

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES D'AUGUSTE

PART 55

Justice

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JAMIE MEJIA,

Plaintiff,

- v -

SUPER P57 LLC, P57 INVESTORS, LLC, HUNTER
ROBERT CONSTRUCTION GROUP, RXR REALTY, FCS
GROUP, LLC.,

Defendants.

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INDEX NO. 159121/2017

MOTION DATE 10/05/2020,
04/18/2022

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 65, 66, 70, 71, 72, 73

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115

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

Upon the foregoing documents, the motion and cross-motions seeking summary judgment are decided as follows: (1) plaintiff's motion seeking summary judgment on the issue of liability under his Labor Law 240(1) claim is denied; and (2) defendants' motion for summary judgment seeking dismissal of the complaint is granted.

As an initial matter, plaintiff concedes that his Labor Law 200 and 241(6) claims require dismissal. Next, as for plaintiff's Labor Law 240(1) claim, it is undisputed that plaintiff was engaged in a protected activity when he apparently fell from a scaffold. The problem plaintiff has in asserting a valid claim is that his accidents was not observed by any one and plaintiff has no recollection of the occurrence. Moreover, defendants submitted an expert affidavit attesting to the adequacy of scaffold as a safety device. Plaintiff was performing work on a large scaffold

(twice the width of a Baker’s Scaffold) that was equipped with a guardrail system on each side of the scaffold. There were guardrails at two levels. The first guardrail was thigh-high, and the second guardrail was chest-high. There is no evidence that the scaffolding failed in any manner. Plaintiff did not provide an expert submission that contested the assertions of defendants’ expert, much less supported a proposition that defendants were required to provide both scaffolding and a personal fall arrest system, such as a lanyard. In the end, plaintiff appears to be relying on the existence of the accident itself to support a potential finding of liability, but the mere fact that plaintiff fell from scaffolding is insufficient to support potential Labor Law 240(1) liability. *Blake v Neighborhood Hous. Servs. of N.Y.C.*, 1 N.Y.3d 280, 288 (2003) (citations omitted). Accordingly, plaintiff’s Labor Law 240(1) claim is required to be dismissed.

The Clerk is directed to enter judgment in favor of the moving defendants dismissing the complaint as against them with prejudice and without costs. This constitutes the decision and order of this Court.



<u>9/14/2022</u> DATE	<u>JAMES D'AUGUSTE, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE