

<b>Rodriquez v Mitlon Boron, LLC</b>
2020 NY Slip Op 34651(U)
November 17, 2020
Supreme Court, Bronx County
Docket Number: Index No. 36182/2017E
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seqs. # 1, 2

JULIO A. RODRIQUEZ,

Index No.: 36182/2017E

Plaintiff,

- against -

**DECISION and ORDER**

MITLON BORON, LLC,

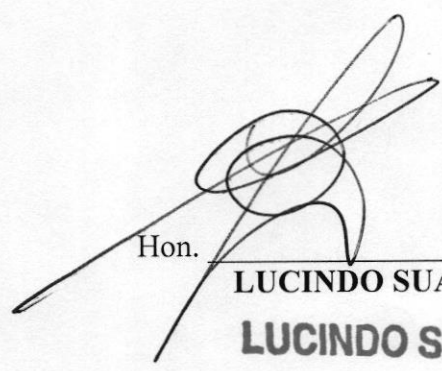
Defendant.

and Third-Party actions.

	<u>PAPERS NUMBERED</u>
Plaintiff's Notice of Motion, Affirmation in Support, Exhibits (Mtn. Seq. # 1)	1, 2, 3
Defendant's Affirmation in Opposition, Exhibit (Mtn. Seq. # 1)	4, 5
Plaintiff's Reply Affirmation (Mtn. Seq. # 1)	6
Defendant's Notice of Motion, Affirmation in Support, Exhibits (Mtn. Seq. # 2)	7, 8, 9
Plaintiff's Affirmation in Opposition (Mtn. Seq. # 2)	10
Defendant's Reply Affirmation (Mtn. Seq. # 2)	11

Upon the enumerated papers, Plaintiff's motion (Mtn. Seq. # 1) seeking summary judgment on his Labor Law §240(1) claim is denied and Defendant's motion seeking a dismissal of Plaintiff's complaint is granted, in accordance with the annexed decision and order.

Dated: 11/17/2020



Hon.

**LUCINDO SUAREZ, J.S.C.**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seqs. # 1, 2

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JULIO A. RODRIQUEZ,

Plaintiff,

- against -

MITLON BORON, LLC,

Defendant.

Index No.: 36182/2017E

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MITLON BORON, LLC,

Third-Party Plaintiff,

- against -

**DECISION and ORDER**

LEX RESIDENCE, LLC and LEX RESIDENCE II, LLC,

Third-Party Defendants.

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MITLON BORON, LLC,

Second Third-Party Plaintiff,

- against -

BOWERY RESIDENTS' COMMITTEE, INC.,

Second Third-Party Defendant.

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PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff's summary judgment motion is whether his injury-producing work is a covered activity under the Labor Law §240(1), and if so, whether he established a *prima facie* violation of same.<sup>1</sup> This court finds that Plaintiff's activities at the time of loss are not protected

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<sup>1</sup> Plaintiff did not oppose the branches of Defendant's summary judgment seeking dismissal of his common law negligence and Labor Law §§241(6) and 200 claims, therefore, same is granted without opposition.

under Labor Law §240(1).

According to Plaintiff, he was employed by non-party Somerstein Associates LLC (“Somerstein”) as a superintendent for a building that housed a residential homeless shelter. His duties as the superintendent included replacing leaking sinks, repairing ceiling damage caused by water, replacing broken floor tiles, painting rooms, and repairing plumbing leaks. In addition, Plaintiff testified that he was required to perform walk-throughs at the subject building to check for items that were damaged and needed repair.

On the date of loss, Plaintiff testified that his supervisor, Sarath Wanigasinghe, performed a walk-through of the building and informed him that the smoke and carbon monoxide detectors in room 502 were not working. Plaintiff averred that each room in the building had a separate carbon monoxide detector that was battery-powered and a smoke detector that was hard-wired. However, due to the residents of the building removing the batteries from the carbon monoxide detector, Plaintiff’s employer agreed to install a single hard-wired electrical carbon monoxide/smoke detector.

Plaintiff testified that he went to inspect the room with his supervisor, Mr. Wanigasinghe, equipped with an 8-foot A-frame ladder. Upon his inspection of the smoke detector, he determined that it was malfunctioning and needed to be replaced. He then testified that he descended from the ladder and proceeded to shut off the power breaker that supplied electricity to the room. Plaintiff then averred that he ascended the ladder and with his hands above his head he began the process to install the single hard-wired electrical carbon monoxide/smoke detector when suddenly the ladder moved causing him to fall to the ground and sustain injuries.

Labor Law §240(1), imposes absolute liability on building owners, contractors, and their agents whose failure to provide adequate protection to workers employed on a construction site proximately causes injury to a worker. *Santos v. Condo 124 LLC*, 161 A.D.3d 650, 78 N.Y.S.3d

113 (1st Dep't 2018). To establish liability under Labor Law §240(1), a plaintiff must show that the statute was violated, and that the violation was a proximate cause of the injury. *Id.* In addition, a plaintiff must demonstrate that his injury was attributed to a specific gravity-related injury such as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured. *See Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, 959 N.E.2d 488, 935 N.Y.S.2d 551 (2011).

Here, Plaintiff argues he established his *prima facie* entitlement to judgment because Defendants failed to secure the ladder, he was on at the time of loss and ensure it remained steady and erect, thereby, constituting a violation of the Labor Law. Moreover, Plaintiff contends that the task he was completing at the time of loss, namely replacing a malfunctioning smoke detector and installing the single hard-wired electrical carbon monoxide/smoke detector comes within the purview of Labor Law §240(1) because it constituted a “repair”, which is a protected activity under same. Further, Plaintiff posits that Defendant’s expert’s affidavit does not raise an issue of fact as it is based upon speculation. Lastly, Plaintiff argues that he cannot be the sole proximate cause of his accident as the evidence demonstrated that Defendant’s failure to provide him with adequate safety device to prevent him from falling was the proximate cause of his injuries.

In opposition, Defendant argues that the ladder supplied to Plaintiff was an adequate safety device for Plaintiff’s work. Defendant relies upon its expert witness, Scott Cameron, who averred that the ladder was an appropriate safety device as it was precisely designed for the work Plaintiff was tasked to complete. Furthermore, Mr. Camron averred that no other additional support or safety devices were required as the subject ladder is a self-supporting device. In addition, Defendant contends that the replacement of a smoke detector was routine maintenance

work that falls outside of the scope of Labor Law §240(1). Lastly, Defendant argues that no liability should attach as Plaintiff was the sole proximate cause of his accident.

This court finds that Plaintiff's injury-producing work was not a "repair" as envisioned by Labor Law §240(1). The work performed by Plaintiff at the time of loss involved the mere replacement of a smoke detector in a non-construction and non-renovation context, which does not constitute "repairing" within the meaning of Labor Law §240(1) so as to bring Plaintiff within the protective ambit of the statute. *See Wein v Amato Props., LLC*, 30 A.D.3d 506, 816 N.Y.S.2d 370 (2d Dep't 2006); *see also Jani v. City of NY*, 284 A.D.2d 304, 725 N.Y.S.2d 388 (2d Dep't 2001); *see also Russ v. State*, 267 A.D.2d 833, 699 N.Y.S.2d 822 (3d Dep't 1999).

Accordingly, it is

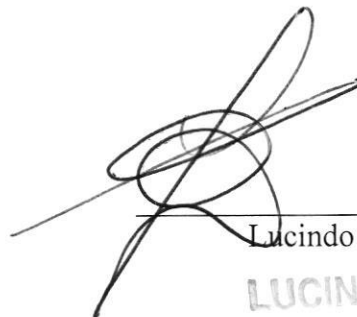
ORDERED, that Plaintiff's summary judgment motion seeking judgment on liability as to his Labor Law §240(1) claim is denied; and it is further

ORDERED, that Defendant's summary judgment motion seeking the dismissal of Plaintiff's complaint is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: November 17, 2020



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.