SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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KELLISON GATINHO,

Plaintiff,

-against-

EAST RAMAPO CENTRAL SCHOOL DISTRICT, AXIOM CONSULTANT GROUP, LLC[1], and GEA ENGINEERING P.C.[2]

Defendants.

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EAST RAMAPO CENTRAL SCHOOL DISTRICT,

Third-Party Plaintiff,

-against-

UNITED ROOFING & SHEET METAL, INC.

Third-Party Defendant.

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DECISION AND ORDER

(Motions #3, 4 & 6)

Index No.: 036603/2018

Sherri L. Eisenpress, J.

The following papers, numbered 1 to 26, were reviewed in connection with (i) Third-Party Defendant United Roofing & Sheet Metal Inc.'s ("United") Notice of Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting summary judgment and dismissal of Plaintiff's Labor Law §§ 240(1) and 241(6) causes of action **(Motion #3)**; (ii) Defendant East Ramapo Central School District's ("East Ramapo") Notice of Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting summary judgment and dismissal of Plaintiff's action in its entirety **(Motion #4)**; and (iii) Plaintiff's Notice of Cross-Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting him partial summary judgment

[1] Plaintiff filed a Stipulation of Discontinuance against Defendant Axiom on October 28, 2020
[2] Plaintiff filed a Stipulation of Discontinuance against Defendant GEA on February 24, 2020.

as to liability on his Labor Law § 240(1) and § 241(6) cause of actions against Defendant East Ramapo **(Motion #6)**:

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Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

Plaintiff commenced the above captioned action against the East Ramapo School District on November 7, 2018, alleging violations of Labor Law § 240(1), §241(6), and § 200, arising out of an accident which occurred on July 14, 2018, at the Hempstead

Elementary School in Spring Valley, New York. Issue was joined with the service of an Answer on November 26, 2018. Defendant East Ramapo filed a third-party complaint against Plaintiff's employer, United Roofing & Sheet Metal, Inc., on April 19, 2019. Issue was joined as to the third-party action on July 1, 2019. Although the Complaint was amended two times thereafter to join additional parties, the action has been discontinued as to those entities.

Factual Allegations

Plaintiff, Kellison Gatinho, was employed as a union roofer by third-party defendant United. On the day of the accident, Plaintiff was working at Hempstead Elementary School in Spring Valley, which was owned by Defendant East Ramapo, in connection with a roof replacement project. He had begun working on that project four or five days prior to the accident. Plaintiff was working on the roof near the rear of the building, which was approximately 25 feet high, when the accident occurred. Plaintiff testified that, as a general rule, United did not provide him with safety equipment such as a harness and hard hat, although he did have a personal one which he sometimes used. Other times, a United foreman would make company harnesses available to the workers.

Mr. Gatinho testified that on the day of the accident, the safety equipment on the roof consisted of a single safety cart, in addition to yellow perimeter flags that served as "warning lines" to let workers know when they were near the edge of the roof. He described the safety cart as being a weighted, four wheeled cart manufactured by "Cobra," to which two workers could "tie off" at a time. The cart could be moved to different parts of the roof by removing its weights and wheeling it to the desired location. Plaintiff testified that workers were not permitted to move the cart, however, if other workers were tied off and already using it.

Mr. Gatinho testified that he did not have his personal harness with him on the day of the accident.[3] He claimed there no prohibition against working on the roof without one when working within the warning perimeter. After having performed several tasks within the safety perimeter, he testified that Mr. Bazzoni, his supervisor, instructed him to trim a piece of insulation that had been left hanging over the edge of the back portion of the roof, as he was concerned that someone would step on it and fall. In order to do so, Plaintiff had to go outside the warning perimeter. After removing the piece, Mr. Gatinho snapped a chalk line at the edge of the roof in order to mark a straight edge where the insulation should be cut.

Plaintiff testified that Mr. Bazzoni stood within the safety perimeter and watched him perform these tasks without a harness. Mr. Gatinho testified that he was unaware if any safety harnesses were available to him that day but that even if he had been wearing a harness, there was no place to "tie off." He testified that at least six of his co-workers were working outside the perimeter flags without being tied off. He further testified that at the time of his accident, two workers outside the flags were tied off to the single safety cart on the roof located 10-15 feet from him, the maximum permitted. Plaintiff claims that he was expressly instructed to perform this task outside the safety area, notwithstanding the fact that he was not wearing a safety harness. When asked why he performed the task without a safety belt, he testified that he was following his supervisor's orders. After snapping the chalk line, Mr. Gatinho knelt down and made the cut. As he was in the process of snapping a line for a second cut, while still kneeling, he lost his balance and fell from the edge of the roof, 25 feet to the asphalt below. Plaintiff denied that Mr. Bazzoni yelled at him to not work outside the safety perimeter prior to the accident or that he directed him to put a safety belt on and tie off.

[3] The Court notes, however, that Plaintiff signed a statement dated July 23, 2018, in which he states that he had his own safety harness in the car that day but did not use it.

Eduardo Bazzoni, Plaintiff's foreman, testified on behalf of third-party Defendant United. He testified that he could not remember exactly how many workers were present on the day of the accident but estimates that there were approximately ten to twelve United employees at the worksite. Mr. Bazzoni testified that United provided the plaintiff with safety equipment, including harnesses, retractables, safety carts, mobile carts, ropes and lanyards. He stated that there was a safety line set up around the perimeter as well as three mobile safety carts- two of which provided tie off points for five workers and one which provided tie off points for two workers.

Bazzoni testified that there was no need for the plaintiff to go outside the safety line to cut insulation. He stated that after observing Plaintiff do so, he reprimanded Plaintiff and expected him to go back inside the safety perimeter and tie off. Bazzoni testified that he became aware of the accident approximately 15-20 minutes later when he heard someone scream that Plaintiff fell off the roof. Although Mr. Bazzoni testified that there were at least two safety carts to which Plaintiff could have attached himself, he was unable to say where they were located or whether any were within the section of the roof that Plaintiff was performing his work. He also could not remember if all three carts were being used at the time of the accident such that they were unavailable. Bazzoni stated that it would take about "a minute" to move a cart 50 feet.

Additionally, Bazzoni testified that he took photographs shortly after the accident which would have presumably shown the location of the safety equipment. The accident report notes that photographs are attached, however, they were not. No such photographs were produced in response to Plaintiff's demand, and United claims that Mr. Bazzoni's tablet was damaged, was no longer in use, and that items on the tablet "are no longer recoverable."

The parties submitted examination before trial transcripts and/or signed and notarized statements from Plaintiff's co-workers. Herbert Ramirez testified at his examination before trial that he was about ten feet away from Plaintiff at the time of the accident and heard him fall but did not see him. He testified that safety harnesses were provided by United and that safety carts were on the roof on the morning of the accident where workers could tie off, however,

he was unable to recall seeing any safety carts near Plaintiff. He did not recall Mr. Bazzoni telling Plaintiff to get away from the edge of the roof or not to work in that area prior to the accident occurring. Bruno Almeida testified that about five minutes before the accident he saw Plaintiff inside the safety perimeter about to "snap a line." He did not see Plaintiff fall and did not hear any United foremen remind workers to tie off. Although there were safety carts on the roof that morning, he could not say how many but did say none were within ten feet of Plaintiff before he fell. He did not hear Mr. Bazzoni yell at Plaintiff that morning.

Plaintiff submits the affidavit of Sidnei Olivera, who was working with Plaintiff on the roof when the accident occurred. Mr. Olivera was designated the "safety monitor" by Bazzoni and was in charge of supervising his co-workers when they were working outside of the flagged area and were not tied off. He avers that it was common for only one cart to be available to attach to and thus it was United's company practice to allow workers to work outside the flagged perimeter and near the edge, provided they were being monitored. About ten minutes after Olivera was designated the monitor, Mr. Bazzoni informed him that he would take over his duties as safety monitor. At that time, Plaintiff was working near the edge without being tied off, a fact which he states Bazzoni acknowledged. Moments after Bazzoni took over, he states he learned that Plaintiff had fallen off the roof. Mr. Olivera further states that he remembers Bazzoni specifically instruct Plaintiff to go and cut a piece of insulation located in the exact area from which Plaintiff fell.

Also submitted is the testimony of Isidro Cardoso Branco. Mr. Branco was working on the roof when Plaintiff fell, although he did not see the accident occur. He testified that there was a safety cart on the roof, approximately 22 feet from the roof's edge in the area of Plaintiff's fall, but it was in use by two other workers. There were also other carts elsewhere on the roof at the time but they were also being used. Mr. Branco did not hear anyone say anything to Plaintiff in the five minutes before the accident, during which time Bazzoni was standing to Mr. Branco's right.

Summary Judgment Standard

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., *et al*., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003).

However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). "On a motion for summary judgment, facts must be viewed 'in the light most favorable to the non-moving party.'" Vega v. Restani Const. Corp., 18 N.Y.3d 499, 503, 942 N.Y.S.2d 13 (2012).

Labor Law § 240(1)

Third-party Defendant United and Defendant East Ramapo each move for summary judgment and dismissal of the Labor Law § 240(1) cause of action on the ground that Plaintiff is the sole proximate cause of the subject occurrence. They argue that at the time of the accident, Plaintiff had adequate safety devices and fall protection available to him including safety lines, safety carts, harnesses and lanyards. Notwithstanding the availability of this equipment, they argue that he unilaterally chose not to use the equipment and additionally, he disregarded his supervisor's directions and the required safety protocol.

Plaintiff opposes the summary judgment motions and cross-moves for summary judgment in his favor on his Labor Law § 240(1) cause of action. In support of his motion, Plaintiff submits the expert affidavit of Herman Silverberg, P.E. who avers that with a reasonable degree of engineering certainty, Mr. Gatinho was not provided with proper protection under Labor Law § 240(1) due to the failure to provide him with, and ensure the proper arrangement and operation of appropriate fall protection devices, including a safe and secure anchor point for a harness/lanyard. Additionally, Plaintiff argues that the testimony clearly establishes that Plaintiff was not provided with any means of anchoring a personal fall protection harness in the area where he was required to work because no safety carts intended for that purpose were available to him. More specifically, although there was one cart in the general area that could accommodate two workers, it was in use by two of his co-workers at the time of the accident. He also contends that the sole proximate cause defense is not applicable because Plaintiff's failure to tie off to a safety cart was not the product of recalcitrance but due to the absence of an available anchor point.

As an initial matter, while the cross-motion was technically untimely, having been filed on August 13, 2020, the various Administrative Orders issued in response to the COVID-19 emergency, extended such deadlines. Moreover, it is well-established that a court may entertain an untimely cross motion for summary judgment if the court is deciding a timely motion for summary judgment made on nearly identical grounds. Alexander v. Gordon, 95 A.D.3d 1234, 1247, 945 N.Y.S.2d 397 (2d Dept. 2012); Paredes v. 1668 Realty Associates, LLC, 110 A.D.3d 700, 702, 972 N.Y.S.2d 304 (2d Dept. 2013). Given that Plaintiff's cross-motion is made on nearly identical grounds as the motion made by East Ramapo, the Court will entertain Plaintiff's cross-motion.

Labor Law Sec. 240(1) states:

> All contractors and owners and their agents, except owners of one or two family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting,

> cleaning or pointing of a building or structure shall furnish or erect, or caused 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.

This statute imposes absolute liability upon an owner, contractor or their agents for their failure to provide or erect safety devices necessary to give proper protection to a worker who sustains an injury proximately caused by that failure. Zimmer v. Chemung County Performing Arts, 65 NY2d 513; 493 N.Y.S.2d 102, 105 (1985). This duty is non-delegable and an owner is liable even though the job is performed by an independent contractor over which the owner has no supervision or control. Rocovich v. Consolidated Edison Co., 78 NY2d 589; 577 N.Y.S.2d 219 (1993), Cosban v. New York City Transit Authority, 227 A.D.2d 160; 641 N.Y.S.2d 838 (1st Dept. 1996). Furthermore, it is well established that the purpose of Labor Law § 240 (1) is the maximum protection of workmen from injury. Zimmer, 493 N.Y.S.2d. at 105. Therefore, the statute is to be liberally construed so as to achieve its legislative purpose. Id

Labor Law § 240 (1) was designed to prevent those types of accidents in which a ladder, scaffold, netting or other protective devices proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person.* [Emphasis in the original] Ross v. Curtis-Palmer Hydro-Electric Co., 577 N.Y.S.2d 219 (1993); Rocovich v. Consolidated Edison Co., 577 N.Y.S.2d 219 (1991). The legislature has therefore seen fit to give the worker exceptional protection in circumstances where there are risks related to elevation differentials. Rocovich, supra, at 222. Labor law § 240(1) provides protection for workers engaged in certain enumerated tasks including erection, demolition, repairing, altering, painting, cleaning or pointing.

To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries. Caçanoski v. 35 Cedar Place Assoc. LLC, 147 A.D.3d 810, 811-812, 47

N.Y.S.3d 71 (2d Dept. 2017). Case law makes clear that the statute is violated where a worker falls due to the absence of an adequate anchor/attachment point for a safety harness. See Gomes v. Pearson Capital Partners LLC, 159 A.D.3d 480 (1st Dept. 2018); Atkins v. Central N.Y. Regional Mkt. Auth., 275 A.D.2d 911, 921, 713 N.Y.S.2d 399 (4th Dept. 2000); Salzer v. Benderson Dev. Co., LLC, 130 A.D.3d 1226 (3d Dept. 2015).

In Merante v. IBM, 169 A.D.2d 710, 711, 564 N.Y.S.2d 463 (2d Dept. 1991), the Court rejected defendants' contention that they supplied adequate safety equipment in the nature of safety harnesses since this was negated by the fact that no safety lines were furnished to which these belts could be attached. Likewise, in DiMuro v. Town of Babylon, 210 A.D.2d 373, 374, 620 N.Y.S.2d 114 (2d Dept. 1994), the Court found that plaintiff succeeded in demonstrating that he was injured when he fell from a steel beam at the subject construction site, and that, while he had been provided with a safety belt, there were no safety lines to which the belt could be attached in the work area where he fell. See also Anderson v. MSG Holdings, L.P., 146 A.D.3d 401, 403, 44 N.Y.S.3d 388 (1st Dept. 2017)(plaintiff entitled to summary judgment where defendants failed to sufficiently refute plaintiff's testimony that there was no place for him to tie off the harness.)

In the instant matter, the Court finds that Plaintiff met his burden upon summary judgment that although safety harnesses were available on site, he nonetheless was not provided with an available and adequate safety device in that he was not provided with a safe and secure anchor point upon which to tie off. Plaintiff testified that he was aware of only one safety cart on the roof, which was being fully utilized by two people at the time of the accident. Thus, it was not available to him. Likewise, Mr. Branco confirmed at his non-party examination before trial that although he was aware of other carts on the roof, they too were in use at the time of Plaintiff's accident.

East Ramapo and United, on the other hand, have failed to affirmatively demonstrate that Plaintiff was provided with an adequate and available tie point to which he

could have tied off the safety belt. Although Mr. Bazzoni testified that there were at least two safety carts to which Plaintiff could have attached himself, he was unable to say where they were located or whether any were within the section of the roof that Plaintiff was performing his work. Moreover, he also could not remember if all three carts were being used at the time of the accident such that they were available for Plaintiff's use. Likewise, while some of Plaintiff's co-workers were aware that safety carts were on the roof, none of them testified that the carts were not in use at the time of the accident such that they were available to Plaintiff for his use.

Having found that Plaintiff set forth a prima facie case, the Court must now assess whether Defendants have demonstrated a triable issue of fact so as to require the denial of summary judgment. In the instant matter, Defendants argue that Plaintiff was the sole proximate cause of the subject occurrence. A plaintiff under Labor Law § 240(1) need only show "that his injuries were at least partially attributable to defendants' failure to take statutorily mandated safety measures to protect him from the risks arising from an elevation differential." Pardo v. Ialystoker Center & Bikur Cholim, 308 A.D.2d 384, 764 N.Y.S.2d 409, 411 (1st Dept. 2003) As stated by the Court "there may be more than one proximate cause of a workplace accident." Id. Moreover, where the owner or contractor fails to provide adequate safety devices to protect workers from elevation-related injuries and that failure is a cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence. Tavarez v. Weissman, 297 A.D.2d 245, 247; 747 N.Y.S.2d 424 (1st Dept. 2002).

The Court of Appeals in Blake, 1 N.Y.3d 380, 771 N.Y.S.2d 484 (2003) further clarified the defense of "sole proximate cause:"

> Under 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. FN8

See also Keilar v. Metropolitan Museum of Art, 55 A.D.3d 456, 866 N.Y,S.2d629 (1st Dept. 2008); Ferluckai v. Goldman Sachs & Co., 53 A.D.2d 422; 862 N.Y.S.2d 473 (1st Dept. 2008).

A defendant arguing that a plaintiff was the sole proximate cause of his accident because he had adequate safety devices available to him on the job site and chose not to use them must demonstrate that "the safety devices that the worker alleges were needed were readily available, [that] the worker knew where to find them, [that]the worker knew that he or she was expected to use them[,] and [that], for no good reason, the worker chose not to do so." See N.Y. Pattern Jury Instruction Civil 2:217; Gallagher v. New York Post, 14 N.Y.3d 83, 88, 896 N.Y.S.2d 732 (2010). While the court has not effectively defined "readiness" or "ease of availability", the requirement of a worker's "normal and logical response" to get a safety device rather than having one furnished or erected for him is limited to those situations when workers know the exact location of the safety device or devices and where there is a practice of obtaining such devices because it is a simple matter for them to do so. Cherry v. Time Warner, 66 A.D.3d 233, 238, 885 N.Y.S.2d 28 (1st Dept. 2009).

The case of Rice v. West 37th Group, LLC, 78 A.D.3d 492, 497-498, 913 N.Y.S.2d 13 (1st Dept. 2010), is instructive with respect to the instant matter. In Rice, the Court specifically found that Plaintiff's actions could not be the sole proximate cause of the occurrence because defendants "failed to refute Gleason's testimony that the scaffold was in use at the time he and Rice were looking for a safety device, nor, more importantly, did they establish that the scaffold would have soon become available." The Court noted that the defense argument that on a couple of prior occasions during the subject project plaintiff had been instructed to wait to complete a task until equipment could be freed up, while performing an alternative assignment, is irrelevant since it's impossible to infer that following such a course would have been practical under the circumstances. Id. at 498.

Similarly, in Pena v. Jane H. Goldman Residuary Trust Number 1, 155 A.D.3d 565, 71 N.Y.S.3d 58 (1st Dept. 2018), the Court held that defendants failed to raise a triable issue of fact as to whether plaintiff was the sole proximate cause of his accident given their failure to address plaintiff's testimony that the other workers were using those ladders alleged to be available. In DeRose v. Blooomingdale's Inc., 120 A.D.3d 41, 46-47, 986 N.Y.S.2d 127 (1st Dept. 2014), the Court noted "even assuming that a sturdy A-frame ladder (instead of a Baker scaffold) would have been adequate for plaintiff to perform the demolition work, the fiberglass ladders that were in use by plaintiff's coworkers cannot be said to have been available."

Here, while Plaintiff could have obtained and worn a safety belt on site, East Ramapo and United have failed to demonstrate a triable issue of fact that any of the three safety carts were actually available to Plaintiff at the time of the accident. Plaintiff and his co-worker testified that the carts were in use by other co-workers and Mr. Bazzoni was unable to say where the other carts were located or whether they were in use. Nor did Mr. Bazzoni undertake any actions to ascertain their availability when he claims to have directed Plaintiff to tie-off. Additionally, any argument that they would become available in the immediate future would amount to nothing more than speculation. Accordingly, Plaintiff's cross-motion for summary judgment as to his Labor Law § 240(1) cause of action is granted and East Ramapo and United's motions to dismiss the Labor Law § 240(1) cause of action are denied.

Labor Law Sec. 241(6)

Plaintiff opposes Defendant and Third-Party Defendant's summary judgment motions as to his Labor Law Sec. 241(6) cause of action and cross-moves for summary judgment in his favor. With regard to his Labor Law Sec. 241(6) cause of action, it appears that Plaintiff has abandoned all pled provisions with the exception of 23-1.16(b) and (d). Labor Law § 241(6) imposes a non-delegable duty upon owners and contractors to provide reasonable and adequate protection and safety to workers engaged in the inherently

dangerous work of construction, excavation or demolition. Ross v. Curtis-Palmer Hydro-Electric Co., 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993) Since an owner or general contractor's vicarious liability under § 241(6) is not dependent on its personal capability to prevent or cure a dangerous condition, the absence of actual or constructive notice sufficient to prevent or cure it is also irrelevant to the imposition of Labor Law § 241(6) liability. Rizzuto v. L.A. Wenger Contracting Co., 91 N.Y.2d 343, 670 N.Y.S.2d 816 (1998). The worker must allege and prove that the owner or contractor violated a rule or regulation of the Commissioner of the Department of Labor which sets for a specific standard of conduct, as opposed to a general reiteration of the common law. Ross, 81 N.Y.2d at 502-504.

Moreover, allegations of comparative fault on the part of the Plaintiff do not bar an award of partial summary judgment under Labor Law Sec. 241(6). Once the defendant's liability is established by demonstrating the violation of an applicable Industrial Code regulation, the issue of comparative negligence, if any, operates only to reduce the amount of damages otherwise recoverable by the plaintiff at trial. Rodriguez v. City of New York, 31 N.Y.3d 312, 76 N.Y.S.3d 898 (2018).

12 NYCRR § 1.16, entitled "Safety belts, harnesses, tail lines and lifelines," states in relevant part:

> (b) Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.
>
> (d) Tail lines. The length of any tail line shall be the minimum required in order for an employee to perform his work, but in no case shall be longer than four feet. Such tail line shall be attached to a hanging lifeline or to a substantial structural member at a

> point no lower than two feet above the working platform or working level. Tail lines shall be first grade manila or synthetic fiber rope at least one-half inch in diameter with a breaking strength of not less than 4,0000 pounds or shall be fabricated of other approved materials.

This section is sufficiently specific to support a cause of action under Labor Law §241(6). Yaucan v. Hawthorne Village, LLC, 155 A.D.3d 924, 926, 63 N.Y.S.3d 721 (2d Dept. 2017); King v. Villetee, 155 A.D.3d 619, 63 N.Y.S.2d 2017 (2d Dept. 2017). In the instant matter, the Court finds that Defendant violated 12 N.Y.C.R.R.§ 23-1.16(b) and grants summary judgment as to this Industrial Code provision only. The Court finds that for the reasons set forth herein, Defendant did not provide an available anchorage point to attach a safety belt. The remaining Industrial Code provisions alleged by Plaintiff are hereby dismissed.

Labor Law Sec. 200

Labor Law §200 is a codification of the common law duty imposed on owners and general contractors to maintain a safe construction site, Rizzuto v. L.A. Wenger, 91 NY2d 343, 670 N.Y.S.2d 816 (1998); Combs v. State Elec., 82 NY2d 876-7, 609 N.Y.S.2d 168 (1993); Russin v. Picciano, 54 NY2d 311, 317, 445 N.Y.S.2d 127 (1981), provided they have the authority to control the activity bringing about the injury so as to enable it to avoid or correct an unsafe condition. Lombardi v. Stout, 80 NY2d 290, 295, 590 N.Y.S.2d 55 (1992).

With regard to accidents involving the means or methods of the work, an "owner does not owe a duty to protect a contractor's employee from hazards resulting from the contractor's methods over which the owner exercises no supervisory control." Marin v. San Martin Rest., Inc., 287 A.D.2d 441, 731 N.Y.S.2d 70 (2d Dept. 2001). The determinative factor on the question of control is not whether a defendant furnishes equipment, but whether it has control of the work being done and the authority to insist that proper safety practices be followed. Eldoh v. Astoria Generating Co., L.P. 81 A.D.3d 871, 875 (2d Dept. 2011); Everitt v. Nozkowski, 285 A.D.2d 442, 443-444 (2d Dept. 2011).

Where the injury arises from an allegedly defective or dangerous condition on the premises, a property owner will be liable under a theory of common-law negligence, as codified by Labor Law Sec. 200, when the owner created the alleged dangerous or defective condition, or failed to remedy a dangerous or defective condition of which it had actual or constructive notice. Bauman v. Town of Islip, 120 A.D.3d 603, 605, 992 N.Y.S.2d 276 (2d Dept. 2014).

In the instant matter, Defendant East Ramapo has met its burden upon summary judgment. Defendant did not have supervisory control over the means and methods of Plaintiff's work, nor did it have notice of a dangerous or defective condition. In opposition thereto, Plaintiff has failed to raise a triable issue of fact. As such, Plaintiff's Labor Law § 200 cause of action is dismissed.

Accordingly, it is hereby

ORDERED that the Notice of Motion (#3) filed by Third-Party Defendant United Roofing & Sheet Metal, Inc. for an Order granting summary judgment, pursuant to CPLR Sec. 3212, is DENIED in its entirety; and it is further

ORDERED that the Notice of Motion (#4) by Defendant East Ramapo Central School District, is DENIED in part and GRANTED in part, only to the extent that Plaintiff's Labor Law § 200 cause of action is dismissed; and it is further

ORDERED that Plaintiff's Notice of Motion (#6) for partial summary judgment on his Labor Law § 240(1) and Labor Law § 241(6) causes of action against Defendant East Ramapo Central School District is GRANTED in its entirety; and it is further

ORDERED that the parties are to appear for a trial settlement conference on FEBRUARY 25, 2020, at 10 a.m. via Microsoft Teams. The Court expects that all parties be fully authorized to discuss settlement at that time.

The foregoing constitutes the Decision and Order of this Court on Motion #3,4, and 6.

Dated: New City, New York
December 23, 2020

HON. SHERRI L. EISENPRESS, A.J.S.C.

To: All parties via e-filing