SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. MATTHEW PARKER-RASO **PART** 21
Justice

----------X

VICTOR ISAEL CHAVEZ ROMERO, BASIDES VERGARA ROMANO,

Plaintiff,

- v -

RELATED CONSTRUCTION LLC, COLUMBUS OFFICE LLC,CROSS MANAGEMENT CORP,

Defendant.

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INDEX NO. 33173/2019E

MOTION DATE

MOTION SEQ. NO. 3 4

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 3) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 131, 132, 133, 134, 138, 139, 144, 146, 148, 149, 150, 151, 152, 153, 154

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

The following e-filed documents, listed by NYSCEF document number (Motion 4) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 135, 137, 140, 141, 142, 143, 145, 147, 155

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

Motion sequences 003 and 004 in the above referenced matter are decided in accordance with the annexed decision and order.

This constitutes the order of the Court.

Dated: 11/24/25

Hon. MATTHEW PARKER-RASO J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☑ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

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Upon the foregoing documents, and after oral argument held June 30, 2025, the decision and order of this Court is as follows:

Plaintiffs, Victor Isael Chavez Romero ("Chavez") and Basides Vergara Romano ("Vergara") move for summary judgment on the issue of liability on their Labor Law §240(1) causes of action (Motion Seq. 003). Defendants, Related Construction LLC ("Related"), Columbus Office, LLC ("Columbus"), and Cross-Management Corp.("Cross-Management") (hereinafter, collectively referred to as "defendants") oppose the motion. Defendants also move for summary judgment dismissing the complaint in its entirety (Motion Seq. 004). Both motions are consolidated and decided in accordance with this single decision and order.

Plaintiffs commenced this action by filing a summons and complaint seeking damages for personal injuries allegedly sustained as a result of a construction accident. Defendants all appeared by answer. It is undisputed that at the time of the accident, Chavez and Vergara were both employed by non-party Alba Services, Inc. ("Alba"). Chavez was a laborer and Vergara was a

foreman. Defendant Columbus owns the premises where the accident occurred and Related was the general contractor on the job, which consisted of a renovation of the mechanical and electrical systems. Related hired Alba as the demolition sub-contractor. Plaintiffs contend that while they were inside of the raised bucket of a scissor lift dismantling an HVAC duct, one of the ropes used to secure the duct broke, causing the duct to fall and strike the scissor lift which then fell with plaintiffs still inside.

Relevant Testimony

Chavez testified that on the date of accident, Vergara directed him to an area and explained that they were going to do some cleaning to make space for the scissor lift to be operated to lower a duct (*id.* at pg. 71). Chavez testified that he never operated the scissor-lift, nor was he involved in tying the ropes, but that his job was only to go up and cut with the sawzall (*id.* at pg. 57-58). After they were done cleaning the area, Vergara instructed him to get his tools ready so they could go up and cut the supports around the duct (*id.* at pg. 79). Vergara drove the lift to him, but Chavez testified that he did not see how it was turned on (*id.* at pg. 80). The first beam was cut and lowered by using ropes and Vergara lowering the scissor lift simultaneously (*id.* at pg. 87). Chavez testified that he began cutting the second beam straight ahead of him and when he finished, the accident happened and he does not remember anything else (*id.* at pg. 89-91). Chavez testified that Vergara was the person in charge and no one else ever told him how to perform his work (*id.* at pg. 31, 50-51). He denied knowing who Vergara's boss is (*id.* at pg. 38).

Vergara confirmed that he was the foreman in charge of his crew (NYSCEF Doc. 92 at pg. 96-97) but testified that he received specific instructions from Pablo daily (*id.* at pg. 60). The chain of command was Pablo told him what to do and he would tell the crew (*id.* at pg. 78). There was another Alba crew on site, but Vergara denied remembering the name of the foreman of that crew was (*id.* at pg. 58). On the day of the accident, Vergara testified that he met with Pablo and Pablo told him to continue with the ducts and "that's it" (*id.* at pg. 83). Vergara testified that he previously removed ducts at the location with a scissor lift (id. at pg. 72) and also used chains provided by Pablo because the ducts were heavy (id at pg. 85). Vergara testified that he would always get the keys for the scissor lift from Pablo (*id.* at pg. 67-68). However, on the date of the accident, Vergara testified that he found a scissor lift with the keys already inside of it in the area where he was working and though he did not know who owned it, he took it (*id.* at pg. 124-125). There was no conversation with the workers about what had to be done because everyone already knew what to

do since they had already been doing it (*id.* at pg. 113-114). Before they started any cutting, the duct was secured (*id.* at pg. 128). One side of the duct was secured with a chain and the other side was tied to a drain pipe with ropes (NYSCEF Doc. 93 at pg. 36). There was another chain available but Vergara testified that he did not use it because he could not reach that part of the duct with the scissor lift (NYSCEF Doc. 92 at pg. 136). He had never used this securing method before, but he inspected and it met his approval (*id.*). When the last support was cut, the rope that was tied to the drain pipe broke, the duct hit the scissor lift and caused it to fall (*id.* at pg. 137). Vergara claims that he made the last cut prior to the accident after Chavez passed him the sawzall (*id.* at pg. 71). Vergara also denied that Alba had specialized crews to remove large duct work (*id.* at pg. 75-76).

Applications

Plaintiffs argue that defendants violated Labor Law §240(1) by failing to provide them with necessary and adequate safety equipment to protect them from the elevation-related hazards of their work because the scissor-lift tipped over. Plaintiffs argue in the alternative that defendants are liable under falling object liability because the HVAC duct was not properly secured, which caused it to strike the scissor lift. In opposition, defendants argue that plaintiffs were not authorized or instructed to perform the work that they were doing, that they were provided the appropriate equipment to perform the tasks that they were assigned to, and that Vergara's unforeseeable actions were the sole proximate cause of the accident, which precludes summary judgment for both plaintiffs.[1]

Defendants also move to dismiss the complaint in its entirety. Defendants argue that plaintiffs were provided with the appropriate tools and equipment to perform the tasks they were assigned to perform. Defendants further argue that Vergara's decision to use a scissor lift belonging to another company and his willful disregard of explicit instructions on the scope of work are the sole proximate cause of the accident. Defendants further argue that Vergara's actions constitute willful misconduct which severed any link to defendants and was a superseding cause of the accident.

[1] After an initial review of the moving papers, the Court directed plaintiffs' counsel to submit a memorandum of law regarding a potential conflict of interest in its representation of both plaintiffs in this matter. Counsel complied with the Court's directive and additionally submitted affidavits from each plaintiff waiving any potential conflict (NYSCEF Doc. No. 150 and 151).

In support of their motion to dismiss the complaint, defendants submit the affidavit of Alba's general foreman Paul Hidalgo ("Hidalgo affidavit"). Hidalgo confirms that Vergara was a foreman for Alba and that Chavez was a member of his crew. The Hidalgo affidavit sets forth that Hidalgo was present on the date of the plaintiffs' accident. Hidalgo affirms that he conducted a pre-task safety meeting with Alba's crews, including both plaintiffs, during which they discussed the work to be performed and the associated hazards of removing small duct work. Hidalgo further explains that after the safety meeting, he met separately with Vergara and another foreman named Ismael Gonzalez "Gonzalez" to review specific tasks for each crew. Hidalgo explains that he specifically instructed Vergara to commence demolition of the bathroom floor using chipping guns and then to remove materials on the fourth floor using the bakers scaffold due to noise restrictions in the building. The Hidalgo affidavit further sets forth that Hidalgo told Vergara that Gonzalez's crew, which was specifically trained for large duct removal and equipped with the appropriate tools for that task, were scheduled to remove the large duct on the following day. Hidalgo sets forth that he never instructed anyone to remove the large duct, never provided a key to operate the scissor lift in furtherance of that task, and further that both plaintiffs were aware that Alba had a designated crew for large HVAC duct removal because he told them so. Defendants also submit the affidavit of Mauricio Hidalgo, Alba's services foreman, who also affirms he was present for the pre-task meeting set forth above (NYSCEF Doc. 127).

Defendants also submit the affidavit of the site's senior safety consultant Randall Lockley (hereinafter, the "Lockley affidavit") (NYSCEF Doc. No.125). Lockley explains that part of his responsibilities on site were to maintain a site safety log. The Lockley affidavit sets forth that there is no record that the removal of large ventilation duct work was scheduled the night of the accident and further that the same would have required a written pre-task or safe work plan. Lockley also had no recollection of ever being advised that any such work would be taking place. Lockley affirms that he was called to the site after the accident and provided instructions to make the area safe.

Applicable Law and Analysis

The proponent of a motion for summary judgment must tender sufficient evidence in admissible form 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 Hospital*, 68 N.Y.2d 320 [NY 1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [NY 1985]). Once this showing has been

made the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material facts which require a trial of the action *(Zuckerman v. City of New York*, 49 N.Y. 2d 557 [1980]). A mere conclusory assertion devoid of evidentiary facts, is insufficient to defeat a well-supported summary judgment motion as is reliance upon surmise, conjecture or speculation (*Grullon v. City of New York*, 297 A.D.2d 261 [1st Dep't. 2002]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept. 1989]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1st Dept. 1999]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [NY 1957]).

Initially, plaintiff does not oppose the branch of defendants' motion seeking dismissal of the Labor Law §§200, 240(2), and 240(3) causes of action. Accordingly, said claims are dismissed as abandoned.

Labor Law §240(1)

Labor Law § 240(1) imposes a duty upon owners and contractors to furnish proper safety devices and protection during construction and related activities. To achieve that goal, the statute "imposes absolute liability where the failure to provide proper protection is a proximate cause of a worker's injury" (*Fabrizi v. 1095 Ave. of the Ams., L.L.C.*, 22 N.Y.3d 658, 662[2014]). Labor Law § 240(1) relates only to "special hazards" presenting "elevation-related risk[s]" (*Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509, 514 [1991]).

The Court finds that there is an issue of fact regarding what work plaintiffs were assigned and authorized to perform on the date of accident which precludes summary judgment on the §240(1) claim. Plaintiffs contend that they were injured while on a scissor lift. The Hidalgo affidavit sets forth that Hidalgo had a pre-shift meeting, which both plaintiffs attended, at which time he specifically provided instructions for work that night which did not include any reason to be on a scissor lift. Vergara's testimony also establishes that he was not given the keys to the scissor lift on that night and defendants submit what appears to be legal correspondence to Alba

from non-party DNJ Mechanical, seeking monetary damages for unauthorized use of that company's scissor lift. Both plaintiffs deny the pre-shift meeting took place, and Chavez denies even knowing who Hidalgo is. Moreover, while Vergara initially denied that he was instructed to break up the bathroom floor that night as opposed to removing the duct (NYSCEF Doc. No. 93 at 33-34), he later testified that he remembers Pablo initially instructing him to break up concrete, but that he later changed his mind (*id.* at pg. 138). Hidalgo in turn, avers that he never instructed plaintiff to remove the subject duct and affirmatively advised him that another crew with the proper equipment was scheduled to do it the following day. Vergara denies that any such crew exists, but acknowledges that there was another Alba crew on site. Based on the record as set forth above, there is an issue of fact as to whether plaintiffs were affirmatively instructed not to remove the duct that caused the accident and aware that another crew was scheduled to do so the following morning. A credibility issue may not be resolved on a motion for summary judgment. (*Art Cap. Grp., LLC v. Rose*, 149 A.D.3d 447, 448 [1st Dep't 2017]). Said issue is material since strict liability attaches under a violation of the statute for failure to provide proper safety equipment for the work being performed. Unlike the cases cited by plaintiffs, this is not a matter of failing to use an available safety device or engaging in unsafe practices. The issue here is regarding the work itself and whether the safety device would have been required at all. To the extent that plaintiffs were instructed not to remove the subject duct, Vergara's unauthorized use of another company's scissor lift may be the sole cause of the accident. However, to the extent that there was no such instruction or Vergara was provided updated instructions for the night, there can be an argument made to support a claim of comparative negligence, which is not a defense to a §240(1) claim. The Court additionally notes that it is unclear based on the testimony how the accident occurred. Chavez testified that he made the last cut before the duct collapsed, while Vergara claimed that he did. This inconsistency puts the plaintiffs' credibility in question as well. For the reasons set forth above, both motions for summary judgment on the §240(1) cause of action is denied.

Labor Law §241(6)

Labor Law §241(6) is a "hybrid" statute, as the first sentence, "reiterates the general common-law standard of care," while the second sentence imposes a nondelegable duty with respect to compliance with rules of the Commissioner which contain "specific, positive command[s]" (*Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 503–504 [1993]). Thus, an owner or general contractor, "is vicariously liable without regard to [their] fault," and "even in

the absence of control or supervision of the worksite," where a plaintiff establishes a violation of a specific and applicable Industrial Code regulation (*Rizzuto v. L.A. Wenger Contr. Co., Inc.*, 91 N.Y.2d 343, 348–350, 670 N.Y.S.2d 816, 693 N.E.2d 1068 [1998]). In addition, Labor Law § 241 (6) requires that a plaintiff establish that the violation of the safety regulation was the proximate cause of the accident (*see Gonzalez v Stern's Dep't Stores*, 211 A.D. 2d 414 [1st Dep't., 1995]).

Defendants move to dismiss the §241(6) cause of action. Plaintiff opposes dismissal of the §241(6) claim premised on §1.5(c)(3) which provides:

> "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."

Initially, this section is sufficiently specific to support a cause of action (*See Becerra v. Promenade Apartments Inc.*, 126 A.D.3d 557, 558 [1st Dep't., 2015]). Plaintiffs contend that because the rope being used as a safety device broke, the defendants fail to establish that they did not violate this section. Defendants submit no evidence on the issue and therefore fail to establish that the section was not violated. Accordingly, the branch of defendants' motion to dismiss the §241(6) claim premised on § 1.5(c)(3) is denied.

Based on the foregoing, it is hereby,

ORDERED, that plaintiffs' motion for summary judgment on the issue of liability on the Labor Law §240(1) cause of action is denied (Seq. 003); and it is further,

ORDERED, that the branch of defendants' motion for summary judgment dismissing the complaint is granted to the extent that the Labor Law §§200, 240(2), and 240(3) claims are dismissed; and it is further,

ORDERED, that the branch of defendants' motion for summary judgment dismissing the Labor Law §241(6) claim premised on a violation of §1.5(c)(3) is denied and all other predicates to the §241(6) claim are dismissed as abandoned; and it is further,

ORDERED, that the branch of defendants' motion for summary judgment dismissing the Labor Law §240(1) cause of action is denied; and it is further,

ORDERED, that defendants serve a copy of this Order with notice of entry on plaintiffs within 30 days of the entry date hereof; and it is further,

ORDERED, that the parties appear for a pre-trial conference in Part 21 on February 9, 2026 at 9:30 am.

This constitutes the decision and order of the Court.

Dated: 11/24/25 **Hon.** MPR
MATTHEW PARKER-RASO J.S.C.

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