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

PRESENT: EMILY JANE GOODMAN Justice

PART 17

Index Number : 107656/2006

MORENTE, PEDRO

VS.

39-25 21ST STREET LLC.

SEQUENCE NUMBER : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion is decided per attached

FILED

SEP 07 2010

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/7/10

J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

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PEDRO MORENTE,

Index No.:
107656/06

Plaintiff,

-against-

39-25 21st STREET LLC., STORAGE DELUXE MAINTENANCE COMPANY, LLC., and PERIMETER BRIDGE & SCAFFOLD CO., INC.,

Defendants.

Emily Jane Goodman, J.S.C.:

This is an action to recover for injuries allegedly sustained by a construction worker when a metal pipe fell off a machine while being hoisted and hit plaintiff on the head and shoulders on September 14, 2005.

In motion sequence number 003, plaintiff moves, pursuant to CPLR 3212, for summary judgment in his favor under Labor Law §§ 240 (1) as against defendants 39-25 21st Street LLC (the owner of the property where the construction at issue took place), and Storage Deluxe Maintenance Company, LLC.[1] (together, defendants).

DISCUSSION

"'The proponent of a summary judgment motion must make a prima facie showing of

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[1]Storage Deluxe Maintenance Company, LLC. was described by its employee as being involved in the business of providing rental storage units and was in the process of development of a five story self-storage facility on the property. That entity also signed a contract with plaintiff's employer for construction of the facility.

entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Housing Corporation*, 298 AD2d 224, 226 [1st Dept 2002]).

Labor Law § 240 (1) is referred to as the Scaffold Law (*Ryan v Morse Diesel, Inc.*, 98 AD2d 615, 615 [1st Dept 1983]). Labor Law § 240 (1) provides, in relevant 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."

Labor Law § 240 (1) expresses a clear legislative intent to provide exceptional protection for workers against special hazards which arise on work sites which are either elevated or positioned below the level where materials or loads are hoisted or secured (*see Rocovich v Consolidated Edison Company*, 78 NY2d 509, 515 [1991]).

Labor Law § 240 (1) imposes absolute liability upon an owner or general contractor for failing to provide or erect safety devices necessary to give proper protection to a worker who

sustains injuries proximately caused by that failure (*Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 523 [1985]; *Correia v Professional Data Management, Inc.*, 259 AD2d 60, 63 [1st Dept 1999]). The duty imposed by Labor Law § 240 (1) is nondelegable and an owner or contractor who breaches that duty may be held liable in damages regardless of whether they actually supervised or controlled the work (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500 [1993]).

In order 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 (*Felker v Corning Inc.*, 90 NY2d 219, 224-225 [1997][worker injured by fall from elevated work site must generally prove that the absence of safety device was the proximate cause of his or her injuries to prevail on scaffolding law claim]).

In their opposition to plaintiff's motion, defendants mis-characterize plaintiff's testimony, arguing that "plaintiff did not see any falling pipe, did not know whether a pipe or something else hit him on his right cheek, and did not know whether the purported pipe fell to the ground or remained in the air" and didn't prove where the accident occurred. Although plaintiff has some difficulty with the English language, he clearly testify that he tied the pipes with rope and "that's when the pipes fell on me and I remained unconscious" and "I saw it lifting and when I felt it, it hit me" and "it was in the air and fell on me like this."[2] In any event, it is irrelevant whether the pipe fell to the ground after it hit him, or merely "remained in the air" as defendants speculate might have happened, because the evidence indicates that an object fell from a height while being

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[2]Plaintiff also submits the FDNY Ambulance Call Report and Employer's Report of Work-Related Accident in reply, both indicating that plaintiff was struck by a beam. The Court does not rely on these documents as they were submitted for the first time in reply.

hoisted, injuring plaintiff. As to defendants attempt to create issues of fact regarding the location of the accident, the contract with defendant Storage Deluxe Management Company, LLC and plaintiff's employer indicates that the work was being done at the premises.

Thus, plaintiff has established, prima facie, that defendants are subject to liability under Labor Law § 240 (1) based upon his testimony that the beam fell on him while it was being hoisted (*see Gonzalez v Glenwood Mason Supply Company*, 41 AD3d 338, 339 [1st Dept 2007] [elevation risk fell within ambit of section 240 (1) where plaintiff was hit with a load of cinder blocks that became loose and fell on him as it was being hoisted from a flatbed truck by a fork boom]; *Zervos v City of New York*, 8 AD3d 477, 480 [2d Dept 2004]). To this effect, Labor Law § 240 (1) is applicable because the beam "'was a load that required securing for the purposes of the undertaking at the time it fell [citation omitted]'" (*Cammon v City of New York*, 21 AD3d 196, 200 [1st Dept 2005]). In addition to the evidence that plaintiff was struck by an inadequately-secured beam, there was also evidence that defendants failed to provide safety devices as required by Labor Law § 240 (1), and that this breach was a proximate cause of plaintiff's injury (*see Zuluaga v P.P.C. Construction, LLC*, 45 AD3d 479, 479-480 [1st Dept 2007] [partial summary judgment properly granted where plaintiff, while performing asbestos removal work, was injured when he was struck by a pipe that fell from above, and the record established that no safety devices were provided]). It is well settled that "[a]bsolute liability for falling objects under Labor Law § 240 (1) arises only when there is a failure to use necessary and adequate hoisting or securing devices" (*Narducci v Manhasset Bay Associates*, 96 NY2d 259, 268 [2001]; *Mendoza v Bayridge Parkway Associates, LLC*, 38 AD3d 505, 506-507 [2d Dept 2007]).

As defendants failed to raise a triable issue of fact (*Cruci v General Electric Company*, 33 AD3d 838, 839 [2d Dept 2006]), plaintiff is entitled to summary judgment against defendants 39-25 21st Street LLC and Storage Deluxe Maintenance Company, LLC.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion (motion sequence number 003), pursuant to CPLR 3212, for summary judgment in his favor on liability under Labor Law § 240 (1), as against defendants 39-25 21st Street LLC and Storage Deluxe Maintenance Company, LLC., is granted, and it is further

ORDERED that the parties shall appear for trial on November 15, 2010.

DATED: September 7, 2010

This Constitutes the Decision and Order of the Court.

ENTER:

J.S.C.

EMILY JANE GOODMAN