**Supreme Court of the State of New York**
**County of Kings**

**Index Number 510270/2023**
Seq. 002

Part LL1 M

**DECISION/ORDER**

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 |
| Order to Show Cause and Affidavits Annexed | |
| Answering Affidavits | 2 |
| Replying Affidavits | 3 |
| Exhibits | Var. |
| Other | |

PALMER DESMARATTES,

Plaintiff,

against

BIG INDIE PICTURES, INC., BIG INDIE HONDO, INC., AND AMAZON STUDIES LLC,

Defendants.

Upon the foregoing papers, plaintiff's motion for summary judgment against all defendants (Seq. 002) is decided as follows:

**Procedural Posture**

Plaintiff commenced this action to recover for damages he claims to have sustained on July 28, 2022, when he fell from an A-frame ladder while working on the set at a soundstage located at The Brooklyn Army Terminal, 140 58th Street, Brooklyn, NY. The set was being used for a television series developed by defendant Amazon Studios LLC (Amazon). Amazon hired Big Indie Pictures, Inc. (Pictures) to produce the series. Big Indie Hondo, Inc. (Hondo) was a subsidiary created by Pictures in connection with this series. Plaintiff was employed non-party Cast & Crew Entertainment Services, LLC (Cast & Crew). Plaintiff filed the note of issue on September 13, 2024.

**Factual Background**

The following facts are undisputed: The plaintiff was a construction grip on the set of the television series "Fallout" (Desmarattes EBT at 65; Lucy Huang, Amazon representative, at 26). Plaintiff was working at the Brooklyn Army Terminal location at the time of his accident (Desmarattes EBT at 43–45, 52, 64). The set at that location was approximately eighty feet by twenty feet, divided into two rooms with a false wall (Kailey Carambia, Pictures representative, at 23). The set pieces were affixed to the "[concrete] pillars[,] floor[,] and ceiling . . . with large bolts" (*id.* at 27). Plaintiff was engaged in the process of disassembling the set (Desmarattes EBT at 66).

On the day of the occurrence, plaintiff was removing "flats," or temporary walls, and taking the set apart using screw guns, hammers and knives (*id.* at 55). Plaintiff testified that the moldings had to be removed before the walls could be removed (*id.* at 67). Specifically, at the time of the accident, plaintiff was removing a piece of molding which was connected to two flats at the top of the set room, about 8 to 10 feet off the floor (*id.* at 66). Plaintiff was standing on an aluminum A-frame ladder to reach that molding (*id.* at 57, 75). Plaintiff testified that the ladder lost its footing, moved under him, and "shifted off to the side," causing both Plaintiff and the ladder to fall (*id.* at 76–78, 81, 142).

Plaintiff testified that there were no Baker scaffolds or scissor lifts available at the site on the date of his accident (*id.* at 58–59). Ms. Carambia testified that she believed Pictures had a scissor lift and that she had previously seen it in the building. However, she specifically testified that she did not know if there was a lift on the annex (and therefore available to the plaintiff) on the date of the incident (Carambia EBT at 66).

**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 or absence of a safety device enumerated by the statute (*e.g.* a ladder) 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)]). The protections of Labor Law § 240 (1) apply when an individual is performing activity covered by the statute, including the "alteration" of a building or structure (*Joblon v Solow*, 91 NY2d 457, 465 [1998] ["'altering' within the meaning of Labor Law § 240 (1) requires making a significant physical change to the configuration or composition of the building or structure"]). The set was a "piece of work artificially built or composed of parts joined together in some definite manner," which included affixing pieces to concrete with large bolts, and therefore constitutes a "structure" for the purpose of Labor Law § 240 (1) (*McCoy v Abigail Kirsch at Tappan Hill, Inc.*, 99 AD3d 13, 14 [2d Dept 2012] [chupah held to be a structure under the Labor Law because of "intricate, interconnected parts"]).

Plaintiff has demonstrated his prima facie entitlement to summary judgment on his Labor Law § 240 (1) claim. Plaintiff testified that he was on a ladder removing molding from temporary walls as part of the larger project of removing the temporary walls themselves from

the set. While the removal of molding itself may arguably constitute "decorative modification" (*see Panek v County of Albany*, 99 NY2d 452 [2003]), the removal of the temporary walls is a significant alteration (*see Joblon, supra*). Because plaintiff's work at the time of his accident was part of a covered project, plaintiff is entitled to protection under Labor Law § 240 (1) (*see Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878, 882 [2003]). Plaintiff further testified that the ladder on which he was working shifted and he fell, which is sufficient to meet his prima facie burden under the statute (*see e.g. Pai v Nelson Senior Housing Development Fund Corporation*, 232 AD3d 822 [2d Dept 2024]).

In opposition, defendants fail to raise a triable issue of fact. Contrary to defendants' assertions, plaintiff's work was part of a larger covered project. Defendants are also incorrect that the plaintiff is required to explain why the ladder he was using failed. Finally, defendants' contention that plaintiff may have been the sole proximate cause of his accident for failing to use a scissor lift is unavailing. Ms. Carambia's testimony about a boom or scissor lift specifically denied knowledge as to whether a lift was present and available for plaintiff on the date of his accident, and is therefore insufficient to raise a triable issue of fact (*see Iannaccone v United Natural Foods, Inc.*, 219 AD3d 819 [2d Dept 2023]).

Therefore, plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim is granted.

**Conclusion**

Plaintiff's motion for summary judgment (Seq. 002) is granted.

This constitutes the decision and order of the court.

March 25, 2025
**DATE**

**DEVIN P. COHEN**
Justice of the Supreme Court