At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of April 2024.

P R E S E N T:

HON. INGRID JOSEPH,
Justice.

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ZAFAR SABOEV,

Plaintiff,

-against-

Index No. 516386/18

THE BORDEN REVIEW LLC, CENTRO PAZ CONSTRUCTION CORP, and GOOD QUALITY BUILDERS AND CONSTRUCTION CORP.,

Defendants.

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DECISION & ORDER

THE BORDEN REVIEW LLC,

Third-Party Plaintiff,

-against-

FIRST QUALITY ELECTRIC CORP, a/k/a FQE ELECTRIC LLC,

Third-Party Defendant.

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CENTRO PAZ CONSTRUCTION CORP. and GOOD QUALITY BUILDERS AND CONSTRUCTION CORP.,

Second Third-Party Plaintiffs,

-against-

KEREN STAR MANAGEMENT LLC,

Second Third-Party Defendant.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	212-227, 235-241, 245-264
Opposing Affidavits (Affirmations)	270-276, 277-278, 279-285
Affidavits/ Affirmations in Reply	287, 288, 289

Upon the foregoing papers, third-party defendant First Quality Electric Corp. a/k/a FQE Electric LLC (FQE) moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the third-party claims and all other claims and cross claims asserted against FQE (Mot. Seq. No. 10). Defendants/second-third party plaintiffs Centro Paz Construction Corp. and Good Quality Builders and Construction Corp. (the Centro Paz defendants) move for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint and all cross claims and counterclaims as against the Centro Paz defendants (Mot. Seq. No. 11). Plaintiff Zafar Saboev moves for an order, pursuant to CPLR 3212, granting partial summary judgment in plaintiff's favor on his Labor Law § 240 (1) claim as asserted against The Borden Review LLC (Borden) (Mot. Seq. No. 12).

This matter involves an accident that occurred on July 8, 2018, at a construction site at a two-story building located at 30-02 Borden Avenue in Long Island City.[1] On this date, the premises was owned by Borden and second-third party defendant Keren Star Management LLC was the property manager for the building. There were two phases involved in the project and the record reveals that the Centro Paz defendants[2] were involved in phase one and performed work relating to reinforcement of the existing building structure. The record further indicates that the work that the Centro Paz defendants had performed was completed several months before plaintiff's accident. FQE was involved in both phases of the project and was responsible for electrical work including the installation of lighting, panel boxes, gates, power outlets, and switches. Plaintiff testified that he was employed by FQE as a mechanical helper and was only assigned to work at the premises on Sundays for the four weeks prior to his accident. He further testified that on the day of the accident, he was working on the second floor, and was responsible

[1] The property was also known as 30-01 Review Avenue.
[2] Defendant Good Quality Builders and Construction Corp. did not perform any work at the premises.

for removing and replacing wiring and piping and replacing and installing new three-foot-long lamps. In order to perform this work, plaintiff was using a 12-foot tall A-frame ladder. Plaintiff stated that he was standing on either the third or fourth rung from the top and was using a Sawzall to cut through the pipes. He testified that his co-worker, Temur Shamsiev, was holding the ladder as it shook when he used the Sawzall. However, at some point, Mr. Shamsiev stepped away to plug a device back into an electrical socket but failed to advise plaintiff of this. As plaintiff was cutting a pipe, the ladder began to shake causing plaintiff and the ladder to fall to the ground. Plaintiff sustained various injuries.

Plaintiff commenced the instant action by filing a summons and verified complaint on August 10, 2018. Defendant Borden joined issue by filing a verified answer on January 3, 2019, and the Centro Paz defendants filed a verified answer on February 12, 2019. On October 3, 2019, Borden filed a third-party complaint against FQE, which served a verified answer on February 13, 2020. On June 12, 2020, plaintiff filed an amended verified complaint and served a verified Bill of Particulars on July 1, 2020. On July 2, 2020, the Centro Paz defendants filed a joint verified answer to the amended complaint. Borden filed its answer to the amended complaint on August 17, 2020. On May 4, 2022, the Centro Paz defendants filed a second third-party action against Keren Star Management LLC. Discovery ensued, and the depositions of plaintiff and representatives from Borden, Centro Paz, FQE and a non-party witness were conducted. Plaintiff filed his note of issue on January 26, 2023, and the following timely motions were made.

