SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAKOTA D. RAMSEUR** **PART** **34M**

Justice

----------X

KRZYSZTOF LAPINSKI,

Plaintiff,

- v -

MIP ONE WALL STREET ACQUISITION LLC, J.T. MAGEN & COMPANY INC.

Defendant.

----------X

INDEX NO. 150585/2022

MOTION DATE 09/11/2024, 08/05/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 76, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 92

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 90

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

Plaintiff Krzysztof Lapinski commenced this action on January 19, 2022, asserting claims under Labor Law §§ 200, 240 (1), and 241 (6) against defendants MIP One Wall Street Acquisition LLC ("MIP One Wall Street") and J.T. Magen & Company Inc. ("J.T. Magen," or together, "defendants").[1] In motion sequence 001, plaintiff moves for summary judgment pursuant to CPLR 3212 on his Labor Law § 240 (1) cause of action; in motion sequence 002, defendants move for summary judgment dismissing plaintiff's Labor Law §§ 240 (1) and 241 (6) causes of action.[2] Both motions are opposed in their entirety. The Court consolidates them for resolution herein. For the following reasons, defendants' motion is granted, and plaintiff's is denied.

BACKGROUND

MIP One Wall Street owns the subject premises at One Wall Street, New York, New York, and hired J.T. Magen as a general contractor to perform certain construction and renovation work to convert the former office building into one with residential apartment units. In turn, J.T. Magen subcontracted with non-party Independence Carting, Inc., a sanitation

[1] Although plaintiff asserts a cause of action alleging various violations of 12 NYCRR Part 23 that is separate to his cause of action under Labor Law § 241 (6), a violation of this part of the Industrial Code does not create an independent cause of action. Rather, a claim made under § 241 must be premised on an alleged violation of the Industrial Code. (*See Bazdaric v Almah Partners LLC*, 41 NY3d 310 [2024]; *see also Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993].)

[2] Neither party seeks summary judgment on plaintiff's § 200 claim.

company and plaintiff's employer, to remove waste and debris from the worksite. In his capacity as a sanitation truck driver, on January 15, 2022, plaintiff alleges that he was struck by a falling wooden pallet while collecting debris from the premises' the loading dock.

In moving for summary judgment for liability under § 240 (1), plaintiff contends that the stacked pallets that fell were positioned at the edge of an elevated platform, and that defendants' failure to provide adequate safety device to protecte against this elevated-related risk caused his injuries. By contrast, defendants' opposition is premised on the argument that, as a sanitation driver who was not on the premises to perform construction work, plaintiff is not within the class of workers protected by these Labor Law sections—or, more specifically, they maintain that the sanitation work he was performing at the time of the accident is not an enumerated activity that are protected under sections § 240 (1) and § 241 (6).

DISCUSSION

Under CPLR 3212 (b), a proponent moving for a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to eliminate any material issues of fact from the case. (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010]; *Kesselman v. Lever House Rest.*, 29 A.D.3d 302 [1st Dept 2006].) Once a defendant establishes their entitlement, the burden shifts to the plaintiff to raise a triable issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Since summary judgment is an extreme remedy, the Court must draw all reasonable inferences in favor of the non-moving party. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) Where there is doubt as to the existence of material facts or where different conclusions can reasonably be drawn from the evidence, summary judgment should be denied. (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563, 565 [1st Dept 2010].)

Labor Law § 240 provides, "All contractors owners and their agents…in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish… [safety] devices which shall be constructed, placed and operated as to give proper protection to a person so employed." Similarly, liability under Labor Law § 241 (6) is limited to accidents where the work performed involves "construction, excavation, or demolition." (*Washington-Tatum v City of New York*, 205 AD3d 976, 979 [1st Dept 2022].) Here, the parties dispute whether plaintiff's employment and job responsibilities—specifically, removing debris and other material from the site as a truck driver—is considered an enumerated activity that brings plaintiff within the class of workers protected by the statutes. (*See Prats v Poet Authority of New York and New Jersey*, 100 NY2d 878, 883 [2003] [the question of whether of a specific activity falls within section 240 (1) must be determined on "a case-by-case basis, depending on the context of the work"].) The Court must be mindful that "the intent of the statute was to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts." (*Id.* at 882.)

