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

PRESENT: Hon. MICHAEL D. STALLMAN Justice — PART 7

FRANCIS A. BELLAMAN

-v-

BENORD REALTY ASSOCIATES LP

INDEX NO. 100127/05

MOTION DATE 8/21/07

MOTION SEQ. NO. 002

MOTION CAL. NO. 6

The following papers, numbered 1 to 4 were read on this motion for SJ

	PAPERS NUMBERED
Notice of Motion— Affidavits — Exhibits A F	1-2
Answering Affidavits — Exhibits	3
Replying Affidavits	4

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion for summary judgment is determined according to the attached memorandum decision and order.

FILED
NOV 21 2007
NEW YORK
COUNTY CLERK'S OFFICE

FILED
NOV 21 2007
COUNTY CLERK'S OFFICE
NEW YORK

MICHAEL D. STALLMAN J.S.C.

Dated: 11/14/07
New York, New York

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

DATED: J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 7

----------X

FRANCIS A. BELLARAN,

Index No.: 100127/05

Plaintiff,

Decision and Order

- against -

BELNORD REALTY ASSOCIATES, L.P., PAVARINI McGOVERN, LLC and PAVARINI CONSTRUCTION CO., INC.,

Defendants.

----------X

PAVARINI McGOVERN, LLC and PAVARINI CONSTRUCTION CO., INC.,

Index No.: 591011/05

Third-Party Plaintiffs,

-against-

INTERSTATE IRON WORKS OF NEW JERSEY,

Third-Party Defendant.

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HON. MICHAEL D. STALLMAN, J:

This is an action to recover damages for personal injuries sustained by an iron worker at a construction site located at Amsterdam Avenue and 86th Street in Manhattan on October 21, 2003. Defendants and third-party plaintiffs Pavarini McGovern, LLC, Pavarini Construction Co., Inc. (collectively, Pavarini) and defendant Belnord Realty Associates, L.P. (Belnord) (collectively, defendants) move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff Francis A. Bellaran's common-law negligence and Labor Law §§ 200, 240 (1) and 241 (6) claims against them. The branch of Pavarini's motion for summary judgment against third-party defendant Interstate Iron Works of New Jersey (Interstate) has been withdrawn pursuant to stipulation dated August 10, 2007.

BACKGROUND

On the date of his accident, plaintiff was working on a construction project that involved the renovation of a 10-story apartment building owned by defendant Belnord. Defendant Pavarini was the general contractor and construction manager for the project. Interstate served as a structural steel contractor for the job. Plaintiff, who was employed by and supervised by Metro Steel, the steel erector for the project and affiliate of Interstate, was assigned to a phase of the project which involved replacing a courtyard.

At the time of his accident, plaintiff was assisting his co-workers in the moving of a 15- to 20-foot-long steel I-beam (the beam), which weighed several hundred pounds, into position within the courtyard with a crane-like device called a roustabout. The roustabout consisted of a base, four wheels and a mast with a cable and a hand crank. The beam was attached to a hook, which was attached to the cable. The cable was being used to hoist the beam into place. The roustabout, which was supplied by Metro Steel, was being used on the project because a crane could not fit into the courtyard. The roustabout had no mechanical problems before plaintiff's accident.

Plaintiff testified that, prior to the incident, two of his co-workers rigged the beam to the roustabout and hoisted the beam two to three feet above the ground. Thereafter, another co-worker pushed the roustabout to a location within the courtyard where the beam was ultimately to be hoisted 15 feet above ground level. Plaintiff was assisting his co-workers by walking ahead of the roustabout clearing debris from its path. The debris, which consisted of concrete, wood and bricks, had been created by various contractors at the job site, though not by plaintiff or his co-workers. Plaintiff explained that the debris, which was scattered all throughout the job site, had to be removed from the roustabout's path, because if the roustabout were to strike the debris, it would stop, tilt and

the workers would have to correct it.

Plaintiff stated that, as he was walking ahead of the roustabout clearing the debris, the roustabout stopped suddenly, causing the beam to suddenly shift forward and strike plaintiff on the foot. Specifically, plaintiff stated that one of the roustabout's wheels "must have hit something and the beam came out, cantered down, hit me across my foot" (Defendant's Notice of Motion, Exhibit C, Bellaran Deposition, at 25). Plaintiff noted that, prior to his accident, he had not seen the debris that the roustabout allegedly struck, though he had experience with roustabouts striking debris in the past. Based on his past experiences, plaintiff concluded that the only thing that could have caused his accident was the roustabout hitting debris.

Robert Ianneilli, plaintiff's co-worker, testified that he was pushing the roustabout at the time of plaintiff's accident, and that he observed the roustabout striking the debris. He stated that, upon striking the debris, the roustabout was then caused to tip forward, which in turn caused the beam to slide forward and strike plaintiff's foot.

DISCUSSION

"'The 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 eliminate any material issues of fact from the case'" (Santiago v Filstein, 35 AD3d 184, 185-186 [1st Dept 2006], quoting Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (Mazurek v Metropolitan Museum of Art, 27 AD3d 227, 228 [1st Dept 2006]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]; DeRosa v City of New York, 30 AD3d 323, 325 [1st Dept 2006]). 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]; Grossman v Amalgamated Housing Corporation, 298 AD2d 224, 226 [1st Dept 2002]).

COMMON-LAW NEGLIGENCE AND LABOR LAW § 200 CLAIMS

Labor Law § 200 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' [citation omitted]" (Cruz v Toscano, 269 AD2d 122, 122 [1st Dept 2000]; see also Russin v Louis N. Picciano & Son, 54 NY2d 311, 317 [1981]). Labor Law § 200 (1) states, in pertinent part, as follows:

> "1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

Based on the record in this case, a reasonable jury could find that the improper securing of the load, as well as the unsafe condition created by the scattered debris in the area of plaintiff's accident, were both factors in causing plaintiff's accident. Therefore, it is not sufficient for defendants to argue only that they did not supervise plaintiff's work, that standard applying in Labor Law § 200 cases which involve injuries resulting from the means and methods of the work. In addition, Pavarini must set forth that it did not create or have actual or constructive notice of the unsafe condition at issue (see Keating v Nanuet Board of Education, 40 AD3d 706, 708-709 [2d Dept 2007] [where plaintiff's injuries stemmed not from the manner in which the work was performed, but, rather from a dangerous condition on the premises, general contractor was liable in common-law negligence and Labor Law § 200, when it had control over the work site and actual or constructive notice of the same]; Thomas v Claffee, 24 AD3d 749, 751 [2d Dept 2005]; Murphy v

Columbia University, 4 AD3d 200, 202 [1st Dept 2004] [to support finding of a Labor Law § 200 violation, it was not necessary to prove general contractor's supervision and control over plaintiff because the injury arose from the condition of the work place created by or known to contractor, rather than the method of plaintiff's work]).

Initially, as the issue of whether defendant and owner Belnord created or had actual or constructive notice of the unsafe condition at issue was never addressed by defendants in any way, Belnord has not met its burden of proof so as to be granted summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claim as against it.

In addition, as general contractor and construction manager in charge of keeping the work site clear of debris, not only did Pavarini have control over the work site at issue, it is likely that Pavarini had actual notice of the unsafe condition. Although defendants assert that it was plaintiff's responsibility to remove the debris, in fact, debris removal at the job site was the responsibility of Pavarini. Plaintiff testified that it was not his job to pick up debris at the job site, and that other contractors at the job site were responsible for picking up the debris. Plaintiff maintained that he only picked up debris and moved it if it was in the path of the roustabout, so as to avoid any hazard it might create.

In his affidavit of July 3, 2007, Iannielli stated that there was a significant amount of debris on the ground at the job site on the day of plaintiff's accident. He also noted that "it was not our responsibility to clear this debris. The only reason we had moved the debris on the day of the incident was to attempt to clear a path for the roustabout" (Plaintiff's Affirmation in Opposition, Exhibit A, Iannielli Affidavit).

Christoper Fillos, Pavarini's assistant project manager, testified that it was the individual contractors' responsibility to clear the debris they created from the job site. Fillos stated that, at the time of plaintiff's accident, Pavarini had at least three employees assigned to the job site to make sure that this occurred, including a project manager, an assistant project manager and a superintendent. Fillos stated that it was the superintendent's job to make sure the ground was level and clean before the work began. In fact, the superintendent was also responsible for maintaining safety at the job site, keeping track of the contractors, as well as overall site observation.

In addition, Fillos testified that Pavarini had personnel inspecting the job site on a "constant basis," and if there was a situation where a contractor had left debris in an area where another contractor then had to work, Pavarini would have "corrected it immediately by requesting the contractor who created the debris to clean it up" (Defendants' Notice of Motion, Exhibit D, Fillos Deposition, at 24-25). Fillos also noted that, although the contractors were responsible for center-piling any debris that they created during the day, Pavarini's laborers were responsible for cleaning up the center-piled debris at the end of each day. If a contractor did not center-pile the debris it created, Pavarini would remove said debris and charge it back to the contractor.

Fillos also testified that the duties of the Pavarini's laborers at the site consisted of:

> Clean up, maintain safety, make sure there's no debris, even on the sidewalk. Safety within the project site, clean up after the subcontractors after they have center piled their debris, and any other duties that were asked of them from the Pavarini McGovern staff

(id. at 23).

Thus, as Pavarini controlled debris removal at the job site, was responsible for cleaning up any debris not cleaned up by the contractors who created it, and conducted continual and constant

debris inspections, it is likely that Pavarini had actual notice of the unsafe condition at issue.

In addition, Pavarini may also be charged with constructive notice of the unsafe condition at issue. A plaintiff may establish constructive notice by demonstrating an ongoing and recurring dangerous condition in the area of the alleged accident (Solazzo v New York City Transit Authority, 21 AD3d 735, 736 [1st Dept] affd 6 NY3d 734 [2005]; Maza v University Avenue Development Corporation, 13 AD3d 65, 65 [1st Dept 2004][general contractor correctly found liable under Labor Law § 200 where it had the authority to direct trades and its own employees to clean up the site, and it was not disputed that construction debris had been present and continued to accumulate in the area]; O'Connor-Miele v Barhite & Holzinger, Inc., 234 AD2d 106, 106-107 [1st Dept 1996][plaintiff may establish constructive notice by evidence that an ongoing and recurring dangerous condition existed in the area of the accident that was routinely left unaddressed by the landlord]).

Here, plaintiff, Iannielli and Fillos testified that a significant amount of scattered debris had accumulated at the job site in the area of plaintiff's accident, indicating that the unsafe condition was visible and apparent and existed for a sufficient length of time for defendants to discover and remedy it. As Pavarini has not demonstrated that it did not have actual or constructive notice of the unsafe condition that caused plaintiff's accident, Pavarini is not entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claims as against them.

LABOR LAW § 240 (1)

Labor Law § 240 (1), also known as the Scaffold Law (Ryan v Morse Diesel, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant part:

> All contractors and owners and their agents ... in the erection, demolition, repairing, altering, painting ... shall furnish or erect, or cause to be furnished or erected for the performance of such labor,

> scaffolding, hoists ... 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-Electric Company, 81 NY2d 494, 501 [1993]). To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated and that this violation was a proximate cause of the plaintiff's injuries (Blake v Neighborhood Housing Services of New York City, 1 NY3d 280, 287 [2003]; Felker v Corning Inc., 90 NY2d 219, 224-225 [1997]; Torres v Monroe College, 12 AD3d 261, 262 [1st Dept 2004]).

The Scaffold Law does not apply merely because work is performed at elevated heights, but applies where the work itself involves risks related to differences in elevation (Binetti v MK West Street Company, 239 AD2d 214, 214-215 [1st Dept 1997]; see Ross v Curtis-Palmer Hydro-Electric Company, 81 NY2d at 500-501]). "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, 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 Associates, 96 NY2d 259, 267 [2001]; Ross v Curtis-Palmer, 81 NY2d at 501).

"Although the statute was intended to protect a worker against gravity-related risks arising from the work being performed, not every gravity-related hazard falls within the scope of the statute [internal citations omitted]" (Melo v Consolidated Edison Company of New York, 246 AD2d 459,

460 [1st Dept] affd 92 NY2d 909 [1998]; Misseritti v Mark IV Construction Company, 86 NY2d 487, 490-491 [1995] [Labor Law § 240 (1) not triggered where unbraced concrete fire wall collapsed at ground level onto plaintiff]; Gonzalez v Turner Construction Company, 29 AD3d 630, 631 [2d Dept 2006]). "Rather, the statute addresses only exceptionally dangerous conditions posed by elevation differentials, when the work site itself is elevated or is positioned below the area where materials or load are hoisted or secured [internal quotation marks and citations omitted]" (id.; Daley v City of New York Metropolitan Transportation Authority, 277 AD2d 88, 89-90 [1st Dept 2000]). Absent elevation differentials, the statute does not impose liability even if the injury is caused by an inadequate or malfunctioning hoist or other enumerated safety device (id.).

Thus, when an object that falls is positioned at the same level as the work site, there is no fall from an elevated work site (Daley v City of New York Metropolitan Transportation Authority, 277 AD2d at 89-90 [in order to implicate Labor Law § 240 (1), the site itself must be elevated above, or positioned below, the area where the object is being secured or hoisted]; Jacome v State of New York, 266 AD2d 345, 346 [2d Dept 1999] [foreman not entitled to recover under scaffolding law, even though plate which slipped injured plaintiff as it was unloaded from truck was elevated several inches above truck bed at time of accident]; Malecki v Wal-Mart Stores, Inc., 222 AD2d 1010, 1010 [4th Dept 1995] [where an object fell from a height of approximately three feet from a forklift onto plaintiff's foot, Court held that the statute did not apply because the object that fell was at the same level as the work site]; Ruiz v 8600 Roll Road, Inc., 190 AD2d 1030, 1030-1031 [4th Dept 1993] [fatal injury not within purview of statute where steel beam being hoisted by a crane from a pile of debris slipped, striking decedent in the head]; Carringi v International Paper Company, 184 AD2d 137, 140 [3d Dept 1992] [while assisting in the assembly of the boom sections of a mobile truck

crane, the crane cable at the top of the boom became dislodged and fell on plaintiff's head. Court held that, as crane was being assembled at ground level, creating no difference between the level of the required work and a lower level, there was no elevation-related risk requiring the provision of any of the devices listed in Labor Law § 240]).

As plaintiff and the roustabout carrying the steel beam were both at ground level when plaintiff's accident occurred, the court concludes that plaintiff's injury from the falling steel beam is the type of "ordinary and usual" peril a worker is commonly exposed to at a construction site and not an elevation -related risk subject to the safeguards prescribed by Labor Law § 240 (1) (Misseritti v Mark IV Construction Company, 86 NY2d at 491; Melo v Consolidated Edison Company, 246 AD2d at 460-461). Thus, defendants are entitled to summary judgment dismissing plaintiff's Labor Law § 240 (1) claim against them.

LABOR LAW § 241 (6)

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, 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 on owners and contractors to provide reasonable and adequate protection and safety to workers (see Ross v Curtis-Palmer Hydro-Electric Company, 81 NY2d at 501-502). However, Labor Law § 241 (6) is not self-executing, and in order

to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (id.).

Although plaintiff alleges multiple violations of the Industrial Code in his bill of particulars, with the exception of Industrial Code sections 23-8.1 (f) (1) (iv), 23-8.1 (f) (2) (i) and 23-8.2 (c), plaintiff failed to address these Industrial Code violations in his moving papers. Thus, this court deems these claims as abandoned, and defendants are entitled to summary judgment on those alleged Industrial Code violations (see Genovese v Gambino, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]).

Initially, it should be noted that all three provisions at issue of Section 23-8 of the Industrial Code, which applies to mobile cranes, tower cranes, and derricks, apply to cranes hoisting loads. In addition, the steel beam at issue in this case was to be considered a load in the process of being hoisted, despite the fact that it was moving in a horizontal direction at the time of plaintiff's accident. In a similar case, McCoy v Metropolitan Transportation Authority (38 AD3d 308, 309 [1st Dept 2007]), the Court noted that, "[t]hese provisions are not rendered inapplicable as a matter of law simply because the accident occurred while the beam was being propelled in a forward direction, having been already been lifted a foot off the ground" (see Smith v Hovnanian Company, 218 AD2d 68, 71 [3d Dept 1995] [Court held that when one transports a load, which is suspended by a choker from a crane boom, it is being hoisted, as "[t]he regulation was clearly designed to protect workers

from the hazards created by the horizontal movement of a load caused by a mobile crane"]).

The Court in McCoy reasoned:

> When a crane is being used to move a large, heavy or unwieldy item from one spot to another, the term "hoisting" should not be read so narrowly as to apply only to the part of the process in which the item is being moved in an upward direction, and to preclude the part of the operation when the load, having been lifted upward, is being propelled horizontally. There is little logic to the idea that the Code would require a tag or restraint line to protect workers and others from the rotation or swinging of the load, but only when the load is being raised, and not when an already raised load is being moved horizontally

(id. at 309-310).

Industrial Code 12 NYCRR 23-8.1 (f) (1) (iv) states, in pertinent part:

> (f) Hoisting the load. (1) Before starting to hoist with a mobile crane ... the following inspection for unsafe conditions shall be made:
>
> * * *
>
> (iv) the load [must be] well secured and properly balanced in the sling or lifting device before it is lifted more than a few inches.

Initially, it should be noted that Industrial Code 12 NYCRR 23-8.1 (f) (1) (iv) states a specific standard of conduct as opposed to a general common-law standard of care (McCoy v Metropolitan Transportation Authority, 38 AD3d at 309; Cammon v City of New York, 21 AD3d 196, 199 [1st Dept 2005]).

Industrial Code 12 NYCRR 23-8.1 (f) (1) (iv) requires that the load that is being hoisted be well secured and properly balanced. Here, it is clear from the testimony that the steel beam was not well secured and properly balanced, as evidenced by the fact that it tipped over and fell when the crane hit the debris (see Cammon v City of New York, 21 AD3d at 200-201 [the airborne timber that struck plaintiff from above while he was cutting it required securing at the time that it fell for purposes of the statute]). Thus, defendants are not entitled to summary judgment dismissing

plaintiff's Labor Law § 241 (6) claim predicated on a violation of Industrial Code 12 NYCRR 23-8.1 (f) (1) (iv).

Industrial Code 12 NYCRR 23-8.1 (f) (2) states, in pertinent part:

> (2) During the hoisting operation the following conditions shall be met:
> (i) There shall be no sudden acceleration or deceleration of the moving load unless required by emergency conditions.

Initially, it should be noted that Industrial Code 12 NYCRR 23-8.1 (f) (2) (i) states a specific standard of conduct as opposed to a general common-law standard of care (McCoy v Metropolitan Transportation Authority, 38 AD3d at 309).

Industrial Code 12 NYCRR 23-8.1 (f) (2) (i) prohibits sudden acceleration or deceleration of a moving load during a hoisting operation. Plaintiff argues that this section of the Industrial Code was violated by defendants when the crane rapidly decelerated, and that the cause of the crane's deceleration is irrelevant. However, as the sudden deceleration of the moving load was not caused intentionally by the crane's operator, but was instead caused when the crane accidentally hit the debris, defendants did not violate Industrial Code 12 NYCRR 23-8.1 (f) (2) (i). Thus, defendants are entitled to summary judgment dismissing plaintiff's Labor Law § 241 (6) claim predicated on a violation of Industrial Code 12 NYCRR 23-8.1 (f) (2) (i).

Industrial code section 23-8.2 (c) (3) states, in pertinent part:

> Loads lifted by mobile cranes shall be raised vertically so as to avoid swinging during hoisting except when such operations are permitted by the capacity chart. A tag or restraint line shall be used when rotation or swinging of any load being hoisted by a mobile crane may create a hazard.

Industrial Code 12 NYCRR 23-8.2 (c) (3) contains specific directives that are sufficient to sustain a cause of action under Labor Law § 241 (6) (McCoy v Metropolitan Transportation

Authority, 38 AD3d at 309; Stang v Garbellano, 262 AD2d 853, 854 [3d Dept 1999]; Smith v Hovnanian Company, 218 AD2d at 71).

Industrial Code 12 NYCRR 23-8.2 (c) (3) requires that tag or restraint lines be used when rotation or swinging of a load being hoisted by a mobile crane may create a hazard. As an issue of fact exists as to whether the use of a tag or restraint line should have been used in order to control the potentially hazardous forward movement of the steel beam, defendants are not entitled to summary judgment dismissing plaintiff's Labor Law § 241 (6) claim predicated on a violation of Industrial Code 12 NYCRR 23-8.2 (c) (3) (see Stang v Garbellano, 262 AD2d at 854 [a tag line should have been used where a sign attached to a mobile crane swung back, causing the sign to become unhooked from the crane and fall on plaintiff's arm]; Smith v Hovnanian Company, 218 AD2d at 71 [plaintiff's section 23-8.2 (c) (3) claim sustained, where injuries were brought about as a result of the uncontrolled horizontal movement of a load due to the absence of tag lines]).

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that defendants Pavarini McGovern, LLC, Pavarini Construction Co., Inc. and Belnord Realty Associates, L.P.'s (collectively, defendants) motion, pursuant to CPLR 3212, for summary judgment dismissing plaintiff Francis A. Bellaran's common-law negligence and Labor Law § 200 claims, as well as those parts of plaintiff's Labor Law § 241 (6) claim predicated on violations of Industrial Code 12 NYCRR 23-8.1 (f) (1) (iv) and 23-8.2 (c) (3) are denied; and it is further

ORDERED that defendants' motion, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's Labor Law § 240 (1) claim, as well as that part of plaintiff's Labor Law § 241 (6) claim predicated on a violation of Industrial Code 12 NYCRR 23-8.1 (f) (2) (i) is granted, and those parts of plaintiff's complaint are severed and dismissed and the clerk shall enter judgment accordingly; and it is further

ORDERED that the remainder of the action shall continue.

Dated: November 14, 2007
New York, New York

ENTER:

J.S.C.

MICHAEL D. STALLMAN
J.S.C.

FILED
NOV 21 2007
NEW YORK
COUNTY CLERK'S OFFICE