SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

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VELI MORINA,

Plaintiff,

- v -

250 BROADWAY ASSOCIATES CORP., 250 BROADWAY OWNER LLC,AMTRUST REALTY CORP., 250 BROADWAY CONDOMINIUM

Defendant.

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INDEX NO. 161431/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 66, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 123, 124, 125, 126

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

FACTUAL BACKGROUND

This personal injury action arises from an incident that occurred on October 1, 2021, at approximately 9:30 p.m., inside the lobby of 250 Broadway, New York, New York (the "Premises"). Plaintiff, Veli Morina, was employed by nonparty Harvard Maintenance, Inc. ("Harvard") in its Marble Division as a stone mechanic.

Plaintiff commenced this action on December 21, 2021, asserting causes of action under Labor Law §§ 200, 240(1), and 241(6), as well as common-law negligence. Discovery included depositions of Plaintiff and several Harvard employees, including supervisor Alit ("Al") Pahumi. A Note of Issue was filed on September 6, 2024.

At the time of the accident, Plaintiff and three Harvard co-workers were performing work in connection with a building lobby renovation. Their task involved removing and transporting large travertine stone panels, each weighing between 300 and 350 pounds and measuring roughly 98 inches by 28 inches. The panels were being maneuvered onto A-frame dollies for transport.

Plaintiff alleges that one such slab, standing vertically on the lobby floor, toppled and struck him in the head. He contends that no safety devices were provided to stabilize the slab during the loading process. Plaintiff asserts that this absence of protective devices was the proximate cause of the accident and his resulting injuries.

Defendants dispute this version of events. They contend that the panel never fell, but that Plaintiff, distracted by using his cell phone, walked into the slab while his co-workers were holding it at ground level and attempting to load it onto a dolly. Defendants emphasize that Harvard, not Defendants, supervised the work, supplied the equipment, and instructed Plaintiff, and that Plaintiff had been repeatedly told not to use his phone during work hours. Plaintiff denies being on his cell phone. He maintains that the slab itself fell and struck him. Witness accounts from Harvard employees differ as to whether the slab toppled or whether Plaintiff inadvertently collided with it while distracted.

Plaintiff now moves in Motion Sequence 001 for partial summary judgment on liability under Labor Law §240(1). Defendants oppose and separately move in Motion Sequence 002 for summary judgment dismissing the complaint in its entirety.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted

competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Labor Law §240(1) states "All contractors and owners and their agents…in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

The statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). "[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

"To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries. The burden then shifts to the defendant to raise a triable issue of fact" (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). "The extraordinary protections

of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

"Labor Law § 240(1) applies to both 'falling worker' and 'falling object' cases." (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68 [2001]). With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to 'a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured.'" (Id. *quoting Rocovich v Consol. Edison Co.*, 78 NY2d 509, 514 [1991]).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 [1992]). Here, plaintiff's claim under Labor Law §241(6) is based on violation of Industrial Codes 23-1.5, 23-1.7(a)(1) & (2) as follows:

i) 23-1.5

> (a) Health and safety protection required. All places where employees are suffered or permitted to perform work of any kind in construction, demolition or excavation operations shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection for the lives, health and safety of such persons as well as of persons lawfully frequenting the area of such activity. To this end, all employers, owners, contractors and their agents and other persons obligated by law to provide safe working conditions, personal protective equipment and safe places to work for persons employed in construction, demolition or excavation operations and to protect persons lawfully frequenting the areas of such activity shall provide or cause to be provided the working conditions, safety devices, types of construction, methods of demolition and of excavation and the materials, means, methods and procedures required by this Part (rule). No employer shall suffer or permit an employee to work under

working conditions which are not in compliance with the provisions of this Part (rule), or to perform any act prohibited by any provision of this Part (rule).

(b) General requirement of competency. For the performance of work required by this Part (rule) to be done by or under the supervision of a designated person, an employer shall designate as such person only such an employee as a reasonable and prudent man experienced in construction, demolition or excavation work would consider competent to perform such work.

(c) Condition of equipment and safeguards.

(1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.
(2) All load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon.
(3) All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged.

ii) 23-1.7(a)(1) & (2);

(a) Overhead Hazards

(1) Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. Such overhead protection shall consist of tightly laid sound planks at least two inches thick full size, tightly laid three-quarter inch exterior grade plywood or other material of equivalent strength. Such overhead protection shall be provided with a supporting structure capable of supporting a loading of 100 pounds per square foot.
(2) Where persons are lawfully frequenting areas exposed to falling material or objects but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas.

