SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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SATNAM SINGH and BIMLA KAUR,

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY BOARD OF EDUCATION, NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY and NEW YORK CITY SCHOOL CONSTRUCTION RECIPROCAL,

Defendants.

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DCM Part 4

Present:

HON. JOHN A. FUSCO

DECISION AND ORDER

Index No. 102523/09

Motion Nos. 3591-002
3903-003

The following papers numbered 1 to 5 were marked fully submitted on the 16th day of December, 2011.

	Papers Numbered
Notice of Motion by Plaintiffs for Summary Judgment, with Supporting Papers and Exhibits (dated September 20, 2011)	1
Notice of Cross Motion by Defendants for Summary Judgment, with Supporting Papers and Exhibits (dated October 10, 2011)	2
Memorandum of Law by Defendants (dated October 11, 2011)	3
Affirmation in Opposition by Plaintiffs (dated November 23, 2011)	4
Reply Affirmation in Support of Cross Motion (dated December 9, 2011)	5

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Upon the foregoing papers, the motion (No. 3591) for summary judgment by plaintiff Satnam Singh (hereinafter "plaintiff") is denied, and defendants' cross motion (No. 3903) is granted to the extent indicated.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on May 7, 2009, as the result of a fall from a ladder. At the time in question, plaintiff was employed by non-party Gem Quality Corp., the general contractor hired by defendants to perform renovation work in the school library of P.S. 3 located on Staten Island. Since, in large measure, the existence of liability under Labor Law § 240(1) "rests upon the fact of ownership" (*see* Coleman v City of New York, 230 AD2d 762, *aff'd* 91 NY2d 821, quoting Gordon v Eastern Ry. Supply, 82 NY2d 555, 560), and it is undisputed that time of the incident, the City of New York was the admitted "owner" of the premises in question (*see* Defendants' Exhibit "B"), the complaint as against the other named defendants must be dismissed[1].

"Labor Law § 240(1) imposes liability upon owners and contractors who violate the statute by failing to provide or erect necessary safety devices for the protection of workers exposed to elevation-related hazards, where such failure is a proximate cause of the accident ... [, *i.e.*, it] was specifically designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other 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" (Henry v Eleventh Ave, L.P., 87

[1]The Court notes that the contrary deposition testimony of one Harry Nelson, an alleged employee of subcontractor TDX Construction (*see* Plaintiffs' Exhibit "H", pp 24-25), is neither dispositive of this issue or sufficient to raise a triable issue on the papers presently before the Court. Nor is there any competent evidence before the Court that the other named defendants were acting as agents of the City or its general contractor, plaintiffs' employer.

AD3d 523, 524 [citations and internal quotation marks omitted]). While it has been famously held that the statute "is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed" (Rocovich v. Consolidated Edison Co., 78 NY2d 509, 513), it nevertheless remains that in order to establish a prima facie case under Labor Law § 240(1), a plaintiff must demonstrate both that defendant violated the statute and that said violation was the proximate cause of his or her injuries (*see* Androv City of New York, 62 AD3d 919). As the Court of Appeals has recently held, the single decisive question in determining whether Labor Law § 240(1) is applicable is whether the worker's injuries "were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (Runner v New York Stock Exch. Inc., 13 NY3d 599, 603, *accord* Selazar v Novalex Contr. Corp., 18 NY3d 134; La Veglia v St. Francis Hosp., 78 AD3d 1123, 1126-1127).

In this context, it is well settled that "[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection" and that the "failure to secure a ladder to insure that it remains stable and erect while being used constitutes a [per se] violation of Labor Law § 240 (1)" (*see* Montalvo v J. Petrocelli Constr., Inc., 8 AD3d 173, 174 [internal quotation marks omitted]). Hence, plaintiff at bar established his prima facie entitlement to judgment as a matter of law by affirming (*see* Plaintiffs' Exhibit "F") that he fell off the ladder when it "shifted" while he was installing metal framing for the new library ceiling (*see* Lesisz v Salvation Army, 40 AD3d 1050, 1051).

In opposition, the City maintains that plaintiff's own actions were the sole proximate cause of the accident (*see* Blake v Neighborhood Hous. Servs. of NY City, 1 NY3d 280, 290). More

specifically, the City contends that there was no statutory violation because plaintiff was provided with an adequate safety device, *i.e.*, the ladder, which has not been shown to be defective. Rather, it appears that the ladder "shifted" and plaintiff fell a minute or two after his co-worker, who had been holding the ladder, went to "fetch some [additional] material" (*see* Plaintiffs' Exhibit "G" pp 24-25). Critically, while plaintiff admits that his co-worker told him that he was walking away from the ladder which he had been securing (*see* Plaintiffs' Exhibit "G" p 24), there is no evidence that plaintiff was directed or otherwise required to remain on the ladder or continue working after his co-worker stepped away (*see* Plaintiffs' Exhibit "G" p 51). As the Court of Appeals stated in Blake (*id*, at 289) "an accident alone does not establish a Labor Law § 240(1) violation or causation ... . [To the contrary, the] strict or absolute liability [imposed thereby] is necessarily contingent on a violation of [the] section ... [which] plaintiff [is] obligated to show ... was a contributing cause of his fall" (citations and internal quotation marks omitted]). Here, neither has been established as a matter of law, as the accident did not occur until plaintiff determined to continue working after his co-worker had departed. Shortly thereafter, plaintiff fell.

Under these circumstances, a jury question is presented as to whether plaintiff's own actions constituted the sole proximate cause of his injury (*see* Blake v Neighborhood Hous. Servs. of NY City, *id.*).

Accordingly, it is hereby

ORDERED, that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED, that defendants' cross motion is granted to the extent that the complaint and any cross claims against the New York City Board of Education, the New York City School

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Construction Authority and the New York City School Construction Reciprocal are hereby severed and dismissed; and it is further

ORDERED, that the balance of the cross motion is denied; and it is further

ORDERED, that the Clerk shall enter judgment accordingly

E N T E R,

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Hon. John A. Fusco, J.S.C.

Dated: February 28, 2012