

**DeCayette v 50 Lex Dev., LLC**

2022 NY Slip Op 34842(U)

September 26, 2022

Supreme Court, Kings County

Docket Number: Index No. 523486/2018

Judge: Odessa Kennedy

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This opinion is uncorrected and not selected for official publication.

P R E S E N T :

HON. ODESSA KENNEDY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 2

RANDY DECAYETTE,

Index No.: 523486/2018

Plaintiff(s)

-against-

**ORDER**

50 LEX DEVELOPMENT, LLC and TISHMAN  
CONSTRUCTION CORPORATION OF NEW YORK,

Defendant(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion:

<b>Papers</b>	<b>NYSCEF Document No.</b>
<b>Motion Sequence No.</b>	<b>3</b>
Notice of Motion, Affirmation in Support	66 – 77
Opposition	97, 98
Reply	100

Upon oral argument held and placed on the record on September 21, 2022 and review of the foregoing papers, plaintiff Randy Decayette’s motion for an Order pursuant to CPLR § 3212 granting plaintiff summary judgment against defendants, 50 Lex Development, LLC and Tishman Construction Corporation of New York, on the issue of liability under Labor Law § 240(1) is GRANTED.

Plaintiff allegedly sustained injuries as a result of an incident that occurred on July 12, 2018 at the premises located 138 East 50<sup>th</sup> Street, New York, New York when plaintiff was performing construction work. It is undisputed that defendant, 50 Lex Development, LLC, owned the subject premises and that Tishman Construction Corporation of New York acted as a contractor as contemplated by Labor Law § 240(1). *See, Walls v. Turner Construction Co.*, 4 N.Y.3d 861 (2005).

Plaintiff's accident occurred as he was installing sheet rock in the ceiling of a closet on the 41<sup>st</sup> floor of the subject building. To perform this work, Plaintiff was provided with an A-frame ladder. Immediately before the accident, Plaintiff set up the ladder in the subject closet, climbed the latter, and up a piece of sheetrock and positioned it with his left hand. Plaintiff grabbed the preloaded screw gun and installed the first screw, connecting the sheetrock to the ceiling and reloaded the gun and installed a second screw. As he attempted to load another screw, the sheetrock fell and struck Plaintiff. He felt the ladder move underneath him causing him to fall to the ground. The ladder was not tied off or otherwise secured.

### DISCUSSION

In order to prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a prima facie showing, the motion must be denied, regardless of the sufficiency of the opposing papers. *Alvarez v Prospect Hospital*, 68 N.Y.2d 320, 324 (1986). However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient

to establish the existence of a material issue of fact that precludes summary judgment and requires a trial”. *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1st Dept 2007), citing *Alvarez*, 68 N.Y.2d at 324.

***Plaintiff is Entitled to Summary Judgment on Liability Under  
Labor Law §240(1)***

The Court finds Plaintiff met his initial burden in establishing judgment as a matter of law under Labor Law § 240(1).

Labor Law § 240(1) is intended to promote safe practices at construction sites and provides statutory protections for workers engaged in the erection, demolition, alteration and repairing of "buildings and structures." Specifically, it requires that owners, general contractors and their agents, at sites where such work is undertaken, furnish "scaffolds, hoists...slings pulleys, braces, irons, and other devices which shall be so constructed, placed and operated as to give proper protection" to construction workers. See, Labor Law § 240(1). Labor Law § 240(1) has long been regarded as an absolute liability statute pursuant to which an injured, protected worker may recover without establishing fault on the part of the owner or contractor. *Koenig v. Patrick Constr. Co.*, 298 N.Y. 313 (1948). Comparative negligence may not be asserted as a defense. *Bland v. Manocherian*, 66 N.Y.2d 452 (1985).

“In cases involving ladders or scaffolds that collapse or malfunction for no apparent reason,’ the Court of Appeals has applied ‘a presumption that the ladder or scaffolding device was not good enough to afford proper protection’”. *Kebe v. Greenpoint-Goldman Corp.*, 150 A.D.3d 453, 454 (1<sup>st</sup> Dept. 2017) quoting, *Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d 280, 289 (2003).

Indeed, even if a worker is provided with some type of device to perform his task such as a scaffold or a ladder it is insufficient to defeat a finding of a violation of Labor Law § 240(1), if the provided device is, in and of itself, insufficient to protect the worker from the significant risk of elevated height. *See, Nimirouski v. Vornado Realty Trust Company*, 29 A.D.3d 762 (2d Dept. 2006); *Lightfoot v. State*, 245 A.D.2d 488 (2d Dept. 1997); *Pritchard v. Murray Walter*, 157 A.D.2d 1012 (3d Dept. 1990).

Plaintiff established an entitlement to summary judgment by demonstrating that he was caused to fall from an unsecured ladder which moved while he was working atop it. It is well settled that when a worker falls from an unsecured ladder that slipped or moved and no safety devices were provided to prevent or protect the fall, such as in the instant case, the worker is entitled to summary judgment under Labor Law § 240(1). *See, Ramirez v. I.G.C. Wall Systems, Inc.*, 140 A.D.3d 1047 (2d Dept. 2016) (Plaintiff entitled to summary judgment pursuant to Labor Law § 240(1) when ladder “jerked” while he was descending, causing him to fall to the ground); *Grant v. City of New York*, 109 A.D.3d 961 (2d Dept. 2013) (Plaintiff entitled to summary judgment pursuant to Labor Law § 240(1) when ladder shifted causing him to fall to the ground); *Paganani v. Congregation Eretz H’Chaim*, 105 A.D.3d 830 (2d Dept. 2013) (Plaintiff entitled to summary judgment pursuant to Labor Law § 240(1) when ladder shifted causing him to fall to the ground).

In addition, Plaintiff established an entitlement to summary judgment by demonstrating that he struck by an object, namely, the subject sheetrock, which was not properly secured for the work that was being performed. *Outar v. City of New York*, 5 N.Y.3d 731 (2005), *aff’d* 286 A.D.2d 671 (2d Dept. 2001) (reversing lower court and granting summary judgment in favor of plaintiff who was injured when an

unsecured dolly fell from the top of the bench wall 5 ½ feet striking plaintiff); *Tyluki v. Tishman Tech*, 7 A.D.3d 696 (2d Dept. 2004) (granting summary judgment to plaintiff because during demolition of a building he was struck by a falling piece of sprinkler pipe); *Orner v. Port Auth. of New York and New Jersey*, 293 A.D.2d 517 (2d Dept. 2002) (granting summary judgment to plaintiff who was injured when struck by unsecured roofing material that fell from the roof and struck plaintiff).

In opposition, defendants argue that Plaintiff was the sole proximate cause of his accident as questions of fact exist as to whether he should have used a scaffold or have a co-worker hold his ladder while he was performing his work.

However, these arguments fail as there was no evidence submitted to establish that Plaintiff was provided a scaffold or a co-worker to hold his ladder. Moreover, the unrefuted evidence shows that a scaffold would not have fit in the area in which Plaintiff was working at the time of his accident. A non-moving party cannot raise an issue of fact solely on conjecture, suspicion, and speculation. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1985).

As held by the Court of Appeals "under Labor Law §240(1), it is conceptually impossible for a statutory violation 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. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation." *Blake v. Neighborhood Housing Services of New York City, Inc.*, 1 N.Y.3d 280 (2003).

WHEREFORE it is hereby:

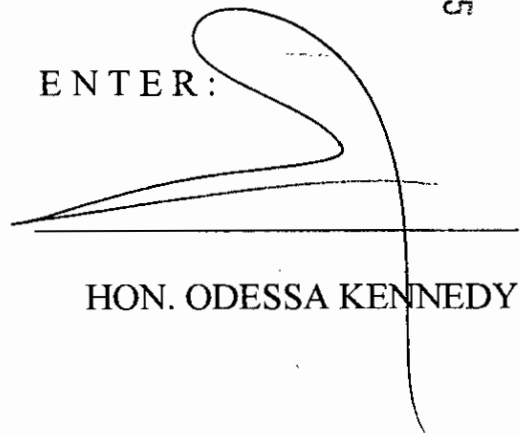
ORDERED that Plaintiff's motion for summary judgment against defendants, 50 Lex Development, LLC and Tishman Construction Corporation of New York, on the issue of liability under Labor Law § 240(1) is GRANTED in its entirety, and this case will proceed on the issue of damages, only.

This constitutes the Order of the Court.

Dated: September 26, 2022

KINGS COUNTY CLERK  
FILED  
2022 OCT -3 AM 11:15

ENTER:



HON. ODESSA KENNEDY