The Court will first address FQE's motion, which seeks an order dismissing the third-party claims and all other claims and cross claims asserted against FQE. FQE argues that all claims against it should be dismissed as the third-party action is barred by Section 11 of the Workers' Compensation Law since FQE was plaintiff's employer and FQE had no contractual obligation to defend and or indemnify any party for plaintiff's injuries. Workers' Compensation Law § 11 prohibits common law indemnity or contribution claims against a plaintiff's employer unless the plaintiff sustained a grave injury. This section provides in pertinent part as follows:

> An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand

> or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

In support of its contention that all claims should be dismissed against FQE because it was plaintiff's employer and he did not sustain a grave injury, FQE points to the testimony of both plaintiff and FQE President Yoel Guttman, both of whom testified that plaintiff was an employee of FQE on the date of the accident. FQE submits a printout of a time clock entry which indicates that plaintiff was paid for approximately nine hours of work that he allegedly performed on July 8, 2018, for FQE. In addition, FQE points to a decision issued by the New York State Workers' Compensation Board related to the accident at issue, that lists FQE as plaintiff's employer. FQE further notes that plaintiff, in his bill of particulars, has alleged physical injuries to both ankles and shoulders, cervical and lumbar spine, as well as headaches, depression and anxiety. FQE argues that none of the injuries alleged by plaintiff rise to the level of a grave injury as defined in Workers' Compensation Law § 11.

Additionally, FQE argues that Borden retained it to do the electrical work at the premises without entering into a written contract. In support of this, FQE submits copies of the proposal and invoices it submitted to Borden, none of which contain any terms, conditions, or indemnification provisions. FQE further claims that it did not enter into a contract with any other party for the work that plaintiff was performing for FQE on the date of his alleged accident. Accordingly, FQE argues that any claims seeking contractual indemnification from FQE should be dismissed.

In opposition, Borden argues that FQE's motion should be denied because although plaintiff was an employee of FQE, at the time of the accident he was not performing work within the scope of his employment. Specifically, Borden contends that plaintiff unlawfully entered the premises on a Sunday to remove Borden's property (copper wiring) to sell and personally profit from and was not there to install light fixtures as he contends. In support of this contention, Borden relies on the deposition testimony of non-party Mohammed Loutfy. Mr. Loutfy was a tenant on the first floor of the premises and was present on the date of the accident. Mr. Loutfy testified that plaintiff and another man arrived at the premises on the morning of July 8, 2018, and entered through his first floor space to access the second floor as the site was not open and no other

construction work was taking place (NYSCEF Doc No. 271, at 22, lines 20-22). He testified that the two men arrived in a private minivan, not an FQE vehicle, and were wearing regular clothes and not any sort of FQE shirt or uniform as he had observed in the past (*id.* at 21, lines 5-20). Mr. Loutfy further testified that when he went up to the second floor to use the bathroom, he observed one of the individuals on top of the ladder pulling and removing old wiring from pipes that were located in the ceiling while the other individual was rolling the wiring on the floor (he did not observe any light fixtures being installed (*id.*at 27-31), Mr. Loutfy testified that a few hours later he observed one of the individuals assisting the other down the stairs and was informed that the man had fallen off a ladder (*id.* at 32, lines 2-8). He stated that he observed the men leave the premises with the rolled-up wire and that he called property manager Isidore Mandel the next day to tell him about the accident.

Additionally, Borden points to the deposition testimony of Mr. Mandel, who testified that the installation of the light fixtures had been completed prior to July 8, 2018. He further testified that the building was closed on Sundays and that no trades should have been there performing work on that day. Additionally, Borden argues that neither the proposal nor the invoices submitted by FQE indicate that the removal of existing wires was to be performed.

