Supreme Court of the State of New York
County of Kings

Index Number 521183/2022
Seqs. 004, 005

Part LL1

DECISION/ORDER

FERNANDO QUEIROGA DE SOUZA,

Plaintiff,

against

LEEDING BUILDERS GROUP LLC AND QBDK HURON, LLC,

Defendants.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	3–4
Replying Affidavits	4–5
Exhibits	
Other	

Upon the foregoing papers, defendants' motion for summary judgment (Seq. 004) and plaintiff's motion for summary judgment (Seq. 005) are decided as follows:

Factual Background

Plaintiff commenced this this action to recover for damages he claims to have sustained on May 31, 2022 at a premises located at 15 Huron Street a/k/a 161 West Street, Brooklyn, NY (the site). It is undisputed that QBDK Huron, LLC (Huron) owned the premises and Leeding Builders Group LLC (Leeding) was the general contractor. Leeding sub-contracted work to RC Structures, and RC Structures employed plaintiff.

Plaintiff testified as follows: On the date of the accident, plaintiff was given a harness connected to a retractable lanyard, or "yo-yo," and used both while working on the top deck (De Souza EBT at 32–33, 48). The anchorage point for the yo-yo was at foot level (*id.* at 48). Plaintiff received instructions solely from his foreman, Janio (*id.* at 38). Plaintiff's duties involved building out the deck by placing plywood and trusses before concrete was poured (*id.* at 39–40, 43). Plaintiff testified initially that he "got the plywood and was looking ahead" prior to his accident and that he had no trouble carrying the plywood (*id.* at 45). Subsequently, he

testified that he was not carrying the plywood, but had just laid and secured a piece of plywood to the deck (*id.* at 62). Plaintiff was "walking ahead" when the line attached to his harness "got stuck" (*id.*). Plaintiff was unsure what caused the line to stick (*id.* at 49). When the line got stuck, plaintiff lost his balance and fell into a hole that was approximately two feet by two feet (*id.* at 45). Plaintiff testified that the hole was "more or less eight to ten feet away" on his right side, but that he fell "directly in the hole" (*id.* at 50, 51).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure of a safety device enumerated by the statute (*e.g.* a lanyard) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). Damages sustained while avoiding a fall caused by a statutory violation are covered by Labor Law § 240 (1) as long as the opening is large enough for the plaintiff to "fall through" (*Wilson v Bergon Construction Corp.*, 219 AD3d 1380 [2d Dept 2023]; *Balfe v Graham*, 214 AD3d 693 [2d Dept 2023]). Although a plaintiff can obtain summary judgment when he is the sole witness to an accident, the plaintiff's testimony must resolve all

material issues questions of fact (*see Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]).

Here, the plaintiff failed to establish his prima facie entitlement to judgment as a matter of law. Plaintiff's testimony leaves open questions of, *inter alia*, how far he was from the hole when his line "got stuck"; whether the tightening of the line was caused by the retractable line locking as it was designed to or failing; and how the plaintiff fell "directly" into a hole eight to ten feet away if his tether was "stuck." While plaintiff's expert, Herman Silverberg, P.E., speculates on some of these matters (Silverberg Aff. at¶ 17), he does not resolve these issues of fact.

Defendant's submissions, including accident reports, plaintiff's treating records, and the affidavit of Michael Tracey, P.E., are also insufficient to establish entitlement to summary judgment as a matter of law. To the extent that these submissions are admissible, they would only serve to demonstrate issues of fact.

Therefore, both parties' motions are denied with respect to plaintiff's Labor Law § 240 (1) claim.

Labor Law § 241 (6)

Defendant seeks summary judgment on plaintiff's Labor Law § 241 (6) claim; the plaintiff does not move on this issue. To recover under Labor Law § 241 (6), "a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the circumstances of the accident" (*Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]). The plaintiff only opposes defendants' motion with respect to Rule 1.16 (b) and (d) and Rule 1.7 (b) (1) (iii) (c). Therefore, the remainder of plaintiff's claims regarding Industrial Code violations are dismissed.

In light of the material issues of fact, already discussed above, about how plaintiff's accident occurred, there are questions of fact about the anchorage of the line (Rule 1.7 [b] and 1.16 [b]). There are also questions of fact about whether the plaintiff should have been provided with a tail-line, which would have required anchoring two feet above working level (Rule 1.16 [d]). Therefore, defendants' motion is denied with respect to these claims.

Labor Law § 200

Defendants also move for summary judgment on plaintiff's Labor Law § 200 claims; plaintiff does not move on this claim.

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]).

Defendant Huron makes out its prima facie entitlement to summary judgment based on its contentions that it was not present at the site and did not have authority or control over the work. Plaintiff also does not advance any substantive arguments in opposition to this motion with respect to defendant Huron.

Defendant Leeding also contends that it did not have authority to direct, control, or supervise the plaintiff's work. In opposition, plaintiff points to Leeding's Project Safety Program, which states that "where practicable, the anchor end of the lanyard shall be secured at a level above the employee's head but not lower than the employee's waist" (safety program at ¶ M2 [b]). Richard LaPointe's testimony indicates that Leeding representatives may have been responsible for "[enforcing]" this safety program (LaPointe EBT at 18). There are, therefore, questions of fact about the extent of Leeding's authority and, by extension, Leeding's liability under Labor Law § 200.

Conclusion

Plaintiff's motion for summary judgment (Seq. 004) is denied.

Defendants' motion for summary judgment (Seq. 005) is granted to the extent of dismissing plaintiff's Labor Law § 241 (6) as predicated on each alleged Industrial Code provision except Rules 1.7 (b), 1.16 (b) and (d), and as to plaintiff's Labor Law § 200 claim against defendant Huron only. The remainder of the motion is denied.

This constitutes the decision and order of the court.

March 10, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court