SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2

Justice

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INDEX NO. 451602/2015

MIKAEL RUDITSER,

Plaintiff,

MOTION SEQ. NO. 001

- v -

FORTY SEVENTH FIFTH COMPANY LLC, KM POSIDON CORP, FORTY SEVENTH FIFTH MEMBER CORP

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion and cross motion are decided as follows.

This is an action by Mikhael Ruditser to recover damages for personal injuries he allegedly sustained on July 1, 2014 when he fell from a ladder while working as a painter at a commercial building located at 580 Fifth Avenue, New York, New York (the Premises). Defendants Forty Seventh Fifth Company LLC (Forty Seventh) and Forty Seventh Fifth Member Corp. (Fifth Member) (together, defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint and the cross claims against them. Plaintiff cross-moves, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against defendants. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion and cross motion are decided as follows.

Pursuant to a stipulation dated January 6, 2015, the action was discontinued without prejudice as against defendant KM Posidon Corp.[1] (NY St Cts Electronic Filing [NYSCEF], Doc. No. 2). The parties have not indicated that there are any surviving cross claims.

FACTUAL AND PROCEDURAL BACKGROUND

On the day of the accident, Forty Seventh owned the Premises where the accident occurred. Forty Seventh's subsidiary, nonparty Fosev Construction Corp. (Fosev), served as Forty Seventh's in-house maintenance and repair company for the Premises. At the time of the accident, Forty Seventh was preparing the 21st floor of the Premises, so that it could advertise the space for leasing to prospective tenants. Fosev performed a portion of the preparatory work (the Project).

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was employed by Fosev as a painter. He had been tasked with plastering and painting the ceiling on the 21st floor, and he had been working on that floor with another Fosev employee, Victor, for two weeks prior to the accident. Plaintiff, who is 5'2" tall, described the ceiling on the 21st floor as ranging between 15 feet and 16 feet above the concrete floor.

On the day of the accident, plaintiff retrieved an 8-foot aluminum A-frame ladder from a room in the basement at the Premises where Fosev stored its equipment and tools. Prior to beginning his work, plaintiff checked that the four rubber feet on the ladder were in place by "just [picking] it up a little bit" (*id.* at 50). He also ran his hands over the steps to see if they were

[1] This Court takes judicial notice of the stipulation filed in this action (*see Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 202 [1st Dept 2010] [stating that the court may take judicial notice of undisputed court records or files]).

broken and ensured that the ladder was secure when it was in an open position. Plaintiff explained, "I just tried to make sure – I mean I shook the ladder to make sure if it was stable" (*id.* at 47). He further explained that he placed the ladder on the floor and then shook it. Plaintiff maintained that he repeated this process of checking the ladder each time he moved it to a different location, and that he had already been working for several hours before he fell. Plaintiff also stated that there was nothing wrong with the ladder he used and that the floor was clean and level.

Plaintiff testified that the accident occurred as he stood on the seventh step of the ladder with a paintbrush in his right hand. He testified, "I was painting the ceiling and then I don't know why, but the ladder fell" (*id.* at 64). He further stated that the ladder fell to his left as he raised his right arm toward ceiling. Plaintiff repeated that he did not know what caused the ladder to fall and that he did not feel the ladder move or shift to one side. Although Victor was working on the 21st floor, he was not holding onto the ladder at the time of plaintiff's accident.

Fosev kept one or two scaffolds in a separate room in the basement at the Premises, and only plaintiff's foreman, Andrew Konopolin, had access to that room. Plaintiff admitted that he was able to request a scaffold if necessary but, on the day of the accident, he did not request one.

The Deposition Testimony of Carl Klein (Building Manager)

Carl Klein (Klein) testified that Forty Seventh had "set up" Fosev as a separate corporation to operate as an "in-house maintenance and repairs company" responsible for "small renovation jobs . . . [and preparing] offices for leasing" (Klein tr at 14-15), although he was not certain of Fosev's official purpose. He was not aware of a service contract between Fosev and Forty Seventh. Klein expressed that he and the maintenance staff, including plaintiff, were employed by Fosev at

the Premises in 2014. However, when Fosev closed "as a result of . . . [Forty Seventh's] refinancing," Klein became an employee of Forty Seventh (*id.* at 14).

Forty Seventh maintained a contract with Harvard Maintenance (Harvard), pursuant to which Harvard provided Forty Seventh with porter and security services. Harvard employees also worked with Fosev on various projects at the Premises, and Harvard supplied two employees, Victor and Kelly, to paint and wallpaper when needed.

Klein stated that, at the time of the accident, Forty Seventh was "preparing [the 21st floor] for marketing so [Fosev was] whitewashing the place and getting it ready" to lease out (*id.* at 28). Although Forty Seventh retained a general contractor for the Project, Fosev performed a portion of the work. Klein did not know who directed plaintiff to paint on the day of the accident, or if anyone told plaintiff that he should have used a scaffold. Klein maintained that Fosev's employees were "basically self performing on their own means and methods" (*id.* at 45) and "basically self responsible" for ensuring that they used the proper equipment for their work (*id.* at 50).

The Affidavit of Kenneth F. Kahn

In his affidavit, Kenneth F. Kahn (Kahn) avers that he has been Forty Seventh's executive manager for more than 10 years. As such, he has personal knowledge of Forty Seventh's corporate structure. Kahn states that Fosev was formed in December 10, 1998, and that Forty Seventh was Fosev's sole shareholder. Fosev operated as Forty Seventh's wholly owned subsidiary until August 3, 2016, when Fosev was dissolved. Kahn maintains that Fifth Member is a "special member" of Forty Seventh formed for the sole purpose of obtaining securitized mortgage financing. Fifth Member had no involvement in the management, maintenance or repair of the Premises, of which Forty Seventh was the sole owner.

LEGAL CONSIDERATIONS

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and by the pleadings and other proof such as affidavits, depositions and written admissions (*see* CPLR 3212). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (*id.*, citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, *regardless of the sufficiency of the opposing papers*" (*Vega*, 18 NY3d at 503 [internal quotation marks and citation omitted, emphasis in original]).

Applicability of The Workers' Compensation Law

As a third affirmative defense, defendants allege that the action is barred by the Workers' Compensation Law. Defendants now move for summary judgment in their favor based on this affirmative defense.

As an initial matter, this Court declines to strike defendants' third affirmative defense, as requested by plaintiff. Although defendants failed to serve a bill of particulars with respect to this affirmative defense in response to plaintiff's demand, plaintiff never moved to strike the defense or preclude defendants from asserting it prior to his filing of a note of issue. Further, "[t]he purpose

of the bill of particulars is to amplify the pleadings" (*Paterra v Arc Dev. LLC*, 136 AD3d 474, 475 [1st Dept 2015]). Defendants are not moving under a different or alternative theory than the Workers' Compensation Law defense raised in their answer. Hence, there is no prejudice or surprise to plaintiff that defendants have moved for relief on their third affirmative defense.

"Where an employee is injured in the course of employment, his exclusive remedy against his employer is ordinarily a claim for workers' compensation benefits" (Workers' Compensation Law § 11)" (*Valenziano v Niki Trading Corp.*, 21 AD3d 818, 820 [1st Dept 2005]; *see also O'Rourke v Long*, 41 NY2d 219, 221 [1976] [stating that "where workmen's compensation provides a remedy, the remedy that it provides . . . is exclusive"]). The exclusivity provision of the Workers' Compensation Law extends to situations where an employee is injured while working for another entity that functions as the alter ego of the employee's direct employer (*see Vazquez v Diamondrock Hospitality Co.*, 100 AD3d 502, 503 [1st Dept 2012]), thereby shielding both entities from tort liability. The exclusivity of the remedy also protects a parent corporation from claims for injuries sustained by an employee of a subsidiary corporation "if the subsidiary functions as the alter ego of the parent" (*Batts v IBEX Constr., LLC*, 112 AD3d 765, 766-767 [2d Dept 2013], quoting *Dennihy v Episcopal Health Servs.*, 283 AD2d 542, 543 [2d Dept 2001]; *Kittay v Moskowitz*, 95 AD3d 451, 452 [1st Dept 2012], *lv denied* 20 NY3d 859 [2013] [finding that the parent company was the alter ego of the plaintiff's employer because the parent "completely dominated and controlled" its subsidiary]).

"A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity" (*Quizhpe v Luvin Constr. Corp.*, 103 AD3d 618, 619 [2d Dept 2013], citing *Samuel v Fourth Ave. Assoc., LLC*, 75 AD3d 594, 594-595 [2d Dept 2010]). A defendant may meet this burden by

presenting proof that the two entities shared corporate officers, "financial management, administrative headquarters, an insurance policy, and a common purpose" (*see Carty v East 175th St. Hous. Dev. Fund Corp.*, 83 AD3d 529, 529 [1st Dept 2011]; *see also Morato-Rodriguez v Riva Constr. Group., Inc.*, 88 AD3d 549, 549 [1st Dept 2011] [finding that the defendant and a nonparty shared executives, used the same office address, and were insured under the same policies]; *Ramnarine v Memorial Ctr. for Cancer & Allied Diseases*, 281 AD2d 218, 218 [1st Dept 2001] [finding that two separate corporate entities functioned as one integrated entity because they shared common management and executive officers, shared payroll and human resource departments, issued combined financial statements, and followed the same employment policy manual]; *Kudelski v 450 Lexington Venture*, 198 AD2d 157, 157 [1st Dept 1993] [supervision and joint authority over employees of both entities sufficient to find that one entity functioned as the alter ego of another]). In effect, the evidence must demonstrate that one entity essentially "controls the day-to-day operations of the other" (*Batts*, 112 AD3d at 767 [collecting cases]).

As noted earlier, defendants' argument that Workers' Compensation §§ 11 and 29 (6) bar the present action is predicated upon Fosev's status as Forty Seventh's wholly-owned subsidiary. However, the fact that Forty Seventh and Fosev are related is insufficient, in the absence of other probative evidence, to establish that one entity controlled the other (*see Samuel*, 75 AD3d at 595 [stating that a mere showing that the entities are related is insufficient where a defendant cannot demonstrate that one controlled the day-to-day operations of the other]). Likewise, Forty Seventh and Fosev may have maintained separate certificates of incorporation but this factor, standing alone, is insufficient to conclude that Forty Seventh is Fosev's alter ego (*see Di Rie v Automotive Realty Corp.*, 199 AD2d 98, 98 [1st Dept 1993]).

Here, there has been no evidence submitted to this Court reflecting that Forty Seventh and Fosev commingled funds (*see Ocana v Quasar Realty Partners, L.P.*, 137 AD3d 566, 567 [1st Dept 2016], *lv dismissed* 27 NY3d 1078 [2016] [finding that the defendant building owner and plaintiff's employer, which provided the defendant with janitorial services, operated as two separate entities and did not commingle funds]). Similarly, defendants presented no evidence to show that they and Fosev comprised a single entity, such as shared officers or employees or a shared insurance policy. Since defendants failed to establish that they are alter egos of Fosev, that branch of their motion seeking dismissal of the complaint based on the exclusivity provisions in the Workers' Compensation Law is denied.

The Common-Law Negligence and Labor Law §§ 200 and 241 (6) Claims

Defendants move for dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against them. Since plaintiff did not address these claims in his opposition, they are dismissed as abandoned (*see Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]).

Thus, defendants are entitled to dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims as against them.

The Labor Law § 240 (1) Claim

Plaintiff cross moves for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim, and defendants move for dismissal of that claim against them.

Labor Law § 240 (1) 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."

It is well settled that "Labor Law § 240 (1) was 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*" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]; *see also Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [stating that "the purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction work site elevation differentials"]). Thus, the statute applies to incidents involving a "falling worker" or a "falling object" [*Harris v City of New York*, 83 AD3d 104, 108 [1st Dept 2011] [internal quotation marks omitted]).

Labor Law 240 § (1) also "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], *rearg denied* 65 NY2d 1054 [1985] [internal quotation marks and citation omitted]). However, "not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1)" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). Therefore, in order to prevail on a Labor Law § 240 (1) claim, plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the injury (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]). Once plaintiff establishes that a violation of the statute proximately

caused his or her injury, then an owner or contractor is subject to "absolute liability" for the Labor Law § 240 (1) violation (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011], quoting *Misseritti v Mark IV Constr. Co.*, 86 NY2d 487, 490 [1995], *rearg denied* 87 NY2d 969 [1996]).

