Wen Ling Gao v Mehran Enters. Ltd.
2017 NY Slip Op 32341(U)
November 1, 2017
Supreme Court, New York County
Docket Number: 159168/2013
Judge: Kelly A. O'Neill Levy
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KELLY O'NEILL LEVY** **PART 19**

Justice

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WEN LING GAO,

Plaintiff,

- v -

MEHRAN ENTERPRISES LTD., FUTURE QUEENS REALTY, INC., SEAPORT RESTAURANT, INC., TIAN MING ZHENG, ZHI GANG WANG, QIN-ZHOU CHEN and ZIN-PING ZHOU,

Defendants.

---X

MEHRAN ENTERPRISES LTD.,

Third-Party Plaintiff,

- v –

OCEANICA CHINSE RESTAURANT, INC., SEAPORT RESTAURANT, INC., TIN CHENG, WANG ZHI GANG, QIN ZHOW CHEN, JIN PING ZHO,

Third-Party Defendants.

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INDEX NO. 159168/2013

MOTION DATE

MOTION SEQ. NO. 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 121, 122, 123, 124, 125, 148, 150

were read on this application to/for summary judgment

Plaintiff Wen Ling Gao moves, pursuant to CPLR 3212, for partial summary judgment on his Labor Law § 240 (1) claim against defendant Mehran Enterprises Ltd. (“Mehran”). Mehran opposes.

BACKGROUND

The alleged accident took place on the second floor in the kitchen area of 37-02 Main Street in Flushing, New York (the "Building") on September 7, 2012. Mehran owned the Building on the day of the accident. Mehran, as owner, triple net leased the Building to Future Queens Realty, Inc ("Future") pursuant to a lease dated March 6, 2002. On May 30, 2012, Future sub-leased the second floor of the Building to four individuals, Tin Cheng, Qin Zhou Chen, Jin Ping Zhu and Wang Zhi Gang, who all personally guaranteed the lease. On June 29, 2012, Oceanica Chinese Restaurant, Inc. ("Oceanica") assumed the sub-lease between Future and Mr. Cheng, Mr. Chen, Mr. Zhu, and Mr. Gang, who were also the shareholders of Oceanica.

Plaintiff alleges that on September 7, 2012, he was working as a construction laborer for a construction contractor by the name of Tian Ming Zheng when he fell from a ladder and sustained injuries. According to Plaintiff, Mr. Zheng was directly responsible for the construction and renovation of a Chinese restaurant that was being built at the Building. Plaintiff testified that as part of the construction project, he was directed by Mr. Zheng to patch a hole in a ceiling approximately ten feet above the tile floor in the kitchen area and was provided a ladder to reach the ceiling. As he ascended the ladder with an electric drill in one hand, Plaintiff felt the ladder shake and move, and ultimately pitch to one side, causing him to fall and sustain injuries. Plaintiff claims that a screw securing one of the ladder's steps came loose, causing the ladder to shift and his subsequent fall.

Mehran contends that on the date of the accident, as evidenced by Plaintiff's Employer's Report of Work-Related Injury/Illness C-2 report, Plaintiff may have been employed as a janitor, responsible for cleaning and maintenance, and that he may have been injured when he stepped on an empty plastic barrel while in the process of cleaning the top of a refrigerator.

Plaintiff's Deposition Testimony and Affidavit

Plaintiff, with the assistance of an interpreter as English is not his native language, testified that in June of 2012, he approached Tian Ming Zheng looking for work. He did not know whether Mr. Zheng had a company or not, but he began to work for and under the supervision of Mr. Zheng at the Building on a "renovation project" (tr. at 59). Plaintiff's understanding was that he was working for a renovation business and that he was going to perform interior renovation, particularly plastering, including of the walls and ceilings. On the day of the accident, Mr. Zheng told Plaintiff that he would be installing stainless steel above the freezer in the kitchen area. There was also a hole in the ceiling above the freezer door in the kitchen area, which Mr. Zheng directed Plaintiff to repair.

In order to repair the hole in the ceiling, Plaintiff retrieved an eight-foot makeshift ladder. He leaned the ladder against the seven-foot freezer and climbed the ladder with an electrical drill in his hand. Plaintiff testified that the ladder was "shaky" and moved, causing him to fall (tr. at 166). Plaintiff further testified that the accident occurred as a result of a screw in the ladder coming loose. He did not know that the ladder had a loose screw until the accident occurred, he was not provided with any railings, harness or rope as fall protection, and he did not see any other ladders, except a "two-step high" ladder (tr. at 323).

Plaintiff's affidavit is consistent with his deposition testimony. Plaintiff states that he was hired by Mr. Zheng to work as a construction laborer in connection with the construction of a restaurant at the Building. His duties included sheetrock installation, plastering and general construction labor in and around the kitchen area of the restaurant. Among the equipment provided to him to perform his duties was a makeshift ladder, approximately eight feet in height. He was not provided with any fall protection equipment.

Plaintiff states that on September 7, 2012, Mr. Zheng directed him to patch a hole in the kitchen ceiling. To perform the patchwork, Plaintiff used the aforementioned ladder, which was the only device provided or available to reach the ceiling. Plaintiff leaned the ladder against the door of a freezer in the kitchen, but the ladder was neither secured nor was it able to be secured. He climbed the ladder with an "electric tool" in one hand, and the ladder began to shake and shifted to one side causing him to fall, which Plaintiff believed was caused by a loose screw holding one of the steps in place.

STANDARD

Summary Judgment

On a motion for summary judgment, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that there exist material factual issues. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment is issue-finding, rather than making credibility determinations or findings of fact. *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 503, 505 (2012).

The non-moving party may use hearsay to oppose summary judgment. *Rivera v. GT Acquisition 1 Corp.*, 72 A.D.3d 525, 526 (1st Dep't 2010); *Candela v. City of New York*, 8 A.D.3d 45, 47 (1st Dep't 2004). Although summary judgment should be denied where "credible evidence reveals differing versions of the accident," (*Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442 [1st Dep't 2012]), inadmissible hearsay evidence alone is insufficient to warrant

denial of a summary judgment motion; *Briggs v. 2244 Morris, L.P.*, 30 A.D.3d 216, 216 (1st Dep't 2006); *Quichimbo v. Vornado 640 Fifth Ave.*, L.L.C., 30 A.D.3d 194, 195 (1st Dep't 2006).

Labor Law § 240 (1)

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."

Labor Law § 240 (1) "was enacted to protect workers in construction projects against injury from the expected risks of inherently hazardous work posed by elevation differentials at the work site." *Lipari v. AT Spring, LLC*, 92 A.D.3d 502, 503 (1st Dep't 2012); *John v. Baharestani*, 281 A.D.2d 114, 118 (1st Dep't 2001); *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501 (1993). While the statute is meant to be liberally construed, "the fact that a worker falls at a construction site, in itself, does not establish a violation of Labor Law § 240 (1)." *O'Brien v. Port Auth. of New York & New Jersey*, 29 N.Y.3d 27, 33 (2017); *Kebe v. Greenpoint-Goldman Corp.*, 150 A.D.3d 453, 453 (1st Dep't 2017). Rather, absolute "[l]iability may ... be imposed under the statute only where the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential." *O'Brien*, 29 N.Y.3d at 33 (quoting *Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 97, *reargument denied,* 25 N.Y.3d 1195 [2015]) (internal quotation marks omitted). "Whether 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." *Melchor v. Singh*, 90 A.D.3d 866, 868 (2d Dep't 2011); *Cuentas v. Sephora USA, Inc.*, 102 A.D.3d 504, 505 (1st Dep't 2013); *see Weber v. Baccarat, Inc.*, 70 A.D.3d 487,

487-488 (1st Dep't 2010) (plaintiff's uncontested testimony that the ladder on which he was standing broke by itself established prima facie a violation of scaffold law and that the violation was a proximate cause of plaintiff's injuries); *see also Peralta v. American Tel. and Tel. Co.*, 29 A.D.3d 493, 494 (1st Dep't 2006) ("Unrefuted evidence that the unsecured ladder moved, combined with evidence that no other safety devices were provided to plaintiff, warranted a finding that the owners were absolutely liable under Labor Law § 240 [1]"). To succeed on a Labor Law § 240 (1) claim, the plaintiff must that the statute was violated and the violation was a proximate cause of the injury. *Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d 280, 287 (2003); *Cherry v. Time Warner, Inc.*, 66 A.D.3d 233, 236 (1st Dep't 2009).

In a ladder case like the one here, "[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain[s] steady and erect while being used, constitutes a violation of Labor Law § 240 (1)." *Hill v. City of New York*, 140 A.D.3d 568, 569 (1st Dep't 2016) (quoting *Montalvo v. J. Petrocelli Constr., Inc.*, 8 A.D.3d 173, 174 [1st Dep't 2004]). Further, a plaintiff does not need to show that the ladder was defective for the purposes of liability under Labor Law § 240 (1). *Hill*, 140 A.D.3d at 570. "It is sufficient for purposes of liability under section 240 (1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent." *Hill*, 140 A.D.3d at 570 (quoting *Orellano v. 29 E. 37th St. Realty Corp.*, 292 A.D.2d 289, 291 [1st Dep't 2002]); *see also Garcia v. Church of St. Joseph of the Holy Family of City of New York*, 146 A.D.3d 524, 525 (1st Dep't 2017) ("Plaintiff's testimony that the ladder shifted as he descended, thus causing his fall, established a prima facie violation of Labor Law § 240 [1]"); *Hamill v. Mut. of Am. Inv. Corp.*, 79 A.D.3d 478, 478 (1st Dep't 2010) ("Plaintiff established prima facie his entitlement to summary judgment on the Labor Law § 240 [1] cause of action through his own testimony that he fell to

the ground when the ladder on which [he] was standing to perform his work shifted and fell"); *Hart v. Turner Constr. Co.*, 30 A.D.3d 213, 214 (1st Dep't 2006) (plaintiff "met his prima facie burden through testimony that while he performed his assigned work, the eight-foot ladder on which he was standing shifted, causing him to fall to the ground").

However, there is no liability under Labor Law § 240 (1) when the plaintiff is the sole proximate cause of his injury. *Barreto v. Metro. Transp. Auth.*, 25 N.Y.3d 426, 436, *reargument denied,* 25 N.Y.3d 1211 (2015); *Blake v. Neighborhood Hous. Servs. of New York City, Inc.*, 1 N.Y.3d 280, 290 (2003). Generally, the sole proximate cause defense applies "where the worker misused, removed, or failed to use an available safety device that would have prevented the accident, or knowingly chose to use an inadequate device despite the availability of an adequate device." *Boyd v Schiavone Constr. Co., Inc.*, 106 AD3d 546, 548 (1st Dep't 2013). "To raise a triable issue of fact as to whether a plaintiff was the sole proximate cause of an accident, the defendant must produce evidence that adequate devices were available, that the plaintiff knew that they were available and was expected to use them, and that the plaintiff unreasonably chose not to do so, causing the injury sustained." *Nacewicz v Roman Catholic Church of the Holy Cross*, 105 AD3d 402, 402-403 (1st Dep't 2013).

ANALYSIS

In the instant ladder case, Plaintiff moves for partial summary judgment as to liability on the Labor Law § 240 (1) claim against Mehran. As the undisputed owner of the premises where the incident occurred, Mehran may be liable for Plaintiff's injuries under Labor Law § 240 (1).

Mehran argues that the Employer's Report of Work-Related Injury/Illness C-2 report (the "C-2 report") raises factual issues as to how the accident occurred and as to whether Plaintiff was engaged in construction work. According to the C-2 report, Plaintiff was "cleaning the top of [a] refrigerator" in his capacity as "janitor." His normal job activities were listed as "cleaning and

maintenance." The form also states that "[t]he employee [tried] to clean the top of a refrigerator [when he] stepped on an empty plastic barrel and fell on the floor." The form was signed by Zhi Gang Wang, as "President" of Oceanica. While Mehran argues that the C-2 report is a sworn document executed under oath under penalty of perjury and therefore sufficient to defeat summary judgment, Plaintiff contends that the C-2 report is inadmissible hearsay.

Nowhere in its moving papers does Mehran cite an exception to the hearsay exclusionary rule. Without more than the C-2 report taken from the worker's compensation file from Plaintiff's employer, Mehran cannot defeat Plaintiff's motion for partial summary judgment. *See Taylor v One Bryant Park, LLC*, 94 AD3d 415, 415 (1st Dep't 2012) (worker's compensation C-2 report relied upon by defendants in opposition to plaintiff's motion as to liability under Labor Law § 240 [1] was neither credible nor admissible where the report was neither signed nor authenticated, and it was "not conclusively clear who created the report or where that person acquired the information") (citing *Zuluaga v P.P.C. Constr., LLC*, 45 AD3d 479, 480 [1st Dep't 2007]) (trial court properly declined to consider accident report prepared by plaintiff's supervisor in opposition to plaintiff's motion for summary judgment, since no foundation was provided that the report was prepared in the ordinary course of business and it was not the defendant's record); *Roldan v. New York University*, 81 A.D.3d 625, 627 (2d Dep't 2011) (reasoning that statements as to the cause of an accident in the accident report and in the Workers' Compensation file did not establish the existence of factual questions regarding the cause of the accident sufficient to preclude summary judgment because said items contained inadmissible hearsay and the plaintiff failed to lay the proper foundation); *see also Zelnik v. Bidermann Industries U.S.A., Inc.*, 242 A.D.3d 227, 228 (1st Dep't 1997) ("No judgment, even in a small claims action, can rest entirely on hearsay evidence"); *Arnold Herstand & Co., Inc. v. Gallery: Gertrude Stein, Inc.*, 211 A.D.2d 77, 83 (1st Dep't 1995) (judgment in a contested civil action cannot be supported solely by

hearsay). Accordingly, Mehran has not provided sufficient evidence to raise a question of fact as to whether Plaintiff was a janitor engaged in routine cleaning and maintenance or as to whether Plaintiff tripped over a plastic barrel. Mehran's arguments regarding the type of cleaning protected by the scaffold law are therefore moot.

Mehran also argues that Plaintiff is not entitled to summary judgment because there is no evidence other than Plaintiff's testimony establishing how the alleged accident occurred. In support, Mehran cites the First Department in *Antunes v. 950 Park Avenue Corp.*, 149, A.D.2d 332 (1st Dep't 1989). The *Antunes* court held that a material issue of fact existed as to whether a plaintiff was entitled to recover when a ladder slipped out from under the plaintiff because plaintiff had placed the ladder on a plastic cloth notwithstanding that the plaintiff was the sole witness. However, the *Antunes* court also explained that there was "nothing in the present record to indicate that the ladder was not 'so constructed, placed and operated as to give proper protection.'" *Antunes*, 149 A.D.2d at 333 (quoting Labor Law § 240 [1]).

Here, Plaintiff testified that a screw securing one of the ladder's steps came loose, causing the ladder to shift and Plaintiff to fall. In other words, the ladder was not so constructed as to give proper protection. Further, Mehran does not provide evidence sufficient to challenge Plaintiff's credibility. Thus, Plaintiff's testimony alone is sufficient to establish a prima facie violation of section 240 (1). *See Rodriguez v. 3251 Third Ave. LLC*, 80 A.D.3d 434 (1st Dep't 2011) ("Plaintiff testified that he fell off an unsecured ladder while preparing to paint office space in a building owned by [defendant]. No issue of fact as to plaintiff's version of events or his credibility is raised by the absence of corroboration of his testimony or by anything in the record, whether in the testimony itself or in evidence presented by defendant"); *Perrone v. Tishman Speyer Properties, L.P.*, 13 A.D.3d 146, 147 (1st Dep't 2004) ("Plaintiff satisfied his prima facie burden on the motion through testimony that while he performed work as directed by

his supervisor, the six-foot A-frame ladder on which he was standing 'became a little uneasy' and 'shaky' and fell down as he started to descend from the next-to-top step. The fact that plaintiff may have been the sole witness to his accident does not preclude summary judgment on his behalf") (internal citations omitted); *Rauschenbach v. Pegasystems, Inc.*, 273 A.D.2d 90, 90–91 (1st Dep't 2000); *see also Fanning v. Rockefeller Univ.*, 106 A.D.3d 484, 484–85 (1st Dep't 2013) ("Plaintiff's motion for partial summary judgment on his Labor Law § 240 [1] claim was properly granted. Plaintiff established prima facie entitlement to judgment as a matter of law through testimony that when the unsecured ladder on which he was working suddenly moved, he fell, causing him to sustain injuries"). Additionally, Plaintiff provides a copy of his questionnaire signed on July 16, 2013 and provided to the Workers' Compensation Board in which he stated that he fell from "constructed stairs" while working as a "construction/contract worker."

Mehran argues that summary judgment should be denied because Plaintiff did not demonstrate that the ladder was properly set up and cites both *Antunes* and *Hernandez v. Bethel United Methodist Church of New York*, 49 A.D.3d 251 (1st Dep't 2008). Moreover, Mehran further argues that Plaintiff failed to establish that he was not the sole proximate cause of his injuries because there was a two-step ladder nearby that Plaintiff could have used instead.

As mentioned above, *Antunes* concerned a case in which the plaintiff stated by affidavit that he had positioned a ladder on plastic cloths. The instant case is thus distinguishable. Mehran also argues that the *Hernandez* court held that a "Plaintiff must first demonstrate that the ladder was steady and erect when it was first set up to establish a violation that the ladder failed to remain steady and erect during its use" (Aff. in Opp., ¶ 15). However, the *Hernandez* court held that "[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240 (1)." 49

A.D.3d at 252 (quoting *Montalvo v. J. Petrocelli Constr., Inc.*, 8 A.D.3d 173, 174, [1st Dep't 2004]) (citations and quotation marks omitted). The *Hernandez* court is concerned with the defendant securing the ladder, not the plaintiff, and the law here concerns the defendant's obligation to properly secure a ladder under Labor Law § 240 (1). *See Felker v. Corning Inc.*, 90 N.Y.2d 219, 224 (1997) ("Section 240 [1] of the Labor Law was designed to place the responsibility for a worker's safety squarely upon the owner and contractor rather than on the worker").

Per his affidavit and deposition testimony, Plaintiff states that he leaned the ladder against the door of a freezer. He was not provided with any fall protection, and the ladder was not secured nor was it able to be secured. As discussed above, for the purposes of liability under Labor Law § 240 (1), it is sufficient that adequate safety devices to protect Plaintiff from falling or the ladder from slipping were absent. *Hernandez v. Bethel United Methodist Church of New York*, 49 A.D.3d at 253 (1st Dep't 2008). Here, additional safety devices to prevent Plaintiff from falling were required. *See DeRose v. Bloomingdale's Inc.*, 120 A.D.3d 41, 45 (1st Dep't 2014) ("The duty to furnish adequate safety devices is nondelegable, and those who fail to furnish such devices are absolutely liable for injuries that proximately result from an employee's elevation-related accident"); *Ortega v. City of New York*, 95 A.D.3d 125, 131 (1st Dep't 2012) ("A defendant's failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability"); *Bush v. Goodyear Tire & Rubber Co.*, 9 A.D.3d 252, 253 (1st Dep't 2004).

As to sole proximate cause, Mehran's argument that Plaintiff did not demonstrate that he was not the sole proximate cause of his accident fails because Mehran did not provide an adequate safety device in the first instance. *Hoffman v. SJP TS, LLC*, 111 A.D.3d 467, 467 (1st

Dep't 2013). Regarding the nearby two-step ladder, Plaintiff testified that it would not have allowed him to reach the ten-foot ceiling.

In any event, Plaintiff's alleged conduct goes to the issue of comparative fault, and comparative fault is not a defense to a Labor Law § 240 (1) cause of action because the statute imposes absolute liability once a violation is shown. *Bland v. Manocherian*, 66 N.Y.2d 452, 460 (1985); *Dwyer v. Central Park Studios, Inc.*, 98 A.D.3d 882, 884 (1st Dep't 2012); *Velasco v. Green-Wood Cemetery*, 8 A.D.3d 88, 89 (1st Dep't 2004) ("Given an unsecured ladder and no other safety devices, plaintiff cannot be held solely to blame for his injuries"); *Klein v. City of New York*, 222 A.D.2d 351, 351, *aff'd,* 89 N.Y.2d 833 (1st Dep't 1996). "[T]he Labor Law does not require a plaintiff to have acted in a manner that is completely free from negligence. It is absolutely clear that 'if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it.'" *Hernandez v. Bethel United Methodist Church of N.Y.*, 49 A.D.3d at 253 (1st Dep't 2008) (quoting *Blake v. Neighborhood Hous. Servs. of N.Y.*, 1 N.Y.3d at 290). Where "the owner or contractor fails to provide adequate safety devices to protect workers from elevation-related injuries and that failure is *a* cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence." *Tavarez v. Weissman*, 297 A.D.2d 245, 247 (1st Dep't 2002) (internal quotation marks omitted); *see Velasco v. Green-Wood Cemetery*, 8 A.D.3d at 89 ("Plaintiff's use of the ladder without his coworker present amounted, at most, to comparative negligence"); *Ranieri v Holt Constr. Corp.*, 33 A.D.3d 425, 425 (1st Dep't 2006) (finding that failure to supply plaintiff with a properly secured ladder or any safety devices was a proximate cause of his fall, and there was no reasonable view of the evidence to support defendants' contention that plaintiff was the sole proximate cause of his injuries); *Lopez v. Melidis*, 31 A.D.3d 351, 351 (1st Dep't 2006).

Thus, Plaintiff is entitled to partial summary judgment as to liability on the Labor Law § 240 (1) claim against Mehran Enterprises Ltd.[1]

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiff Wen Ling Gao's motion, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim as against defendant Mehran Enterprises Ltd. is granted; and it is further

ORDERED that the remainder of the action shall continue.

This constitutes the decision and order of the court.

11-1-17
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		DO NOT POST				FIDUCIARY APPOINTMENT		REFERENCE

[1] In his reply, Plaintiff requests that the court deny Mehran's motion for an order dismissing Plaintiff's Labor Law 241 (6) cause of action as a matter of law. This request is premature as Mehran has not made any such motion.