| **Loja v 111 Wall Funding LLC** |
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| 2024 NY Slip Op 33336(U) |
| September 20, 2024 |
| Supreme Court, New York County |
| Docket Number: Index No. 156494/2020 |
| Judge: Mary V. Rosado |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

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

*Justice*

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ROBINSON LOJA,

Plaintiff,

- v -

111 WALL FUNDING LLC,JVN RESTORATION INC., 111 WALL STREET LLC and CITIBANK N.A.

Defendants.

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**INDEX NO.** 156494/2020

**MOTION DATE** 09/22/2024

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 62, 63, 64

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

Upon the foregoing documents, Plaintiff Robinson Loja's ("Plaintiff") motion for partial summary judgment on the issue of liability on his Labor Law § 240(1) claim against Defendants 111 Wall Street LLC ("111 Wall Street") and Citibank N.A. ("Citibank") (collectively "Defendants") is granted.

## I. Background

This is an action for personal injuries sustained by Plaintiff while he performed asbestos abatement work on an eight-foot-A-frame ladder at 111 Wall Street, New York, New York (the "Premises"). 111 Wall Street owned the premises and Citibank leased the Premises.

On August 1, 2019, Plaintiff was working for PAL Environmental Safety ("PAL"), who was contracted to perform the asbestos remediation work at the Premises (NYSCEF Doc. 48 at 19-20). Plaintiff was using a ladder to cut an HVAC duct with an electric saw (*id.* at 31-33). Workers on a prior shift had already started to cut the duct and tried to secure the partially cut duct with

metal (*id.* at 43). Plaintiff claims the HVAC duct suddenly broke free hitting the ladder Plaintiff was using (*id.*). Plaintiff and the ladder fell.

Plaintiff now moves for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim. Plaintiff argues because he was struck by a falling object while engaged in demolition work, and the ladder on which he was conducting the demolition work was insufficient to prevent him from falling. Plaintiff argues summary judgment is appropriate under both the "falling worker" and "falling object" theories of liability. Defendants oppose and argue that there is no evidence the ladder was insufficient. Defendants further argue there is an issue of fact as to whether Plaintiff was provided with scaffolding but declined to use it. As for the falling object theory of liability, Defendants argue that Plaintiff failed to establish that the duct being removed required hoisting or securing. In reply, Plaintiff argues the ladder was improperly secured. Plaintiff further argues he is entitled to summary judgment under a falling object theory of liability because there was no safety device to regulate the descent of the HVAC duct and ensure it did not strike Plaintiff or his ladder. Plaintiff further argues there is no issue of fact as to whether he was the sole proximate cause of his accident as his uncontradicted testimony states that he was not provided with a scaffold on the date of his accident nor was he instructed to use one.

## 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, there is a *prima facie* violation of Labor Law § 240(1). It is undisputed that Plaintiff was a worker engaged in demolition work and with permission to be on the Premises. It is further undisputed that the Defendants are proper statutory defendants under Labor Law § 240(1). Moreover, there is no dispute that Plaintiff was using an A-frame ladder when an HVAC duct became unsecured and hit Plaintiff and the ladder, causing him to fall.

This case is factually analogous to *Franco v. 1221 Avenue Holdings, LLC*, 189 AD3d 615 (1st Dept 2020). In *Franco*, the First Department held that plaintiff's testimony that "he was injured during demolition work when an unsecured pipe fell from the ceiling and struck him, knocking him off a ladder, establishes prima facie that his injuries resulted 'directly from the application of the force of gravity' and that, having failed to provide proper safety devices, defendants are liable for these injuries under Labor Law § 240(1)." Indeed, despite Plaintiff using an electric saw to cut a nearly fifteen-foot-long HVAC duct from the ceiling for purposes of asbestos remediation, Defendants have shown no safety devices provided to Plaintiff to regulate the descent of the HVAC duct to the ground. Nor have Defendants shown how the ladder which Plaintiff was instructed to use was properly secured if the HVAC duct struck the ladder during its

descent from ceiling to floor (*see also Arnaud v 140 Edgecomb LLC*, 83 AD3d 507 [1st Dept 2011]; *Kosavick v Tishman Const. Corp. of New York*, 50 AD3d 287, 288 [1st Dept 2008]).

In opposition, Defendants have failed to establish that Plaintiff knew that alternative safety devices were available and that he was expected to use the devices yet failed to utilize them for no good reason (*Rivera v 712 Fifth Ave. Owner LP*, 229 AD3d 401 [1st Dept 2024]; *Anderson v MSG Holdings, L.P.*, 146 Ad3d 401 [1st Dept 2017]). Nor have Defendants shown any other triable issues of fact regarding whether a Labor Law § 240(1) violation caused Plaintiff's accident. Therefore, summary judgment as to liability on Plaintiff's Labor Law § 240(1) claim is appropriate.

Accordingly, it is hereby,

ORDERED that Plaintiff Robinson Loja's motion for partial summary judgment on the issue of liability on his Labor Law § 240(1) claim against Defendants 111 Wall Street LLC and Citibank N.A. is granted; 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.

9/20/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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| 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 |