

NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT

Danilo Veliz Escudero v. Belmont Ave 2321 LLC et al.

2026 NY Slip Op 01848 (App. Div. 1st Dep't 2026) · No. Index No. 800463/22; Appeal No. 6202; Case No.
2024-04943 · Decided March 26, 2026

SUMMARY

The Appellate Division, First Department reversed the denial of plaintiff's motion for summary judgment on liability under Labor Law § 240(1) and granted the motion. The court held that plaintiff established that an A-frame ladder moved while he was working at the ceiling, and that defendants failed to raise a triable issue regarding sole proximate cause because their expert's contrary opinion was speculative.

CASE DETAILS

COURT	New York Supreme Court, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; González, J.; Mendez, J.; O'Neill Levy, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 26, 2026
DOCKET	Index No. 800463/22; Appeal No. 6202; Case No. 2024-04943
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying his motion for summary judgment on liability under Labor Law § 240(1).
STANDARD OF REVIEW	De novo review of the denial of summary judgment and the record to determine whether plaintiff established prima facie entitlement to judgment as a matter of law and whether defendants raised a triable issue of fact.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Danilo Veliz Escudero v. Belmont Ave 2321 LLC et al.

TOPICS

construction law

summary judgment

civil procedure

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff established prima facie entitlement to summary judgment on liability under Labor Law § 240(1) based on his un rebutted testimony that the ladder moved and tipped while he was performing work at an elevated height.
2. Whether defendants raised a triable issue of fact that plaintiff was the sole proximate cause of the accident.

HOLDINGS

1. Plaintiff established prima facie entitlement to summary judgment on liability because his un rebutted testimony showed that the A-frame ladder moved and tipped while he was using it to reach the ceiling.
2. Defendants failed to raise a triable issue of fact as to whether plaintiff was the sole proximate cause of his accident.

KEY QUOTATIONS

*“Plaintiff established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim.” (*1)*

*“However, in opposition, defendants failed to raise an issue of fact as to whether plaintiff was the sole proximate cause of his accident.” (*1)*

*“Defendants' expert's opinion that plaintiff did not need a ladder was based on an incomplete reading of plaintiff's testimony, and did not otherwise identify first-hand knowledge or other evidence about the actual height of the ceiling, and was thus, speculative” (*1)*

FACTUAL BACKGROUND

While plaintiff was tightening a coupling on a pipe in the ceiling, the A-frame ladder on which he was standing moved, causing him to fall and the ladder to tip over. Plaintiff testified without contradiction that he needed the ladder to reach the ceiling, which was a little more than six feet high. Defendants submitted an expert opinion asserting that plaintiff did not need a ladder, but the court found that opinion speculative because it relied on an incomplete reading of plaintiff's testimony and did not identify firsthand knowledge or other evidence concerning the actual ceiling height.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied plaintiff's motion for summary judgment on liability on his Labor Law § 240(1) claim in an order entered July 31, 2024. The Appellate Division, First Department, unanimously reversed on the law and granted the motion.

DISPOSITION

reversed

CASES CITED

- *Morales v. 2400 Ryer Ave. Realty, LLC*, 190 A.D.3d 647, 647 (1st Dep't 2021)
- *Min Zhong v. Matranga*, 208 A.D.3d 439, 443 (1st Dep't 2022), *aff'd*, 39 N.Y.3d 1053 (2023)
- *Simpertegui v. Carlyle House Inc.*, 227 A.D.3d 486, 486 (1st Dep't 2024)

OPINION

PER CURIAM.

Escudero v Belmont Ave 2321 LLC (2026 NY Slip Op 01848) Escudero v Belmont Ave 2321 LLC 2026 NY Slip Op 01848 Decided on March 26, 2026 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: March 26, 2026 Before: Webber, J.P., González, Mendez, O'Neill Levy, Hagler, JJ. Index No. 800463/22|Appeal No. 6202|Case No. 2024-04943| [*1]Danilo Veliz Escudero, Appellant, v Belmont Ave 2321 LLC et al., Respondents, NY CC Construction Corporation, Defendant.

(And a Third-Party Action.) Rubin Law, PLLC, New York (Denise A. Rubin of counsel), for appellant. Milber Makris Plousadis & Seiden, LLP, Purchase (Giancarlo Santino Vecchiarelli of counsel), for respondents. Order, Supreme Court, Bronx County (Paul L. Alpert, J.), entered July 31, 2024, which denied plaintiff Danilo Veliz Escudero's motion for summary judgment on liability on his Labor Law § 240(1) claim, unanimously reversed, on the law, without costs, and the motion granted.

Plaintiff established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim. Plaintiff provided unrebutted testimony that while he was tightening a coupling on a pipe in the ceiling, the A-frame ladder he was standing on moved, causing him to fall and the ladder to tip over (see *Morales v 2400 Ryer Ave. Realty, LLC*, 190 AD3d 647, 647 [1st Dept 2021]).

However, in opposition, defendants failed to raise an issue of fact as to whether plaintiff was the sole proximate cause of his accident. Plaintiff's unrebutted testimony was that he had to use the ladder to reach the ceiling, and that the ceiling was "a little more" than six-feet high. Defendants' expert's opinion that plaintiff did not need a ladder was based on an incomplete reading of plaintiff's testimony, and did not otherwise identify first-hand knowledge or other evidence about the actual height of the ceiling, and was thus, speculative (see *Min Zhong v Matranga*, 208 AD3d 439, 443 [1st Dept 2022], *aff'd* 39 NY3d 1053 [2023]).

Even if plaintiff's testimony contained inconsistencies concerning the height of the ceiling, such inconsistencies were insufficient to raise a triable issue of fact as to how the accident occurred (cf. *Simpertegui v Carlyle House Inc.*, 227 AD3d 486, 486 [1st Dept 2024]). THIS CONSTITUTES

THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT.

ENTERED: March 26, 2026

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