

**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.

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