

Grigoryan v 108 Chambers St. Owner, LLC
2021 NY Slip Op 30938(U)
March 26, 2021
Supreme Court, New York County
Docket Number: 158572/2017
Judge: Alexander M. Tisch
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH

PART IAS MOTION 18EFM

Justice

-----X

INDEX NO. 158572/2017

VITALIY GRIGORYAN, MARINA STASIVA,

MOTION DATE 08/12/2020

Plaintiff,

MOTION SEQ. NO. 004

- v -

108 CHAMBERS STREET OWNER, LLC, 108 CHAMBERS STREET CONSTRUCTION MANAGER, LLC, ROSS & ASSOCIATES, LLC, RIGHTWAY PLUMBING AND HEATING, INC., BEST MECHANICAL SERVICES, INC.,

DECISION + ORDER ON MOTION

Defendant.

-----X

108 CHAMBERS STREET OWNER, LLC, 108 CHAMBERS STREET CONSTRUCTION MANAGER, LLC, ROSS & ASSOCIATES, LLC

Third-Party
Index No. 595470/2018

Plaintiff,

-against-

INTEGRAL POWER & CONTROL CORP.

Defendant.

-----X

108 CHAMBERS STREET OWNER, LLC, 108 CHAMBERS STREET CONSTRUCTION MANAGER, LLC, ROSS & ASSOCIATES, LLC

Second Third-Party
Index No. 595569/2018

Plaintiff,

-against-

BEST MECHANICAL SERVICES, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 121, 122, 123, 124, 125, 126, 127

were read on this motion to/for

JUDGMENT - SUMMARY

In this Labor Law action, Vitaliy Grigoryan (the injured plaintiff) seeks to recover damages for personal injuries he allegedly sustained on September 19, 2017, when, while working as a laborer on a construction project (the Project) at 108 Chambers Street in the County, City and State of New York (the Premises), an uninstalled fire pump fell over onto his right foot.

In motion sequence number 004, plaintiffs move, pursuant to CPLR 3212, for summary judgment on the issue of liability on the Labor Law § 240 (1) claim insofar as asserted against defendants/third-party plaintiffs 108 Chambers Street Owner, LLC (108 Chambers) and Ross & Associates, LLC (Ross).

BACKGROUND

On the day of the accident, 108 Chambers owned the Premises where the accident occurred. 108 Chambers hired Ross as the construction manager for the Project, which entailed the construction of a 10-story mixed use building. The injured plaintiff was employed by third-party defendant Integral Electrical Power & Control Corp. (Integral), a trade contractor retained by Ross to perform electrical work for the Project.

The Injured Plaintiff's Deposition Testimony

The injured plaintiff testified that on the day of the accident, he was employed by Integral and had been working on the Project doing electrical work for approximately two months (Injured Plaintiff's Tr, NYSCEF Doc. Nos. 114-116).

According to the injured plaintiff, the day before the accident, his foreman instructed him to begin installing conduit in the pump room the next day. The next morning, the injured plaintiff and two of his co-workers entered the pump room, which was located in the basement of the Premises. They were all looking up at the ceiling while the injured plaintiff explained the work plan to his co-workers. Suddenly, the injured plaintiff felt as if someone shot him in the

leg. He fell down and saw that an uninstalled fire pump had fallen on his right foot. His co-workers were able to slide the fire pump off of his foot.

The injured plaintiff testified that he did not notice the fire pump in the room before it fell. He had never entered the pump room prior to the accident. He and his co-workers were only in the pump room for about 15 to 20 seconds before the accident happened.

Deposition Testimony of Alexander Herrera (Ross's Superintendent)

Alexander Herrera testified that he was Ross's superintendent for the Project (Herrera's Tr, NYSCEF Doc. No. 109). He testified that the fire suppression system is located in the pump room. However, on the day of the accident, the fire suppression system had yet to be installed. Herrera explained that the fire pump was being stored in that room for future installation because it was part of the fire suppression system.

Ross hired Best Mechanical Services, Inc. (Best) to do the plumbing and sprinkler work for the Project, including installation of the fire pump. Best's vendor delivered the fire pump to the Project site in a crate. Best initially placed the fire pump on the first floor for storage. However, when work began on that floor, Herrera asked Best to move the pump to the basement. Best removed the pump from the crate in order to bring it downstairs and then brought it to the pump room.

After Integral complained about the fire pump being in its way, Herrera asked Best to move it to a corner of the room. Best moved the pump to the right corner of the pump room, standing it up vertically, in an upright position. Herrera testified that after learning of the accident, he went to the pump room, where he observed the uninstalled fire pump in the same location, but positioned horizontally, on its side. Herrera stated that he never learned what caused the pump to fall over. He testified that after the accident, "we secured the pump safely" by leaving it "horizontally on the floor so it would not fall over again" (*id.* at 147).

Deposition Testimony of Moshe Mendlowitz (Best's President and CEO)

Moshe Mendlowitz testified that he is the President and CEO of Best (Mendlowitz Tr, NYSCEF Doc. No. 124). Best's work included procuring and installing the fire pump system. Mendlowitz testified that he believes the fire pump weighed more than 500 pounds and stood roughly 3-feet tall. The fire pump was delivered to the site about a month before the accident at the request of Ross and was installed a couple of weeks after the accident.

According to Mendlowitz, upon delivery, Herrera directed that the fire pump be placed on the first floor. The pump was not easy to maneuver and needed to be in a location where it could stay for a while. Best moved it to the pump room a day or two before the accident at the direction of Herrera in order to begin the installation process. However, the next morning, other trades were working in the room and Herrera told Mendlowitz that Best could not begin installing the pump until the other trades finished their work.

Mendlowitz testified that Best placed the fire pump in the center of the room and that it was still in that location at the time of the accident. When questioned about why the pump was left free-standing in the middle of the room, rather than being secured in some way, Mendlowitz testified: "It was requested of me to begin to install the pump, and therefore we placed the pump where it should be for . . . installation" (*id.* at 69). He maintained that when the pump was moved into the room, he was not aware that other trades would be working in the room.

Herrera acknowledged that it would have been better to have the uninstalled fire pump secured in some way. When asked "in what manner . . . the fire pump [could] have been secured in the room," Herrera testified as follows:

"A. There is a way to secure the leg.

Q. How?

A. Bolt it down.

Q. How long does it take to bolt it down?

A. If you have everything, two, three hours.

Q. What about placed on its side? If it had been placed on its side . . . , would that have been a better way to secure it in the room?

...

A. I don't understand. Are you asking me --

Q. Would placing it on its side have been better than placing it on its end with regards to securing --

A. Not necessarily.

Q. How so?

A. It's not supposed to be laying. It's supposed to be standing up.

Q. Why?

A. That's the position the pump belongs.

Q. That's the position it needs to be installed; correct?

A. Yes.

Q. Would the pump be ruined in any way if it was stored on its side for a few days until it could be installed?

A. Potentially.

Q. How so?

A. Being knocked around.

Q. That's not my question. Assume that nobody is touching it. Does storing it on its side or placing it on its side for a few days ruin the integrity or the ability to use the fire pump? . . .

A. The pump does not belong in that position. It's like you are going to store a refrigerator laying down. It's not a thought.

Q. That doesn't answer my question, though. I'm going to keep asking it until I get an answer.

...

A. . . . I don't know. That's my answer.

Q. That's not your answer. Your answer was different. I will use your analogy. You can put a refrigerator on its side and it won't ruin the refrigerator. Same question -- *can you put a fire pump on its side and not ruin it?*

A. Yes"

(*id.* at 74-77 [emphasis added]).

