SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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PETER GALURIS,

Plaintiff,

- v -

THOR ASB 155 MERCER, LLC,DOLCE & GABBANA USA INC.,EXA USA CORP.

Defendants.

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INDEX NO. 156725/2018

MOTION DATE 12/15/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

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

The motion by plaintiff for summary judgment on his Labor Law § 240(1) claim is granted and the cross-motion by defendants for summary judgment dismissing the complaint is granted in part and denied in part.

Background

Plaintiff claims he fell from an unsecured ladder while working on a sign above the entrance to a Dolce & Gabbana store in Manhattan. He contends the ladder he was standing on shifted, which caused him to fall. Plaintiff argues that he told a supervisor for defendant EXA USA Corp. (the general contractor) that the job required a lift. Plaintiff argues that he was able to use the lift to install two letters for the sign but then electrical workers took back the lift. He insists that the EXA supervisor demanded he use a ladder to finish the job. Plaintiff maintains that the accident happened while he was drilling holes in the cast iron façade of the building.

In opposition and in support of its cross-motion, defendants seek summary judgment dismissing plaintiff's Labor Law §§ 200, 240(1) and 241(6) claims. Defendants insist that because the accident happened based on the means and methods of plaintiff's work, they cannot be held liable under a section 200 theory. With respect to the section 240(1) cause of action, defendants claim that plaintiff knew a lift was the appropriate device to complete the job but decided to do it with a ladder anyway.

Defendants also claim that defendant Dolce and Gabbana is not a proper Labor Law defendant and that they are entitled to summary judgment dismissing the 241(6) claims.

Plaintiff's Motion

"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 plaintiff's motion. The fact is that plaintiff's account of the circumstances surrounding the accident is unrebutted. He claims that Diego, EXA's supervisor,

told him to do the job despite the fact that the lift was not longer available. Without anything from Diego to counter plaintiff's version of events, the Court has no choice but to credit plaintiff's theory. And that theory includes plaintiff's assertion that he was not provided with the adequate safety device (the lift) and forced to complete the work with a ladder that moved and caused him to fall when he attempted to drill into the façade. Plaintiff is entitled to summary judgment on his Labor Law § 240(1) claim.

Defendants' Cross-Motion

The Court denies the branch of defendants' motion based on Labor Law § 200. Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

As stated above, plaintiff's claim is that the EXA supervisor instructed him to finish the job and not wait for the lift to be available again. That contention is unrebutted and therefore raises an issue of fact about whether defendants are liable under a common law negligence theory of liability. Contrary to defendants' arguments, plaintiff did not choose the means and methods of his task. He claims Diego refused to let him complete the work with the appropriate equipment (the lift).

The branch of defendants' motion that seeks dismissal of plaintiff's Labor Law § 241(6) claim is granted. "The duty to comply with the Commissioner's safety rules, which are set out in

the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6) . . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" *(Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

As defendants point out, plaintiff failed to address his reliance on sections 12 NYCRR 23-1.15, 23-1.16, 23-1.17 and 23-1.7. The only section plaintiff does address, 12 NYCRR 23-1.21(e)(3), is inapplicable because that refers to a stepladder while plaintiff contends he was using an A-frame ladder when he was injured.

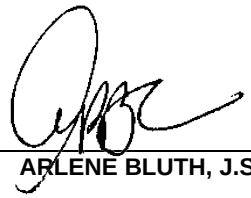
Labor Law Defendant

The Court finds that defendant Dolce and Gabbana USA Inc. is a proper Labor Law defendant because it entered into the contract with general contractor EXA (NYSCEF Doc. No. 95). In fact, the contract identifies Dolce and Gabbana as the owner (*id.*). "The term 'owner' as used in those sections is not limited to titleholders, but also encompasses one who has an interest in the property, such as a lessee ..., who contracted for or otherwise has the right to control the work" (*Walp v ACTS Testing Labs, Inc./Div. of Bur. Veritas*, 28 AD3d 1104, 1104-05 [4th Dept 2006]). Therefore, plaintiff can seek redress against this defendant.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for partial summary judgment on his Labor Law § 240(1) claim is granted; and it is further

ORDERED that the cross-motion by defendants is granted only to the extent that plaintiff's Labor Law § 241(6) claims are severed and dismissed, and denied as to the remaining relief requested.



12/17/2021
DATE

ARLENE BLUTH, J.S.C.

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