

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

Narvaez v. 12 W. 31st St. Corp.

Narvaez, 2026 NY Slip Op 02069 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 152206/21; Appeal Nos. 6277-6279; Case Nos. 2024-06849, 2024-06850, 2025-03857 ·
Decided April 7, 2026

SUMMARY

The Appellate Division, First Department modified an order denying plaintiff's motion to vacate a dismissal, holding that law office failure provided a reasonable excuse as to the Labor Law § 240(1) claim. The court vacated dismissal of that claim and granted plaintiff partial summary judgment, while deeming the Labor Law §§ 241(6) and 200 and common-law negligence claims abandoned. The appeal from the dismissal order was dismissed as academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Kennedy, J.; Kapnick, J.; González, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 7, 2026
DOCKET	Index No. 152206/21; Appeal Nos. 6277-6279; Case Nos. 2024-06849, 2024-06850, 2025-03857
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed orders denying his CPLR 5015(a)(1) motion to vacate an order dismissing the complaint and denying his motion for partial summary judgment on his Labor Law § 240(1) claim.
STANDARD OF REVIEW	The Appellate Division reviewed the CPLR 5015(a)(1) vacatur ruling and summary-judgment determination as matters of law and modified or reversed on the law.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Wilson Narvaez v. 12 West 31st Street Corp., et al.

TOPICS

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QUESTIONS PRESENTED

1. Whether plaintiff demonstrated a reasonable excuse and lack of unreasonable delay warranting vacatur under CPLR 5015(a)(1) of the order dismissing his Labor Law § 240(1) claim.
2. Whether plaintiff established the merit of his Labor Law § 240(1) claim sufficiently to obtain partial summary judgment.
3. Whether plaintiff abandoned his Labor Law §§ 241(6) and 200 claims and common-law negligence claim by failing to address them in his vacatur motion.

HOLDINGS

1. Plaintiff demonstrated a reasonable excuse for failing to timely oppose defendants' summary judgment motion and did not unreasonably delay in moving to vacate; the one-time incident of law office failure therefore warranted vacatur of the dismissal of the Labor Law § 240(1) claim.
2. Plaintiff was entitled to partial summary judgment on his Labor Law § 240(1) claim because he was required to work on an elevated fire escape, was exposed to an elevation-related risk, and defendants failed to provide an adequate safety device.
3. Those claims were deemed abandoned because plaintiff did not address them in his motion to vacate, and the court declined to search the record to reverse their dismissal.

KEY QUOTATIONS

“Here, however, plaintiff established that the fire escape “was an elevated surface on which [he] was required to work,” which “required provision of an adequate safety device”” ([*1])

FACTUAL BACKGROUND

Plaintiff was welding a handrail between the tenth and eleventh floors on a fire escape when he slipped and fell down several freshly painted, wet steps. The fire escape was an elevated surface on which plaintiff was required to work, and the record showed that defendants did not provide a safety device protecting him from the elevation-related risk. Defendants argued that the fire escape was neither defective nor used as a safety device, but the court found those arguments contradicted by the record.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on November 1, 2024 dismissing the complaint after plaintiff failed to timely oppose defendants' summary judgment motion. The court subsequently denied plaintiff's motion to vacate that order and denied his motion for partial summary judgment. The Appellate Division modified the order denying vacatur, reversed the order denying partial summary judgment, granted plaintiff

summary judgment on his Labor Law § 240(1) claim, and dismissed the appeal from the November 1 order as academic.

DISPOSITION

other

CASES CITED

- US Bank N.A. v. Richards, 155 A.D.3d 522, 522-523 (1st Dep't 2017)
- Winters v. Atlantic Dev. Corp., 205 A.D.3d 447, 447 (1st Dep't 2022)
- O'Brien v. Port Auth. of N.Y. & N.J., 29 N.Y.3d 27, 33 (2017)
- Conlon v. Carnegie Hall Socy., Inc., 159 A.D.3d 655, 655 (1st Dep't 2018)
- Gomez v. City of New York, 63 A.D.3d 511 (1st Dep't 2009)
- O'Shea v. Procida Constr. Corp., 220 A.D.3d 622, 623 (1st Dep't 2023)
- Batista-Rosa v. 1230 Franklin, LLC, 245 A.D.3d 461, 462 (1st Dep't 2026)

OPINION

Narvaez v. 12 W. 31st St. Corp. 2026 NY Slip Op 02069

PER CURIAM.

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dismissing the complaint, unanimously modified, on the law, to the extent of vacating so much of the November 1, 2024 order as dismissed plaintiff's claim pursuant to Labor Law § 240(1), and otherwise affirmed without costs. Order, same court and Justice, entered on or about November 6, 2024, which denied plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim, unanimously reversed, on the law, without costs, and the motion granted. Appeal from November 1, 2024 order, unanimously dismissed, without costs, as academic.

Plaintiff, in moving to vacate the order dismissing the complaint, did not address his claims pursuant to Labor Law §§ 241(6) and 200 and common-law negligence, so they are deemed abandoned, and we decline plaintiff's request to search the record and reverse the dismissal of those claims.

With respect to plaintiff's Labor Law § 240(1) claim, the one-time incident of law office failure constituted a reasonable excuse for failing to timely oppose defendants' summary judgment motion, and plaintiff did not unreasonably delay in moving to vacate the order dismissing the complaint, demonstrating his lack of intention to abandon the action (*see* *US Bank N.A. v Richards*, 155 AD3d 522, 522-523 [1st Dept 2017]; *see also* *Winters v Atlantic Dev. Corp.*, 205 AD3d 447, 447 [1st Dept 2022]).

Further, plaintiff established the merit of the claim not only for purposes of vacating the order, but also for purposes of summary judgment in his favor on the claim. He testified that he was welding a handrail between the 10th and 11th floor on a fire escape when he slipped and fell down several freshly painted and wet steps. To be sure, not every fall down a staircase on a construction site establishes a Labor Law § 240(1) violation (*see* *O'Brien v Port Auth. of N.Y. and N.J.*, 29 NY3d 27, 33 [2017]). Here, however, plaintiff established that the fire escape "was an elevated surface on which [he] was required to work," which "required provision of an adequate safety device" (*Conlon v Carnegie Hall Socy., Inc.*, 159 AD3d 655, 655 [1st Dept 2018]; *see also* *Gomez v City of New York*, 63 AD3d 511 [1st Dept 2009]). The record also demonstrates that defendants failed to provide plaintiff with such a device that would protect him from an elevation-related risk (*see* *O'Shea v Procida Constr. Corp.*, 220 AD3d 622, 623 [1st Dept 2023]). Defendants' arguments that the fire escape was not defective and was not used as a safety device are belied by the record (*see* *Batista-Rosa v 1230 Franklin, LLC*, 245 AD3d 461, 462 [1st Dept 2026]).

We have considered the remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 7, 2026

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