At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25th day of March 2024.

P R E S E N T:

HON. INGRID JOSEPH,
Justice.

----------X

MIGUEL ARGUDO,
Plaintiff,

-against-

Index No. 514116/19

80 ADAMS PROPERTY OWNER, LLC, HOPE STREET CAPITAL, LLC, TRITON CONSTRUCTION COMPANY INC. and EAST-END CONCRETE CORP.,
Defendants.

DECISION & ORDER

----------X

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	62-75
Opposing Affidavits (Affirmations)	78-79
Affidavits/ Affirmations in Reply	81

Upon the foregoing papers, defendants 80 Adams Property Owner, LLC (80 Adams), Hope Street Capital, LLC (Hope Street), Triton Construction Company Inc., (Triton) and East-End Concrete Corp. (East-End) (collectively, defendants) move (in motion sequence number 3) for an order, pursuant to CPLR 3212, granting summary judgment dismissing plaintiff's claims arising under Labor Law §§ 240 (1), 241 (6), 200 and common law negligence.

This matter involves an accident that occurred on October 15, 2018, at a project involving the construction of a condominium building located at 80 Adams Street in Brooklyn. Defendant 80 Adams was the owner of the property and had entered into a contract with Triton to serve as the general contractor for the project. Triton subcontracted with non-party Highbury Concrete (Highbury) to perform superstructure concrete, which involved pouring the concrete for the structure of the building as well as columns and floor slabs. Plaintiff was employed by Highbury as a street foreman and was responsible for receiving deliveries of materials to the site to be used

by Highbury. Typically, the materials would be unloaded from trucks using a forklift and then placed in a "staging area" where the materials would remain until they were brought into the building. The Highbury staging area was located on the sidewalk and a portion of the street on the Adams Street side of the property.

Plaintiff testified that some of the materials, such as plywood shoring posts, would be brought into the building manually. He further testified that other materials unloaded from the trucks and moved within the construction site, but outside of the building, were moved using a barela, which is a wheeled basket used to take materials to the staging area. Plaintiff noted that the barelas could not be brought into the building because there was a ramp leading up to the first floor that could not support the weight of the barela and the materials contained therein. Accordingly, a crane or forklift would be used to bring the materials into the building area.

Plaintiff further testified that the day prior to his accident, a delivery of approximately 50-100 pieces of rebar was received and placed in the staging area at his direction. He noted that the rebar remained in that area because the crane that was needed to bring the rebar into the building was broken, and thus the materials could not be moved into the building. The next day, October 15, 2018, plaintiff and two of his co-workers were moving various materials that were unloaded from trucks and needed to be moved to the staging area. At some point, they began moving a barela that was loaded with steel beams. While they were in the process of lifting it approximately two feet onto the curb in the staging area, plaintiff tripped on the rebar that had been placed there the day prior, causing him to fall and sustain various injuries.

Plaintiff commenced the instant action by filing a summons and verified complaint on June 26, 2019. Defendants joined issue by filing a verified answer on August 21, 2019. On or about September 13, 2019, plaintiff served his verified bill of particulars. Depositions were conducted and plaintiff filed his note of issue on May 25, 2023.

Defendants move for summary judgment dismissing plaintiff's claims arising under Labor Law §§ 240 (1), 241 (6) and 200 and common law negligence. "Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact'" (*Kolivas v Kirchoff*, 14 AD3d 493, 493 [2d Dept 2005], citing *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *see Sucre v Consolidated Edison Co. of N.Y., Inc.*, 184 AD3d 712, 714 [2d Dept 2020]). "The proponent for the summary judgment must make a prima facie showing of entitlement to judgment as a matter

of law, tendering sufficient evidence to demonstrate absence of any material issues of fact" (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce admissible evidence to establish the existence of material issues of fact which require a trial for resolution (*see Gesuale v Campanelli & Assocs.*, 126 AD3d 936, 937 [2d Dept 2015]; *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 494 [2d Dept 1989]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad*, 64 NY2d at 853; *Skrok v Grand Loft Corp.*, 218 AD3d 702 [2d Dept 2023]; *Menzel v Plotnick*, 202 AD2d 558, 558-559 [2d Dept 1994]).

The Court will first address Labor Law § 240 (1). The purpose of Labor Law § 240 (1) is to protect workers "from the pronounced risks arising from construction work site elevation differentials" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see also Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Consequently, Labor Law § 240 (1) applies to accidents and injuries that directly flow from the application of the force of gravity to an object or to the injured worker performing a protected task (*see Gasques v State of New York*, 15 NY3d 869 [2010]; *Vislocky v City of New York*, 62 AD3d 785, 786 [2d Dept 2009], *lv dismissed* 13 NY3d 857 [2009]). The statute is designed to protect against "'such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured'" (*Ross v DD 11th Ave., LLC*, 109 AD3d 604, 604-605 [2d Dept 2013], quoting *Ross*, 81 NY2d at 501). "[L]iability arises under Labor Law § 240 (1) only where the plaintiff's injuries are the 'direct consequence' of an elevation-related risk, not a separate and ordinary tripping or slipping hazard" (*Schutt v Dynasty Transp. of Ohio, Inc.*, 203 AD3d 858, 860-861 [2d Dept 2022], quoting *Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 98-99 [2015], quoting *Runner*, 13 NY3d at 60; *see Melber v 6333 Main St.*, 91 NY2d 759 [1998]).

The duty to provide the required "proper protection" against elevation-related risks is nondelegable; therefore, owners, contractors and their agents are liable for the violations even if they have not exercised supervision and control over either the subject work or the injured worker

(*see Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 521 [1985] [owner or contractor is liable for Labor Law § 240 (1) violation "without regard to . . . care or lack of it"]; *see Roblero v Bais Ruchel High Sch., Inc.*, 175 AD3d 1446, 1447 [2d Dept 2019]). "To succeed on a cause of action under Labor Law § 240 (1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries" (*id.*).

Here, plaintiff's testimony reveals that his Labor Law § 240 (1) claim arises out of his tripping over rebar while moving a basket of materials with his co-workers. Thus, defendants argue that inasmuch as plaintiff did not fall from a higher level to a lower level, his accident did not involve a physically significant elevation differential. Moreover, they note that he was not struck by an object that was elevated above the worksite. Defendants point out that plaintiff's testimony reveals that he and his co-workers lifted the barela only two feet off the ground to get it onto the sidewalk and plaintiff admits that he was never struck by the barela.

In opposition, plaintiff appears to be arguing that Labor Law § 240 (1) is applicable because the barela he was lifting at the time of his accident should not have been moved manually by hand due to its weight, and instead should have been moved by a forklift. In support of his opposition, plaintiff points to various cases, the majority of which involve a plaintiff struck by a falling object, which is distinguishable from the facts herein.

The court finds that defendants have demonstrated, prima facie, that Labor Law § 240 (1) is inapplicable in this case. Plaintiff's testimony that he tripped and fell over the rebar at ground level has demonstrated that the alleged accident is "unrelated to any elevation risk," and that the absence or inadequacy of any safety device was not the cause of his fall (*Schutt*, 203 AD3d at 861; *see Nicometi*, 25 NY3d at 98-99; *Cohen v Memorial Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 [2008]; *Nieves v Five Boro Air Conditioning & Refrigeration Corp.*, 93 NY2d 914 [1999]; *Castro v Wythe Gardens, LLC*, 217 AD3d 822, 825 [2d Dept 2023]; *Krarunzhiy v 91 Cent. Park W. Owners Corp.*, 212 AD3d 722, 723 [2d Dept 2023]; *Sanchez v 74 Wooster Holding, LLC*, 201 AD3d 755, 756 [2d Dept 2022] *Lopez v Edge 11211, LLC*, 150 AD3d 1214, 1215 [2d Dept 2017]). Accordingly, that branch of defendants' motion seeking dismissal of plaintiff's Labor Law § 240 (1) cause of action is granted and the claim is dismissed.

The Court next addresses Labor Law § 241 (6), which imposes a nondelegable duty on owners, contractors and their agents to provide reasonable and adequate protection and safety to persons employed in construction, excavation or demolition work, and to comply with the safety rules and regulations promulgated by the Commissioner of the Department of Labor (*see Misicki v Caradonna*, 12 NY3d 511, 515 [2009]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *Seales v Trident Structural Corp.*, 142 AD3d 1153, 1157 [2d Dept 2016]; *Norero v 99-105 Third Ave. Realty, LLC,* 96 AD3d 727, 728 [2d Dept 2012]). To prevail on a Labor Law § 241 (6) claim, it must be predicated upon violations of specific codes, rules, or regulations applicable to the circumstances of the accident (*see Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]; *Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 53 [2d Dept 2011]). In his bill of particulars, plaintiff asserts a violation of Industrial Code §§ 23-1.5; 23-1.7 (a), (b), (e); 23-1.8; 23-1.11; 23-1.15; 23-1.16; 2.1 (a) (1), (2), (b); 23-1.28; and 23-1.30 as predicates for his Labor Law § 241 (6) claim. Defendants argue that plaintiff's Labor Law § 241 (6) claim should be dismissed as the Industrial Code sections he alleges were violated are not applicable or did not proximately cause his accident.

As an initial matter, in opposition to this branch of defendants' motion, plaintiff concedes that only Industrial Code §§ 23-1.5 (c) (3), 1.7 (e) and 2.1 (a) (1) are applicable to this case and abandons his reliance on the other Industrial Code provisions alleged in his bill of particulars (*see Debennedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021] [holding that plaintiff abandoned his reliance on any other provisions of the Industrial Code that he failed to address in his brief]; *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]; *Kempisty v 246 Spring Street, LLC*, 92 AD3d 474, 475 [1st Dept 2012]). In any event, the court finds that defendants have made a prima facie showing that 12 NYCRR §§ 23-1.5 (a), 1.5 (b), 23-1.7 (a), 23-1.7 (b), 23-1.8, 23-1.15, 23-1.16, 23-1.28, 23-1.30, and 23-2.1 (b) are either too general to support a Labor Law § 241 (6) claim, or inapplicable given the circumstances of the accident.

Turning to 12 NYCRR § 23-1.5 (c) (3), this section provides that " . . . [a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." Defendants argue that this section is not applicable to the facts of this case as plaintiff was not, in fact, using any equipment or machinery at the time of his accident. Specifically, they assert that this Code provision does not address when certain equipment or machinery should be used, what type of

loads should be lifted with certain equipment, and that it solely applies to machinery or equipment that is actually being utilized by the worker. Thus, defendants argue that it cannot be used as a basis for determining that a crane or forklift should have been used to either move the rebar or to lift the barela. In addition, defendants note that their action in taking the forklift out of use when it was broken was consistent with the mandate of the Code provision. Finally, they assert that even if it could be shown that this provision was violated, the lack of a forklift was not a proximate cause of plaintiff's accident.

In opposition, plaintiff argues that this provision is applicable as the rebar was stored in the staging area because a crane was not available to move it inside. Additionally, he notes that the barela had to be moved by hand because the forklift was broken. Plaintiff contends that these were both proximate causes of his accident.

At the outset, the Court notes that Industrial Code § 23-1.5 (c) (3) is sufficiently specific to support a Labor Law § 241 § (6) claim (*see Opalinski v City of New York*, 205 AD3d 917, 918 [2d Dept 2022]; *Perez v 286 Scholes St. Corp.*, 134 AD3d 1085, 1086 [2d Dept 2015]; *Becerra v Promenade Apts. Inc.*, 126 AD3d 557, 558 [1st Dept 2015]). However, the court finds that defendants have demonstrated that this Industrial Code provision is not applicable here as plaintiff was not injured as a result of using machinery or equipment that was damaged or broken. Rather, he asserts that he was injured because he was unable to use a forklift that was taken out of service to be repaired and a crane was not available to move the rebar. Plaintiff fails to demonstrate that he was provided with equipment or machinery that was defective. Accordingly, the situation herein is not one in which the protections of Industrial Code § 23- 1.5 (c) (3) have been triggered (*see Contreras v 3335 Decatur Ave. Corp.*, 173 AD3d 496, 497 [1st Dept 2019] [plaintiff injured while using grinder that got stuck, kicked back and knocked him to the ground]; *Tuapante v LG-39, LLC*, 151 AD3d 999, 1000 [2d Dept 2017] [plaintiff injured using defective grinder]; Lopez v CBP 441 9th Ave. Owner LLC, 2023 Misc LEXIS 3973 [Sup Ct, NY County, 2023] [a violation of § 23-1.5 (c) (3) found where plaintiff injured when he fell from ladder that was missing two rungs]). Inasmuch as plaintiff has failed to raise an issue of fact in opposition, that branch of defendants' motion seeking to dismiss plaintiff's Labor Law § 241 (6) claim as based upon a violation of Industrial Code § 23-1.5 (c) (3) is granted.

Next, Industrial Code § 23-1.7 (e), which relates to tripping and other hazards, provides as follows:

> (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.
>
> (2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

Defendants argue that the rebar was not a tripping hazard within the meaning of the term as set forth in the statute or based on New York case law interpreting this section of the Industrial Code. In this regard, they note that plaintiff's own testimony, the photographs, and all other evidence in the case, indicate that the rebar on which plaintiff tripped was "an integral part of the construction" and does not constitute debris. Moreover, defendants note that the rebar was intentionally placed in the staging area at plaintiff's direction as he testified that he was the worker responsible for unloading materials delivered to the site.

In opposition, plaintiff argues that his accident occurred in an area that was a passageway, walkway or working area, as he was required to take this route to perform his work. Moreover, he alleges that the rebar was not integral to the work and was actually an impediment that should have been moved by a crane after it had been delivered to the site. In this regard, he contends that simply because the rebar would eventually be installed at the site does not render it integral to the work being performed. Plaintiff maintains that the work he was performing involved unloading materials from delivery trucks for transfer into the building.

Industrial Code §§ 23-1.7 (e) (1) and (2) are sufficiently specific to support a claim brought under Labor Law § 241 (6) (*see Jara v N.Y. Racing Ass'n, Inc.*, 85 AD3d 1121, 1123 [2d Dept [2011]). However, defendants have established their prima facie entitlement to judgment as a matter of law dismissing that portion of plaintiff's Labor Law § 241 (6) claim as predicated on violations of § 23-1.7 (e) (1) and (2), by demonstrating that the rebar upon which plaintiff alleged he tripped over was an integral part of the construction work being performed (*see Freyberg v Adelphi Univ.*, 221 AD3d 658, 659-660 [2d Dept 2023]; *Fonck v City of New York*, 198 AD3d 874, 876 [2021]; *Martinez v 281 Broadway Holdings, LLC*, 183 AD3d 712, 714 [2d Dept 2020];

Krzyzanowski v City of New York, 179 AD3d 479, [1st Dept 2020] [holding that the "integral-to-the-work defense" applies to both Industrial Code §23-1.7 (e) (1) and (2)]; *Tucker v Tishman Constr. Corp. of N.Y.*, 36 AD3d 417, 417 [1st Dept 2007] [rebar that plaintiff tripped over was "not debris, scattered tools and materials," but rather, "an integral part of the work being performed"]). Plaintiff fails to raise a triable issue of fact in opposition. As such, that branch of defendants' motion seeking to dismiss plaintiff's Labor Law § 241 (6) claim as predicated upon a violation of Industrial Code § 23-1.7 (e) (1) and (2) is granted.

Finally, defendants argue that Industrial Code § 23-2.1 (a) (1) is not applicable to the facts herein. This provision provides in relevant part, that "[a]ll building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare." Defendants contend that there is no violation of this Industrial Code provision as the rebar pile on which plaintiff allegedly tripped was not being "stored," but was merely placed in the staging area after being unloaded from a truck and prior to being moved into the building. In support of this contention, they point to plaintiff's testimony as follows:

> Q. Sir, my question is this: Were those rebar sitting there because they were being stored for later use, or were those rebar sitting there because you were waiting for the crane to bring them up into the building or something else?
>
> A. Waiting for the crane to put them up or lift (NYSCEF Doc No. 67, plaintiff's tr at 180, lines 4-11).

Additionally, defendants note that the rebar was located within a large open area outside of the building that was being used exclusively for the staging of materials by Highbury. Thus, defendants contend that since the rebar was not placed on a defined pathway, Industrial Code § 23-2.1 (a) (1) is not applicable as it did not occur in a "passageway," "walkway," "staircase" or thoroughfare."

In opposition, plaintiff argues that his testimony reveals that the rebar was present in that area since the prior day because the crane was not available to move it. In addition, he points to the testimony of his Highbury co-worker, Eric Terry, who testified that the rebar was being stored there until it could be brought into the building by crane (NYSCEF Doc No. 70, Terry tr at 34-35).

Plaintiff further points to the testimony of Arthur Karakatsanis, who was the Highbury concrete safety manager at the time of plaintiff's accident. Mr. Karakatsanis testified that the rebar was located in an area where material was stored (NYSCEF Doc No. 69, Karakatsanis tr at 63, lines 21-24). Plaintiff also argues that the area at which his accident occurred was a passageway or walkway as that was the route he and his co-workers had to take to enter the building. In further support of this contention, plaintiff points to Mr. Karakatsanis' testimony that the area at which the rebar was located was a walkway (*id.*, at 62, lines 13-14).

This regulation is sufficiently specific to support a Labor Law § 241 (6) claim (*see Rodriguez v DRLD Dev., Corp.*, 109 AD3d 409, 410 [1st Dept 2013]; *Aragona v State*, 74 AD3d 1260, 1262 [2d Dept 2010]). Here, plaintiff, through the submission of the aforementioned testimony, has raised a question of fact regarding whether the placement of the rebar in the staging area for a few days constituted storage of same thereby triggering a violation of Industrial Code § 23-2.1 (a) (1), and whether the area in which he alleges he was injured constituted a passageway or walkway. Accordingly, that branch of defendants' motion seeking dismissal of plaintiff's Labor Law § 241 (6) claim as predicated upon a violation of Industrial Code § 23-2.1 (a) (1) is denied.

The Court now address Section 200 of the Labor Law, which is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876 [1993]; *Haider v Davis*, 35 AD3d 363 [2d Dept 2006]). "Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]; *see Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

Where "a claim arises out of an alleged dangerous premises condition, a property owner or general contractor may be held liable in common-law negligence and under Labor Law § 200 when the owner or general contractor has control over the work site and either created the dangerous condition causing an injury, or failed to remedy the dangerous or defective condition while having actual or constructive notice of it" (*Mitchell v Caton on the Park, LLC,* 167 AD3d 865, 867 [2d Dept 2018], quoting *Abelleira v City of New York*, 120 AD3d 1163,1164 [2d Dept 2014]; *see Shaughnessy v Huntington Hosp. Assn.*, 147 AD3d 994, 997 [2d Dept 2017]; *Marquez v L & M Dev. Partners, Inc*, 141 AD3d 694, 698 [2d Dept 2016]).

Conversely, "[w]here a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work. Moreover, 'the right to generally supervise the work, stop the contractor's work if a safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law § 200 or for common-law negligence'" (*Marquez*, 141 AD3d at 698, quoting *Austin v Consolidated Edison, Inc.*, 79 AD3d 682, 684 [2d Dept 2010]; *see Gasques v State of New York*, 59 AD3d 666, 668 [2d Dept 2009], *affd on other grounds* 15 NY3d 869 [2010]; *Torre v Perry St. Dev. Corp.*, 104 AD3d 672, 676 [2d Dept 2013]). "The requisite supervision or control exists for Labor Law § 200 purposes when the property owner bears responsibility for the manner in which the work is performed" (*Moscati v Consol. Edison Co. of New York, Inc*, 168 AD3d 717, 720 [2d Dept 2019]).

Here, defendants argue that plaintiff's Labor Law § 200 and common law negligence claims must be dismissed as against them because none of the defendants directed or controlled plaintiff's work on the project. Rather, they contend that it was plaintiff who directed how and where to unload the rebar on which he allegedly tripped. Defendants assert that the accident resulted from the means and methods utilized by plaintiff, and his employer Highbury, and that defendants did not exercise any control over the means and methods of such work. Specifically, they assert that the accident was caused by the manner in which plaintiff directed the rebar be placed in the staging area which was an area that was exclusively used for Highbury equipment and materials. Additionally, defendants state that they did not direct how plaintiff performed his work or where materials would be placed during the performance of Highbury's work, and thus did not exercise any supervision or control over the work performed by plaintiff or his employer. In support of this, defendants point to plaintiff's own testimony that he received all direction and instruction from Highbury employees (NYSCEF Doc No. 67, plaintiff's tr at 80, lines 9-24). Defendants also point to Mr. Karakatsanis' testimony that only Highbury used the staging area for equipment and materials and that only Highbury workers would walk through the area where plaintiff claims to have tripped (NYSCEF Doc No. 69, Karakatsanis tr at 20, lines 3-10, at 71, lines 6-24). Accordingly, defendants contend that they did not exercise the necessary supervision and control over plaintiff's work to support a claim for common law negligence or a violation of Labor Law § 200 and thus these claims must be dismissed as a matter of law.

In opposition, plaintiff argues that Triton's site safety supervisor was responsible for conducting a daily walkthrough of the site and had the authority to stop work that was being performed in an unsafe manner. Moreover, plaintiff asserts that the tripping hazard would not have existed if a working crane had been available to move the rebar. Plaintiff further contends that defendants created two separate property defects and/or hazards namely, that the rebar they ordered could not be moved into the building in a timely fashion and an inadequate staging area. Plaintiff maintains that the staging area was a maze of stored materials that had been on the site for several months, and the rebar had been present for days despite repeated requests for a crane to be provided to move it. Thus, he asserts that defendants created these dangerous conditions and failed to rectify them despite having ample time to do so.

Here, plaintiff's accident related to the means and manner of the work, rather than a premises condition (*see Wilson v Bergon Constr. Corp.*, 219 AD3d 1380, 1383 [2d Dept 2023]; *Gomez v 670 Merrick Rd. Realty Corp.*, 189 AD3d 1187, 1191 [2d Dept 2020]; *Klimowicz v Powell Cove Assoc., LLC*, 111 AD3d 605, 606-607 [2d Dept 2013]). "Where, as here, the plaintiff's injuries arise from the manner in which the work is performed, to be held liable under Labor Law § 200, 'a defendant must have the authority to exercise supervision and control over the work'" (*Southerton v City of New York*, 203 AD3d 977, 980 [2d Dept 2022], quoting *Navarra v Hannon*, 197 AD3d 474, 476 [2d Dept 2021]). "The right to generally supervise the work, stop the contractor's work if a safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law §200 or for common-law negligence." (*Klimowicz v Powell Cove Assoc., LLC*, 111 AD3d 605, 608 [2d Dept. 2013], quoting *Austin v Consolidated Edison, Inc.*, 79 AD3d 682, 684 [2d Dept 2020]).

The Court finds that defendants have demonstrated prima facie that they did not direct or control the work that plaintiff was performing, as established by plaintiff's own testimony indicating that he was directed and supervised in his work solely by Highbury employees. Moreover, to the extent that plaintiff alleges that his Labor Law § 200 and common law negligence claims are based upon two separate property defects in the form of the rebar condition and an inadequate staging area, the Court finds that such argument lacks merit. To establish defendants' liability for such claims, plaintiff would have to demonstrate that defendants either created the dangerous condition causing his injury or failed to remedy the dangerous or defective condition while having actual or constructive notice of it. Here, plaintiff's own testimony reveals that he

never made any complaints regarding either condition to any of the defendants (NYSCEF Doc No. 67, plaintiff's tr at 82, lines 8-12), and that he only complained to his Highbury supervisor (*id.*, at 126, line 25, at 27, lines 2-8). Further, it is undisputed that plaintiff was the person that directed that the rebar be placed in the staging area. Accordingly, that branch of defendants' motion seeking summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims is granted and said claims are dismissed (*see Wilson*, 219 AD3d at 1383; *Kefaloukis v Mayer*, 197 AD3d 470, 471 [2d Dept 2021]; *Lopez v Edge 11211, LLC*, 150 AD3d 1214, 1215-1216 [2d Dept 2017]; *Przyborowski v A & M Cook, LLC*, 120 AD3d 651, 652-653 [2d Dept 2014]; *Ortega*, 57 AD3d at 61-62).

To the extent not specifically addressed herein, the parties' remaining contentions and arguments were considered and found to be without merit and/or moot. Accordingly, it is hereby

ORDERED that those branches of defendants' motion (mot. seq. no. 3) seeking summary judgment dismissing plaintiff's Labor Law §§ 240 (1), 200 and common law negligence claims are granted and said claims are hereby dismissed; that branch of the motion seeking summary judgment dismissing plaintiff's Labor Law § 241 (6) claim is granted *except* to the extent said claim is predicated upon a violation of Industrial Code § 23- 2.1 (a) (1).

This constitutes the decision and order of the Court.

E N T E R,

Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice