

**Ming-Hua Huang v LF Gramercy Prop. Co., LLC**

2011 NY Slip Op 30028(U)

January 3, 2011

Supreme Court, New York County

Docket Number: 111711/07

Judge: Saliann Scarpulla

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Saliann Scarpulla PART 19

Justice

Huang, Ming-tuea

INDEX NO. 111711/07

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

- v -  
LF Gramercy Property Co.,

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

**FILED**

JAN 07 2011

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

NEW YORK  
COUNTY CLERK'S OFFICE

~~motion and~~ cross-motion are decided in accordance with accompanying memorandum decision.

Dated: 1/3/11

Saliann Scarpulla  
SALIANN SCARPUZZA J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X  
MING-HUA HUANG AND FU-YING ZHANG,

Plaintiffs,  
-against-

Index No.: 111711/07  
Submission Date: 10/13/10

LF GRAMERCY PROPERTY CO., LLC, CENTAUR  
PROPERTIES, LLC AND BERGER HARLAM,

Defendants.

**DECISION AND ORDER**

-----X  
LF GRAMERCY PROPERTY CO., LLC, CENTAUR  
PROPERTIES, LLC AND BERGER HARLAM,

Third-Party Plaintiffs,  
-against-

Third-Party Index No.:  
590037/08

CD HOUSING CONSTRUCTION CORP.,  
Third-Party Defendant.

**FILED**

For Plaintiffs:  
Caesar & Napoli  
350 Broadway, 10<sup>th</sup> Floor  
New York, NY 10013

For Defendants:  
Law Offices of Margaret G. Klein & Associates  
200 Madison Avenue  
New York, NY 10016

JAN 07 2011

Papers considered in review of this motion for summary judgment and cross motion for summary judgment:

NEW YORK  
COUNTY CLERK'S OFFICE

Notice of Motion . . . . .	1
Notice of Cross Motion . . . . .	2
Aff in Opp . . . . .	3
Reply . . . . .	4

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, third-party defendant CD Housing Construction Corp. ("CD") moves for summary judgment dismissing the third-party complaint and plaintiff Ming-Hua Huang ("Huang") cross moves for partial

summary judgment on his Labor Law §240(1) cause of action asserted against defendants LF Gramercy Property Co., LLC (“Gramercy”), Centaur Properties, LLC (“Centaur”) and Berger Harlam (collectively “defendants”).<sup>1</sup>

Gramercy owned and Centaur managed the building located at 35 East 21<sup>st</sup> Street.<sup>2</sup> Pursuant to an agreement dated March 16, 2007, Centaur retained CD to perform certain renovation work in the building. On April 5, 2007, Huang, a laborer employed by CD, was engaged in the renovation of office space on the third floor of the building. He was standing on the third step of a six foot A-frame ladder that was placed on top of construction paper. Huang fell from the ladder and sustained injuries to his right hip.

Huang commenced this action seeking to recover damages for the injuries he sustained as the result of his fall. He asserted a negligence cause of action as well as Labor Law §241(6), §240(1), and §200 causes of action. His wife, plaintiff Fu-Ying Zhang, sought to recover damages for loss of services. Defendants answered the complaint and denied all material allegations.

Huang now cross moves for partial summary judgment on his Labor Law §240(1) cause of action asserted against the defendants, arguing that defendants clearly violated §240(1) by failing to provide him with a ladder that had adequate safety devices. In

---

<sup>1</sup> In an Interim Order dated October 13, 2010, the court granted third-party defendant’s motion for summary judgment dismissing the third-party complaint and reserved decision on the plaintiff’s cross motion for partial summary judgment.

<sup>2</sup> Defendant “Berger Harlam” is alleged to be an owner of Centaur.

support of his cross motion, Huang refers to, *inter alia*, his examination before trial testimony and affidavit, and the examination before trial testimony of CD's project manager Leonard Hu.

Huang testified that he had set up the ladder and locked the two cross bars in position so that the ladder would remain in its A-frame position. CD had supplied the ladder. The ladder had all of its component parts. The ladder was placed on top of construction paper taped to the floor by the workers. The paper was slightly worn out. At the time of the accident, Huang's left hand was holding the sheetrock and his right hand was holding a screw gun. He explained that the accident happened "while I was nailing the sheetrock to the ceiling and I hit something hard [with the screw gun] and that hard object shook very hard and I felt that the ladder moved forward." He explained that the ladder shook and toppled over to its side, causing him to fall from the ladder to the floor. No one was holding the ladder at the time of the accident.

Hu maintained that he was at the job site supervising work progress when Huang's accident occurred. The ladder from which Huang fell was owned by CD and was in good condition. Hu had not received any prior complaints about that ladder. No one was holding the ladder and there were no scaffolds at the work site. Another worker, Tsing, told Hu how the accident happened. Tsing told him that "when he screwed the ceiling, because it's too far away, so he cannot reach the screw. So he have to expand, to stretch himself. That's why - - he stretch himself, that's why the ladder, you know, fall."

Another worker, Logou, confirmed Tsing's account of the accident. Hu examined the subject ladder after the accident and found nothing wrong with the ladder.

In opposition, defendants argue that the cross motion must be denied because issues of fact exist as to whether Huang simply lost his balance and fell from the ladder, such that his own actions were the sole proximate cause of the accident.

They submit the examination before trial testimony of CD Design Inc.'s project manager Alex Wu ("Wu") to support their argument. Wu testified that CD Design works jointly on projects with CD Housing. He explained that he was working at the job site on the day of the accident checking job progress and he witnessed the accident. He saw Huang walk up to the third step of the ladder with a screw gun in his hand, raise his arms, lose his balance and then fall. He claimed that Huang's friend, CD employee Gao, was holding the ladder in place. Wu further claimed that the ladder did not move prior to Huang's fall and remained standing when Huang fell.

### **Discussion**

Labor Law 240(1) imposes absolute liability on building owners, construction contractors and their agents with regard to elevation-related risks to workers at construction sites. *See Rodriguez v. Forest City Jay St. Assocs.*, 234 A.D.2d 68 (1<sup>st</sup> Dept. 1996). The statute was designed to prevent those types of accidents in which the protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person. *See Runner v.*

*New York Stock Exchange*, 13 N.Y.3d 599 (2009); *Luongo v. City of New York*, 72 A.D.3d 609 (1<sup>st</sup> Dept. 2010). To prevail on a Section 240(1) claim, the plaintiff must show that the statute was violated and that this violation was a proximate cause of the plaintiff's injuries. *Blake v Neighborhood Housing Services of New York City*, 1 N.Y.3d 280, 287 (2003); *Felker v Corning Inc.*, 90 N.Y.2d 219, 224-225 (1997); *Torres v Monroe College*, 12 A.D.3d 261, 262 (1<sup>st</sup> Dept. 2004). The failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law 240(1). *Wasilewski v. Museum of Modern Art*, 260 A.D.2d 271, 271 (1<sup>st</sup> Dept. 1999).

Here, Huang made a *prima facie* showing of liability under Labor Law 240(1) through his testimony that the ladder shook and moved forward, causing the ladder and him to fall. *See Siegel v RRG Fort Greene, Inc.*, 68 A.D.3d 675 (1<sup>st</sup> Dept. 2009).

In opposition, however, the defendants raised an issue of fact as to the happening of the accident and whether Huang's actions were the sole proximate cause of same. The conflict between Wu and Huang's testimony as to the happening of the accident presents a triable issue of fact as to whether Huang's injury was attributable to defendants' failure to provide adequate protective devices or was caused simply because Huang lost his balance. *See Buckley v. J.A. Jones/GMO*, 38 A.D.3d 461 (1<sup>st</sup> Dept. 2007); *Petrocelli v. Tishman Constr. Corp.*, 19 A.D.3d 145 (1<sup>st</sup> Dept. 2005); *Delahaye v. Saint Anns School*, 40 A.D.3d 679 (2<sup>nd</sup> Dept. 2007).

In accordance with the foregoing, it is hereby

ORDERED that plaintiff Ming-Hua Huang's cross motion for partial summary judgment on his Labor Law §240(1) cause of action asserted against defendants LF Gramercy Property Co., LLC, Centaur Properties, LLC, and Berger Harlam is denied.

This constitutes the decision and order of the Court.

Dated: New York, NY  
~~December~~, 2010  
January 3

ENTER:

*Saliann Scarpulla*  
Saliann Scarpulla, J.S.C.

**FILED**

**JAN 07 2011**

NEW YORK  
COUNTY CLERK'S OFFICE