

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)