**Supreme Court of the State of New York**
**County of Kings**
Part LL1

LUIS TOBO,

Plaintiff,

against

2862-2874 FULTON STREET LLC, VINALE MANAGEMENT & CONSULTANTS, INC., AND GC1 SERVICE CORP.,

Defendants.

VINALE MANAGEMENT & CONSULTANTS, INC.,

Third-Party Plaintiffs,

against

ALPHA CONSTRUCTION SERVICES, INC.,

Third- Party Defendant.

2862-2874 FULTON STREET LLC,

Second Third-Party Plaintiff,

against

STARLIGHT SAFETY INC. AND ALPHA CONSTRUCTION SERVICES, INC.,

Second Third-Party Defendant.

**Index Number** 522433/2021
Seqs. 004–006

# 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 | 1–3 |
| Order to Show Cause and Affidavits Annexed | 3–11 |
| Answering Affidavits | ____ |
| Replying Affidavits | 12–15 |
| Exhibits | Var. |
| Other | ____ |

## Introduction

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 004), Vinale Management & Consultants, Inc.'s motion for summary judgment (Seq. 005) and 2862-2874 Fulton Street LLC (Fulton)'s cross-motion for summary judgment (Seq. 006) are decided as follows:

**Procedural Posture**

Plaintiff commenced this action to recover for damages that he claims to have sustained on August 13, 2021, when he fell while working on the roof at a construction site. 2862-2874 Fulton Street LLC (Fulton) owned the subject premises. Fulton hired Vinale Management & Consultants, Inc. (Vinale) as the general contractor to install exterior fencing, windows, to perform concrete work, and to paint. Fulton also retained Starlight as the site superintendent. Vinale sub-contracted Alpha Construction Services, Inc. (Alpha) to perform stucco work at the sight. The plaintiff was employed by Alpha Construction Services, Inc. (Alpha).

Vinale also sub-contracted GC1 Service Corp. (GC1) to install the "construction fence, overhead protection, and roof protection" (38–39). GC1 has not appeared in this action. Plaintiff previously moved for default judgment against GC1; however, that motion was denied by Justice Carl J. Landicino on January 26, 2023, for failure to provide an adequate affidavit of merit. The plaintiff did not ultimately take further steps to obtain a default judgment against GC1.

**Facts**

It is undisputed that the plaintiff was engaged in stucco work on an exterior wall at the premises on the date of the accident, and that this work required the use of a pumpjack scaffold. Plywood was placed on the roof of a garage that was adjacent to the premises in order to protect the roof. It is undisputed that the plywood was installed by GC1. President of Alpha, Chris Mallouras, testified that workers were directed to climb a ladder onto the plywood in order to access the scaffold (Mallouras EBT at 100). Mr. Mallouras further testified that an employee from either Vinale or Fulton would be present at the job site inspecting Alpha's work on a daily basis (*id.* at 60–61). Finally, Mr. Mallouras testified that the only available place to tie off a

harness was on the scaffold, and that there was not a place to tie off while walking across the plywood (*id.* at 101). Lisa Bagnoli, the owner of Starlight, testified that Vinale "handled" the plywood protection on the adjoining premises (Bagnoli EBT at 101). Ms. Bagnoli further testified that she notified both Vinale and Fulton prior to plaintiff's accident that "something" was wrong with the plywood "the way it was installed" (Bagnoli EBT at 58).

The plaintiff testified that his accident happened as follows: Plaintiff was provided with a harness, which he left in a bucket near the pumpjack scaffold during his lunch break (Tobo EBT at 82). In order to access the scaffold, plaintiff was directed to walk across the plywood that had been laid on the roof of an adjacent garage (*id.* at 100). Plaintiff's boss had instructed him to access the scaffold via the plywood, and the workers stored materials on the plywood (*id.* at 93, 97, 100). A piece of the plywood covering the adjacent garage moved while plaintiff was walking across it to retrieve his harness and access the scaffold (*id.* at 110–111). The movement caused plaintiff to fall backwards off of the roof of the garage approximately eleven to twelve feet to the ground below (*id.* at 110–111).

**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.* guardrails or a harness with an adequate anchorage point)

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)]).

Plaintiff's testimony is sufficient to establish his prima facie entitlement to summary judgment under the statute. Plaintiff testified, and his employer admits, that he was accessing the work area in a manner directed by his supervisor. Plaintiff further testified, and it is admitted, that the elevated working area lacked guardrails and that there was no place to tie off a harness while walking across the plywood.

In opposition, defendants fail to raise a triable issue of fact. Plaintiff cannot have been the sole proximate cause of his accident where there was a statutory violation (*Blake*, *supra*). Here, even if it was accepted *arguendo* that plaintiff should have been wearing his harness at the time of his accident, plaintiff's employer admitted that there were no tie off points and that plaintiff was instructed to walk across the plywood (Mallouras EBT at 100–101). A harness alone, without a secure anchorage point on which to tie off, would have done nothing to prevent plaintiff's fall (*see Amaro v New York City School Construction Authority*, 229 AD3d 746 [2d Dept 2024]).

Therefore, plaintiff's motion is granted as to his Labor Law § 240 (1) claims.

**Labor Law § 241 (6)**

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered harm (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Although the plaintiff included multiple alleged Industrial Code violations in his bill of particulars, Fulton does not address the

applicability of any of these provisions. Instead, Fulton incorrectly argues that the plaintiff does not claim any Industrial Code violations. Therefore, plaintiff was not obliged to substantively argue as to any of the provisions and has not abandoned these claims.

Defendants also contend that the plaintiff was the sole proximate cause of his accident. However, as indicated above, plaintiff was not the sole proximate cause of his accident. Therefore, defendants' motion is denied with respect to plaintiff's Labor Law § 241 (6) claim.

**Labor Law § 200**

Vinale and Fulton also seek summary judgment on the Labor Law § 200 claim against them. "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]). Claims under this statute are evaluated under a dangerous premises condition analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 131 [2d Dept 2008]), a dangerous means and methods analysis (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2d Dept 2011]), or a combination of the two (*id.*)

Fulton contends that it did not have the authority to direct the means and methods of plaintiff's work, and that it had neither actual nor constructive notice of any dangerous condition. However, Ms. Bagnoli testified that she notified both Vinale and Fulton of a problem with the plywood. Ms. Bagnoli also testified that Vinale "handled" the plywood protection on the adjoining rooftop. There is a material question of fact as to, *inter alia*, whether Fulton had notice of the dangerous condition that caused the plaintiff's accident, whether Vinale caused or created the dangerous condition, and whether Vinale had authority over the work based on its authority as the general contractor. Therefore, both Vinale and Fulton's motions is denied as to this claim.

**Indemnification and Contribution**

As a procedural matter, that portion of Fulton's cross-motion which seeks relief against non-moving parties is procedurally improper (CPLR 2215; *Sanchez v Metro Builders Corp.*, 136 AD3d 783 [2d Dept 2016]). On the merits, neither Vinale nor Fulton have shown themselves free from negligence as discussed in the foregoing section on Labor Law § 200. Therefore, neither defendant is entitled to summary judgment on their contractual indemnification claims (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]).

**Conclusion**

Plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim (Seq. 004) is granted.

Vinale's motion for summary judgment (Seq. 005) is denied.

Fulton's motion for summary judgment (Seq. 006) is denied.

This constitutes the decision and order of the court.

September 12, 2025
**DATE**

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