SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M

Justice

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STEVEN CONROY,

Plaintiff,

- v -

BOP NE LLC,BOP NE TOWER LESSEE LLC,BOP NE TOWER LESSEE LLC C/O BROOKFIELD FINANCIAL PROPERTIES, L.P., BROOKFIELD FINANCIAL PROPERTIES, L.P., BOP NE TOWER LESSEE LLC C/O BROOKFIELD OFFICE PROPERTIES INC.,BROOFIELD OFFICE PROPERTIES INC.,TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, SAFWAY ATLANTIC, LLC,PLATFORM SOLUTIONS INC.

Defendant.

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INDEX NO. 155251/2021

MOTION DATE 12/05/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 were read on this motion to/for JUDGMENT - SUMMARY.

FACTUAL BACKGROUND

This action arises out of an incident that occurred on December 20, 2018 at 401 Ninth Avenue, New York, New York, a commercial construction project owned by the Brookfield-related entities and managed by Tishman Construction Corporation of New York. Safway Atlantic, LLC supplied hoisting equipment on the project. Plaintiff was employed onsite by non-party EJ Electric Installation Co. as a union electrician.

On the date of the accident, plaintiff had taken a temporary personnel hoist to the 53rd-floor landing while transporting a loaded cart containing electrical materials weighing approximately 300 pounds. Plaintiff testified that as he attempted to push the cart from the hoist car onto the exterior platform, the front wheels dropped into a gap of approximately three to four

inches between the hoist car and platform, causing the cart to tip and spill materials, propelling him forward to the landing where he fell.

Plaintiff further testified that no steel bridge plate was present at the hoist, despite his experience that such plates are standard and operator-installed before unloading materials.

Defendants dispute plaintiff's description of the accident, relying on a Tishman incident report and a Medcor medical care note completed on the date of the occurrence. Those documents record plaintiff as reporting that he stepped backward and fell over boxes while cleaning up spilled materials.

No affidavit has been provided by the hoist operator or any witness to the accident. The parties also dispute whether a bridge plate was required, available, customarily used at this hoist, or missing at all. While plaintiff points to contractual provisions requiring the supply and maintenance of bridge plates, defendants deny any statutory violation and maintain plaintiff was the sole cause of his fall.

Plaintiff, in Motion Sequence 002 moves for summary judgment pursuant to Labor Law § 240(1) and 241(6). Defendants cross-move for summary judgment on those same causes of action.

At oral argument on September 30, 2025, plaintiff voluntarily withdrew his Labor Law § 200 and common-law negligence claims.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence 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 Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no

disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Labor Law §240(1) states "All contractors and owners and their agents…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."

The statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). "[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

"To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries. The burden then shifts to the defendant to raise a triable issue of fact" (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). "The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass

any and all perils that may be connected in some tangential way with the effects of gravity" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

"Labor Law § 240(1) applies to both 'falling worker' and 'falling object' cases." (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68 [2001]). With respect to 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. *quoting Rocovich v Consol. Edison Co.,* 78 NY2d 509, 514 [1991]).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 (1992)). Here, plaintiff's claim under Labor Law §241(6) is based on violation of Industrial Codes 23-1.5(c); 23-1.7(e)(1) & (2); 23-7.1(b) and 23-9.2(a) as follows:

i) 23-1.5(c)

(c) Condition of equipment and safeguards.

(1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.

(2) All load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon.

(3) 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.

ii) 23-1.7(e)(1) & (2);

(e) Tripping and other hazards.

(1) Passageways. All passageways shall be kept free from … obstructions or conditions which could cause tripping…

(2) Working areas. The parts of floors, platforms, and similar areas where persons work or pass shall be kept free from accumulations of dirt and

debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

iii) 23-7.1(b);
(b) Maintenance. Personnel hoisting equipment shall be maintained in good repair and in proper operating condition at all times. Inspections of such equipment shall be made with such frequency as to insure such maintenance and operation.

iv) 23-9.2(a);
(a) Maintenance. All power-operated equipment shall be maintained in good repair and in proper operating condition at all times. Sufficient inspections of adequate frequency shall be made of such equipment to insure such maintenance. Upon discovery, any structural defect or unsafe condition in such equipment shall be corrected by necessary repairs or replacement. The servicing and repair of such equipment shall be performed by or under the supervision of designated persons. Any servicing or repairing of such equipment shall be performed only while such equipment is at rest.

DISCUSSION

Labor Law §240(1)

First, there is conflicting evidence regarding the nature and mechanism of the accident. Plaintiff testified that the front wheels of a heavily loaded materials cart became lodged in a 3–4 inch gap between the hoist and exterior platform, causing the cart to tip, spill its contents, and propel him forward where he fell.

In contrast, both the Tishman incident report and the Medcor medical note contemporaneously recorded plaintiff as stating he tripped after stepping backward and fell over boxes while cleaning up.

These conflicting descriptions raise a clear question of fact as to whether gravity-related forces acting on a falling object caused the injury, or whether the accident resulted from an ordinary trip over ground-level objects unrelated to an elevation hazard. Compounding this dispute, the record contains no affidavit from any eyewitness, including the hoist operator who

was present, leaving the mechanism of the accident to credibility determinations inappropriate for resolution on summary judgment.

Second, factual disputes exist as to whether a bridge plate was required, whether one was customarily used at this location, and whether the absence of a plate was a proximate cause of the accident. Although plaintiff testified that plates are standard and tethered to the hoist, the record does not conclusively establish whether a plate was typically used on this hoist, whether one was available but not deployed, or whether its use was the responsibility of the operator, a subcontractor, or plaintiff's employer, EJ Electric.

These factual uncertainties bear directly on whether a statutory safety device was absent and whether defendants breached a nondelegable duty under § 240(1). Accordingly, credibility issues, conflicting documentary evidence, and unresolved questions of proximate causation render summary judgment inappropriate.

Both plaintiff's and defendants' motions are therefore denied as to Labor Law § 240(1).

Labor Law §241(6)

Labor Law §241(6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection to workers, contingent upon establishing a violation of a specific, applicable Industrial Code provision that proximately caused the accident (*Ross v Curtis-Palmer Hydro-Electric Co.,* 81 NY2d 494, 501 [1993]).

Plaintiff pleads violations of Industrial Code §§ 23-1.5(c); 23-1.7(e)(1) & (2); 23-7.1(b) and 23-9.2(a).

A. 12 NYCRR § 23-1.5(c)

Subsection (c), which requires equipment to be in good repair and safety devices to be operable, has been found to be sufficiently specific to support a claim for liability pursuant to

Labor Law §241(6). (*Becerra v Promenade Apartments Inc.*, 126 AD3d 557, 559 [1st Dept 2015]).

The subcontract between Tishman and Safway references the use and maintenance of bridge plates. However, there is a factual dispute as to whether the hoist landing where plaintiff was injured was designed or routinely operated with a bridge plate in place. No witness other than plaintiff testified to the expected practice for this particular hoist, and defendants have not conceded a plate was missing or required. Thus, whether a mandatory safety device was absent, and whether that absence was a substantial factor in causing the accident, remains a disputed factual issue.

B. 12 NYCRR § 23-1.7(e)(1) and (2)

Subsections (e)(1) and (e)(2) require passageways and working areas be kept free of tripping hazards.

The record establishes that this hoist landing was routinely used by workers to move tools and materials from the hoist car onto the 53rd-floor platform. During the plaintiff's deposition, he testified that this was the means of ingress and egress each time he transported electrical materials for EJ Electric to upper levels, including on the date of the accident. Likewise, the subcontract agreements demonstrate that hoist landings were intended as the primary route for moving personnel and materials. Accordingly, the hoist landing constituted a "passageway" within the meaning of § 23-1.7(e)(1). (*see Sancino v Metro. Transportation Auth.*, 184 AD3d 534 [1st Dept 2020]).

Plaintiff asserts that he tripped over scattered materials created by the cart spill and therefore the hoist landing constituted a passageway with prohibited debris. Plaintiff's testimony supports that narrative; however, the Tishman incident report and Medcor record document

plaintiff stating he stepped backward and tripped over a box that had been behind him while he was gathering materials. Thus, it is unclear whether the boxes and debris were present before plaintiff reached the hoist landing or created solely by plaintiff's own handling of the cart. These uncertainty raises a factual issue as to whether debris in the passageway was a product of defendants' conduct or an incidental part of plaintiff's own work, which would fall outside § 23-1.7(e).

Plaintiff's testimony related to his alleged fall caused by the gap between hoist car and platform also raises issues of fact as to the condition of the subject passageway. As such, issues of fact remain precluding summary judgment as to this subsection.

C. 12 NYCRR §§ 23-7.1(b) and 23-9.2(a)

Plaintiff claims that the hoist was not properly maintained because it stopped above an uneven platform. Yet, the record lacks technical evidence that the hoist was malfunctioning, improperly installed, or out of repair. No maintenance records were submitted. No expert opined on whether the elevation differential or the presence or absence of a plate constituted a code violation. Without such proof, the trier of fact must determine whether the stop position of the hoist reflected an equipment defect, a normal operational state, or a condition requiring remediation. As such, issues of fact remain which preclude summary judgment related to alleged violations of 12 NYCRR §§ 23-7.1(b) and 23-9.2(a).

As such, issues of fact remain as to all alleged sections of the Industrial Code, which precludes summary judgment for Plaintiff and Defendants pursuant to Labor Law §241(6).

Accordingly, it is hereby:

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

ORDERED that defendants' cross-motion for summary judgment is denied; and it is further

ORDERED that plaintiff's claims under Labor Law § 200 and common-law negligence are deemed withdrawn pursuant to plaintiff's representation on September 30, 2025.

The foregoing constitutes the decision and order of the court.

12/11/2025
DATE

LESLIE A. STROTH, J.S.C.

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