Contratti v Mutual Redevelopment Houses, Inc.
2019 NY Slip Op 31042(U)
April 8, 2019
Supreme Court, New York County
Docket Number: 162024/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 162024/2015

MICHAEL CONTRATTI,

Plaintiff,

MOTION SEQ. NO. 001, 002

- v -

MUTUAL REDEVELOPMENT HOUSES, INC., F.W. SIMS MECHANICAL SERVICES, LLC, F.W. SIMS MECHANICAL SERVICES, LLC D/B/A F.W. SIMS, INC., F.W. SIMS, INC.,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 64, 65

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 67, 68

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is ordered that the motions are decided as follows.

Motion sequence numbers 001 and 002 are consolidated for disposition.

In this action by plaintiff Michael Contratti arising out of a construction site accident, defendants Mutual Redevelopment Houses, Inc. (Mutual)[1] and F.W. Sims Mechanical Services, LLC d/b/a F.W. Sims, Inc. move, pursuant to CPLR 3212, for summary judgment dismissing the complaint as against them (motion sequence number 001). Plaintiff cross-moves, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law § 240 (1).

[1] Mutual indicates that its motion was made on behalf of all the defendants. However, plaintiff discontinued the action as against F.W. Sims Mechanical Services, LLC (NY St Cts Elec Filing [NYSCEF] Doc No. 31). In addition, defendant F.W. Sims, Inc. made a separate motion for summary judgment.

Defendant F.W. Sims, Inc. (F.W. Sims) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint as against it (motion sequence number 002). Plaintiff again cross-moves, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law § 240 (1).

FACTUAL AND PROCEDURAL BACKGROUND

On September 4, 2015, plaintiff, a union carpenter, was allegedly injured at 345/355 Eighth Avenue in Manhattan, also known as Penn South Building #8 ("the premises"). It is undisputed that Mutual owned the premises. Mutual hired F.W. Sims as a general contractor in order to restore the HVAC system at the premises. F.W. Sims, in turn, retained VRH Construction Corp. (VRH) as the carpentry subcontractor. Plaintiff was employed by VRH on the date of his accident.

According to plaintiff, in September 2015, he was working at the premises for VRH (plaintiff deposition tr at 23). He had been working for VRH for three months (*id.*). Plaintiff performed sheetrock and metal framing work (*id.* at 32). VRH was hired to renovate the apartments and lobby of the premises (*id.* at 33). On the day of the accident, plaintiff was "metal framing on a scaffold" in the lobby (*id.* at 39, 43). More specifically, plaintiff was "metal framing a soffit," or "attaching metal to the sheetrock and making a soffit" (*id.*). In order to perform his task, plaintiff used a baker's scaffold (*id.* at 49-52). Before plaintiff started working, the scaffold was in a taped area in the lobby (*id.* at 55-56). Plaintiff wheeled the scaffold to the area where he needed to work and locked the wheels (*id.* at 55-56). He had to change the height of the scaffold's platform to do his work (*id.* at 58). To do so, plaintiff had to attach the horizontal arms of the scaffold to the vertical legs of the scaffold and then snap them in place (*id.*

at 58-62). Plaintiff had to use pins and a knob to tighten the parts of the scaffold (*id.* at 62). He had to set the height of the platform to three feet (*id.* at 63). Specifically, he had to adjust the height of the platform in all four corners, put the pin in to lock it and then tighten it with the knob (*id.* at 63-65). Plaintiff checked that all of the pins were properly in place (*id.* at 64-65, 143-144).

Plaintiff then climbed the scaffold in order to perform his work (*id.* at 65-70). He worked on the scaffold for approximately an hour, and did not move the scaffold (*id.* at 65-70, 144-146). He testified that he was "working up in the soffit and [he] was using [his] screw gun at the time. And the scaffold gave way underneath [him] and [he] fell through it, through it, not off of it" (*id.* at 70). According to plaintiff, "[t]he plank didn't break. The arm separated and [he] fell through it, right through it" (*id.*). "[W]hen [he] fell through [he] just [saw] that it came apart. And he was looking at it and one end was still hooked and the other end opened up and . . . one end was still, you know, intact" (*id.* at 150). The pins were still attached (*id.*). Plaintiff then reassembled the scaffold after the accident (*id.* at 75-76). Plaintiff used the scaffold for about 10 more minutes before his coffee break (*id.* at 76, 87-88, 148). Plaintiff left work during his coffee break because he was in pain (*id.* at 88).

Patrick Marlowe (Marlowe), VRH's superintendent, testified that VRH had baker's scaffolds on the site (Marlowe tr at 22). After the accident, Marlowe inspected the scaffold, and "surmised" that the spring clip in the corner was not properly locked in place because "that's the corner where the platform fell" (*id.* at 20). He stated that the scaffold was not defective, and believed that plaintiff failed to lock the clamp on the scaffold, as required (*id.* at 26). However, he did not recall whether all of the pins were locked in place (*id.* at 27).

William Gillen (Gillen) testified that he was F.W. Sims' senior project manager for the Penn South project (Gillen tr at 7). F.W. Sims was hired to perform an HVAC renovation (*id.* at 8). Gillen testified that VRH provided all of the scaffolds at the site, and that all of the scaffolds were new (*id.* at 21, 22).

John Damalio (Damalio), VRH's carpenter foreman, testified that VRH provided baker's scaffolds on the job site (Damalio tr at 7, 13-14). According to Damalio, the majority of baker's scaffolds used "spring-loaded pins that went into a setting hole, and then you would put another pin, a safety pin, to lock it" (*id.* at 28). Damalio was working within six feet from plaintiff on the day of the accident (*id.* at 14-15, 16). Plaintiff had set up the scaffold at its lowest level, about two feet off the floor (*id.* at 15). Damalio heard a crashing sound, and then saw plaintiff standing between the rails of the baker's scaffold on top of the platform on the floor (*id.* at 17). Plaintiff climbed out from where he was and put the platform back on the scaffold (*id.* at 19).

Plaintiff commenced this action against Mutual on November 20, 2015, seeking recovery for violations of Labor Law §§ 200, 240 (1), and 241 (6) and for common-law negligence. Plaintiff subsequently amended the complaint, adding F.W. Sims Mechanical Services, LLC and F.W. Sims as direct defendants, seeking recovery on the same causes of action.

On September 20, 2016, plaintiff discontinued its claims as against F.W. Sims Mechanical Services, LLC (NYSCEF Doc No. 31).

F.W. Sims subsequently brought a third-party action against VRH. However, F.W. Sims "withdrew" the third-party action on October 19, 2016 (NYSCEF Doc No. 32).

LEGAL CONCLUSIONS

It is well established that "'the 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'" (*Matter of New York City Asbestos Litig.*, -- NY3d -- , 2019 NY Slip Op 01259, *3 [2019], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden then shifts to the party opposing the motion 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]). "Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation" (*Madeline D'Anthony Enters., Inc. v Sokolowsky*, 101 AD3d 606, 609 [1st Dept 2012] [internal quotation marks and citation omitted]).

A. Labor Law § 240 (1)

Mutual argues that plaintiff's Labor Law § 240 (1) claim must be dismissed because plaintiff's actions were the sole proximate cause of his accident. Mutual contends that plaintiff was provided with a new and fully functional baker's scaffold, but plaintiff improperly assembled it. Further, the scaffold was not defective and was subsequently reused without incident. Mutual also maintains that it was merely the owner at the site, and exercised no control over the equipment or plaintiff's work.

Similarly, F.W. Sims contends that plaintiff's own negligence in failing to lock the arm in place was the sole proximate cause of his accident. F.W. Sims also asserts that the scaffold was not defective.

Plaintiff contends, however, that he is entitled to partial summary judgment under Labor Law § 240 (1). Plaintiff points out that he was injured when the platform of the scaffold fell. Plaintiff insists that he was not the sole proximate cause of the accident because he properly assembled it and that, even if he had been negligent in assembling it, his comparative negligence is not a defense to liability. Moreover, plaintiff contends that he was not required to establish that the scaffold was defective.

Labor Law § 240 (1), commonly known as the Scaffold Law (*Hill v Stahl*, 49 AD3d 438, 441 [1st Dept 2008]), provides, in relevant part, as follows:

> "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."

The statute requires that scaffolds and other safety devices "be so constructed, placed and operated as to give proper protection" to workers (*id.*). To recover under Labor Law § 240 (1), the plaintiff must establish a violation of the statute, and that such violation was a proximate cause of the accident (*Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 287 [2003]). "The plaintiff need not demonstrate that the [safety device] was defective or failed to comply with applicable safety regulations, but only that it proved inadequate to shield [plaintiff] from harm directly flowing from the application of the force of gravity to an object or person" (*Soriano v St. Mary's Indian Orthodox Church of Rockland, Inc.*, 118 AD3d 524, 526 [1st Dept 2014] [internal quotation marks and citation omitted]). The plaintiff's comparative negligence is not a defense to a section 240 (1) claim (*see Bonaerge v Leighton House Condominium*, 134 AD3d 648, 649 [1st Dept 2015]).

However, liability does not attach under section 240 (1) where the plaintiff's own actions are the sole proximate cause of an accident (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]; *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]). Specifically, "if adequate safety devices are provided and the worker either chooses for no good reason not to use them, or misuses them, the plaintiff will be deemed the sole proximate cause of his injuries, and liability will not attach under § 240 (1)" (*Fernandez v BBD Developers, LLC*, 103 AD3d 554, 555 [1st Dept 2013]). However,

> "[u]nder Labor Law § 240 (1) it is conceptually impossible for a statutory violation (which serves as a proximate cause for a plaintiff's injury) to occupy the same ground as a plaintiff's sole proximate cause for the injury. Thus, if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it"

(*Blake*, 1 NY3d at 290).

(a) Mutual

Mutual's contention that it was "merely the owner" is insufficient to absolve it of liability herein. It is well established that "[l]iability under § 240 (1) rests on the fact of ownership, and whether the owner has contracted for the work or benefitted from it are legally irrelevant" (*Spagnuolo v Port Auth. of N.Y. & N.J.*, 8 AD3d 64, 64 [1st Dept 2004]). The statute "does not require that the owner exercise supervision or control over the worksite before liability attaches" (*Gordon v Eastern Ry. Supply*, 82 NY2d 555, 560 [1993]). "[S]o long as a violation of the statute proximately results in injury, the owner's lack of notice or control over the work is not conclusive—this is precisely what is meant by absolute or strict liability in this context" (*Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 340 [2008]). Therefore, Mutual may be held liable under the statute.

(b) F.W. Sims

The court notes that F.W. Sims has not disputed that it was a "contractor" within the meaning of the statute (*see* Labor Law § 240 [1]; *see Mulcaire v Buffalo Structural Steel Constr. Corp.*, 45 AD3d 1426, 1428 [4th Dept 2007], *rearg denied* 49 AD3d 1320 [4th Dept 2008]). Thus, F.W. Sims is also a proper Labor Law defendant.

(c) Statutory Violation and Proximate Cause

Here, plaintiff testified that, while he was working on the soffit, "the scaffold gave way underneath [him]," causing him to fall "through it, not off it" (plaintiff tr at 70). He stated that "[t]he arm separated and [he] fell through it, right through it" (*id.*). The collapse of a scaffold establishes a prima facie case of liability under the statute "whenever the employee is injured as a result of [the] collapse, regardless of whether the employee was *on* or *under* the scaffold when it collapsed" (*Thompson v St. Charles Condominiums*, 303 AD2d 152, 154 [1st Dept 2003], *lv dismissed* 100 NY2d 556 [2003]; *see also Blake*, 1 NY3d at 289 n 8). Plaintiff was not required to demonstrate that the scaffold was defective (*see Soriano*, 118 AD3d at 526). Thus, plaintiff has established prima facie entitlement to summary judgment under Labor Law § 240 (1).

Although defendants argue that plaintiff's actions were the sole proximate cause of his accident, they fail to demonstrate that this defense applies. Defendants have also failed to raise an issue of fact in opposition to plaintiff's cross motions. Plaintiff testified that he properly set up the scaffold and checked everything before he used it (plaintiff tr at 58-64). Marlowe's "surmise" that one of the pins was not locked in place (Marlowe tr at 20, 26-27) is insufficient to raise an issue of fact (*see Madeline D'Anthony Enters., Inc.*, 101 AD3d at 609). Even if plaintiff were negligent in assembling the scaffold, plaintiff's comparative negligence is not a defense to

liability under Labor Law § 240 (1) (*see Torres v Monroe Coll.*, 12 AD3d 261, 262 [1st Dept 2004]). Defendants' failure to ensure that the baker scaffold provided "proper protection, and was properly secured and braced, constituted a proximate cause of the accident" (*id.*; *see also Collins v West 13th St. Owners Corp.*, 63 AD3d 621, 622 [1st Dept 2009] [rejecting "defendants' argument, that the onus is on plaintiff to construct an adequate safety device . . . improperly shifted to the worker the responsibility for creating a proper safety device"]).

Although defendants cite *Blake, supra*, in support of their argument that plaintiff was the sole proximate cause of his accident, that case is distinguishable. In *Blake*, a jury found that the plaintiff used an extension ladder without locking the extension clips in place, a misuse of the ladder (*Blake,* 1 NY3d at 291). Here, in contrast, there is no evidence that plaintiff misused the scaffold.

Accordingly, plaintiff's cross motions for partial summary judgment on the issue of liability under Labor Law § 240 (1) are granted as against Mutual and F.W. Sims.[2] The branches of defendants' motions seeking dismissal of this claim are denied.

B. Labor Law § 241 (6)

Labor Law § 241 (6) provides, in relevant part, that:

> "All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> ***

[2] As noted by plaintiff, since plaintiff is entitled to partial summary judgment under Labor Law § 240 (1), defendants' arguments regarding his Labor Law §§ 200 and 241 (6) claims are academic (*see Cronin v New York City Tr. Auth.*, 143 AD3d 419, 420 [1st Dept 2016]). Nevertheless, the court shall consider these arguments for the sake of completeness.

> "6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work . . . shall comply therewith."

Labor Law § 241 (6) "requires owners and contractors to 'provide reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Elec Co.*, 81 NY2d 494, 501-502 [1993]). "To state a claim, the plaintiff must demonstrate that his or her injuries were proximately caused by a violation of a specific and applicable provision of the New York State Industrial Code (12 NYCRR § 23 et seq)" (*Licata v AB Green Gansevoort, LLC*, 158 AD3d 487, 488 [1st Dept 2018]). Unlike Labor Law § 240 (1), the plaintiff's comparative negligence is a defense (*Once v Service Ctr. of N.Y.*, 96 AD3d 483, 483 [1st Dept 2012], *lv dismissed* 20 NY3d 1075 [2013]).

(a) Mutual

Mutual argues that plaintiff's Labor Law §241 (6) claim should be dismissed because: (1) the Industrial Code provisions relied upon by plaintiff do not have anything to do with the baker's scaffold; and (2) plaintiff was the sole proximate cause of his own injury.

Mutual has failed to establish prima facie entitlement to summary judgment on plaintiff's Labor Law § 241 (6) claim. Of the numerous Industrial Code violations alleged in plaintiff's bill of particulars (verified bill of particulars, ¶ 4), Mutual only specifically addresses one alleged violation, section 23-1.5 (c) (3), arguing that this section is insufficiently specific to support plaintiff's section 241 (6) claim. However, the First Department has determined that section 23-1.5 (c) (3) is sufficiently specific (*see Becerra v Promenade Apts. Inc.*, 126 AD3d 557, 558 [1st

Dept 2015]). Additionally, Mutual has not demonstrated that the provisions concerning scaffolds are inapplicable to the facts of this case (*see* 12 NYCRR 23-5.1 *et seq.*).

Moreover, although Mutual argues that plaintiff was the sole proximate cause of his accident, Mutual has failed to demonstrate that a violation of the Industrial Code was not a proximate cause of plaintiff's accident (*see Misirlakis v East Coast Entertainment Props.*, 297 AD2d 312, 312 [2d Dept 2002], *lv denied* 100 NY2d 637 [2003]). Indeed, Mutual has not pointed to any evidence indicating that plaintiff's actions in setting up the scaffold were so unnecessary and unforeseeable so as to relieve it of liability (*compare Scoz v J&Y Elec. & Intercom Co. Inc.*, 137 AD3d 535, 535 [1st Dept 2016] [plaintiff was the sole proximate cause where he "used the wrong tool for the job, and rigged it (in) a manner that he knew was unsafe"]; *Kerrigan v TDX Constr. Corp.*, 108 AD3d 468, 471 [1st Dept 2013], *lv denied* 22 NY3d 862 [2014] [worker's own conduct, in misrigging the boom lift, failing to use tag lines to steady the load, and use of hand signals rather than "squawk box" speaker in the crane's cab, was sole proximate cause of the accident]).

(b) F.W. Sims

F.W. Sims has also not met its burden of establishing that plaintiff's section 241 (6) claim should be dismissed in its entirety. In opposition to F.W. Sims' motion, plaintiff notes that F.W. Sims fails to address whether section 23-5.1 (h) applies to this matter. Thus, plaintiff has abandoned reliance on the remaining alleged Code violations in opposition to F.W. Sims' motion (*see Rodriguez v Dormitory Auth. of the State of N.Y.*, 104 AD3d 529, 530 [1st Dept 2013]).

Section 23-5.1 (h) provides that "[e]very scaffold shall be erected and removed under the supervision of a designated person" (12 NYCRR 23-5.1 [h]). "Designated person" is defined in

the Industrial Code as "[a] person selected and directed by an employer or his authorized agent to perform a specific task or duty" (12 NYCRR 23–1.4 [b] [17]).

Section 23-5.1 (h) has been held to be sufficiently specific (*Atkinson v State of New York*, 12 Misc 3d 582, 584 [Ct Cl 2006]). There are issues of fact as to whether a "designated person" was supervising the erection of the baker's scaffold (*see Medina v 42nd & 10th Assoc.*, LLC, 129 AD3d 610, 611 [1st Dept 2015]). Plaintiff testified that he was working alone (plaintiff tr at 54-55, 63, 67). Additionally, there are questions of fact as to whether a violation of this provision served as a proximate cause of the accident. Although F.W. Sims stresses that plaintiff assembled the scaffold, it has failed to show that plaintiff was the sole proximate cause of his accident (*see Misirlakis*, 297 AD2d at 312). Therefore, the branch of F.W. Sims' motion seeking dismissal of plaintiff's Labor Law § 241 (6) claim is granted except as to the alleged violation of 12 NYCRR 23-5.1 (h).

C. Labor Law § 200 and Common-Law Negligence

Mutual and F.W. Sims argue that plaintiff's Labor Law § 200 and negligence claims must be dismissed because the accident arose out of the methods of plaintiff's work, and they did not exercise control over that work.

In response, plaintiff contends that there are triable issues of fact as to whether defendants knew that VRH's workers set up scaffolds without any supervision.

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross*, 81 NY2d at 505). Labor Law § 200 (1) provides as follows:

> "All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places

> shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section."

"Claims for personal injury under the statute and the common law fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]).

"Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work" (*Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 406 [1st Dept 2018], quoting *Cappabianca*, 99 AD3d at 144). However, "[w]here an existing defect or dangerous condition caused the injury, liability [under Labor Law § 200] attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*Licata*, 158 AD3d at 489 [internal quotation marks and citation omitted]).

Here, plaintiff's accident arose from the means and methods in which he performed his work, not a dangerous premises condition. There is no evidence that defendants exercised supervision or control over plaintiff's work (plaintiff tr at 58-64). Moreover, there is no evidence that defendants provided the scaffold (Marlowe tr at 22; Damalio tr at 13-14).

Plaintiff submits that there are triable issues of fact regarding whether defendants knew that VRH required workers to assemble scaffolds without supervision. However, mere notice of unsafe methods of performance is not enough to hold the owner or general contractor liable under Labor Law § 200 in the absence of supervisory control (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 878 [1993]). Thus, plaintiff's section 200 and common-law negligence claims are dismissed.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion (sequence number 001) of defendant Mutual Redevelopment Houses, Inc. for summary judgment is granted to the extent of dismissing plaintiff's Labor Law § 200 and common-law negligence claims, and is otherwise denied; and it is further

ORDERED that the cross motion of plaintiff for partial summary judgment under Labor Law § 240 (1) is granted on the issue of liability as against defendant Mutual Redevelopment Houses, Inc., with the issue of plaintiff's damages to be determined at the trial of this action; and it is further

ORDERED that the motion (sequence number 002) of defendant F.W. Sims, Inc. for partial summary judgment is granted to the extent of dismissing plaintiff's Labor Law § 200 claim and plaintiff's Labor Law § 241 (6) claim, except as to the alleged violation of 12 NYCRR 23-5.1 (h), and plaintiff's common-law negligence claim, and is otherwise denied; and it is further

ORDERED that the cross motion of plaintiff for partial summary judgment under Labor Law § 240 (1) is granted on the issue of liability as against defendant F.W. Sims, Inc., with the issue of plaintiff's damages to be determined at the trial of this action; and it is further

ORDERED that, within 20 days of entry of this order, plaintiff shall serve this order, with notice of entry, on all parties, as well as on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

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

4/8/2019
DATE

KATHRYN E. FREED, J.S.C.

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