Defendants' primary argument, then, is that plaintiff was not employed to perform one of the enumerated activities—erection, demolition, repairing, etc.—and was not engaged in an act that could be considered ancillary to one of these activities, meaning plaintiff's employment is not protected under Labor Law § 240 (1) or § 241 (6). The Court agrees. In circumstances nearly

identical to those found here, the First Department, in *Toro v Plaza Constr. Corp.* (82 AD3d 505 [1st Dept 2011]), dismissed the § 240 (1) and § 241 (6) claims of a plaintiff-truck driver, who was injured while employed by a third-party defendant to perform construction debris removal on a renovation project. (*Id.* at 506.) Its reasoning is particularly apt: as it explained, § 240 (1) and 241 (6) were inapplicable because the plaintiff's activities did not include anything other than driving the garbage truck and picking up the debris, he had never been inside the building under renovation, and his contract was limited to "pulling up to the loading dock." (*Id.*) "Since plaintiff was not performing tasks ongoing and contemporaneous with the greater project, and the work he was performing was a separate activity easily distinguishable from the construction project, he was not intended to be protected by the statute." (*Id.*)

Here, the same circumstances are present. Plaintiff acknowledged that he would typically drive the truck alone to the worksite and park where the debris had to be picked up from, at which time employees of other construction companies would load the debris on to the truck. (NYSCEF doc. no. 70 at 27-28, plaintiff's EBT; *id.* at 36-38 ["Once I had backed in, there were several people that were usually there. We started loading the construction waste and the construction debris on to the vehicle and I was working the machine"].) As he explained, while he would sometimes attach dumpsters to the truck for loading, most of the debris was "big independent pieces of waste" and "if these were large pieces of debris, then I was just operating the controllers, and the other employees were loading it up." (*Id.* 36-38.) He further admitted that his job responsibilities did not include anything other than collecting debris, and his duties never required him to enter the building in which the renovation/construction work was being performed. (*Id.* at 39-40.) On the day in question, it appears that his routine did not change as plaintiff testified that he stood at the rear of the truck operating the controls for approximately one hour while the other workers were loading the debris. (*Id.* at 48-49.)

Although plaintiff attempts to distinguish his employment relationship and responsibilities with those at issue in *Toro*, such distinctions are unpersuasive. He contends that, unlike in *Toro*, he was more actively involved in loading debris and construction material onto the truck since his work was not, strictly speaking, "limited to pulling up to the loading dock." (*See* NYSCEF doc. no. 78 at ¶19.) Even if plaintiff is correct that his contact with the site was greater than that of the plaintiff in *Toro* (which, as described above, is arguable), this does not change the fact that he was performing a separate activity from the construction, demolition, repairing, etc., that was being performed by other contractors in other areas of the worksite. Moreover, judging from plaintiff's testimony, he and Toro shared an identical overarching relationship to the construction project, whereby both were employed by a sub-contracting sanitation company and the particular construction project where the accident occurred was, depending on the day, just one of many pick-ups. (*Compare* NYSCEF doc. no. 70 at p. 27 *with Toro*, at 506.) Even so, *Hernandez v 601 W. Assoc.* (172 AD3d 548 [1st Dept 2019]) entirely refutes the contention that an "active involvement" in loading debris and construction material brings plaintiff's activity within the protections of these two Labor Law statutes. There, the plaintiff's task "was to remove debris and garbage," a task he was performing when the refrigerator he was attempting to push upstairs fell on him. (*Id.* at 548-549.) Notwithstanding that this plaintiff's responsibilities undoubtedly required more of him than pulling up to a loading dock or its equivalent, the First Department held that he was not engaged in activity protected by either §§ 240 (1) or 241 (6). (*Id.*; *see also Gentile v New York City Hous. Auth.*, 228 AD2d 296,

296 [1st Dept 1996] [finding defendant entitled to summary judgment where a truck driver, whose responsibilities were to "haul[] away concrete construction debris," was not engaged "in the erection, demolition, repairing, altering, painting, cleaning or pointing" within the intended meaning of Labor Law § 240 (1)].)

