SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ADHAMHIAN O'DOCHARTAIGH,

Plaintiff,

- v -

NEW LINE STRUCTURES AND DEVELOPMENT, LLC,TERMINAL FEE OWNER, L.P., L & L HOLDING COMPANY, COLUMBIA PROPERTY TRUST

Defendant.

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INDEX NO. 151321/2023

MOTION DATE 10/28/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

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

Defendants New Line Structures and Development, LLC, Terminal Fee Owner L.P., L&L Holding Company, and Columbia Property Trust's motion pursuant to CPLR 3212 seeking for an order granting summary judgment dismissing plaintiff's complaint in its entirety (NYSCEF # 23) and plaintiff Adhamhian O'Dochartaigh's cross-motion seeking an order granting partial summary judgment holding defendants New Line Structures & Development, LLC, and Terminal Fee Owner L.P., liable for violation of Labor Law § 240(1) (NYSCEF # 38) are determined as follows:

Background

Plaintiff sustained injuries when he allegedly fell from a ladder from approximately the height of eight feet (NYSCEF # 39 at 1). Plaintiff worked for D.W. Interiors, which was previously known as Deadwood Construction (NYCEF # 40 at ¶ 5). D.W. Interiors was a subcontractor hired to perform carpentry work, but had assumed responsibility for work on beams and columns (NYSCEF # 39 at 3). At the time of his accident, plaintiff was attempting to install metal pieces

known as "90's" into a column while standing on top of the ladder (NYSCEF # 40 at ¶ 8-9). After a failed initial attempt, plaintiff tried to hit the 90 into place once or twice again, at which point the ladder toppled over and plaintiff fell to the floor (*id.* at ¶ 9). Defendants Terminal Fee Owner L.P. ("Terminal") owned the construction premises and contracted New Line Structures Development, LLC ("New Line") to be the construction manager and general contractor for the project (NYSCEF # 31 at 9; NYSCEF # 39 at 3).

On October 28, 2024, defendants filed a motion pursuant to CPLR 3212 seeking summary judgment dismissing plaintiff's complaint in its entirety and with prejudice (NYSCEF # 23). Plaintiff opposes defendants' motion and cross-moves for partial summary judgment (NYSCEF # 38).

Discussion

Recalcitrant Worker Defense

"While it is well settled that an injured worker's contributory negligence is not a defense to a Labor Law § 240(1) claim, the "recalcitrant worker" defense may allow a defendant to escape liability under section 240(1)" (*Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 562 [1993]).

The recalcitrant worker defense requires a showing of the "injured worker's *deliberate refusal* to use available and visible safety devices in place at the work station" (*Harris v Rodriguez*, 281 AD2d 158 [1st Dept 2001] [reinstating plaintiff's Labor Law §§ 240(1) and 241(6) claims because there was no evidence that plaintiff deliberately refused to use a safety device], citing *Powers v Lino Del Zotto and Son Builders Inc.*, 266 AD2d 668, 669 [3d Dept 1999]).

Thus, it is insufficient to merely provide a showing that the worker failed to comply with an employer's instruction to avoid using unsafe equipment, engaging in unsafe practices, or using a particular safety device (*see Gordon*, 82 NY2d at 606 [rejecting a recalcitrant worker defense

based on defendants' claim that plaintiff was repeatedly instructed to use a scaffold, not a ladder, when sandblasting railroad cars]).

In addition, an instruction by an employer or owner to avoid using unsafe equipment or engaging in unsafe practices is not equivalent to refusing to use available, safe, and appropriate equipment (*see id.*, citing *Stolt v Gen. Foods Corp.*, 81 NY2d 918, 920 [1993]). Rather, it must be shown that the "injured worker refused to use the safety devices that were provided by the owner or employer" (*Stolt*, 81 NY2d at 920; *see Hagins v State*, 81 NY2d 921, 922 [1993] [holding the State's allegations that claimant had repeatedly been told not to walk across the abutment are not alone sufficient to create a triable issue of fact under the "recalcitrant worker" doctrine]). Thus, an employer instructing a worker to avoid using unsafe equipment or engaging in unsafe practices is not itself a "safety device" (*Stolt*, 81 NY2d at 920). Furthermore, evidence of such instructions by itself does not create an issue of fact sufficient to support a recalcitrant worker defense (*see Gordon*, 82 NY2d at 563).

Here, defendants assert that plaintiff's "own negligence and recalcitrance was the sole proximate cause of his accident" (NYSCEF # 24 at 3). Moreover, defendants' claim rests on their contention that plaintiff was allegedly given "repeated instructions by his foreman" to not use a ladder when using a 15 to 20 pound sledge hammer (*id.* at 3, 5). Rather, defendants claim that plaintiff should have used a scissor lift since those devices were available at the time of plaintiff's accident (*id.* at 5-6). In addition, Caimin Clancy, who was New Line's construction super, testified that plaintiff should not have been using a ladder (NYSCEF # 31 at 43). Instead, a scissor lift would have been the "correct piece of equipment" (*see id.*).

While plaintiff may not have used the correct equipment, plaintiff's action would not qualify as a deliberate refusal to warrant a recalcitrant worker defense (*see Stolt*, 81 NY2d at 920; *see also Hagins*, 81 NY2d at 923).

Here, defendants cannot rely on plaintiff's own negligence in using a ladder instead of a scissor lift to qualify as a "supervening cause" of plaintiff's injuries (*Hagins*, 81 NY2d at 923). Moreover, defendants failed to provide sufficient evidence that plaintiff deliberately refused instructions (*see Stolt*, 81 NY2d at 920). Accordingly, defendants' assertion of the recalcitrant worker defense does not apply.

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" constitutes 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).

"The failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law" (*Cherry v Time Warner, Inc.*, 66 AD3d 233, 235-36 [1st Dept 2009], citing *Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 520 [1985]). Thus, "[i]n order for a plaintiff to demonstrate entitlement to summary judgment on an alleged violation of Labor Law § 240(1), he must establish that there was a violation of the statute, which was the proximate cause of the worker's injuries" (*see id.* at 36; *see also Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 289 [2003])

Here, plaintiff made a prima facie showing that his injuries were proximately caused by a violation of Labor Law § 240(1) through his testimony (NYSCEF # 29 at 110). Plaintiff testified that "the ladder moved and I went, my feet went forward and my right leg, I landed on the right leg, heel of the right leg and hit the ground" (*id.*). In addition, plaintiff's fall from the ladder was corroborated by plaintiff's coworker Stephens Archer's testimony (NYSCEF # 30). Archer

testified that he found plaintiff lying on the floor and stated that "the ladder was on the floor. [T]he ladder was laying on the ground" (*id.* at 25).

Accordingly, plaintiff has made a prima facie showing for his Labor Law § 240(1) claim by demonstrating that his falling from a ladder was a gravity-related risk against which defendants failed to provide adequate protection (*see Barreto v Bd. of Managers of 545 W. 110th St. Condominium*, 234 AD3d 515, 516 [1st Dept 2025]; *see also Loaiza v Museum of Arts and Design*, 228 AD3d 511, 512 [1st Dept 2024]). Here, plaintiff's injury arose from falling off a ladder while performing construction work (NYSCEF # 29 at 110). The alleged unsecure ladder contributed to plaintiff's fall and injury (*see id.*). Whether or not the plaintiff could have used a better safety device such as a scissor lift would not change the court's analysis (NYSCEF # 31 at 43).

Defendants' argument that plaintiff was the sole proximate cause of his incident by choosing to utilize the wrong equipment is unavailing (*see id.*). Such acts by plaintiff would at most merely qualify as comparative negligence, which is not a defense to a Labor Law 240(1) claim (*see Barreto*, 234 AD3d at 516 [holding that "plaintiff's testimony that he properly positioned the rope grab above his head prior to the accident, would support the conclusion that plaintiff was, at most, only comparatively negligent"]; *see also Morales v 2400 Ryer Ave. Realty, LLC*, 190 AD3d 647, 647 [1st Dept 2021]; *see also Encarnacion v 3361 Third Ave. Hous. Dev. Fund Corp.*, 176 AD3d 627, 628 [1st Dept 2019]).

Accordingly, plaintiff's cross-motion under Labor Law 240(1) is granted, and defendants' motion to dismiss plaintiff's Labor Law 240(1) claim is denied.

Labor Law §§ 241(6), 200, Common Law Negligence

In his papers, plaintiff asserts that he "does not oppose the dismissal of the claims pursuant to Labor Law §§ 200 and 241(6), or common law negligence (NYSCEF # 39 at 10). Therefore, defendants' motion to dismiss those claims are granted.

Conclusion

WHEREFORE, it is hereby:

ORDERED that defendants' motion pursuant to CPLR 3212 for an order granting summary judgment dismissing plaintiff's Labor Law § 240(1) claim is denied; and it is further

ORDERED that plaintiff Adhamhian O'Dochartaigh's cross-motion pursuant to CPLR 3212 for an order granting summary judgment on the Labor Law § 240(1) claim is granted; and it is further

ORDERED that defendants' motion pursuant to CPLR 3212 for an order granting summary judgment dismissing plaintiff's Labor Law §§ 200 and 241(6) claims are granted.

This constitutes the decision and order of the court.

12/11/2025
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