





Labor Law § 240(1)

Section 240(1) of the Labor Law provides, in pertinent part:

"All contractors and owners and their agents ... 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."

This section was enacted for the protection of workers from injury and "'is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed'" (Zimmer v Chemung County Performing Arts, 65 NY2d 513, 521 [1985], quoting Quigley v Thatcher, 207 NY 66, 68 [1912]).

Plaintiff testified that: He ascended an A-frame, free standing ladder in the restaurant, tested a fire alarm module which was attached to the ceiling, and determined that the module was malfunctioning. He then descended the ladder to replace the malfunctioning module. As he took one step downward, the ladder wobbled causing him to fall to the ground and fracture his left ankle.

Labor Law § 240(1) requires that a plaintiff be engaged in some type of construction, erection, demolition, or repair of a building or structure. Because the fire alarm module was built into the wall of the building, it was both a structure and part of the building for the purposes of Labor Law § 240(1) (see Lombardi v Stout, 80 NY2d 290 [1992]; Izrailev v Ficarra Furniture, 70 NY2d 813 [1987]). While it is true that Labor Law § 240(1) does not apply to routine maintenance in a nonconstruction context (see Edwards v Twenty-Four Twenty-Six Main St. Assocs., 195 AD2d 592 [1993]), that was not the situation here. In this case, the injured plaintiff was engaged in the repair of a nonfunctioning alarm system and as such was engaged in the type of "repair" work which is specifically protected under Labor Law § 240(1) (see Kinsler v Lu-Four Assocs., 215 AD2d 631 [1995]). Furthermore, inasmuch as the replacement of the fire alarm system was necessary since the older one was no longer functional, plaintiff's work was in the nature of "altering" or "repairing" of a building or structure and within the purview of section 240[1] (see Tate v Clancey-Cullen Storage Co., Inc., 171 AD2d 292 [1991]; cf. Prats v Port Auth. of N.Y. & N.J., 100 NY2d 878, 882 [2003]; Joblon v

Solow, 91 NY2d 457, 465 [1998]). Accordingly, the branch of the motion which is to dismiss plaintiff's claims pursuant to Labor Law § 240(1), on the ground that the work plaintiff was performing was not covered by Labor Law § 240[1], is denied.

The branch of Farmingville's motion which is to dismiss the complaint on the ground that plaintiff's accident was not caused by a violation of the Labor Law, but by plaintiff's own misuse of the ladder, is denied. Plaintiff here has asserted violations of Labor Law § 240(1), in that the ladder was not provided with proper protection against slipping and was not secured or steadied by either mechanical or human means while plaintiff climbed it. Both plaintiff and a co-worker testified that at no point was the ladder plaintiff used tied to any specific place so that it would not move and that the co-worker was not given any instructions to hold the ladder while plaintiff was on it. Farmingville provided no facts or opinion constituting evidence that the ladder was properly secured and hence provided proper protection. It has, thus, not shown a triable issue of fact regarding the cited violations. Thus, the undisputed evidence before this court is that the defendant did not provide any safety devices so that the ladder could be tied off nor did it provide scaffolding. The defendant had a non-delegable duty to provide these safety devices and to see to their use. It did neither. When a ladder slips from its position because it is unsecured against slipping, liability will attach pursuant to § 240 (see Evans v Anheuser Busch, Inc., 277 AD2d 874 [2000]; Petit v Board of Education, 307 AD2d 749 [2003]; Burke v APV Crepaco, Inc., 2 AD3d 1279 [2003]). Therefore, the branch of the motion which is to dismiss on the ground that plaintiff's misuse of the ladder caused his fall, is denied.

#### Labor Law § 200

Labor Law § 200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work (see Comes v New York State Elec. & Gas Corp., 82 NY2d 876 [1993]; Russin v Picciano & Son, 54 NY2d 311 [1981]). There is no liability under the common-law or Labor Law § 200, however, unless the owner or general contractor exercised supervision or control over the work performed (see Comes v New York State Elec. & Gas Corp., *supra*; Russin v Picciano & Son, *supra*; Schuler v Kings Plaza Shopping Ctr. & Mar., 294 AD2d 556 [2002]; Sprague v Peckham Materials Corp., 240 AD2d 392 [1997]). Farmingville established its *prima facie* entitlement to summary judgment dismissing the causes of action alleging common-law negligence and violation of Labor Law § 200 by demonstrating that it did not exercise any supervision or control over the work being performed (see Reinoso v Ornstein Layton Management, Inc.,

19 AD3d 678 [2005]). Plaintiff did not dispute this contention. Therefore, the branch of Farmingville's motion which is to dismiss plaintiff's claims pursuant to Labor Law § 200, is granted.

Labor Law § 241(6)

"Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers [citations omitted]" (Giza v New York City School Construction Authority, 22 AD3d 800, 801 [2005]). "In order to support a cause of action pursuant to Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the circumstances of the accident" (Biafora v City of New York, 27 AD3d 506 [2006]; see also Locicero v Princeton Restoration, 25 AD3d 664 [2006]), and which "sets forth specific safety standards" (Giza v New York City School Construction Authority, supra). Of the sections of the Industrial Code which plaintiff has alleged in his bill of particulars, section 23-1.5 ("General responsibility of employers") is insufficient to support a section 241(6) claim (see Maldonado v Townsend Ave. Enterprises, 294 AD2d 207 [2002]).

Section 23-1.16(b) of the Industrial Code ("Safety belts, harnesses, tail lines and lifelines") requires that harnesses provided by employers to their employees shall be used "at all times" while attached to a tail line or lifeline that is securely attached or anchored, so that if the worker were to fall, the fall would not exceed five feet (see Kyle v City of New York, 268 AD2d 192 [2000]). It is undisputed that plaintiff was not wearing a harness at the time of his accident. Thus, the branch of defendants' summary judgment cross motion which seeks dismissal of plaintiff's Labor Law § 241(6) claim based upon a violation of Industrial Code § 23-1.16 is denied.

The injured plaintiff's deposition testimony is unclear as to whether he fell because of a "wobbling" of the ladder or simply because he lost his balance (see Xirakis v 1115 Fifth Avenue Corp., 226 AD2d 452 [1996]). Accordingly, there are issues of fact as to whether the ladder failed to provide the injured plaintiff with the requisite "proper protection" (Kalofonos v State of New York, 104 AD2d 75 [1984]). Likewise, there are issues of fact concerning liability under Industrial Code § 23-1.21, as the plaintiff has not demonstrated as a matter of law that the ladder was insufficient to meet the load standards provided by Industrial Code § 23-1.21 (see Khan v Convention Overlook, Inc., 232 AD2d 529 [1996]; see generally Ross v Curtis Palmer Hydro-Elec. Co., 81 NY2d 494 [1993]; Zimmer v Chemung County Performing Arts, 65 NY2d 513

[1985]; Brinson v State of New York, 178 AD2d 457 [1991]). Therefore, the branch of Farmingville's motion which is for summary judgment in its favor, dismissing plaintiff's claims based upon a violation of Industrial Code § 23-1.21, is denied.

Plaintiff's cause of action alleging violations of Industrial Code § 23-1.7, is dismissed as it was not specifically pleaded and, in any event, appears inapplicable to the facts at hand (see Pisciotta v St. John's Hosp., 268 AD2d 465 [2000]).

#### Plaintiff's motion

\_\_\_\_\_The purpose of Labor Law § 240(1) is to protect workers from elevation-related risks (see Blake v Neighborhood Hous. Servs. of N.Y. City, 1 NY3d 280 [2003]; Joblon v Solow, 91 NY2d 457 [1998]; Rocovich v Consolidated Edison Co., 78 NY2d 509 [1991]). To establish liability under Labor Law § 240(1), a plaintiff must demonstrate a violation of the statute and that such violation was a proximate cause of his or her injuries (see Blake v Neighborhood Hous. Servs. of N.Y. City, *supra*; Rocovich v Consolidated Edison Co., *supra*). The plaintiff established his prima facie entitlement to partial summary judgment on the issue of liability under Labor Law § 240(1) by demonstrating that he was exposed to elevation-related risks for which no safety devices were provided, and that such failure resulted in his fall and was a proximate cause of his injuries (see Taeschner v M & M Restorations, 295 AD2d 598 [2002]; Elkins v Robbins & Cowan, 237 AD2d 404 [1997]). In opposition, Farmingville failed to raise a triable issue of fact. Although there is no dispute that the ladder from which the defendant fell was not defective, defendant failed to establish, prima facie, either that the plaintiff was provided with proper additional safety devices, or that no such devices were necessary (see Karapati v K.J. Rocchio, Inc., 12 AD3d 413, 415 [2004]; Alesius v Good Samaritan Hosp. Med. & Dialysis Ctr., 6 AD3d 470, 471 [2004]; see generally Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Therefore, plaintiffs' motion for summary judgment in their favor on their claims pursuant to Labor Law § 240, is granted.

#### Conclusion

\_\_\_\_\_The branches of the motion which seek to dismiss plaintiff's claims pursuant to Labor Law § 240(1), on the grounds that (1) the work plaintiff was performing was not covered by Labor Law § 240[1], and (2) that plaintiff's accident was not caused by a violation of the Labor Law, but by plaintiff's own misuse of the ladder, are denied.

The branch of Farmingville's motion which is to dismiss plaintiff's claims pursuant to Labor Law § 200, is granted.

The branches of Farmingville's summary judgment motion which seek dismissal of plaintiff's Labor Law § 241(6) claims based upon violations of Industrial Code sections 23-1.16 and 23-21, are denied. The branches of the motion which seek to dismiss plaintiff's Labor Law § 241(6) claims based upon violations of Industrial Code §§ 23-1.7 and 23-1.5, are granted.

Plaintiffs' motion for summary judgment in their favor on the issue of liability under Labor Law § 240(1), is granted.

Dated: July 12, 2006

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J.S.C.