SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37
Justice

----------X

FELIX MERCEDES,

Plaintiff,

- v -

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

Defendants.

----------X

INDEX NO. 155328/2022
MOTION DATE 06/16/2025
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 157, 161, 163, 169, 170, 172, 174, 181,

were read on this motion for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons set forth below, plaintiff's motion for partial summary judgment is granted.

Background

Defendants Vornado Two Penn Property, LLC and Two Penn Property, LLC, own the building located at 2 Penn Plaza, New York, NY 10001 (the "Premises"). NYSCEF Doc. No. 7. Defendant Turner Construction Company ("Turner") was the General Contractor for construction work at the premises. In 2020, Turner contracted with non-party Breeze National Inc. ("Breeze") to engage in a construction project that included demolition work at the Premises (the "Project"). NYSCEF Doc. No. 95.

The instant action arises from an alleged June 18, 2022, accident in which plaintiff, Felix Mercedes ("Mercedes"), a Local 79 Union Laborer working for Breeze, sustained serious personal injuries, which he claims were "gravity related" while performing demolition work. NYSCEF Doc. No. 91. Plaintiff was instructed to work with co-workers to take down marble columns from the 5th floor and bring them down to the 4th floor of the Premises. Id. Plaintiff alleges that he and a foreman, Pablo Juela ("Pablo"), were "lowering a marble column that was rigged to a Bobcat Machine[1] using a cable and hook" when "the cable broke off[,] causing the marble column, which was being moved at Plaintiff's head height, to become dislodged and descend onto Plaintiff[,] striking him in his face." Id. Plaintiff further alleges that he was also

[1] Plaintiff explains that a Bobcat Machine "is a yellow construction vehicle about the size of a car." NYSCEF Doc. No. 91.

struck in the face by the cable when it broke, and that when he was struck in the face, he fell to the ground, landing on debris. Id.

On June 24, 2022, plaintiff commenced the instant action. NYSCEF Doc. No. 1. On September 7, 2022, plaintiff filed a verified amended complaint, asserting the following five causes of action: (1) negligence (2) violation of Labor Law § 200; (3) violation of Labor Law § 240; (4) violation of Labor Law § 241(6); and (5) violation of Rule 23 of the Industrial Code. NYSCEF Doc. No. 7.

On September 26, 2022, defendants filed a verified answer with a general denial and eighteen affirmative defenses. NYSCEF Doc. No. 17.

On May 29, 2025, plaintiff moved, pursuant to CPLR 3212, for partial summary judgment against defendants, on the issue of liability under Labor Law § 240(1). NYSCEF Doc. No. 90.

In support of the motion, plaintiff contends, inter alia, that "the marble column rigged by a cable, hook and choker was obviously an object that required securing" and was "inadequately" secured, as it snapped "off its chain" and caused the marble column to fall. NYSCEF Doc. No. 91.

Plaintiff further argues that it is of no consequence that his testimony states "a slightly different version" of the accident than defendants' incident report, which states that a "worker [was] lowering precast panels to the ground with a chain fault[.] [T]he choker being used slipped off the panel and jumped…the shackle and hook hit him above the eye" (NYSCEF Doc. No. 99). Id. (However, plaintiff has made out a prima facie case for summary judgment under either scenario). Plaintiff points to DeGidio v City of New York, 176 AD3d 452, 453 (1st Dept. 2019), where the First Department noted that "[w]hile plaintiff's testimony at his deposition varied somewhat from his 50–h testimony, he repeatedly cautioned that the accident happened so fast it was difficult for him to describe exactly how it occurred[,]" and ruled that "no matter which version is accepted[,]" Labor Law § 240(1) applied to the defendants.

Additionally, plaintiff argues that defendants' incident report evidences that "the panel indeed was not rigged correctly and therefore adequate safety devices were not in place so as to prevent Plaintiff from gravity related harm." Id. Plaintiff testified that the column was approximately 20-feet in length, and notes that Matthew Miranda, an employee of Turner, testified that it was approximately 10 to 15-feet in length (NYSCEF Doc. No. 98). Id.

In opposition, defendants argue, inter alia, that: plaintiff's alleged accident did not involve any significant height differential; he did not fall from a height and was not struck by a falling object; and rather, was struck by a cable that swung upwards and therefore was not a height related hazard as contemplated by Labor Law § 240(1). NYSCEF Doc. No. 144.

Additionally, defendants argue that there are issues of fact precluding summary judgment, citing to an affidavit from Pablo (NYSCEF Doc. No. 146). Pablo attested that he worked with plaintiff to lift the slab "using the choker and cable which were attached to a chain fall device." NYSCEF Doc. No. 144. Pablo recalled that at the time the choker struck plaintiff, "the slab was only a

few inches above the dolly." NYSCEF Doc. No. 146. at ¶ 10. Additionally, Pablo recalled that the choker did not break but "came loose and struck" plaintiff. Id. at ¶ 9. The Court notes that Pablo refers to what plaintiff has called marble columns as "slabs of concrete" and also that Pablo asserted that "the choker came loose because a portion of the concrete broke." Id.

Defendants contend that based on their incident report and Pablo's affidavit, plaintiff's injuries did not result from the effects of gravity, as "there was no significant height differential between plaintiff and the cable, nothing fell on plaintiff, nor was the plaintiff struck by the load that was hoisted." NYSCEF Doc. No. 146.

Additionally, defendants dispute plaintiff's claim that "the column weighed over 1,000 pounds and [that he had] placed it on [his] shoulders which [it] fell on him[,]" which defendants argue defies logic and credibility. Id. Defendants point to the photograph of plaintiff's face after the accident (NYSCEF Doc. No. 101), showing a cut on the corner of his eye; defendants argue that this supports defendants' version of the facts. Id.

Defendants also cite to the IME report of Dr. Saran Rosner, in which Dr. Rosner opined that plaintiff's description of the alleged accident and subsequent injuries was "inconsistent." NYSCEF Doc. No. 150 at 19.

In reply and further support, plaintiff contends, inter alia, that nothing in defendants' opposition papers controverts defendants' liability under Labor Law § 240(1). NYSCEF Doc. No. 152.

Discussion

"[A] Labor Law section 240(1) inquiry cannot focus simply on whether the provided safety devices malfunctioned, but must also examine whether the safety devices that were provided operated so as to give proper protection." Harris v City of New York, 83 AD3d 104, 111 (1st Dept. 2011) (internal citations and quotation marks omitted). Cf. Gallegos v Bridge Land Vestry, LLC, 188 AD3d 566 (1st Dept. 2020).

> [P]laintiff was exposed to an elevation-related hazard when he was instructed to pry from the wall an 80–pound, three-foot-high by five-foot-wide by one-foot-deep electrical panel that was positioned six or seven feet above the ground, and lower it to the floor. He was thereby engaging in an activity covered by § 240(1). Such an activity clearly posed a significant risk to plaintiff's safety due to the position of the heavy electrical panel above the ground, even if such elevation differential was slight, and was thus a task where a hoisting or securing device of the kind enumerated in the statute was indeed necessary and expected precisely because the object was too heavy to be hoisted or secured by hand.

Cardenas v One State St., LLC, 68 AD3d 436, 437 (1st Dept. 2009) (internal citations omitted).

"The relevant inquiry … is whether the harm flows directly from the application of the force of gravity to the object[,]" even in cases where the object did not fall on the worker. Runner v New York Stock Exch., Inc., 13 NY3d 599, 604 (2009). Additionally, "the weight of the falling object "and the amount of force it was capable of generating, even over the course of a relatively

short descent" must be taken into account." Harris v City of New York, 83 AD3d 104, 110 (1st Dept. 2011) (internal quotation marks omitted).

Here, plaintiff was exposed to an elevation-related hazard, even if the elevation differential was slight, when he was instructed to lower large heavy marble a column/concert slab from the 5th floor to the 4th floor of the Premises, using a hoisting or securing device. Plaintiff was thereby engaging in an activity covered by Labor Law § 240(1).

This Court finds that defendants' opposition fails to raise any triable issues of material fact.

Plaintiff has demonstrated a prima facie entitlement to summary judgment on defendants' liability pursuant to Labor Law § 240(1) by submitting evidence that: plaintiff suffered a gravity related harm when hoisting a heavy marble column from an elevated height; and at the time of the alleged accident, plaintiff was not protected with an adequate safety device (i.e. hoisting or securing device), such as a cable or choker that could withstand the weight of the column/slab, to prevent the subject cable from breaking and striking plaintiff.

That defendants dispute the weight plaintiff approximated for the column/slab (of at least 1,000 pounds), and that defendants contend plaintiff was struck in the face only by the cable (when it "came loose") and not by the column/slab, is immaterial; as the column/slab was demonstrably heavy and either version of events renders defendants liable. While it is less clear whether plaintiff was also struck by the column/slab, it is undisputed that the cable struck plaintiff.

These facts are sufficient to demonstrate that defendants are liable under Labor Law § 240 (1) and that defendant's failure to provide plaintiff with an adequate hoisting or securing device was a proximate cause of plaintiff's injuries. The subject accident falls squarely within the ambit of Labor Law § 240(1).

This Court has considered defendants' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, the motion of plaintiff, Felix Mercedes, for partial summary judgment is hereby granted. The Clerk is hereby directed to enter a judgment in favor of plaintiff declaring that defendants, Vornado Two Penn Property, LLC, Two Penn Property, LLC, and Turner Construction Company violated Labor Law § 240(1) and proximately caused plaintiff's June 18, 2022, accident and thus are liable to plaintiff thereunder.

HON. ARTHUR F. ENGORON

12/12/2025
DATE

ARTHUR F. ENGORON, 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