

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

Rivera v. Site 2 DSA Owner, LLC

Rivera, 2025 NY Slip Op 06668 (Appellate Division of the Supreme Court of the State of New York First Department 2025) · No. Index No. 159502/20; Appeal No. 5258; Case No. 2024-03358 · Decided December 2, 2025

SUMMARY

The Appellate Division, First Department modified an order granting defendants summary judgment and denying the plaintiff partial summary judgment. The court reinstated the plaintiff's Labor Law § 240(1) claim and granted summary judgment on liability against specified defendants based on injuries sustained while loading a heavy gang box, while otherwise affirming the order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; Kapnick, J.; Mendez, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Index No. 159502/20; Appeal No. 5258; Case No. 2024-03358
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, that denied his motion for partial summary judgment on his Labor Law § 240(1) claim and granted defendants' motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the summary judgment ruling as a matter of law and determined whether the record established entitlement to judgment on the Labor Law § 240(1) claim.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Danny Rivera v. Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, T.G. Nickel & Associates, LLC, et al.

TOPICS

summary judgment

construction law

civil procedure

appellate procedure

PRACTICE AREAS

Construction law

Personal injury

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to summary judgment on liability under New York Labor Law § 240(1) for injuries caused when a heavy gang box being elevated began to fall.
2. Whether defendants were entitled to summary judgment dismissing plaintiff's Labor Law § 240(1) claim.
3. Whether Delancey Street Associates, LLC could dispute ownership of the property when its answer admitted ownership by omission.
4. Whether plaintiff's Labor Law § 200 claim against T.G. Nickel & Associates, LLC was improperly dismissed.

HOLDINGS

1. Under the circumstances presented, plaintiff was entitled to summary judgment on liability on his Labor Law § 240(1) claim against Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G. Nickel & Associates, LLC.
2. Defendants were not entitled to summary judgment dismissing plaintiff's Labor Law § 240(1) claim; the claim was reinstated.
3. Delancey Street Associates, LLC could not rely on a factual assertion that it did not own the property because that assertion contradicted the pleadings, which admitted ownership by omission in its answer.

KEY QUOTATIONS

*“Under the circumstances presented, he was entitled to summary judgment on his Labor Law § 240(1) claim against Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G. Nickel & Associates, LLC” (*1)*

FACTUAL BACKGROUND

Plaintiff was injured while he and coworkers were lifting a gang box approximately three to four feet from the ground to load it into a truck. The gang box was approximately four feet high, five feet long, three feet wide, and weighed between 400 and 600 pounds. When the box began to fall, plaintiff raised his leg to stop its descent.

PROCEDURAL HISTORY

Supreme Court, New York County, denied plaintiff's motion for partial summary judgment against Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G. Nickel & Associates, LLC on the Labor Law § 240(1) claim and granted defendants summary judgment dismissing the complaint. The Appellate Division modified the order by reinstating the Labor Law § 240(1) claim and granting plaintiff summary judgment on liability against those three defendants, while affirming the order otherwise.

DISPOSITION

other

CASES CITED

- Agli v 21 E. 90 Apts. Corp., 195 AD3d 458, 458-459 [1st Dept 2021]
- Kollbeck v 417 FS Realty, 4 AD3d 314, 314 [1st Dept 2004]

OPINION

PER CURIAM.

Rivera v Site 2 DSA Owner, LLC (2025 NY Slip Op 06668) Rivera v Site 2 DSA Owner, LLC 2025 NY Slip Op 06668 Decided on December 02, 2025 Appellate Division, First 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 and Entered: December 02, 2025 Before: Renwick, P.J., Scarpulla, Kapnick, Mendez, O'Neill Levy, JJ. Index No. 159502/20|Appeal No. 5258|Case No. 2024-03358| [*1]Danny Rivera, Plaintiff-Appellant, v Site 2 DSA Owner, LLC, et al., Defendants-Respondents.

Pollack, Pollack, Isaac & DeCicco, LLP, New York (Lori E. Parkman of counsel), for appellant. Ahmuty, Demers & McManus, Albertson (Nicholas P. Calabria of counsel), for respondents. Order, Supreme Court, New York County (David B. Cohen, J.), entered on or about May 2, 2024, which, to the extent appealed from, denied plaintiff's motion for partial summary judgment against defendants Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G.

Nickel & Associates, LLC, on his claim against them pursuant to Labor Law § 240(1), and which granted defendants' motion for summary judgment dismissing the complaint, unanimously modified, on the law, to deny summary judgment to defendants on plaintiff's claim pursuant to Labor Law § 240(1), and the claim reinstated, and to grant summary judgment on the issue of liability to plaintiff on his Labor Law § 240(1) claim as against defendants Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G.

Nickel & Associates, LLC, and otherwise affirmed, without costs. Plaintiff was injured when the approximately four feet high, five feet long and three feet wide, 400-to-600-pound gang box that he and his co-workers were lifting three to four feet from the ground and loading into a truck began to fall, requiring him to lift his leg up to stop the descent.

Under the circumstances presented, he was entitled to summary judgment on his Labor Law § 240(1) claim against Site 2 DSA Owner, LLC, Delancey Street Associates, LLC, and T.G. Nickel & Associates, LLC (see Agli v 21 E. 90 Apts. Corp., 195 AD3d 458, 458-459 [1st Dept 2021]; see also Kollbeck v 417 FS Realty, 4 AD3d 314, 314 [1st Dept 2004]).

Although it is claimed in defendants' brief that one of those defendants, Delancey Street Associates, LLC did not own the subject property, this contradicts the pleadings, which by omission in its answer admitted ownership by that entity.

The remaining defendants' relationship to the property is unclear and on this record it is not possible to determine whether they have liability as owners under the Labor Law. We have considered the remaining arguments, including plaintiff's assertion that his Labor Law § 200 claim against T.G. Nickel & Associates, LLC was improperly dismissed, and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 2, 2025