At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21st day of November, 2024.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CELIO SAMANIEGO,

Plaintiff,

-against-

Index No.: 518923/2021

SUNLIGHT CONSTRUCTION AA, LLC, SUNLIGHT DEVELOPMENT, LLC, 64 ROAD LLC, and REGO TOWER 64TH ROAD CONDOMINIUM,

DECISION AND ORDER

(Motions Seq. No. 3)

Defendants.

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SUNLIGHT CONSTRUCTION AA, LLC, and 64 ROAD LLC,

Third-Party Plaintiffs,

-against-

VEHICLE STORAGE SOLUTIONS, INC.

Third-Party Defendant.

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The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Affirmation in Support/Exhibits.....	48 – 56
Affirmation in Opposition/Memorandum of Law/Exhibit.....	67 – 70
Reply Affirmation/Exhibit.....	71 – 72

Upon the foregoing papers, Plaintiff Celio Samaniego ("Plaintiff") moves for an order: (1) pursuant to CPLR 3212, granting summary judgment in Plaintiff's favor on his Labor Law § 240 claim as asserted against defendants Sunlight Construction AA, LLC ("Sunlight") and 64 Road LLC ("64 Road"); and (2) setting this matter down for a trial on damages only (Mot. Seq. No. 3).

This matter involves an accident that occurred on October 26, 2020, at a construction site at a building located at 97-29 64th Road in Queens, New York. The premises was owned by 64 Road and Sunlight was the general contractor on the project. Plaintiff was employed as a mechanic by third-party defendant Vehicle Storage Solutions, Inc. ("VSS"). Plaintiff avers that VSS was hired to produce, install and secure steel structured moving racks for parked vehicles in the parking lot within the building structure and within the basement. On the date of the accident, Plaintiff was assigned to work in the basement and was tasked to reach a hole below the basement where the carousel for the parking lift system was assembled and constructed. Plaintiff contends that a ladder was already placed within the hole and that he needed to use the ladder to reach the carousel machine. According to Plaintiff, as he descended the ladder and was approximately on the second rung, the ladder slipped. Plaintiff alleges that the ladder moved and fell on the floor and he went down after.

In his motion, Plaintiff argues that Sunlight and 64 Road failed to provide him with an appropriate ladder, in clear violation of Labor Law § 240. Plaintiff maintains that 64 Road, as the owner, and Sunlight, as the general contractor, were subject to the mandates of this statute. In addition, Plaintiff asserts that caselaw establishes that a ladder which moves constitutes a violation of the statute and that Plaintiff is not required to set forth a reason as to why the ladder moved.

In opposition, Sunlight and 64 Road contend that there are multiple issues of fact as to the ladder that Plaintiff used. According to Sunlight and 64 Road, it is possible that Plaintiff used the wrong ladder since Plaintiff testified to using an aluminum ladder when VSS only kept fiberglass ladders. Since Plaintiff testified that this was his first time using the subject ladder, Sunlight and 64 Road argue that this implies it was not a company ladder. In addition, Sunlight and 64 Road claim that there is no evidence suggesting that the ladder provided to Plaintiff was not in working order and sufficient for the work he was to perform. Instead, it was the manner in which Plaintiff descended the ladder that resulted in it moving.

In reply, Plaintiff contends that Sunlight and 64 Road's argument as to the possible existence of other ladders is irrelevant to a Labor Law § 240 claim and unsupported by caselaw. Plaintiff maintains that no one instructed Plaintiff not to use the subject ladder and he did not ignore any instruction to use some other ladder. Even if Plaintiff was supposed to use some other ladder, Plaintiff argues that this would only give rise to comparative fault which is not a defense to a Labor Law § 240 cause of action.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact'" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], citing *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *see Sucre v Consolidated Edison Co. of N.Y., Inc.*, 184 AD3d 712, 714 [2d Dept 2020]). "The proponent for the summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact" (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce admissible evidence to establish the existence of material issues of fact which require a trial for resolution (*see Gesuale v Campanelli & Assocs.*, 126 AD3d 936, 937 [2d Dept 2015]; *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 494 [2d Dept 1989]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad*, 64 NY2d at 853; *Skrok v Grand Loft Corp.*, 218 AD3d 702 [2d Dept 2023]; *Menzel v Plotnick*, 202 AD2d 558, 558-559 [2d Dept 1994]).

Labor Law § 240 (1), states, in relevant part, that:

> All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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 purpose of Labor Law § 240 (1) is to protect workers "from the pronounced risks arising from construction work site elevation differentials" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see also Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Consequently, Labor Law § 240 (1) applies to accidents and injuries that directly flow from the application of the force of gravity to an object or to the injured worker performing a protected task (*see Gasques v State of New York*, 15 NY3d 869 [2010]; *Vislocky v City of New York*, 62 AD3d 785, 786 [2d Dept 2009], *lv dismissed*

13 NY3d 857 [2009]). The statute is designed to protect against "'such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured'" (*Ross v DD 11th Ave., LLC*, 109 AD3d 604, 604-605 [2d Dept 2013], quoting *Ross*, 81 NY2d at 501).

The duty to provide the required "proper protection" against elevation-related risks is nondelegable; therefore, owners, contractors and their agents are liable for the violations even if they have not exercised supervision and control over either the subject work or the injured worker (*see Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 521 [1985] [owner or contractor is liable for Labor Law § 240 (1) violation "without regard to . . . care or lack of it"]; *see Roblero v Bais Ruchel High Sch., Inc.*, 175 AD3d 1446, 1447 [2d Dept 2019]). On a cause of action under Labor Law § 240 (1), "a plaintiff may establish prima facie entitlement to judgment as a matter of law by showing both that he or she fell from a defective or unsecured ladder, and that the defect or failure to secure the ladder was a proximate cause of his or her injuries" (*Alvarez v. 2455 8 Ave, LLC*, 202 AD3d 724, 725 [2d Dept 2022]). "A worker's comparative negligence is not a defense to a claim under Labor Law § 240 (1) and does not effect a reduction in liability" (*Roblero*, 175 AD3d at 1447, citing *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 286 [2003]; *see also Garzon v Viola*, 124 AD3d 715, 716-717 [2d Dept 2015]). "[W]here . . . a violation of Labor Law § 240 (1) is a proximate cause of an accident, the worker's conduct cannot be deemed solely to blame for it" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 696 [2d Dept 2006], citing *Blake*, 1 NY3d at 290).

In cases involving falling workers, "[w]hether a device provides proper protection is a question of fact, except when the device collapses, moves, falls or otherwise fails to support the plaintiff and his or her materials" (*Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 729 [2d Dept 2020], quoting *Melchor v Singh*, 90 AD3d 866, 868 [2d Dept 2011]). Thus, the collapse of a ladder or scaffold constitutes prima facie evidence of a Labor Law § 240 (1) violation (*see Exley v Cassell Vacation Homes, Inc.*, 209 AD3d 839, 841 [2d Dept 2022]; *Debennedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021] injuries"]).

Here, Plaintiff has established his entitlement to summary judgment on his Labor Law § 240 claim through the submission of his testimony that he was descending the ladder to get screws when the ladder moved causing plaintiff to fall off the ladder, which also fell to the floor. In opposition, Sunlight and 64 Road failed to proffer testimony or other evidence demonstrating that

Plaintiff "may not have fallen from the ladder, that the ladder was not defective, or that the ladder did not move. The evidence as to. . . the movement of the ladder established, prima facie, that the plaintiff's actions were not the sole proximate cause of the accident" (*Melchor*, 90 AD3d at 869). Their argument that there were other ladders available on site is unavailing since "[n]o evidence was offered to indicate that plaintiff . . . had been instructed to use [those] other ladder[s] as opposed to the one he chose, and that he chose to ignore his employer's instruction" (*O'Shea v. Procida Constr. Corp.*, 220 AD3d 622, 624 [1st Dept 2023]).

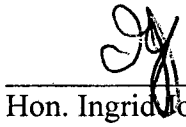
To the extent not specifically addressed herein, the parties' remaining contentions and arguments were considered and found to be without merit and/or moot.

Accordingly, it is hereby

ORDERED that Plaintiff's motion (Mot. Seq. No. 3) for an order granting summary judgment as to his Labor Law § 240 claim as asserted against Sunlight Construction AA, LLC and 64th Road LLC is granted.

This constitutes the decision and order of the court.

E N T E R,



Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice