), and 23-1.7(e)(2), because he failed to establish prima facie that those provisions applied.

KEY QUOTATIONS

“To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must prove that the defendant violated the statute and that such violation was a proximate cause of his or her injuries”

“Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat [the] plaintiff's motion for summary judgment only if there is a plausible view of the evidence—enough to raise a fact question—that there was no statutory violation and that [the] plaintiff's own acts or omissions were the sole cause of the accident”

“To prevail on a cause of action alleging a violation of Labor Law § 241(6), a plaintiff must establish the violation of an Industrial Code provision that sets forth specific, applicable safety standards, and that his or her injuries were proximately caused by such Industrial Code violation”

FACTUAL BACKGROUND

BSD 370 Lexington, L.L.C. hired the plaintiff's employer to perform renovation work at a Manhattan building. While standing on the platform of a Baker scaffold and attempting to move it, Bustamante fell five to six feet when the scaffold toppled. He testified that the scaffold lacked safety railings and that he was not provided safety devices to prevent his fall.

PROCEDURAL HISTORY

Bustamante sued the defendants for personal injuries allegedly sustained when a Baker scaffold toppled during renovation work. The Supreme Court, Kings County, denied the specified branches of his summary-judgment motion. The Appellate Division modified the order by granting summary judgment on the Labor Law § 240(1) claim and the Labor Law § 241(6) claim predicated on 12 NYCRR 23-5.18(b), while affirming the denial of relief based on the other cited Industrial Code provisions.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified by deleting the provisions denying summary judgment on liability under Labor Law § 240(1) and under Labor Law § 241(6) predicated on 12 NYCRR 23-5.18(b), and substituting provisions granting those branches of the motion. As modified, the order was affirmed insofar as appealed from.

CASES CITED

- Von Hegel v. Brixmor Sunshine Sq., LLC, 180 A.D.3d 727, 728 (2d Dep't 2020)
- Caiazzo v. Mark Joseph Contr., Inc., 119 A.D.3d 718, 720 (2d Dep't 2014)
- Hossain v. Condominium Bd. of Grand Professional Bldg., 221 A.D.3d 981, 983 (2d Dep't 2023)
- Blake v. Neighborhood Hous. Servs. of N.Y. City, 1 N.Y.3d 280, 289 n. 8 (2003)
- Masmalaj v. New York City Economic Dev. Corp., 197 A.D.3d 1292, 1293 (2d Dep't 2021)
- Morocho v. Boulevard Gardens Owners Corp., 165 A.D.3d 778 (2d Dep't 2018)
- Garzon v. Viola, 124 A.D.3d 715, 716 (2d Dep't 2015)
- Amaro v. New York City Sch. Constr. Auth., 229 A.D.3d 746, 748 (2d Dep't 2024)
- Fuentes v. 257 Toppings Path, LLC, 225 A.D.3d 746, 748 (2d Dep't 2024)
- Graziano v. Source Bldrs. & Consultants, LLC, 175 A.D.3d 1253, 1258 (2d Dep't 2019)
- Perez v. 286 Scholes St. Corp., 134 A.D.3d 1085, 1086 (2d Dep't 2015)
- Moscati v. Consolidated Edison Co. of N.Y., Inc., 168 A.D.3d 717, 718 (2d Dep't 2019)
- Aragona v. State of New York, 147 A.D.3d 808, 809 (2d Dep't 2017)
- Moran v. 200 Varick St. Assoc., LLC, 80 A.D.3d 581, 582-583 (2d Dep't 2011)
- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986)

OPINION

Bustamante v. BSD 370 Lexington, L.L.C. 2026 NY Slip Op 01180

PER CURIAM.

Bustamante v BSD 370 Lexington, L.L.C. (2026 NY Slip Op 01180) Bustamante v BSD 370 Lexington, L.L.C. 2026 NY Slip Op 01180 Decided on March 4, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and subject to revision before publication in the Official Reports.
Decided on March 4, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

PAUL WOOTEN

HELEN VOUTSINAS

JAMES P. MCCORMACK, JJ. 2024-07704

(Index No. 513306/19) [*1]Melvin J. Bustamante, appellant, v BSD 370 Lexington, L.L.C., et al., respondents (and a third-party action). Greenberg & Stein, P.C., New York, NY (Ian Asch of counsel), for appellant. Gerber Ciano Kelly Brady LLP, Buffalo, NY (Matthew S. Lerner and Brendan Fitzpatrick of counsel), for respondents. DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Caroline Piela Cohen, J.), dated May 9, 2024. The order, insofar as appealed from, denied the plaintiff's motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on violations of 12 NYCRR 23-5.1(b), 23-5.1(c)(2), 23-5.18(b), and 23-1.7(e)(2). ORDERED that the order is modified, on the law, by deleting the provision thereof denying those branches of the plaintiff's motion which were for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of 12 NYCRR 23-5.18(b), and substituting therefor a provision granting those branches of the motion; as so modified, the order is affirmed insofar as appealed from, with costs to the plaintiff. The defendant BSD 370 Lexington, L.L.C., contracted for the plaintiff's employer, Gateway Builders Corp., inter alia, to perform certain renovation work at a building it owned on Lexington Avenue in Manhattan. The plaintiff's assigned work on the project required him to stand on top of a Baker scaffold. As the plaintiff was attempting to move the scaffold while standing on the platform of the scaffold, the scaffold toppled over and the plaintiff fell five to six feet to the floor below. The plaintiff subsequently commenced this action against the defendants to recover damages for personal injuries, alleging, among other things, violations of Labor Law §§ 240(1) and 241(6). The plaintiff moved, inter alia, for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on violations of 12 NYCRR 23-5.1(b), 23-5.1(c)(2), 23-5.18(b), and 23-1.7(e)(2). The defendants opposed the motion. By order dated May 9, 2024, the Supreme Court, among other things, denied those branches of the plaintiff's motion. The plaintiff appeals. "Labor Law § 240(1) imposes a nondelegable duty [and absolute liability] upon owners and general contractors and their agents to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (Von Hegel v Brixmor Sunshine Sq., LLC , 180 AD3d 727, 728 , quoting Caiazzo v Mark Joseph Contr., Inc. , 119 AD3d

718, 720). "To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must prove that the defendant violated the statute and that such violation was a proximate cause of his or her injuries" (*id.* ; see *Hossain v Condominium Bd. of Grand Professional Bldg.* , 221 AD3d 981, 983). "Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat [the] plaintiff's motion for summary judgment only if there is a plausible view of the evidence—enough to raise a fact question—that there was no statutory violation and that [the] plaintiff's own acts or omissions were the sole cause of the accident" (*Blake v Neighborhood Hous. Servs. of N.Y. City* , 1 NY3d 280 , 289 n 8; see *Masmalaj v New York City Economic Dev. Corp.* , 197 AD3d 1292 , 1293). Here, the plaintiff met his prima facie burden of demonstrating a violation of Labor Law § 240(1) and that this violation was a proximate cause of his injuries by submitting a transcript of his deposition testimony in which he testified that he fell from a scaffold that did not have any safety railings and that he was not provided with any safety devices to keep him from falling (see *Morocho v Boulevard Gardens Owners Corp.* , 165 AD3d 778 ; *Garzon v Viola* , 124 AD3d 715, 716). In opposition, the defendants failed to raise a triable issue of fact. Since the plaintiff established a violation of Labor Law § 240(1) and that the violation was a proximate cause of his fall, his comparative negligence, if any, is not a defense to the cause of action alleging a violation of that statute (see *Amaro v New York City Sch. Constr. Auth.* , 229 AD3d 746 , 748; *Fuentes v 257 Toppings Path, LLC* , 225 AD3d 746 , 748). Accordingly, the Supreme Court should have granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). "Labor Law § 241(6) imposes on owners and contractors a nondelegable duty to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Graziano v Source Bldrs. & Consultants, LLC* , 175 AD3d 1253 , 1258, quoting *Perez v 286 Scholes St. Corp.* , 134 AD3d 1085, 1086). "To prevail on a cause of action alleging a violation of Labor Law § 241(6), a plaintiff must establish the violation of an Industrial Code provision that sets forth specific, applicable safety standards, and that his or her injuries were proximately caused by such Industrial Code violation" (*Moscato v Consolidated Edison Co. of N.Y., Inc.* , 168 AD3d 717 , 718; see *Aragona v State of New York* , 147 AD3d 808, 809). Here, the Supreme Court properly denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability on so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on violations of 12 NYCRR 23-5.1(b), 23-5.1(c)(2), and 23-1.7(e)(2), as the plaintiff failed to establish, prima facie, the applicability of those Industrial Code provisions. However, the court should have granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability on so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of 12 NYCRR 23-5.18(b), as the plaintiff established, prima facie, that the manually propelled scaffold lacked safety railings (see *id.* ; *Morocho v Boulevard Gardens Owners Corp.* , 165 AD3d 778 , 778-779; *Moran v 200 Varick St. Assoc., LLC*

, 80 AD3d 581, 582-583), and the defendants failed to raise a triable issue of fact in opposition (see Alvarez v Prospect Hosp. , 68 NY2d 320, 324). CONNOLLY, J.P., WOOTEN, VOUTSINAS and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-the-state-of-new-york-appellate-division-second-department-supreme-court-of-the-sta/2026/bustamante-v-bsd-370-lexington-l-l-c-3x6njs60>