

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 3

RAVIN LALBEHARRY,

Index No.: 22326/2020E

Plaintiff,

- against -

DECISION and ORDER

HAUSER & WIRTH US PROPERTY LLC and
WESTERMAN CONSTRUCTION COMPANY, INC.,

Defendants.

and Third-Party actions.

	PAPERS NUMBERED
Plaintiff's Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits	NYSCEF Doc. No. 54-66
Defendants Hauser & Wirth US Property LLC's and Westerman Construction Company, Inc.'s Affirmation in Opposition, Response to Statement of Material Facts, Exhibit	NYSCEF Doc. No. 75-77
Plaintiff's Reply Affirmation, Exhibit	NYSCEF Doc. 79-80

Upon the enumerated papers, and due deliberation, this Court finds:

The issue in Plaintiff's summary judgment motion is whether he demonstrated his entitlement to judgment with respect to liability under the Labor Law 240(1) claim.¹ This Court holds Plaintiff established his *prima facie* burden of a Labor Law 240(1) violation as against Defendants Hauser & Wirth US Property LLC ("Hauser & Wirth") and Westerman Construction Company, Inc. ("Westerman"), and they failed to raise triable issues of fact to preclude summary judgment in Plaintiff's favor.

It is undisputed that Hauser & Wirth, owner of the premises located at 542 West 22nd Street, New York County, retained Westerman to serve as general contractor to perform the construction of a five-story commercial building at the subject premises.

¹ Although Plaintiff affirmatively requests summary judgment relief as to both Labor Law 240(1) and 241(6) claims in his Affirmation in Support, counsel only sets forth arguments in support of summary judgment as to his Labor Law 240(1) claim and therefore, the Court will only address the merits of same.

According to Plaintiff, on the day of the accident, he was employed by non-party CEC Elevator Cab as an elevator mechanic helper to assist in the installation of new freight elevator ceiling at the subject premises. He testified that he was assigned to “Elvis” as his mechanic on the date of the accident. Plaintiff recalled two six-foot A-frame ladders belonging to his employer available in his work area. He testified that he complained that the six-foot ladders were too short and requested a sixteen-foot ladder that was never delivered before the accident occurred. The accident occurred as Plaintiff stood on the third rung of a six-foot A-frame ladder and holding a 150- to 200-pound section of ceiling above his head, he testified that the unsecured ladder shifted causing the unsecured section of ceiling to fall onto him. As a result of the ceiling section’s fall, he was caused to fall off the ladder to the ground with the ceiling section landing on top of him. Plaintiff testified that he wore steel tip shoes, company shirt, and a hard hat on the date of the accident.

He further testified that he never installed this type of ceiling. Before the accident occurred, Plaintiff testified that he and three other coworkers lifted the section of ceiling off the floor and he stood on the ladder while lifting the ceiling. He testified that no one was holding the ladder as he lifted the ceiling above him.

Labor Law 240(1) imposes a nondelegable duty upon owners, contractors, and their agents to provide safety devices to protect workers from risks inherent in elevated work sites. *McCarthy v Turner Constr., Inc.*, 17 NY3d 369 [2011]. The statute applies to both falling worker and falling object cases. *See Harris v City of New York*, 83 AD3d 104 [1st Dept. 2011]. Plaintiff must demonstrate both a violation of the statute and that the violation was a proximate cause of the injury. *See Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280 [2003]. “The single decisive question is whether plaintiff’s injuries were the direct consequence of a failure to provide

adequate protection against a risk arising from a physically significant elevation differential.” *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]. The doctrine of comparative negligence is not applicable. *See Lopez v Boston Props., Inc.*, 41 AD3d 259 [1st Dept. 2007].

This Court finds Plaintiff established his *prima facie* burden of a Labor Law 240(1) violation as it was uncontroverted that his injuries resulted from the failure to provide safety devices to shield Plaintiff from a gravity-related hazard. *See Iuculano v City of New York*, 214 AD3d 535 [1st Dept. 2023]. In opposition, Defendants Hauser & Wirth and Westerman failed to raise a triable issue of fact. Any sole proximate cause argument fails as their statutory violation served as a proximate cause for the accident, thus, Plaintiff cannot be solely to blame for it. *See Blake v Neighborhood Hous. Servs. of NY City, Inc.*, 1 NY3d 280 [2003].

In opposition, Defendants Hauser & Wirth’s and Westerman’s argument that Plaintiff’s accident is not actionable under Labor Law 240(1) where the ladder was not shown to be defective is unpersuasive. To the extent that one of Plaintiff’s coworkers lost his grip while lifting the section of ceiling off the floor is of no moment “as people are not safety devices” within the meaning of Labor Law 240(1). *Iuculano*, 214 AD3d at 536. No matter the version of the events leading up to the accident, Plaintiff was not afforded the proper protection against the section of ceiling falling and striking him as multiple workers attempted to manually move an elevator ceiling given its size, weight, and configuration. *See id.*, citing *Natoli v City of New York*, 180 AD3d 477 [1st Dept. 2020].

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby denied.

Accordingly, it is

ORDERED, that Plaintiff's summary judgment motion, is granted; and it is further

ORDERED, that Plaintiff is awarded judgment as to liability with respect to the Labor Law
240(1) claim against Defendants Hauser & Wirth and Westerman.

This constitutes the Decision and Order of the Court.

Dated: October 23, 2023



Hon.

LUCINDO SUAREZ, J.S.C.
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