

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

Maza v. 120 E. 144 LLC

Maza, 2026 NY Slip Op 03119 (Supreme Court of the State of New York Appellate Division First Department
2026) · No. Index No. 819431/23; Appeal No. 6654; Case No. 2025-08029 · Decided May 19, 2026

OPINION

Maza v. 120 E. 144 LLC 2026 NY Slip Op 03119

PER CURIAM.

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Maza v 120 E. 144 LLC

2026 NY Slip Op 03119

May 19, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Jhonatan Maza, Appellant,

v

120 East 144 LLC, Respondent.

Decided and Entered: May 19, 2026

Index No. 819431/23|Appeal No. 6654|Case No. 2025-08029

Before: Moulton, J.P., Scarpulla, Kapnick, Shulman, Michael, JJ.

Pollack, Pollack, Isaac & DeCicco, LLP, New York (Brian J. Isaac of counsel), for appellant.

Conway, Farrell, Curtin & Kelly, P.C., New York (Darrell John of counsel), for respondent.

Order, Supreme Court, Bronx County (Kim Adair Wilson, J.), entered on or about December 3, 2025, which denied plaintiff's motion for partial summary judgment on his claims pursuant to Labor Law §§ 240(1) and 241(6), unanimously affirmed, without costs.

Plaintiff alleges that he suffered a crush injury to his left foot while working on a demolition project at defendant's premises. Plaintiff met his prima facie burden on summary judgment by submitting his deposition testimony that the approximately 1000 pound bucket attachment on a Bobcat compact excavator fell on his foot while he was switching it out with another attachment (*see Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 409 [1st Dept 2013]). In response, defendant established an issue of fact concerning the cause of plaintiff's injury and whether it was gravity-related (*see Campos v 68 E. 86th St. Owners Corp.*, 117 AD3d 593, 594 [1st Dept 2014]). Specifically, sworn statements by the coworker who was operating the Bobcat, and a statement that plaintiff allegedly

made to his project manager, suggest that plaintiff's foot was on top of the bucket while the bucket was still fully attached to the Bobcat. Under this scenario, when the Bobcat raised the bucket, plaintiff's foot was injured because it became wedged between the bucket and the connection plate that connected the bucket to the arms of the Bobcat. This alternate cause of plaintiff's injury was not related to gravity and so could not give rise to liability under Labor Law § 240(1) (*see Joseph v City of New York*, 143 AD3d 489, 490 [1st Dept 2016], *lv denied* 33 NY3d 904 [2019]). The affirmation of the Bobcat operator, who stated that the bucket never fell, was not inconsistent with his previous statement that he did not witness how plaintiff was hurt (*see Cuevas v Baruti Constr. Corp.*, 164 AD3d 447, 448 [1st Dept 2018]).

Supreme Court also correctly denied plaintiff's motion for partial summary judgment on the Labor Law § 241(6) claim premised on Industrial Code (12 NYCRR) §§ 23-1.5(c)(3) and 23-9.2(a). Assuming, without finding, that defendant violated those Industrial Code sections, defendant's alternate account of the injury raises issues of fact as to whether those violations caused plaintiff's injuries (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 318 [2024]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 19, 2026

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PER CURIAM.

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denied plaintiff's motion for partial summary judgment on his claims pursuant to Labor Law §§ 240(1) and 241(6), unanimously affirmed, without costs. Plaintiff alleges that he suffered a crush injury to his left foot while working on a demolition project at defendant's premises. Plaintiff met his prima facie burden on summary judgment by submitting his deposition testimony that the approximately 1000 pound bucket attachment on a Bobcat compact excavator fell on his foot while he was switching it out with another attachment (see *Marrero v 2075 Holding Co. LLC* , 106 AD3d 408 , 409 [1st Dept 2013]). In response, defendant established an issue of fact concerning the cause of plaintiff's injury and whether it was gravity-related (see *Campos v 68 E. 86th St. Owners Corp.* , 117 AD3d 593 , 594 [1st Dept 2014]). Specifically, sworn statements by the coworker who was operating the Bobcat, and a statement that plaintiff allegedly made to his project manager, suggest that plaintiff's foot was on top of the bucket while the bucket was still fully attached to the Bobcat. Under this scenario, when the Bobcat raised the bucket, plaintiff's foot was injured because it became wedged between the bucket and the connection plate that connected the bucket to the arms of the Bobcat. This alternate cause of plaintiff's injury was not related to gravity and so could not give rise to liability under Labor Law § 240(1) (see *Joseph v City of New York* , 143 AD3d 489, 490 [1st Dept 2016], lv denied 33 NY3d 904 [2019]). The affirmation of the Bobcat operator, who stated that the bucket never fell, was not inconsistent with his previous statement that he did not witness how plaintiff was hurt (see *Cuevas v Baruti Constr. Corp.* , 164 AD3d 447 , 448 [1st Dept 2018]). Supreme Court also correctly denied plaintiff's motion for partial summary judgment on the Labor Law § 241(6) claim premised on Industrial Code (12 NYCRR) §§ 23-1.5(c)(3) and 23-9.2(a). Assuming, without finding, that defendant violated those Industrial Code sections, defendant's alternate account of the injury raises issues of fact as to whether those violations caused plaintiff's injuries (see *Bazdaric v Almah Partners LLC* , 41 NY3d 310 , 318 [2024]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 19, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

PER CURIAM.

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appellant.</p> <p>Conway, Farrell, Curtin & Kelly, P.C., New York (Darrell John of
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County (Kim Adair Wilson, J.), entered on or about December 3, 2025, which denied plaintiff's
motion for partial summary judgment on his claims pursuant to Labor Law §§ 240(1) and 241(6),
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his left foot while working on a demolition project at defendant's premises. Plaintiff met his prima
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1000 pound bucket attachment on a Bobcat compact excavator fell on his foot while he was
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