SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2EFM

Justice

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CARL LABOLLITA,

Plaintiff,

- v -

JACOBS PROPERTY MANAGEMENT CO., ROCKMORE CONTRACTING CORP.,

Defendant.

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INDEX NO. 652335/2017

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

ROCKMORE CONTRACTING CORP.

Plaintiff,

-against-

C.L.J. CARPENTRY CORP.

Defendant.

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Third-Party
Index No. 595777/2017

The following e-filed documents, listed by NYSCEF document number (Motion 001) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 119, 120, 121, 122, 132, 133

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 123, 124, 125, 126, 127, 128, 129, 130, 131

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

Motion Sequence numbers 001 and 002 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by a worker on October 4, 2016 when, while working at a construction site located at the 369th Regiment

Armory building at 2366 Fifth Avenue, ("the Premises"), a Baker scaffold's wheel collapsed, causing the scaffold to topple and him to fall.

In motion sequence number 001, defendant Jacobs Project Management, Co. ("Jacobs") and defendant/third-party plaintiff Rockmore Contracting Corp. ("Rockmore") (together, "defendants") move, pursuant to CPLR 3212, for summary judgment in their favor on the third-party contractual indemnification claim against third-party defendant CLJ Carpentry Corp. ("CLJ").

In motion sequence number 002, plaintiff Carl Labollita moves, pursuant to CPLR 3212, for summary judgment in his favor as to liability on his Labor Law §§ 240 (1) and 241 (6) claims against defendants.

FACTUAL AND PROCEDURAL BACKGROUND:

On the day of the accident, Jacobs was hired by nonparty the New York State Office of General Services ("OGS") as the construction manager for a project at the Premises that entailed an extensive renovation of the Premises (the Project). Rockmore was hired by OGS to be the general contractor for the Project. Rockmore hired CLJ to perform carpentry work on the Project. Plaintiff was a carpenter employed by CLJ.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was a carpenter employed by CLJ. To perform his work, he regularly used a Bakers scaffold. Except for his hand tools, his tools and equipment were provided by CLJ. His foreman was Ray Garrigan ("Garrigan"), also a CLJ employee. Garrigan directed his work.

Plaintiff worked on the Project for approximately a year before his accident. CLJ's work included installing steel framing, studs and sheetrock. To do his work, he used a Baker's scaffold – a wheeled mobile scaffold – provided by CLJ. Plaintiff testified that CLJ workers were responsible for erecting the Baker's scaffolds, although he did not know who erected the one he was using. The scaffolds were not typically broken down during the day or overnight. Instead, they were chained up in the storage area when not in use.

On the day of the accident, plaintiff took an erected Baker's scaffold ("the Scaffold") out of the storage area and moved it to his work area. The Scaffold's platform was set to a height of approximately eight feet. The platform had safety railing on three of its four sides, with the open side "facing the framing" – i.e. facing the under-construction wall that he was in the process of installing (plaintiff's tr at 81). He inspected the Scaffold and found it to be in good condition – the wheels did not wobble and the planking was sturdy. He was able to move the Scaffold from storage to his work area without issue. To get on the top of the Scaffold, he used an A-frame ladder that he positioned next to the Scaffold. He used the Scaffold throughout the morning without issue.

The accident occurred around 1:00 p.m. Plaintiff testified that he was "framing the wall" while standing on top of the Scaffold, when "[t]he Baker collapsed" (*id.* at 95), causing him to fall forward while "the [Scaffold] fell backwards" (*id.* at 78). Specifically, plaintiff explained, the rear right side of the Scaffold began tilting downwards, causing him to fall forward towards the frame he was constructing. His chest "hit the studs" he was installing, and he grabbed on to a "header" installed on the ceiling (*id.* at 99). Then "the Baker fell down, hit the ladder, and then the Baker went through the studs, broke the studs free" (*id.*). Plaintiff hung on the header until it "broke loose" causing plaintiff to fall (*id.* at 101). Plaintiff hit the floor feet first and then fell down.

There were no witnesses to the accident, but plaintiff's coworker "Jack" – another CLJ foreman – ran over after hearing a noise and checked on plaintiff. At that time, plaintiff had already stood up and was inspecting the Scaffold. He noted that the wheel was detached and the threads of the screw that held it to the frame were stripped. Plaintiff's coworkers then took apart the Scaffold and removed it from the worksite.

Plaintiff was shown several photographs, which he confirmed contained images of the Scaffold. Plaintiff testified that one photograph showed that the subject wheel's connection point had "no threads" (*id.* at 91), another photograph showed an empty space where the wheel should have been, and a third photograph showed the wheel itself.

Deposition Testimony of William Gove of Jacobs

William Gove testified that, as of the day of the accident, he ran Jacobs' business. His duties included marketing and business development for Jacobs as well as the oversight of project operations, including for the Project. Jacobs was the construction manager for the Project at the Premises. As construction manager, Jacobs was responsible for managing the preconstruction and construction phases of the Project. It coordinated the work between the contractors and made sure that the contractors were following the construction plans and specifications.

Jacobs had two or three employees at the Project daily. Their jobs were to walk the jobsite, monitor progress and prepare reports for OGS. Gove also testified that Jacobs did not provide any materials or have the authority to direct the means and methods of any contractor's work, although they had the authority to stop work if they saw an unsafe condition.

Gove was unaware of the accident occurring and did not learn of it until "well after the fact" (Gove tr at 73). He was also unaware of the specifics of the accident or any investigation into the accident.

Deposition Testimony of Joseph Van Eron (Rockmore's Project Manager)

Joseph Van Eron ("Van Eron") testified that on the day of the accident he was one of Rockmore's project managers. Rockmore was the "C-contractor" for the Project pursuant to a WICKS Law contract with the State of New York. Rockmore was responsible for carpentry work, glasswork and painting. It subcontracted out the carpentry work to CLJ. Van Eron's work included overseeing the work done by Rockmore and its subcontractors.

Van Eron held weekly meetings with its subcontractors to discuss progress, work, and safety. Rockmore employees also did daily walkthroughs of the Project, prepared daily reports, and had the authority to stop work if they saw an unsafe condition.

Van Eron first learned of the accident on the day it happened from CLJ's foreman, Garrigan. At the end of the shift (several hours after the accident), Van Eron went to speak with plaintiff. Van Eron testified that plaintiff told him that he had fallen "[d]own the wall off a Baker" because "the wheel on the Baker bent off or something" (Van Eron tr at 46, 48-49).[1] Van Eron never investigated the accident location itself, nor did he inspect the Scaffold. He learned that the Scaffold had been removed from the Premises shortly after the accident because "it was broken" (*id.* at 74).

[1] Later in his deposition, Van Eron testified that he did not remember when he learned of the wheel coming off the Baker.

Because plaintiff indicated that he did not want to fill out an accident report and had declined medical attention, Van Eron never prepared an incident report.

Deposition Testimony of Raymond Garrigan (CLJ's Foreman)

Garrigan testified that, on the day of the accident, he was CLJ's foreman for the Project at the Premises. Plaintiff was one of the workers he oversaw. His responsibilities included directing and supervising CLJ's workers at the Project. He received his instructions from CLJ's owner, Anthony Carallo. He received no instruction from Rockmore or Jacobs.

CLJ provided Baker scaffolds for its work at the Project. Those scaffolds were erected by CLJ workers when they first started working at the Project, and they generally remained assembled until the Project was finished.

Garrigan was present on the day of the accident, but he did not witness it. Shortly after the accident occurred, he received a call notifying him that plaintiff had fallen. He went to the accident site and saw the Scaffold, with plaintiff standing nearby. He could not recall whether the Scaffold "fell down or just the wheel was off it" (Garrigan tr at 34). He did recall that "[o]ne wheel had become dislodged" or "bent" (*id.* at 38). Garrigan then prepared an incident report based on information given to him by plaintiff.

Incident Reports and Forms

The Incident Report

The CLJ incident report is dated October 4, 2016, the day of the accident ("the Incident Report"). It was prepared by Garrigan. The Incident Report indicated that plaintiff's accident was

caused when a "Baker wheel collapsed causing a fall" (plaintiff's notice of motion, exhibit 14). It also notes that plaintiff injured his "back and right arm and ankle (*id.*).

The C3 Forms

Plaintiff filled out and signed two Workers' Compensation Board C-3 injury claim forms ("the C3 Forms"). The first C3 Form is dated October 4, 2016 – the day of the accident. It contains the following information as relevant:

> "How did the injury/illness happen? . . . Baker wheel collapsed an [sic] fell to floor"

(plaintiff's affirmation in opposition, exhibit B). Plaintiff listed his injuries as "left ankle, lower back" (*id.*)

The second C3 Form is dated November 3, 2016 – a month following the accident. It contains, as relevant here, the following information:

> "How did the injury/illness happen? . . . I was on a Baker scaffold, the wheel broke and I flipped over and fell 7 or 8 feet"

(plaintiff's affirmation in opposition, exhibit A). Plaintiff listed his injuries as "left foot, left ankle, right shoulder and back" (*id.*).

The C2 Report

On October 18, 2016, CLJ prepared an Employers Report of Work-Related Injury form, known as a C2 report ("the C2 Report") (plaintiff's affirmation in opposition, exhibit C). The C2 Report indicates that the accident occurred when a wheel on the scaffold collapsed and plaintiff fell to the floor. It listed plaintiff's injuries as "left ankle" (*id.*).

LEGAL CONCLUSIONS:

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must "'assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions'" (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). 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]).

The Labor Law § 240 (1) Claim (Motion Sequence Number 002)

Plaintiff moves for summary judgment in his favor as to liability on his Labor Law § 240 (1) claim against defendants.

Labor Law § 240 (1), also known as the Scaffold Law, provides, as relevant:

> "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 designed to prevent those types of accidents in which the scaffold . . . 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'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards . . . and must be liberally construed to accomplish the purpose for which it was framed" (*Valensisi v Greens at Half Hollow, LLC,* 33 AD3d 693, 695 [2d Dept 2006] [internal citations omitted]).

Not every worker who falls at a construction site is afforded the protections of Labor Law § 240 (1), and "a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace" (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]). Instead, liability "is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Therefore, to prevail on a section 240 (1) claim, a plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (*see Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

As an initial matter, defendants do not dispute that they are proper Labor Law defendants.

Here, plaintiff is entitled to summary judgment in his favor as to liability on the Labor Law § 240 (1) claim. Through his testimony, plaintiff has established that the Scaffold "fell backwards" while he was on top of it, causing him to fall (plaintiff's tr at 78; *id.* at 99 ["the Baker fell down"]).

Plaintiff's testimony is supported by the Injury Report, the C2 Report, and two C3 Forms, as well as Garrigan's testimony that one of the wheels was "dislodged" or "bent" (Garrigan's tr at 38).

"'[I]n cases involving ladders or scaffolds that collapse or malfunction for no apparent reason' . . . , [there is] 'a presumption that the ladder or scaffolding device was not good enough to afford proper protection'" (*Kebe v Greenpoint-Goldman Corp.,* 150 AD3d 453, 454 [1st Dept 2017], quoting *Blake v Neighborhood Hous. Servs. of N.Y. City,* 1 NY3d 280, 289 [2003]). The "tilting or collapse" of a scaffold establishes prima facie evidence of a violation of section 240 (1) (*Kind v 1177 Ave. of the Ams. Acquisitions, LLC,* 168 AD3d 408, 409 [1st Dept 2019]; *see also Quattrocchi v F.J Sciame Constr. Corp.,* 44 AD3d 37, 381 [lst Dept 2007], *affd* 11 NY3d 757 [2008]; *Cuentas v Sephora USA, Inc.,* 102 AD3d 504, 505 [1st Dept 2013]).

The fact that plaintiff used the Scaffold throughout the day without incident does not raise a question of fact as to whether he was the sole proximate cause of the accident (*Singh v Hanover Estates, LLC,* 276 AD2d 394, 394 [1st Dept 2000] ["that plaintiff had been using the scaffold for a month prior to the accident without indication of any problems" did not give rise to an issue of fact "as to whether the accident was due solely to plaintiff's fault"). In any event, any alleged action on plaintiff's part in regard to the Scaffold's use goes to the issue of comparative fault, which is not a defense to a Labor Law § 240 (1) claim (*Bland v Manocherian*, 66 NY2d 452, 460 [1985]; *Velasco v Green-Wood Cemetery*, 8 AD3d 88; 89 [lst Dept 2004] ["Given an unsecured ladder and no other safety devices, plaintiff cannot be held solely to blame for his injuries"]; *Tavarez v Weissman,* 297 AD2d 245, 247 [1st Dept 2002] [where an owner or contractor does not provide sufficient safety devices "and that failure is a cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence"] [citations and internal quotation marks omitted]).

Defendants also argue that a question of fact exists because plaintiff was the sole witness to his accident. However, the fact that plaintiff was the sole witness to the accident does not, by itself, preclude a finding of summary judgment in plaintiff's favor (*Campbell v 111 Chelsea Commerce, L.P.*, 80 AD3d 721, 722 [2d Dept 2011] ["The fact that the plaintiff may have been the sole witness to the accident does not preclude the award of summary judgment in her favor"]).

Finally, defendants argue that plaintiff's credibility has been called into question because his testimony and the information contained in the C3 Forms differs and creates three potentially different versions of the accident (*Ellerbe v Port Auth. of N.Y. & N.J.*, 91 AD3d 441, 442 [1st Dept 2012] ["where credible evidence reveals differing versions of the accident, one under which defendants would be liable and another under which they would not, questions of fact exist making summary judgment inappropriate"]). However, the signed C3 Forms – that "Baker wheel collapsed an [sic] fell to floor" (affirmation in opposition, exhibit B), and "the wheel broke and I flipped over and fell" (*id.* exhibit A) do not raise a question of fact as to the nature and cause of the accident, as they are consistent with plaintiff's deposition testimony that the wheel of the Scaffold broke and "the Baker fell down" causing him to fall (plaintiff's tr at 99). Accordingly, plaintiff's credibility has not been called into question, and no credible evidence exists as to differing versions of events.

Given the foregoing, defendants have failed to raise a question of fact sufficient to defeat plaintiff's prima facie entitlement to judgment as a matter of law. Thus, plaintiff is entitled to summary judgment in his favor as to liability on his Labor Law § 240 (1) claim against defendants.

The Labor Law § 241 (6) Claim (Motion Sequence Number 001)

Plaintiff moves for summary judgment in his favor as to liability on the Labor Law § 241 (6) claim.

Labor Law § 241 (6) provides, in pertinent part, as follows:

> "All contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
> * * *
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "'to provide reasonable and adequate protection and safety' to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *see Ross,* 81 NY2d at 501-502). Importantly, to sustain a Labor Law § 241 (6) claim, it must be shown that the defendant violated a specific, "concrete" implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*Ross,* 81 NY2d at 505). Such violation must be a proximate cause of the plaintiff's injuries (*Annicaro v Corporate Suites, Inc.*, 98 AD3d 542, 544 [2d Dept 2012]).

Plaintiff moves solely with respect to that part of his section 241 (6) claim that arises from an alleged violation of Industrial Code 12 NYCRR 23-5.18 (b). Section 23-5.18 governs manually propelled mobile scaffolds, such as a Baker scaffold. Subsection (b) provides as follows:

> "Safety railings required. The platform of every manually-propelled scaffold shall be provided with a safety railing constructed and installed in compliance with this Part (rule)"

(12 NYCRR 23-5.18 (b). This section is sufficiently specific to support a claim under section 241 (6) (*see Ritzer v 6 East 43rd St. Corp.*, 57 AD3d 412, 413 [1st Dept 2008]).

Defendants' sole argument against this claim is that it provided the requisite scaffolding pursuant to an OSHA regulation. This argument is unpersuasive. Section 23-5.18 does not incorporate or otherwise reference OSHA regulations, and, notably, the violation of an OSHA regulation cannot form the basis of a Labor Law § 241 (6) claim (*Schiulaz v Arnell Constr. Corp.*, 261 AD2d 247 [1st Dept 1999]; *Simon v Schenectady N. Congregation of Jehovah's Witnesses*, 132 AD2d 313, 317 [3d Dept 1987] ["an action predicated upon Labor Law § 241 (6) must refer to a violation of the specific standards set forth in the implementing regulation (12 NYCRR part 23)"]). For the same reason, the purported fulfillment of an OSHA regulation cannot form the basis of a defense against a violation of New York's Industrial Code.

That said, according to plaintiff, the accident was caused when the Scaffold's wheel broke and/or dislodged from the Scaffold, causing the Scaffold to tip over and plaintiff to fall. The lack of a railing was not the cause of plaintiff's accident, and plaintiff does not allege or otherwise testify that, had a railing been present, he would not have fallen from the Scaffold when it tipped over. Accordingly, plaintiff has not established his prima facie entitlement to judgment as a matter of law on this claim.

Thus, plaintiff is not entitled to summary judgment in his favor on the Labor Law § 241 (6) claim predicated on a violation of Industrial Code 12 NYCRR 23-5.18 (b).

Rockmore's Contractual Indemnification Claim Against CLJ (Motion Sequence 001)

Defendants move for summary judgment in their favor on Rockmore's third-party claim for contractual indemnification as against CLJ. Notably, Jacobs is not a party to the third-party

action. Nor is it mentioned at all in Rockmore's third-party complaint. Based on this, Jacobs has no standing to seek relief in the third-party action. Accordingly, the part of defendants' motion seeking relief with respect to Jacob's rights under the subject indemnification provision is denied.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.,* 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.,* 32 NY2d 149, 153 [1973]; *see also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]).

"In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Correia v Professional Data Mgt.,* 259 AD2d 60, 65 [1st Dept 1999]; *see also Murphy v WFP 245 Park Co., L.P.*, 8 AD3d 161, 162 [1st Dept 2004]). Unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, "[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (*Correia,* 259 AD2d at 65).

Additional Facts Relevant to this Claim

Rockmore and CLJ entered into an agreement dated June 4, 2015 for carpentry services at the Project ("the Agreement"). The Agreement includes a rider containing an indemnification provision ("the Indemnification Provision"). The Indemnification Provision provides in pertinent part, the following:

> "To the fullest extent permitted by law, [CLJ] agrees to indemnify, defend and hold harmless [Rockmore] as well as all parties listed below as additional insureds . . . (collectively 'Indemnitees') from any and all claims . . . related to death, personal injuries or property damage . . . brought any of the Indemnitees by any person or entity, arising out of or in connection

> with or as a result or consequence of the performance of the Work of [CLJ] . . . whether or not caused in whole or in part by [CLJ] . . . ."

(Rockmore's notice of motion, exhibit A, Rider A).

Here, plaintiff's work at the time of the accident was performed for CLJ pursuant to its agreement with Rockmore for carpentry services on the Project. Accordingly, plaintiff's accident arose out of CLJ's performance of its work on the Project, and the Indemnification Provision is triggered. Therefore, Rockmore is entitled to summary judgment in its favor against Rockmore.

While it is noted that the Indemnification Provision also contains the following language:

> "1) [F]ull indemnity in the event of liability imposed against the Indemnitees without negligence and 2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim which negligence is expressly excepted from [CLJ's] obligation"

(*id.*), such language does not impact upon the above determination. By its language, this portion of the Indemnification Provision addresses the limits of indemnification, as required by the General Obligations Law, and does not address when and how CLJ's contractual indemnification obligations arise.

To the extent that CLJ argues that the Agreement was not authenticated and may be inaccurate, such argument is unpersuasive because the Agreement was produced by CLJ itself during discovery.

Thus, Rockmore is entitled to summary judgment in its favor on its contractual indemnification claim as against CLJ.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that defendant/third-party plaintiff Rockmore Contracting Corp. and defendant Jacobs Project Management Co.'s motion (motion sequence number 001), pursuant to CPLR 3212, for summary judgment in their favor on the third-party claim for contractual indemnification against third-party defendant CLJ Carpentry Corp. is granted as to Rockmore only, and the motion is otherwise denied; and it is further

ORDERED that plaintiff Carl Labollita's motion (motion sequence number 002), pursuant to CPLR 3212, is granted to the extent that he seeks summary judgment in his favor on the Labor Law § 240 (1) claim against defendants, and the motion is otherwise denied; and it is further

ORDERED that, within twenty days of the entry of this order, counsel for plaintiff Carl Labollita shall serve a copy of this order, with notice of entry, upon all parties and upon the Clerk of the Court (60 Centre Street, Room 141 B), who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible* at the "E-Filing" page on the court's website at the address www.nycourts.gov/supetmanh); and it is further

ORDERED that the parties shall appear for a conference in Part 2, either virtually (via internet-enabled video conference or telephone conference) or, if possible, in person, in Room 280, 80 Centre Street, on December 1, 2020.

ORDERED that this constitutes the decision and order of this Court.

7/13/2020
DATE

KATHRYN E. FREED, 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