

<b>Rankin v 1120 Ave. of the Ams., LLC</b>
2020 NY Slip Op 31110(U)
April 30, 2020
Supreme Court, New York County
Docket Number: 161897/2014
Judge: James E. d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM**

*Justice*

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DAVID RANKIN,

Plaintiff,

INDEX NO. 161897/2014

- v -

MOTION DATE 01/17/2020

1120 AVENUE OF THE AMERICAS, LLC, EDISON  
PROPERTIES, LLC, BOVIS LEND LEASE, INC., BOVIS  
LEND LEASE LMB, INC., BOVIS LEND LEASE HOLDINGS,  
INC., BOVIS LEND LEASE INTERIORS, INC., QUADRANT  
CONSTRUCTION, LTD., BBC WORLDWIDE AMERICAS,  
INC.,

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

QUADRANT CONSTRUCTION, LTD.

Third-Party  
Index No. 595572/2016

Plaintiff,

-against-

PJ MECHANICAL SERVICE & MAINTENANCE CORP.

Defendant.

-----X

QUADRANT CONSTRUCTION, LTD.

Second Third-Party  
Index No. 595028/2017

Plaintiff,

-against-

P. J. MECHANICAL CORP., F.R.P. SHEET METAL  
CONTRACTING CORP.

Defendant.

-----X

1120 AVENUE OF THE AMERICAS, LLC, EDISON  
PROPERTIES, LLC

Third Third-Party  
Index No. 595171/2017

Plaintiff,

-against-

PJ MECHANICAL CORP., FRP SHEET METAL  
CONTRACTING CORP.

Defendant.

-----X

PJ MECHANICAL SERVICE & MAINTENANCE CORP.

Fourth Third-Party  
Index No. 595488/2018

Plaintiff,

-against-

F.R.P. SHEET METAL CONTRACTING CORP.

Defendant.

-----X

BBC WORLDWIDE AMERICAS, INC.

Fifth Third-Party  
Index No. 595998/2018

Plaintiff,

-against-

P.J MECHANICAL CORP., F.R.F SHEET METAL  
CONTRACTING CORP.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 226, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 254, 255, 256, 257, 258, 259, 260, 261, 266, 267, 268, 269, 270

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing papers, the motion by plaintiff David Rankin for partial summary judgment, pursuant to CPLR 3212(e), on the issue of liability under Labor Law Sections 240(1) and 241(6) is granted.

On February 14, 2012, plaintiff was working for third-party defendant F.R.P. Sheet Metal Contracting Corp. on the fifth floor of the building located at 1120 Avenue of the Americas in Manhattan.<sup>1</sup> At the time of plaintiff's accident, he was installing ductwork in the ceiling for an

<sup>1</sup> Defendant BBC Worldwide Americas, Inc. ("BBC") was the lessee of the fifth floor of said building at the time of the accident. Defendant 1120 Avenue of the Americas, LLC owned the building located at 1120 Avenue of the Americas. Defendant Edison Properties, LLC was the manager of the subject building according to the Building Management Agreement. Defendant

air conditioning system as part of the renovations taking place on the fifth floor for BBC. In order to install the ductwork, plaintiff was provided with a wooden eight-foot-tall A-frame ladder. Plaintiff was installing a collar for a VAV box, a device placed between ductwork to increase airflow to another area, which was ten to eleven feet high. Plaintiff claims that when he arrived at the location, he opened the A-frame ladder and pushed down the brace to ensure that it was locked. Plaintiff had ascended the ladder to the fourth or fifth step to install the collar. As he was screwing the collar in place, plaintiff fell backwards off of the ladder when the ladder allegedly moved because a brace on the ladder allegedly crumbled. Based upon the way the accident occurred, plaintiff is entitled to summary judgment on the issue of liability under both Labor Law Sections 240(1) and 241(6).

Labor Law 240(1) imposes absolute liability on owners and general contractors who fail to protect employees from elevation-related hazards. *Wilinski v. 334 E. 92nd Housing Development Fund Corp.*, 18 N.Y. 3d 1, 8 (2011). The duties imposed by Section 240(1) are nondelegable. *Gordon v. Eastern Ry. Supply, Inc.*, 82 N.Y.2d 555, 559 (1993). In order to obtain summary judgment against an owner or general contractor under Section 240(1), a plaintiff must only demonstrate that the accident occurred because the elevation-related safety device failed to perform its function to support or secure the plaintiff from injury. *See Blake v. Neighborhood Housing Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280, 289 n.8 (2003). Thus, an owner or general contractor will be liable to an employee who sustains an elevation-related injury even if the owner or general contractor had no supervision or control over the plaintiff's work. *See Wise v. 141 McDonald Ave., LLC*, 297 A.D.2d 515, 516 (1st Dep't 2002). Here, plaintiff testified that

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Quadrant Construction, Ltd. was the general contractor of the construction project that was ongoing at the building at the time of plaintiff's accident. The claims against defendants Bovis Lend Lease, Inc., Bovis Lend Lease LMB, Inc., and Bovis Lend Lease Interiors, Inc. were discontinued by stipulation filed September 17, 2015. NYSCEF Doc. No. 31.

while he was installing the collar as part of the ductwork he was performing, the ladder moved because the brace gave way and he fell backwards. Further, “[p]laintiff’s allegation that the ladder ‘gave way’ or collapsed beneath him, causing him to fall, was uncontested. As such, defendants failed to create an issue of fact regarding proximate causation.” *Panek v. County of Albany*, 99 N.Y.2d 452, 458 (2003) (citing cases). Accordingly, plaintiff’s motion for summary judgment on his Labor Law 240(1) claim is granted.

Labor Law Section 241(6) provides, in pertinent part, as follows:

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:

\* \* \*

(6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.

Section 241(6) imposes a nondelegable duty “on owners and contractors to ‘provide reasonable and adequate protection and safety’ to workers.” *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501-502 (1993). However, Section 241(6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant’s motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety. *Id.*

Here, plaintiff alleges violations of Industrial Code provisions 12 NYCRR 23-1.21(b)(4)(iv), 12 NYCRR 1.21(e)(3), and/or 12 NYCRR 23-1.21(b)(3)(iv). 12 NYCRR 1.21(b)(4)(iv) and 1.21(e)(3) provide, in relevant part, that when work is being performed more than ten feet above the ladder footing that the ladder must be secured against slippage. The case

law that addresses these regulations holds that they apply to an A-frame ladder when the plaintiff is working at a height more than ten feet above the base of the ladder, irrespective of whether the plaintiff's feet are less than ten feet above the floor. As plaintiff has testified that he was working on an A-frame ladder at a height of eleven feet off of the ground, and there is no indication that the ladder was secured, these provisions of the Industrial Code were violated and plaintiff is entitled to summary judgment on his Labor Law Section 241(6) claim.

This Court has considered the arguments advanced by defendants in opposition to the instant motion, however, defendants' assertions are without merit. For example, first, the purported statement made by plaintiff that he fell off the ladder while doing ductwork is not inconsistent with his testimony that he slipped off of the ladder after the ladder moved. *See, e.g., Wasilewski v. Museum of Modern Art*, 260 A.D.2d 271 (1st Dep't 1999). Second, the fact that there is contrary testimony indicating that the ladder was not broken does not create a genuine issue of material fact because the individual, Anthony Bieda, who examined the ladder does not even know if he examined the exact ladder that plaintiff used. Third, defendants attempt to argue that there is a question of fact as to whether plaintiff was the sole proximate cause of the accident because he supposedly could have had an apprentice hold the ladder while he was using it, but this is not the standard for liability under the Labor Law—it is defendants' duty to provide plaintiff with safety equipment and ensure that the ladder is secure. Fourth, defendants contend that plaintiff provided inconsistent versions as to how the accident occurred, however, the only alleged inconsistencies relate to whether or not the ladder fell during the accident and the exact malfunction of the ladder that caused it to collapse. Fifth, the fact that the accident was unwitnessed is immaterial as to whether or not a triable issue of fact exists as there can be no real

dispute that the accident occurred. This Court has considered defendants' remaining arguments and find them similarly to be without merit.

Accordingly, plaintiff's motion for partial summary judgment on his Labor Law Section 240(1) and 241(6) claims is granted.

This constitutes the decision and order of this Court.



4/30/2020  
DATE

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JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE