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

PRESENT: Hon. Joan A. Madden Justice PART ____

Index Number : 108073/2008
GROSSO, PETER
vs.
HUNT/BOVIS LEND
SEQUENCE NUMBER : 001
PARTIAL SUMMARY JUDGMENT

INDEX NO. ____
MOTION DATE ____
MOTION SEQ. NO. ____
MOTION CAL. NO. ____

this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Memorandum Decision + Order.

FILED

APR 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: April 5, 2011

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

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PETER GROSSO,

Index No.: 108073/08

Plaintiff,

-against-

HUNT/BOVIS LEND LEASE ALLIANCE II, A JOINT VENTURE, HUNT CONSTRUCTION GROUP, INC., BOVIS LEND LEASE, INC., NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, QUEENS BALL PARK COMPANY, LLC, and METS DEVELOPMENT COMPANY, LLC.,

Defendants.

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JOAN A. MADDEN, J.

In this action to recover damages for the injuries allegedly sustained by plaintiff Peter Grosso ("Grosso") as the result of a workplace accident, plaintiff moves for partial summary judgment against the defendants on the issue of liability under Labor Law § 240(1) (motion seq. no. 001). Defendants Hunt/Bovis Lend Lease Alliance II, a joint venture, Hunt Construction Group, Inc. Bovis Lend Lease, Inc., (collectively "Hunt/Bovis"), and Queens Ballpark Company, L.L.C. and Mets Development Company, LLC (collectively "Queens Ballpark") oppose the motion, and separately move for summary judgment dismissing the complaint and all cross claims (motion seq. no. 002).[1]

BACKGROUND

Plaintiff sues to recover for damages under Labor Law §§ 240(1), 241(6), and 200 and for common law negligence. Plaintiff was employed as an ironworker by non-party Cornell & Company ("Cornell") in connection with the construction of the new Mets Stadium ("the

[1] Motion seq. nos. 001 and 002 are consolidated for disposition.

Project") commonly referred to as Citifield, in Queens, New York ("the Stadium"). The City's Industrial Development Agency (IDA) was the ground lessee and owner of the stadium and Queens Ballpark was the IDA's agent. Hunt-Bovis was the construction manager on the Project.

Plaintiff alleges that he was injured on April 23, 2008, while walking along an elevated area where he and his coworkers were screwing down decking into the exposed iron beams. At the time of the accident, plaintiff was working with his foreman and a partner on an upper level portion of the Stadium described as the sunscreen canopy (Grosso Deposition 3/3/09 at 73).

Before the accident, plaintiff had worked on the job for three days, screwing decking into exposed iron beams located on the bays between columns of the Stadium (Id. at 106). He and his coworkers completed work on one bay on his second day of work, and proceeded to the next bay on his third day (Id. at 108-109). At the time of the accident, plaintiff was walking to the secured deck of the first bay, after having been asked by his foreman to retrieve a drill bit for his partner (Id. at 135). He estimated that he walked 5-6 feet along the beam, before he stepped first with his right foot and then with his left onto two piles of decking (Id. at 136-137). The second of these rocked backwards, causing his weight to shift back onto his right foot, which then slipped (Id. at 138). This decking then upended and hit plaintiff, before he fell through the open space to the level below (Id. at 138). Plaintiff estimates he fell a distance of 14-15 feet (Id. at 121).

On his first day, plaintiff recalled going to an orientation meeting, but could not recall the content of that meeting or whether it involved safety procedures (Id. at 62, 64-66). He stated that he received tools from the foreman consisting of a screw gun and screws, as well as an electrical cord (Id. at 70, 89). He did not remember whether there were any additional meetings, safety or otherwise, after that point (Id. at 132). He did not recall dealing with anyone from Hunt/Bovis, and only first heard about them after the accident (Id. at 118).

