SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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JAVIER NEGRON,

Plaintiff,

- v -

SHVO INC.,VS 125 LLC,PLAZA CONSTRUCTION LLC,BIZZI & PARTNERS DEVELOPMENT LLC

Defendant.

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INDEX NO. 150351/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 106, 107, 108, 109, 110, 111, 112

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

Upon the foregoing documents, and after oral argument, which took place on May 28, 2024, where Sagar Chadha, Esq. appeared for Plaintiff Javier Negron ("Plaintiff") and Daniel E. Cerritos, Esq. appeared for all Defendants, Plaintiff's motion for partial summary judgment on his Labor Law §240(1) claim is granted.

I. Background

This is an action arising out of alleged personal injuries from violations of the New York Labor Law. On December 17, 2018, Plaintiff was employed by non-party Delta Sheet Metal ("Delta") and was working on a construction project located at 125 Greenwich Street, New York, NY on the 38th Floor (the "Worksite"). The Worksite involved constructing a new 72-floor building. Defendant VS 125 LLC owned the Worksite. Defendant Plaza Construction LLC was a general contractor on the Worksite. Delta was contracted to carry out HVAC work. Another subcontractor, non-party Structure Tech, was contracted to build the concrete superstructure.

Plaintiff was ultimately injured by a 'reshore brace' that was being used as a ceiling support by Structure Tech. The reshores were placed vertically with one end on the ground and the other on the ceiling. The reshores were not secured but are held in place by pressure. Plaintiff was peeling plastic off a piece of ductwork when he felt the reshore strike the back of his neck.

Plaintiff testified the reshore was being secured with styrofoam (NYSCEF Doc. 79 at 187). He testified he felt an impact in "the middle to the right" of his neck (*id.* at 110). Plaintiff testified that his coworker, Jose Mateo was in front of him at the time of impact and took a photo (*id.* at 122). Mr. Jose Mateo testified at his deposition that he witnessed the accident out of his peripheral vision and the reshore brace struck Plaintiff (NYSCEF Doc. 57). Mr. Mateo provided a witness statement with an illustration of how the incident happened (NYSCEF Doc. 43).

Michael Chiodo, a witness from Defendant Plaza Construction LLC was questioned about the reshore and the proper way to secure reshore columns. When asked why there was a piece of Styrofoam affixed to the end of a reshore in a photo, Mr. Chiodo could provide no explanation (NYSCEF Doc. 44 at 82-83). Mr. Chiodo likewise testified that if properly erected and secured, the reshore is not supposed to fall (*id.* at 84). Mr. Chiodo testified that the subcontractor responsible for placing the reshores was Structure Tech (*id.* at 101; 104). Mr. Chiodo was shown work logs which indicated Structure Tech was removing reshores on the 38th floor where Plaintiff was injured just days prior to his accident (*id.* at 111). However, Mr. Chiodo could not explain why Structure Tech was removing reshores on the 38th floor (*id.* at 111-112). Mr. Chiodo admitted it was Plaza's responsibility to coordinate the work being done by the trades and likewise admitted that other trades would need to be clear of Structure Tech's work when conducting reshore removal (*id.* at 115-116).

Michael Duffy testified as a representative of non-party Structure Tech (NYSCEF Doc. 38) that the reshores were secured by pressure from the concrete ceiling, and that there was a dial to either extend or shorten the reshore. To secure it, the dial would be turned to extend the reshore so that it was plush against the ceiling, and to loosen and remove the reshore the dial would be moved to shorten the reshore. To be safely secured, Mr. Duffy testified the reshores should be "airtight" between each concrete slab (*id.* at 148). Mr. Duffy testified that it was Structure Tech's general practice to clean the floor, loosen the reshores, and then remove them immediately once loosened (*id.* at 42-43). When asked why there was blue Styrofoam attached to the end of the reshore, Mr. Duffy testified that the plumber used the reshore with Styrofoam on it to fill holes he mistakenly made in the ceiling (*id.* at 88). Mr. Duffy testified there were issues with other contractors using or taking reshores to lower levels (*id.* at 51). This issue was brought to the general contractor's attention (*id.* at 54). Mr. Duffy testified the Styrofoam attached to the top of the reshore was part of a recurring issue Structure Tech had with the plumber who was using the reshores to fill holes he mistakenly made in the concrete ceiling (*id.* at 88; 157-158). Mr. Duffy testified that the Styrofoam affixed on top of the reshore was an improper means of securing the reshore (*id.* at 173).

Plaintiff now moves for summary judgment on his Labor Law § 240(1) claim. He argues there are numerous other cases such as this one where summary judgment under Labor Law § 240(1) is granted to workers who are struck by objects that fell over on to them.

Defendants oppose and argue because the reshore was not being used for its intended and foreseeable purpose, there can be no violation of Labor Law § 240(1). Defendants argue there is an issue of fact as to whether the reshore hit him as his deposition testimony and verified bill of particulars state his right shoulder was struck, but the photo proffered by Plaintiff shows the

reshore hit his left shoulder. Defendants also cite to the deposition of a Structure Tech representative, Michael Duffy. Mr. Duffy testified that at the time of Plaintiff's accident there was no concrete work requiring shoring posts being completed on the 38th floor where Plaintiff fell. Defendants argue the reshore was being used without their knowledge or permission, and therefore its use was not foreseeable. Defendants argue that foreseeability of whether a device is required to be secured under Labor Law § 240(1) is a requirement. Defendants further argue that there is a question of fact as to whether the reshore was of sufficient mass to trigger applicability of Labor Law § 240(1).

In reply, Plaintiff argues Defendants' opposition is speculative and conclusory. Plaintiff further argues that there is no "foreseeability" requirement for liability to exist under Labor Law § 240(1). Plaintiff argues that there is no question of fact as to whether the shoring post was of a sufficient mass to trigger § 240(1) due to the large size of the post.

II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.,* 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.,* 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North*

Am. v Victory Taxi Mgt., Inc., 1 NY3d 381 [2004]). The Court of Appeals has instructed Courts to interpret Labor Law §240(1) liberally to accomplish its purpose of ensuring workers are properly protected against elevation related hazards (*Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513 [1985]).

Here, Plaintiff has met his *prima facie* burden of showing a violation of Labor Law § 240(1). It is undisputed that Plaintiff was engaged in a protected activity – namely altering the structure by installing an HVAC. It is further undisputed that the Defendants are the statutory owners and general contractors under Labor Law § 240(1). It is undisputed that Plaintiff had permission to be engaged in HVAC work. Finally, there is no genuine dispute that Plaintiff was struck by a large reshore column when it became dislodged from the ceiling. The Court of Appeals has held that where the base of a large column rests at the same level as a plaintiff, and the top of the column falls from an elevated height onto a plaintiff, Labor Law § 240(1) is an available remedy (*Wilinski v 334 East 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 10 [2011]; *Spero v 3781 Broadway, LLC*, 214 AD3d 546 [1st Dept 2023]).

The case of *Grigoryan v 108 Chambers Street Owner, LLC*, 204 A.D.3d 534 (1st Dept 2022) is instructive. There, a 3-to-4-foot-tall fire pump, which had been standing upright and unsecured, fell on plaintiff's leg. The First Department held that the failure to secure the fire pump constituted a violation of Labor Law § 240(1) and found that it was foreseeable that an unsecured pump would topple over. Here, the column was much higher than the 3-to-4-foot-tall fire pump in *Grigoryan*, and the uncontroverted testimony of Mr. Duffy shows that the Styrofoam affixed by the plumbing subcontractor to the reshore was an improper means of securing the column. Thus, Plaintiff has met his *prima facie* burden of showing a violation of Labor Law § 240(1).

In opposition, Defendants fail to show a material issue of fact. Although Defendants argue that the improper use of the reshore was not foreseeable, this contradicts the deposition testimony of Mr. Duffy who testified he complained on multiple occasions about plumbers using the reshores to the general contractor. Moreover, it is foreseeable that an improperly secured reshore would tip over and fall onto a worker (*Grigoryan, supra* at 535 ["the hazard plaintiff faces was that the unsecured fire pump would topple over, which was a foreseeable harm that needed to be protected against"] citing *Jordan v City of New York*, 126 AD3d 619, 620 [1st Dept 2015]).

Moreover, although there may be a dispute as to which part of Plaintiff's body the column hit, this does not preclude summary judgment as there is no admissible evidence contradicting multiple witnesses' sworn testimony that Plaintiff was indeed struck by the reshore column (*see Singh v City of New York*, 191 AD3d 547 [1st Dept 2021] [inconsistency in testimony is academic where under any version of event NYCHA would be liable for Labor Law § 240(1)]; *Klein v City of New York*, 222 AD2d 351 [1st Dept 1995] [inconsistency in worker's testimony as to precise location of gunk which caused slippery condition insufficient to defeat summary judgment on Labor Law § 240(1) claim]). Moreover, recent First Department case law makes clear that the mass of the reshore column is no bar to the protections of Labor Law § 240(1) (*see Ruiz v Phipps Houses,* 216 AD3d 522 [1st Dept 2023]; *see also Keilitz v Light Tower Fiber New York, Inc., et al.*, 221 AD3d 429 [1st Dept 2023]). Therefore, summary judgment in favor of Plaintiff is appropriate.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for partial summary judgment as to liability on his Labor Law § 240(1) claim is granted against Defendants VS 125 LLC and Plaza Construction LLC; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/4/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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