SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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MICHAEL AGLI, JR.,

Plaintiff,

-v-

21 EAST 90 APARTMENTS CORP., DOUGLAS ELLIMAN PROPERTY MANAGEMENT, AND INSIGNIA RESIDENTIAL GROUP,

Defendants.

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INDEX NO. 156425/2016

MOTION DATE

MOTION SEQ. NO. 004, 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 71-83, 107-109, 113-116; (Motion 005) 84-98, 103-106, 112

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

Plaintiff Michael Agli, Jr., an employee of non-party Dunwell Elevator Electrical Industries, commenced this Labor Law action to recover for personal injuries he suffered on September 19, 2014, at the building located at 21 East 90th Street, New York, New York, owned by defendant 21 East 90 Apartments Corporation and managed by defendant Douglas Elliman Property Management, while renovating and modernizing the building's freight elevator. Plaintiff discontinued his action against defendant Insignia Residential Group on July 31, 2018. In motion #004, plaintiff moves pursuant to CPLR 3212 for partial summary judgment on liability on his Labor Law 240(1) claim against defendants. In motion #005, defendants move pursuant to CPLR 3212 for partial summary judgment seeking dismissal of plaintiff's Labor Law 200 and 241(6) claims. The motions are consolidated for purposes of this decision.

Plaintiff testified that he was injured while he and two other Dunwell employees were attempting to manually lower an approximately 500-pound elevator bedplate down the building's exterior staircase to the elevator motor room in the basement of the building. Affirmation of

Jonathan Michaels dated November 26, 2019, Exh. 5 (Plf. Dep. Tr. 44, 52-54, 56-59, 62, 65, 77). There was no hoisting equipment available that could have been utilized on the staircase and defendants had refused Dunwell's requests to bring the equipment through the building's lobby and down the shaftway of the lobby's elevator, using existing rigging equipment. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 30-34, 41-42, 47-48). The bedplate had been placed on a handcart after delivery by the manufacturer, and at the time of the accident, plaintiff was assisting Curtis Browne and another worker, in lowering the cart down the stairs. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 60-61, 63, 65, 84-85). Plaintiff testified that he was holding onto one side of the cart, which had a handle, while Mr. Browne and the other worker supported the bottom half. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 63). Plaintiff testified that he was injured when the helper who was supporting the lower half of the cart let off some pressure, causing plaintiff to slip and for the cart to jerk forward. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 68-74). Plaintiff immediately felt a pop in his right shoulder and cried out that he was injured. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 73-76, 95).

According to plaintiff, in order to move the bedplate safely down the stairs, they should have been provided with a T-rig, which he described as legs with a beam across them, together with a trolley and a chain to which the bedplate could have been attached. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 85). However, no such equipment was available at the site and plaintiff doubted that Dunwell even possessed the necessary equipment. Michaels Aff., Exh. 5 (Plf. Dep. Tr. 86-87). Plaintiff's testimony that they were not provided with the necessary equipment to safely complete this job is supported by his co-worker, Mr. Browne, who confirmed that no rigging equipment was available and that they were prohibited from using the elevator shaft in the lobby to bring the bedplate down to the basement. Michaels Aff., Exh. 6 (Browne Dep. Tr. 17-21, 27-

28). Plaintiff's testimony is also supported by the affidavit of Nicholas Bellizzi, a professional engineer who states that since the workers were not allowed to bring the bedplate down the shaftway, they should have been provided with hoisting equipment to securely attach and lower the bedplate down the stairs. Michaels Aff., Exh. 9.

Turning to plaintiff's motion, Labor Law § 240(1) imposes liability on contractors and owners for exposing workers to certain elevation-related hazards and failing to provide adequate safety devices for these risks. *Keenan v. Simon Property Group, Inc.*, 106 A.D.3d 586, 587 (1st Dep't 2013). In order for a plaintiff to demonstrate entitlement to summary judgment on an alleged violation of Labor Law § 240(1), he must establish that there was a violation of the statute, which was the proximate cause of the workers' injuries." *Cherry v. Time Warner, Inc.*, 66 A.D.3d 233, 236 (1st Dep't 2009) (internal citations omitted). Here, plaintiff has met this burden by submitting testimony that he was injured when the bedplate that he was lowering downstairs suddenly jerked forward and that he was not provided with appropriate equipment to protect himself from injury as a result of this work. *See Runner v. New York Stock Exch.*, 13 N.Y.3d 599, 603-604 (2009); *Dirschneider v. Rolex Realty Co.*, 157 A.D.3d 538 (1st Dep't 2018); *Serowik v. Learden Boiler Works Inc.*, 129 A.D.3d 471 (1st Dep't 2015).

Defendants attempt to raise an issue of fact by arguing that plaintiff's testimony is contradicted by the testimony of his co-worker, Mr. Browne, and as such, there are material questions of fact regarding how the accident occurred or if it even did. However, Mr. Browne's testimony does not contradict plaintiff's testimony in any material way. Mr. Browne's testimony that he was holding the handcart from the top, rather than the bottom as plaintiff testified, and that unlike plaintiff, he did not recall seeing any gravel or any other slippery substance on the stairs, does not contradict the fact that plaintiff was injured while lowering the bedplate down the

stairs. Michaels Aff., Exh. 6 (Browne Dep. Tr. 16). Although Mr. Browne could not recall any quick descent of the handcart due to the sudden release of pressure from the worker at the bottom or losing control of the handcart for any period of time, he did confirm that plaintiff was injured while lowering the handcart as he heard him cry out that he was hurt. Michaels Aff., Exh. 6 (Browne Dep. Tr. 15-17, 31-34, 48-49, 68). Thus, while Mr. Browne does not recall how the accident occurred, his testimony confirms the fact that plaintiff was injured while lowering the handcart down the stairs.

Thus, plaintiff is entitled to summary judgment on his Labor Law 240(1) claim.

In light of this holding, the court need not address the parties' arguments concerning plaintiff's negligence and Labor Law 241(6) claims. *Henningham v. Highbridge Comm. Hous. Dev.*, 91 A.D.3d 521, 522 (1st Dep't 2012). Accordingly, it is

ORDERED that plaintiff's motion for partial summary judgment (#004) is granted; and it is further

ORDERED that defendants' motion for partial summary judgment (#005) is denied.

6/15/20
DATE

PAUL A. GOETZ, J.S.C.

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