SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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VICTOR UNZAIN,

Plaintiff,

- v -

EVEREST SCAFFOLDING, INC.,NW 100 BROADWAY PROPERTY OWNER, LLC,GILBANE BUILDING COMPANY, METROPOLITAN LIFE INSURANCE COMPANY, LSL CONSTRUCTION SERVICES, INC, FIVE BOROUGH NYC, LLC,RELIABLE PLUMBING & HEATING, CORP., ALLSTATE SPRINKLER, CORP.,

Defendants.

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INDEX NO. 450164/2020

MOTION DATE 03/17/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

LSL CONSTRUCTION SERVICES, INC,

Plaintiff,

-against-

DRYWALL CONCEPTS BUILDERS, INC.

Defendant.

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Third-Party
Index No. 43326/2019E

The following e-filed documents, listed by NYSCEF document number (Motion 006) 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff's motion for summary judgment against defendant LSL Construction Services, Inc. ("LSL") and NW 100 Broadway Property Owner LLC (the "Owner") is granted in part and denied in part.

Background

This Labor Law action arises out of injuries suffered by plaintiff while he was working on an 8-foot A frame ladder. Plaintiff testified that he "had to do a soffit, that what's [its] called, I had to build the framing on top of the window and put the sheetrock on that area" (NYSCEF Doc. No. 328 at 18). He added that the top of the window as about 10 to 12 feet off the ground (*id*. at 19). Plaintiff had a waistbelt with all of his tools, a helmet, boots and eyeglasses for the job (*id*. at 21). He alleges that "I was nailing the last piece of the frame. I was using a screw gun and when I was putting pressure on it, the ladder moved and I fell. I fell on top of the ladder. That's when I broke my ribs and the ladder" (*id*. at 21-22). Plaintiff added that "The ladder moved and I fell down on top of the ladder. I think it was on top of the ladder because when I was on the ground, the ladder was underneath me and then I broke my ribs and injured my lung" (*id*. at 22). When asked again what caused him to fall, plaintiff insisted that "When I was about to screw it in, I felt that the ladder had a little sound and it moved. And that's when I lost balance and went down" (*id*. at 86-87). He suggested that the spreaders on the ladder began to bend and that's what caused him to fall as they were a little loose prior to the accident (*id*. at 91).

Plaintiff admitted at his deposition that the ladder was "a little loose" and that usually there were two people working, with one worker assigned to hold the ladder (*id*. at 34). But plaintiff acknowledged that he did the work by himself that afternoon because his boss (Rocco) "came and asked me if I was able to finish the job because there was not much left to do. And he said can you finish it alone. And I said yes" (*id*. at 30). Apparently, plaintiff had been working with a coworker that morning but that that person was sent home and plaintiff continued by himself (*id*. at 105).

Plaintiff seeks summary judgment on his Labor Law § 240(1) claim based on the fact that he was working on a ladder when it wobbled, he lost his balance and both he and the ladder fell. Plaintiff also seeks partial summary judgment on his Labor Law § 241(6) claim as well as his Labor Law § 200 claim.

In opposition, defendants LSL (the general contractor) and the Owner (the "Opposing Defendants") blame plaintiff for the accident. They claim that there is a question of fact regarding whether the ladder was defective or inadequate and point out that plaintiff had used it for hours prior to the incident. The Opposing Defendants claim that plaintiff simply lost his balance.

Labor Law § 240(1)

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The Court grants the motion with respect to this cause of action. The Opposing Defendants did not submit any evidence to contradict plaintiff's testimony that he heard a sound from the ladder, the ladder wobbled and then he fell. Their attempt to characterize plaintiff as the sole proximate cause of his accident is without merit as, on this record, the ladder provided to plaintiff malfunctioned and he was injured. The Opposing Defendants' argument that plaintiff should not have worked alone and instead had a coworker stabilize the ladder is contradicted by plaintiff's testimony that his foreman (Rocco) encouraged him to get the job done by himself. In any event, such an argument only relates to comparative negligence which is not a defense to a Labor Law § 240(1) claim (*Loaiza v Museum of Arts and Design*, 228 AD3d 511, 512, 211 NYS3d 379 [1st Dept 2024]). The Opposing Defendants simply failed to raise an issue of fact that plaintiff was the sole proximate cause of his accident.

The Court recognizes that the Opposing Defendants emphasize that plaintiff was using this ladder for hours prior to the accident without any issues. But that does not change the Court's conclusion as ladders can malfunction; in other words, simply because a ladder worked for some period of time prior to an accident does not foreclose a Labor Law § 240(1) claim. The evidence shows that this ladder was serviceable until it wasn't and, unfortunately, plaintiff was standing on it when became unfit to hold him while he worked.

Labor Law §241(6)

"The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6). . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law

principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" *(Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

"Section 241(6) subjects owners and contractors to liability for failing to adhere to required safety standards whether or not they themselves are negligent. Supervision of the work, control of the worksite, or actual or constructive notice of a violation of the Industrial Code are not necessary to impose vicarious liability against owners and general contractors, so long as some actor in the construction chain was negligent" (*Leonard v City of New York*, 216 AD3d 51, 55-56, 188 NYS3d 471 [1st Dept 2023]).

Plaintiff seeks summary judgment with respect to this claim based on Industrial Code sections 23-1.4(b)(13), 23-1.5(c)(1), (2) and (3), 23-1.21(b).

With respect to 23-1.4(b)(13), the Opposing Defendants contend that this Industrial Code section is not sufficiently specific to support a Labor Law § 241(6) claim because it merely contains a definition section of the Industrial Code. Plaintiff did not address this argument in his reply and so this portion of the motion is denied.

23-1.5(c)(1)-(3) provides that:

"(c) Condition of equipment and safeguards.

(1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.

(2) All load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon.

(3) All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged."

The Opposing Defendants contend that plaintiff testified that he saw the bent support beams on the ladder following his accident and so that renders section 3 as inapplicable because there was no indication that there were issues with the ladder prior to plaintiff's fall.

The Court finds that sections one and three are inapplicable here. Plaintiff did not include any evidence that the ladder was not in good repair prior to the accident itself—in fact, plaintiff used the ladder for many hours prior to his fall.

However, the Court grants summary judgment with respect to Industrial Code section 23-1.5(c)(2). LSL's witness admitted at his deposition that "the spreaders gave way and bent to the right side causing it to collapse (NYSCEF Doc. No. 329 at 86). The Court's takeaway from this discussion with LSL's witness is that the ladder simply did not hold the weight of plaintiff along with his tools and that led to the ladder failing (and plaintiff falling) (*see id*. at 85-87). It is undisputed on this record that the supporting beams of the ladder were bent (NYSCEF Doc. No. 332 [photographs of the ladder]) and that this shows the ladder failed to adequately support plaintiff.

However, the Court denies plaintiff's motion to the extent it is based on Industrial Code Section 23-1.21(b). The problem is that section (b) contains 10 different types of requirements and plaintiff's moving papers do not discuss in sufficient detail which provisions apply and why. Although plaintiff quoted a few subsections within section (b), he did not include any specific analysis for how each of them applies to the facts of this case. Instead, plaintiff only offered a conclusory argument (NYSCEF Doc. No. 326, ¶ 47) that the ladder bent, moved and wobbled. For instance, plaintiff did not include detailed information about the weight placed on the ladder or about defective footings (among the various requirements included in these subsections).

Labor Law § 200

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

"Claims for personal injury under this statute and the common law fall under two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-44, 950 NYS2d 35 [1st Dept 2012]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*id.* at 144).

Plaintiff contends that the Opposing Defendants (the general contractor and the owner) had the ability to stop the work and should have known that the ladder was defective. The Opposing Defendants argue that LSL's witness insisted he would never direct the manner in which contractors performed their work.

The Court denies this branch of plaintiff's motion as he did not meet his prima facie burden to establish, as a matter of law, that the Opposing Defendants had notice of the allegedly defective ladder. The Court observes that this case clearly relates to an alleged defect with the ladder as opposed to a case involving the manner in which the work was performed; after all, plaintiff's theory is that the ladder failed to hold his weight. Plaintiff did not point to any

specific evidence showing that anyone knew about the fact that, according to plaintiff, the ladder was "loose." Plaintiff even admitted he never told his foreman about the ladder being loose (NYSCEF Doc. No. 328 at 34).

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted only to the extent that his claims based on Labor Law §§ 240(1) and Labor Law 241(6) premised on Industrial Code Section 23-1.5(c)(2) are granted as to liability only and denied with respect to the remaining requests for relief.

3/19/2025
DATE

ARLENE P. BLUTH, J.S.C.

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