

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

Ballard v. Beard

2026 NY Slip Op 01260 (N.Y. Ct. App. 2026) · No. CV-24-1602 · Decided March 5, 2026

SUMMARY

The Appellate Division, Third Department affirmed an order denying the defendant homeowner's motion for summary judgment in a personal injury action arising from renovation work. The court held that the plaintiff raised a triable issue of fact concerning whether the defendant directed or controlled the injury-producing work, potentially defeating the one- and two-family dwelling exemption under Labor Law §§ 240(1) and 241(6). Similar factual issues supported allowing the plaintiff's Labor Law § 200 and common-law negligence claims to proceed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Powers, J.; Garry, P.J.; Clark, J.; Pritzker, J.; Corcoran, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Third Department
DECIDED	March 5, 2026
DOCKET	CV-24-1602
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of Supreme Court, Columbia County, denying his motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	Summary judgment review; the moving party must establish entitlement to judgment as a matter of law, after which the burden shifts to the opposing party to demonstrate a triable issue of fact.
PRECEDENTIAL VALUE	Published; precedential New York Appellate Division decision
PARTIES	Richard Alex Beard, also known as Richard A. Beard v. Charles J. Ballard

TOPICS

construction law

negligence

summary judgment

standard of review

preservation of error

PRACTICE AREAS

construction law

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendant established as a matter of law that the one- and two-family dwelling exemption relieved him of liability under Labor Law §§ 240(1) and 241(6).
2. Whether plaintiff raised a triable issue of fact as to whether defendant directed or controlled the injury-producing work.
3. Whether defendant was entitled to summary judgment on plaintiff's Labor Law § 200 and common-law negligence claims.
4. Whether defendant's argument that the hole was open and obvious was preserved for appellate review.

HOLDINGS

1. Defendant initially satisfied his prima facie burden of showing that the homeowner exemption applied, but plaintiff's opposing evidence raised a triable issue of fact as to whether defendant directed or controlled the injury-producing work. Summary judgment was therefore properly denied.
2. Defendant was not entitled to summary judgment on the Labor Law § 200 and common-law negligence claims because the evidence raised similar questions of fact concerning his control over the work and the injury-producing condition.
3. Defendant's argument that the open and obvious nature of the hole barred negligence liability was unpreserved because it was not adequately raised or supported before Supreme Court.

KEY QUOTATIONS

"[T]he phrase 'direct or control' is to be strictly construed and, in ascertaining whether a particular homeowner's actions amount to direction or control of a project, the relevant inquiry is the degree to which the owner supervised the method and manner of the actual work being performed by the injured party" ([*2])

"general supervisory control is insufficient" to impose such liability" ([*3])

FACTUAL BACKGROUND

In August 2019, Charles J. Ballard was performing renovation work at Richard Alex Beard's vacation home when he fell into a hole excavated for installation of a Bilco basement door. Ballard sustained head and neck injuries requiring surgery. The evidence conflicted as to whether Beard or Ralph Pesce directed the renovation work and specifically controlled the installation of the door; deposition testimony and worker affirmations supported competing accounts.

PROCEDURAL HISTORY

Plaintiff sued defendant after being injured while performing renovation work at defendant's vacation home, asserting claims under Labor Law §§ 200(1), 240(1), and 241(6), and common-law negligence. Defendant moved for summary judgment, arguing that the one- and two-family dwelling exemption applied because he did not direct or control the injury-producing work. Supreme Court denied the motion after finding triable issues concerning defendant's direction or control, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Barnhardt v. Richard G. Rosetti, LLC, 216 AD3d 1295, 1296 (3d Dept 2023), lv dismissed 40 NY3d 1005 (2023)
- Fabiano v. State of New York, 123 AD3d 1262, 1263 (3d Dept 2014), lv dismissed 25 NY3d 957 (2015)
- Borelli v. JB IV, LLC, 209 AD3d 1121, 1123 (3d Dept 2022)
- Whiting v. Nau, 211 AD3d 1214, 1215 (3d Dept 2022)
- Cannon v. Putnam, 76 NY2d 644, 649-650 (1990)
- Lombardi v. Stout, 80 NY2d 290, 296 (1992)
- Sanchez v. Marticorena, 103 AD3d 1057, 1059 (3d Dept 2013)
- Bartoo v. Buell, 87 NY2d 362, 368 (1996)
- Vogler v. Perrault, 149 AD3d 1298, 1298 (3d Dept 2017)
- Bombard v. Pruiksma, 110 AD3d 1304, 1305-1306 (3d Dept 2013)
- Nusbaum v. 1455 Wash. Ave., LLC, 240 AD3d 1113, 1116-1117 (3d Dept 2025)
- Capuzzi v. Fuller, 200 AD3d 1448, 1449-1450 (3d Dept 2021)
- Pelham v. Moracco, LLC, 172 AD3d 1689, 1691 (3d Dept 2019)
- Abreu v. Rodriguez, 195 AD3d 1277, 1278 (3d Dept 2021)
- James v. Marini Homes, LLC, 234 AD3d 1078, 1081-1082 (3d Dept 2025)
- Schoonover v. Diaz, 222 AD3d 1244, 1248-1249 (3d Dept 2023)
- Peck v. Szwarcberg, 122 AD3d 1216, 1220 (3d Dept 2014)
- Schultz v. Albany Med. Ctr. Hosp., 238 AD3d 1286, 1289 (3d Dept 2025)
- Halpin v. Banks, 231 AD3d 1337, 1339 n 2 (3d Dept 2024)
- Sullivan v. Flynn, 244 AD3d 1354, 1356 (3d Dept 2025)