At an IAS Term, Part 9, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse of 360 Adams Street, Brooklyn, New York on the 25 Day of Sept, 2025.

P R E S E N T:

HON. Steven Z. Mostofsky,
Justice.

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CARLOS CRISPIN GAYOSO CORONEL,

Plaintiff,

-against-

Index No.: 522767/2019
Motion Seq. No.: 7, 8, and 9

VILLANO CONSTRUCTION, LLC, 486 LEFFERTS BH LLC, SGS CONSTRUCTION INC., GREENLINE DEVELOPERS LLC, and TOT DEVELOPERS INC.,

Defendants.

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486 LEFFERTS BH LLC,

Third-Party Plaintiff,

-against-

LUQUE CONSTRUCTION CORP.,

Third-Party Defendant.

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The following e-filed papers read herein: NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	131-174
Opposing Affidavits (Affirmations)	175-180
Affidavits/ Affirmations in Reply	181-183

Exhibits_____ Var.

On October 18, 2019, Carlos Crispin Gayoso Coronel ("Plaintiff") commenced this Labor law action by filing a complaint with the Kings County Clerk. Plaintiff alleges he was injured on October 2, 2019, at 486 Lefferts Avenue, Brooklyn, New York.

Plaintiff seeks partial summary judgment (Mot. Seq. 8) for Plaintiff's claims pursuant Labor Law § 240(1) against Defendants 486 Lefferts BH LLC, SGS, and TOTS DEVELOPERS INC. Plaintiff did not assert a Labor Law § 241(6) or § 200 claim.

Defendants' Lefferts and TOT move for partial summary judgment (Mot. Seq. 9) seeking dismissal of plaintiff's Labor Law causes of actions under Labor Law § 241(6) and § 200, but not Labor Law § 240(1).

Defendant SGS Construction, Inc. ("SGS"), seeks summary judgment dismissing Plaintiff's complaint in its entirety (Mot. Seq. 7).

Statement of Facts

Lefferts owned 486 Lefferts Avenue, Brooklyn, New York. It hired TOTS as the general contractor for the construction of a full ground up residential building. TOT subcontracted the sheetrock installation work to SGS. SGS subcontracted the entire sheetrock scope of work to Luque Construction Corp., Plaintiff's employer. On October 2, 2019, Plaintiff and his coworker, Elias, were tasked by their supervisor, Douglas, with installing sheetrock to the entire living room and bathroom of an apartment on the first floor of the premises. The ceiling of the apartment was approximately 10 feet high. Douglas provided Plaintiff with an 8-foot-A-frame ladder to reach the upper portions of the walls and ceiling. While Plaintiff was installed the sheetrock while on the A-frame ladder, it moved and fell. It caused Plaintiff to fall from a height

down to the ground below. Plaintiff was not provided with safety devices to protect him from height related risks.

Summary Judgment Legal Standard

" '[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue' " (*Rotuba Extruders, Inc v Ceppos*, 46 NY2d 223, 231 [1978], quoting *Moskowitz v Garlock*, 23 AD2d 943 [3rd Dept 1965]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ Med Center*, 64 NY2d 851 [1985]) and "facts must be viewed 'in the light most favorable to the non-moving party'" (*Vega v Restani Const Corp*, 18 NY3d 499, 503 [2012]). The court's function is to determine "material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Const Corp*, 18 NY3d at 505).

Labor Law § 200

Labor Law § 200 is "a codification of the common-law duty imposed on owners, contractors and their agents to provide workers with a safe place to work" (*Mondragon-Moreno v Sporn*, 189 AD3d 1574, 1576 [2d Dept 2020])." The two broad categories of Labor Law § 200 are "those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Southerton v City of New York*, 203 AD3d 977, 979-80 [2d Dept 2022]). Liability under Labor Law § 200 requires a plaintiff to allege that their injuries resulted from the means or methods by which work is performed, "to be held liable under Labor Law a defendant must have the authority to exercise

supervision and control over the work" (*Navarra v Hannon*, 197 AD3d 474, 475 [2d Dept 2021])."

