

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

De Souza v. El Sol Contracting and Construction Corporation, et al.

De Souza, 2026 NY Slip Op 03064 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 151863/21; Appeal No. 6618; Case No. 2025-04667 · Decided May 14, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed an order granting Ronald G. De Souza partial summary judgment on his Labor Law § 240(1) claim. The court held that evidence concerning the collapse of an inadequately stabilized ladder established prima facie entitlement to judgment and that defendants failed to raise a triable issue regarding sole proximate cause.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; González, J.; Pitt-Burke, J.; Higgitt, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	May 14, 2026
DOCKET	Index No. 151863/21; Appeal No. 6618; Case No. 2025-04667
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, New York County, granting plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim.
STANDARD OF REVIEW	Summary judgment is proper where the moving party establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published; precedential decision of the New York Supreme Court, Appellate Division, First Department
PARTIES	El Sol Contracting and Construction Corporation, et al. v. Ronald G. De Souza

TOPICS

- summary judgment
- construction law
- civil procedure
- standard of review
- affirmative defenses

PRACTICE AREAS

Construction law

Personal injury

Labor law

Civil procedure

QUESTIONS PRESENTED

1. Whether plaintiff established prima facie entitlement to partial summary judgment on his Labor Law § 240(1) claim.
2. Whether defendants raised a triable issue of fact that plaintiff was the sole proximate cause of his accident because he used a dismantled ladder despite the availability of safer ladders.
3. Whether plaintiff's alleged failure to comply with instructions to have a coworker brace the ladder created a triable issue of fact concerning sole proximate cause.

HOLDINGS

1. Plaintiff established prima facie entitlement to partial summary judgment on his Labor Law § 240(1) claim through deposition testimony, photographs, and an investigative incident report showing that an inadequate, unstable ladder collapsed while he was performing elevated construction work.
2. Defendants failed to raise a triable issue of fact on sole proximate cause because their affidavits did not establish that plaintiff knew he was expected to use another ladder and unreasonably rejected that alternative.
3. Defendants did not raise a triable issue of fact based on plaintiff's alleged failure to have a coworker brace the ladder; at most, that conduct would constitute comparative negligence, which is not a defense to a Labor Law § 240(1) claim, and a coworker is not a statutorily contemplated safety device for an otherwise inadequate ladder.

KEY QUOTATIONS

"Plaintiff established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim by submitting evidence, including deposition testimony, photographs, and an investigative incident report, that indicated he was injured when the 12-foot long, upper half of a dismantled extension ladder which lacked stabilizing feet slid out from under him and collapsed while he was engaged in bridge painting work on an elevated work platform made out of flexible corrugated metal" ([*1])

"Even if true, the allegation at most amounts to comparative negligence, which is not a defense to a Labor Law § 240(1) claim" ([*1])

"a co-worker supporting an otherwise inadequate ladder does not constitute a safety device within the contemplation of the statute" ([*1])

FACTUAL BACKGROUND

Plaintiff was injured while performing bridge-painting work on an elevated work platform made of flexible corrugated metal. The upper half of a 12-foot dismantled extension ladder, which lacked stabilizing feet, slid out from under him and collapsed. Plaintiff had complained about the ladder's instability to his employer's foreman

and safety director, but was not given another ladder. A project superintendent testified that the ladder lacked stabilizing feet and should have been tied off at the top.

PROCEDURAL HISTORY

Supreme Court, New York County, granted plaintiff partial summary judgment on his Labor Law § 240(1) claim. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Tuzzolino v. Consolidated Edison Co. of N.Y., 160 A.D.3d 568, 568 (1st Dep't 2018)
- Stankey v. Tishman Constr. Corp. of N.Y., 131 A.D.3d 430, 430 (1st Dep't 2015)
- Scanlon v. South St. Seaport L.P., 246 A.D.3d 546, 546-547 (1st Dep't 2026)
- York v. Tappan Zee Constructors, LLC, 224 A.D.3d 527, 528 (1st Dep't 2024)
- Daly v. Metropolitan Transp. Auth., 206 A.D.3d 467, 468 (1st Dep't 2022)
- Velasco v. Green-Wood Cemetery, 8 A.D.3d 88, 89 (1st Dep't 2004)
- Melendez v. 1595 Broadway LLC, 214 A.D.3d 600, 601-602 (1st Dep't 2023)
- McCarthy v. Turner Constr., Inc., 52 A.D.3d 333, 334 (1st Dep't 2008)