SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ **PART** 47

Justice

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YEIMY SERRANO,

Plaintiff,

- v -

215 N 10 PARTNERS LLC,SUNRISE CONSTRUCTION LLC D/B/A LARGO CONSTRUCTION,

Defendants.

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INDEX NO. 159639/2020

MOTION DATE 05/23/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

215 N 10 PARTNERS LLC, SUNRISE CONSTRUCTION LLC D/B/A LARGO CONSTRUCTION

Plaintiffs,

-against-

FQE ELECTRIC LLC

Defendant.

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Third-Party
Index No. 595358/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

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

In this action arising out of a construction site accident, plaintiff Yeimy Serrano moves, pursuant to CPLR § 3212, for summary judgment on the issue of liability on her claims under Labor Law §§ 240 (1) and 241 (6).

BACKGROUND

Plaintiff, an employee of FQE Electric, fell from a ladder while installing temporary lighting at a new construction site located at 215 North 10th Street, Brooklyn, New York (the premises) (Statement of Facts, ¶¶ 1-3, NYSCEF Doc No 34). Plaintiff testified that as she reached to place the light bulb in the socket, the ladder was uneven and moved, causing plaintiff

to fall (*id.* at ¶ 5; Plaintiff's EBT, pp 77-80, NYSCEF Doc No 36). Plaintiff alleges the ladder lacked proper footing because at least one but perhaps two or three feet of the ladder were missing rubber bottoms (NYSCEF Doc No 36, pp 82-84). Plaintiff also alleges that the third rung from the top of the ladder was bent and defective; however, she testified that at the time of her accident she was standing on the second run from the top of the ladder (*id.* at pp 89-91).

It is undisputed that 215 N 10 Partners was the fee owner of the premises and Sunrise Construction was the general contractor hired to complete the construction project on the date of the accident (NYSCEF Doc No 34, ¶ 7).

DISCUSSION

"It is well settled that '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 demonstrate the absence of any material issues of fact'" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010]). "The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427,

428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Labor Law § 240 (1)

Plaintiff argues that defendants' 215 N 10 Partners LLC (215 N 10 Partners) and Sunrise Construction LLC d/b/a Largo Construction (Sunrise Construction) failure to secure the ladder she was working on and ensure that it remained steady and erect constitutes a Labor Law § 240 (1) violation. Plaintiff also argues that defendants' failure to provide proper protection negates the defense that plaintiff was the sole proximate cause of her accident.

Defendants oppose the motion by arguing that the alleged defects to the ladder were not the proximate cause of plaintiff's fall, defendants did not provide the ladder to plaintiff, and that issues of fact remain considering the photographs submitted by plaintiff do not depict the alleged defects and third-party defendant FQE Electric LLC (FQE Electric) has not yet had a chance to testify that the ladder was not defective as alleged by plaintiff.

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

> 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) "imposes absolute liability on building owners and contractors whose failure to provide proper protection to workers employed on a construction site proximately causes injury to a worker" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18

NY3d 1, 7 [2011] [internal quotation marks and citation omitted]). To prevail on a Labor Law § 240 (1) cause of action, the plaintiff must establish that the statute was violated, and that the violation was a proximate cause of his or her injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-289 [2003]). "[T]he single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

The legislative intent behind the statute is to place "ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor, instead of on workers, who are scarcely in a position to protect themselves from accident" (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 520 [1985], *rearg denied* 65 NY2d 1054 [1985] [internal quotation marks and citations omitted]). Therefore, the statute should be liberally construed to achieve the purpose for which it was framed (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]).

In terms of ladders specifically, Labor Law § 240 (1) requires that ladders and other safety devices be "so constructed, placed and operated as to give proper protection" to a worker (Labor Law § 240 [1]; *see also Klein v City of New York*, 89 NY2d 833, 833-34 [1996]; *Lipari v AT Spring, LLC*, 92 AD3d 502, 503-04 [1st Dept 2012]). It is well established that the "failure to properly secure a ladder to insure that it remains steady and erect while being used, constitutes a violation of Labor Law § 240 (1)" (*Plywacz v 85 Broad St. LLC*, 159 AD3d 543, 544 [1st Dept 2018] [internal quotation marks and citation omitted]). "It is sufficient for purposes of liability under section 240 (1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent" (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d

289, 291 [1st Dept 2002]). The plaintiff is not required to show that the ladder was defective (*Perez v NYC Partnership Hous. Dev. Fund Co., Inc.*, 55 AD3d 419, 420 [1st Dept 2008]).

Here, plaintiff testified that while standing on the second rung from the top of the ladder, it was wobbly, "uneven and it moved," causing plaintiff to fall (NYSCEF Doc No 36, pp 73-74, 77-84). In view of this testimony, plaintiff has made a *prima facie* showing of entitlement to summary judgment under Labor Law §240 (1) (*see Blake*, 1 NY3d at 289 n 8).

Defendants have failed to raise an issue of fact as to whether plaintiff was the sole proximate cause of her accident and ultimately, do not dispute that the ladder collapsed. Even if the third rung of the ladder was not defective plaintiff still testified that the ladder may have been wobbly due to the lack of at least one rubber bottom (NYSCEF Doc No 36, p 82). Regardless, plaintiff is not required to prove what caused her accident or in what ways the ladder was defective (*Perez*, 55 AD3d 419). Thus, a statutory violation occurred as a matter of law, which served as a proximate cause of the accident and "if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it" (*id.* at 290; *see Mussara v Mega Funworks, Inc.*, 100 AD3d 185, 194 [2d Dept 2012]).

Additionally, although defendants contend that plaintiff deprived them of plaintiff's coworker Michael Moreno's testimony, they have failed to demonstrate what impact Moreno's testimony would have on the outcome of plaintiff's motion (*see* CPLR § 3212 [f]). "The mere hope that further disclosure might uncover evidence likely to help [defendants'] case" does not provide a basis for postponing summary judgment (*Maysek & Moran v Warburg & Co.*, 284 AD2d 203, 204 [1st Dept 2001]). Nor do the photographs of the ladder submitted by plaintiff create an issue of fact as to the lack of rubber bottoms because it appears that a rubber bottom is missing from one of the ladder's feet (NYSCEF Doc No 36, p 170).

Accordingly, plaintiff's motion for summary judgment on her Labor Law § 240 (1) claim will be granted.

Labor Law § 241 (6)

Plaintiff failed to brief her motion for summary judgment on her Labor Law § 241 (6) claim as well as lay out any Industrial Code violations to support such a claim in her complaint.

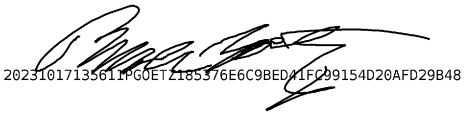
Accordingly, plaintiff's motion for summary judgment on her Labor Law § 241 (6) claim will be denied.

CONCLUSION

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on her Labor Law § 240 (1) claim is granted and denied as to her Labor Law § 241 (6) claim; and it is further

ORDERED that the discovery conference scheduled for December 7, 2023 is canceled since plaintiff re-filed the note of issue on September 27, 2023.



10/17/2023
DATE

PAUL A. GOETZ, 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