

**Jaimes-Gutierrez v 37 Raywood Dr. LLC**

2023 NY Slip Op 34847(U)

February 21, 2023

Supreme Court, Rockland County

Docket Number: Index No. 031881/2019 E

Judge: Rolf M. Thorsen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF ROCKLAND

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MANUEL JAIMES-GUTIERREZ,  
  
Plaintiff,

To commence the statutory time period for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-against-

DECISION & ORDER

37 RAYWOOD DRIVE LCC and BE & YO  
REALTY, INC.,

Index No: 031881/2019 E

Defendants.

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37 RAYWOOD DRIVE LLC and BE & YO  
REALTY INC.,

Third-Party Plaintiffs,

-against-

HIGH POINT TRIMMERS, INC.,

Third-Party Defendant.

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HON. ROLF M. THORSEN, A.J.S.C.

Plaintiff, Manuel Jaimes-Guiterrez, an employee of non-party Global Security, was allegedly injured when he fell off of a pull-down wooden attic staircase as he was ascending the stairs to the attic at a newly-constructed four-unit condominium in Monroe, New York to run cable wires. Defendant 37 Raywood Drive LLC was the owner of the premises and Defendant Be & Yo Realty, Inc. was the general contractor who, in turn, subcontracted with Global Security. As a result of his injuries, Plaintiff commenced the within action asserting causes of action for negligence (first cause of action), violations of Labor Law §200, §240 and §241 (second cause of action) and violation of Labor Law §241(6). Plaintiff now moves for summary judgment pursuant to CPLR §3212 on the issue of liability with respect to violations of Labor Law §240(1) and §241(6). Defendants oppose Plaintiff's motion and

cross-move for an order granting summary judgment in favor of Defendants. The Court has considered the following papers on the motions:

1. Notice of Motion (#002), Statement of Material Facts, Affirmation in Support and Exhibits A through F submitted therewith, and Memorandum of Law;
2. Defendants' Affirmation in Opposition and Exhibits A through K submitted therewith and Memorandum of Law in Opposition;
3. Defendants' Notice of Cross-Motion (#003), Counter-Statement of Facts, Affirmation in Support of Cross-Motion and Exhibits A through K submitted therewith and Memorandum of Law;
4. Plaintiff's Affirmation in Opposition to Cross-Motion and Memorandum of Law; and
5. Defendants' Reply Affirmation.

Turning first to Plaintiff's motion for summary judgment on his Labor Law §240(1) cause of action, it is well-settled that "[t]o prevail on a cause of action alleging a violation of Labor Law §240(1), a plaintiff must prove that the defendant violated the statute and that such violation was a proximate cause of his or her injuries." Von Hegel v. Brixmor Sunshine Sq., LLC, 115 N.Y.S.3d 712 (2d Dept. 2020), citing, Blake v. Neighborhood Hous. Servs. of NYC, 1 N.Y.3d 280, 290 (2003). Applied here, Plaintiff has failed to meet that burden. As testified to by Plaintiff, he fell from a permanent pull-down attic stairway, which is not the type of ladder that the Labor Law was intended to apply as it "was not designed as a safety device to protect him from an elevation-related risk." Norton v. Park Plaza Owners Corp., 263 A.D.2d 531, 532 (2d Dept. 1999).

With respect to Plaintiff's cause of action alleging a violation of Labor Law §241(6), that statute provides:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not directly or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

\* \* \*

All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

Labor Law §241(6). In other words, "Labor Law §241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers." Comes v. N.Y.State Elec. & Gas Corp., 82 N.Y.2d 876, 878 (1993) (Citations omitted). Thus, a plaintiff alleging a violation of Labor Law §241(6) "is required to plead and prove that the defendant violated a specific provision or provisions of the Industrial Code." Norton v. Park Plaza Owners Corp., 263 A.D.2d at 532. Here, Plaintiff alleges a violation of Industrial Code §23-1.21(b)(4).<sup>1</sup> Based on Plaintiff's deposition testimony, read in conjunction with the specific requirements regarding the use of ladders pursuant to Industrial Code §23-1.21(b)(4), the only subsection remotely applicable to the within facts is Industrial Code §23-1.21(b)(4)(i),<sup>2</sup> which provides as follows:

(i) Any portable ladder used as a regular means of access between floors or other levels

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<sup>1</sup> Although not specifically identified in his motion papers, Plaintiff's Bill of Particulars cites to Industrial Code §23-1.21(b)(4)(i) through (v) as the basis for his Labor Law §241(6) cause of action.

<sup>2</sup> At the outset, this Court is not persuaded that the permanent pull-down staircase that Plaintiff used is the type of ladder that was envisioned by the statute. In any event, as there is no evidence that Plaintiff's fall was the result of the ladder footings, loading conditions on a leaning ladder, work being performed from ladder rungs between six and ten feet above the ladder footing or a slippery surface at the upper end of a leaning ladder, Industrial Code §23-1.21(b)(4)(ii) through (v) do not apply.

in any building or other structure shall be nailed or otherwise securely fastened in place. Such ladder shall extend at least 36 inches above the floor, level or landing or handholds shall be provided at such upper levels to afford safe means of access to or egress from the ladder. Such a ladder shall be included a maximum of three inches for each foot of rise.

However, this provision applies only to portable ladders, *i.e.*, ladders that are "capable of being carried or moved about."<sup>3</sup> Since Plaintiff testified that he fell from a permanent pull-down attic staircase, the Court finds this particular provision to be inapplicable. *See, Norton v. Park Plaza Owners Corp.*, 263 A.D.2d at 532. As such, Plaintiff's motion for summary judgment with respect to his Labor Law §241(6) cause of action must be denied.

Turning next to Defendants' cross-motion for summary judgment, for the reasons set forth herein, the Court finds that summary judgment in favor of Defendants with respect to Plaintiff's Labor Law §240(1) and §241(6) causes of action is warranted. Moreover, with respect to Plaintiff's cause of action alleging a violation of Labor Law §200, that section "codifies the common-law duty of an owner or employer to provide employees with a safe place to work." *Smith v. 499 Fashion Tower, LLC*, 38 A.D.3d 523, 524 (2d Dept. 2007) (Internal citations omitted). "An implicit precondition to this duty 'is that the party charged with that responsibility have the authority to control the activity bringing about the injury.'" *Id.*, quoting, *Russin v. Picciano & Son*, 54 N.Y.2d 311, 317 (1981). Applied here, Defendants have met their prima facie burden of establishing their entitlement to judgment as a matter of law. Defendants have demonstrated that they did not control the manner in which Plaintiff performed his work. Nor did Defendants cause or create or have actual or constructive notice of the alleged dangerous condition that caused Plaintiff's injuries thereby warranting summary judgment in favor of Defendants on Plaintiff's common-law negligence cause of action. Plaintiff has failed to raise triable issues of fact in opposition.

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<sup>3</sup> *See, <https://www.merriam-webster.com/dictionary/portable>.*

Based on the foregoing, it is hereby

ORDERED that Plaintiff's motion for summary judgment (#002) is denied; and it is further


ORDERED that Defendants' cross-motion for summary judgment (#003) is granted and the complaint is dismissed; and it is further

ORDERED that all other relief not herein decided is denied.

The foregoing constitutes the Decision and Order of this Court.

**E N T E R**

Dated: February 21, 2023  
New City, New York

  
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HON. ROLF M. THORSEN  
Acting Supreme Court Justice

TO: NYSCEF