SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 160752/2023

ROBERT CHIEFO,

MOTION DATE 03/12/2025

Plaintiff,

MOTION SEQ. NO. 002

- v -

525 LEXINGTON OWNER, LLC., CUSTODIO CONSULTING, LLC., BDB CONSTRUCTION ENTERPRISE, INC.,

DECISION + ORDER ON MOTION

Defendant.

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BDB CONSTRUCTION ENTERPRISE, INC.

Third-Party
Index No. 595522/2025

Plaintiff,

-against-

SLADE INDUSTRIES INC. D/B/A SLADE ELEVATOR INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

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

Upon the foregoing documents, and after a final submission date of June 4, 2025, Plaintiff's motion for summary judgment against Defendant 525 Lexington Owner, LLC ("525 Lexington") on the issue of liability with respect to his Labor Law §§ 240(1) and 241(6) claims is denied, without prejudice, with leave to renew upon further discovery.

According to Plaintiff's affidavit, on February 16, 2023, Third-Party Defendant Slade Industries Inc. ("Slade") employed Plaintiff as a mechanic's helper at 525 Lexington Avenue, New York, New York (the "Premises"). Plaintiff was replacing hoisting cables on top of the fourth elevator car, which was raised to the 16th floor of the Premises. The elevator shaft was dark, and

Plaintiff's foot caught something on the top of the elevator car. He lost his balance and began to fall into the elevator shaft. Plaintiff was able to grab the elevator rail in the adjacent elevator shaft to break his fall. However, the elevator car in the adjacent shaft, which was still operating, moved upward and caught Plaintiff's right hand which was gripping the rail. Plaintiff now moves for summary judgment on his Labor Law §§ 240(1) and 241(6) claims.

There have not yet been party depositions. A preliminary conference order dated August 27, 2024, ordered Plaintiff's deposition to take place on or before November 20, 2024 (NYSCEF Doc. 33). That deposition was apparently adjourned by the Defendants due to outstanding paper discovery. A subsequent discovery stipulation stated Plaintiff would be deposed on February 21, 2025. That deposition was also apparently adjourned by the Defendants. Defendants, in turn, argue that they did not take Plaintiff's deposition because they were missing medical record authorizations, social media information, an employment authorization for Plaintiff's wage and attendance records, and video footage of the accident. On March 12, 2025, Plaintiff filed this motion for summary judgment, which 525 Lexington opposes arguing the motion is premature.

Although the parties point fingers at each other for who is to blame for depositions not taking place, and while the Court does not condone the multiple deposition adjournments, the Court finds there may exist facts not in 525 Lexington's control but material to the pending motion requiring denial of the motion as premature.

As stated by the Court of Appeals, to recover under Labor Law §§ 200, 240, and 241, a plaintiff must establish that he was permitted to perform work on a structure (*Mordkofsky v V.C.V. Development Corp.*, 76 NY2d 573, 576 [1990]). Where there is conflicting evidence as to whether a plaintiff had permission to perform work at the accident site, a motion for summary judgment premised on Labor Law §§ 240(1) and 241(6) should be denied (*Goya v Longwood Hous. Dev.*

Fund Co., Inc., 167 AD3d 402 [1st Dept 2018] citing *Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 135 AD3d 790, 791-792 [2d Dept 2016]). Moreover, where a plaintiff fails to use adequate safety equipment despite its availability and knowledge of its availability, or where the plaintiff completely disregards the instructions of his employer, an issue of fact may be raised as to whether the plaintiff was the sole proximate cause of his accident (*Battle v NY Devs. & Mgt., Inc.*, 193 AD3d 562, 563, [1st Dept 2021]; *Mendoza v Velastate Corp.*, 99 AD3d 401 [1st Dept 2012]).

Here, 525 Lexington sought information from Plaintiff and Slade (a) regarding Plaintiff's permission to be on the Premises at the time of his accident; (b) training or instructions provided to Plaintiff and his coworker, and (c) any safety equipment available to Plaintiff on the Premises at the time of his accident. All this information is relevant to 525 Lexington's defenses in this action and is in the exclusive possession of Plaintiff or the Third-Party Defendant Slade (*see generally* CPLR 3212[f]). The Court cannot find that 525 Lexington has been lackadaisical in pursuing discovery given the numerous good faith letters sent to Plaintiff and the subpoena served on Slade for both documents and testimony, which Slade ignored. Slade is now a third-party defendant represented by counsel and is expected to cooperate fully and expeditiously in completing discovery in this matter. If Defendants/Third-Party Plaintiffs continue to adjourn Plaintiff's and other parties' depositions without sufficient cause, the Court may issue discovery sanctions such as preclusion or waiver against these parties, or Plaintiff may be granted leave to file a discovery motion.

However, based on the record before the Court, and the need for discovery to uncover information in the sole possession of other parties, which may be material to Plaintiff's Labor Law 240(1) and 241(6) claims, the Court denies Plaintiff's motion for summary judgment, without

prejudice, and with leave to renew after a more developed record *see, e.g. Konstantinovic v Finch Apartment Corp.*, 235 AD3d 468, 468 [1st Dept 2025]; *Rivera v Matiz Architecture, PLLC*, 217 AD3d 552, 554 [1st Dept 2023]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied, without prejudice, with leave to renew upon a more fully developed record; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed case management order reflecting outstanding discovery and deadlines by which to complete depositions. The proposed order shall be submitted via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall it be submitted any later than ~~August 20~~ September 24, MMR, 2025.[1] If any party fails to comply with the deadlines set forth in the case management order they may be subject to discovery sanctions; and it is further

ORDERED that within ten days of entry, counsel for Defendant 525 Lexington 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.

8/25/2025
DATE

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

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

[1] This is not a date to appear for a conference, it is for submission of a conference order only. If the parties have a serious dispute requiring court intervention, they shall contact the court via e-mail at SFC-Part33-Clerk@nycourts.gov explaining the dispute, at which time a conference may be scheduled.