

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

construction law

personal injury

labor law

summary judgment

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