Deposition Testimony of Maksim Stasiva (The Injured Plaintiff's Brother-in-Law)

Maksim Stasiva testified that the injured plaintiff is married to his sister, plaintiff Marina Stasiva¹ (Maksim Stasiva Tr, NYSCEF Doc. No. 113). On the day of the accident, Maksim was working on the Project as an electrician, employed by Integral. He observed the fire pump standing vertically, in the middle of the pump room about three or four days before the accident. He was not working with the injured plaintiff in the pump room on the day of the accident.

Ross's Incident Report

Herrera prepared an incident report for Ross, dated September 17, 2019, stating that the injured plaintiff was hurt by an uninstalled fire pump, describing the incident as follows: "One of Integral's employee[s] had [an] incident this morning down in the cellar fire pump room. The fire pump fell and injured the electrician[']s right foot" (Ross Incident Report, NYSCEF Doc. No. 110). Herrera attached photos of the uninstalled fire pump and the injured plaintiff's foot to the report (*id.*).

DOB Summons/Violation and OATH Order

On September 17, 2019, the New York City Department of Buildings (DOB) BEST Squad (Building Enforcement Safety Team) visited the Project site² and issued a summons to Ross with regard to the incident, stating that a violation of section 3303.4.5 of the New York City Building Code³ was observed during the visit (DOB Summons/Violation, NYSCEF Doc. No. 111). The summons states:

¹ In this action, the injured plaintiff's wife, Marina Stasiva, seeks derivative damages.

² Herrera testified that he called the DOB on the day of the accident because he is required to do so whenever emergency services are needed in response to an accident (Herrera Tr, at 139-140).

³ Section 3303.4.5 of the New York City Building Code, entitled "Storage of materials and equipment during construction or demolition," states: "Material and equipment stored at a site during construction or demolition operations shall comply with Sections 3303.4.5.1 and 3303.4.5.2." Section 3303.4.5.1 states: "Open and exposed

“Unsafe storage of materials during construction. Note: observed large fire pump in cellar of site fire pump room where worker was when large pump fell over injuring worker's foot. FDNY took worker off of site. Worker was bleeding and in extreme pain according to onsite report. The pump appeared to have been stored vertically with the smaller end on the floor making the 300-400 lb. piece of equipment susceptible to dislodgement and it was knocked over or fell causing serious injury.

Remedy: Comply w/Code”

(*id.*). The summons directed Ross to appear for a hearing before the New York City Office of Administrative Trials and Hearings (OATH) on November 9, 2017. After the hearing, an OATH hearing officer issued an order, dated November 9, 2017, sustaining the charges and imposing a \$2,400 fine (OATH Order, NYSCEF Doc. No. 117).

DISCUSSION

On a motion for summary judgment, the “movant bears the heavy burden of establishing ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact’” (*Deleon v New York City Sanitation Dept.*, 25 NY3d 1102, 1106 [2015], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Once this showing has been made . . . , the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; see *Zuckerman v City of New York*, 49 NY2d at 562). On the motion, the “facts must be viewed ‘in the light most favorable to the non-moving party’” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]).

areas. When not being used, material or equipment located on a working deck, unenclosed floor, roof, ground area, or similar exposed area shall be secured against dislodgement by wind or accidental impact.”

The court's function on a motion for summary judgment "is issue finding rather than issue determination" (*Genesis Merchant Partners, L.P. v Gilbride, Tusa, Last & Spellane, LLC*, 157 AD3d 479, 481 [1st Dept 2018]). The motion "should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2014]).

The Labor Law § 240 (1) Claim

Plaintiffs move for summary judgment in their favor as to liability on the injured plaintiff's Labor Law § 240 (1) claim insofar as asserted against defendants 108 Chambers and Ross.

Labor Law § 240 (1), commonly referred to as the Scaffold Law, provides, in 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."

"[T]he duty imposed by Labor Law § 240 (1) is nondelegable and . . . an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). "As has been often stated, the purpose of Labor Law § 240 (1) is to protect workers by placing responsibility for safety practices at construction sites on owners and general contractors, 'those best suited to bear that responsibility' instead of on the workers, who are not in a position to protect themselves" (*John v Baharestani*, 281 AD2d 114, 117 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 500).

"[A]bsolute liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 33 [2017])[quotation marks and

citation omitted]). Thus, “[t]he kind of accident triggering section 240 (1) coverage is one that will sustain the allegation that an adequate ‘scaffold, hoist, stay, ladder or other protective device’ would have ‘shield[ed] the injured worker from harm directly flowing from the application of the force of gravity to an object or person’” (*Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139 [2011], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 501).

The statute applies to both falling worker and falling object cases (*Narducci v Manhasset Bay Associates*, 96 NY2d 259, 267 [2001]). In falling object cases, the statute “applies where the falling of an object is related to a significant risk inherent in . . . the relative elevation . . . at which materials or loads must be positioned and secured” (*id.* at 267-68, quoting *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]). However, there is no *per se* rule precluding recovery under section 240 (1) simply because the injured worker and the falling object were on the same level (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 9-10 [2011]). Rather, the applicability of the statute depends upon whether “the harm flows directly from the application of the force of gravity to the object” (*Runner v New York Stock Exch., Inc.*, 13 NY3d at 604).

On a motion for summary judgement in a falling object case, the injured worker must also “demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking” (*Fabrizi v 1095 Ave. of the Ams., L.L.C.*, 22 NY3d 658, 662-663 [2014][internal quotation marks and citations omitted]). However, section 240 (1) “does not apply in situations in which a hoisting or securing device of the type enumerated in the statute would not be necessary or expected” (*Ruiz v Ford*, 160 AD3d 1001, 1003 [2d Dept 2018] [quotation marks and citations omitted]).

Here, plaintiffs argue that the accident invokes the protection of section 240 because 108 Chambers and Ross failed to provide a safety device to protect him from the fire pump falling on

his foot. They point out that the fire pump, which stood 3-feet tall and weighed between 300 and 500 pounds, was being stored in a vertical position, small side down, with nothing to secure it in place. They further highlight that the DOB issued a summons/violation based upon the pump being left unsecured in violation of section 3303.4.5 of the New York City Building Code and argue that there can be no claim by Ross that the fire pump was properly stored or secured, because Ross is collaterally estopped from denying the factual findings that were sustained by the OATH Hearing Officer on November 9, 2017.

In arguing that the statute applies, plaintiffs primarily rely *Runner v New York Stock Exch., Inc.* (13 NY3d 599) and *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.* (18 NY3d 1). In *Runner*, the plaintiff was injured while moving “a large reel of wire, weighing some 800 pounds, down a set of about four stairs” (13 NY3d at 602). He and his coworker were using a makeshift pulley system to lower the reel down the stairs. The plaintiff was holding the loose end of a rope while his coworkers began to push the reel, to which the other end of the rope was attached, down the stairs. “The expedient of wrapping the rope around [a metal] bar proved ineffective to regulate the rate of the reel’s descent and plaintiff was drawn horizontally into the bar, injuring his hands as they jammed against it” (*id.*). The Court of Appeals held:

“The elevation differential here involved cannot be viewed as de minimis, particularly given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent. And, the causal connection between the object’s inadequately regulated descent and plaintiff’s injury was . . . unmediated--or, demonstrably, at least as unmediated as it would have been had plaintiff been situated paradigmatically at the rope’s opposite end. [The injury was] the direct consequence of a failure to provide statutorily required protection against a risk plainly arising from a workplace elevation differential”

(*id.* at 605 [emphasis added]).

In *Wilinski*, a wall that was being demolished fell into two 10-foot-high unsecured metal pipes, causing them to topple onto the injured worker. The Court of Appeals declined to establish a so-called “same level” rule, holding in this regard

“that plaintiff is not precluded from recovery under section 240 (1) simply because he and the pipes that struck him were on the same level. The pipes, which were metal and four inches in diameter, stood at approximately 10 feet and toppled over to fall at least four feet before striking plaintiff, who is five feet, eight inches tall. That height differential cannot be described as *de minimis* given the amount of force [the pipes] w[ere] []able [to] generat[e] over their descent. Thus, plaintiff suffered harm that flow[ed] directly from the application of the force of gravity to the [pipes]”

(*id.* at 10 [internal quotation marks and citations omitted][emphasis added]). The Court in *Wilinski* nevertheless denied summary judgment to both parties because they failed to meet their *Wilinski* burden on the issue of whether the injuries were proximately caused by the lack of a safety device of the kind required by the statute (*id.* at 11).

Plaintiffs are correct that *Wilinski* makes clear that recovery under Labor Law § 240 (1) is not precluded simply because the injured plaintiff and the fire pump were on the same level. Plaintiffs also points out that in *Wilinski*, the Court of Appeals relied on *Runner* for the proposition that “the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent” must be taken into consideration when deciding whether an elevation differential is physically significant (*Runner v New York Stock Exch., Inc.*, 13 NY3d at 605). Plaintiffs contend that here, in light of the 300-500 pound weight of 3-foot tall fire pump, and the significant force it was capable of generating over the course of its descent, the height differential was not *de minimis*.

There is no bright line rule regarding the distance an object on the same level as the injured worker must fall in relation to its weight, for the purpose of determining whether the amount of force it is capable of generating is sufficient to trigger the protection of Labor Law § 240 (1). In arguing that the force capable of being generated here was sufficient, plaintiffs draw the court’s attention to a number of distinguishable cases (*see Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404 [1st Dept 2018] [plaintiff injured while attempting to load a 500 pound, 12-foot long steel I-beam into a freight elevator; plaintiff and his co-workers opened a hatch on top of the elevator, and were attempting to stand the beam on its end, with the high end

extending through the open hatch of the elevator, when the beam fell down half a foot onto plaintiff's shoulder]; *Kempisty v 246 Spring St., LLC*, 92 AD3d 474 [1st Dept 2012] [plaintiff injured when a 4-ton steel block crushed his foot]; *McCallister v 200 Park, L.P.*, 92 AD3d 927 [2d Dept 2012] [plaintiff injured while moving four disassembled scaffolds stacked on top of an assembled scaffold for transport, fell after the assembled scaffold's wheel broke off, pinning him against a wall; platform of assembled scaffold stood 4-feet high and the four stacked scaffolds weighed between 450 to 550 pounds]; *Kropp v Town of Shandaken*, 91 AD3d 1087 [3d Dept 2012] [plaintiff injured while working at the bottom of a trench when he was struck by an iron pipe, measuring 18 inches in diameter and 18 feet long with a total weight of approximately 1,500 pounds, as it was being moved]; *DiPalma v State of New York*, 90 AD3d 1659 [4th Dept 2011] [plaintiff injured when a large "skid box" containing concrete debris slid off of a forklift, falling one or two feet, and struck him]; *Harris v City of New York*, 83 AD3d 104 [1st Dept 2011] [plaintiff injured when a 10-foot-by-20-foot slab of concrete and steel, weighing approximately one ton, was being lowered a distance of 3 to 4 feet, when it descended too quickly, shattering the wedge of lumber upon which plaintiff stood and causing plaintiff to fall]; *Gutman v City of New York*, 78 AD3d 886 [2d Dept 2010] [plaintiff injured as he and his coworkers were using rail hooks to move a 39-foot, 1,300-pound rail on top of another rail when plaintiff's coworkers began lifting the rail off the ground, but plaintiff's hooks were not in place and he was not ready to begin lifting, allegedly causing the team to lose control of the rail and resulting in the rail falling a distance of 12 to 16 inches onto the plaintiff's right leg]; *Ray v City of New York*, 62 AD3d 591 [1st Dept 2009] [plaintiff injured when struck by an 8,000-pound steel beam approximately 60 feet long and 2 to 3 feet thick as it was being lowered into place atop two 25-foot-high steel towers]). These cases, like *Runner* and *Wilinski*, are all distinguishable based on the weight and/or the dimensions of the objects at issue.

In any event, assuming the fire pump was capable of generating an amount of force sufficient to trigger the protection of Labor Law § 240 (1), the statute “does not apply in situations in which a hoisting or securing device of the type enumerated in the statute would not be necessary or expected” (*Ruiz v Ford*, 160 AD3d at 1003 [quotation marks and citations omitted]; see *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d at 11 [although plaintiff suffered harm that flowed directly from the application of the force of gravity, plaintiff was not entitled to summary judgment inasmuch as he failed to meet his burden on the issue of whether his injuries were proximately caused by the lack of a safety device of the kind required by the statute]; *Narducci v Manhasset Bay Assocs*, 96 NY2d at 268 [section 240 (1) applies “only when there is a failure to use necessary and adequate hoisting or securing devices”]). In this regard, plaintiffs assert that the uninstalled fire pump was a load that should have been kept inside the crate that was used to secure the pump during transport. They argue that for the purposes of the statute, a crate is the “functional equivalent” of a scaffold and would have kept the fire pump secure, preventing it from toppling over. Plaintiffs contend that for no good reason, defendants removed the pump from the crate and placed it in an unstable position on the basement floor in violation of the New York City Building Code.

Plaintiffs also assert that a pallet jack was used to transport the fire pump into the building and contend that the pallet jack was necessary to safely hoist, maneuver and control the fire pump. Therefore, they assert, the fire pump was a load that required securing for the purposes of the undertaking at the time it fell.

As an initial matter, placing the fire pump inside a crate is not the “functional equivalent” of a scaffold, inasmuch as a scaffold is meant to prevent a worker from falling, not an item from toppling over. Additionally, the assertion that a pallet jack was needed in order to safely move the fire pump is irrelevant given that the fire pump was not in the process of being moved at the time of the accident.

More broadly, plaintiffs did not establish as a matter of law that the fire pump was an object that required a securing device of the kind enumerated in the statute to prevent it from falling. In this respect, the papers submitted in support of plaintiffs' motion suggest that simply placing the fire pump in a horizontal position on its side would have prevented the accident. Therefore, plaintiffs failed to establish, prima facie, that utilizing a securing device of the sort listed in section 240 (1) was at all necessary in this case.

Finally, in support of their motion, plaintiffs assert that Ross cannot claim that the pump was properly stored or secured because it is collaterally estopped from doing so by the OATH Hearing Officer's order, sustaining the finding that it was improperly secured in violation of the Building Code. Plaintiffs' reliance on the doctrine of collateral estoppel is misplaced.

Collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). The issue raised by this motion — i.e., whether the accident invokes the protection of section 240 — was not before the OATH Hearing Officer. Contrary to plaintiffs' suggestion, a violation of the New York City Building Code does not establish a violation of Labor Law § 240 (1) (*see generally Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 101 [2015]; *Perri v Gilbert Johnson Enters, Ltd.*, 14 AD3d 681, 684 [2d Dept 2005]; *Blair v Rosen-Michaels, Inc.*, 146 AD2d 863, 865 [3d Dept 1989]).

Since plaintiffs failed to establish their prima facie entitlement to summary judgment as to liability on their Labor Law § 240 (1) claim, it is not necessary to consider the sufficiency of the opposition papers of 107 Chambers and Ross (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853). Thus, plaintiffs' motion is denied without regard to the sufficiency of the opposing papers.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby **ORDERED** that plaintiffs' motion, pursuant to CPLR 3212, for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim insofar as asserted against defendants/third-party plaintiffs 108 Chambers Street Owner, LLC and Ross & Associates, LLC is denied. This constitutes the decision and order of the Court.

3/26/2021
DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE