FA 4/1/15 E

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____ **PART** _____

Justice

Index Number : 112252/2011
CORRIGAN, JOHN
vs.
NEW YORK UNIVERSITY
SEQUENCE NUMBER : 006
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

FILED
APR 01 2015
NEW YORK
COUNTY CLERK'S OFFICE

is decided **in accordance with the annexed decision.**

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

Dated: 3/30/15

_____, **J.S.C.**

1. **CHECK ONE:** ..... ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**
2. **CHECK AS APPROPRIATE:** .....**MOTION IS:** ☐ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**
3. **CHECK IF APPROPRIATE:** ..... ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER**
   ☐ **DO NOT POST** ☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

----------x

JOHN CORRIGAN and KATHALEEN CORRIGAN,

Plaintiffs,

Index No. 112252/11

-against-

DECISION/ORDER

NEW YORK UNIVERSITY a/k/a NEW YORK UNIVERSITY REAL ESTATE CORPORATION, TURNER CONSTRUCTION COMPANY, ARE-NY MANAGEMENT, LLC, ARE-EAST RIVER SCIENCE PARK, LLC, ALEXANDRIA REAL ESTATE EQUITIES, INC., SHAWMUT DESIGN AND CONSTRUCTION, PYRAMID FLOOR COVERING, INC., SHAWMUT WOODWORKING & SUPPLY, INC., SITE SAFETY, LLC, NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION a/k/a NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, THE CITY OF NEW YORK DEPARTMENT OF GENERAL SERVICES-BUSINESS OF REAL PROPERTY, THE CITY OF NEW YORK DEPARTMENT OF HEALTH AND MENTAL HYGIENE and THE CITY OF NEW YORK,

Defendants.

----------x

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiffs John Corrigan and Kathaleen Corrigan commenced this action to recover for injuries allegedly sustained by Mr. Corrigan in the course of his employment. Plaintiffs now

bring the instant motion for an Order pursuant to CPLR § 3212 granting them partial summary judgment on the issue of liability pursuant to New York Labor Law ("Labor Law") §240(1) against defendants Turner Construction Company ("Turner"), New York University a/k/a New York University Real Estate Corporation ("NYU") and the City of New York (the "City"). For the reasons set forth below, plaintiffs' motion is granted.

The relevant facts are as follows. On or about May 25, 2011, plaintiff, an employee of subcontractor Donaldson Interiors, was working as a carpenter at a job site located at 450 East 29th Street, New York, New York (hereinafter referred to as the "project" or the "job site" or the "building") and was assigned the task of performing the "rough carpentry" on floors three, eight and nine of the building, which involved framing the walls and installing sheetrock. Turner was the general contractor on the project, the City was the owner of the building and NYU was the tenant of the building. Plaintiff testified that on the date of his accident, he was assisting his coworker, Tom Iacouzzi, in laying out the measurements for a soffit that was to be positioned approximately 12 feet above the floor on the 8th floor of the building. In order to lay a chalk line at that height, plaintiff used an 8-foot A-frame ladder with a platform incorporated therein. In order to reach the same height at the opposite end of the chalk line, Mr. Iacouzzi used a motorized scissor lift.

Plaintiff testified that he ascended the ladder and stood on its platform while Mr. Iacouzzi stood on the scissor lift on the opposite end of the chalk line. As soon as the chalk line was snapped, the front two feet of the ladder on which plaintiff was standing sunk approximately one foot into an open and unprotected gap between the concrete floor and the wall of the building, causing plaintiff to fall backwards off the platform and the ladder. During his fall, plaintiff's

hard hat came off and he hit the ground, striking his head on a bundle of metal studs, causing plaintiff serious injuries. Plaintiff testified that he did not know the gap was there because it had been filled with fire-proofing insulation that was identical in color and appearance to the concrete floor.

Thereafter, plaintiffs commenced the instant action against defendants alleging causes of action for, *inter alia*, violations of Labor Law ("Labor Law") §§ 200, 240(1) and 241(6). Plaintiffs now move for an Order pursuant to CPLR § 3212 granting them partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) against Turner, NYU and the City.

Pursuant to Labor Law §240(1),

> All contractors and owners and their agents . . . who contract for but do not 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.

Labor Law §240(1) was enacted to protect workers from hazards related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of materials or load being hoisted or secured. *See Rocovich v. Consolidated Edison*, 78 N.Y.2d 509, 514 (1991). Liability under this provision is contingent upon the existence of a hazard contemplated in §240(1) and a failure to use, or the inadequacy of, a safety device of the kind enumerated in the statute. *Narducci v. Manhasset Bay*

Associates, 96 N.Y.2d 259 (2001). Owners and contractors are subject to absolute liability under Labor Law §240(1), regardless of the injured worker's contributory negligence. *See Bland v Manocherian*, 66 N.Y.2d 452 (1985). Only if the plaintiff was the sole proximate cause of his injuries would liability under this section not attach. *See Robinson v East Medical Center, LP*, 6 N.Y.3d 550 (2006). "It is well settled that failure to properly secure a ladder to insure that it remains steady and erect while being used constitutes a violation of Labor Law § 240(1)." *Cuentas v. Sephora USA, Inc.*, 102 A.D.3d 504 (1st Dept 2013); *see also Fanning v. Rockefeller Univ.*, 106 A.D.3d 484, 485 (1st Dept 2013)("[p]laintiff established prima facie entitlement to judgment as a matter of law [on his § 240(1) claim] through testimony that when the unsecured ladder on which he was working suddenly moved, he fell, causing him to sustain injury.") Indeed, Labor Law § 240(1) explicitly states that "ladders...shall be so...placed...as to give proper protection to a [worker]." Labor Law § 240(1). Further, the case law makes clear that the ladder itself need not be defective in order to recover under Labor Law § 240(1). *See Fanning*, 106 A.D.3d at 485(holding that plaintiff "was not required to present further evidence that the ladder was defective.") Rather, "[i]t is sufficient for purposes of liability under [Labor Law § 240(1)] that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent." *Orellano v. 29 E. 37th St. Realty Corp.*, 292 A.D.2d 289, 291 (1st Dept 2002).

In the instant action, plaintiffs are entitled to partial summary judgment on the issue of liability against Turner, NYU and the City pursuant to Labor Law § 240(1) as they have shown that plaintiff's injury occurred due to said defendants' failure to provide an adequate safety device to prevent him from falling off the ladder on which he was standing in violation of Labor Law §240(1). Here, plaintiff's injuries clearly occurred due to a gravity-related hazard as the

accident flowed directly from the application of the force of gravity onto plaintiff when he was standing on the ladder after the front of the ladder fell into the gap between the floor and the wall. It was foreseeable that a worker standing on a ladder could fall and injure himself if he was not properly secured to a safety device or if the ladder was not properly secured to the floor. The fact that the front of the ladder did slip into the gap between the floor and the wall, causing plaintiff to fall to the ground below is proof that there was a failure to provide adequate safety devices to protect plaintiff from such a fall pursuant to Labor Law § 240(1).

In response, defendants have failed to raise an issue of fact sufficient to defeat plaintiffs' motion for summary judgment. Defendants' assertion that summary judgment should be denied on the ground that there exists an issue of fact as to whether plaintiff was the sole proximate cause of his accident is without merit. Defendants assert that plaintiff was the sole proximate cause of the accident because he failed to use an electric scissor lift that was "readily available" instead of a ladder. However, such assertion is without merit. Plaintiff has testified that the battery in the only other scissor lift available to him had not been charged from the day before so that he could not use it on the day of his accident. Indeed, defendants have not presented any evidence that a working scissor lift was in fact available to the plaintiff on the day of his accident. Defendants' assertion that the photographs taken after the accident reveal two electric lifts present on the floor of the job site is meritless as the photographs do not provide any evidence as to whether the lifts were in working condition.

Additionally, defendants' assertion that plaintiff was the sole proximate cause of the accident because he simply lost his balance and fell from an otherwise non-defective ladder prior to the ladder sinking into the fire-proofing material is without merit. In support of this assertion,

defendants point to the accident report in which Mr. Iacouzzi, plaintiff's co-worker, stated that "[i]t appeared to [him] that [plaintiff] was attempting to recover his balance. The next thing [he] saw was [plaintiff] falling backwards from the 3rd or 4th step." However, such statement is insufficient to raise an issue of fact as to whether plaintiff was the sole proximate cause of his accident. Indeed, it is consistent with plaintiff's testimony that he lost his balance and fell off the ladder after the front part of the ladder sunk into the fire-proofing material. In further support of their assertion, defendants rely on the Independent Medical Examination report of Dr. Bradley D. Wiener in which Dr. Wiener states as follows:

> [plaintiff] has a significant past medical history for bilateral lower extremity lymphedema, venous stasis disease, and bilateral knee arthralgia, which represent pre-existing conditions that may impact on the claimant's functional capacity and proprioception. These conditions represent pre-existing conditions and comorbidities that cannot be excluded as competent producing causes of the claimant's poor balance sense which may have contributed to the fall injury.

However, such report is insufficient to raise an issue of fact as to whether plaintiff was the sole proximate cause of his accident as it merely suggests that plaintiff's pre-existing conditions "may have contributed" to the accident. It is well-settled that owners and contractors are subject to absolute liability under Labor Law §240(1), regardless of the injured worker's contributory negligence. *See Bland*, 66 N.Y.2d 452. Moreover, the First Department has held that discrepancies in the description of how or why a plaintiff falls off a ladder are irrelevant when "there is no dispute that [plaintiff's] injuries were caused by his fall." *Orellano*, 292 A.D.2d at 291. Here, the parties do not dispute that plaintiff's injuries occurred due to him falling off the ladder.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for partial summary judgment on the issue of liability pursuant to Labor Law §240(1) against defendants Turner, NYU and the City is granted. This constitutes the decision and order of the court.

Dated: 3/30/15

Enter: _____
J.S.C.