

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

appellate procedure

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

OPINION

Barbu v. Doyle 2026 NY Slip Op 00487

PER CURIAM.

Barbu v Doyle (2026 NY Slip Op 00487) Barbu v Doyle 2026 NY Slip Op 00487 Decided on February 4, 2026 Appellate Division, Second 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 on February 4, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department BETSY BARROS, J.P.

BARRY E. WARHIT

LILLIAN WAN

PHILLIP HOM, JJ. 2023-01678

(Index No. 605328/20) [*1]Mark Barbu, et al., appellants, v Kenneth Doyle, etc., et al., respondents. Thomas M. Martyn, Bayville, NY, for appellants. Barbiero Bisch O'Connor & Commander LLP, Melville, NY (Joseph M. O'Connor and Kathleen Commander of counsel), for respondents Kenneth Doyle and Par 4 Property Management, LLC. Harfenist Kraut & Perlstein LLP, Lake Success, NY (Steven J. Harfenist and Heather L. Smar of counsel), for respondent Connan Land Company, LLC. DECISION & ORDER In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Conrad D. Singer, J.), entered January 11, 2023. The order, insofar as appealed from, (1) granted that branch of the motion of the defendant Connan Land Company, LLC, which was for summary judgment dismissing the amended complaint insofar as asserted against it, (2) granted that branch of the motion of the defendants Kenneth Doyle and Par 4 Property Management, LLC, which was for summary judgment dismissing the amended complaint insofar as asserted against them, and (3) denied those branches of the plaintiffs' cross-motion which were for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and for leave to amend the bill of particulars. ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the defendants appearing separately and filing separate briefs. The plaintiff Mark Barbu (hereinafter the injured plaintiff) allegedly was injured on March 29, 2017, when he fell from a pallet rack inside the warehouse portion of a building owned by the defendant Connan Land Company, LLC (hereinafter the owner), and leased to the defendant Par 4 Property Management, LLC (hereinafter Par 4). Par 4 was owned by the injured plaintiff's brother-in-law, the defendant Kenneth Doyle. The injured plaintiff testified at his deposition that, on the date of the accident, he went to the premises to retrieve personal items he stored at the warehouse, including tools and construction materials. He testified that he climbed on top of the pallet rack to look for his property, but he lost his balance and fell approximately 10 feet

to the ground. Thereafter, the injured plaintiff, and his wife suing derivatively, commenced this action against the owner, Par 4, and Doyle, alleging, among other things, common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6). The owner moved, inter alia, for summary judgment dismissing the amended complaint insofar as asserted against it. Par 4 and Doyle [*2](hereinafter together the Par 4 defendants) moved, among other things, for summary judgment dismissing the amended complaint insofar as asserted against them. The plaintiffs opposed the motions and cross-moved, inter alia, for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and for leave to amend the bill of particulars to assert violations of the Industrial Code. In an order entered January 11, 2023, the Supreme Court, among other things, granted those branches of the separate motions of the owner and the Par 4 defendants and denied those branches of the plaintiffs' cross-motion. The plaintiffs appeal. The Supreme Court properly granted those branches of the separate motions of the owner and the Par 4 defendants which were for summary judgment dismissing the causes of action alleging violations of Labor Law §§ 200, 240(1), and 241(6) insofar as asserted against each of them and denied that branch of the plaintiffs' cross-motion which was for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). "[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" (*Daeira v Genting N.Y., LLC* , 173 AD3d 831 , 834, quoting *Mordkofsky v V.C.V. Dev. Corp.* , 76 NY2d 573, 576-577). Here, the owner and the Par 4 defendants established their prima facie entitlement to judgment as a matter of law dismissing the Labor Law causes of action insofar as asserted against each of them by demonstrating that the injured plaintiff was not hired to perform work at the premises and was not acting as an employee when he went to retrieve his property from the warehouse (see *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). In opposition, the plaintiffs failed to raise a triable issue of fact. Furthermore, the Supreme Court properly granted that branch of the owner's motion which was for summary judgment dismissing the common-law negligence cause of action insofar as asserted against it. "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" (*Greco v St. Bridget's Church at Westbury, Queens Co.* , 231 AD3d 1019 , 1019-1020 [internal quotation marks omitted]; see *Marmolejo-Cuellar v Spar Knitwear Corp.* , 236 AD3d 889). Here, the owner demonstrated, prima facie, that it was an out-of-possession landlord that was not bound by contract or a course of conduct to maintain the interior of the premises (see *Marmolejo-Cuellar v Spar Knitwear Corp.* , 236 AD3d 889 ; *Miranda v 1320 Entertainment, Inc.* , 230 AD3d 755 , 757). In opposition, the

plaintiffs failed to raise a triable issue of fact. The Supreme Court also properly granted that branch of the Par 4 defendants' motion which was for summary judgment dismissing the common-law negligence cause of action insofar as asserted against them. "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" (*Butler v NYU Winthrop Hosp.* , 225 AD3d 658 , 659 [internal quotation marks omitted]; see *Kean-Chong v MBA-Vernon Blvd., LLC* , 228 AD3d 851 , 852). "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" (*Robbins v 237 Ave. X, LLC* , 177 AD3d 799 , 799 [internal quotation marks omitted]). Here, the Par 4 defendants established, prima facie, that the pallet rack was readily observable by those employing the reasonable use of their senses and was not inherently dangerous (see *Rider v Manhattan Monster, Inc.* , 208 AD3d 807, 808-809 ; *Luttenberger v McManus-Lorey Funeral Home, Ltd.* , 200 AD3d 671). The evidence demonstrated that the injured plaintiff was familiar with the warehouse, having been there on more than 20 occasions, and with pallet racking systems, which he had previously installed. Additionally, the injured plaintiff testified at his deposition that he did not notice anything wrong with the subject pallet rack. In opposition, the plaintiffs failed to raise a triable issue of fact. The parties' remaining contentions either are without merit or need not be reached in light of our determination. Accordingly, the Supreme Court properly granted those branches of the separate motions of the owner and the Par 4 defendants which were for summary judgment dismissing the amended complaint insofar as asserted against each of them and denied those branches of the plaintiffs' cross-motion which were for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1) and for leave to amend the bill of particulars. BARROS, J.P., WARHIT, WAN and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court