At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 26th day of February 2020

PRESENT:
HON. CAROLYN E. WADE,
Justice

----------X

VALERII GOLOTIN,

Plaintiff,

Index No. 507339/2017

Seq 7

-against-

DECISION and ORDER

TOMLEX REALTY LLC and CONSTRUCTION CONSULTING OF NY LTD.

Defendants.

----------X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's Motion:

Papers	Numbered
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	2
Reply Affidavits/Affirmations.....	3
Memorandum of Law.....	

Upon the foregoing cited papers, and after oral argument, plaintiff Valerii Golotin moves for an order to: 1) renew a February 4, 2019 Centralized Compliance Part order that denied his application to extend the time to move for summary judgment, and upon renewal, deeming the motion timely or entertaining it pursuant to *Brill v. City of New York*; and 2) grant him summary judgment, dismissing all affirmative defenses, and awarding him costs, disbursements and attorney's fees.

The underlying action was commenced by plaintiff Valerii Golotin ("Plaintiff"), a construction worker, for serious injuries that he allegedly sustained when installing window frames. Plaintiff alleges that he fell from a ladder that wobbled, and collapsed underneath him. The subject construction site was owned by defendant Tomlex Realty LLC ("Tomlex Realty"); and co-defendant Construction Consulting of NY Ltd. ("Construction Consulting") (collectively, "Defendants") served as the general contractor for the project. Construction Consulting hired Plaintiff's employer, non-party Signature Building Corp. ("Signature"), as a sub-contractor at the site.

By a Centralized Compliance Part order, dated February 4, 2019, the Hon. Lizette Colon, A.J.S.C., denied Plaintiff's Motion to Extend the Time to File a Summary Judgment application with leave to renew pursuant to *Brill v. City of NY,* 305 AD2d 525 [2d Dept 2003].

The instant motion ensued (Exhibit "P" of Plaintiff's motion).

After a meticulous examination of the respective submissions, this court decides as follows:

As a preliminary matter, Defendants do not challenge the branch of Plaintiff's motion which seeks to renew the Centralized Compliance Part order that denied his application to extend the time to file for summary judgment. Consequently, this branch of Plaintiff's motion to renew is granted, and upon renewal, is granted without opposition.

Turning to the prong of Plaintiff's application for summary judgment, Labor Law § 200 codifies an owner and general contractor's common law duty to maintain a safe work place (*Russin v. Louis N. Picciano & Son*, 54 NY2d 311 [1981]). The party against whom liability is sought must "have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition" (*Rizzuto v. Wenger Contracting Co.*, 91 NY2d 343, 352 [1998]). General instructions and oversight of the quality of the work performed is not enough to impose liability under the statute (*Dalanna v. City of NY*, 308 AD2d 400 [1st Dept 2003]).

"[W]here the defect or dangerous condition arises from a sub[-]contractor's methods, and the owner and general contractor exercised no control or supervision over the activity at issue, they will not be held liable under Labor Law [§] 200, even if the same had notice of the sub-contractor's defective methods or the dangerous condition alleged" [(*Dipalma v. Metro. Transp. Auth.*, 20 Misc3d 1128[A] [Sup Ct, Bronx Cty. 2008]); see also *Comes v. NY State Elec. & Gas Corp.*, 82 NY2d 876 [1993])].

In the instant case, Janusz Dziegiel ("Dziegiel"), a Signature foreman and site safety supervisor, testified at his deposition that he supervised Plaintiff when the company owner, Eric Kogan ("Kogan"), was not present. In fact, Plaintiff stated that each day he would

report to Dziegiel at a specific location at the site to get work order. On the other hand, Hillel Fischman, a member of Tomlex, testified that he signed contracts that were prepared by Construction Consulting, but he was not aware of the work that was in progress at the time of the accident. Construction Consulting, as the general contractor, was responsible for running the day-to-day operations at the site. Consequently, this court determines that Tomlex and Construction Consulting are free from liability under Labor Law §200.

Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with proper safety devices to protect against "such gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). When assessing a Labor Law § 240(1) claim, the Second Department in *Simmons v. City of New York*, 165 AD3d 725, 726 [2d Dept 2018] stated the following: "In determining whether a plaintiff is entitled to the extraordinary protections of Labor Law § 240(1), the 'single decisive question [is] whether plaintiff's injuries were the direct consequence of a failure to provide protection against a risk arising from a physically significant elevation differential' (*Runner v. New York Stock Exch. Inc.*, 13 NY3d 599, 603, 922 N.E.2d 865, 895 N.Y.S.2d 279)."

Plaintiff testified that Dziegiel directed him to get a ladder to perform his task. Plaintiff states that there was only one ladder left, which upon his inspection, did not have a rubber foot on one of its legs, and was "shaking" (Exhibit "D" of Plaintiff's motion, pg. 48/lines 7-17). An inquiry was made at his deposition regarding whether he informed the foreman about the ladder's condition prior to using it; however, Plaintiff did not give a direct

answer (Exhibit "E" of Plaintiff's motion, pg. 49/ lines 3 -22). Dziegiel testified that a ladder missing a rubber bottom would be thrown away (Exhibit "N" of Plaintiff's motion, pg, 39-40).

With respect to safety equipment, Plaintiff indicated that he was only provided a helmet (Exhibit "E" of Plaintiff's motion, pg. 23/lines 22-24; pg. 24/lines 1-6). Conversely, Kogan, Signature's owner, testified that safety harnesses and hardhats were available at the site (Exhibit "O" of Plaintiff's motion, p. 18-19). Dziegiel further stated that it would usually take six workers to install a window frame, not one (Exhibit "N" of Plaintiff's motion, pg. 45/line 25; pg. 46/lines 1-19). Plaintiff testified that during his two-plus weeks at the site, he requested that Dziegiel have someone hold his ladder while he worked on it, but he was told that there was no one available. Given the conflicting statements of the deponents, this court determines that there are triable issues of material fact with respect to Defendants' liability under Labor Law § 240(1).

"Labor Law [§] 241(6) imposes a nondelegable duty of reasonable care upon an owner or general contractor to provide reasonable and adequate protection to workers, and a violation of an explicit and concrete provision of the Industrial Code by a participant in the construction project constitutes some evidence of negligence for which the owner or general contractor may be held vicariously liable" (*Fusca v. A & S Construction, LLC*, 84 AD3d 1155 [2d Dept 2011]).

In the instant case, Plaintiff alleges that Defendants violated New York Industrial Code §§ 23-1.21(b); 23-1.21 (b)(3)(i), (ii) and (iv); 23-1.21(b)(4)(ii); 23-1.21(b)(8); and 23-1.21(e)(2), (3). Plaintiff submits a supporting expert affidavit from John P. Coniglio, P.E., a

Certified Safety Professional, who opines that these sections were violated (Exhibit "X" of Plaintiff's motion). However, it is undisputed that he never inspected the subject ladder. Both Defendants also deny having the opportunity to inspect it. Thus, this court finds that there are triable questions of fact as to whether those Industrial Codes were violated.

Accordingly, based upon the above, Plaintiff's Motion to Renew the Centralized Compliance Order, dated February 4, 2019, that denied his application to extend the time to file for summary judgment is granted, and upon renewal, is granted without opposition, solely to the extent that this motion is hereby entertained pursuant to *Brill,* 305 AD2d at 526. The remaining branch of Plaintiff's application for summary judgment is denied in its entirety.

All remaining contentions have been examined, and are now rendered meritless and/or moot.

This constitutes the Decision and Order of the court.

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

KINGS COUNTY CLERK
FILED
2020 MAR -2 AM 8:17