SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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JAVIER MURIEL,

Plaintiff,

- v -

590 MADISON AVENUE, LLC, VERUS INC. D/B/A VERUS CONSTRUCTION,

Defendants.

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INDEX NO. 151436/2020

MOTION DATE 09/09/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

590 MADISON AVENUE, LLC

Third-Party Plaintiff,

-against-

VERUS INC. D/B/A VERUS CONSTRUCTION, COMMERCIAL ELECTRICAL CONTRACTORS INC.

Third-Party Defendants.

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Third-Party
Index No. 595955/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 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.

Pursuant to CPLR 3212, plaintiff Javier Muriel moves for summary judgment granting his Labor Law § 240 (1) claim against defendants 590 Madison Avenue LLC (590 Madison Avenue) and Verus Inc. d/b/a Verus Construction (Verus). Defendant and third-party plaintiff 590 Madison Avenue opposes and cross-moves under CPLR 3212: (1) seeking additional time to file their summary judgment motion; (2) granting their summary judgment motion to dismiss plaintiff's complaint; and (3) granting summary judgment to dismiss all crossclaims asserted against it by defendant and third-party defendant Verus. Verus opposes and replies to both

summary judgment motions. Plaintiff and 590 Madison Avenue submit replies. For the reasons below, plaintiff's motion is granted and 590 Madison Avenue's cross-motion is denied.

BACKGROUND AND PROCEDURAL HISTORY

On September 12, 2019, plaintiff was injured in an accident at a construction site located at 590 Madison Avenue in New York County (Construction Site) (NY St Cts Elec Filing [NYSCEF] Doc No. 82, plaintiff's exhibit 6, plaintiff's deposition tr at 70, 71, 92). Plaintiff was trained how to use A-frame ladders and was employed by Commercial Electric Contractors, Inc. (Commercial Electric) (*id*. at 33-39, 54-55). 590 Madison Avenue retained Verus as the general contractor for a construction project on several floors at the Construction Site (NYSCEF Doc No. 89, plaintiff's exhibit 13, construction contract; NYSCEF Doc No. 85, plaintiff's exhibit 9, Verus owner's deposition tr at 25). Verus hired Commercial Electric as a subcontractor for the construction project (NYSCEF Doc No. 85 at 19-20, 33; NYSCEF Doc No. 90, plaintiff's exhibit 14, Verus purchase order with Commercial Electric).

On the date of the accident, plaintiff was working at another location when his supervisor offered plaintiff an opportunity to work overtime at the Construction Site (NYSCEF Doc No. 82 at 67-71). Plaintiff had not been at the Construction Site prior to the accident (*id*. at 71). When plaintiff entered the room to perform his work, there was already an A-frame ladder that was set up in the room and there was debris on the floor (*id*. at 102-03, 105, 106). Plaintiff was alone in the room when the accident occurred (*id*. at 97). Plaintiff did not inspect the ladder prior to using it because the ladder was already open and did not remember if he checked the feet of the ladder (*id*. at 107-08, 118; NYSCEF Doc No. 83, plaintiff's exhibit 7, plaintiff's deposition tr at 17). Plaintiff climbed the ladder until he was three steps from the top and, at that point, held a cable in his right hand and a screwdriver in his left hand (*id*. 124-26). Plaintiff had to lean over the top

of the ladder to reach the junction box to connect the cable he was holding (*id*. at 132). Plaintiff then fell off the ladder because it moved as he was trying to connect the cable to the junction box (*id*. at 133-35; NYSCEF Doc No. 83 at 13, 17-18, 20-21). Plaintiff was lifted by two workers after falling and he informed his supervisor of the accident (NYSCEF Doc No. 83 at 23-24, 31). As a result of the fall, plaintiff's left knee was injured that required reconstruction surgery (NYSCEF Doc No. 79, plaintiff's exhibit 3, bill of particulars; NYSCEF Doc No. 83 at 72).

On February 7, 2020, plaintiff commenced this action against 590 Madison Avenue (NYSCEF Doc No. 77, plaintiff's exhibit 1, summons and complaint). On May 14, 2020, 590 Madison Avenue filed its answer (NYSCEF Doc No. 78, plaintiff's exhibit 2, 590 Madison Avenue's answer). On November 16, 2020, 590 Madison Avenue impleaded Verus and Commercial Electric as third-party defendants (NYSCEF Doc No. 80, plaintiff's exhibit 4, 590 Madison Avenue's third-party summons and complaint). On March 31, 2021, 590 Madison Avenue voluntarily withdrew its third-party complaint and claims asserted against Commercial Electric (NYSCEF Doc No. 99, 590 Madison Avenue's exhibit D, Notice of Partial Discontinuance). On April 20, 2021, Verus submitted its answer to 590 Madison Avenue's third-party complaint that included, *inter alia*, a counterclaim against 590 Madison Avenue (NYSCEF Doc No. 100, 590 Madison Avenue's exhibit E, Verus's answer to third-party complaint). On January 8, 2024, this Court granted plaintiff's motion to amend his complaint to add Verus as a direct defendant (NYSCEF Doc No. 86, plaintiff's exhibit 10, court order). On January 9, 2024, plaintiff filed his amended summons and complaint (NYSCEF Doc No. 87, plaintiff's exhibit 11, amended summons and complaint). On July 11, 2024, a Note of Issue and Certificate of Readiness for trial was filed (NYSCEF Doc No. 72, Note of Issue). On September 4, 2024, Verus filed its answer to plaintiff's amended complaint that included, *inter alia*, a

crossclaim against 590 Madison Avenue (NYSCEF Doc No. 74, Verus's answer to plaintiff's amended complaint). Plaintiff now moves for summary judgment on the issue of his Labor Law § 240 (1) claim against 590 Madison Avenue and Verus, and 590 Madison Avenue cross-moves to dismiss plaintiff's complaint and Verus's crossclaim.

LEGAL STANDARD

"The 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 eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Pullman v Silverman*, 28 NY3d 1060, 1062 [2016]). Without a *prima facie* showing, the motion must be denied regardless of the sufficiency of the opposing papers (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] *citing Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The moving party has a heavy burden as the facts must be viewed in a light most favorable to the non-moving party (*William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]; *see also Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]). If the moving party meets their burden, the opposing party must produce evidentiary proof in admissible form that is sufficient to raise a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient to defeat a summary judgment motion (*Justinian Capital SPC v WestLB AG, N.Y. Branch*, 28 NY3d 160, 168 [2016]).

DISCUSSION

Plaintiff's Summary Judgment Motion

Plaintiff argues, *inter alia*, that defendants are subject to absolute liability under Labor Law § 240 (1) because they failed to provide sufficient safety devices to protect workers when work is being performed on a building or structure, and that the statute places no duty on the worker to guarantee their own safety (NYSCEF Doc No. 76, plaintiff's affirmation in support at 9-10). Plaintiff emphasizes that the Appellate Division, First Department has consistently granted summary judgment in cases where plaintiffs were injured from falling due to unsecured ladders (*id*. at 11-14). Plaintiff contends that it is immaterial whether he fell due to vibrations caused from using a drill or whether the accident was not witnessed by anyone else because the ladder was inadequate to provide sufficient protection since it was not secured (*id*.). Plaintiff argues that the Court of Appeals has consistently stated that the statue must be construed as liberally as possible to ensure its goal of protecting workers (*id*. at 10).

590 Madison Avenue's Cross-Motion for Summary Judgment

590 Madison Avenue argues that Labor Law § 240 (1) is inapplicable because plaintiff was the sole proximate cause of his injuries (NYSCEF Doc No. 94, 590 Madison Avenue's memorandum of law at 6-12). 590 Madison Avenue contends, *inter alia*, that not every injury invokes the statute's protections and that whether adequate safety devices were provided is a factual question for a jury (*id*. at 6-7). It further argues that the statute does not apply when sufficient safety devices are available but the worker does not use them or in situations where an owner or general contractor fails to insist that a recalcitrant worker use protection devices (*id*. at 8). 590 Madison Avenue asserts that plaintiff's negligent actions were the sole proximate cause of his injuries because he failed to check that the ladder's spreaders were opened and in the

locked position and that the feet were placed flush with the floor (*id*. at 8-12). Additionally, 590 Madison Avenue contends that it should be allowed to have extended time to file its cross-motion for summary judgment because counsel and his wife were experiencing medical issues that caused a delay in filing the cross-motion and that the cross-motion is based on the same record and seeks the same relief as plaintiff's motion (*id*. at 2-4).

Verus's Reply

Verus opposes plaintiff's and 590 Madison Avenue's summary judgment motions. Verus argues, *inter alia*, that plaintiff is not entitled to summary judgment because there are factual issues and credibility issues that only a jury can decide (NYSCEF Doc No. 108, Verus's mem of law at 3-6). Specifically, Verus contends that plaintiff's testimony that he did not remember checking the ladder before using it does not eliminate triable issues of fact (*id*. at 3-4). Further, Verus claims that plaintiff's credibility is at issue because the incident report and plaintiff's testimony as to where and how the accident happen conflict, and that plaintiff was the sole witness to the accident (*id*. at 5-6). Like 590 Madison Avenue, Verus also argues that plaintiff was the sole proximate cause of the accident and that Labor Law § 240 (1) does not automatically apply simply because there was an accident from a height-related incident (*id*. at 6-10). Turning to 590 Madison Avenue's cross-motion, Verus contends that the branch to dismiss Verus's crossclaims of contractual indemnification should be denied because factual issues exist regarding the negligent condition of the building interior since plaintiff claims there was debris on the floor but there is no record of materials on the floor (*id*. at 10-11).

Plaintiff and 590 Madison Avenue's Responses

Plaintiff's reply argues, *inter alia*, that the assertion that plaintiff was the sole proximate cause of his injuries is meritless (NYSCEF Doc No. 111, plaintiff's affirmation in opp to 590

Madison Avenue's cross-motion; NYSCEF Doc No. 114, plaintiff's reply affirmation to Verus). Plaintiff also contends that defendants are trying to shift their burden of ensuring worker safety onto plaintiff, which is impermissible under Labor Law § 240 (NYSCEF Doc No. 111 at 4-5; NYSCEF Doc No. 114 at 4). Additionally, plaintiff asserts that factual issues are not created to defeat summary judgment simply because the accident was not witnessed by anyone other than plaintiff or that the accident report provided by Verus stated that plaintiff had a misstep on the ladder since the accident report was unverified and constitutes impermissible hearsay (NYSCEF Doc No. 114 at 6, 8-10; NYSCEF Doc No. 110, Verus's exhibit B, accident report).

590 Madison Avenue's cross-motion reply reasserts much of the same arguments it made in its cross-motion papers (NYSCEF Doc No. 120, 590 Madison Avenue's affirmation in reply to cross-motion).

Time Extension for 590 Madison Avenue's Cross-Motion for Summary Judgment

Under CPLR 3212 (a), a summary judgment motion must be made no later than 120 days after filing a note of issue except with leave of the court on good cause shown (*Freire-Crespo v 345 Park Ave. L.P.*, 122 AD3d 501, 502 [1st Dept 2014]). "Good cause" requires a "satisfactory explanation for the untimeliness—rather than simply permitting meritorious, nonprejudicial filings, however tardy" (*Fofana v 41 W. 34th St., LLC*, 71 AD3d 445, 448 [1st Dept 2010], quoting *Brill v City of New York*, 2 NY3d 648, 652 [2004]). Illness of counsel may establish good cause to satisfy the untimeliness explanation of a summary judgment motion (*see Freire-Crespo*, 122 AD3d at 502). Additionally, an untimely cross-motion for summary judgment may be considered without good cause shown where the cross-motion seeks nearly identical relief to that of the initial timely summary judgment motion (*Connor v AMA Consulting Engrs. PC*, 213

AD3d 483, 484 [1st Dept 2023], *lv dismissed in part & lv denied in part*, 40 NY3d 1088 [2024], citing *Filannino v Triborough Bridge & Tunnel Auth.*, 34 AD3d 280, 281 [1st Dept 2006]).

The Court will consider 590 Madison Avenue's cross-motion for summary judgment. Illness of its counsel is a sufficient basis to satisfy the "good cause shown" requirement. Furthermore, the cross-motion seeks nearly identical relief and is based on the same record as plaintiff's motion.

Labor Law § 240 (1)

Labor Law § 240 (1), commonly known as the Scaffold Law, imposes absolute liability upon owners, contractors, and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v. Eastern Railway Supply, Inc.*, 82 NY2d 555, 559 [1993]; *see also Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 96 [2015]). The statute provides in part:

> All contractors and owners and their agents, . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing of a premises 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.

"Labor Law § 240 (1) 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]; *see also White v 31-01 Steinway, LLC*, 165 AD3d 449, 452 [1st Dept 2018]). "The purpose of the statute is to protect workers by placing ultimate responsibility for safety practices on owners and contractors instead of on workers themselves" (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015] [internal quotation marks and citations omitted]). Further, courts must be cognizant between "the usual and ordinary dangers of a construction site" versus "the extraordinary elevation risks" covered by the statute (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). "Not every

worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 268 [1st Dept 2007], quoting *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

To prevail on a Labor Law § 240 (1) claim, a plaintiff must show that the statute was violated and that the violation was a proximate cause of their injury (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]). However, there is no liability where a plaintiff's actions are the sole proximate cause of their injury or where a recalcitrant worker is provided safety devices but fails to use such devices (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]). Thus, the inquiry is "whether a jury could have found that [a plaintiff's] own conduct, rather than any violation of Labor Law § 240(1), was the sole proximate cause of [the plaintiff's] accident" (*id*. at 40). In order to "raise a triable issue of fact as to whether a plaintiff was the sole proximate cause of an accident, the defendant must produce evidence that adequate safety devices were available, that the plaintiff knew that they were available and was expected to use them, and that the plaintiff unreasonably chose not to do so, causing the injury sustained" (*Nacewicz v Roman Catholic Church of the Holy Cross*, 105 AD3d 402, 402-03 [1st Dept 2013]). Additionally, whether a plaintiff is the sole witness to their accident does not prevent them from prevailing on summary judgment (*Rivera v 712 Fifth Ave. Owner LP*, 229 AD3d 401, 402 [1st Dept 2024]).

Yet, even if a plaintiff acted negligently, a plaintiff cannot be the sole proximate cause of their injury if a statutory violation is a proximate cause (*Barreto v Metropolitan Transp. Auth.*,

25 NY3d 426, 433 [2015]; *Saula v Harlem Urban Dev. Corp.*, 235 AD3d 478, 478 [1st Dept 2025]; *Hernandez v Bethel United Methodist Church of N.Y.*, 49 AD3d 251, 253 [1st Dept 2008]). In other words, a plaintiff's contributory or comparative negligence to their own injury is not a defense to a Labor Law § 240 (1) claim (*Ladd v Thor 680 Madison Ave LLC*, 212 AD3d 107, 114 [1st Dept 2022]; *Caceres v Standard Realty Assoc., Inc.*, 131 AD3d 433, 434 [1st Dept 2015]).

Owners and contractors have a statutory duty to provide adequate safety devices for their workers and failure to provide such safety devices is a *per se* violation of Labor Law § 240 (1) for which the owner and contractor is strictly liable (*Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 8 [1st Dept 2011]). In fact, the burden of providing adequate safety devices is entirely placed on owners, contractors, and their agents (*id*. at 10). When "a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection" (*Hill v City of New York*, 140 AD3d 568, 569 [1st Dept 2016] [internal quotation marks and citation omitted]). "It is well settled that failure to properly secure a ladder to insure that it remains steady and erect while being used, constitutes a violation of Labor Law § 240(1)" (*Plywacz v 85 Broad St. LLC*, 159 AD3d 543, 544 [1st Dept 2018] [internal quotation marks and citation omitted]).

Plaintiff has met his *prima facie* burden. Plaintiff's injuries stem from his fall because the ladder he used to reach the ceiling was unsecured (*see Rodas-Garcia v NYC United LLC*, 225 AD3d 556, 556 [1st Dept 2024]). The fact that plaintiff does not remember whether he inspected the ladder before using it is immaterial because he was not required to show the ladder was defective to meet his *prima facie* burden (*see Daniello v J.T. Magen & Co. Inc.*, 239 AD3d 516, 517 [1st Dept 2025]). Responsibility to ensure adequate safety devices are provided rests with defendants not plaintiff (*see Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept

2004]). Additionally, it is irrelevant that plaintiff was the sole witness to his accident because the unsecured ladder led to his injury (*see Rivera*, 229 AD3d at 402). The burden now shifts to defendants to raise a triable issue of fact.

Defendants failed to raise a triable issue of fact, and 590 Madison Avenue has not met its *prima facie* burden on its cross-motion. Defendants contend that plaintiff was the sole proximate cause of his accident and that he was a recalcitrant worker; however, this defense is unavailable because the ladder was unsecured and thus an adequate safety device was not provided (*see Nunez v SY Prospect LLC*, 226 AD3d 410, 410 [1st Dept 2024]). Additionally, defendants' argument that plaintiff failed to check the ladder's spreaders before using it is unconvincing because the plaintiff is not required to demonstrate that the ladder was defective to meet his *prima facie* burden (*see Begnoja v Hudson Riv. Park Trust*, 238 AD3d 481, 482 [1st Dept 2025]). Verus's argument that plaintiff's credibility is at issue by claiming the accident was witnessed only by plaintiff and contradictory statements by plaintiff as to whether his accident was caused by a misstep or the ladder being unsecured is also unconvincing. Plaintiff as the sole witness to his accident does not create a triable issue of fact since there is nothing in the record to refute his credibility or his account of how the accident occurred (*see Concepcion v 333 Seventh LLC*, 162 AD3d 493, 494 [1st Dept 2018]; *see also Melendez v 1595 Broadway LLC*, 214 AD3d 600, 601 [1st Dept 2023]). "[A]lleged minor discrepancies in plaintiff's testimony do not affect the material facts concerning defendants' liability under Labor Law § 240(1)" (*Navarro v Joy Constr. Corp.*, 241 AD3d 446, 447 [1st Dept 2025]). Additionally, Verus's reliance on an accident report is insufficient to defeat plaintiff's motion because it contains inadmissible hearsay and the incident report describes the accident as a fall from a ladder (*Rivera*, 229 AD3d at 403; *Eisner v Posillico Civ., Inc.*, 2025 NY Slip Op 05455 [1st Dept 2025]).

The Court has considered the parties remaining arguments and finds them unavailing.

WHEREFORE, it is hereby:

ORDERED that plaintiff Javier Muriel's motion for summary judgment on its claim of liability under Labor Law § 240 (1) as against defendants 590 Madison Avenue LLC and Verus Inc. d/b/a Verus Construction, pursuant to CPLR 3212, is granted; and it is further

ORDERED that 590 Madison Avenue LLC's cross-motion for summary judgment to dismiss Javier Muriel's complaint and dismiss crossclaims asserted by Verus Inc. d/b/a Verus Construction, pursuant to CPLR 3212, is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

11/17/2025
DATE

RICHARD G. LATIN, J.S.C.

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