

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

Hernandez v. Bushwick Realty Holdings LLC

Hernandez, 2026 NY Slip Op 03879 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 23014/18; Appeal No. 6922; Case No. 2025-03642 · Decided June 18, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order granting the plaintiff summary judgment on liability under Labor Law § 240(1) arising from a fall from a ladder at a construction site. The court held that the ladder's sudden movement established a prima facie violation, and that alleged misuse, contradictory testimony, and expert opinions did not 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	Kennedy, J.P.; Friedman, J.; Gesmer, J.; Michael, J.; Chan, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	June 18, 2026
DOCKET	Index No. 23014/18; Appeal No. 6922; Case No. 2025-03642
DISPOSITION	affirmed
PROCEDURAL POSTURE	Capital Concrete NY Inc. appealed from an order denying its motion for summary judgment dismissing Roberto Hernandez's Labor Law §§ 240(1) and 241(6) claims and granting Hernandez summary judgment as to liability on his Labor Law § 240(1) claim.
STANDARD OF REVIEW	The court reviewed the summary judgment record to determine whether the moving party established entitlement to judgment as a matter of law and whether the opposing party raised a triable issue of fact.
PRECEDENTIAL VALUE	published
PARTIES	Capital Concrete NY Inc. v. Roberto Hernandez

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QUESTIONS PRESENTED

1. Whether Hernandez was entitled to summary judgment as to liability on his Labor Law § 240(1) claim based on his testimony that the ladder suddenly moved and caused his fall.
2. Whether Hernandez's alleged misuse of the ladder, contradictory testimony, or failure to use an available staircase raised a triable issue of fact or established that he was the sole proximate cause of the accident.
3. Whether Capital Concrete's expert opinion that the ladder could not have moved raised a triable issue of fact.
4. Whether the court needed to reach Capital Concrete's arguments concerning Hernandez's Labor Law § 241(6) claim after affirming summary judgment under Labor Law § 240(1).

HOLDINGS

1. Hernandez established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim through testimony that he fell when the ladder suddenly moved, and Capital Concrete failed to raise a triable issue of fact.
2. Any alleged misuse of the ladder constituted, at most, comparative negligence and was not a defense to the Labor Law § 240(1) claim; Hernandez's contradictory accounts were immaterial because he consistently testified that the ladder moved and caused his fall.
3. Capital Concrete's expert opinion that the ladder was secured and could not have moved was speculative and insufficient to defeat summary judgment because the expert did not physically inspect the ladder.
4. The court did not reach the merits of Capital Concrete's Labor Law § 241(6) arguments because its affirmance of summary judgment on the Labor Law § 240(1) claim made those arguments academic.

KEY QUOTATIONS

“any alleged misuse of the ladder constitutes at most comparative negligence, which is not a defense to a Labor Law § 240(1) claim” ([*1])

“Capital Concrete's expert opinion that the ladder was secured and could not have moved is speculative because the expert did not conduct any physical inspection of the ladder” ([*2])

FACTUAL BACKGROUND

Hernandez fell from a ladder while descending to the basement of a construction-site job location. He testified that the ladder rapidly moved to the right when he reached its middle, causing him to fall, although he gave contradictory accounts about whether he descended facing the rungs and whether he used one or both hands. Capital Concrete relied on expert testimony that the ladder was secured and could not have moved and argued that Hernandez should have used an available staircase.

PROCEDURAL HISTORY

Hernandez brought claims arising from a fall from a ladder at a construction site. Supreme Court, Bronx County, denied Capital Concrete's motion for summary judgment on the Labor Law claims and granted Hernandez summary judgment as to liability under Labor Law § 240(1). The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Rom v. Eurostruct, Inc., 158 AD3d 570, 571 (1st Dept 2018)
- Pinzon v. Royal Charter Props., Inc., 211 AD3d 442, 443 (1st Dept 2022)
- Hoxhaj v. West 30th HL LLC, 195 AD3d 503, 504 (1st Dept 2021)
- Bradley v. IBEX Constr., LLC, 54 AD3d 626, 627 (1st Dept 2008)
- Ellerbe v. Port Auth. of N.Y. & N.J., 91 AD3d 441, 442 (1st Dept 2012)
- Rivera v. 712 Fifth Ave. Owner LP, 229 AD3d 401, 402-403 (1st Dept 2024)
- Garces v. Windsor Plaza, LLC, 189 AD3d 539, 539 (1st Dept 2020)
- Fanning v. Rockefeller Univ., 106 AD3d 484, 485 (1st Dept 2013)