SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

----------X

ROBERT JUSTICE III,

Plaintiff,

- v -

NEW YORK SOCIETY FOR THE RELIEF OF THE RUPTURED AND CRIPPLED, MAINTAINING THE HOSPITAL FOR SPECIAL SURGERY,

Defendant.

----------X

INDEX NO. 159094/2016

MOTION DATE N/A

MOTION SEQ. NO. 001, 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28-42, 57-59; (Motion 002) 44-56, 60

were read on these motions for JUDGMENT - SUMMARY.

Plaintiff Robert Justice III commenced this action against the owner, defendant New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery ("Hospital"), to recover for injuries he allegedly suffered on August 21, 2016, when, during the course of installing electrical wires for a nurse call system in the Hospital, he fell from an unsecured A-frame ladder. Plaintiff moves pursuant to CPLR 3212 for partial summary judgment on liability on his Labor Law § 240(1) claim (Motion #001). Defendant moves pursuant to CPLR 3212 for summary judgment seeking dismissal of all of plaintiff's claims (Motion #002). In response to defendant's motion, plaintiff has withdrawn his claim under Labor Law § 200. The motions are consolidated for purposes of this decision.

Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant 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.

Labor Law § 240(1) imposes liability on contractors and owners for exposing workers to certain elevation-related hazards and failing to provide adequate safety devices for these risks. *Keenan v. Simon Property Group, Inc.*, 106 A.D.3d 586, 587 (1st Dep't 2013). In order for a plaintiff to demonstrate entitlement to summary judgment on an alleged violation of Labor Law § 240(1), he must establish that there was a violation of the statute, which was the proximate cause of the workers' injuries." *Cherry v. Time Warner, Inc.*, 66 A.D.3d 233, 236 (1st Dep't 2009) (internal citations omitted). "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)." *Plywacz v. 85 Broad Street LLC*, 159 A.D.3d 543, 544 (1st Dep't 2018). Further, plaintiff is not required to show that the ladder was defective to meet his burden on summary judgment. *Ortiz v. Burke Ave. Realty, Inc.*, 126 A.D.3d 577, 577 (1st Dep't 2015)

Here, plaintiff testified that he was standing on the third-rung of the fiber-glass A-frame ladder, approximately three-feet off the ground, when he reached up and over in order to pull down the "snake" from the ceiling. Affirmation of Rebecca Barrett dated November 28, 2019, Exh. G (Plf. Dep. Tr. 60-61, 64, 72-74). As he reached over, plaintiff lost his balance, causing one of the legs on the ladder to come off the ground and the ladder gave way, causing him to fall to the ground. Barrett Aff., Exh. G (Plf. Dep. Tr. 64, 72-74). This testimony, which showed that plaintiff was injured when the unsecured ladder upon which he was working fell and that defendant failed to provide him with any safety equipment, such as a safety harness or a scaffold, to perform the work, was sufficient to satisfy plaintiff's prima facie burden on summary

judgment. *Messina v. City of New York*, 148 A.D.3d 493, 494 (1st Dep't 2017) (plaintiff established entitlement to partial summary judgment on his Labor Law 240(1) claim through his testimony that he was injured when the A-frame ladder on which he was standing moved underneath him when he applied pressure to it while trying to remove the drop ceiling he was demolishing); *see also Plywacz v. 85 Broad Street LLC*, 159 A.D.3d 543, 544 (1st Dep't 2018); *Lipari v. AT Spring LLC*, 92 A.D.3d 502, 503-504 (1st Dep't 2012). Further, contrary to defendants' contention, this is not an instance where plaintiff fell merely because he lost his balance, as plaintiff's testimony demonstrates that the ladder's leg lifted off the ground, causing him to lose his balance and fall to the ground. *See Lipari*, 92 A.D.3d at 504 (where worker's fall was caused either by unsecured ladder which slipped or because worker lost his balance because unsecured hardboard gave way when he leaned on it, court found that plaintiff was not given proper protection under Scaffold Law); *compare Hugo v. Sarantakos*, 108 A.D.3d 744, 745 (2d Dep't 2013) (no liability under Scaffold Law where plaintiff admitted he fell off ladder because he lost his balance and ladder did not move or slip and remained in upright position after his fall).

In opposition to plaintiff's motion, and in support of its own motion for summary judgment, defendant argues that plaintiff's Labor Law § 240 claim should be dismissed because at the time of the accident, plaintiff was engaged in routine maintenance work and is therefore not entitled to the protections of this statute. It is well-established that Labor Law § 240(1) "affords protection to workers engaged in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." *Dos Santos v. Consolidated Edison of NY*, 104 A.D.3d 606, 607 (1st Dep't 2013) (internal quotations omitted). However, routine maintenance work, as opposed to repairing or altering, does not afford an injured worker the protections of the

statute. *Soriano v. St. Mary's Indian Orthodox Church*, 118 A.D.3d 524, 526 (1st Dep't 2014). Whether a particular activity constitutes repairing or altering versus routine maintenance must be decided on a case by case basis, depending on the context of the work. *Dos Santos*, 104 A.D.3d at 607.

Here, defendant attempts to portray the work that plaintiff was performing as "routine maintenance" by focusing exclusively on the specific task that plaintiff was engaged in at the time of the accident, which was retrieving the metal snake used for wall fishing in order to attach it to electrical wiring and pull it into the bathroom in the patient's room. Barrett Aff., Exh. G (Plf. Dep. Tr. 49). However, by focusing exclusively on the specific activity plaintiff was performing at the time of the accident, defendants conveniently ignore the context of plaintiff's work. *Saint v. Syracuse Supply Co.*, 25 N.Y.3d 117, 125 (2015) (rejecting defendant's efforts to limit analysis to moment of plaintiff's injury and stating that a contextualized analysis is required). Here, plaintiff testified that he and his company had been working on installing a new nurse call system at the Hospital for several months and that the floor where he was working had to be shut down and cleared of all patients in order for the work to be completed. Barrett Aff., Exh. G (Plf. Dep. Tr. 42-44). Plaintiff testified that installing the new wiring for the nurse call system required him to cut holes in the sheetrock in order to retrieve the wiring from the ceiling and move the cables to their designated located, which is what plaintiff was doing just prior to the accident. Barrett Aff., Exh. G (Plf. Dep. Tr. 57, 70-72). Viewing plaintiff's work in the context of the project as a whole, it constitutes alteration work under Labor Law 240(1) and thus plaintiff is entitled to protection under the statute. *See Joblon v. Solow,* 91 N.Y.2d 457, 465 (1998) (electrician who was employed to create hole through wall in office building in order to

route conduit into new office was engaged in altering building within meaning of scaffolding law). Therefore, defendants' argument must be rejected.

Finally, contrary to defendant's contention, plaintiff was not the sole proximate cause of his accident. Even if plaintiff was negligent in bending over on the ladder in order to reach the "snake," his negligence would only raise an issue as to comparative negligence, which is not a defense to a Labor Law 240(1) claim. *Sotarriba v. 346 West 17th Street LLC*, 179 A.D.3d 599 (1st Dep't 2020). Accordingly, plaintiff is entitled to summary judgment on liability on his Labor Law 240(1) claim.

In light of the granting of this ruling, the Labor Law § 241(6) is academic. *Messina,* 148 A.D.3d at 494. Accordingly, it is

ORDERED that plaintiff's motion for partial summary judgment on his Labor Law § 240(1) cause of action is granted on liability only; and it is further

ORDERED that defendant's motion for summary judgment seeking dismissal of plaintiff's claims is denied.

5/7/20
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

APPLICATION: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER

CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ INCLUDES TRANSFER/REASSIGN ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE