

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

Peterkin v. Westchester Parks Found., Inc.

Peterkin, 2026 NY Slip Op 00268 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-07774 · Decided January 21, 2026

SUMMARY

The Appellate Division, Second Department, reversed the denial of the defendant's motion for summary judgment and dismissed the plaintiff's Labor Law § 240(1) cause of action. The court held that the plaintiff's tree-cutting and removal work constituted routine maintenance outside a construction or renovation context and was not covered by Labor Law § 240(1), while affirming the denial of the plaintiff's cross-motion.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	January 21, 2026
DOCKET	2021-07774
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendant appealed and the plaintiff cross-appealed from an order denying the defendant's motion for summary judgment dismissing the Labor Law § 240(1) claim and denying the plaintiff's cross-motion for summary judgment on liability.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the Appellate Division reviewed the Supreme Court's ruling as a matter of law.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Westchester Parks Foundation, Inc. v. Douglas Peterkin

TOPICS

construction law

personal injury

statutory interpretation

appellate procedure

standard of review

PRACTICE AREAS

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labor law

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QUESTIONS PRESENTED

1. Whether the plaintiff's tree-cutting and removal work was activity protected by Labor Law § 240(1) because it was part of or integral to a construction project associated with the holiday light show.
2. Whether the defendant was entitled to summary judgment dismissing the Labor Law § 240(1) claim.
3. Whether the plaintiff was entitled to summary judgment on liability under Labor Law § 240(1).

HOLDINGS

1. Tree cutting and removal, standing alone, are not activities covered by Labor Law § 240(1), and routine tree maintenance outside a construction or renovation context is not subject to the statute.
2. The defendant was entitled to summary judgment because it established that the plaintiff was engaged in routine tree cutting and removal, and the plaintiff failed to raise a triable issue of fact connecting the work to a construction project.
3. The plaintiff was not entitled to summary judgment on liability under Labor Law § 240(1).

KEY QUOTATIONS

*“'[T]ree cutting and removal, in and of themselves, are not activities subject to Labor Law § 240(1). Those activities are generally excluded from statutory protection because a tree is not a building or structure, as contemplated by the statute but, rather, 'a product of nature'” (*2)*

FACTUAL BACKGROUND

On October 22, 2018, Douglas Peterkin, an employee in the general maintenance department of the Westchester County Department of Parks, Recreation and Conservation, was cutting down a tree at Kensico Dam Plaza from an elevated bucket on a bucket truck. He was struck by a portion of the tree he had just cut. The Department was also involved in setting up a holiday light show at the Plaza, and Peterkin alleged that the tree removal was integral to erecting a scaffold and mounting a large artificial star for that show. Department personnel testified, however, that the work involved routine tree maintenance and was not performed to prepare for installation of the star.

PROCEDURAL HISTORY

Douglas Peterkin commenced an action seeking damages for personal injuries, including a claim alleging violation of Labor Law § 240(1). The Supreme Court, Dutchess County, denied the defendant's motion for summary judgment dismissing that claim and denied the plaintiff's cross-motion for summary judgment on

liability. The Appellate Division reversed the order insofar as appealed from, granted the defendant's motion, and affirmed the order insofar as cross-appealed from.

DISPOSITION

reversed

CASES CITED

- McCarthy v. Turner Constr., Inc., 17 N.Y.3d 369, 374
- Valentin v. Stathakos, 228 A.D.3d 985, 989
- Lombardi v. Stout, 80 N.Y.2d 290, 295-96
- Moreira v. Ponzo, 131 A.D.3d 1025, 1026-27
- Morales v. Westchester Stone Co., Inc., 63 A.D.3d 805, 805-06
- Derosas v. Rosmarins Land Holdings, LLC, 148 A.D.3d 988, 990
- Olarte v. Morgan, 148 A.D.3d 918, 919
- Enos v. Werlatone, Inc., 68 A.D.3d 713, 714

OPINION

PER CURIAM.

Peterkin v Westchester Parks Found., Inc. (2026 NY Slip Op 00268) Peterkin v Westchester Parks Found., Inc. 2026 NY Slip Op 00268 Decided on January 21, 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 January 21, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department ANGELA G. IANNACCI, J.P. PAUL WOOTEN BARRY E. WARHIT DONNA-MARIE E. GOLIA, JJ. 2021-07774 (Index No. 51137/19) [*1]Douglas Peterkin, respondent-appellant, v Westchester Parks Foundation, Inc., appellant-respondent. Schwab & Gasparini, PLLC, White Plains, NY (Louis U. Gasparini of counsel), for appellant-respondent.

O'Connor & Partners, PLLC, Kingston, NY (Michael Kolb of counsel), for respondent-appellant. DECISION & ORDER In an action to recover damages for personal injuries, the defendant appeals, and the plaintiff cross-appeals, from an order of the Supreme Court, Dutchess County (Hal B. Greenwald, J.), dated October 12, 2021.

The order, insofar as appealed from, denied that branch of the defendant's motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1). The

order, insofar as cross-appealed from, denied the plaintiff's cross-motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1).

ORDERED that the order is reversed insofar as appealed from, on the law, and that branch of the defendant's motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1) is granted; and it is further, ORDERED that the order is affirmed insofar as cross-appealed from; and it is further, ORDERED that one bill of costs is awarded to the defendant.

On October 22, 2018, the plaintiff, who worked in the general maintenance department of Westchester County Department of Parks, Recreation and Conservation (hereinafter the Department), allegedly was injured while cutting down a tree in Kensico Dam Plaza (hereinafter the Plaza).

The plaintiff had been working from an elevated bucket of a bucket truck when he was struck by a portion of the tree he had just cut. Around the time of the accident, employees of the Department were setting up a holiday light show in the Plaza to serve as a fundraiser for the defendant, Westchester Parks Foundation, Inc. The plaintiff subsequently commenced this action against the defendant alleging, inter alia, a violation of Labor Law § 240(1).

The plaintiff alleged, among other things, that the cutting and removal of the subject tree was an integral part of the erection of a scaffold system and the mounting of a large artificial star thereto to be displayed for the holiday light show.

The defendant moved, inter alia, for summary judgment dismissing the cause of [*2]action alleging a violation of Labor Law § 240(1), and the plaintiff cross-moved for summary judgment on the issue of liability on that cause of action.

In an order dated October 12, 2021, the Supreme Court, among other things, denied that branch of the defendant's motion and the plaintiff's cross-motion. The defendant appeals and the plaintiff cross-appeals. "Labor Law § 240(1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374; see *Valentin v Stathakos*, 228 AD3d 985, 989).

The statute "applies where an employee is engaged 'in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure'" (*Valentin v Stathakos*, 228 AD3d at 989, quoting Labor Law § 240[1]; see *Lombardi v Stout*, 80 NY2d 290, 295). "[T]ree cutting and removal, in and of themselves, are not activities subject to Labor Law § 240(1).

Those activities are generally excluded from statutory protection because a tree is not a building or structure, as contemplated by the statute but, rather, 'a product of nature'" (*Moreira v Ponzo*, 131

AD3d 1025, 1026 [citations omitted], quoting *Lombardi v Stout*, 80 NY2d at 296; see *Morales v Westchester Stone Co., Inc.*, 63 AD3d 805, 805).

Here, the defendant established its prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging a violation of Labor Law § 240(1) by submitting evidence demonstrating that, at the time of his accident, the plaintiff was engaged in tree cutting and removal, which "constituted routine maintenance outside of a construction or renovation context" (*Morales v Westchester Stone Co., Inc.*, 63 AD3d at 806; see *Derosas v Rosmarins Land Holdings, LLC*, 148 AD3d 988, 990; *Olarte v Morgan*, 148 AD3d 918, 919; *Enos v Werlatone, Inc.*, 68 AD3d 713, 714).

In support of its motion, the defendant submitted, inter alia, transcripts of the deposition testimony of James Leonard, the director of general maintenance for the Department, and Russell Argila, a senior maintenance mechanic in the general maintenance department. Leonard testified that, on the date of the accident, the plaintiff and his coworkers were engaged in "thinning out, pruning trees, dead branches along... [a] hillside," and that the tree the plaintiff was cutting at the time of his accident was part of that work.

Argila testified that the tree crew, of which the plaintiff was a member, was "coming up there to clean it up, to do their normal tree work," and denied that the purpose of the tree work was to prepare for the installation of the star.

In opposition to the defendant's prima facie showing, the plaintiff failed to raise a triable issue of fact. The plaintiff's contention that the tree removal was necessary to complete a larger construction project in connection with the holiday light show in the Plaza is unsupported by the record (see *Olarte v Morgan*, 148 AD3d at 919; cf. *Moreira v Ponzo*, 131 AD3d at 1027).

The parties' remaining contentions either are without merit or need not be reached in light of our determination. Accordingly, the Supreme Court should have granted that branch of the defendant's motion which was for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1).

For the same reasons, the court properly denied the plaintiff's cross-motion for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). IANNACCI, J.P., WOOTEN, WARHIT and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court