In finding that the Labor Law does not protect plaintiff, as the Court does here, *Prats v Poet Authority of New York and New Jersey* (100 NY2d 878, 883 [2003]) is instructive as well. There, the Court of Appeals held that a plaintiff's inspection fell within the protections provided by the Labor Law because he was, as a mechanic, "employed substantially to perform work that involved alteration of a building," which is specifically enumerated in Labor Law § 240 (1) as protected activity. (*Id.* at 883.) By contrast, sanitation work and cleaning debris in not, per the language of the statutes, an enumerated activity and plaintiff's company was not retained by contract to perform any work that could be considered protected by the Labor Law. (*See also Peterman v Ampal Realty Corp.*, 288 AD2d 54, 55 [1st Dept 2001] [plaintiff, an engineer, had no cause of action under § 240 (1) because he was neither hired by the owner or general contractor to perform renovation work, nor was he permitted or suffered to work there at the time of the accident, "but rather was performing a task that was part of his regular duties as the managing agent's chief engineer"].)

Though plaintiff cites to several cases where "debris removal" was arguably considered protected activity, the respective plaintiffs were engaged in either enumerated or ancillary acts intended to be protected by the Labor Law. For example, in *McCann v Central Synagogue* (280 AD2d 298 [1st Dept 2001]), the plaintiff was an employee of Amis, Inc., a demolition company, who testified that his job to fill up 100-pound metal bins with debris for removal. This case is in line with *Prats*, where the plaintiff's company undoubtedly contracted with the general contractor to perform work protected under the statute and plaintiff was engaged in said work. This would likely explain why the defendant in *McCann* did not challenge—and the First Department did not address—the applicability of the Labor Law §§ 240 and 241 to the plaintiff's claim. The same can be said of *Rivera v Squibb Corp.* (184 AD2d 239, 240 [1st Dept 1992]), where the plaintiff's employer subcontracted to perform construction work on the 25th through 27th floors, an ancillary component of which was debris removal. (*Id.*) And in *Badzmierowski v PBAK LLC* (5 Misc 3d 1005[A] [Sup. Ct., NY County 2004]), the court is clear that, even though plaintiff was engaged in the removal of debris at the time of the incident, this was part of the "demolition phase of the renovation project" for which he was hired. (*Id.* at *2.)

In sum, because defendant has established that plaintiff's job responsibilities do not come within the ambit of Labor Law § 240 (1) or § 241 (6) protection, they have demonstrated their entitlement to summary judgment. As such, the Court need not reach plaintiff contention that his accident was the result of defendants' failure to provide adequate safety equipment or that they violated a provision of the Industrial Code, as would be necessary to establish § 241 (6) liability.

Accordingly, for the foregoing reasons, it is hereby,

ORDERED that defendants MIP One Wall Street Acquisition LLC and J.T. Magen & Company Inc.'s motion for summary judgment pursuant to CPLR 3212 is granted and plaintiff

Krzysztof Lapinski's Labor Law §§ 240 (1) and 241 (6) causes of action are dismissed; and it is further

ORDERED that plaintiff's motion for summary judgment pursuant to CPLR 3212 under motion sequence 001 is denied; and it is further

ORDERED that within twenty (20) days of entry, counsel for defendants shall serve a copy of this Decision and Order, with notice of entry, upon all parties to this action via NYSCEF.

This constitutes the Decision and Order of the Court.

10/8/2025
DATE

DAKOTA D. RAMSEUR, J.S.C.

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