

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

Barbu v. Doyle

Barbu, 2026 NY Slip Op 00487 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-01678 · Decided February 4, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order granting summary judgment to the property owner, tenant, and tenant's owner in a personal-injury action arising from the plaintiff's fall from a pallet rack. The court held that the Labor Law claims failed because the plaintiff was not hired to perform work at the premises, that the out-of-possession owner owed no common-law negligence duty, and that the pallet rack was open and obvious. The court also affirmed denial of the plaintiffs' motion for Labor Law § 240(1) liability and leave to amend the bill of particulars.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Lillian Wan, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 4, 2026
DOCKET	2023-01678
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting the defendants' motions for summary judgment dismissing the amended complaint and denying plaintiffs' cross-motion for summary judgment on Labor Law § 240(1) liability and for leave to amend the bill of particulars.
STANDARD OF REVIEW	Summary judgment is proper where the moving party establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Mark Barbu, et al. v. Kenneth Doyle, etc., et al.

TOPICS

personal injury

premises liability

negligence

standard of review

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PRACTICE AREAS

personal injury

premises liability

construction law

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants were entitled to summary judgment dismissing the Labor Law §§ 200, 240(1), and 241(6) causes of action because the injured plaintiff was not hired to perform work at the premises and was not acting as an employee.
2. Whether the out-of-possession owner was entitled to summary judgment dismissing the common-law negligence claim because it had no statutory, contractual, or course-of-conduct duty to maintain the interior of the leased premises.
3. Whether Par 4 and Doyle were entitled to summary judgment on the common-law negligence claim because the pallet rack was open and obvious and not inherently dangerous.
4. Whether the plaintiffs were entitled to summary judgment on liability under Labor Law § 240(1) or leave to amend the bill of particulars to assert Industrial Code violations.

HOLDINGS

1. A plaintiff cannot invoke the protections of Labor Law §§ 200, 240(1), and 241(6) without demonstrating that the plaintiff was permitted or suffered to work on a building or structure and was hired by an owner, contractor, or agent. Because Barbu was not hired to perform work at the premises and was not acting as an employee when retrieving his property, the defendants were entitled to summary judgment dismissing the Labor Law causes of action.
2. An out-of-possession landlord is not liable for injuries caused by dangerous conditions on leased premises absent a statute imposing liability, a contractual obligation to repair, or a course of conduct giving rise to a duty. Connan Land Company established that it was not contractually or otherwise obligated to maintain the interior of the premises, and summary judgment dismissing the negligence claim against it was proper.
3. A possessor of real property has no duty to protect or warn against an open and obvious condition that is not inherently dangerous as a matter of law. The pallet rack was readily observable and not inherently dangerous, so Par 4 and Doyle were entitled to summary judgment dismissing the common-law negligence claim.

KEY QUOTATIONS

*“[I]n order to invoke the protections afforded by the Labor Law and to come within the special class [of workers] for whose benefit liability is imposed upon contractors, owners and their agents, a plaintiff must demonstrate that he [or she] was both permitted or suffered to work on a building or structure and that he [or she] was hired by someone, be it owner, contractor or their agent” ([*1])*

“An out-of-possession landlord is not liable for injuries caused by dangerous conditions on leased premises in the absence of a statute imposing liability, a contractual provision placing the duty to repair on the landlord, or a course of conduct by the landlord giving rise to a duty” ([*1])

“While a possessor of real property has a duty to maintain that property in a reasonably safe condition, there is no duty to protect or warn against an open and obvious condition that, as a matter of law, is not inherently dangerous” ([*2])

“A condition is open and obvious if it is readily observable by those employing the reasonable use of their senses, given the conditions at the time of the accident” ([*2])

FACTUAL BACKGROUND

Mark Barbu went to a warehouse to retrieve personal property, including tools and construction materials, that he had stored there. He climbed onto a pallet rack to look for his property, lost his balance, and fell approximately 10 feet. The warehouse was owned by Connan Land Company, LLC, leased to Par 4 Property Management, LLC, and Par 4 was owned by Kenneth Doyle; Barbu was not hired to perform work at the premises and was not acting as an employee when he entered the warehouse.

PROCEDURAL HISTORY

Mark Barbu and his wife commenced an action for personal injuries and derivative damages against Connan Land Company, LLC, Par 4 Property Management, LLC, and Kenneth Doyle. The Supreme Court, Nassau County, entered an order on January 11, 2023, granting the defendants' motions for summary judgment and denying the plaintiffs' cross-motion. The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Daeira v Genting N.Y., LLC, 173 AD3d 831, 834
- Mordkofsky v V.C.V. Dev. Corp., 76 NY2d 573, 576-577
- Dos Anjos v Palagonia, 165 AD3d 626, 627
- Hill v Country Club Acres, Inc., 134 AD3d 1267, 1268
- Passante v Peck & Sander Props., LLC, 33 AD3d 980
- Greco v St. Bridget's Church at Westbury, Queens Co., 231 AD3d 1019, 1019-1020
- Marmolejo-Cuellar v Spar Knitwear Corp., 236 AD3d 889
- Miranda v 1320 Entertainment, Inc., 230 AD3d 755, 757
- Butler v NYU Winthrop Hosp., 225 AD3d 658, 659
- Kean-Chong v MBA-Vernon Blvd., LLC, 228 AD3d 851, 852
- Robbins v 237 Ave. X, LLC, 177 AD3d 799, 799
- Rider v Manhattan Monster, Inc., 208 AD3d 807, 808-809

- Lutzenberger v McManus-Lorey Funeral Home, Ltd., 200 AD3d 671

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