The only items that plaintiff recalled bringing to the job were his tool belt[2] (Id. at 76), and his own safety harness, which he identified himself as wearing in photographs taken after his fall (Id. at 89-90). He stated that this harness had a lanyard attached to it, a kind of "bungee cord with a hook," which if fastened to a safety device, would catch him in the event of a fall (Id. at 91). He stated that his lanyard was approximately four feet in length, would stretch to six feet in the event of a fall, and would fasten around the upper middle of his back (Id. at 91-92). At the other end of the lanyard is a closable metal hook that attaches to a safety device (Id. at 93). Attaching to such a device is called "tying off." (Id. at 94). Plaintiff stated that it was typical for safety lines to be provided for a worker to tie off, but that individual tie off points could also be provided, particularly where a worker would be immobile for long periods of time (Id. at 95). Plaintiff did not remember whether there was any discussion about how to use harnesses and lanyards or the need to be tied off, either at the orientation meeting he attended or in conversations with various site personnel (Id. at 95-96).

Plaintiff stated that no member of his team—the foreman, his partner, or himself—was tied off at any point in his time at the Project (Id. at 115-116). Yet he stated that he nonetheless wore his harness, in case he was put in an area where he could tie off (Id. at 116). He also stated that no one on his team was ever told to tie off, or asked why they were not tied off (Id. at 133).

At his deposition, plaintiff was shown photographs labeled as Defendants' Exhibits "A" through "L."[3] Exhibits "G" and "I" were taken from the lower level onto which plaintiff fell, showing both the hole and a dangling wire loop, or "choker," also described as "a steel rope with

[2] Plaintiff described his tool belt as containing wrenches, a bull pin, bolt bags, and soap stone, and did not mention that it contained any safety devices. Id. at 38-39. He was wearing a hardhat at the time of his fall. Id. at 147.

[3] These photographs appear to have all been taken by Defendants' witnesses Haney and Wright after the accident. The exact date and time of the photographs is unclear. Exhibits "B," "C," "G," and "I" all appear to have been taken by Wright (Wright. Dep. at 5, 60, 64, 83).

two eyes in it" (Id. at 73). This choker is pointed out specifically in Exhibits "B" and "C," where an unidentified construction worker gestures at the choker with the hook of his own lanyard from the lower level. Plaintiff stated that Exhibits G and I accurately represented the area of the accident, except that there was more decking laid out than at the time of his fall, and, significantly, that the choker was not there at the time of his fall (Id. at 73, 97). Plaintiff stated that neither he nor the other two members of his team used a choker at any point while he was at the site (Id. at 99).

In a sworn affidavit, the plaintiff's foreman, Robert Diresto ("Diresto"), stated that during their work at the level where the accident occurred, the workers were not provided with any fall protection (See Diresto Affidavit at 1). He specified that there was nothing at that location for them to attach a harness or lanyard to, including no "static lines, clamps, holes or safety cables" (Id. at 1). He also stated that they were instructed to work without being provided with fall protection equipment (Id. at 2). In reviewing photographs identified as Defendant's Exhibits "B," Exhibit "C," Exhibit "G," and Exhibit "I" from Mr. Grosso's deposition on March 23, 2009, depicting a wire choker located in the area where plaintiff fell, Diresto stated that this choker was not available at the time of the accident (Id. at 1-2). Moreover, he stated that even if it had been present, such a safety device would not have prevented the accident because "it was not fixed at both ends and it reached to the level below" (Id. at 2).

Stephen Martin Haney ("Haney"), a project health and safety manager employed by defendant Bovis Lend Lease for sites including the Stadium Project, visited the area of the fall on the day of the accident (Id. at 44). He observed that there were no horizontal static lines present at the site, which would have allowed a worker to attach a lanyard and move along the line while working (Id. at 64).

Haney defined a tie off point as an anchorage point under OSHA regulations capable of holding a 5000-pound load without failure (Id. at 93). Haney testified that a choker like the one presented in photographs B, C, G, and I could function as such a tie-off point if it was wrapped around an i-beam and one eye was pulled through the other (Id. at 95). While he observed a choker as being present at the fall site, he could not recall whether it was attached in this manner (Id. at 70). Because the photographs presented as exhibits in the depositions did not demonstrate that one eye of the choker was looped through the other eye, he also could not say whether the choker depicted was a functional tie-off point (Id. at 94). Even if it were, however, Haney stated that it would not allow a worker to both remain connected to the choker and move from the location of the choker to an adjacent bay (Id. at 100-101). Haney did not recall observing retractable lanyards being used on the project (Id. at 65).

Robert Jay Wright ("Wright"), Bovis Lend Lease's Site Safety Manager on the Project, testified that he instructed all new hires in fall protection at an orientation meeting (Wright Dep. at 25). In the course of his duties, he often did four to five walkthroughs of the Stadium a day to determine if there were safety hazards visible (Id. at 29, 27). He also addressed the concerns of employees such as Bill Fennell, a Hunt/Bovis supervisor who supervised the ironworkers, had a "hands-on" relationship with them, and met with them every morning to go over their schedules in detail (Id. at 31- 32). Wright and all other Hunt/Bovis employees had the authority to order workers to stop if it was deemed that the manner in which they were working was unsafe (Id. at 28).

Wright testified that he was at the Stadium at the time of plaintiff's accident, and that he both examined the area and took photographs shortly after the fall (Wright deposition at 38, 56). He testified that the choker or wire rope, visible in above-mentioned exhibits, was present at the

location when he arrived (Id. at 59). He indicated that the choker was wrapped around a beam, making it an acceptable place to tie off, and that he observed one eye looped through the other (Id. at 59-60). Wright stated that Exhibit "C," showing the worker pointing towards the choker with his own lanyard, was taken to illustrate that "there might be enough length that if he had been tied off to it to decelerated [sic] his fall" (Id. at 65).

Wright stated that Plaintiff was wearing a fixed-point lanyard at the time of his fall (Id. at 69). He also identified that the choker at the site of the accident was immovable if attached to a lanyard (Id. at 85). In reviewing the area of the fall, he recalled the choker, but no retractable lanyard or "beemer clip"[4] present (Id. at 54-55). Notably, Wright acknowledged that it was not feasible for the plaintiff, wearing a regular, fixed point lanyard and fixed point choker, like the wire choker in the photographs, to move from one area of the opening to the next bay without disconnecting his lanyard (Id. at 70). He also stated that nothing present in any of the photographs he examined showed a device that would have allowed the plaintiff to move from one bay to another without disconnecting his lanyard (Id at 70).

Wright testified that a retractable lanyard would have allowed an ironworker to move from one bay to another while still remaining attached to the choker depicted in the photographic exhibits "B," "C," "G," and "I." (Id. at 69). A retractable lanyard, worn instead of a regular lanyard, provides the wearer with as much as 14 feet of walking area, but will lock in place in the event of a sudden fall (Id. at 19, 21). Wright testified that Cornell ironworkers on the project used these retractable lanyards (Id. at 19-20). He stated that such lanyards were provided by Cornell, stored in the Cornell trailer, and that "loads of them" were available (Id. at 20). He also recalled seeing retractables in Cornell workers' toolboxes (Id. at 90). He also testified that

[4] Wright testified that a beemer clip is a safety device hooked to an I-beam, which attaches to a lanyard and can be dragged along behind the worker (Id. at 55).

Cornell kept a wide variety of its equipment in a number of gang boxes on the field of the stadium in an area called "Shanty Town." (Id. at 87-88).

DISCUSSION

On a motion for summary judgment, the proponent "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..." Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324, (1986).

Labor Law § 240 Claim

Labor Law § 240 (10) commonly known as the Scaffold Law, provides as follows:

> "All contractors and owners and their agents . . . 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."

The purpose of the statute is to "protect[] workers by placing ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor, instead of on workers, who are scarcely in a position to protect themselves from accident." Zimmer v. Chemung County Performing Arts, 65 NY2d 513, 520, *rearg denied* 65 NY2d 1054 (1985) (internal quotation marks and citations omitted). To impose liability under Labor Law § 240 (1), the plaintiff need only prove a violation of the statute (i.e., that the owner or general contractor failed to provide adequate safety devices), and that the statutory violation proximately caused his or her injuries. Blake v. Neighborhood Hous. Servs. of

N.Y. City, 1 NY3d 280, 290 (2003).

Plaintiff moves for partial summary judgment with respect to liability on his Labor Law § 240(1) claim, arguing that he was provided with no suitable safety devices that would have enabled him to perform his job and also adequately protected him in the event of a fall.

Defendants oppose the motion, and separately move for summary judgment dismissing this claim, asserting that plaintiff's actions made him the sole proximate cause of his injuries and thus they are not subject to liability under § 240(1). In support of this argument, defendants cite photographic evidence and testimony that a wire choker was present at the site, that it was purportedly an acceptable tie-off point for plaintiff, and that it would have arrested plaintiff's fall if he had only attached his harness to it. Defendants argue that plaintiff had been instructed to use this choker in a manner that would have prevented his fall, and that his subsequent failure to do so bars recovery under § 240(1).

In reply, plaintiff argues that, assuming *arguendo* that the wire choker was present at the time of his fall, the fact that he was not equipped with a retractable lanyard would have made it impossible for him to move from one bay to another and still remain safely secured to the wire choker. Additionally, plaintiff argues that, even if retractable lanyards that would have allowed plaintiff to move from bay to bay while secured to the choker were in fact present on the site, even in large quantities, no evidence indicates that plaintiff ever received a retractable lanyard, that he ever was instructed to use one, or that he was aware of their presence. Therefore, plaintiff argues it cannot be said that he was the sole proximate cause of his injuries.

Plaintiff has made a prima facie showing of defendants' liability under § 240 (1) based on evidence that defendants failed to provide him with an adequate safety device to protect him from an elevation-related risk and that this failure was a proximate cause of his injuries.

In opposition, defendants have failed to raise a triable issue of fact as to whether plaintiff was the sole proximate cause of his injuries. To show that a plaintiff's negligence was the sole proximate cause of an injury allegedly based on violations of the Labor Law, a defendant must establish that the plaintiff "had adequate safety devices available: that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured." Cahill v. Triborough Bridge & Tunnel Auth., 4 NY3d 35, 40 (2004); see also, Kosavick v. Tishman Construction Corp. of New York, 50 AD3d 287 (1st Dept 2008).

Here, there is no evidence that equipment immediately available to the plaintiff at the time of his fall was adequate to prevent his accident. Moreover, even assuming that the wire choker displayed in photographic exhibits B, C, G, and I was both present at the fall site before the accident and constituted a safe tie-off point, the uncontroverted record shows the fixed-point lanyard which plaintiff was wearing at the time of the fall would not have enabled him to remain securely tied off while performing the task of moving from bay to bay. Additionally, the record shows that there was no safety device present at the immediate fall site that would have both provided adequate fall protection and allowed plaintiff the range of motion necessary to perform his job. In this regard, defendants' assertion that there was sufficient give in the plaintiff's lanyard to protect him at the particular spot he fell, had he been connected to the choker, is mere speculation apparently based on unclear photographic evidence.

Finally, the mere availability of adequate safety equipment somewhere on a job site, without evidence that plaintiff knew of that availability or that he was expected to use it, is insufficient to demonstrate that plaintiff was the sole proximate cause of his injuries. Gallagher v. New York Post, 14 NY3d 83 (2010); see also, Tounkara v. Fernicola, 80 AD3d 470 (1st Dept

2011). In Gallagher, the Court of Appeals rejected defendants' argument that a plaintiff ironworker could have prevented his fall by using safety devices present on the project, where there was no evidence that plaintiff had any knowledge as to the availability of these devices, or had received any instructions to use them.

In this case, there is no evidence that plaintiff knew or should have known that adequate safety equipment was available or that he was expected to use it. Wright identified retractable lanyards as a means by which plaintiff could have remained securely fastened to the wire choker and still been capable of doing his job. While Wright recalls that there were "loads" of retractable lanyards available to Cornell employees in the area called "Shantytown," and that he observed Cornell employees with retractable lanyards, no one else recalls that retractable lanyards were supplied. In any event, even assuming they were available, the record does not demonstrate that plaintiff had a retractable lanyard, had knowledge that these lanyards were available, or that he was ever instructed as to the need for their use. Therefore it cannot be said that plaintiff's actions were the sole proximate cause of his injuries.

Accordingly, plaintiff's motion for summary judgment is granted with regard to liability under Labor Law §240 (1), and defendant's motion for summary judgment dismissing plaintiff's Labor Law §240 (1) claim is denied.

Labor Law § 241(6) Claim

Labor Law §241(6) requires that owners and contractors "'provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor." Ross v. Curtis-Palmer Hydro-Electric Co., supra, 81 NY2d at 502. Claimants must cite specific violations of the Industrial Code regulations for section 241(6) to apply. See, Amato v. State of New York, 241

AD2d 400 (1st Dept. 1997), lv denied 91 NY2d 805 (1998). "Only a violation of the State Industrial Code and regulations promulgated by the State Commissioner of Labor may serve as a basis for liability under that statutory section." Heller v. 83rd St. Investors Ltsd. Partnership, 228 AD2d 371, 372 (1st Dept.), lv denied, 88 NY2d 815 (1996).

Defendants argue that they are entitled to summary judgment dismissing plaintiff's Labor Law § 241(6) claim, as the Industrial Code provisions cited by defendant do not suffice to provide a ground for liability and/or are not applicable to the facts in this case.

Plaintiff counters that alleged violations of Industrial Code Section 23-1.7(b), 23-1.7(d), 23-1.16(b), and 23-1.16(e),[5] each provide a sufficient basis for his Labor Law § 241(6) cause of action in that they are sufficiently specific and applicable to the facts of this case.

Industrial Code § 23-1.7(b)(1)(i) requires that "[e]very hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part." Industrial Code §23-1.7(b)(1) has been held to be a sufficiently concrete specification to provide a basis for a violation of the statute. Olsen v. James Miller Marine Service, Inc., 16 AD3d 169, 171 (1st Dept 2005). In circumstances where an opening must remain open in order for work to progress, a worker's fall into the opening does not implicate a violation of § 23-1.7(b)(1), unless the opening is equal to or greater than 15 feet in depth, Salazar v. Novalex Contracting Corp., 72 AD3d 418, 423 (1st Dept 2010) *citing § 23.1.7(b)(1)(iii)(a)*. Here, plaintiff's job was to close up the space into which he fell by screwing in decking, meaning that the opening necessarily remained open until the task was complete. However, § 23.1.7(b)(1) is potentially applicable to this case, as plaintiff

[5]All other sections of the Industrial Code and the OSHA provisions cited by plaintiff as a basis for his cause of action under Labor Law § 241(6) are deemed abandoned.

testified that he fell approximately 14-15 feet to the level below.

Next, while an employer may also avoid liability for a violation of § 23-1.7(b)(1) by providing "either an approved life net installed not more than five feet beneath the opening," or "an approved safety belt with attached lifeline which is properly secured to a substantial fixed anchorage" (Industrial Code § 23-1.7(b)(1)(iii)(b)-(c)), here, it appears from the record that plaintiff was not provide with such devices. Therefore, there is sufficient evidence on the record to support the applicability of §23-1.7(b).

Industrial Code §23-1.7(d) concerns slipping hazards, and states that "[i]ce, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded, or covered to provide safe footing." None of these elucidated foreign substances have been claimed to be the cause of the plaintiff's fall, and therefore this section is not applicable to the action herein. Gdoviak v. Southbridge Towers, Inc., 20 Misc. 3d 1129(A) (Sup. Ct. NY Co. 2008); see also, Lewis v. Lower East Side Tenement Museum, 40 AD3d 438 (1st Dept 2007). The mere fact that plaintiff stated that he "slipped" on decking therefore fails to raises an issue of fact regarding this section.

Industrial Code § 23-1.16 prescribes standards for safety belts, harnesses, tail lines, and lifelines, and provides that:

> (b)Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging life line. Such attachments shall be so arranged that if the user shall fall such fall shall not exceed five feet.

Here, plaintiff testified that although wearing his harness, a retractable lanyard which would have permitted him to move from bay to bay, was not provided. In any event, he was not

directed to use a retractable lanyard, and fell fourteen to fifteen feet from the level where he was working. Accordingly, there is a basis for finding that subdivision (b) of this section applicable to the facts of this case.

Subdivision (e) of § 23-1.16 provides standards for the proper use of lifelines. For purposes of Labor Law § 241(6) liability, however, this provision applies only where the worker was provided with such equipment. Dzieran v. 1800 Boston Road, 25 AD3d 336 (1st Dept. 2006). As plaintiff does not argue that he was provided with a lifeline, this section is not applicable.

Labor Law § 200 Claim

"Where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to owner under the common law or under Labor Law § 200." Comes v. New York State Elec. And Gas Corp., 82 NY2d 876, 877 (1993). Moreover, liability will not be found under § 200 "solely because the owner had notice of the unsafe manner in which work is performed." Id., at 878. To be charged with liability under Labor Law § 200, an owner or general contractor must perform more than "their general duty to supervise the work and ensure compliance with safety regulations." De La Rosa v. Philip Morris Management Corp., 303 AD2d 190, 192 (1st Dept 2003); see also Vasiliades v. Lehrer McGovern & Bovis, Inc., 3 AD3d 400 (1st Dept 2004); Reilly v. Newireen Associates, 303 AD2d 214 (1st Dept), lv denied, 100 NY2d 508 (2003).

"[M]onitoring and oversight of the timing and quality of the work is not enough to impose liability under section 200, [n]or is a general duty to ensure compliance with safety regulations or the authority to stop work for safety reasons." Dalanna v. City of New York, 308 AD2d 400, 400 (1st Dept 2003). Instead it must be shown that the owner "'*had authority to*

control the activity bringing about the injury to enable it to avoid or correct the unsafe condition'." Hughes v. Tishman Construction Corp., 40 AD3d 305 (1st Dept 2007) (emphasis in the original), quoting, Ruzzuto v. Wenger Construct. Co., 91 NY2d at 352.

Defendants argue that they cannot be held liable under Labor Law § 200 and common law negligence, as they did not control the means and methods of plaintiff's work. In addition, they argue that notice is also required to impose liability under Labor Law § 200, and as they had no notice that plaintiff would choose to walk along an open beam with an unsecured safety harness.

Plaintiff counters that Hunt/Bovis had sufficient authority of the injury producing to provide a basis for liability under Labor Law § 200, noting that Wright testified that Hunt/Bovis employees had both the authority to stop any unsafe work practices on the site and had the duty to oversee the site, and that there are factual questions as to whether Hunt/Bovis had constructive notice of a dangerous condition at the canopy level of the Stadium due to a lack of safety lines.

In reply, defendants argue that the dangerous condition in this case was the unsecured decking, and that this condition resulted from the means and methods used by plaintiff to perform their work and that defendants did not directly exercise supervision or control of the work.

Here, defendants are entitled to summary judgment dismissing the Labor Law § 200 and common law negligence claims. First, the record is devoid of evidence that the defendants' monitoring and oversight reached the level of control necessary to impose liability under § 200. In particular, the record shows that Hunt/Bovis did not exercise control and supervision over the means and methods of the injury producing work. Indeed, plaintiff recalls only interacting with Cornell up to the time of the accident, and first heard about Hunt/Bovis after his fall. Finally,

plaintiff has not shown that defendants can be held liable for common law negligence.

CONCLUSION

In view of the above, it is

ORDERED that plaintiff's motion for summary judgment as to liability for plaintiff's Labor Law § 240(1) claim is granted, and it is further

ORDERED that defendants' motion for summary judgment is granted, only to the extent of dismissing plaintiff's Labor Law §200 and common law negligence claims; and plaintiff's §241(6) claim shall survive insofar as it is based on violations of Industrial Code §23-1.7(b) and Industrial Code §23-1.16(b); and it is further

ORDERED that the parties shall appear for a pre-trial conference in Part 11, 60 Center Street, room 351 on May 5, 2011 at 2:30 pm.

DATED: April 5 2011

J.S.C.