

**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

OPINION

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PER CURIAM.

Hernandez v Bushwick Realty Holdings LLC - 2026 NY Slip Op 03879 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Hernandez v Bushwick Realty Holdings LLC 2026 NY Slip Op 03879 June 18, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Roberto Hernandez, Plaintiff-Respondent, v Bushwick Realty Holdings LLC et al., Defendants-Respondents. Bushwick Realty Holdings LLC et al., Third-Party Plaintiffs-Respondents, Sam Maintenance Service Inc. Doing Business as Demo Boyz, Third-Party Defendant-Respondent. Sam Maintenance Service Inc. Doing Business as Demo Boyz, Second Third-Party Plaintiff-Respondent, Capital Concrete NY Inc., Second Third-Party Defendant-Appellant, Dunn Co. Safety LLC et al., Second Third-Party Defendants. Decided and Entered: June 18, 2026 Index No. 23014/18|Appeal No. 6922|Case No. 2025-03642| Before: Kennedy, J.P., Friedman, Gesmer, Michael, Chan, JJ. Gerber Ciano Kelly Brady LLP, Garden City (Brendan T. Fitzpatrick of counsel), for appellant. Gorayeb & Associates, P.C., New York (Jonathan D. Moran of counsel), for Roberto Hernandez, respondent. [*1] Order, Supreme Court, Bronx County (Shawn T. Kelly, J.), entered on or about May 22, 2025, which, to the extent appealed from as limited by the briefs, denied the motion of second third-party defendant Capital Concrete NY Inc. for summary judgment dismissing plaintiff's Labor Law § 240(1) claim and the Labor Law § 241(6) claim predicated on Industrial Code (12 NYCRR) §§ 23-1.5(c)(3), 23-1.21(b)(1), and 21-1.21(b)(3), and granted plaintiff's motion for summary judgment as to liability on his Labor Law § 240(1) claim, unanimously affirmed, without costs. Plaintiff alleges that he fell from a ladder while he was using it to descend to the basement of a job site. Plaintiff initially testified that he was facing the rungs of the ladder with both hands on the handrails as he descended, but later testified that he descended facing away from the ladder with only his right hand on it. According to plaintiff, when he reached the middle of the ladder, it "rapidly" moved to the right, causing him to fall. Plaintiff made a prima facie showing of entitlement to summary judgment on his Labor Law § 240(1) claim through his deposition testimony that he fell from the ladder when

it suddenly moved (see *Rom v Eurostruct, Inc.* , 158 AD3d 570 , 571 [1st Dept 2018]). Although plaintiff testified that the ladder was "secured at both the top and the bottom," and that he did not know whether the ladder detached from those secured points, this testimony does not raise an issue of fact, as plaintiff is not required to demonstrate that the ladder was defective (see *Pinzon v Royal Charter Props., Inc.* , 211 AD3d 442 , 443 [1st Dept 2022]). Capital Concrete's opposition failed to raise a triable issue of fact or demonstrate that plaintiff was the sole proximate cause of the accident. Even if plaintiff descended the ladder while facing away from the rungs with only one hand on the railing, any alleged misuse of the ladder constitutes at most comparative negligence, which is not a defense to a Labor Law § 240(1) claim (see *Hoxhaj v West 30th HL LLC* , 195 AD3d 503 , 504 [1st Dept 2021]). Furthermore, although plaintiff gave contradictory testimony about how he descended the ladder, the contradictions are immaterial to a determination of liability under Labor Law § 240(1) given that plaintiff consistently testified that he fell because the ladder moved (see *Bradley v IBEX Constr., LLC* , 54 AD3d 626, 627 [1st Dept 2008]). Thus, defendants are liable under either version of the accident (see *Ellerbe v Port Auth. of N.Y. & N.J.* , 91 AD3d 441 , 442 [1st Dept 2012]). [*2] 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 (see *Rivera v 712 Fifth Ave. Owner LP* , 229 AD3d 401 , 402-403 [1st Dept 2024]). Further, while the expert also opined that plaintiff could have used an available staircase to access the basement, there is no evidence that plaintiff was instructed to use the staircase or that he was expected to do so (see *Garces v Windsor Plaza, LLC* , 189 AD3d 539 , 539 [1st Dept 2020]). Capital Concrete's arguments concerning plaintiff's Labor Law § 241(6) claim are academic in light of our finding that plaintiff was properly granted summary judgment as to liability on his Labor Law § 240(1) claim (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: June 18, 2026 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.