

Juarez v Noll St. Assoc., L.P.

2008 NY Slip Op 31220(U)

April 25, 2008

Supreme Court, Kings County

Docket Number: 0036939/2003

Judge: Karen B. Rothenberg

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At an IAS Term, Part 35 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 April, 2008.

P R E S E N T:

HON. KAREN B. ROTHENBERG,
Justice.

----- X
SALOMON JUAREZ,

Index No. 36939/03

Plaintiff,

- against -

NOLL STREET ASSOCIATES, L.P., NOLL STREET
DEVELOPMENT FUND COMPANY INC., STRATEGIC
CONSTRUCTION CORP. AND SPRING SCAFFOLDING, INC.,

Defendants.

----- X

The following papers number 1 to 12 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1-2, 3-4, 6-7 _____
Opposing Affidavits (Affirmations) _____	5, 8, 10 _____
Reply Affidavits (Affirmations) _____	9, 11, 12 _____
_____ Affidavits (Affirmations) _____	_____ _____
Other Papers _____	_____ _____

Upon the foregoing papers, plaintiff Salomon Juarez moves for an order, pursuant to CPLR 3212, granting him partial summary judgment against defendants Noll Street Associates, L.P. (Noll Associates), Noll Street Development Fund Company Inc. (Noll Development), Strategic Construction Corp. (Strategic) and Spring Scaffolding, Inc. (Spring) on the issue of liability under Labor Law §§ 200, 240 (1) and 241 (6). Defendants Noll

Associates, Noll Development and Strategic cross-move for an order, pursuant to CPLR 3212, granting them summary judgment dismissing all Labor Law § 200 and common-law negligence claims asserted against them.¹ Lastly, Spring cross-moves for an order, pursuant to CPLR 3212, granting it summary judgment dismissing all claims asserted against it.

Facts and Procedural History

Plaintiff commenced the instant action against Noll Associates, Noll Development and Strategic on October 8, 2003. Plaintiff commenced a subsequent action against Spring on October 26, 2005. These two actions were consolidated by order of this court dated March 6, 2007.

The verified consolidated complaint alleges that on June 28, 2003, plaintiff was injured while performing “construction, renovation and/or rehabilitation” work at a building located at 45-47 Central Avenue in Brooklyn. Specifically, plaintiff alleges that he was caused to fall approximately one and a half stories from an elevated scaffold to the ground.

Plaintiff also alleges that Noll Associates, Noll Development, Strategic and Spring are either owners of the subject premises, contractors hired by the owners to complete the subject construction project or agents of the owners or contractors. The complaint further alleges that defendants, by the actions and omissions of their agents, breached their common-law

¹ Defendants also seek either an extension of time to cross-move for summary judgment or an order deeming their cross-motions timely filed. However, since plaintiff’s motion was timely, and since defendants seek relief against plaintiff, defendants’ cross-motions are timely by virtue of the fact that plaintiff’s motion for summary judgment was timely (*see e.g. Gaines v Shell-Mar Foods, Inc.*, 21 AD2d 986 [2005]; *Maciejewski v 975 Park Ave. Corp.*, 10 Misc 3d 1079 [A], 2005 NY Slip Op 52258 [U] [2005]).

duty to maintain a safe construction site, and violated sections 240, 241 and 200 of the Labor Law. Lastly, the complaint asserts that these violations of the common-law duty and the Labor Law were the proximate cause of the accident, and defendants are thus liable for plaintiff's injuries.

Plaintiff filed a note of issue on December 12, 2007, certifying that the instant action is ready for trial. The parties now seek summary judgment.

Arguments Advanced by Plaintiff

Plaintiff testified at his examination before trial that on the date of the accident, he was employed by non-party Astir Construction as a laborer. He arrived at the work site and performed his usual tasks, but was subsequently instructed by his supervisor (referred to by plaintiff as Alex) to help construct a chute from leading from the roof of a six-story building under construction to the ground. The chute was comprised of pipes and was to be used as a garbage chute, allowing workers near the roof to dispose of garbage in a receptacle on the ground.

After plaintiff and other workers connected the pipes and completed the chute, plaintiff noticed that the chute was bent near the second floor of the building, causing garbage to get stuck in the chute. In order to reach the second-floor level and straighten the chute, plaintiff climbed up the side of a scaffold near the chute. Plaintiff climbed up to the second-floor level; however, there was no platform on which he could stand. While plaintiff hung on to and stood on the crossbars of the scaffold, he asked Alex for a piece of wood to

place across the scaffold bars on the second level. Plaintiff intended to place the wood and use it as a platform. As Alex handed a piece of wood to plaintiff, one of the crossbars that plaintiff was either grasping or standing on became loose and fell from the scaffold. Consequently, plaintiff fell to the ground and sustained injuries.

In support of his motion, plaintiff asserts that defendants and their agents failed to provide him with adequate (or any) safety devices to prevent him from falling off the scaffold. Plaintiff further asserts that each defendant is an “owner”, a “contractor” or an agent thereof, as those terms are defined in the Labor Law and by judicial decisions interpreting the same. For these reasons, argues plaintiff, he has demonstrated prima facie entitlement to judgment as a matter of law on his Labor Law § 240 (1) causes of action.

With respect to his Labor Law § 241 (6) claim, plaintiff argues that defendants and their agents violated section 23-1.16 of the Industrial Code (12 NYCRR ch. 1, subch. A). Specifically, plaintiff claims that Industrial Code § 23-1.16 requires owners and contractors (and their agents) to provide safety belts and lifelines that would limit worker falls to five feet. Plaintiff also claims that Industrial Code § 23-1.16 required defendants not only to provide safety belts and lifelines, but also to instruct plaintiff how to properly use these devices. Plaintiff asserts that he was not so instructed, reiterates that such devices were not provided, and concludes that he is entitled to partial summary judgment on the issue of defendants’ liability under Labor Law § 241 (6).

Lastly, plaintiff claims he is entitled to partial summary judgment on his Labor Law § 200 cause of action. Plaintiff asserts that, irrespective of whether defendants and their agents supervised the activity that led to the accident, the loose cross-beam of the scaffold was a dangerous condition, and defendants and their agents had constructive notice thereof.

Arguments Advanced by Noll Associates, Noll Development and Strategic

In support of their motion, Noll Associates, Noll Development and Strategic rely mainly on the deposition testimony of Alexandros Stavropoulos, a non-party witness. Stavropoulos testified that on the date of the accident, he was employed as a foreman for Astir Construction. He also stated that he was plaintiff's supervisor on that date, and that he witnessed the events before and after the subject accident.

Stavropoulos stated that safety harnesses were always available to plaintiff at the construction site, including the date of the accident. Stavropoulos also stated that plaintiff (as well as any other Astir Construction laborer) was not instructed—indeed, was not even permitted—to use the subject scaffold on the subject date.²

Based chiefly on the above-referenced testimony, Noll Associates, Noll Development and Strategic conclude that triable issues of fact exist with respect to erstwhile violations of the Labor Law, precluding summary judgment. Specifically, Noll Associates, Noll Development and Strategic argue that adequate safety equipment was available at the work

² Noll Associates, Noll Development and Strategic note other statements made by Stavropoulos at the deposition to advance their arguments. The court notes, however, that these statements appear to be hearsay.

site on the date of the accident for plaintiff's use, but plaintiff elected not to use the equipment. Noll Associates, Noll Development and Strategic further argue that Stavropoulos' testimony creates an issue of fact as to whether plaintiff was even assigned the task of climbing up the side of the subject scaffold. Noll Associates, Noll Development and Strategic state that, for the above-referenced reasons, plaintiff is not entitled to partial summary judgment on the issue of Labor Law § 240 (1) liability.

Noll Associates, Noll Development and Strategic also assert that issues of fact preclude summary judgment with respect to Labor Law § 241 (6). They argue that, notwithstanding plaintiff's contention that Industrial Code § 23-1.16 was violated because he was not provided with any safety harnesses, belts or lifelines, Stavropoulos testified that this safety equipment was provided. Noll Associates, Noll Development and Strategic reason that plaintiff elected not to use the subject safety equipment, and thus an issue of fact exists as to whether Industrial Code § 23-1.16 was actually violated.³

Lastly, Noll Associates, Noll Development and Strategic assert that they are entitled to summary judgment dismissing all Labor Law § 200 and common-law negligence claims asserted against them. Noll Associates, Noll Development and Strategic claim that liability under Labor Law § 200 or common-law negligence exists only if their agents had exercised some supervisory control over the work that produced the injury. Noll Associates, Noll

³Noll Associates, Noll Development and Strategic advance arguments regarding other Industrial Code sections; however, plaintiff appears to limit his Labor Law § 241 (6) argument to an alleged Industrial Code § 23-1.16 violation.

Development and Strategic assert that plaintiff was supervised only by Stavropoulos and other employees of Astir Construction. Noll Associates, Noll Development and Strategic conclude that plaintiff thus has no viable Labor Law § 200 or common-law negligence claim against them.

Arguments Advanced by Spring

In support of its motion for summary judgment, Spring first asserts that plaintiff has no viable Labor Law § 200 or common-law negligence claim against it. Spring states that it designed and erected the subject scaffold in a manner consistent with applicable safety standards used in the construction industry. Spring further states that, although a cross-brace became loose and fell when plaintiff stood on it, this was due to plaintiff's misuse of the subject scaffold. Spring asserts that plaintiff has not and cannot identify any defect in the scaffold that contributed to the subject accident. Spring also asserts that it is not liable under Labor Law § 200 or common-law negligence because it neither directed or controlled plaintiff's work, nor had the authority to do so. For these reasons, argues Spring, it is entitled to summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence claims asserted against it.

Spring also argues that plaintiff does not have a viable Labor Law § 240 (1) or § 241 (6) cause of action against it. Spring asserts that it is not a "contractor", "owner" or agent thereof, for Labor Law purposes. To the contrary, states Spring, it merely designed, erected, and subsequently disassembled the subject scaffold. Spring maintains that it did not have

control over the use of the subject scaffold and was not responsible for maintenance of the same unless notified of a defect. Spring asserts that for these reasons, it is not an “owner”, “contractor” or agent thereof, and plaintiff thus does not have a viable Labor Law § 240 (1) or § 241 (6) claim against it.

Standards for Summary Judgment

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 (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The proponents of a motion for summary judgment must first demonstrate entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The motion should be granted only when it is clear that no material and triable issue of fact is presented (*Di Menna & Sons v City of New York*, 301 NY 118 [1950]). If the existence of an issue of fact is even arguable, summary judgment must be denied (*Museums at Stony Brook v Vil. of Patchogue Fire Dept.*, 146 AD2d 572 [1989]). Also, parties opposing a motion for summary judgment are entitled to every favorable inference that may be drawn from the pleadings, affidavits and competing contentions of the parties (*Nicklas v Tedlen Realty Corp.*, 305 AD2d 385 [2003]; *see also Akseizer v Kramer*, 265 AD2d 356

[1999]; *Gibson v American Export Isbrandtsen Lines*, 125 AD2d 65, 74 [1987]; *Strychalski v Mekus*, 54 AD2d 1068, 1069 [1976]; *McLaughlin v Thaima Realty Corp.*, 161 AD2d 383, 384 [1990]). Indeed, the trial court is required to accept the opponents' contentions as true and resolve all inferences in the manner most favorable to opponents (*Henderson v City of New York*, 178 AD2d 129, 130 [1991]; see also *Gibson v American Export Isbrandtsen Lines*, 125 AD2d 65, 74 [1987]; *Strychalski v Mekus*, 54 AD2d 1068, 1069 [1976]; *McLaughlin v Thaima Realty Corp.*, 161 AD2d 383, 384 [1990]). Lastly, parties seeking summary judgment have the burden of establishing their prima facie entitlement to judgment as a matter of law by affirmatively demonstrating the merit of their claim or defense, rather than by pointing to gaps in the plaintiff's proof (*Nationwide Prop. Cas. v Nestor*, 6 AD3d 409, 410 [2004]; *Katz v PRO Form Fitness*, 3 AD3d 474, 475 [2004]; *Kucera v Waldbaums Supermarkets*, 304 AD2d 531, 532 [2003]).

Labor Law § 200 and Common-law Negligence

Labor Law § 200 states, in relevant part:

“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 protections to such persons.”

Labor Law § 200 codifies the common-law duty of an owner or general contractor to provide a safe place to work (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]).

Generally, parties are liable under Labor Law § 200 or common-law negligence only if their agents either directed and controlled the subject work (*Aranda v Park East Constr.*, 4 AD3d 315, 316 [2004]; *see also Lombardi v Stout*, 80 NY2d 290, 295 [1992]), created a dangerous condition (*see e.g. Bonura v KWK Assocs., Inc.*, 2 AD3d 207, 207-208 [2003]), or had actual or constructive notice of a dangerous condition (*see e.g. Rodgers v 72nd St. Assoc.*, 269 AD2d 258 [2000]). General supervisory authority for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose Labor Law § 200 liability (*see e.g. Dos Santos v STV Engrs., Inc.*, 8 AD3d 223, 224 [2004]).

Here, plaintiff asserts that all defendants had notice of the dangerous condition. However, this contention is not supported by any factual assertion. Plaintiff notes no testimony or other material that tends to show any defendant had actual notice of the loose cross-brace. Moreover, constructive notice of an allegedly defective condition exists only when the condition was visible and apparent, and existed for a sufficient period of time prior to the accident to permit a defendant to discover it and take corrective action (*Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]). However, plaintiff notes no testimony or other material that tends to show that the loose cross-brace was visible to defendants or their agents for any specified period of time. Accordingly, there are no issues of fact with respect to whether any defendant had notice of the loose cross-brace.

Despite plaintiff's contentions, Noll Associates and Noll Development have demonstrated entitlement to summary judgment with respect to Labor Law § 200 and

common-law negligence causes of action as it is uncontroverted that their agents did not exercise actual control over plaintiff's work (*see e.g. Conforti v Bovis Lend Lease LMB, Inc.*, 37 AD3d 235, 236 [2007]; *Bright v Orange & Rockland Utils., Inc.*, 284 AD2d 359, 360 [2001]). However, Strategic is not entitled to summary judgment with respect to Labor Law § 200 and common-law negligence. Plaintiff testified at his examination before trial that on the date of the accident, he received instructions from "Richie", who "was working for Strategic" (Examination Before Trial of Plaintiff, p. 27). Since plaintiff's testimony indicates that Strategic, the general contractor herein, actually supervised and controlled plaintiff's work, Strategic is thus subject to liability under Labor Law § 200 and common-law negligence (*see e.g. McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 798 [2007]; *see also Lombardi v Stout*, 80 NY2d 290, 295 [1992]; *Guerra v Port Auth. of N.Y. & N. J.*, 35 AD3d 810, 811 [2006]; *Parisi v Loewen Dev. of Wappinger Falls*, 5 AD3d 648 [2004]).

Lastly, Spring is entitled to summary judgment dismissing plaintiff's Labor Law § 200 claim. Spring, hired to erect a scaffold, is not a contractor or owner for Labor Law purposes and is thus not subject to the Labor Law (*see e.g. Morales v Spring Scaffolding, Inc.*, 24 AD3d 42, 46 [2005]). Plaintiff's Labor Law § 200 cause of action must thus be dismissed as against Spring. However, the court cannot summarily determine that there were no defects in the subject scaffold that was erected by Spring (*see e.g. Mendez v Union Theol. Seminary in City of N.Y.*, 17 AD3d 271 [2005]; *see also Urbina v 26 Court St. Assocs., LLC*, 12 AD3d 225

[2004]; *Keohane v Littlepark House Corp.*, 290 AD2d 382 [2002]; *Greco v Archdiocese of New York*, 268 AD2d 300, 301 [2000]), and therefore, Spring is not entitled to summary judgment dismissing plaintiff's common-law negligence claim asserted against it.

Labor Law § 240 (1)

Labor Law § 240 (1) states, in relevant part, that:

“All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, 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 a person so employed . . .”

Labor Law § 240 (1) was enacted 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 force of gravity to an object or person” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Thus, Labor Law § 240 (1) is implicated in “situations in which a worker is exposed to the risk of falling from an elevated worksite or being hit by an object falling from an elevated worksite” (*Thompson v Ludovico*, 246 AD2d 642, 642-643 [1998]; quoting *Rocovich v Consolidated Edison Co.*, 167 AD2d 524, 526 [1990], *affd* 78 NY2d 509 [1991]). Furthermore, the duties delineated in § 240 (1) are nondelegable and owners and contractors are liable for the violations of their agents even if they have not exercised supervision and control (*Rocovich*, 78 NY2d at 513).

Initially, as previously noted, Spring, hired to erect a scaffold, is not a contractor or owner for Labor Law purposes and is thus not subject to the Labor Law (*see e.g. Morales v Spring Scaffolding, Inc.*, 24 AD3d 42, 46 [2005]). Accordingly, Spring is entitled to summary judgment dismissing plaintiff's Labor Law § 240 (1) claim as against it.

As to defendants Noll Associates, Noll Development and Strategic, the deposition testimony of Stavropoulos demonstrates an issue of fact—specifically, whether plaintiff disobeyed instructions to use a safety harness, and to not climb the subject scaffold on the date of the accident (*see e.g. Walls v Turner Constr. Co.*, 10 AD3d 261, 262 [2004], *aff'd* 4 NY3d 861 [2005]; *Jastrzebski v North Shore School Dist.*, 223 AD2d 677 [1996], *aff'd* 88 NY2d 946 [1996]; *Beamon v Agar Truck Sales, Inc.*, 24 AD3d 481, 483-484 [2005]). Moreover, there seem to be conflicting sworn accounts of how the accident occurred, and as such, the question of plaintiff's credibility must be resolved by a jury (*see e.g. Sozzi v Gramercy Realty Co. No. 2*, 304 AD2d 555, 557 [2003]; *Stelmach v 650 Fifth Ave. Co.*, 290 AD2d 434, 435 [2002]). If the trier of fact credits Stavropoulos' testimony, the defendants may establish a "recalcitrant worker" defense (*see e.g. Santo v Scro*, 43 AD3d 897, 898-899 [2007]). Plaintiff's assertion that the Stavropoulos testimony is "clearly fabricated" notwithstanding, this court cannot summarily find that the sworn testimony of a witness is not credible. Indeed, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . on a motion for summary judgment" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 314-315 [2004], quoting *Anderson v*

Liberty Lobby, Inc., 477 US 242, 255 [1986]; *see also Scott v Long Is. Power Auth.*, 294 AD2d 348 [2002]). Lastly, a trier of fact may find that plaintiff misused the subject scaffold, and that said misuse was the sole proximate cause of his injuries (*see e.g. Ernish v City of New York*, 2 AD3d 256 [2003]). Since plaintiff has thus failed to demonstrate the absence of triable issues of material fact, he is not entitled to summary judgment on his Labor Law § 240 (1) cause of action.

Labor Law § 241 (6)

Labor Law § 241 states, in applicable part, as follows:

“All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.”

A Labor Law § 241 (6) claim is established if the defendants violated a provision of the Industrial Code which contains concrete specifications with which the defendants must comply under Labor Law § 241 (6) (*Donovan v S & L Concrete Constr. Corp., Inc.*, 234 AD2d 336, 337 [1996]; *see also Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The Industrial Code provision relied on to support a Labor Law § 241(6) must

contain a specific command and not general regulatory criteria such as “adequate”, “effective” and “proper” (*Ross*, 81 NY2d at 501-504). A violation of an Industrial Code provision that “mandates a distinct standard of conduct” serves to establish vicarious liability of an owner or contractor under Labor Law § 241 (6) (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 351 [1998]).

Once again, Spring, hired to erect a scaffold, is not a contractor or owner for Labor Law purposes and is thus not subject to the Labor Law (*see e.g. Morales v Spring Scaffolding, Inc.*, 24 AD3d 42, 46 [2005]). Accordingly, Spring is entitled to summary judgment dismissing plaintiff’s Labor Law § 241 (6) claim as against it.

Furthermore, the lack of available safety devices does not establish a violation of Industrial Code 23-1.16. Contrary to plaintiff’s contentions, Industrial Code 23-1.16 does not require owners and contractors to provide a construction worker with a safety belt or harness (*see e.g. Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 615 [2008]; *Dzieran v 1800 Boston Rd., LLC*, 25 AD3d 336, 337 [2006]; *Luckern v Lyonsdale Energy Ltd. Partnership*, 281 AD2d 884, 887 [2001]; *Avendano v Sazerac, Inc.*, 248 AD2d 340, 341 [1998]; *Spenard v Gregware Gen. Contr.*, 248 AD2d 868 [1998]). Moreover, assuming arguendo that plaintiff did establish an Industrial Code violation, he would nevertheless not be entitled to summary judgment on his Labor Law § 241 (6) claim, since an Industrial Code violation is merely some evidence of negligence, and it is for the trier of fact to determine the cause of plaintiff’s injury

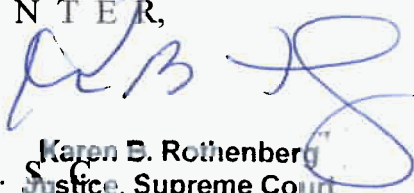
(*Rizzuto*, 91 NY2d at 351). For these reasons, plaintiff's application for partial summary judgment on his Labor Law § 241 (6) claim is denied.

Summary

The motion by plaintiff Salomon Juarez seeking partial summary judgment is denied in its entirety. The cross motion by defendants Noll Street Associates, L.P., Noll Street Development Fund Company Inc. and Strategic Construction Corp. is granted solely to the extent that plaintiff's causes of action alleging a Labor Law § 200 violation and common-law negligence are dismissed as against Noll Street Associates, L.P. and Noll Street Development Fund Company Inc., and is otherwise denied. Lastly, the cross-motion by defendant Spring Scaffolding, Inc. for summary judgment is granted solely to the extent that plaintiff's causes of action alleging Labor Law violations as against it are dismissed, and is otherwise denied.

The foregoing constitutes the decision and order of the court.

E N T E R,


Karen B. Rothenberg
J. S. C. Justice, Supreme Court