SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 152975/2019

DARWIN S. BUNAY,

Plaintiff,

MOTION DATE 12/05/2024, 12/05/2024

- v -

MOTION SEQ. NO. 006 007

ONE CITY BLOCK LLC,TACONIC MANAGEMENT COMPANY LLC,ELITE INTERIOR CONTRACTING CORPORATION,

DECISION + ORDER ON MOTION

Defendants.

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ELITE INTERIOR CONTRACTING CORPORATION

Third-Party
Index No. 595684/2021

Plaintiff,

-against-

EDCC SERICES CORP.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 239, 240, 241, 242, 243, 244, 248, 249, 250

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 222, 237, 238, 245, 246, 247

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

Upon the foregoing documents, it is

ORDERED that the portion of plaintiff's motion (MS #7) for summary judgment on his Labor Law § 240(1) claim as against defendants, One City Block LLC ("One City"), Taconic Management Company LLC ("Taconic"), and Elite Interior Contracting Corporation ("Elite") is denied, and the portion of Elite's motion to dismiss plaintiff's Labor Law § 240(1) claim as

against it is also denied, because a triable issue of fact exists as to whether plaintiff was the "the sole proximate cause of his accident" in that Elite has submitted testimony of EDCC Services Corp. foreman, who testified that he instructed employees to not use ladders to remove the air ducts, and to wait until scissor lifts were available (NYSCEF Doc No 215 at 31:2 – 35:6), however, plaintiff has submitted conflicting testimony, that he was told by the foreman to use the ladder, which he ultimately fell from causing his injuries (NYSCEF Doc No 212 at 37:7 – 37:21) (*see Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 40 [2004] [holding that an employee who receives and ignores specific safety instructions to use an available device is the sole proximate cause of his injuries][1]), thus a finder of fact must determine whether adequate safety devices were available but plaintiff chose not to use them[2]; and it is further

ORDERED that the portion of plaintiff's motion (MS #7) for summary judgment on his Labor Law § 241(6) claim as against One City, Taconic, and Elite, is denied, and the portion of Elite's motion (MS #6) for summary judgment dismissing plaintiff's Labor Law § 241(6) claim as against it is granted because the Industrial Code sections upon which plaintiff predicates his

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[1] While plaintiff correctly notes that "[a] general standing order to use safety devices does not raise a question of fact that a plaintiff knew that safety devices were available and unreasonably chose not to use them" (*Peters v New School*, 102 AD3d 548 [1st Dept 2013]), here Elite has submitted evidence that the day of the accident EDCC specifically instructed workers to use the scissor lifts and to wait until one was available (*see also Silvia v Bow Tie Partners, LLC*, 77 AD3d 1143, 1144 [3d Dept 2010] ["[l]iability under section 240(1) does not attach when the safety devices that plaintiff alleges were absent were readily available at the work site, albeit not in the immediate vicinity of the accident, and plaintiff knew he was expected to use them but for no good reason chose not to do so, causing an accident"]).

[2] One City and Taconic's argument that plaintiff was the "sole proximate cause" of his accident due to his positioning of the ladder must be rejected. As plaintiff notes it is "conceptually impossible for a statutory violation (which serves as a proximate cause for a plaintiff's injury) to occupy the same ground as a plaintiff's sole proximate cause for the injury" (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 290 [2003]). The difference between this argument and Elite's argument is that if Elite's submitted testimony is to be believed then, there is no statutory violation since there were available safety devices. It is undisputed that the ladder itself did not provide adequate protection to plaintiff (*see Jara-Salazar v 250 Park, L.L.C.*, 231 AD3d 674 [1st Dept 2024]). The key triable issue of fact is whether plaintiff ignored a readily available safety device, thus making him the sole proximate cause of his injuries.

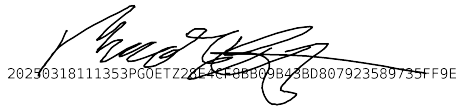
claim for Labor Law § 241(6) liability do not apply to the facts alleged in the complaint[3]; and it is further

ORDERED that the portion of Elite's motion (MS #6) seeking summary judgment on plaintiff's Labor Law § 200 and common law negligence claims as against it is granted because it has "summarily concluded that the case exclusively implied a means and methods theory of liability, and contended that they only had general supervisory authority over the work site, which would be insufficient to impose liability for common-law negligence and under Labor Law § 200 in a means and methods case" (*Rodriguez v HY 38 Owner, LLC*, 192 AD3d 839, 842 [2d Dept 2021]); and it is further

ORDERED that the portions of Elite's motion (MS #6) and One City's and Taconic's cross-motion (on MS #6) seeking summary judgment on their cross-claims as against each other for indemnification and contribution, and the portion of Elite's motion seeking summary judgment on its third-party claims for indemnification and contribution as against EDCC, are denied as premature as the underlying questions of fact referenced above will be determinative of

[3] Plaintiff cites violations of Industrial Code §§ 23- 1.21(b)(1); 1.21(b)(4)(iv), 1.21(e)(2) and 1.21(e)(3). Plaintiff alleges that he fell from the top of a ladder when a falling piece of duct swung down and struck the ladder.
Industrial Code § 23-1.21(b)(1) discusses the strength of ladders, but plaintiff makes no allegation that he fell due to a structural defect in the ladder.
Industrial Code § 23-1.21(b)(4)(iv) is applicable to leaning ladders, but here plaintiff alleges he was on an A-frame ladder.
Industrial Code §§ 23-1.21(e)(2) and 1.21(e)(3) address requirements for braces and footing of ladders, and the plaintiff does not allege that his accident occurred due to improper footing or bracing.

liability on the cross-claims and third-party claims *(Morin v Heritage Builders Group, LLC*, 211 AD3d 1138 [3d Dept 2022]).



3/18/2025
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	☐	**CASE DISPOSED**		☒	**NON-FINAL DISPOSITION**		
	☐	**GRANTED**	☐ **DENIED**	☒	**GRANTED IN PART**	☐	**OTHER**
APPLICATION:	☐	**SETTLE ORDER**		☐	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		☐	**FIDUCIARY APPOINTMENT**	☐	**REFERENCE**