As the owner of the Premises when the accident occurred, Forty Seventh may be liable for plaintiff's injuries under Labor Law § 240 (1). While Fifth Member was not an owner or general contractor, this Court must still determine whether it can be liable for plaintiff's injuries as an agent of the owner or general contractor.

It is well settled that a third party who obtains the authority to supervise and control the work becomes the statutory agent of the owner or general contractor (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]). Further, a statutory agent of an owner or general contractor may be held liable under the Labor Law "for a statutory violation resulting in injury, regardless of whether they directed or controlled the work" (*Merino v Continental Towers Condominium*, 159 AD3d 471, 472 [1st Dept 2018]). Thus, "[t]he determinative factor is whether the defendant had the right to exercise control over the work, not whether it actually exercised that right" (*Santos v Condo 124 LLC*, 161 AD3d 650, 653 [1st Dept 2018]).

Importantly, plaintiff does not oppose the dismissal of the Labor Law § 240 (1) claim as against Fifth Member. Therefore, that claim is deemed abandoned (*see Genovese*, 309 AD2d at 833]). In any event, since Fifth Member was formed solely for the purpose of obtaining mortgage financing, it did not supervise or control the injury-producing work. Since it is not a proper Labor Law defendant, Fifth Member is entitled to dismissal of the Labor Law § 240 (1) claim against it. Therefore, the remainder of the decision, addressing plaintiff's claim pursuant to Labor Law § 240 (1), will be addressed solely with respect to Forty Seventh.

This Court finds that plaintiff met his prima facie burden of establishing that Forty Seventh violated Labor Law § 240 (1) by submitting his uncontested testimony that, while he performed his assigned work, the 8-foot extension ladder on which he was working collapsed, causing him to fall and sustain injury. Importantly, "[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain[s] steady and erect while being used, constitutes a violation of Labor Law § 240 (1)" (*Hill v City of New York*, 140 AD3d 568, 569 [1st Dept 2016], quoting *Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept 2004]; *see also Gordon v City of New York*, – AD3d –, 2018 NY Slip Op 05972, *3 [1st Dept 2018] [stating that "the ladder that was provided to plaintiff failed to provide proper protection for him to perform the elevation-related task" because the ladder slipped out from underneath him, causing him to fall to the ground]; *Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 496 [1st Dept 2018] [finding that the 8-foot A-frame ladder furnished to the plaintiff was inadequate because he could not reach the area needed to perform his work]; *Ward v Urban Horizons II Hous. Dev. Fund Corp.*, 128 AD3d 434, 434 [1st Dept 2015] [finding that the defendants' failure to provide the plaintiff with equipment "to guard against the risk of falling from the ladder," together with the fact that the "plaintiff's coworker was not stabilizing the ladder at the time of the fall" sufficient to find a Labor Law violation]).

Contrary to Forty Seventh's position, a plaintiff seeking to impose liability for a Labor Law § 240 (1) violation is "not required to show that the ladder was defective" (*Ortiz v Burke Ave. Realty, Inc.*, 126 AD3d 577, 577 [1st Dept 2015]). "In cases involving ladders or scaffolds that collapse or malfunction for no apparent reason, . . . [there is] a presumption that the ladder or scaffolding device was not good enough to afford proper protection" [*Blake*, 1 NY3d at 289 n8;

accord Quattrocchi v F.J. Sciame Constr. Corp., 44 AD3d 377, 381 [1st Dept 2007], *affd* 11 NY3d 757 [2008]). Thus, "[i]t is sufficient for purposes of liability under section 240 (1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent" (*Hernandez v Bethel United Methodist Church of N.Y.*, 49 AD3d 251, 252-253 [1st Dept 2007], quoting *Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 291 [1st Dept 2002] [granting partial summary judgment to the plaintiff who sustained injury when the ladder on which he was working "began to move unsteadily" and the "feet . . . on the right side . . . came off the ground"]). Consequently, plaintiff's inability to identify a specific defect with the ladder is no bar to recovery under Labor Law § 240 (1).

Forty Seventh also argues it is entitled to dismissal of the Labor Law § 240 (1) claim because plaintiff was the sole proximate cause of the accident. To that effect, Forty Seventh asserts that plaintiff failed to use one of the onsite scaffolds that was available to him, and that he failed to stabilize the ladder before using it.

It is well settled that Labor Law § 240 (1) imposes a duty upon an owner or contractor to furnish a worker with adequate safety devices, and that liability is imposed where a breach of this duty proximately causes a worker's injuries (*see Robinson v East Med Ctr.*, 6 NY3d 550, 554 [2006]). However, "[w]here a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability" under Labor Law 240 § (1) (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]). The defense "applies where the worker misused, removed, or failed to use an available safety device that would have prevented the accident, or knowingly chose to use an inadequate device despite the availability of an adequate device" (*Boyd v Schiavone Constr. Co., Inc.*, 106 AD3d 546, 548 [1st Dept 2013]).

Therefore, in order for a defendant to prevail on the sole proximate cause defense on a recalcitrant worker theory, a defendant must establish that a "plaintiff had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured" (*Cahill*, 4 NY3d at 40). Although the safety device need not be readily available in the vicinity of a plaintiff's work, it must be shown that a plaintiff knew or was made aware of them (*see Gallagher v New York Post*, 14 NY3d 83, 88 [2010]). Further, "[a] general standing order to use safety devices" does not establish that "a plaintiff knew that safety devices were available and unreasonably chose not to use them" (*see Peters v New Sch.*, 102 AD3d 548 [1st Dept 2013], *lv dismissed* 21 NY3d 922 [2013]).

Here, while Forty Seventh contends that plaintiff should have used one of the scaffolds that was available at the Premises to complete his work, it fails to offer any evidence that plaintiff was directed to use a scaffold, that he was aware that he should have used a scaffold, and that he chose for no good reason not to use it. As a consequence, Forty Seventh has not demonstrated that plaintiff's actions were the sole proximate cause of his accident.

Moreover, Forty Seventh's contention that plaintiff failed to properly stabilize the ladder before he used it is speculative and unsupported by any evidence. In any event, plaintiff's alleged failure to ensure that the ladder was secure addresses his comparative negligence, which is not a defense to a Labor Law § 240 (1) claim (*see Orellano*, 292 AD2d at 291 [stating that the plaintiff's comparative negligence is immaterial where the failure to provide the plaintiff with an adequate safety device is a cause of the plaintiff's injury]; *Nacewicz v Roman Catholic Church of the Holy Cross*, 105 AD3d 402, 403 [1st Dept 2013] [concluding that plaintiff's failure to check the ladder from which he fell before he used it "does not show intentional misuse or other egregious

misconduct and amounts, at most, to contributory negligence, a defense inapplicable to a Labor Law § 240 (1) claim"]).

To the extent that Forty Seventh attempts to raise an issue regarding plaintiff's credibility by submitting his medical records with their reply, this Court notes that "the function of a reply affidavit is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of the motion" (*Ritt v Lenox Hill Hosp.*, 182 AD2d 560, 562 [1st Dept 1992]). Had defendants wished to raise this issue, they should have done so in their initial moving papers, which would have permitted plaintiff to respond.

Thus, plaintiff is entitled to partial summary judgment on liability on the Labor Law § 240 (1) claim against defendants, and Forty Seventh is not entitled to summary judgment dismissing said claim.

In light of the foregoing, it is hereby:

ORDERED that the branch of the motion by defendants Forty Seventh Fifth Company, LLC (Forty Seventh) and Forty Seventh Fifth Member Corp. (Fifth Member), pursuant to CLPR 3212, for summary judgment dismissing the complaint against Fifth Member is granted, and the complaint is dismissed as against Fifth Member, with costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment in favor of Fifth Member; and it is further

ORDERED that the branch of the motion by Forty Seventh and Fifth Member, pursuant to CLPR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims against them is granted to the extent of dismissing those claims as against Forty Seventh, and the motion is otherwise denied; and it is further

ORDERED that, within twenty days of the entry of this order on NYSCEF, Fifth Member shall serve a copy of this order, with notice of entry, on all parties and on the County Clerk's office; and it is further

ORDERED that the action shall continue with respect to plaintiff's remaining causes of action; and it is further

ORDERED that plaintiff's cross motion, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim is granted against Forty Seventh; and it is further

ORDERED that the issue of damages, if any, to be awarded against Forty Seventh shall be determined at the time of trial; and it is further

ORDERED that this constitutes the decision and order of the court.

10/12/2018
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE