SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN **PART** 58

Justice

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MANUEL ZAMBRANO,

Plaintiff,

- v -

STEINBERG & POKOIK MANAGEMENT CORP., REALTIES 1430, & YAO W. GUO ARCHITECT, PC

Defendants.

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INDEX NO. 150687/2020

MOTION SEQ. NO. 001, 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 45, 46, 47, 48, 49, 50, 52, 56, 58, 60, 61

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 51, 53, 54, 55, 57, 59, 62, 63, 64

were read on this motion to/for SUMMARY JUDGMENT.

Motion Sequences 001 and 002 are hereby consolidated for disposition.

In this Labor Law action, Steinberg & Pokoik Management Corp. ("Steinberg") and Realties 1430 ("1430") (collectively "the Steinberg Defendants") move, pursuant to CPLR 3212, for summary judgment on liability dismissing all claims and cross claims against them. Manuel Zambrano ("Plaintiff") opposes the motion in part and also moves for summary judgment on liability as against 1430. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motions are decided as follows.

I. Factual and Procedural Background

On March 19, 2019, Plaintiff was allegedly injured while conducting demolition work on the 7th floor at the building located at 1430 Broadway in Manhattan ("the premises"). The

premises were owned by 1430 and managed by Steinberg. Plaintiff commenced this action against all of the defendants alleging negligence and violations of Labor Law §§ 200, 241(6), and 240(6).

At his deposition, Plaintiff testified that he was "beating and pulling" a crowbar over his head trying to take down a piece of metal from the ceiling when the metal "came down and fell on [him]" (Plaintiff's EBT at 58:04-07, 59:14-61:19, 62:23-63:03, 65:15-66:13). He said that "[r]ight before the accident happened, … the ladder [was] … in good shape" (id. at 48:06-10). He did not remember what happened after he was hit by the metal (id. at 119:06-09).

Francis Kelly ("Kelly"), employed as a stationery engineer by 1430, saw Plaintiff performing demolition while standing on a six-foot A-frame ladder placed on concrete flooring on the day of the incident (Kelly EBT at 30, 31, 32, 35, 39, citing to photographs [Doc 31]).

II. The Parties' Contentions

A. Steinberg Defendants' Summary Judgment Motion

The Steinberg Defendants argue that (1) they are entitled to summary judgment dismissing Plaintiff's Labor Law § 240 claim since (i) the demolition of the metal was the target of the injury-producing activity and, thus, securing the metal would have been illogical, and (ii) the ladder was an adequate safety device; (2) the Labor Law § 241 claims must be dismissed since Industrial Code sections 23-1.5, 23-1.7, 23-1.16, 23-1.15, 23-1-17 and 23-1.21 are either too general and/or inapplicable; and (3) the Labor Law § 200 claims must be dismissed since they did not direct and/or control Plaintiff's work at the time of the incident.

In opposition to the Steinberg Defendants' motion on the Labor Law § 240 claim, Plaintiff argues that the metal was supposed to fall to the ground and not onto him or his ladder and that Plaintiff was working without any safety device to prevent him from falling from the

ladder. "Plaintiff does not oppose the branches of [the Steinberg Defendants'] motion concerning Labor Law §§ 241(6) and 200 claims" (Doc 45 ¶ 2).

In further support of their motion, the Steinberg Defendants reiterate their previous arguments.

B. Plaintiff's Summary Judgment Motion

Plaintiff argues that he is entitled to summary judgment on liability on Labor Law § 240(1) because he was injured doing demolition work when the unsecured ladder he was using to remove a piece of metal from the ceiling was struck by a piece of falling metal debris causing him fall to the ground.

In opposition, 1430 argues, based on the depositions of Kelly and Plaintiff, that the ladder was in good working condition.

III. Standard of Review

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). "This burden is a heavy one," requiring that the "facts . . . be viewed in the light most favorable to the non-moving party" (*Jacobsen v NY City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal quotation marks and citation omitted]). The failure to make prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the showing is met, the burden shifts to the opposing party, who must establish the existence of a triable issue of fact to defeat the summary judgment motion (*see id.* at 324).

IV. Legal Conclusions

A. Labor Law § 240(1)

Labor Law § 240(1), also known as the Scaffold Law, provides, in relevant part, that:

> 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]). The legislative purpose behind this enactment is to protect workers against the "effects of gravity" by placing ultimate responsibility for safety practices on the owner and general contractor, instead of on workers who are scarcely in a position to protect themselves from accidents (*Rocovich v Consol. Edison Co.*, 78 NY2d 509, 513 [1991]; *see also Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 284-90 [2003]; *John v Baharestani*, 281 AD3d 114, 118 [1st Dept 2001]).

Here, Plaintiff establishes *prima facie* a violation of Labor Law § 240(1) against 1430 since the uncontradicted evidence establishes that Defendants did not provide adequate safety devices to protect Plaintiff from falling, and that the risk created by such failure is one that is covered by the statute (*see Kosavick v Tishman Const. Corp. of New York*, 50 AD3d 287, 288 [1st Dept 2008]; *Montalvo v J. Petrocelli Const., Inc.*, 8 AD3d 173, 174-5 [1st Dept 2004]; *Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 290 [1st Dept 2002]). 1430 fails to raise an issue of fact in opposition, and the Steinberg Defendants' motion to dismiss the Labor Law § 240 claim is denied on the same grounds.

B. Labor Law 241(6)

Labor Law § 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.

The Steinberg Defendants establish *prima facie* that the Industrial Code sections allegedly violated, 23-1.5, 23-1.7, 23-1.16, 23-1.15, 23-1-17 and 23-1.21, are either inapplicable or too general, and Plaintiff fails to raise an issue of fact in opposition. Accordingly, the Labor Law § 241(6) claims are dismissed as against the Steinberg Defendants.

C. Common Law Negligence and Labor Law § 200

Labor Law § 200 "is a codification of the common law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005] [internal citations omitted]). It provides, in pertinent part:

> All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons.

(Labor Law § 200[1]).

"An owner is obligated to maintain its property in a reasonably safe condition" (*Laecca v New York Univ.*, 7 AD3d 415, 416 [1st Dept 2004]; *see also Prevost v One City Block LLC*, 155 AD3d 531, 533, 534 [1st Dept 2017]; 2A N.Y. Jur. 2d Agency § 425). "However, a party who employs an independent contractor for a particular task on the premises is generally not liable for

the negligent acts of that contractor, absent a showing of a specifically imposed duty or knowledge by the principal of an inherent danger" (*Laecca*, 7 AD3d at 416 [internal citations omitted]). "Such knowledge can be imputed where the owner or principal created the hazardous condition or otherwise had actual or constructive notice of it, or where he exercised supervisory control over the contractor's operation" (id. [internal citations omitted]). "The retention of general supervisory authority over the acts of an independent contractor is generally insufficient for the imposition of such vicarious liability" (id. [internal citations omitted]). An owner or a general contractor may not be held liable under common law negligence or Labor Law § 200 for injuries arising from a dangerous condition in the absence of evidence that the owner or the general contractor actually created the dangerous condition or had actual or constructive notice of it (*DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 625 [1st Dept 2015]).

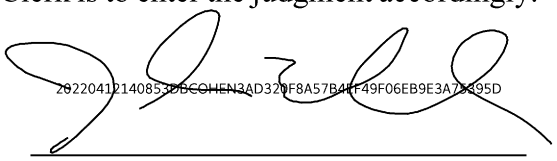
The Steinberg Defendants establish prima facie that the Labor Law § 200 claims against them must be dismissed since they did not direct or control Plaintiff's work, and Plaintiff fails to raise any material issue of fact in opposition.

Accordingly, it is hereby:

ORDERED that the motion (Seq. 001) by Steinberg & Pokoik Management Corp. and Realties 1430, seeking to dismiss all claims and cross claims against them, is granted to the extent Labor Law §§ 200 and 241(6) claims and cross claims are dismissed against them, and the motion is otherwise denied; and it is further,

ORDERED that the motion (Seq. 002) by Plaintiff Manuel Zambrano seeking an order granting it summary judgment on liability on its claim pursuant to Labor Law § 240(1) against Realties 1430 is granted; and it is further,

ORDERED that counsel shall serve a copy of this order with notice of entry upon the Court Clerk within 30 days from the date of this order; and the Clerk is to enter the judgment accordingly.



4/12/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE