

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

Quintero v. MBH Capital, LLC

2026 NY Slip Op 03010 (App. Div. 2026) · No. 2024-01815 · Decided May 13, 2026

SUMMARY

The Appellate Division, Second Department modified an order concerning a personal-injury action arising from a workplace accident. It held that the former property owner was not entitled to summary judgment on the Labor Law § 200 and common-law negligence claims sounding in premises liability, but was entitled to summary judgment on the Labor Law §§ 240(1) and 241(6) claims. The court also denied the plaintiff’s cross-motion concerning an untimely reply to a sanctions counterclaim, while affirming denial of the defendant’s request for a default judgment because no viable independent cause of action for sanctions existed.

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.; Lara J. Genovesi, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 13, 2026
DOCKET	2024-01815
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Federal Brick Management Group, LLC appealed from an order denying its motion for summary judgment dismissing the personal-injury complaint and for leave to enter a default judgment on its sanctions counterclaim, and granting the plaintiff's cross-motion to deem his reply to the counterclaim timely served and to dismiss the counterclaim.
STANDARD OF REVIEW	Summary judgment is reviewed under the prima facie showing and triable-issue-of-fact standard. A party seeking summary judgment must establish entitlement to judgment as a matter of law; the opposing party must then raise a triable issue of fact.

PRECEDENTIAL VALUE	published
PARTIES	Federal Brick Management Group, LLC v. Fernando Vasquez Quintero

TOPICS

summary judgment construction law construction defects default judgment appellate procedure

PRACTICE AREAS

construction law personal injury real estate civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Federal Brick was entitled to summary judgment dismissing the Labor Law § 200 and common-law negligence claims insofar as they sounded in premises liability.
2. Whether Federal Brick was entitled to summary judgment dismissing the Labor Law §§ 240(1) and 241(6) claims because it was not the owner or general contractor at the time of the accident.
3. Whether Quintero was entitled to have his untimely reply to the sanctions counterclaim deemed served nunc pro tunc and to summary judgment dismissing the counterclaim.
4. Whether Federal Brick was entitled to leave to enter a default judgment on its sanctions counterclaim.

HOLDINGS

1. A prior owner may remain potentially liable for a dangerous premises condition if the condition existed when the property was conveyed and the new owner lacked a reasonable opportunity to discover and remedy it. Federal Brick did not establish prima facie that this exception was unavailable because its affidavit did not address those facts.
2. The narrow prior-owner exception for premises liability does not extend to the statutory liability imposed by Labor Law §§ 240(1) and 241(6). A defendant is entitled to summary judgment on those claims when it establishes that it was neither the owner nor the general contractor at the time of the accident and the plaintiff fails to raise a triable issue of fact.
3. A party that defaults by failing to timely reply to a counterclaim must establish a reasonable excuse to vacate the default. Until the default is vacated, the court may not entertain a nonjurisdictional defense, and summary judgment is unavailable when issue has not been joined.
4. A court may not enter a default judgment on a counterclaim for sanctions where the asserted sanctions provision does not create an independent cause of action. New York does not recognize an independent cause of action for sanctions under CPLR 8303-a or 22 NYCRR 130-1.1.

KEY QUOTATIONS

“A narrow exception exists, however, and liability may be imposed [on a prior owner] where a dangerous condition existed at the time of the conveyance and the new owner has not had a reasonable time to discover

*the condition, if it was unknown, and to remedy the condition once it is known” ([*2])*

*“However, the "narrow exception" that allows for premises liability to be extended to prior owners of property does not apply to the statutory liability imposed by Labor Law §§ 240(1) and 241(6).” ([*2])*

*“New York does not recognize an independent cause of action for the imposition of sanctions under either CPLR 8303-a or Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1” ([*3])*

FACTUAL BACKGROUND

In April 2023, Quintero allegedly fell and was injured while working on property in Brooklyn. Federal Brick allegedly had owned and managed the property but had sold it to MBH Capital, LLC before the accident. Quintero asserted Labor Law and negligence claims against Federal Brick, while Federal Brick asserted a counterclaim for sanctions based on its contention that it no longer owned the property and that the claims against it were frivolous. Quintero failed to timely reply to the counterclaim.

PROCEDURAL HISTORY

Quintero commenced a personal-injury action alleging violations of Labor Law §§ 200, 240(1), and 241(6), and common-law negligence. Federal Brick answered and asserted a counterclaim for sanctions, after which Quintero failed to timely reply. The Supreme Court, Kings County, denied the relevant branches of Federal Brick's motion and granted Quintero's cross-motion. The Appellate Division modified the order by granting summary judgment on the Labor Law §§ 240(1) and 241(6) claims, denying Quintero's cross-motion regarding the counterclaim, and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The order is modified to grant Federal Brick's motion for summary judgment dismissing the Labor Law §§ 240(1) and 241(6) causes of action, deny Quintero's cross-motion to deem his reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim, and otherwise affirm the order insofar as appealed from.

CASES CITED

- Carey v Five Bros., Inc., 106 AD3d 938, 941
- Bittrolff v Ho's Dev. Corp., 77 NY2d 896, 898
- Mullen v Zoebe, Inc., 205 AD2d 597, 597
- Larrier v Gateway Sherman, Inc., 60 AD3d 913
- McKoy v Bagot, 245 AD2d 276
- Saint v Syracuse Supply Co., 25 NY3d 117, 124
- Ricottone v PSEG Long Is., LLC, 221 AD3d 1032, 1034

- GITSIT Solutions, LLC v Azcuy, 242 AD3d 956, 958
- Triple E. Constr., Inc. v Green-Citi Mgt., Inc., 238 AD3d 1192, 1193
- Newrez LLC v Jebco OGM Resources, 236 AD3d 1373, 1374
- Bank of N.Y. Mellon Trust Co., N.A. v Lagasse, 224 AD3d 800
- Elias v Serota, 103 AD2d 410, 417
- Pantanilla v Yuson, 237 AD3d 1213, 1214
- Nationstar Mtge., LLC v Gross, 201 AD3d 942, 944
- Barbetta v Facchini, 236 AD3d 623, 624-625
- Cerciello v Admiral Ins. Brokerage Corp., 90 AD3d 967, 968

OPINION

Quintero v. MBH Capital, LLC 2026 NY Slip Op 03010

PER CURIAM.

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denying those branches of the motion of the defendant Federal Brick Management Group, LLC, which were for summary judgment dismissing the causes of action alleging violations of Labor Law §§ 240(1) and 241(6) insofar as asserted against it, and substituting therefor a provision granting those branches of the motion, and (2) by deleting the provision thereof granting the plaintiff's cross-motion to deem its reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim, and substituting therefor a provision denying the cross-motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

In April 2023, the plaintiff allegedly fell and sustained injuries while working on property located in Brooklyn that purportedly was owned and managed by the defendant Federal Brick Management Group, LLC (hereinafter Federal Brick). The plaintiff commenced this action against, among others, Federal Brick, alleging violations of Labor Law §§ 200, 240(1), and 241(6), and common-law negligence. Federal Brick interposed an answer in which it asserted a counterclaim for sanctions, alleging that it did not own the property at the time of the alleged accident and that the causes of action against it were frivolous. The plaintiff failed to timely reply to the counterclaim. Federal Brick moved, inter alia, for summary judgment dismissing the complaint insofar as asserted against it and for leave to enter a default judgment against the plaintiff on its counterclaim. The plaintiff cross-moved to deem its reply to Federal Brick's counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim. In an order dated December 22, 2023, the Supreme Court, among other things, denied those branches of Federal Brick's motion and granted the plaintiff's cross-motion. Federal Brick appeals.

"In cases where a worker at a job site is injured as a result of a dangerous or defective premises condition, a defendant moving for summary judgment must establish prima facie that it neither created the allegedly dangerous condition nor had actual or constructive notice of it" (*Carey v Five Bros., Inc.*, 106 AD3d 938, 941). "As a general rule, liability for dangerous conditions on land does not extend to a prior owner of the premises" (*Bittrolff v Ho's Dev. Corp.*, 77 NY2d 896, 898). "A narrow exception exists, however, and liability may be imposed [on a prior owner] where a dangerous condition existed at the time of the conveyance and the new owner has not had a reasonable time to discover the condition, if it was unknown, and to remedy the condition once it is known" (*id.*; *see* *Mullen v Zoebe, Inc.*, 205 AD2d 597, 597).

Here, the Supreme Court properly denied those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence insofar as asserted against it to the extent that they sounded in premises liability. In support of its motion, Federal Brick submitted an affidavit from its principal and managing member, who asserted that, at the time of the alleged incident, Federal Brick had sold the premises to the defendant MBH Capital, LLC, and no longer owned or operated the premises. However, that affidavit did not address whether the allegedly dangerous condition existed at the time of the conveyance and whether the new owner knew of the condition or had a reasonable time to

discover and remedy it (*see* *Larrier v Gateway Sherman, Inc.*, 60 AD3d 913; *McKoy v Bagot*, 245 AD2d 276). Thus, Federal Brick failed to establish, prima facie, that it could not be held liable for the allegedly dangerous premises condition as a former owner. Inasmuch as "Labor Law § 200 is a codification of the common-law duty of property owners and general contractors to provide workers with a safe place to work" (*Carey v Five Bros., Inc.*, 106 AD3d at 941), the court properly denied those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence insofar as asserted against it to the extent that they sounded in premises liability.

However, the "narrow exception" that allows for premises liability to be extended to prior owners of property (*Bittrolff v Ho's Dev. Corp.*, 77 NY2d at 898) does not apply to the statutory liability imposed by Labor Law §§ 240(1) and 241(6). Those statutes apply to certain construction-related activities (*see* *Saint v Syracuse Supply Co.*, 25 NY3d 117, 124; *Ricottone v PSEG Long Is., LLC*, 221 AD3d 1032, 1034), rather than premises conditions for which a prior owner might remain responsible. Federal Brick established, prima facie, that it was not the owner of the property or the general contractor at the time of the alleged accident, and the plaintiff failed to raise a triable issue of fact in opposition. Thus, the Supreme Court should have granted those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging violations of Labor Law §§ 240(1) and 241(6) insofar as asserted against it.

The Supreme Court also should have denied the plaintiff's cross-motion to deem its reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim. The plaintiff failed to vacate its default in replying to the counterclaim because he did not set forth a reasonable excuse for his delay (*see* *GITSIT Solutions, LLC v Azcuy*, 242 AD3d 956, 958; *Triple E. Constr., Inc. v Green-Citi Mgt., Inc.*, 238 AD3d 1192, 1193). Because the plaintiff failed to vacate his default in replying to the counterclaim, the court should not have entertained the nonjurisdictional defense presented in his motion (*see generally* *Newrez LLC v Jebco OGM Resources*, 236 AD3d 1373, 1374; *Bank of N.Y. Mellon Trust Co., N.A. v Lagasse*, 224 AD3d 800). Additionally, the court should have denied the cross-motion because issue had not been joined on the counterclaim (*see* CPLR 3212[a]; *Elias v Serota*, 103 AD2d 410, 417).

However, the Supreme Court properly denied that branch of Federal Brick's motion which was for leave to enter a default judgment on its counterclaim for sanctions. "On a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant's default" (*Pantanilla v Yuson*, 237 AD3d 1213, 1214 [internal quotation marks omitted]; *see* CPLR 3215[f]; *Nationstar Mtge., LLC v Gross*, 201 AD3d 942, 944). "To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable, since defaulters are deemed to have admitted all factual

allegations contained in the complaint and all reasonable inferences that flow from them. However, a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment, and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action" (*Barbetta v Facchini*, 236 AD3d 623, 624-625 [internal quotation marks omitted]).

Here, the plaintiff does not dispute that he did not reply in a timely manner to Federal Brick's counterclaim for sanctions. However, the Supreme Court properly denied that branch of Federal Brick's motion which was for leave to enter a default judgment because Federal Brick did not meet its burden of stating a viable cause of action. "New York does not recognize an independent cause of action for the imposition of sanctions under either CPLR 8303-a or Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1" (*Cerciello v Admiral Ins. Brokerage Corp.*, 90 AD3d 967, 968). Since Federal Brick brought its counterclaim pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1, no viable cause of action exists (*see Cerciello v Admiral Ins. Brokerage Corp.*, 90 AD3d at 968), and that branch of the motion which was for leave to enter a default judgment was properly denied (*see Barbetta v Facchini*, 236 AD3d at 625).

Accordingly, we modify the order.

IANNACCI, J.P., GENOVESI, LANDICINO and LOVE, JJ., concur.

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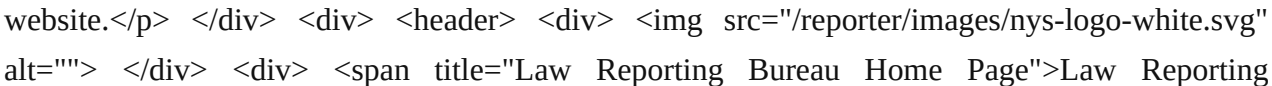
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PER CURIAM.

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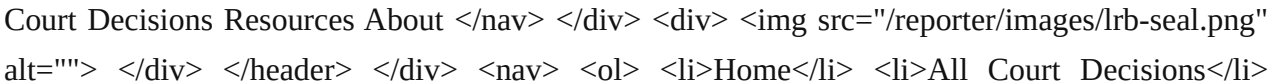
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May 13, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Fernando Vasquez Quintero, respondent,

v

MBH Capital,

LLC, et al., defendants, Federal Brick Management Group, LLC, appellant.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 13, 2026 2024-01815, (Index No. 512159/23)

Angela G. Iannacci, J.P.

Lara J. Genovesi

Carl J. Landicino

Laurence L. Love, JJ.

O. Benjamin Okeke, Brooklyn, NY, for appellant.

DECISION & ORDER

In an action to recover damages for personal injuries, the defendant Federal Brick Management Group, LLC, appeals from an order of the Supreme Court, Kings County (Devin P. Cohen, J.), dated December 22, 2023. The order, insofar as appealed from, denied those branches of that defendant's motion which were for summary judgment dismissing the complaint insofar as asserted against it and for leave to enter a default judgment against the plaintiff on its counterclaim, and granted the plaintiff's cross-motion to deem its reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim.

ORDERED that the order is modified, on the law, (1) by deleting the provision thereof denying those branches of the motion of the defendant Federal Brick Management Group, LLC, which were for summary judgment dismissing the causes of action alleging violations of Labor Law §§ 240(1) and 241(6) insofar as asserted against it, and substituting therefor a provision granting those branches of the motion, and (2) by deleting the provision thereof granting the plaintiff's cross-motion to deem its reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim, and substituting therefor a provision denying the cross-motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

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Accordingly, we modify the order.

IANNACCI, J.P., GENOVESI, LANDICINO and LOVE, JJ., concur.

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PER CURIAM.