In reply, FQE argues that Borden fails to raise an issue of fact in its opposition to FQE's prima facie showing of entitlement to summary judgment pursuant to Workers' Compensation Law § 11. Specifically, FQE contends that even if Borden was correct and plaintiff was stealing wires and thus acting outside the scope of his employment, FQE still could not be held liable under the Labor Law or common-law principles as it would not have had the authority to control safety measures or the working conditions at the time of the accident.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact'" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], citing *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *see Sucre v Consolidated Edison Co. of N.Y., Inc.*, 184 AD3d 712, 714 [2d Dept 2020]). "The proponent for the summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact" (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce admissible evidence to establish the existence of material issues of fact which require a trial for resolution (*see Gesuale v Campanelli & Assocs.*, 126 AD3d 936, 937 [2d Dept 2015]; *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 494 [2d Dept 1989]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad*, 64 NY2d at 853; *Skrok v Grand Loft Corp.*, 218 AD3d 702 [2d Dept 2023]; *Menzel v Plotnick*, 202 AD2d 558, 558-559 [2d Dept 1994]).

Here, FQE has established its entitlement to summary judgment dismissing the third-party claims and all other claims asserted against it through the submission of the testimony of both plaintiff and Mr. Guttman, that plaintiff was performing electrical work at the premises on behalf of FQE at the time of his accident (*see Velazquez-Guadalupe v Ideal Bldrs. & Constr. Servs., Inc.*, 216 AD3d 63, 73 [2d Dept 2023] [noting that "controversies regarding the applicability of the Workers' Compensation Law rest within the primary jurisdiction of the Workers' Compensation Board, including issues as to the existence of an employer-employee relationship"]). In addition, FQE has demonstrated, through the submission of plaintiff's bill of particulars, that he did not sustain a grave injury (*see McIntosh v Ronit Realty, LLC*, 181 AD3d 580, 581 [2d Dept 2020]; *McDonnell v Sandaro Realty, Inc.*, 165 AD3d 1090, 1097 [2d Dept 2018]; *Delvalle v Mercedes Benz USA, LLC*, 117 AD3d 894, 894 [2d Dept 2014]). Finally, FQE has submitted copies of the proposals and invoices between Borden and FQE which do not contain any indemnification obligation on the part of FQE (*see Grech v HRC Corp.*, 150 AD3d 829, 830 [2d Dept 2017]).

Borden fails to raise an issue of fact in opposition. To the extent that Mr. Mandel testified that all of the electrical work was completed a week prior to plaintiff's accident which occurred on July 8, 2018, and that it did not involve the removal of electrical wiring, this is belied by the fact that a violation was issued by the Department of Buildings on July 5, 2018, which stated that an inspection was conducted and "[a]t time of inspection observed the removal of existing high voltage electrical wiring. An electrical permit is needed for this work and no such permit was filed" and a stop work order was issued on July 9, 2018, the day after plaintiff's accident. Additionally, as stated above, the testimony of plaintiff and FQE owner, Mr. Guttman, demonstrates that plaintiff was performing electrical work on behalf of FQE at the time of plaintiff's accident, which Borden fails to rebut. Finally, the court does not find that Mr. Loutfy's

testimony creates an issue of fact. That Mr. Loutfy, a non-party who was not involved in the construction work that was being performed, testified that plaintiff and his coworker arrived at the premises in a non-FQE vehicle and were not wearing FQE uniforms at the time of the accident is not sufficient to raise a question of fact to overcome FQE's prima facie establishment that plaintiff was performing electrical work on FQE's behalf at the time of the accident. Accordingly, FQE's motion seeking summary judgment dismissing the third-party claims and all other claims asserted against it is granted and said claims are dismissed.

The Court next turns to the Centro Paz defendants' motion for summary judgment dismissing the complaint and all cross claims and counterclaims as against the Centro Paz defendants. Specifically, they argue that they were not involved with the electrical work that plaintiff was allegedly performing at the premises at the time of his accident. The Centro Paz defendants maintain that they had completed their work at the premises several months prior to plaintiff's accident. Thus, they assert that they did not owe any duty to plaintiff. In this regard, the Centro Paz defendants aver that they were only involved in phase one of the construction project and had completed their work at the premises several months prior to plaintiff's accident. In support of this, they cite to a letter dated May 15, 2018, from Louis Handler, who was employed by Keren Star Management as an owner's representative and manager of the premises at issue, to J. Gutman (Jacob Gutman), the owner of Centro Paz (NYSCEF Doc No. 238). The letter thanked Centro Paz for the completion of phase one of the project and indicated that the second phase of the project was on hold due to financial matters. Finally, the letter indicated that Centro Paz could revoke the work permit for the location. Moreover, the Centro Paz defendants argue that they do not owe any contractual obligations to Borden as there was no contract between these entities containing an indemnity clause.

