

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

Kapnick, J.P., Moulton, Kennedy, Mendez, Pitt-Burke, JJ.

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JAMES MEJIA,  
Plaintiff-Appellant,

Index No. 159121/17  
Case No. 2022-05066

-against-

SUPER P57 LLC et al.,  
Defendants-Respondents.

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Grey & Grey, LLP, Farmingdale (Sherman B. Kerner of counsel), for appellant.

Freehill Hogan & Mahar LLP, New York (William H. Yost of counsel), for respondents.

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Order, Supreme Court, New York County (James D'Auguste, J.), entered September 15, 2022, which, to the extent appealed from, denied plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim and granted defendants' cross motion for summary judgment dismissing the claim, unanimously affirmed, without costs.

Plaintiff failed to show entitlement to partial summary judgment. Plaintiff established little other than that he fell from the scaffold, which in and of itself does not establish a claim, under Labor Law § 240(1), which requires both a violation of the statute and causation (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 288-289 [2003]).

Defendants demonstrated prima facie both that the scaffold was equipped with proper guardrails, which provided an adequate safety device, and was undamaged after the alleged accident, so that there was no violation of Labor Law § 240 (1) (*see Fabrizi v*

*1095 Ave. of the Ams., L.L.C.*, 22 NY3d 658, 663 [2014]). Moreover, plaintiff was unable to recall how he fell from the scaffold and could provide no evidence that his fall was caused by the lack of a safety device, so that any finding of a violation would be purely speculative (see *Public Adm'r of Queens County v 124 Ridge LLC*, 203 AD3d 493, 494 [1st Dept 2022]; *Consolidated Edison Co. of N.Y. Inc. v Vilsmeier Auction Co., Inc.*, 21 AD3d 726, 729 [1st Dept 2005]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 18, 2023

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with a large initial "S" and "M".

Susanna Molina Rojas  
Clerk of the Court