STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

JAMES J. WILSON,

Plaintiff,

-against-

Index No.: 06-0639
RJI No.: 55-06-01076

MARLBORO CENTRAL SCHOOL DISTRICT,

Defendant.

All Purpose Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

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DECISION/ORDER

George B. Ceresia, Jr., Justice

Plaintiff commenced the instant action seeking recovery for injuries sustained when the platform of a scaffold collapsed, causing him to fall. Plaintiff has moved for partial summary judgment on the issue of liability pursuant to Labor Law § 240 (1)

Summary judgment is a drastic remedy which should only be granted when it is clear that there are no triable issues of fact (see Andre v Pomeroy, 35 NY2d 361, 364

[1974]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; see also Bush v St. Clare's Hosp., 82 NY2d 738, 739 [1993]). Once the movant has established a right to judgment as a matter of law, the burden shifts to the opponent of the motion to establish, by admissible proof, the existence of genuine issues of material fact (see Zuckerman v City of New York, 49 NY2d 557 [1980]). In general, the Court will then view the evidence in a light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference, and determine whether there is any triable issue of fact (see Boyce v Vazquez, 249 AD2d 724, 726 [3d Dept 1998]; Martin v Briggs, 235 AD2d 192, 196 [1st Dept 1997]; Simpson v Simpson, 222 AD2d 984, 986 [3d Dept 1995]).

Plaintiff was injured while installing insulation in the Milton Elementary School, which is owned by defendant. He had just climbed onto the working platform of a Baker's scaffold when the platform collapsed, causing plaintiff to fall through the center of the scaffold. While there is no indication that there was any physical defect in the frame of the scaffold, and the plywood comprising the platform did not break, it appears that the accident was caused because the plywood platform had shifted and was not properly placed or seated within the lip of the frame. There were no clamps or other means of affixing the platform to the frame so that it would remain in a safe and secure

position.

The Court finds that plaintiff's proof that the platform of the scaffold collapsed, causing him to fall, constitutes a prima facie showing of a violation of Labor Law § 240 (1), thereby meeting his burden on the motion for summary judgment of liability (see Gilbert v Albany Med. Ctr., 9 AD3d at 644; Morin v Machnick Bldrs., 4 AD3d at 670; Tavarez v Weissman, 297 AD2d 245 [1st Dept 2002]; Squires v Robert Marini Bldrs., 293 AD2d 808 [3d Dept 2002]; Smith v Pergament Enters. of S.I., 271 AD2d 870 [3d Dept 2000]).

Defendant contends that summary judgment is inappropriate because there was no actual defect in the scaffold and plaintiff negligently failed to inspect the placement of the platform or otherwise determine that it was secure, which constituted the sole proximate cause of the accident. There is no requirement that a safety device have some physical defect, as the statute also requires that they be properly placed and operated to give proper protection (see Ball v Cascade Tissue Group-N. Y., 36 A.D.3d 1187 [3d Dept 2007]).

Defendant contends that because plaintiff was responsible for the failure to inspect and properly operate the scaffold, plaintiff's conduct was the sole proximate cause of the fall (see e.g. Blake v Neighborhood Hous. Servs. of N. Y. City, 1 NY3d 280 [2003]). However, the plaintiff in Blake admitted that the ladder he had been using was not defective and was properly placed in a stable position with no need to have it steadied during use (id. at 284). The Appellate Division, Third Department, has held that the "fact

that plaintiff may have been extending or reaching from the ladder would implicate comparative negligence, which is not a defense to a section 240(1) action. Accordingly, we conclude that plaintiff's motion for partial summary judgment should have been granted." (Gilbert v Albany Med. Cent., 9 AD3d 643, 645 [3d Dept 2004]). Thus it appears that in order for plaintiff's conduct to constitute the sole proximate cause of a fall sufficient to take it out of the protection of the Labor Law, there must be proof that the plaintiff was misusing a safety device (see Morales v Spring Scaffolding, 24 AD3d 42, 48 [1st Dept 2005]; Morin v Machnick Bldrs., 4 AD3d 668, 670 [3d Dept 2004]). Negligence by a plaintiff in the placement or operation of a device does not constitute a defense to liability (see Morin v Machnick Bldrs., 4 AD3d at 670).

Defendants have failed to offer any proof that plaintiff was in any sense misusing the scaffold at the time of his fall nor have they raised any other triable issue of fact concerning liability pursuant to Labor Law § 240 (1). It is therefore determined that plaintiff is entitled to partial summary judgment on the issue of liability pursuant to Labor Law § 240 (1).

Accordingly it is

ORDERED that plaintiff's motion for partial summary judgment on the issue of liability pursuant to Labor Law § 240 (1) is hereby granted.

This shall constitute the Decision and Order of the Court. All papers are returned to the attorneys for plaintiff, who are directed to enter this Decision/Order without notice

and to serve defendant's counsel with a copy of this Decision/Order with notice of entry.

Dated: Troy, New York
April 2, 2007

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

Notice of Motion dated November 28, 2006; Affidavit of James J. Williams sworn to November 28, 2006;Affirmation of Reginald H. Rutishauser, Esq. dated November 28, 2006 with Exhibits A-E annexed;
Memorandum of Law dated November 28, 2006;

Affirmation of Matthew J. McDermott, Esq. dated January 11, 2007 with Exhibits A-B annexed;

Reply Affirmation of Reginald H. Rutishauser, Esq. dated January 23, 2007.