SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD G. LATIN** **PART** **46M**

Justice

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OSCAR ERNESTO MEZA MONGE,

Plaintiff,

- v -

LEEDING BUILDERS GROUP LLC,PARAGON JV PROP III LLC

Defendant.

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INDEX NO. 154148/2022

MOTION DATE 09/27/2024, 09/30/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 44, 46, 48, 50, 52, 54, 56, 59, 61, 63, 64, 65

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 47, 49, 51, 53, 55, 57, 58, 60, 62, 66, 67

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

Upon the foregoing documents, defendants Leeding Builders Group LLC and Paragon JV Prop III LLC's motion pursuant to CPRL 3212 for an order granting summary judgment (NYSCEF # 16) and plaintiff Oscar Ernesto Meza Monge's motion pursuant to CPLR 3212 for an order granting partial summary judgment under Labor Law § 240(1) (NYSCEF # 29) are determined as follows:

Background

Plaintiff was a sheetrock installer, and he constructed the walls inside of the property at 2555 Broadway, New York, New York on the 14th floor of a stairway (NYSCEF # 18 at 3; NYSCEF # 29 at 2). Plaintiff's job entailed carrying and installing sheets of sheetrock (*see id.*). Plaintiff was injured as he was installing a piece of sheetrock onto a wall in the stairway (NYSCEF # 29 at 2). The piece of sheetrock was eight feet long and four feet wide and weighed approximately

100 pounds (*see id.*). The sheetrock fell and injured plaintiff when plaintiff removed his right hand from the sheetrock in order to screw it into the wall (NYSCEF # 29 at 2; NYSCEF 18 at 4; NYSCEF # 34 at 39).

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

Liability Under Labor Law § 241(6) & § 200

Plaintiff's Labor Law § 241(6) and § 200 are dismissed as abandoned since plaintiff did not oppose defendant's arguments for dismissal of those claims (NYSCEF # 29; *see Romano v New York City Tr. Auth.*, 213 AD3d 506, 508 [1st Dept 2023] [dismissing plaintiff's Labor Law § 241(6) claim as abandoned since plaintiff did not oppose NYCTA/MTA's arguments for dismissal of those claims]; *see Murphy v Schimenti Constr. Co., LLC*, 204 AD3d 573, 573 [1st Dept 2022]).

Liability Under Labor Law § 240(1)

Labor Law § 240(1) mandates that building owners and contractors "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"

(*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 6-7 [2011], quoting Labor Law § 240(1)).

The statute imposes absolute liability on building owners and contractors whose failure to "provide proper protection to workers employed on a construction site" constitute proximate cause of injury to a construction worker (*Wilinski*, 18 NY3d at 7, quoting *Misseritti v Mark IV Const. Co., Inc.*, 86 NY2d 487, 490 [1995]). An "accident alone" does not sufficiently establish a violation of Labor Law § 240(1) or causation (*Cutaia v Bd. of Managers of 160/170 Varick St. Condominium*, 38 NY3d 1037, 1038 [2022]). In addition, Labor Law § 240(1) is designed to protect against "harm directly flowing from the application of the force of gravity to an object or person" (*id.*, quoting *Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501 [1993]).

Labor Law 240(1) is to be interpreted as "liberally as may be for the accomplishment of the purpose for which it was thus framed" (*Rocovich v Consol. Edison Co.*, 78 NY2d 509, 513 [1991]). Thus, this section has been interpreted to impose absolute liability for a breach which has proximately caused an injury (*id.*). "Negligence, if any, of the injured worker is of no consequence" (*id.*; *see Bland v Manocherian*, 66 NY2d 452, 459-461 [1985]) In furtherance of the legislature's purpose of protecting workers "against the known hazards of the occupation" § 240(1) is nondelegable and that "an owner is liable for a violation of the section even though the job was performed by an independent contractor over which it exercised no supervision or control" (*Rocovich*, 78 NY2d at 513).

"[F]alling object" liability under Labor Law § 240(1) is not limited to cases in which the falling object is in the process of being hoisted or secured (*Quattrocchi v F.J. Sciame Const. Corp.*, 11 NY3d 757, 758-59 [2008]; *Franco v 1221 Ave. Holdings, LLC*, 189 AD3d 615 [1st Dept 2020] [holding that plaintiff's testimony that he was injured during demolition work when an unsecured

pipe fell from the ceiling and struck him, establishes prima facie that his injuries resulted "directly from the application of the force of gravity" and that, having failed to provide proper safety devices, defendants are liable for these injuries under Labor Law § 240(1)]).

In cases where an object has fallen at a relatively short distance before hitting a plaintiff, courts will take into consideration whether the size and weight of the object can generate a significant amount of force as it falls (*see Connor v AMA Consulting Engineers PC*, 213 AD3d 483, 484 [1st Dept 2023]; *see also Kuylen v KPP 107th St., LLC*, 203 AD3d 465 [1st Dept 2022] [finding an issue of fact on whether the combined weight of multiple sheetrock panels could generate a significant amount of force as it fell]; *see also Padilla v Touro Coll. Univ. Sys.*, 204 AD3d 415, 416 [1st Dept 2022] [finding issues of fact as to whether the sheetrock boards were stored in a "safe and orderly manner"]). Here, unlike in *Kuylen* and *Padilla*, which dealt with injuries involving multiple stacks of sheetrock, plaintiff's injury revolved around one piece of sheetrock (*see Connor* 213 AD3d at 484). However, where a falling object has had a relatively short descent before hitting plaintiff, courts will take into consideration whether the size and weight of the object can generate a significant amount of force as it falls (*see id.*).

In *Connor*, the court held that a single two-foot-wide and eight-foot-high piece of sheetrock which tipped over no more than three feet onto plaintiff, "was an ordinary construction hazard and not an extraordinary danger contemplated by Labor Law § 240(1)" (*id.*). However, unlike in *Conner*, here, plaintiff's alleged injury involved a larger piece of sheetrock with was eight feet long and four feet wide and weighed approximately 100 pounds (NYSCEF # 29 at 2).

Accordingly, plaintiff's Labor Law § 240(1) summary judgment claim is denied.

Since the record presents issues of fact as to whether plaintiff's injuries flowed directly from the application of the force of gravity to the sheetrock, whether the elevation differential was

de minimis, and whether the weight and size of the sheetrock could generate a significant amount of force as it fell (*see Kuylen* 203 AD3d at 465, citing *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 9 [2011]; *O'Brian v 4300 Crescent L.L.C.*, 180 AD3d 437, 438 [1st Dept 2020]). Accordingly, Defendant's motion is also denied.

Conclusion

In view of the above, it is

ORDERED that defendants' motion for summary judgment is granted to the extent that causes of action for liability under Labor Law § 241(6) & § 200 claims are dismissed; and

ORDERED that plaintiff's and defendant's motions for summary judgment under Labor Law§ 240(1) are denied.

10/9/2025
DATE

RICHARD G. LATIN, 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