Property owners often have a general authority to oversee the progress of the work, however, "mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200" (*Ortega v. Puccia*, 57 A.D.3d at 62, 866 N.Y.S.2d 323). A premises owner may be liable under Labor Law § 200 if it had control over the work site where the plaintiff was injured. The owner is liable only if a dangerous condition on the premises caused the injury. If the owner created the dangerous condition, had actual or constructive notice that the dangerous condition existed, they may be liable for common-law negligence (*Azad v 270 5th Realty Corp.*, 46 AD3d 728, 730 [2d Dept 2007]).

Labor Law § 241(6)

Labor Law § 241(6) "imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (*McCarthy v Turner Const., Inc.*, 17 NY3d 369, 374 [2011]). "To establish liability, a plaintiff must demonstrate that his injuries were proximately caused by a violation of an applicable Industrial Code provision" (*Graziano v. Source Builders & Consultants, LLC,* 175 AD3d 1253, 1258 [2d Dept 2019], quoting *Aragona v. State of New York*, 147 AD3d 808, 809 [2d Dept 2018]). A party must breach a "specific, positive command" rather than a "reiteration of common-law standards" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 [1993]). Ross distinguished between Code provisions "mandating compliance with concrete specifications and those that establish general safety standards" (*Id.* at 505).

Labor Law § 240(1)

"Labor Law § 240(1) 'imposes on owners or general contractors and their agents a non-delegable duty, and absolute liability for injuries proximately caused by the failure to provide appropriate safety devices to workers who are subject to elevation-related risks' " (*Keen v Tishman Constr. Corp. of New York*, 233 AD3d 1001, 1002 [2d Dept 2024], quoting *Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]. "To prevail based on Labor Law § 240(1), a plaintiff must establish that the statute was violated and that the violation proximately caused his or her injuries" (*Keen* at 1002 [2d Dept 2024], quoting *Fuentes v 257 Toppings Path, LLC*, 225 AD3d 746, 748 [2024]).

" 'The collapse of a scaffold or ladder for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute creates a presumption that the ladder or scaffold did not afford proper protection' " (*Valentin v Stathakos*, 228 AD3d 985, 989 [2d Dept 2024], quoting *Cruz v R.C. Church of St. Gerard Magella*, 174 AD3d 782, 783 [2d Dept 2019]). "In order to establish liability under Labor Law § 240 (1), there must be a violation of the statute, and the violation must be a proximate cause of the plaintiff's injury" (*Cioffi v Target Corp.*, 188 AD3d 788, 790 [2d Dept 2020]). "[W]here a ladder slides, shifts, tips over, or otherwise collapses for no apparent reason, the plaintiff has established a violation" (*Id.* at 791).

Lefferts BH LLC and TOTS Developer Inc. are Liable Under Labor Law § 200

Defendants' Lefferts and TOTS failed to provide evidence that they are entitled to summary judgment based on their Labor Law § 200 claim. They were present on the jobsite regularly and had or should have had notice of the unsecured ladder and the lack of adequate safety devices to secure the ladder. Additionally, they failed to demonstrate when the ladder was last inspected and failed to submit any admissible evidence demonstrating when they last

inspected the jobsite or the unsecured ladder. Thus, Defendants failed to meet their burden as a matter of law (*Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]).

Therefore, Defendants' motion seeking summary judgment (Mot. Seq. 9) on Plaintiff's Labor Law § 200 claim is denied.

Lefferts BH LLC and TOTS Developer Inc. Are Not Liable Under Labor Law § 241(6)

In their motion for summary judgment (Mot. Seq. 9), defendants, Lefferts and Tots claim that they did not violate the following industrial codes: 23-1.5; 23-1.15; 23-1.16; 23-1.17; 23-1.21(a)(b)(c)(d); and 23-2.1. The court holds that the defendants proved they did not violate the relevant industrial code sections:

Industrial Code § 23-1.5: References "General responsibility of employers." Courts have held that 12 NYCRR 23–1.5 is a regulation that relates to general safety standards and does not provide a basis for a claim under Labor Law § 241(6) (*Vernieri v Empire Realty Co.*, 219 AD2d 593, 598 [2d Dept 1995]). Therefore, this section does not apply.

Industrial Code § 23-1.15: References "Safety railings." Defendants have established that there were no safety railings around the area where Plaintiff fell. Therefore, this section does not apply (*See Fusca v A & S Constr., LLC,* 84 A.D.3d 1155 [2d Dept 2011]).

Industrial Code § 23-1.16: References "Safety belts, harnesses, tail lines, and lifelines" but "does not specify *when* such safety devices are required" (*Thompson v Sithe/Indep., LLC*, 107 AD3d 1385, 1388 [4th Dept 2013]). This section is inapplicable as Plaintiff did not use what was listed.

Industrial Code § 23-1.17: References "Life nets." Defendants have established that this section is inapplicable because the plaintiff was not provided with life nets (*See Venegas v Shymer*, 201 A.D.3d 1001[2d Dept 2022]).

Industrial Code § 23-1.21(a): References "Ladders and ladderways: Approval required." This sections states that any metal or fiberglass ladder that is more than 10 feet in length must be approved. Defendants established that the ladder was 8 feet in height.

Industrial Code § 23-1.21(b)(1) and (b)(2): References "ladder strength" and that "opaque protective coatings on ladders" is prohibited. There is no allegation that the ladder collapsed or failed to support plaintiff's weight due to a loosening or breakage of any part of the ladder, or that the subject ladder had opaque protective coating, which was the proximate cause of the alleged incident.

Industrial Code § 23-1.21(b)(3): References "Ladder maintenance and replacement." There is no evidence the ladder contained insecure members, defects, or worn portions (*See Juchniewicz v. Merex*, 46 A.D.3d 623 [2d Dept 2007]).

Industrial Code § 23-1.21(b)(4): References "Installation and use." This section is inapplicable as it only applies to portable leaning ladders that are being used to provide access between floors.

Industrial Code § 23-1.21(b)(5): References "Wooden ladder rungs." This section is inapplicable since Plaintiff was not using a wooden ladder at the time of the alleged incident.

Industrial Code § 23-1.21(b)(6): References "Ladder splicing." This provision prohibits splicing two ladders together to increase their strength. Plaintiff was not using two connected ladders.

Industrial Code § 23-1.21(b)(7): References "Limited use of metal ladders." This section is inapplicable since the ladder was made from fiberglass.

Industrial Code § 23-1.21(b)(8): References "Spreaders" and states that each ladder shall be equipped with locking type spreaders to hold the base ridged when the ladder is in the open position. This section is inapplicable since the ladder had ridged braces in place, and there is no evidence that those braces failed.

Industrial Code § 23-1.21(b)(9): References "Placement of ladders in door openings." There is no allegation that the ladder was placed in a door opening.

Industrial Code § 23-1.21(b)(10): References "Prohibited types of ladders," specifically that the use of single pole (scaling) ladders or rail type ladders where the rungs or cleats are attached across the pole or rail is prohibited. This section is inapplicable since Plaintiff claimed he used an A-frame ladder.

Industrial Code § 23-1.21(c): References "Single Ladders." This states that a rung ladder shall not exceed 30 feet in length. The subject ladder involved was only 8 feet tall.

Industrial Code § 23-1.21(d): References "Extension ladders and sectional ladders." Plaintiff was working on an A-frame ladder.

Industrial Code § 23-1.21(e): References "Stepladders." This section only applies to ladders that exceed 20 feet and require bracing when opened to full position. Plaintiff's ladder was 8 feet tall and braced

Industrial Code § 23-1.21(f): References "Ladderways." This provision only applies to a ladderway exceeding 70 feet and does not apply here.

Industrial Code § 23-2.1: References "Maintenance and housekeeping." This industrial code section does not apply. The accident did not involve the obstruction of a "passageway, walkway, stairway or other thoroughfare" by a material pile (*Ginter v Flushing Terrace, LLC*, 121 AD3d 840, 844 [2d Dept 2014]).

Therefore, Defendants' Lefferts and Tots motion seeking summary judgment (Mot. Seq. 9) on Plaintiff's Labor Law § 241(6) claim is granted.

Lefferts BH LLC and TOTS Developer Inc. are Liable Under Labor Law § 240(1)

Plaintiff has established his prima facie entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). The A-frame ladder moved for no apparent reason, causing him to fall from a height of approximately 10 feet (*see Cioffi v Target Corp.*, 188 AD3d 788, 791 [2d Dept 2020]; *Salinas v 64 Jefferson Apartments, LLC*, 170 AD3d 1216, 1222 [2d Dept 2019]). Plaintiff was provided with the 8-foot A-frame ladder from his supervisor Douglas. In opposition, the defendants, Lefferts, and TOTS, did not raise any triable issue of fact (*see Masmalaj v New York City Economic Dev. Corp.*, 197 AD3d 1292, 1293 [2d Dept 2021]; *Cabrera v. Arrow Steel Window Corp.*, 163 A.D.3d 758, 759–760 [2d Dept 2018]).

Accordingly, Motion Sequence 8, seeking partial summary judgment against Lefferts BH LLC and TOTS Developer Inc., is granted.

SGS Construction Inc. Is Not Liable under Labor Law § 200, 240(1) or 241(6)

SGS entered into a subcontract with Luque to perform insulation and sheetrock work at the premises (*See NYSCEF Doc. No.* 43). SGS did not have any supervisory duties or responsibilities under its subcontract with Luque and does not have any employees other than the principal, Steven Golomb (*See NYSCEF Doc. No.* 131). Steven Golomb was not present at the

jobsite on the day that Plaintiff alleges to have been injured, nor does Steven Golomb know how the alleged accident occurred, what happened before or after, or who was present (*Id*). Neither SGS nor Steven Golomb directed, supervised, or controlled Plaintiff's work or work area (*Id*).

In addition, SGS did not supply any materials, tools, equipment, or the ladder allegedly involved at 486-488 Lefferts Avenue (*Id*). Plaintiff was employed by Luque at the time of the alleged accident (*See NYSCEF Doc. No.* 42). And, SGS never hired, employed or paid wages to Plaintiff (*See NYSCEF Doc. No.* 43). SGS was not responsible for site safety supervision, or any employment decisions concerning Plaintiff, nor had any direct role in managing, controlling, or overseeing Plaintiff's work or presence at the job site (*Id*).

A subcontractor is strictly liable under Labor Law § 240 (1) and § 241-a where it is a "statutory agent of ... the general contractor" (*Sabato v New York Life Ins. Co.*, 259 AD2d 535, 537 [2d Dept 1999]) with "the authority to supervise and control" the plaintiff's work or work area (*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]). Here, SGS established that they were not a statutory agent. They did not have the authority to supervise and control the Plaintiff or provided him the ladder. To impose liability under section 200, it is necessary to show authority and control over plaintiff's "work" (*Ryder v Mount Loretto Nursing Home Inc.*, 290 AD2d 892, 894 [3d Dept 2002]). SGS has established that they did not have any control over Plaintiff's work.

Plaintiff has failed to demonstrate their prima face burden that SGS had supervisory control or authority over Plaintiff's work. In *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981], the court determined that the defendants were never delegated the general construction work in which plaintiff was engaged at the time of his injury and was not responsible for the work giving rise to the duties imposed by sections 240 and 241. SGS

established that they were never delegated the work in which plaintiff was engaged in at the time of his injury, nor supplied the ladder in which caused the alleged injury.

SGS has therefore met its prima facie burden that it did not control the work that caused the Plaintiff's injury. It is entitled to summary judgment dismissing Plaintiff's complaint against it (Mot. Seq. 7).

Conclusion

Accordingly, it is hereby ordered:

ORDERED that Plaintiff's motion for partial summary judgment (Mot. Seq. 8) for Plaintiff's claims pursuant Labor Law § 240(1), as against Defendants Lefferts, SGS, and TOTS, is granted against Lefferts and TOTS, but not SGS.

ORDERED that Defendants' Lefferts and TOT'S motion for partial summary judgment (Mot. Seq. 9) seeking dismissal of plaintiff's Labor Law causes of actions under Labor Law § 241(6) and § 200, is granted as to Labor Law § 241(6), and denied as to Labor Law § 200.

ORDERED that Defendant SGS Construction, Inc. ("SGS"), motion for summary judgment dismissing Plaintiff Carlos Crispin Gayoso Coronel's Complaint in its entirety as against SGS (Mot. Seq. 7) is granted.

This constitutes the decision of the Court.

HON. STEVEN L. MOSTOFSKY