

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Jose Cerro v. 97 Port Richmond Ave., LLC, et al.

Jose Cerro v. 97 Port Richmond Ave., LLC, 2025 NY Slip Op 06842 (N.Y. Ct. App. 2025) · No. 2023-09961 ·
Decided December 10, 2025

SUMMARY

The Appellate Division, Second Department, affirmed an order granting summary judgment dismissing Jose Cerro's Labor Law § 240(1) claim against 97 Port Richmond Ave, LLC, and Frenchies Port Richmond Equities, LLC. The court held that the plaintiff's tree-cutting work did not involve the erection, demolition, repair, alteration, painting, cleaning, or pointing of a building or structure, and that the tree removal was not part of a larger renovation project. The court also granted the respondents' motion to strike specified portions of the plaintiff's reply brief.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Paul Wooten, J.; William G. Ford, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 10, 2025
DOCKET	2023-09961
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants summary judgment dismissing his Labor Law § 240(1) claim and denying his cross-motion for summary judgment on liability.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the Appellate Division reviewed the Supreme Court's summary-judgment determination de novo.
PRECEDENTIAL VALUE	published

PARTIES

Jose Cerro v. 97 Port Richmond Ave., LLC, Frenchies Port Richmond Equities, LLC

TOPICS

construction law

construction defects

personal injury

appellate procedure

standard of review

PRACTICE AREAS

construction law

personal injury

appellate procedure

QUESTIONS PRESENTED

1. Whether tree-cutting work performed next to a garage constituted work on the erection, demolition, repair, alteration, painting, cleaning, or pointing of a building or structure within the meaning of Labor Law § 240(1).
2. Whether the tree-cutting work was part of a larger renovation project so as to bring it within the protection of Labor Law § 240(1).
3. Whether defendants were entitled to summary judgment dismissing the Labor Law § 240(1) claim and whether plaintiff was entitled to summary judgment on liability.
4. Whether portions of plaintiff's reply brief should be stricken because they raised arguments for the first time in reply and relied on material dehors the record.

HOLDINGS

1. Tree-cutting work is outside the ambit of Labor Law § 240(1) when the work concerns a tree rather than the erection, demolition, repair, alteration, painting, cleaning, or pointing of a building or structure.
2. The tree cutting did not constitute an alteration of the garage and was not shown to be part of a larger renovation project within Labor Law § 240(1).
3. The Supreme Court properly granted defendants summary judgment dismissing the Labor Law § 240(1) cause of action and properly denied plaintiff's motion for summary judgment on liability.
4. The motion to strike was granted, and the specified portion of plaintiff's reply brief was stricken and not considered in deciding the appeal.

KEY QUOTATIONS

"Altering" within the meaning of Labor Law § 240(1) requires making a significant physical change to the configuration or composition of the building or structure, with routine maintenance falling outside the scope of Labor Law § 240(1)" ([*2])

"Here, the plaintiff's tree-cutting work was outside the ambit of Labor Law § 240(1), because a tree is not a "building or structure" within the meaning of the statute" ([*2])

FACTUAL BACKGROUND

In December 2017, 97 Port Richmond Ave., LLC purchased adjacent properties in Staten Island and hired Justino Landscaping, Inc., to remove a tree next to a stand-alone garage. On January 19, 2018, Jose Cerro, a Justino employee, climbed a ladder placed against the garage to cut the tree's branches and allegedly fell and was injured. The tree was removed to prevent future damage to the garage, and the work occurred months before renovations began at the property; the renovation project was not contingent on removal of the tree.

PROCEDURAL HISTORY

Jose Cerro, an employee of Justino Landscaping, commenced a personal-injury action against 97 Port Richmond Ave., LLC, and Frenchies Port Richmond Equities, LLC, after falling from a ladder while cutting a tree. The action was consolidated with separate personal-injury actions brought by Cerro. The Supreme Court, Richmond County, granted defendants' motion for summary judgment dismissing the Labor Law § 240(1) cause of action and denied Cerro's motion for summary judgment on liability. The Appellate Division affirmed the order insofar as appealed from and separately granted defendants' motion to strike portions of Cerro's reply brief.

DISPOSITION

affirmed

CASES CITED

- Guaman v. 178 Ct. St., LLC, 200 A.D.3d 655, 657
- Saitta v. Marsah Props., LLC, 211 A.D.3d 1062, 1064-1065
- Joblon v. Solow, 91 N.Y.2d 457, 465
- Derosas v. Rosmarins Land Holdings, LLC, 148 A.D.3d 988, 990
- Olarte v. Morgan, 148 A.D.3d 918, 919
- Rivera v. Santos, 35 A.D.3d 700, 702