SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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DOMENICO FRANCOMANO, PATRICIA CERCHIARA-FRANCOMANO

Plaintiff,

- v -

RP1185 LLC,LEND LEASE (US) CONSTRUCTION LMB INC.,

Defendant.

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INDEX NO. 154601/2022

MOTION DATE 07/07/2025, 08/11/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 48, 50, 61, 62, 63, 64, 65, 66

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67, 68, 69, 70, 71

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

Plaintiffs Domenico Francomano and Patricia Cerchiara-Francomano's motion pursuant to CPLR 3212 seeking for an order granting summary judgment against defendants under Labor Law § 240(1) (NYSCEF # 25) and defendants RP1185 LLC ("RP1185") and Lease Lease (US) Construction LMB Inc.'s ("Lend Lease") motion seeking for an order granting summary judgment dismissing plaintiffs' complaint (NYSCEF # 37) are determined as follows:

Background

Plaintiff Domenico Francomano sustained injuries when he allegedly fell from a ladder (NYSCEF # 28 at 114). At the time of his accident, plaintiff was employed by Spectrum, which had been contracted to perform decoration and to apply venetian plaster (*id.* at 54). Plaintiff was hired to apply venetian plaster to the ceilings at the site (*see id.* at 47, 53-54, 59). Defendant RP1185 owned the construction premises and contracted with Lend Lease to serve as the

construction manager and general contractor for the project (NYSCEF # 46 at 1). Antonio Corso, the site safety manager for the project, testified that a "[c]onstruction manager basically oversees the work that the subcontractors are doing, making sure it's done on time and built as per drawings" (NYSCEF # 29 at 16). Corso further testified that Lend Lease employed six superintendents on site, and that one superintendent was assigned to oversee Spectrum's work (*see id.* at 22, 24-25).

Discussion

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, 459-61 [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 [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 # 28 at 116). Plaintiff testified that, when descending the ladder, "[t]he ladder started to [shake], and I f[e]ll on the ground, and the ladder f[e]ll on top of my right shoulder" (*id.* at 116).

Plaintiff's account of the fall was corroborated by Martin Quinones' affirmation (NYSCEF # 34). Mr. Quinones stated that he observed plaintiff performing work on the same floor and further

noted that "[t]he floor of the room was poured concrete, but portions of the floor was patchy and uneven" (NYSCEF # 34 ¶ 3). He further stated:

> "Just before the accident I was working approximately 3 to 5 feet away. Suddenly, I heard Mr. Francomano fall to the floor from the ladder and he screamed out in pain. I immediately went over to him to see if he was okay and saw that the ladder had fallen over on its side. After he got up, I noticed the area of the floor where his ladder was and all along the wall he was working on was uneven. The unevenness of the floor extended several feet away from the wall" (*id.* at 1-2).

Further supporting plaintiff's claim, defendants' own "Incident Report" documents that plaintiff fell from a ladder (NYSCEF # 33).

Accordingly, plaintiff has established a prima facie entitlement to relief under Labor Law § 240(1) by demonstrating that his injuries resulted from a gravity-related risk, 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 # 28 at 116). Moreover, it is undisputed that no equipment was provided to plaintiff to guard against the risk of falling from the ladder, despite plaintiff's assertion that the ladder would be placed on uneven flooring (*id.* at 107). Plaintiff testified that he notified his supervisor, Marcin, that he required different equipment due to safety concerns related to the uneven flooring; however, plaintiff testified he did not receive a response (*id.* at 94).

Under these circumstances, plaintiff's testimony that he fell from the ladder while installing venetian plaster established a prima facie entitlement to summary judgment on the issue of liability under his Labor Law § 240(1) claim (*see Caceres v Std. Realty Assoc., Inc.*, 131 AD3d 433, 434 [1st Dept 2015] [finding plaintiff's testimony that he fell from the ladder while performing drilling

work established prima facie entitlement to summary judgment on plaintiff's Labor Law § 240(1) claim]; *see also Ross v 1510 Assoc. LLC*, 106 AD3d 471 [1st Dept 2013] [finding plaintiff was entitled to his Labor Law § 240(1) claim based on plaintiff falling from a ladder because of the unevenness of the floor and defendants failed to provide proper protection]; *see also Dwyer v Cent. Park Studios, Inc.*, 98 AD3d 882, 883 [1st Dept 2012] [granting summary judgment on the issue of liability under Labor Law § 240(1) due to plaintiff's injury from falling off a ladder when installing sheetrock]).

Here, "defendants failed to raise a triable issue of fact concerning the manner in which the accident occurred or whether the ladder provided adequate protection" (*Caceres*, 131 AD3d at 434). Any arguments that plaintiff caused his own injuries would at most establish 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]).

Defendants' contention that the affidavit of Martin Quinones is inadmissible does not alter the courts determination of plaintiff's Labor Law § 240(1) claim (NYSCEF # 61 at 3-4; NYSCEF # 67 at 2-3). Even assuming, arguendo, that the court were to disregard Mr. Quinones affidavit describing the uneven floor and the circumstances of plaintiff's injury, defendants' own "Incident Report" independently establishes that plaintiff fell off a ladder while performing construction work (NYSCEF # 33).

Accordingly, plaintiff's 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 "Affirmation In Opposition" papers, plaintiff stated that he "withdraws its claims under Labor Law §200 and 241(6)" (NYSCEF # 51 at 1). Therefore, defendants' motion to dismiss those claims are granted.

Conclusion

WHEREFORE, it is hereby:

ORDERED that plaintiffs' 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 § 240(1) claim is denied; and it is further

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

This constitutes the decision and order of the court.

12/17/2025
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