Plaintiff opposes the Centro Paz defendants' motion but only to the extent that it could be interpreted as seeking dismissal of plaintiff's complaint as against Borden.

Here, the Centro Paz defendants have demonstrated their entitlement to summary judgment dismissing all claims and cross claims asserted against them through the submission of the letter indicating that it could pull the permit for the project and thanking it for performing the work on the project, which is dated prior to plaintiff's accident. In addition, Mr. Gutman's testimony indicates that Centro Paz had completed its work at the premises in approximately January 2018, and Mr. Handler testified that "to the best of his knowledge" Centro Paz was no longer at the site

in July 2018. No party rebuts the Centro Paz defendants' prima facie demonstration of entitlement to summary judgment. Accordingly, as the Centro Paz defendants' work at the site was completed prior to plaintiff's accident, no liability can be imposed upon them and all claims and cross claims asserted against the Centro Paz defendants are dismissed (*see Agurto v One Boerum Dev. Partners LLC*, 221 AD3d 442, 444 [1st Dept 2023] [holding that there was no basis to impose liability on a contractor no longer working at the site at the time of plaintiff's accident]; *Orofino v 388 Realty Owners, LLC*, 146 AD3d 532, 533 [1st Dept 2017] [no liability where the unrebutted proof demonstrated that contractor and its subcontractors were no longer on site at the time of the accident]).

The Court next turns to Plaintiff's motion for partial summary judgment in his favor on his Labor Law § 240 (1) claim as asserted Borden. Plaintiff argues that he was injured while working at premises owned by Borden in his capacity as a construction worker employed by FQE. Plaintiff contends that Borden retained FQE to perform electrical work at the premises, including the removal and replacement of old wiring necessary to install lighting fixtures. Plaintiff testified that at the time of his accident he was using a twelve-foot A-frame ladder to perform his work which entailed climbing to approximately the third or fourth rung from the top. He further testified that he was using a Sawzall to cut pipes in the ceiling to remove old wiring. Specifically, plaintiff testified that as he was cutting a pipe, the ladder started shaking and veering to the right causing him and the ladder to fall to the ground. He asserts that the ladder was old and unstable and that the floor where he had to work was uneven. In support of his motion, he submits an affidavit from his co-worker Temur Shamsiev, who claims to have been working with plaintiff at the time of the accident (NYSCEF Doc No. 264). Mr. Shamsiev affirms that he and plaintiff were employed by FQE and were performing electrical work on behalf of their employer on the date of plaintiff's accident. He states that he had been holding the ladder steady for plaintiff as he performed his work. However, Mr. Shamsiev states that a plug from an electrical device had dislodged from the electrical socket in the wall and he stopped holding the ladder to go and plug it back in. Mr. Shamsiev admits that he failed to inform plaintiff that he was doing so and that is when plaintiff's accident occurred. Plaintiff maintains that he is entitled to partial summary judgment on the issue of liability on his Labor Law § 240 (1) claim as Borden was the owner of the premises at the time of his accident.

In opposition, Borden raises the same arguments it raised in opposing FQE's motion. Namely, that plaintiff was not acting within the scope of his employment at the time of the incident but was actually at the site to steal copper wiring. Borden contends that plaintiff's accident occurred on a Sunday when the building was not open to any of the trades. In support of this, Borden points to the deposition testimony of Mr. Loutfy, the tenant of the first floor, who let plaintiff and another man onto the premises and observed that they were not wearing any uniforms and had arrived in a private minivan. He further testified that he observed the two men removing wiring from the piping. Borden further notes that the proposal submitted by FQE indicated that the work it would be performing at the premises involved furnishing and installing switchgear and 1200-amp meters on the first and second floors (NYSCEF Doc No. 282). Next Borden points to the invoices submitted by FQE and notes that none of the invoices reference the removal of existing wiring or the replacement of old light fixtures with new ones. Further, Borden asserts that the light points with piping installed on the second floor were not installed in any area where the old light fixtures were located and that FQE was not required to remove any existing wiring in order to install any of the new lighting fixtures (NYSCEF Doc No. 283). Borden also relies on the deposition testimony of Keren Star's property manager Isidore Mandel, who testified that he had visited the site a week before plaintiff's accident and observed that all of FQE's work at the property had been completed at that time (NYSCEF Doc No. 284 at 39, lines 5-11). Accordingly, Borden argues that issues of fact exist regarding whether plaintiff was performing work at the premises for his employer at the time of his accident that preclude a grant of summary judgment in plaintiff's favor.

