SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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HECTOR GERMAN ORTEGA BORGUA,

Plaintiff,

- v -

130 WILLIAM STREET ASSOCIATES LLC,GILBANE RESIDENTIAL CONSTRUCTION, LLC,SAFWAY ATLANTIC, LLC

Defendant.

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INDEX NO. 155463/2018

MOTION DATE 05/20/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

The motion by plaintiff for partial summary judgment on his Labor Law § 240(1) claim against defendants 130 William Street Associates LLC and Gilbane Residential Construction is granted.

Background

Plaintiff claims that he was working for non-party Structure Tech at a job site owned by defendant 130 William Street Associates LLC on May 18, 2018. He asserts that defendant Gilbane was the general contractor for the construction project. Plaintiff maintains that he was working on building a wall when a piece of rebar fell from the floor above and hit him in the head. As he attempted to get up, he felt another impact and was knocked unconscious. Plaintiff now moves for partial summary judgment on his Labor Law § 240(1) claim.

In opposition, defendants claim that plaintiff failed to show that the piece of rebar that hit him was being hoisted, secured, or that it was required to be secured at the time it fell on him.

They claim that this prevents the Court from granting plaintiff's motion. Defendants argue that discussions held after the accident directing workers to secure rebar is not admissible nor does it justify granting plaintiff's motion.

In reply, plaintiff claims that it is undisputed that a piece of rebar hit him after falling 16-18 feet. He insists there are multiple witness statements that support his account of the accident and that there was a subsequent meeting about how to tie up rebar.

Discussion

To be entitled to the remedy of summary judgment, the moving party "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 from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec*,

Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Labor Law § 240(1)

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed 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" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The Court grants the motion. There is no dispute that plaintiff was hit in the head by a piece of rebar from the floor above. That satisfies his prima facie burden for a Labor Law § 240(1) claim (*Franco v 1221 Ave. Holdings, LLC*, 189 AD3d 615, 615 134 NYS3d 709 (Mem) [1st Dept 2020] [granting plaintiff summary judgment on his 240(1) claim where he was hit by an unsecured pipe that fell from the ceiling]). There is no evidence here that plaintiff was working with the rebar that hit him or that the falling rebar was an integral part of the work performed. Defendants' assertion that liability can only be imposed if the rebar was being

hoisted or secured is too narrow a reading of the Labor Law and not supported by applicable case law.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for partial summary judgment on his Labor Law § 240(1) claim against defendants 130 William Street Associates LLC and Gilbane Residential Construction, LLC is granted as to liability only.

5/21/2021
DATE

ARLENE P. BLUTH, 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:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE