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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **4333/2018HON. ARLENE P. BLUTH** **PART** **14**

Justice

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DMITRY IVANENKO,

Plaintiff,

- v -

1135 PARK AVENUE CORPORATION, ABC MANAGEMENT CORP.

Defendant.

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INDEX NO. 154333/2018

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 78, 79, 80, 81, 82

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

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted.

Background

Plaintiff contends that he suffered injuries while working on the repair and modernization of an elevator in a building owned by defendant 1135 Park Avenue Corporation ("1135 Park") and managed by ABC Management Corp. ("ABC"). He was helping to replace cables when he was lifted up nearly two stories by a rope he was using and then he fell back down on top of the elevator cab, only to be struck by cable and shackles from above. Plaintiff maintains that he was holding a rope during the accident that was supposed to keep the old cable secured but that the rope was not secured to the pit of the elevator. He observes that when a coworker cut the last of

the old cables, it caused plaintiff to be hoisted upwards. Plaintiff insists that under these circumstances he is entitled to summary judgment.

In opposition, defendants contend that there was no device being hoisted or secured when plaintiff was injured and therefore there was no defective or inadequate safety device. They claim that because the cable that was being lowered struck plaintiff because of human error (someone losing control of the cable), the Labor Law does not entitle plaintiff to recover. Defendants also argue that because overhead protection was not feasible, the Court should deny the motion.

In reply, plaintiff emphasizes that defendants' argument that "someone made a mistake" does not raise an issue of fact that compels the Court to deny the instant motion. He points to the deposition of his supervisor, who admitted that the accident happened because a rope was not tied off at the basement level.

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]).

The Court grants the motion. The fact is that plaintiff was assisting in changing the cables for the elevator and his supervisor testified that the accident happened because "They were using the rope and they attached the rope to the cables and they did not tie the rope at the bottom of the pit" (NYSCEF Doc. No. 71 at 42). He noted that "you have to tie the rope to the cables and to the pit to let's say the rail bracket or something before you loose[n] the shackles, cables you just disconnect them from the top of the car" (*id.*). Plaintiff's supervisor added that the rope was not tied off due to "someone['s] mistake" (*id.*).

This is precisely the type of accident that is covered by Labor Law § 240(1). It was a gravity-related accident where plaintiff fell from a height and was hit by cables falling from a height. Defendants did not raise a material issue of fact in opposition. Their claim that "plaintiff's accident was not deliberate" is of no moment because "section 240(1) imposes strict liability on owners and contractors" (*Thompson v St. Charles Condominiums*, 303 AD2d 152, 153, 756 NYS2d 530 [1st Dept 2003]).

Defendants' other argument that overhead protection was not feasible does not raise an issue of fact because it was not supported by an expert's affidavit or a reference to deposition testimony suggesting that there was, essentially, no way to prevent this accident due to the task to be performed. In fact, the deposition testimony of plaintiff's supervisor—which explains exactly how this accident could have been prevented—is uncontroverted.

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on his Labor Law § 240(1) is granted as to liability.

7/6/2023
DATE

ARLENE P. 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