SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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YUDA SIGLER,

Plaintiff,

- v -

VORNADO TWO PENN PROPERTY LLC,VORNADO REALTY LP, TURNER CONSTRUCTION COMPANY

Defendant.

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INDEX NO. 152605/2023

MOTION DATE 05/15/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

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

Plaintiff Yuda Sigler's ("Sigler") motion pursuant to CPLR 3212 seeking for an order granting summary judgment on the issue of liability on the Labor Law § 240(1) against defendants Vornado Two Penn Property, LLC ("Vornado") and Turner Construction Company ("Turner") (NYSCEF # 15) is determined as follows:

Background

Plaintiff sustained injuries when a guardrail allegedly fell and hit plaintiff at a loading dock area (NYSCEF # 20 at 67). The loading dock functioned as a delivery site for construction materials to be received for the Two Penn Plaza construction site (*see id.*). Plaintiff testified he was employed to deliver "plumbing supplies to the job sites" (*id.* at 68). While plaintiff was on the loading dock, a metal guardrail at approximately 10 feet above, fell and injured plaintiff (NYSCEF # 22 at 3). Turner's "Accident Report" from Exhibit 6 indicated that:

> "driver was unfolding his boom on the truck. The dockmaster was on the leveler when the guardrail was not secured to the leveler and it fe[l]l hitting the driver on his shoulder and lef[t] hand left shoulder" (*id.* at 2).

Plaintiff's was employed by J&L Delivery, which delivered construction materials to the work site (NYSCEF # 20 at 68). Vornado owned the premises (NYSCEF # 18 ¶ 4) and Turner controlled "safety policies and procedures" at the worksite (NYSCEF # 21 at 14). In addition, Turner's project superintendent, Matthew Miranda, testified that Turner served as "construction managers" to the owner of the property and would hire other entities to work on parts of the construction project (NYSCEF # 25-26).

On May 15, 2025, plaintiff filed a motion pursuant to CPLR 3212 seeking summary judgment on the issue of liability against defendants under Labor Law § 240(1) (NYSCEF # 15). Defendants oppose plaintiff's motion (NYSCEF # 28).

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 § 240(1)

Defendants aver that plaintiff's role as a delivery driver does not constitute an enumerated activity to be protected under Labor Law § 240(1) (NYSCEF # 28 at 2-4). Defendants further assert

> "there is a distinction drawn in the Labor Law, and where the delivery person is injured in the act of the delivery of materials being

> "stockpiled" for future use rather than "readied for immediate use", the Labor Law does not apply" (*id.* at 3, citing *Kusayev v Sussex Apartments Assoc., LLC*, 163 AD3d 943 [2d Dept 2018]).

Labor Law § 240 (1) protects persons engaged "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." "The task that a plaintiff is performing at the exact moment of their accident is not dispositive of whether they were engaged in a protected activity for purposes of liability under this statute" (*Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 240 AD3d 452, 453 [1st Dept 2025], citing *Prats v Port Auth. of New York and New Jersey*, 100 NY2d 878, 881 [2003]).

Instead, the court will look to whether the "plaintiff's employer was contracted to perform the kind of work enumerated in the statutes" (*id.*, citing *Gibson v Worthington Div. of McGraw-Edison Co.*, 78 NY2d 1108, 1109 [1991]). In addition, the court will look to whether the plaintiff was performing work that was "necessary and incidental to" a protected activity (*id.*, citing *Longo v Metro-N. Commuter R.R.*, 275 AD2d 238, 239 [1st Dept 2000]).

Here, because plaintiff's work in delivering and unfolding his boom to hoist plumbing materials were used in the construction of an active worksite, plaintiff's activity is deemed "necessary and incidental" to qualify as a protected activity covered by Labor Law § 240(1) (*id.* [holding that plaintiff's "delivering and unloading of tiles to be used in the activity covered by Labor Law § 240(1)" is within the class of workers to be protected]; NYSCEF # 20 at 85-92).

Moreover, while plaintiff did not directly engage in the installation or use of the delivered plumbing supplies, he was "within the class of workers protected by those statutes" (*id.*, citing *St. v Syracuse Supply Co.*, 25 NY3d 117, 125 [2015] [rejecting an interpretation of Labor Law § 240(1) that "would compartmentalize a plaintiff's activity and exclude from the statute's coverage preparatory work essential to the enumerated act"]; *see also Prats*, 100 NY2d at 882 [stating "it is

neither pragmatic nor consistent with the spirit of the statute to isolate the moment of injury and ignore the general context of the work"]; *see also Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 231 AD3d 603, 604 [1st Dept 2024] [holding that a worker washing a cement truck following a cement delivery to a construction site was covered by Labor Law § 240 (1)]).

In addition, defendants' reliance on *Kusayev*, does not apply. In *Kusayev*, plaintiff was injured while delivering building materials to an apartment building (*see Kusayev*, 163 AD3d 943 [2d Dept 2018]). The *Kusayev* court rejected a Labor Law § 240(1) claim because "plaintiff was not engaged in construction work within the meaning of Labor Law § 240 (1), and was not working in a construction area" (id.). The materials were delivered to an apartment not involved in construction at the time and the building materials were not being "readied for immediate use" (*id.*, quoting *Sprague v Louis Picciano, Inc.*, 100 AD2d 247, 250 [3d Dept 1984]). Rather, the materials were instead being "stockpil[ed] for future use" (*id.*, quoting *Parot v City of Buffalo*, 174 AD2d 1034, 1034 [4th Dept 1991] [dismissing plaintiff's Labor Law § 240 (1) cause of action because the delivery of the street light standards was not to a construction site, but was merely for stockpiling for future use]).

Here, and unlike in *Kusayev*, plaintiff delivered plumbing materials at an active construction site, rather than an apartment (*id.* at 943). Defendants further do not refute the nonexistence of construction activity where the alleged injury occurred.

Falling Object

Next, Labor Law § 240(1) applies to both "falling worker" and "falling object" cases (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). In regard to injuries arising from 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.* at 268, quoting *Rocovich v Consol. Edison Co.*, 78 NY2d 509, 514 [1991]).

"A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute" (*id.*, citing *Pope v Supreme-K.R.W. Const. Corp.*, 261 AD2d 523, 523 [2d Dept 1999]). Absolute liability for falling objects under Labor Law § 240(1) arises due to the failure to use necessary and adequate hoisting or securing devices (*see id.*).

Thus, when applying the facts of this case, the guardrail that fell on plaintiff was a material required to be secure at the time it fell, thus Labor Law § 240(1) will apply. Plaintiff's delivery of the plumbing materials and hoisting them to an elevated area constitutes as a situation where a "hoisting or securing device of the kind enumerated in the statute would have been necessary or even expected" (*id.*). Moreover, falling objects such as guardrails at a construction site is the type of risk that Labor Law § 240(1) was intended to address. Here, defendants' accident report admitted that the guardrail "was not secured to the leveler and it fe[l]l hitting the [plaintiff]" (NYSCEF # 22 at 2).

Accordingly, the absence of a necessary hoisting or securing device of the kind enumerated in Labor Law § 240(1) caused the falling of the guardrail that injured plaintiff. This was a general hazard of the workplace, one that was clearly contemplated to be subject to the protections of Labor Law § 240(1) (*see Misseritti v Mark IV Const. Co., Inc.*, 86 NY2d 487, 491 [1995]).

Accordingly, plaintiff's motion for summary judgment as to liability on his Labor Law § 240 (1) claim is granted.

Conclusion

WHEREFORE, it is hereby:

ORDERED that plaintiff Yuda Sigler's motion pursuant to CPLR 3212 for an order granting summary judgment on the issue of liability against defendants Vornado Two Penn Property, L.L.C. and Turner Construction Company for his Labor Law § 240(1) claim is granted; and it is further

ORDERED that, within 20 days from entry of this order, defendant 321 West 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.

12/4/2025
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