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denied those branches of Federal Brick's motion and granted the plaintiff's cross-motion. Federal Brick appeals. "In cases where a worker at a job site is injured as a result of a dangerous or defective premises condition, a defendant moving for summary judgment must establish prima facie that it neither created the allegedly dangerous condition nor had actual or constructive notice of it" (*Carey v Five Bros., Inc.* , 106 AD3d 938 , 941). "As a general rule, liability for dangerous conditions on land does not extend to a prior owner of the premises" (*Bittrolff v Ho's Dev. Corp.* , 77 NY2d 896 , [*2] 898). "A narrow exception exists, however, and liability may be imposed [on a prior owner] where a dangerous condition existed at the time of the conveyance and the new owner has not had a reasonable time to discover the condition, if it was unknown, and to remedy the condition once it is known" (*id.* ; see *Mullen v Zoebe, Inc.* , 205 AD2d 597, 597). Here, the Supreme Court properly denied those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence insofar as asserted against it to the extent that they sounded in premises liability. In support of its motion, Federal Brick submitted an affidavit from its principal and managing member, who asserted that, at the time of the alleged incident, Federal Brick had sold the premises to the defendant MBH Capital, LLC, and no longer owned or operated the premises. However, that affidavit did not address whether the allegedly dangerous condition existed at the time of the conveyance and whether the new owner knew of the condition or had a reasonable time to discover and remedy it (see *Larrier v Gateway Sherman, Inc.* , 60 AD3d 913 ; *McKoy v Bagot* , 245 AD2d 276). Thus, Federal Brick failed to establish, prima facie, that it could not be held liable for the allegedly dangerous premises condition as a former owner. Inasmuch as "Labor Law § 200 is a codification of the common-law duty of property owners and general contractors to provide workers with a safe place to work" (*Carey v Five Bros., Inc.* , 106 AD3d at 941), the court properly denied those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence insofar as asserted against it to the extent that they sounded in premises liability. However, the "narrow exception" that allows for premises liability to be extended to prior owners of property (*Bittrolff v Ho's Dev. Corp.* , 77 NY2d at 898) does not apply to the statutory liability imposed by Labor Law §§ 240(1) and 241(6). Those statutes apply to certain construction-related activities (see *Saint v Syracuse Supply Co.* , 25 NY3d 117, 124 ; *Ricottone v PSEG Long Is., LLC* , 221 AD3d 1032, 1034), rather than premises conditions for which a prior owner might remain responsible. Federal Brick established, prima facie, that it was not the owner of the property or the general contractor at the time of the alleged accident, and the plaintiff failed to raise a triable issue of fact in opposition. Thus, the Supreme Court should have granted those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging violations of Labor Law §§ 240(1) and 241(6) insofar as asserted against it. The Supreme Court also should have denied the plaintiff's cross-motion to deem its reply to the counterclaim served nunc pro tunc and for summary judgment dismissing the counterclaim. The

plaintiff failed to vacate its default in replying to the counterclaim because he did not set forth a reasonable excuse for his delay (see *GITSIT Solutions, LLC v Azcuy* , 242 AD3d 956 , 958; *Triple E. Constr., Inc. v Green-Citi Mgt., Inc.* , 238 AD3d 1192 , 1193). Because the plaintiff failed to vacate his default in replying to the counterclaim, the court should not have entertained the nonjurisdictional defense presented in his motion (see generally *Newrez LLC v Jebco OGM Resources* , 236 AD3d 1373 , 1374; *Bank of N.Y. Mellon Trust Co., N.A. v Lagasse* , 224 AD3d 800). Additionally, the court should have denied the cross-motion because issue had not been joined on the counterclaim (see CPLR 3212[a]; *Elias v Serota* , 103 AD2d 410, 417). However, the Supreme Court properly denied that branch of Federal Brick's motion which was for leave to enter a default judgment on its counterclaim for sanctions. "On a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant's default" (*Pantanilla v Yuson* , 237 AD3d 1213 , 1214 [internal quotation marks omitted]; see CPLR 3215[f]; *Nationstar Mtge., LLC v Gross* , 201 AD3d 942, 944). "To demonstrate the facts constituting the cause of action, the plaintiff need only submit sufficient proof to enable a court to determine if the cause of action is viable, since defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them. However, a court does not have a mandatory, ministerial duty to grant a motion for leave to enter a default judgment, and retains the discretionary obligation to determine whether the movant has met the burden of stating a viable cause of action" (*Barbetta v Facchini* , 236 AD3d 623 , 624-625 [internal quotation marks omitted]). Here, the plaintiff does not dispute that he did not reply in a timely manner to Federal Brick's counterclaim for sanctions. However, the Supreme Court properly denied that branch of [*3] Federal Brick's motion which was for leave to enter a default judgment because Federal Brick did not meet its burden of stating a viable cause of action. "New York does not recognize an independent cause of action for the imposition of sanctions under either CPLR 8303-a or Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1" (*Cerciello v Admiral Ins. Brokerage Corp.* , 90 AD3d 967, 968). Since Federal Brick brought its counterclaim pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1, no viable cause of action exists (see *Cerciello v Admiral Ins. Brokerage Corp.* , 90 AD3d at 968), and that branch of the motion which was for leave to enter a default judgment was properly denied (see *Barbetta v Facchini* , 236 AD3d at 625). Accordingly, we modify the order. IANNACCI, J.P., GENOVESI, LANDICINO and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

