

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

Valarezo v. HP Jamsta Hous. Dev. Fund Co. Inc.

Valarezo, 2026 NY Slip Op 01148 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 158491/17; Appeal No. 5929; Case No. 2023-02794 · Decided February 26, 2026

SUMMARY

The Appellate Division, First Department modified an order of the Supreme Court, New York County, granting plaintiffs summary judgment on liability under Labor Law § 240(1) arising from injuries caused by an unsecured steel bar falling during construction work. The court otherwise affirmed the dismissal of the Labor Law § 200 and common-law negligence claims, concluding that defendants failed to raise a triable issue of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per curiam; Kennedy, J.P.; Scarpulla, J.; Kapnick, J.; González, J.; Rodriguez, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	February 26, 2026
DOCKET	Index No. 158491/17; Appeal No. 5929; Case No. 2023-02794
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order granting defendants summary judgment dismissing plaintiffs' Labor Law § 200 and common-law negligence claims and denying plaintiffs summary judgment on liability under Labor Law § 240(1).
STANDARD OF REVIEW	Summary judgment is proper where the moving party establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published
PARTIES	Cristian Valarezo et al. v. HP Jamsta Housing Development Fund Company Inc. et al.

TOPICS

construction law personal injury negligence appellate procedure standard of review

PRACTICE AREAS

construction law personal injury negligence appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiffs were entitled to summary judgment on liability under Labor Law § 240(1) where an unsecured steel bar being hoisted by excavation equipment fell and struck plaintiff.
2. Whether defendants raised a triable issue of fact in opposition to plaintiffs' motion.
3. Whether the appellate court should reach the arguments concerning the Labor Law § 200 and common-law negligence claims after granting plaintiffs summary judgment under Labor Law § 240(1).

HOLDINGS

1. Plaintiffs were entitled to summary judgment on liability under Labor Law § 240(1) because the evidence established that the steel bar was not secured while the excavation and drilling machine was hoisting it, and the bar fell and injured plaintiff.

KEY QUOTATIONS

*“Supreme Court should have granted plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim.” (*1)*

*“Plaintiffs demonstrated prima facie entitlement to summary judgment on this claim by submitting evidence establishing that the steel bar was not secured while the excavation/drilling machine was hoisting it.” (*1)*

*“Even though plaintiff testified that he did not see the precise moment that the bar began to fall and was unsure whether a sling was attached to the bar at the time of the accident, he was not obliged to show the exact circumstances under which the object fell.” (*1)*

*“Furthermore, because the equipment used to hoist the steel bar failed to prevent it from falling, plaintiffs were also not obliged to specify the type of safety device that defendants should have provided.” (*1)*

FACTUAL BACKGROUND

Plaintiff was injured while he and coworkers used a drilling and excavation machine to remove steel bars drilled into the ground while making bases for cement columns. A fabric sling and hook were used to lift the bars, but plaintiff testified that the last bar was standing vertically on the machine and was not secured before it was moved. The bar fell and struck plaintiff.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on or about May 1, 2023, that denied plaintiffs' motion for summary judgment on liability under Labor Law § 240(1) and granted defendants' motion for summary

judgment dismissing the Labor Law § 200 and common-law negligence claims. The Appellate Division modified the order to grant plaintiffs' motion for summary judgment on liability under Labor Law § 240(1) and otherwise affirmed.

DISPOSITION

other

CASES CITED

- Wilinski v. 334 East 92nd Hous. Dev. Fund Corp., 18 NY3d 1, 5 (2011)
- MacGregor v. MRMD NY Corp., 194 AD3d 550, 551 (1st Dept. 2021)
- Harsanyi v. Extell 4110 LLC, 220 AD3d 528, 529 (1st Dept. 2023)
- Rubio v. New York Proton Mgt., LLC, 192 AD3d 438, 439 (1st Dept. 2021)
- Marrero v. 2075 Holdings Co. LLC, 106 AD3d 408, 409 (1st Dept. 2013)
- Fanning v. Rockefeller Univ., 106 AD3d 484, 485 (1st Dept. 2013)

OPINION

Valarezo v. HP Jamsta Hous. Dev. Fund Co. Inc. 2026 NY Slip Op 01148

PER CURIAM.

Valarezo v HP Jamsta Hous. Dev. Fund Co. Inc. (2026 NY Slip Op 01148) Valarezo v HP Jamsta Hous. Dev. Fund Co. Inc. 2026 NY Slip Op 01148 Decided on February 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: February 26, 2026 Before: Kennedy, J.P., Scarpulla, Kapnick, González, Rodriguez, JJ. Index No. 158491/17|Appeal No. 5929|Case No. 2023-02794|[*1]Cristian Valarezo et al., Plaintiffs-Appellants, v HP Jamsta Housing Development Fund Company Inc. et al., Defendants-Respondents. Gorayeb & Associates, P.C., New York (John M. Shaw of counsel), for appellants. Gallo Vitucci Klar LLC, New York (Andrew M. Lauri of counsel), for respondents. Order, Supreme Court, New York County (Lyle E. Frank, J.), entered on or about May 1, 2023, which, to the extent appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim and granted defendants' motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims, unanimously modified, on the law, to grant plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim, and otherwise affirmed, without costs. Plaintiff was injured as he and his coworkers were making bases for cement columns by using a drilling/excavation machine to remove steel bars that had been drilled into the ground. Plaintiff testified that when removing the bars, a fabric sling was tied to the top of the bar, a hook was placed into the sling, and the drilling/excavation machine lifted the bar away. As the last bar was being removed, it fell and hit plaintiff. According to plaintiff's testimony, the bar was standing

vertically on the drilling machine and was not secured before the machine moved it. Supreme Court should have granted plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim. Plaintiffs demonstrated prima facie entitlement to summary judgment on this claim by submitting evidence establishing that the steel bar was not secured while the excavation/drilling machine was hoisting it out of the ground (see *Wilinski v 334 East 92nd Hous. Dev. Fund Corp.* , 18 NY3d 1, 5 [2011]; *MacGregor v MRMD NY Corp.* , 194 AD3d 550, 551 [1st Dept 2021]). Even though plaintiff testified that he did not see the precise moment that the bar began to fall and was unsure whether a sling was attached to the bar at the time of the accident, he was not obliged to show the exact circumstances under which the object fell (see *Harsanyi v Extell 4110 LLC* , 220 AD3d 528 , 529 [1st Dept 2023]). Furthermore, because the equipment used to hoist the steel bar failed to prevent it from falling, plaintiffs were also not obliged to specify the type of safety device that defendants should have provided (see *Rubio v New York Proton Mgt., LLC* , 192 AD3d 438 , 439 [1st Dept 2021]). In opposition, defendants failed to raise a triable issue of fact. Plaintiff's un rebutted testimony was sufficient to establish plaintiffs' prima facie case without the necessity of considering various documents that were submitted on plaintiffs' motion (see *Marrero v 2075 Holdings Co. LLC* , 106 AD3d 408 , 409 [1st Dept 2013]). Because we are granting plaintiffs' motion for summary judgment on liability under Labor Law § 240(1), the arguments related to the Labor Law § 200 and common-law negligence claims are academic (see *Fanning v Rockefeller Univ.* , 106 AD3d 484 , 485 [1st Dept 2013]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 26, 2026
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Valarezo v HP Jamsta Hous. Dev. Fund Co. Inc. (2026 NY Slip Op 01148) *Valarezo v HP Jamsta Hous. Dev. Fund Co. Inc.* 2026 NY Slip Op 01148 Decided on February 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: February 26, 2026 Before: Kennedy, J.P., Scarpulla, Kapnick, González, Rodriguez, JJ. Index No. 158491/17|Appeal No. 5929|Case No. 2023-02794|[*1]Cristian Valarezo et al., Plaintiffs-Appellants, v HP Jamsta Housing Development Fund Company Inc. et al., Defendants-Respondents. Gorayeb & Associates, P.C., New York (John M. Shaw of counsel), for appellants. Gallo Vitucci Klar LLC, New York (Andrew M. Lauri of counsel), for respondents. Order, Supreme Court, New York County (Lyle E. Frank, J.), entered on or about May 1, 2023, which, to the extent appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim and granted defendants' motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims, unanimously modified, on the law, to grant plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim, and otherwise affirmed, without costs. Plaintiff was injured as he and his coworkers were making bases for cement columns by using a

drilling/excavation machine to remove steel bars that had been drilled into the ground. Plaintiff testified that when removing the bars, a fabric sling was tied to the top of the bar, a hook was placed into the sling, and the drilling/excavation machine lifted the bar away. As the last bar was being removed, it fell and hit plaintiff. According to plaintiff's testimony, the bar was standing vertically on the drilling machine and was not secured before the machine moved it. Supreme Court should have granted plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim. Plaintiffs demonstrated prima facie entitlement to summary judgment on this claim by submitting evidence establishing that the steel bar was not secured while the excavation/drilling machine was hoisting it out of the ground (see *Wilinski v 334 East 92nd Hous. Dev. Fund Corp.* , 18 NY3d 1, 5 [2011]; *MacGregor v MRMD NY Corp.* , 194 AD3d 550, 551 [1st Dept 2021]). Even though plaintiff testified that he did not see the precise moment that the bar began to fall and was unsure whether a sling was attached to the bar at the time of the accident, he was not obliged to show the exact circumstances under which the object fell (see *Harsanyi v Extell 4110 LLC* , 220 AD3d 528, 529 [1st Dept 2023]). Furthermore, because the equipment used to hoist the steel bar failed to prevent it from falling, plaintiffs were also not obliged to specify the type of safety device that defendants should have provided (see *Rubio v New York Proton Mgt., LLC* , 192 AD3d 438, 439 [1st Dept 2021]). In opposition, defendants failed to raise a triable issue of fact. Plaintiff's un rebutted testimony was sufficient to establish plaintiffs' prima facie case without the necessity of considering various documents that were submitted on plaintiffs' motion (see *Marrero v 2075 Holdings Co. LLC* , 106 AD3d 408, 409 [1st Dept 2013]). Because we are granting plaintiffs' motion for summary judgment on liability under Labor Law § 240(1), the arguments related to the Labor Law § 200 and common- law negligence claims are academic (see *Fanning v Rockefeller Univ.* , 106 AD3d 484, 485 [1st Dept 2013]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 26, 2026