In reply, plaintiff contends that Borden fails to raise an issue of fact because its contention that plaintiff was not at the premises performing work on behalf of FQE is based on feigned evidence. In this regard, plaintiff asserts that Borden's party witnesses made contradictory statements regarding when they first learned about the accident. Additionally, plaintiff contends that Borden's claim that the removal of the copper wires was not part of FQE's scope of work is rebuttable because Mr. Mandel testified that "to his knowledge" FQE was not supposed to take out the copper wiring but admitted that he had only been assigned to monitor this project a month prior (NYSCEF Doc No. 254 at 57, lines 2-11; at 18, lines 4-18). Conversely, plaintiff points to FQE owner, Yoel Guttman's testimony that FQE's work included the installation of lighting, panel boxes, gates, power outlets, switches, and "mak[ing] legal everything with piping and a nice job

for lighting" (NYSCEF Doc. No. 258 at 22, lines 15-18). Accordingly, plaintiff contends that FQE's work at the premises included the removal of existing wiring from piping throughout the premises.

Plaintiff further contends that the documentary evidence contradicts Borden's contention and indicates that the electrical work had not been completed prior to his accident and was in fact ongoing. In support of this, plaintiff points out that Borden was issued a violation from the New York City Department of Buildings (DOB) on July 5, 2018, for the performance of electrical work without a permit and the inspector had "observed the removal of existing high voltage electrical wiring" (NYSCEF Doc No. 259). In addition, on July 9, 2018, the day after plaintiff's accident, the DOB issued a stop work order due to a violation that had been issued a few days prior for the performance of "electrical work without a permit for the removal and disconnect of existing electrical wiring" (NYSCEF Doc No. 260). Plaintiff further points out that the stop work order was lifted when FQE obtained a permit in August 2018 for the "removal of old wiring and installation of fixtures" (NYSCEF Doc No. 261).

Plaintiff contents that Mr. Loutfy's testimony fails to demonstrate that plaintiff was not performing work within the scope of his employment at the time of the accident noting that his testimony that plaintiff was taking wiring from upstairs is not inconsistent with his job duties of removing and replacing wires and piping and installing new lighting fixtures.

Finally, plaintiff argues that Mr. Guttman, testifying on behalf of FQE, admitted that plaintiff was working for FQE on July 8, 2018, and testified that if he had been made aware of the violation being issued on July 5, 2018, FQE would not have been performing work at the premises on July 8, 2018. Additionally, plaintiff notes that FQE produced the punch clock printout indicating that he was working for FQE on that date. Moreover, plaintiff contends that the Workers' Compensation Board determined that he sustained a work related injury on July 8, 2018, while employed by FQE. Accordingly, plaintiff contends that Borden fails to raise an issue of fact in opposition to his motion for partial summary judgment on his Labor Law § 240 (1) claim.

Labor Law § 240 (1), states, in relevant part, that:

> All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers,

> blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed . . .

The purpose of Labor Law § 240 (1) is to protect workers "from the pronounced risks arising from construction work site elevation differentials" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see also Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Consequently, Labor Law § 240 (1) applies to accidents and injuries that directly flow from the application of the force of gravity to an object or to the injured worker performing a protected task (*see Gasques v State of New York*, 15 NY3d 869 [2010]; *Vislocky v City of New York*, 62 AD3d 785, 786 [2d Dept 2009], *lv dismissed* 13 NY3d 857 [2009]). The statute is designed to protect against "'such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured'" (*Ross v DD 11th Ave., LLC*, 109 AD3d 604, 604-605 [2d Dept 2013], quoting *Ross*, 81 NY2d at 501.