Finally, Labor Law §200 codifies the common law duty of an owner to provide construction workers with a safe place to work (*See Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876 [1993]). Labor Law §200 and common law claims fall under two categories: "those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska*

USA Bldg. Inc., 99 AD3d 139 [1st Dept 2012]). Under the first group, the owner had to have either created the condition or have actual or constructive notice of it (*Id* at 144). In the second category, the owner or general contractor is liable if "it actually exercised supervisory control over the injury-producing work" (*Id*).

Labor Law § 200 claims against a premises owner or contractor can arise from either the manner in which the work is performed or a dangerous or defective condition at the work site. (*Martinez v City of New York,* 73 AD3d 993 [2d Dept 2010]). For the former, the owner or contractor is liable only if it exercised supervision or control of the work that led to the injury. (*Rizzuto v L.A. Wenger Contr. Co., Inc.,* 91 NY2d 343 [1998]). Where the injury arises from a dangerous or defective condition, an owner or contractor is liable if they created the condition, or failed to remedy it when they had actual or constructive notice. (*Williams v McAlpine Contr. Co.*, 235 AD3d 521, 522 [1st Dept 2025]).

DISCUSSION

Labor Law § 240(1)

Plaintiff asserts that the accident occurred when a travertine slab, approximately 98 inches by 28 inches and weighing between 300–350 pounds, toppled while being loaded onto a dolly and struck him. He maintains that no safety devices such as braces, ropes, or slings were provided to secure the slab in its vertical position, and that this omission directly caused the panel to fall and injure him.

Defendants counter that the slab did not "fall" in the sense contemplated by the statute. They claim that Plaintiff, distracted by cell phone use, walked into the panel while it was being held at ground level by co-workers, and that both Plaintiff's feet and the slab were on the same floor, such that no elevation-related risk was present.

New York courts have consistently rejected §240(1) liability where an accident arises from an ordinary ground-level hazard, such as tripping or colliding with a stationary object (see *Melber v 6333 Main St., Inc.*, 91 NY2d 759, 763 [1998]; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]). The statute does not encompass "any and all perils tangentially connected with the effects of gravity" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

However, courts have also clarified that §240(1) applies not only where an object falls from a great height, but also in cases where "the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent" is substantial enough that the "elevation differential involved cannot be viewed as de minimis." (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 605 [2009]); *see also Outar v City of New York*, 5 NY3d 731, 732 [2005] [plaintiff struck by dolly that tipped over was within statute]).

Here, Plaintiff's account, if credited, establishes that the travertine slab posed a significant gravity-related risk of toppling over, which could have been prevented by the use of slings, braces, or similar devices. Defendants' claim that Plaintiff walked into the slab while distracted raises an issue of comparative negligence, but comparative negligence is not a defense to §240(1). (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 289-90 [2003]) Nor does the recalcitrant worker defense apply, as there is no evidence Plaintiff refused to use an available device (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35 [2004]).

A stone slab being maneuvered upright is a load that "required securing for the purposes of the undertaking" and fell because no protective device was provided (Runner, 13 NY3d 599). That risk is qualitatively different from ordinary ground-level hazards and falls squarely within §240(1).

Accordingly, Plaintiff has established prima facie entitlement to summary judgment under §240(1), and Defendants have failed to raise a triable issue of fact. Plaintiff's motion for summary judgment is granted, and the branch of Defendants' motion to dismiss the §240(1) claim is denied.

Labor Law § 241(6)

Labor Law §241(6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection to workers, contingent upon establishing a violation of a specific, applicable Industrial Code provision that proximately caused the accident (*Ross v Curtis-Palmer Hydro-Electric Co.,* 81 NY2d 494, 501 [1993]).

Plaintiff pleads violations of Industrial Code § 23-1.5, 23-1.7(a)(1) & (2).

12 NYCRR § 23-1.5 (general safety and equipment condition)

Subsection (a) of Industrial Code 23-1.5 is too general to support a claim for liability pursuant to Labor Law §241(6). (*Castaldo v F.J. Sciame Constr. Co. Inc.*, 222 AD3d 579, 580 [1st Dept 2023]). However, subsection (c), which require equipment to be in good repair and safety devices to be operable, are sufficiently specific (*Becerra v Promenade Apartments Inc.,* 126 AD3d 557, 559 [1st Dept 2015]).

Plaintiff contends the travertine slab was inadequately secured and that no devices were provided to stabilize it. Defendants respond that the slab was not "equipment" but building material, and that Plaintiff's distraction was the sole cause of the accident. The slab at issue is not "equipment," however, the record as to the safeguards (or lack thereof) in securing the slab are at issue. As such, Defendants have failed to make a prima facie showing as to whether they are liable pursuant to 12 NYCRR §23-1.5(c) and therefore the branch of Defendants' motion for

summary judgment pursuant to Labor Law § 241(6) predicated on 12 NYCRR § 23-1.5 is denied.

12 NYCRR § 23-1.7(a) (overhead hazards)

This section requires overhead protection where workers are exposed to falling objects. Both versions of the accident establish that the slab was positioned at floor level, either tipping or being maneuvered at approximately Plaintiff's head height. Defendants assert that this Industrial Code provision is irrelevant to Plaintiff's cause of action, but fail to make a prima facie showing that the area Plaintiff was working in is not one "normally exposed to falling material or objects," nor that the lack of provided protections had no bearing on plaintiff's injuries. (*see Moncayo v Curtis Partition Corp.*, 106 AD3d 963, 965 [2d Dept 2013]). As such, Defendants have failed to make a prima facie showing of entitlement to summary judgment, and therefore the branch of Defendants' motion for summary judgment pursuant to Labor Law § 241(6) predicated on 12 NYCRR § 23-1.7 is denied.

Taken together, Defendants' motion for summary judgment pursuant to Labor Law § 241(6) is denied.

Labor Law § 200 and Common Law Negligence

Defendants argue that Plaintiff's Labor Law §200 and common law negligence claims fail because the record demonstrates that they did not supervise or control Plaintiff's work, did not provide tools or materials, and had no notice of any allegedly dangerous condition in the lobby. They emphasize that Plaintiff was employed and directed solely by Harvard, that all equipment, including the A-frame dolly, was supplied by Harvard, and that Plaintiff received instructions exclusively from his Harvard supervisor, Al Pahumi, and co-workers. They further contend that the accident occurred only because Plaintiff, against instructions, was distracted by

his cell phone and walked into the stone panel, such that no dangerous condition on the premises can be attributed to Defendants.

Defendants' arguments relate to their alleged role in directing Plaintiff's means and methods of work, however Plaintiff's theory is not limited to supervision. Rather, Plaintiff asserts that his injuries resulted from a dangerous or defective condition in the lobby, namely, the unsecured storage and handling of a 300–350 pound travertine slab in an upright position without protective devices. In such cases, liability arises if Defendants either created the condition or had actual or constructive notice of it (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]; *Williams v McAlpine Contr. Co.*, 235 AD3d 521 [1st Dept 2025]).

Defendants have not made a prima facie showing that they lacked notice of the hazard. The affidavits submitted by Defendants broadly deny supervisory involvement and assert that Harvard directed the work, but they do not set forth evidence of inspection or maintenance practices undertaken by Defendants to ensure that heavy stone panels were safely stored and handled in their lobby. Nor do they establish how long the panel had been positioned upright without safety devices, which is central to determining constructive notice.

Moreover, the competing testimony is in sharp conflict. Plaintiff testified that the slab itself toppled and struck him, while Defendants' witnesses claim it was firmly held by co-workers and that Plaintiff simply walked into it while distracted. Whether the panel was unstable and inadequately secured, or whether Plaintiff's inattentiveness was the sole cause, presents a question of fact for the jury. As courts have emphasized, "[t]o constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." (*Gordon v Am. Museum of*

Nat. History, 67 NY2d 836, 837 [1986]). The court does not find that, as a matter of law, that Defendants had no opportunity to discover or prevent the alleged hazard.

Accordingly, triable issues of fact remain as to whether the unsecured handling of the travertine slab constituted a dangerous premises condition for which Defendants bore responsibility. Defendants' motion for summary judgment dismissing Plaintiff's Labor Law §200 and common-law negligence claims is therefore denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED, that Plaintiff's motion for partial summary judgment on liability under Labor Law §240(1) (Motion Sequence 001) is granted.

ORDERED, that Defendants' motion for summary judgment (Motion Sequence 002) is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

10/6/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

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