

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

Cerda v. Cydonia W71, LLC

Cerda, 2025 NY Slip Op 07220 (Supreme Court of the State of New York Appellate Division First Department 2025) · No. Index No. 161637/19; Appeal No. 5442; Case No. 2024-02844 · Decided December 23, 2025

SUMMARY

The New York Appellate Division, First Department, affirmed an order granting the plaintiff partial summary judgment on his Labor Law § 240(1) claim arising from injuries caused by an unsecured scaffold plank. The court modified the order to conditionally grant Cydonia W71, LLC and CCNY Construction Inc. summary judgment on their contractual indemnification claim against Standard Waterproofing Corp., while affirming the denial of Standard's indemnification claim against Xuntos Construction Corp.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Kapnick, J.; Rodriguez, J.; Michael, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 23, 2025
DOCKET	Index No. 161637/19; Appeal No. 5442; Case No. 2024-02844
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, concerning partial summary judgment on plaintiff's Labor Law § 240(1) claim and contractual indemnification claims.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; contractual indemnification is conditionally available where the indemnitee's liability is purely vicarious and factual issues remain concerning the indemnitor's negligence.
PRECEDENTIAL VALUE	published
PARTIES	Cydonia W71, LLC, CCNY Construction Inc., Standard Waterproofing Corp. v. Petronilo Pena Cerda, Standard Waterproofing

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether plaintiff was entitled to partial summary judgment on his Labor Law § 240(1) claim based on the fall of an improperly secured scaffold plank.
2. Whether Cydonia W71, LLC and CCNY Construction Inc. established a triable issue concerning plaintiff's alleged sole proximate cause of the accident.
3. Whether Cydonia and CCNY were entitled to conditional summary judgment on their contractual indemnification claim against Standard Waterproofing Corp.
4. Whether Standard Waterproofing Corp. was entitled to summary judgment on its contractual indemnification claim against Xuntos Construction Corp.

HOLDINGS

1. Plaintiff was entitled to partial summary judgment because the evidence established that an improperly secured scaffold plank fell and proximately caused his injuries, and defendants failed to raise a triable issue of fact.
2. Cydonia and CCNY failed to establish that plaintiff was the sole proximate cause because there was no evidence that his employer or supervisor directed him not to use the scaffolding.
3. Cydonia and CCNY were entitled to conditional summary judgment on their contractual indemnification claim against Standard because their liability was purely vicarious, while factual issues remained concerning Standard's negligence. Standard was not entitled to summary judgment on its indemnification claim against Xuntos because Standard failed to establish its own freedom from negligence and factual issues existed regarding responsibility for maintaining and securing the plank.

KEY QUOTATIONS

*“an instruction to avoid an unsafe practice is not a sufficient substitute for providing a worker with a safety device” (at *1)*

*“from and against claims . . . arising out of or resulting from performance of [Standard's] Work . . . but only to the extent caused by the negligent acts or omissions of [Standard and its subcontractors].” (at *1)*

FACTUAL BACKGROUND

Plaintiff was injured when a plank placed on a scaffolding component called a "bicycle," which extended outside the scaffold frame, fell on him. Evidence showed that the plank was improperly secured and that bicycle planks needed to be tied down while plaintiff performed his work. The record did not establish that plaintiff was directed not to use the scaffolding or that he was the sole proximate cause of the accident. Factual issues remained concerning Standard Waterproofing's negligence and responsibility for maintaining and securing the plank.

PROCEDURAL HISTORY

Supreme Court granted plaintiff partial summary judgment on his Labor Law § 240(1) claim against Cydonia W71, LLC and CCNY Construction Inc. The court denied Cydonia and CCNY's motion for summary judgment dismissing the Labor Law claim and granting them contractual indemnification against Standard Waterproofing Corp., and denied Standard's motion for summary judgment on its contractual indemnification claim against Xuntos Construction Corp. The Appellate Division unanimously modified the order to conditionally grant Cydonia and CCNY summary judgment on their contractual indemnification claim against Standard and otherwise affirmed.

DISPOSITION

other

CASES CITED

- Kristo v. Board of Educ. of the City of N.Y., 134 A.D.3d 550, 550 (1st Dep't 2015)
- Brito v. City of New York, 238 A.D.3d 508, 509 (1st Dep't 2025)
- Gutierrez v. Turner Towers Tenants Corp., 202 A.D.3d 437, 438 (1st Dep't 2022)
- Vasquez v. Cohen Bros. Realty Corp., 105 A.D.3d 595, 598 (1st Dep't 2013)
- Spielmann v. 170 Broadway NYC LP, 187 A.D.3d 492, 494 (1st Dep't 2020)
- Rainer v. Gray-Line Dev. Co., LLC, 117 A.D.3d 634, 636 (1st Dep't 2014)
- Correia v. Professional Data Mgt., 259 A.D.2d 60, 65 (1st Dep't 1999)