The duty to provide the required "proper protection" against elevation-related risks is nondelegable; therefore, owners, contractors and their agents are liable for the violations even if they have not exercised supervision and control over either the subject work or the injured worker (*see Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 521 [1985] [owner or contractor is liable for Labor Law § 240 (1) violation "without regard to . . . care or lack of it"]; *see Roblero v Bais Ruchel High` Sch., Inc.*, 175 AD3d 1446, 1447 [2d Dept 2019]). "To succeed on a cause of action under Labor Law § 240 (1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries" (*id.*). "A worker's comparative negligence is not a defense to a claim under Labor Law § 240 (1) and does not effect a reduction in liability" (*Roblero*, 175 AD3d at 1447, citing *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 286 [2003]; *see also Garzon v Viola*, 124 AD3d 715, 716-717 [2d Dept 2015]). In this regard, "where . . . a violation of Labor Law § 240 (1) is a proximate cause of an accident, the worker's conduct cannot be deemed solely to blame for it" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 696 [2d Dept 2006], citing *Blake*, 1 NY3d at 290).

In cases involving falling workers, "[w]hether a device provides proper protection is a question of fact, except when the device collapses, moves, falls or otherwise fails to support the plaintiff and his or her materials" (*Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 729 [2d Dept 2020], quoting *Melchor v Singh*, 90 AD3d 866, 868 [2d Dept 2011]). Thus, the collapse

of a ladder or scaffold constitutes prima facie evidence of a Labor Law § 240 (1) violation (*see Exley v Cassell Vacation Homes, Inc.*, 209 AD3d 839, 841 [2d Dept 2022]; *Debennedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021] injuries"]).

Plaintiff's testimony herein reveals that his Labor Law § 240 (1) claim arises out of his fall off of an unsecured A-frame ladder. Plaintiff maintains that it was the only ladder available to perform his work. He testified that he was performing work on the third or fourth rung from the top of the ladder reaching up to saw a pipe located overhead when the ladder wobbled and moved causing plaintiff to fall off the ladder, which also fell to the floor. In addition, plaintiff's co-worker, Mr. Shamsiev, affirms that he had been holding the ladder while plaintiff performed the work, but the accident occurred when he stepped away to put a plug back into an electric socket.

The court finds that plaintiff has established his prima facie entitlement to partial summary judgment in his favor on his Labor Law § 240 (1) claim as against Borden as he has demonstrated that defendants failed to provide him with a properly secured ladder or other appropriate safety device to perform his work. Borden fails to raise an issue of fact in opposition. To the extent that Mr. Mandel testified that all of the electrical work was completed a week prior to plaintiff's accident and did not involve the removal of electrical wiring, this is belied by the fact that a violation was issued by DOB on July 5, 2018, which indicated that existing high voltage electrical wiring was being removed at the time of the inspection, and that a stop work order was issued on July 9, 2018, the day after plaintiff's accident. Additionally, the testimony of plaintiff and FQE owner, Mr. Guttman, as well as the affidavit of plaintiff's co-worker, Mr. Shamsiev, all demonstrate that plaintiff was performing electrical work on behalf of FQE at the time of plaintiff's accident, which Borden fails to rebut. Accordingly, plaintiff's motion seeking partial summary judgment on his Labor Law § 240 (1) claim is granted.

To the extent not specifically addressed herein, the parties' remaining contentions and arguments were considered and found to be without merit and/or moot.

Accordingly, it is

ORDERED that FQE's motion (mot. seq. no. 10) seeking summary judgment dismissing the third-party claims and all other claims and cross claims asserted against FQE is granted and all claims as against FQE are dismissed, and it is further

ORDERED that the Centro Paz defendants' motion (mot. seq. no. 11) seeking summary judgment dismissing the complaint and all cross claims and counterclaims as against the Centro Paz defendants is granted and said claims are dismissed; and it is further

ORDERED that plaintiff's motion (mot.seq.no. 12) for an order granting partial summary judgment as to liability in plaintiff's favor on his Labor Law § 240 (1) claim as asserted against Borden is granted.

This constitutes the decision and order of the court.

E N T E R,

Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice