C

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: **HON. ASHLEE CRAWFORD** **PART** **21**

Justice

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ELIEZER VALDEZ,

Plaintiff,

- v -

LIC SITE B-1 OWNER, L.L.C. and NEW LINE STRUCTURES AND DEVELOPMENT LLC,

Defendants.

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INDEX NO. 25420/2020E

MOTION DATE 07/09/2024, 07/09/2024

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 106-119, 142-156, 162.

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 120-141, 157-161, 163-164.

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

Upon the foregoing documents, it is

Plaintiff Eliezer Moises Valdez moves pursuant to CPLR 3212 for summary judgment against defendants LIC Site B-1 Owner, L.L.C. and New Line Structures and Development LLC on his Labor Law § 240(1) claim (motion seq. 002). Defendants oppose and move for summary judgment dismissing plaintiff's complaint, including the claims under Labor Law §§ 240(1), 241(6), 200 and for common law negligence. Plaintiff opposes (motion seq. 003).

Motion sequence numbers 002 and 003 are consolidated for disposition herein.

BACKGROUND

On July 7, 2018, plaintiff was injured while loading wooden beams onto a truck at a construction site at 28-07 Jackson Avenue, Long Island City, New York. At the time of the accident, defendant LIC Site B-1 Owner, L.L.C. was the owner of the property and defendant

New Line Structures and Development LLC was the construction manager. New Line contracted with non-party Casino Development Group Inc. to perform concrete superstructure work; Casino in turn subcontracted plaintiff's employer, non-party Monolithic Contracting Inc., to perform drywall and carpentry work.

According to plaintiff, while he was carrying a 16-foot beam towards the back of a truck to be loaded, an unsecured beam leaning against the truck in a standing position fell over and struck plaintiff, injuring him. (Pl. Tr. at 35:16-39:5 [NYSCEF Doc. 114]). The beam weighed 60 pounds (Valdez Aff. ¶ 3 [NYSCEF Doc. 117]).

DISCUSSION

A party seeking summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]).

I. Labor Law § 240(1)

Labor Law § 240(1) provides in relevant part that where a building is being erected, demolished, repaired, or altered, contractors and owners "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 upon owners, contractors and their agents a nondelegable duty that renders them liable regardless of whether they supervise or control the work" (Barreto v Metropolitan Transp. Auth., 25 NY3d 426, 433 [2015]). "[W]here an accident is caused by a violation of the statute, the plaintiff's own negligence does not furnish a defense; however, where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability" (id. [internal quotation marks omitted]). "Thus, in order to recover under section 240 (1), the plaintiff must establish that the statute was violated and that such violation was a proximate cause of his injury" (id.). Labor Law § 240(1) is to be liberally construed so as to accomplish its legislative purpose of protecting workers (Stoneham v Joseph Barsuk, Inc., 41 NY3d 217, 221 [2023]; Rocovich v Consolidated Edison Co., 78 NY2d 509, 513 [1991]).

"Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1)" (Narducci v Manhasset Bay Assoc., 96 NY2d 259, 267 [2001]). "[L]iability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (id., citing Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]).

"In order to prevail on summary judgment in a section 240(1) 'falling object' case, the injured worker must demonstrate the existence of a hazard contemplated under that statute and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein (Fabrizi v 1095 Ave. of the Americas, LLC, 22 NY3d 658, 662 [2014][internal quotation marks and citation omitted]). "Essentially, the plaintiff must demonstrate that at the time the object fell, it

either was being "hoisted or secured," or "required securing for the purposes of the undertaking" (id. [internal citations omitted]). Section 240(1) does not automatically apply simply because an object fell and injured a worker; a plaintiff must show that the object fell "because of the absence or inadequacy of a safety device of the kind enumerated in the statute" (id. [emphasis removed, citation omitted]).

"In the context of falling objects, the risk to be guarded against is the unchecked or insufficiently checked descent of the object" (Torres-Quito v 1711 LLC, 227 AD3d 113, 116 [1st Dept 2024] [citation omitted]). "It is settled law that a plaintiff establishes a prima facie entitlement to liability on a Labor Law § 240(1) 'falling object' claim where he shows that he was struck by a falling object, that such object required securing for the purposes of the undertaking, and that the lack of adequate overhead protection failed to shield against the falling of such object and therefore proximately caused plaintiff's injuries" (id.).

Plaintiff has met his *prima facie* burden for summary judgment under Labor Law 240(1). The beam required securing for the purposes of the undertaking, and plaintiff, who was not provided with a safety device in violation of the statute, was injured through the force of gravity when the beam fell on him. Defendants fail to raise an issue of fact sufficient to overcome judgment as a matter of law. Accordingly, plaintiff's motion directed to his Labor Law 240(1) claim is granted, and defendants' motion to dismiss that claim is denied.

II. Labor Law § 241(6)

Labor Law § 241(6) imposes a non-delegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety" to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 348 [1998]). To establish a claim

under Labor Law § 241(6), plaintiff must show that defendant violated an Industrial Code regulation that sets forth a specific, positive command, and is not simply a recitation of common-law safety principles (Toussaint v Port Authority of New York and New Jersey, 38 NY3d 89, 93-94 [2022]; Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 503 [1993]). Plaintiff must also establish that such violation was the proximate cause of the accident (Gonzalez v Stern's Dept. Stores, 211 AD2d 414, 415 [1st Dept 1995]).

Plaintiff opposes only the dismissal of his claim predicated on Industrial Code 12 NYCRR § 23-2.1(a)(1). All other predicates are therefore dismissed as abandoned (see Gamez v Sandy Clarkson LLC, 221 AD3d 453, 454-455 [1st Dept 2023]; Martin Assoc., Inc. v Illinois Natl. Ins. Co., 188 AD3d 572, 573 [1st Dept 2020]; Saidin v Negron, 136 AD3d 458, 459 [2016], lv dismissed 28 NY3d 1069 [2016], cert denied 583 US 842 [2017]).

Industrial Code 12 NYCRR § 23-2.1(a)(1), entitled "Maintenance and housekeeping," provides that "[a]ll building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare." This predicate is inapplicable as the beam in question was not being "stored," and rather was in the process of being moved by plaintiff (Brown v Tishman Construction Corp. of New York, 226 AD3d 529, 530 [1st Dept 2024]; Diaz v P&K Contracting, Inc., 224 AD3d 405, 407 [1st Dept 2024]; cf. Castaldo v F.J. Sciame Construction Co. Inc., 222 AD3d 579, 580 [1st Dept 2023]; Rodriguez v DRLD Dev., Corp., 109 AD3d 409, 410 [1st Dept 2013]); was not a "material pile" (Lourenco v City of New York, 228 AD3d 577, 582 [1st Dept 2024]); and was not obstructing a passageway (Diaz v P&K Contracting, Inc., supra at 407; Ormsbee v Time Warner Realty Inc., 203 AD3d 630 [1st Dept 2022]; cf. Padilla v Touro College Univ. System, 204 AD3d 415, 416 [1st Dept 2022]). Accordingly, that part of

defendants' motion to dismiss plaintiff's Labor Law § 241(6) claim predicated on a violation of Industrial Code § 23-2.1(a)(1) is granted.

III. Labor Law § 200 and Common Law Negligence

Labor Law 200 codifies the common-law duty of landowners and general contractors to maintain a safe workplace (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 505 [1993]). Claims under this statute fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises, and those arising from the manner in which the work was performed (Winkler v Halmar Intl., LLC, 206 AD3d 458, 459 [1st Dept 2022]; Cappabianca v Skanska USA Bldg. Inc., 99 AD3d 139, 143-144 [1st Dept 2012]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (Cappabianca at 144). "Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised control over the injury-producing work" (id.).

Defendants have met their burden for dismissal of plaintiff's Labor Law § 200 and common law negligence claims, as the accident did not arise out of a dangerous condition, and defendants did not exercise supervisory control over the means and methods of the work. Plaintiff has not raised an issue of fact to preclude summary judgment. Therefore, that part of defendants' motion to dismiss plaintiff's Labor Law § 200 and common law negligence claims is granted.

Accordingly, it is hereby

ORDERED that the motion by plaintiff Eliezer Moises Valdez for summary judgment on his Labor Law § 240(1) claim is GRANTED; and it is further

ORDERED that the motion by defendants LIC Site B-1 Owner, L.L.C. and New Line Structures and Development LLC for summary judgment dismissing plaintiff's complaint is GRANTED IN PART as directed to plaintiff's claims under Labor Law §§ 241(6) and 200, and for common law negligence, which claims are DISMISSED; and the motion is DENIED as directed to plaintiff's claim under Labor Law § 240(1); and it is further

ORDERED that all parties shall appear for a pre-trial conference to be calendared by the Clerk of the Court.

This constitutes the decision and order of the Court.

12/10/25
DATE

ASHLEE CRAWFORD, J.S.C.

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