| **Samokhval v New York City Hous. Auth.** |
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| 2014 NY Slip Op 31854(U) |
| July 17, 2014 |
| Supreme Court, New York County |
| Docket Number: 400744/11 |
| Judge: Paul Wooten |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN Justice PART 7

VICTOR SAMOKHVAL,
Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY and NEELAM CONSTRUCTION CORPORATION,
Defendants.

INDEX NO. 400744/11

MOTION SEQ. NO. 002

The following papers were read on this motion by defendants for summary judgment.

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | |
| Answering Affidavits — Exhibits (Memo) | |
| Reply Affidavits — Exhibits (Memo) | |

Cross-Motion: ■ Yes ☐ No



This is a personal injury action brought by Victor Samokhval (plaintiff) to recover damages for injuries sustained on April 6, 2010, when allegedly two fly sections of an extension ladder he was descending, slid down into the base, and the ladder and plaintiff fell to the ground. The incident took place outside 210 West 153rd Street, New York, NY premises, known as the Harlem River Houses owned by the New York City Housing Authority (NYCHA). Plaintiff commenced this action by the filing of the Summons and Verified Complaint on September 2, 2010, and asserted claims against the New York City Housing Authority and Neelam Construction Corporation (collectively, defendants) for common law negligence and violations of Labor Law §§ 200, 240(1) and 241(6).

Now before the Court is a motion by defendants for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's claims. Also before the Court is a cross-motion by plaintiff for summary judgment, pursuant to CPLR 3212, for liability based on the relief demanded in the

complaint, dismissing all affirmative defenses, for an award of costs, disbursements and reasonable attorneys fees. On January 16, 2013, a Court Order was entered extending the time to move for summary judgment to March 15, 2013. Plaintiff brought a cross-motion on the identical issues before the Court on the defendants' motion. Defendants submitted an Affirmation in Reply and in Opposition to plaintiff's cross-motion. Plaintiff submitted a Reply Affirmation. Discovery in this matter is complete and the Note of Issue was filed on or about August 24, 2012.

BACKGROUND

NYCHA employed Raj Sangsudham (Sangsudham) as a construction project manager for the brick façade rehabilitation and bulkhead roof replacement work on all buildings at the Harlem River Houses. NYCHA retained HAKS Engineering (Haks) to act as the construction manager. Greg Ghehrardi (Ghehrardi) was Haks' project manager. Haks entered into a contract with Neelam Construction Corporation (Neelam), a general contractor, to perform the brick façade replacement work. Maulik Mistri (Mistri) was Neelam's assistant project manager and project supervisor for the Harlem River Houses construction site. Bhavesh Patel (Patel) was Neelam's supervisor at the site.

Neelam subcontracted with D & S Restoration, Inc. (D&S) to perform the asbestos abatement portion of the construction work. D&S employed plaintiff as an asbestos abatement supervisor. Plaintiff was a supervisor of Jose Santana (Santana) and Wilson Paulino (Paulino) also employed by D&S as workers. D&S employed Bob Brocilovic (Brocilovic) as a senior project manager.

A sidewalk bridge was erected around the Harlem River Houses building at 210 West 153rd Street, to facilitate the work. Plaintiff testified that the walking surface of the sidewalk bridge was about 15 feet above the ground. Prior to the accident, plaintiff used the subject

extension ladder to access the bridge to repair a motorized scaffold. Plaintiff testified that there were two types of extension ladders used at the construction site: red [or orange] ladders provided by D&S and silver ladders provided by Neelam. At a statutory hearing on August 30, 2010, plaintiff testified that he used a silver ladder, which belonged to Neelam. The ladder had been placed in such a manner so as to lean against the sidewalk bridge. The upper portion of the ladder extended five feet above the top of the bridge. Plaintiff testified that the subject ladder was secured to the bridge by a rope tied to a bended nail.

Further, plaintiff testified that he was on top of the sidewalk bridge for about 30 minutes before the alleged accident, and during that time, he did not see anyone use or move the ladder. At a deposition on October 17, 2011, plaintiff testified that he did not know who had positioned the ladder but the ladder was tied to the sidewalk bridge, to only one nail, with a rope. The extension ladder was leaning against the bridge, which did not have a side rail. The ladder was dry and stable, and its feet were sitting on dirt and grass.

Plaintiff testified that as he began descending the ladder, the upper part suddenly slid down along the lower part to the level below the bottom of the sidewalk bridge. Because the ladder was no longer leaning against the sidewalk bridge, plaintiff fell over backwards with the ladder landing on top of him. Plaintiff testified that he did not know what happened to the rope securing the ladder to the sidewalk bridge. Plaintiff also testified he did not see that the ladder was bent or damaged. There were no eye-witnesses to the accident.

Santana testified that on the morning of the alleged accident he climbed onto the sidewalk bridge using a red extension ladder positioned there by one of the D&S' workers. Santana testified that no one moved the ladder between the time he used it and the time of plaintiff's accident. Santana testified further that he was not looking in plaintiff's direction at the time of the alleged accident. When he heard plaintiff scream, he turned around and saw

plaintiff lying on the ground two or three feet from the bottom of the ladder. Santana testified that the ladder was standing in the same position as before the accident - leaning against the sidewalk bridge and extending three feet above it – except, that ladder was tilted slightly to the right.

In his affidavit, Paulino testified that he was on the sidewalk bridge at the time of plaintiff's alleged accident. When he heard the ladder falling, he looked over the bridge and saw plaintiff on the ground and the ladder lying beside him. Paulino stated that he picked up the ladder, straightened it, and re-tied the ladder to the sidewalk bridge. Santana testified that Paulino did not change the length of the ladder - he neither shortened nor elongated it. Paulino stated that others came after the alleged accident and saw the ladder after Paulino had repositioned it.

Brocilovic testified that plaintiff called him after the alleged accident. Plaintiff told Brocilovic that he slipped over from the second step from the ladder. Brocilovic testified that at the scene of the accident, he saw only one red extension ladder belonging to D&S and connected to the sidewalk bridge with a rope (affirmation of defendant's counsel, exhibit O, pp. 28 and 51).

Sangsudham testified that he went to the scene of the alleged accident where he saw an orange ladder standing up-right and tied off to the sidewalk bridge. Mistri testified that he learned about the alleged accident via Nextel and went to the scene. He testified that he found the extension ladder leaning against the sidewalk bridge secured by a rope. Mistri checked the ladder, which was no longer leaning to one side. He shook the ladder from side to side to verify that it was securely tied off. He stood on it and found it stable.

Gherardi testified that he prepared the accident report within 30 minutes of the accident based on the information from the plaintiff (affirmation of defendant's counsel, exhibit L, pp. 33-

34). The accident report states that:

> "Mr. Samokhval was climbing down the secured ladder from the top of the sidewalk shed to the ground. While descending Mr. Samokhval lost his balance, slipped, and fell onto the grassy area below" (affirmation of defendant's counsel, exhibit M).

Mistri learned of the alleged accident from Patel, Neelam's supervisor responsible for plaintiff's crew. Brocilovic testified that Neelam prepared an accident report and showed the report to him (Brocilovic deposition, exhibit O, pp. 30-31). Patel prepared the report for Neelam. The accident report states in the relevant part as follows:

> "Victor lost his balance while going down from ladder fell down from ladder" (affirmation of defendants' counsel, exhibit I).

Sangsudham testified that he was on the site daily to monitor the progress of the job and was not physically present at Harlem River Houses at the time of plaintiff's alleged accident. Sangsudham also testified that every worker on the Harlem River Houses construction site had to follow OSHA and DOB safety protocols, which included, among other things, the requirement that every ladder used at the job site be tied off. Further, he testified that if he found anyone failing to comply with the safety regulations, he would send that worker home.

Mistri testified that Neelam retained a safety manager for the Harlem River Houses construction site. Further, he testified that Neelam did not provide any of its tools or equipment, including ladders, to subcontractors. Mistri testified that subcontractors were responsible for setting up their ladders. Gherardi also testified that subcontractors were required to disassemble their ladders at the end of each day and reinstall them the next morning. Brocilovic testified that plaintiff was responsible for supervising setting up the D&S' ladders every morning. Further, Brocilovic testified that prior to the alleged accident he received no complaints about the D&S ladders used at the Harlem River Houses project.

Mistri testified that prior to the plaintiff's alleged accident, he had not received any

reports about improper use of the ladders at the Harlem River Houses project. Moreover, at his deposition on October 17, 2011, plaintiff testified that he did not have any problems with ladders belonging to the general contractor. He testified that he did not complain to any of the general contractor's employees about any of the ladders used on the construction site (affirmation of defendants' counsel, exhibit G, p. 35).

STANDARD

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Meridian Management Corp. v Cristi Cleaning Service Corp.*, 70 AD3d 508, 510 [1st Dept 2010], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (*Ostrov v Rozbruch*, 91 AD3d 147, 152 [1st Dept 2012], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Santiago v Filstein*, 35 AD3d 184, 185186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212 [b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]).

When deciding a summary judgment motion, the Court's role is solely to determine if

any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth CenturyFox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]; CPLR 3212[b]).

DISCUSSION

I. *Defendants' motion and Plaintiff's Cross-motion on Labor Law § 240(1) Claim*

Labor Law § 240(1) imposes absolute liability upon owners and general contractors who fail to fulfill their statutory obligation to furnish or erect safety devices adequate to give proper protection to a worker who sustains gravity related injuries proximately caused by such failure (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]; *Bland v Manocherian*, 66 NY2d 452 [1985]). Specifically, Labor Law § 240(1), also known as the Scaffold Law, provides, in relevant part:

> "All contractors and owners and their agents ... 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" (*id.*).

The statute was enacted to "'prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person*'" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009], quoting *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 501 [1993]). In order to accomplish its goal, the statute places

responsibility for safety practices and safety devices on owners, contractors, and their agents, who are "best situated to bear that responsibility" (*Ross*, 81 NY2d at 500). The statute is to be liberally construed to achieve this purpose (*see Lombardi v Stout*, 80 NY2d 290, 296 [1992]). For liability to attach under Labor Law § 240(1), "'the owner or contractor must breach the statutory duty . . . to provide a worker with adequate safety devices, and this breach must proximately cause the worker's injuries'" (*Kerrigan v TDX Constr. Corp.*, 108 AD3d 468, 471 [1st Dept 2013], quoting *Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]). Thus, to prevail on this claim, plaintiff must show (1) a violation of the statute (i.e., that defendants breached their nondelegable duty to furnish or erect, or cause to be furnished or erected, safety devices in a manner that gave him proper protection from gravity related risks); and (2) that the statutory violation was a contributing or proximate cause of the injuries sustained *(see Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-289 [2003]). Upon making such a showing, "[t]he burden then shifts to defendant[s] to establish that 'there was no statutory violation and that plaintiff's own acts and omissions were the sole cause of the accident'" (*Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288 [1st Dept 2008], quoting *Blake*, 1 NY3d at 289 n. 8). "If defendant[s'] assertions in response fail to raise a fact question as to these issues, the plaintiff must be accorded summary judgment" (*Blake*, 1 NY3d at 289 n. 8). Contributory or comparative negligence is not a defense to absolute liability under the statute (*Jamison v GSL Enters.*, 274 AD2d 356 [1st Dept 2000]; *Johnson v Riggio Realty Corp.*, 153 AD2d 485 [1st Dept 1989]).

Labor Law § 240(1) imposes liability regardless of any contributory or comparative negligence on the part of plaintiff (*see Romanczuk v Metropolitan Ins. & Annuity Co.*, 72 AD3d 592 [1st Dept 2010]). Thus, where a violation of the statute is a contributing cause of an accident, any negligence on the part of the plaintiff cannot be deemed solely to blame for it, and

cannot defeat the plaintiff's claim (*Blake*, 1 NY3d 280, 290; *Ernish v City of New York*, 2 AD3d 256, 257 [1st Dept 2003]).

In support of their motion, defendants aver that plaintiff gave self-serving and incredible testimony that the ladder he was descending collapsed, which was contradicted by the testimonies of the witnesses. According to the witnesses and the incident reports, plaintiff himself said that he slipped from the second step of the ladder to the ground.

Defendants submit that the mere fact that plaintiff fell is by itself insufficient to establish liability because there is no evidence of any defect in the subject ladder or failure to provide proper protection other than plaintiff's testimony. "There must be evidence that the ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor in causing the plaintiff's injuries" (*Hugo v Sarantakos*, 108 AD3d 744, 247 [2d Dept 2013]). Moreover, "[a] fall from a ladder does not in and of itself establish that the ladder did not provide appropriate protection" (*Campos v 68 E. 86th St. Owners Corp.*, 117 AD3d 593 [1st Dept 2014], citing *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 288-289 [2003]).

The Court finds that there are triable issues of fact as to whether the ladder was properly tied to the sidewalk bridge to provide adequate protection, or whether plaintiff was the sole proximate cause of his accident. The conflict between plaintiff's deposition testimony and the accident reports prepared on the basis of information provided by plaintiff raises an issue of credibility[1] (*see Antenucci v Three Dogs, LLC*, 41 AD3d 205, 205 [1st Dept 2007]; *Ellerbe v.*

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[1] The accident reports prepared by Gherardi and Patel are admissible, as they fall within the business record hearsay exception, and the requirement to certify business records is limited to records produced by non-parties (*see Buckley v J.A. Jones/GMO*, 38 AD3d 461, 462-463 [1st Dept 2007]; CPLR §§ 4518[a] and 3122-a (certification requirement only applies to records produced under subpoena duces tecum pursuant to CPLR § 3120]; cf CPLR 4518[c]). Moreover, Gherardi and Brocilovic referred to the accident reports at their respective depositions, and the transcript thereof is included in the record on the plaintiff's cross-motion.

*Port Auth. of N.Y. & N.J.*, 91 AD3d 441 [1st Dept 2012]). Absent inconsistency in or contradiction with his own accounts of the manner in which the accident occurred, the fact that plaintiff was the only witness to the accident would not bar this Court's grant of summary judgment in his favor (*see Goreczny v 16 Court St. Owner LLC*, 110 AD3d 465 [1st Dept 2013]).

Insofar as such inconsistencies are found, defendants' motion and plaintiff's cross-motion for summary judgment on plaintiff's Labor Law § 240(1) claim are denied as issues of fact exist, which preclude the granting of either motion (*see Buckley*, 38 AD3d at 462; *Degen v Uniondale Union Free Sch. Dist.*, 114 AD3d 822, 822 [2d Dept 2014] ["plaintiff's own submissions demonstrated the existence of triable issues of fact, inter alia, as to how the injured plaintiff's accident occurred, including whether he fell because he merely lost his balance"]; *Chan v Bed Bath & Beyond*, 284 Ad2d 290 [2d Dept 2001]).

II. *Defendants' motion to dismiss plaintiff's Labor Law § 241(6) Claim*

Labor Law § 241(6) states:

> "Construction, excavation and demolition work. 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, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
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> * * *
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> All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two family dwellings who contract for but do not direct or control the work, shall comply therewith."

Labor Law § 241(6) "imposes a nondelegable duty upon owners and contractors to

provide reasonable and adequate protection and safety to construction workers" *(Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 878 [2003]), and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor (*Ross*, 81 NY2d at 501). To sustain a cause of action under section 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable given the circumstances of the accident, and that sets forth a concrete standard of conduct rather than a mere reiteration of common law principles (*id.*, *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]). However, while proof of a violation of a specific Industrial Code regulation is required to sustain an action under Labor Law § 241(6), such proof does not establish liability, and is merely evidence of negligence (*see Ross v CurtisPalmer HydroElec. Co.*, 81 NY2d 494 [1993]). Recovery under this section is dependent on plaintiff's ability to set forth the relevant and specific safety provisions of Part 23 of the New York State Industrial Code (12 NYCRR 231.1 et seq.), which were allegedly violated (*see Walker*, 11 AD3d at 340; *see also Ross*, 81 NY2d at 505). In addition, the provision must be applicable to the facts of the case (*see Singleton v Citnalta Constr. Corp.*, 291 AD2d 393, 394 [2d Dept 2002]). Moreover, an owner or general contractor may raise any valid defense to the imposition of vicarious liability under section 241(6), including contributory and comparative negligence (*see Long v ForestFehlhaber*, 55 NY2d 154, 161 [1982]; *Misicki*, 12 NY3d at 515; *Ross*, 81 NY2d at 502, n 4).

In his supplemental bill of particulars (BP) plaintiff cites violations of Industrial Code §§ 23-1.21(b)(3)(i)-(iv), 23-1.21(b)(4)(i)-(v), 23-1.21(d)(1)- (2), 23.-1.21(f) (see affirmation of plaintiff's counsel, exhibit F, 3/6/12 Supplemental BP). The Court has reviewed these regulations and finds that plaintiff relied upon sufficiently specific Industrial Code regulations to form the predicate for his Labor Law 241(6) claims (*Liu v Sanford Tower Condo., Inc.*, 35 AD3d

378, 379 [2d Dept 2006] [Industrial Code Section 12 NYCRR 23-1.21 is sufficiently specific]; *see also* Kozlowski v Ripin, 60 AD3d 638, 639 [2d Dept 2009] [12 NYCRR § 23-1.21(b)(3)(i), (ii) and (iii); *Riccio v NHT Owners, LLC*, 51 AD3d 897, 898 [2d Dept 2008] [12 NYCRR § 23-1.21(b)(3)(iv)]; *Dwyer v Central Park Studios, Inc.*, 98 AD3d 882, 884 [1st Dept 2012] [12 NYCRR § 23-1.21(b)(4)(i)]; *Hart v Turner Const. Co.*, 30 AD3d 213, 214 [1st Dept 2006] [12 NYCRR § 23-1.21(b)(4)(ii); Montalvo v J. Petrocelli Const., Inc., 8 AD3d 173, 176 [1st Dept 2004] [12 NYCRR § 23-1.21(b)(4)(iv)]; *Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616 [2d Dept 2008] [12 NYCRR § 23-1.21(b)(4)(iii), (v)]; *Deshields v Carey*, 69 AD3d 1191 [3d Dept 2010] [12 NYCRR § 23-1.21(d)(2)]). Thus, plaintiff has adequately satisfied the threshold pleading requirements of his Labor Law § 241(6) claim (*Padilla v Frances Schervier*, 303 AD2d 194, 196-197 [1st Dept 2003]).

With the exception of 12 NYCRR § 23-1.21(b)(4)(i), plaintiff does not address the other Industrial Code provisions cited in his BP in his cross-motion or papers responsive to defendants' motion for summary judgment, and thus, these code provisions are deemed abandoned (*see Gary v Flair Beverage Corp.*, 60 AD3d 413, 413 [1st Dept 2009] ["Indeed, plaintiff's failure to address this issue in its responding brief indicates an intention to abandon this basis of liability"]; *Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003]; *Musillo v Marist College*, 306 AD2d 782, 784 n [3d Dept 2003]).

Industrial Code § 23–1.21(b)(4)(i), states as follows:

> (4) Installation and use. (i) Any portable ladder used as a regular means of access between floors or other levels in any building or other structure shall be nailed or otherwise securely fastened in place. Such a ladder shall extend at least 36 inches above the upper floor, level or landing or handholds shall be provided at such upper levels to afford safe means of access to or egress from the ladder. Such a ladder shall be inclined a maximum of three inches for each foot of rise.

The subject extension ladder was used as a regular means of access to the sidewalk bridge,

which was erected around the Harlem River Houses building. Plaintiff testified that he well as other D&S workers used the extension ladder to access the sidewalk bridge. At his October 17, 2011 deposition, plaintiff testified that he did not know who had positioned the ladder but the ladder was tied to the sidewalk bridge, to only one nail, with a rope. As this Industrial Code provision requires that a ladder be fastened securely (*see Kinsler v Lu-Four Assoc.*, 215 AD2d 631 [2d Dept 1995]), the Court finds that there is a question of fact as to whether the subject July 16, 2014extension ladder was properly secured. Specifically, there is differing testimony between plaintiff, Santana and Paulino as to whether the ladder fell along with plaintiff or whether it was in the same position as before the accident. Accordingly, the portion of defendants' motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's claims for violations of Labor Law § 241(6) is denied.

III. *Plaintiff's Common Law Negligence and Labor Law § 200 Claims*

Labor Law § 200 is a codification of the common law duty of an owner or general contractor to maintain a safe worksite (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876 [1993]; *Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]). Claims involving Labor Law § 200 generally fall into two broad categories: those where workers are injured as a result of the methods or manner in which the work is performed, and those where workers are injured as a result of a defect or dangerous condition existing on the premises (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]).

Where an accident is the result of a contractor's or worker's means or methods, it must be shown that a defendant exercised actual supervision and control over the activity, rather than possessing merely general supervisory authority (*Mitchell v New York Univ.*, 12 AD3d 200 [1st Dept 2004]); *Reilly v Newireen Assoc.*, 303 AD2d 214 [1st Dept 2003]). Generally, monitoring, coordination, and oversight of the timing and quality of the work, as well as a

general duty to supervise the work and ensure compliance with safety regulations, are insufficient to trigger liability under Labor Law § 200 (*see Vasiliades v Lehrer McGovern & Bovis*, 3 AD3d 400 [1st Dept 2004]; *Dalanna v City of New York*, 308 AD2d 400 [1st Dept 2003]).

Where the accident is the result of a dangerous or defective condition at the worksite, it must be shown that the owner or contractor either caused the dangerous condition, or failed to remedy a dangerous or defective condition of which it had actual or constructive notice (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1 [1st Dept 2011]). "The notice must call attention to the specific defect or hazardous condition and its specific location, sufficient for corrective action to be taken" (*Mitchell v New York Univ.*, 12 AD3d at 201). Supervision and control need not be proven where the injury arose from a dangerous condition at the worksite (*see Murphy v Columbia Univ.*, 4 AD3d 200 [1st Dept 2004]).

Defendants argue that plaintiff's common law negligence and Labor Law § 200 claim should be dismissed because neither defendant directed or controlled plaintiff's work, nor provided plaintiff with any tools or equipment. Further, defendants argue that they also did not have a notice of any alleged defect in the subject ladder.

In opposition, plaintiff proffers that defendant's motion for summary judgment should be denied because both NYCHA and Neelam had the authority to supervise and control the manner in which the ladders were installed. Indeed, Sangsudham conceded in his testimony that NYCHA monitored job progress and supervised safety practices, which incorporated OSHA and Department of Building guidelines. Plaintiff argues that since he was injured due to defendants' failure to ensure that the ladder was safely and securely installed, he is entitled to summary judgment on the cause of action of common law negligence, pursuant to Labor Law § 200.

The Court finds that the record is devoid of proof that NYCHA and Neelam had exercised any supervisory authority or control over how the ladders were installed at the Harlem River Houses construction site. "A general duty to supervise work conditions and compliance with safety regulations is insufficient to hold a defendant liable under Labor Law § 200" (*De la Rosa v Philip Morris Management Corporation*, 303 AD2d 190 [1st Dept 2003]; *see also Reilly v Newireen Assocs.*, 303 AD2d 214 [1st Dept 2003]). Similarly, a duty to coordinate the contractors on the site and direct where to work on a given day does not rise to the level of supervision or control predicating liability under Labor Law § 200 (*see Loiacono v Lehrer McGovern Bovis, Inc.*, 270 AD2d 464 [2d Dept 2000]).

Furthermore, the Court finds that defendants established through the deposition testimony that they neither had constructive notice, nor did they supervise or control the ladders or the manner of setting up the ladders used by plaintiff and D&S workers. "An implicit precondition to this duty [to provide construction site workers with a safe place to work] 'is that the party charged with that responsibility have the authority to control the activity bringing about the injury'" (*Reilly v Newireen Assocs.*, 303 AD2d 214 at 219, quoting *Russin v Picciano & Son*, 54 NY2d 311 [1981]); see also *Comes v N.Y.S. Elec. Gas Corp.*, 82 N.Y.2d at 876, 877 [1993]).

Accordingly, the branch of defendant's motion seeking dismissal of plaintiff's common law negligence and Labor Law § 200 claim is granted.

CONCLUSION

Accordingly, it is

ORDERED that the portion of defendants' motion for summary judgment dismissing plaintiff's Labor Law § 240(1) claim is denied; and it is further,

ORDERED that plaintiff's cross-motion for summary judgment on his Labor Law § 240(1) claim is denied; and it is further,

ORDERED that the portion of defendants' motion for summary judgment on plaintiff's claims for common law negligence and Labor Law § 200 is granted; and it is further,

ORDERED that the portion of defendants' motion for summary judgment on plaintiff's claim pursuant to section 241(6) of the New York Labor Law is denied; and it is further,

ORDERED that defendants are directed to serve a copy of this Order with Notice of Entry upon the plaintiff, and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

**Dated:** 7-17-14

PAUL WOOTEN *J.S.C.*

**Check one:** ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**

**Check if appropriate:** ☐ **DO NOT POST** ☐ **REFERENCE**

FILED

JUL 18 2014

COUNTY CLERK'S OFFICE
NEW YORK