

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

DaSilva v. Super P57, LLC

2026 N.Y. Slip Op. 01847 (N.Y. Ct. App. 2026) · No. Appeal No. 5182; Case No. 2024-04548; Index No. 160766/17 · Decided March 26, 2026

SUMMARY

The New York Appellate Division, First Department modified and otherwise affirmed an order concerning plaintiffs' Labor Law claims arising from a fall from an elevated plank. The court upheld partial summary judgment for the injured plaintiff under Labor Law § 240(1), rejected the sole-proximate-cause defense, and deemed the Labor Law §§ 200 and 241(6) claims academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; González, J.; Mendez, J.; Rodriguez, J.; Pitt-Burke, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 26, 2026
DOCKET	Appeal No. 5182; Case No. 2024-04548; Index No. 160766/17
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, concerning cross-motions for summary judgment in a construction-accident action.
STANDARD OF REVIEW	De novo review of summary-judgment determinations and the legal sufficiency of the evidence supporting Labor Law § 240(1) liability.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Super P57, LLC, et al. v. Ivoir DaSilva, et al.

TOPICS

construction law personal injury appellate procedure standard of review proximate cause

PRACTICE AREAS

construction law personal injury torts appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff established entitlement to partial summary judgment under Labor Law § 240(1) based on a fall from an elevation that was not de minimis.
2. Whether defendants established a sole-proximate-cause or recalcitrant-worker defense based on plaintiff's alleged failure to secure the plank, use available tie-downs, or use a scissor lift.
3. Whether the plaintiff's Labor Law §§ 200 and 241(6) claims remained necessary to decide after summary judgment was granted on the Labor Law § 240(1) claim.

HOLDINGS

1. The plaintiff was entitled to partial summary judgment on Labor Law § 240(1) because he fell from a height that was not de minimis, and the inadequate fall-prevention system was a proximate cause of his injury.
2. Defendants did not establish a sole-proximate-cause defense because they failed to show that plaintiff deliberately disobeyed a direct instruction to use the available clamps or tie-downs, failed to show that the scissor lift would have permitted the work to be performed safely, and could not rely on sole proximate cause where multiple safety-device shortcomings contributed to the accident.
3. The branches of the parties' motions concerning Labor Law §§ 200 and 241(6) were properly denied as academic because the plaintiff was entitled to partial summary judgment on Labor Law § 240(1).

KEY QUOTATIONS

“There is no bright-line minimum height differential that determines whether an elevation hazard exists”
([*1])

FACTUAL BACKGROUND

The injured plaintiff was performing elevated façade-scraping work while standing on an unsecured plank approximately 3 to 4½ feet above a metal awning. The plank suddenly shifted and tipped, causing him to fall onto the awning. The fall-prevention system lacked tie-off points at least two feet above the plaintiff's position, and the restraint system did not prevent the forceful landing. Defendants argued that plaintiff was the sole proximate cause because he moved recklessly, failed to use available clamps or ropes, and did not use a scissor lift.

PROCEDURAL HISTORY

Supreme Court denied defendants' motion for summary judgment dismissing the Labor Law § 240(1) claim, granted defendants' motion as to the Labor Law §§ 241(6) and 200 and common-law negligence claims, and granted plaintiffs partial summary judgment on Labor Law § 240(1) liability. The Appellate Division unanimously modified the order to deny as academic the branches concerning Labor Law §§ 200 and 241(6), and otherwise affirmed.

DISPOSITION

CASES CITED

- Palumbo v Citigroup Tech., Inc., 240 AD3d 455 (1st Dept 2025)
- Vitucci v Durst Pyramid LLC, 205 AD3d 441, 444 (1st Dept 2022)
- Gallagher v New York Post, 14 NY3d 83, 88 (2010)
- Quiroz v Memorial Hosp. for Cancer & Allied Diseases, 202 AD3d 601, 604-605 (1st Dept 2022)
- Suazo v 501 Madison-Sutton LLC, 235 AD3d 513, 513 (1st Dept 2025)
- Viruet v Purvis Holdings LLC, 198 AD3d 587, 588-589 (1st Dept 2021)
- M-06841

OPINION

PER CURIAM.

DaSilva v Super P57, LLC (2026 NY Slip Op 01847) DaSilva v Super P57, LLC 2026 NY Slip Op 01847 Decided on March 26, 2026 Appellate Division, First 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 and Entered: March 26, 2026 Before: Webber, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Index No. 160766/17|Appeal No. 5182|Case No. 2024-04548| [*1]Ivoir DaSilva, et al., Respondents-Appellants, v Super P57, LLC, et al., Appellants-Respondents.

Cullen and Dykman LLP, New York (Michael E. Joseph of counsel), for appellants-respondents. Lisa M. Comeau, Garden City, for respondents-appellants. Order, Supreme Court, New York County (Lyle E. Frank, J.), entered on or about June 21, 2024, which denied that branch of defendants' motion for summary judgment dismissing plaintiffs' Labor Law § 240(1) claim, and granted those branches of the motion seeking dismissal of plaintiff's claims under Labor Law §§ 241(6) and 200, and common-law negligence, and granted plaintiffs' motion for partial summary judgment on the issue of liability under Labor Law §§ 240(1) and 241(6) to the extent of granting summary judgment on the claim under Labor Law § 240(1), unanimously modified, on the law, without costs, to deny as academic the branches of defendants' motion as sought summary judgment dismissing plaintiff's claims under Labor Law §§ 200 and 241(6), and to deny as academic the branch of plaintiff's motion seeking partial summary judgment on the issue of liability on their claims under Labor Law § 241(6), and otherwise affirmed, without costs.

Plaintiffs' evidence established that the accident occurred because the injured plaintiff fell from a height which was not de minimis, thus warranting the protections of Labor Law § 240(1). Plaintiff testified that he was standing on a plank that was 3 to 4½ feet above the metal awning onto which he fell when the unsecured plank suddenly shifted and tipped.

This Court has held that "[t]here is no bright-line minimum height differential that determines whether an elevation hazard exists" (*Palumbo v Citigroup Tech., Inc.*, 240 AD3d 455 [1st Dept 2025] [internal quotation marks omitted]). Plaintiff further established that the fall prevention system employed at the time of the accident was not properly designed and constituted a proximate cause of the injury, as there were no tie-off points located at least two feet above where he was standing on the plank.

Further, his restraint system did not prevent him from landing forcefully on the awning beneath the makeshift plank platform. We reject defendants' argument that plaintiff was the sole proximate cause of his injuries because he was reckless in moving about the plank, did not tie down the plank with available clamps and/or ropes located in a shanty, and did not utilize a scissor lift that was on the worksite.

Even assuming that plaintiff knew the clamps/tie-downs were in the shanty, there was no evidence offered to show the plaintiff deliberately disobeyed a direct instruction to use them — conduct which must be shown to support a recalcitrant worker defense (see *Vitucci v Durst Pyramid LLC*, 205 AD3d 441, 444 [1st Dept 2022]). Defendants' contention that plaintiff disobeyed a directive of the site safety manager to use the scissor lift to perform his elevated faÇade scraping work is unavailing as there is no evidence in the record, including from defendants' expert, to show that the scissor lift would have allowed the workers to safely perform their work (see *Gallagher v New York Post*, 14 NY3d 83, 88 [2010]).

Finally, the existence of multiple safety device shortcomings that led to plaintiff's accident logically bar any argument that plaintiff was the sole proximate cause of his injury (see *Quiroz v Memorial Hosp. for Cancer & Allied Diseases*, 202 AD3d 601, 604-605 [1st Dept 2022]).

Because the motion court correctly found that plaintiff was entitled to partial summary judgment on his Labor Law § 240(1) claim, his claims pursuant to Labor Law §§ 200 and 241(6) are academic (see e.g. *Suazo v 501 Madison-Sutton LLC*, 235 AD3d 513, 513 [1st Dept 2025]; *Viruet v Purvis Holdings LLC*, 198 AD3d 587, 588-589 [1st Dept 2021]).

We have considered the parties' remaining contentions and find them unavailing. The Decision and Order of this Court entered herein on November 18, 2025 is hereby recalled and vacated (see M-06841 decided simultaneously herewith). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 26, 2026