

**Gkoumas v Lewis Constr. &
Architectural Mill Work**

2023 NY Slip Op 33644(U)

October 18, 2023

Supreme Court, New York County

Docket Number: Index No. 152119/2016

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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LAMPROS GKOUMAS,

Plaintiff,

- v -

LEWIS CONSTRUCTION AND ARCHITECTURAL MILL
WORK, JORDANA P. FRIBOURG, MIRO KHOUDARI,
LEWIS CONSTRUCTION, NYC INC., PRUT, INC.,

Defendant.

INDEX NO. 152119/2016

MOTION DATE 09/23/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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LEWIS CONSTRUCTION AND ARCHITECTURAL MILL
WORK, LEWIS CONSTRUCTION, NYC INC.

Plaintiff,

Third-Party
Index No. 595488/2017

-against-

FOUR STAR AIR CONDITIONING CO., LLC

Defendant.

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

In this Labor Law and premises liability action, plaintiff Lampros Gkoumas (“Plaintiff”) moves for an order granting partial summary judgment on his Labor Law § 240(1) cause of action against defendants Lewis Construction, NYC, Inc. and Lewis Construction and Architectural Mill Work (collectively “Lewis Defendants”). The Lewis Defendants oppose the motion.

Plaintiff alleges that he was injured while working for third party defendant Four Star Air Conditioning Co., LLC (“Four Star”) at a construction site at 195 Hudson Street in Manhattan on

August 27, 2015. At the time of the accident, Plaintiff was attaching refrigeration lines to an air conditioning unit in the ceiling of a laundry room in a residential apartment. Plaintiff testified that he was working alone in the laundry room and that he was standing on an A-frame ladder that was not held by anybody else. He attested that the ladder shifted, causing him to fall to the ground. He claims that he cut his hand on a fixture during his fall and that he briefly lost consciousness after he hit the floor. Nobody else was in the room with Plaintiff or otherwise witnessed his accident.

The Lewis Defendants acted as the general contractor and hired Four Star and other subcontractors for the project. Their principal, Todd Lewis, testified that the Lewis Defendants were responsible for the safety of subcontractor employees. He further testified that the Lewis Defendants had Baker scaffolds in its inventory and that one had been used during the project and would have been left on site (NYSCEF Doc. No. 99, Lewis EBT at 33-34). However, Lewis stated that the Lewis Defendants did not allow subcontractors to use their equipment and would have to have provided their own to install ductwork on the ceiling (*id.* at 35-37).

Plaintiff commenced this action on March 11, 2016, asserting claims for common law negligence and violation of Labor Law §§ 200, 240(1), and 241(6). He now moves for summary judgment on his Labor Law § 240(1) against the Lewis Defendants.

On a motion for summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden

shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Labor Law § 240(1) “places a nondelegable duty on owners, contractors, and their agents to furnish safety devices giving construction workers adequate protection from elevation-related risks” (*Hill v City of New York*, 140 AD3d 568, 569 [1st Dept 2016]). “The 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]).

A defendant’s failure to properly secure a ladder to “ensure that it remain[s] steady and erect while being used, constitutes a violation of Labor Law § 240(1)” (*Montalvo v J. Petorcelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept 2004], quoting *Kijak v 330 Madison Ave. Corp.*, 251 AD2d 152, 153 [1st Dept 1998]). A plaintiff does not need to “prove that the ladder was defective to make a prima facie showing” (*Rivera v Suydam 379 LLC*, 216 AD3d 495, 495-496 [1st Dept 2023], citing *Estrella v GIT Indus., Inc.*, 105 AD3d 555 [1st Dept 2013]). “The fact that plaintiff was the only witness to his accident does not preclude summary judgment in his favor” where “nothing in the record controverts his account of the accident or calls his credibility into question” (*Rroku v West Rac Contr. Corp.*, 164 AD3d 1176, 1177 [1st Dept 2018]). Summary judgment is properly granted where plaintiff establishes through testimony that an injury occurred due to an unsecured ladder that suddenly moved (*Fanning v Rockefeller Univ.*, 106 AD3d 484 [1st Dept 2013]).

Here, Plaintiff sets forth facts supporting a prima facie case for the Lewis Defendants’ liability under Labor Law § 240(1) by submitting his testimony that he was working on an unsecured A-frame ladder, that the ladder shifted causing him to fall, and that he cut his hand

and suffered other injuries after falling (*cf. Bethel United Methodist Church of N.Y.*, 49 AD3d 251 [1st Dept 2008]).

In opposition, the Lewis Defendants fail to create an issue of fact as to the causes of Plaintiff's accident and injury. Their claim that an issue of fact exists as to "whether the plaintiff ever fell off of the ladder given the various versions of events in his worker's compensation and medical records when compared to his deposition testimony" is without merit. The purported versions of the accident described in the medical records are inadmissible hearsay as statements regarding "acts or occurrences leading to the patient's hospitalization – such as a narration of the accident causing the injury – [are] not germane to diagnosis or treatment" (*Mosqueda v Ariston Dev. Group*, 155 AD3d 504 [1st Dept 2017], quoting *Williams v Alexander*, 309 NY 283, 287 [1955]). The Court finds that Plaintiff's uncertified Workers' Compensation C-3 form purportedly describing the cause of his injuries, in which he indicated that he does not speak English and provides no information as to who prepared the form or translated his responses, is similarly inadmissible and therefore insufficient to create an issue of fact (*cf. Kristo v Bd. of Educ. of City of N.Y.*, 134 AD3d 550, 551 [1st Dept 2015] [unsworn accident report proffered by defendants to show inconsistency in plaintiff's account of accident insufficient to raise issue of fact as it was inadmissible hearsay]).

Finally, none of the EBT testimony contains non-hearsay material that could create an issue of fact. Lewis's EBT statements about Plaintiff's contemporaneous account of the accident and statements of other coworkers who did not witness the accident are inadmissible hearsay. Furthermore, one of Plaintiff's coworkers, nonparty Endrit Caushag, testified that he could not remember the accident. The Lewis Defendants therefore fail to submit any evidence aside from

hearsay statements in support of their position (see *Ying Choy Chong v 457 W. 22nd St. Tenants Corp.*, 144 AD3d 591, 592 [1st Dept 2016]).

The Lewis Defendants’ other arguments in opposition are similarly unavailing. Their assertion that Plaintiff was the sole proximate cause of his accident is without merit as they fail to raise a triable issue of fact as to whether, *inter alia*, “adequate safety devices were available, that [Plaintiff] knew that they were available and was expected to use them, and that [Plaintiff] unreasonably chose not to do so” (see *Quinones v Olmstead Properties, Inc.*, 133 AD3d 87, 89 [1st Dept 2015], quoting *Nacewicz v Roman Catholic Church of the Holy Cross*, 105 AD3d 402, 402-403 [1st Dept 2013]). Their argument that Plaintiff’s motion is premature and should be denied under CPLR 3212(f) fails as they do not establish that facts essential to justify their opposition are within Plaintiff’s exclusive knowledge; the fact that one or more nonparty depositions have not been held are insufficient to deny or delay summary judgment (see *Voluto Ventures, LLC v Jenkins & Gilchrist Parker Chapin LLP*, 44 AD3d 557 [1st Dept 2007]). The Court accordingly grants Plaintiff’s motion for summary judgment on his Labor Law 240(1) cause of action as against the Lewis Defendants.

Accordingly, it is hereby:

ORDERED that the plaintiff’s motion for summary judgment on the cause of action for liability under Section 240(1) of the Labor Law as against defendants Lewis Construction, NYC, Inc. and Lewis Construction and Architectural Mill Work is granted.

10/18/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: