At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, Brooklyn, NY 11201, on the ___ day of _____ 2022.

SEP 0 1 2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

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TERRANCE HAYNES,

Plaintiff,

-against-

BEECHWOOD ATLANTC AVE. LLC,

Defendant.

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DECISION/ORDER

Index No.: 528242/2019
Motion Date: 8/3/2022
Motion Cal. No.:
Mot. Seq. 2

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Plaintiff's notice of motion dated April 30, 2022 pursuant to CPLR § 3212, granting partial summary judgment on the issue of liability, in favor of Terrance Haynes and against Beechwood Atlantic Ave. LLC, on the issue of liability, with respect to Terrance Haynes Third Cause of Action pursuant to Labor Law Section 240(1), etc; attorney affirmation of Kevin M. Gallagher, Esq., affirmed on April 30, 2022; Affidavit of Terrance Haynes, sworn to on October 10, 2020; Exhibits 1-8.....	36-46
Defendant's attorney affirmation of Kevin B. Pollak, Esq. in opposition, affirmed on July 26, 2022 and supporting exhibits.....	49-54
Reply Affirmation.....	55-56

MONTELIONE, RICHARD J., J.

This is an action commenced under the Labor Law by filing the summons and complaint on December 30, 2019, for personal injuries allegedly suffered by plaintiff on December 1, 2017. Issue was joined on March 16, 2020. Plaintiff now moves for partial summary judgment on the issue of liability with regard to his third cause of action pursuant to Labor Law Section 240(1).

Plaintiff argues that he injured himself during work at a construction site when he fell off an unsecured six-foot A-frame ladder, from a height of four feet, when the ladder sunk into the ground beneath him which was comprised of gravel/sand and was uneven and soft. Plaintiff was employed by JME Fire Sprinker Corp. ("JME") as a sprinkler mechanic. The defendant is the owner of the premises and alleged general contractor where the accident is alleged to have

happened. The defendant hired JME to perform some services at the construction site. The accident was immediately reported to "Theo," a lead mechanic for JME. Plaintiff alleges he was given no equipment or second person to secure the ladder to protect him from such a fall, that the extension ladder was too short, causing plaintiff to have to stand too close to the top rung. Plaintiff argues that further discovery is unnecessary because there is no evidence which contradicts plaintiff's version of the accident.[1]

Defendant opposes the motion and argues that the motion for summary judgment is premature because no discovery has taken place.[2] Further, defendant provides affidavits from its employees stating that the ground where the ladder was placed was asphalt and not uneven, that the sprinkler pipes that he was working on were 8 feet 6 inches above the ground, not 10-15feet above the ground, and the six-foot A-frame ladder that JME provided plaintiff allowed him to safely work on and reach the sprinkler pipes.

In reply, plaintiff argues there were inconsistencies in plaintiff's affidavit and the deposition, but the court does not find any issues of fact that would change the analysis in this motion.

A motion for summary judgment will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law. CPLR 3212 (b); *Gilbert Frank Corp, v. Federal Ins. Co.*, 70 N.Y.2d 966, 967 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). On such a motion, the evidence will be construed in a light most favorable to the party against whom summary judgment is sought. *Spinelli v. Procassini*, 258 A.D.2d 577 (2d Dept 1999); *Tassone v. Johannemam*, 232 A.D.2d 627, 628 (AD 2d Dept 1996); *Weiss v. Garfield*, 21 A.D.2dl56, 158 (AD 3rd Dept 1964).

Here, there is no issue of fact that plaintiff fell off the ladder provided to him, there is no indication that the ladder was defective. The position of the ladder and condition of the surface where it was located is not relevant to the issue of liability before the court. *See Messina v City of New York*, 148 AD3d 493, 494, 49 NYS3d 408, 2017 NY Slip Op 01823, 1, 2017 WL 985529 (1st Dept 2017):

> Plaintiff established his entitlement to partial summary judgment on the Labor Law § 240 (1) claim through his testimony that he was injured when the A-frame ladder on which he was standing moved underneath him as he applied pressure to it while trying to remove part of the drop ceiling he was demolishing (*see Hill v City of New York*, 140 AD3d 568, 570 [1st Dept 2016]; *Ausby v 365 W. End LLC*, 135 AD3d 481 [1st Dept 2016]). Plaintiff was not required to show that the ladder was defective or that he actually fell off the ladder to satisfy his prima facie burden (*see Hill*, 140

[1] The court notes that the affidavit of Terrance Haynes is identical to the affidavit of his counsel, that it contains inappropriate references to the law, is not limited to the facts and the court will reject any future inappropriate submissions.
[2] Since the submission of the motion, a deposition of the plaintiff took place.

> AD3d at 570; *Reavely v Yonkers Raceway Programs, Inc.*, 88 AD3d 561, 565 [1st Dept 2011]).
>
> Defendants failed to raise a triable issue of fact whether plaintiff was the sole proximate cause of the accident. There is no testimony in the record as to whether there were other readily available, adequate safety devices at the accident site that plaintiff declined to use (*see Gove v Pavarini McGovern, LLC*, 110 AD3d 601 [1st Dept 2013]). Moreover, the evidence establishes that the ladder twisted underneath plaintiff because it was unsecured, not because he misused it, and that defendants provided no other safety devices for his use. At most, plaintiff's application of pressure to the ladder while engaged in the work he was directed to do, which caused it to twist, was comparative negligence, no defense to a section 240 (1) claim (*Hill*, 140 AD3d at 570; *Noor v City of New York*, 130 AD3d 536, 541-542 [1st Dept 2015], *lv dismissed* 27 NY3d 975 [2016]). "Regardless of the method employed by plaintiff to remove [the drop ceiling], the ladder provided to him was not an adequate safety device for the task he was performing" (*Carino v Webster Place Assoc., LP*, 45 AD3d 351, 352 [1st Dept 2007]).

Even where a ladder moves with no apparent reason to cause plaintiff to fall, plaintiff meets his prima facie burden of showing entitlement to judgment as a matter of law. *See Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 759-60, 82 NYS3d 444, 2018 NY Slip Op 05275, 2, 2018 WL 3451526 (2d Dept 2018), "...(plaintiff) made a prima facie showing of entitlement to judgment as a matter of law through his deposition testimony, which demonstrated that the ladder on which he was working moved for no apparent reason, causing him to fall (*see Alvarez v Vingsan L.P.*, 150 AD3d 1177, 1179 [2017]; *Goodwin v Dix Hills Jewish Ctr.*, 144 AD3d 744, 747 [2016]; *Ocana v Quasar Realty Partners L.P.*, 137 AD3d 566, 567 [2016]; *LaGiudice v Sleepy's Inc.*, 67 AD3d 969, 971 [2009])." Even where plaintiff places the ladder on debris, plaintiff establishes a prima facie case that defendant violated Labor Law §240(1) by failing to ensure proper polacement of the ladder due to the condition of the floor. *See Klein v City of New York*, 89 NY2d 833, 675 NE2d 458, 652 NYS2d 723, 1996 WL 676241 (NYS Ct. of Ap. 1996).

Defendant has not raised an issue of fact regarding the plaintiff's fall from the ladder or that he was the sole proximate cause of the fall. *Tuzzolino v. Consolidated Edison Company of New York*, 160 AD3d 568 (1st Dept 2018). Courts have held even where plaintiff misses a step that this fact, "...does not raise a triable issue as to whether plaintiff was the sole proximate cause of the accident, as it does not refute plaintiff's assertion that the ladder slid out from beneath him (citations omitted)." *See Nolan v Port Auth. of New York and New Jersey*, 162 AD3d 488, 489, 78 NYS3d 333, 2018 NY Slip Op 04293, 1, 2018 WL 2919291 (1st Dept 2018).

Based on the foregoing, it is

ORDERED that plaintiff's motion for partial summary judgment on the issue of liability is GRANTED; and it is further

ORDERED that any other requests for relief are DENIED.

This constitutes the decision and order of the Court.

Hon. Richard J. Montelione