SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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JEONGSOO OH,

Plaintiff,

- v -

STANFORD NEW YORK LLC, DONG HAE CONSTRUCTION INC,

Defendants.

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INDEX NO. 154560/2018

MOTION DATE 06/22/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

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STANFORD NEW YORK LLC

Plaintiff,

-against-

DORIC CONSULTANTS, P.C.

Defendant.

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Third-Party
Index No. 595440/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for JUDGMENT - SUMMARY.

The motion by plaintiff for partial summary judgment on his Labor Law § 240(1) claim is granted.

Background

In this Labor Law case, plaintiff contends that he was injured while working at the Stanford Hotel in Manhattan. He claims he was standing on the top-most step of an 8-foot A frame ladder while working on a light box in the ceiling when the ladder suddenly shook and he

fell. Plaintiff insists he was not provided with any safety equipment other than the ladder and there was no effort made to stabilize the ladder.

In opposition, defendants claim that there are material issues of fact that compel the Court to deny the instant motion. They insist that there are varying accounts regarding how plaintiff's accident happened. Defendants argue that plaintiff told the owner of defendant Doug Hae after the accident that he fell while trying to pull on the wood frame that was previously installed in the ceiling and that this caused him to fall rather than the ladder. It also points to the fact that medical records suggest another version of the accident: that plaintiff fell while changing a light bulb as he was standing on a stool. Defendants maintain that not every fall gives rise to a Labor Law § 240(1) claim.

In reply, plaintiff emphasizes that defendants have cherrypicked portions of Mr. Lee's (defendants' witness) deposition testimony and argues that plaintiff has told a consistent story the entire time. Plaintiff argues that simply omitting certain information—the claim here is that plaintiff did not tell Mr. Lee that the ladder shifted—is not a basis to find that plaintiff offered inconsistent versions of how the accident occurred. Plaintiff also demands that this Court ignore the hospital records because the description of how the accident happened was not germane to plaintiff's diagnosis or treatment. He insists that all that matters is that plaintiff fell.

Discussion

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d

49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

Plaintiff testified that before he went up the ladder, he first "set this A-frame ladder. So when you use an A-frame ladder open, you always should check the lock, and then I secured the lock. There [are] two locks near the bottom on the ladder. I secured that ladder—that lock" (NYSCEF Doc. No. 71 at 76). He added that "I stand [sic] the top of that ladder, and then I opened my back and then stand up, and then the ladder broke and I fell" (*id*. at 81).

Plaintiff continued that "From that second from the top, and then I step onto the top plastic, and then at the top, I tried to hold the ceiling light box, you know, to secure myself, but then, the ladder shook, and then I fell and I lost my consciousness" (*id*. at 82).

The Court grants the motion. Plaintiff clearly established that he fell while working from a height because the ladder did not provide adequate protection. There is no evidence that defendants provided any additional protective measures, such as trying to stabilize the ladder. Moreover, plaintiff testified that the work he was assigned to perform required him to stand on the very top of the ladder, meaning that he was susceptible to losing his balance and falling which appears to be exactly what occurred.

Defendants' arguments in opposition do not raise a material issue of fact. While plaintiff may have offered slightly different versions of the accident, the differences were not material.

Plaintiff's essential version is the same: he fell while working on top of a ladder. That the medical records may indicate he was on a stool is belied by the fact that the defendants do not sufficiently contest that plaintiff was working on a ladder. In other words, defendants did not point to a witness who claimed plaintiff was in fact working on a stool, cite evidence that there was a stool in the area where plaintiff fell or offer any conflicting first-hand evidence.

And to the extent that defendants claim that plaintiff was a recalcitrant worker for not using a scaffold, plaintiff testified that he couldn't use the scaffold because it was missing a wheel (NYSCEF Doc. No. 72 at 186). He insisted that using the scaffold without the wheel would damage the tile floor, floor that had already been laid down (*id*.).

Accordingly, it is hereby

ORDERED that the motion by plaintiff for partial summary judgment on his Labor Law § 240(1) claim is granted as to liability only.

6/24/2022
DATE

ARLENE BLUTH, J.S.C.

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