Squires v County of Suffolk
2011 NY Slip Op 32135(U)
August 1, 2011
Sup Ct, Suffolk County
Docket Number: 08-11647
Judge: Arthur G. Pitts
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SHORT FORM ORDER

INDEX No. 08-11647
CAL. No. 10-00853OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 43 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. ARTHUR G. PITTS
Justice of the Supreme Court

MOTION DATE: 5-25-11
ADJ. DATE: 5-26-11
Mot. Seq. # 003 - MotD

JUSTIN J. SQUIRES and NICOLE SQUIRES, Plaintiffs, -against- COUNTY OF SUFFOLK, SUFFOLK COUNTY WATER AUTHORITY and TOWN OF SOUTHAMPTON, Defendants.	SIBEN & SIBEN, ESQS. Attorneys for Plaintiff 90 East Main St., P.O. Box 5149 Bay Shore, New York 11706 MORENUS, CONWAY, GOREN & BRANDMAN Attorneys for Defendant-S.C.W.A 58 South Service Rd., Ste 350 Melville, New York 11747

Upon the following papers numbered 1 to 21 read on this motion to RRRR; Notice of Motion/ Order to Show Cause and supporting papers (003) 1-6; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 7-18; Replying Affidavits and supporting papers 19-21; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that motion (003) by the defendant Suffolk County Water Authority pursuant to CPLR 2221 (d) for an order granting leave to reargue its prior motion (002), which motion was brought pursuant to CPLR 3212 for summary judgment dismissing the plaintiff's complaint, is granted and upon reargument, summary judgment is granted to the extent that the cause of action premised upon the alleged violation of Labor Law §240 (1), as asserted against the Suffolk County Water Authority, is dismissed as a matter of law, and is denied as to the remainder of the application.

This is an action sounding in negligence wherein the plaintiff, Justin Squires, seeks damages for personal injuries arising out of an incident which occurred on January 11, 2007. While attempting to remove a pin connecting an auger to a boring machine, Squires' arm became caught by the metal paddles in the boring machine, causing severe injury to his arm. This incident occurred during the installation of casings for a water main at a water pump station/and or public water shed, located 190 feet north of the north curb of West Prospect Street, Southampton, New York, during Squires' course of employment with Grimes Construction. It is claimed that Suffolk County Water Authority was the owner of the water pump station/public water shed. A derivative claim has been asserted on behalf of Nicole Squires.

Counsel for the moving defendant affirms that this action was previously discontinued against the County of Suffolk and the Town of Southampton.

Suffolk County Water Authority seeks summary judgment dismissing the plaintiff's causes of action premised upon its alleged violation of Labor Law §200, 240 and 241(6), and 12 NYCRR 23-1.5 through 23-1.7, 23-1.12, 23-9.1, 23-9.2 and 23-9.5, and common law negligence, on the basis it bears no liability for the occurrence. Suffolk County Water Authority asserts that it did not decide which machines would be used for the work, it did not give any instructions concerning how the work was to be done, and there were no employees from Suffolk County Water Authority supervising or directing the work being performed by the Grimes Construction employees.

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. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v N.Y.U. Medical Center***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.***, 79 AD2d 1014, 435 NYS2d 340 [1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (***Friends of Animals v Associated Fur Mfrs.,*** 46 NY2d 1065, 416 NYS2d 790 [1979]).

Summary judgment was previously denied as motion (002) did not contain a signed copy of the transcript of the examination before trial of Fred Berg which was submitted on behalf of the Suffolk County Water Authority. Therefore, the motion was denied as it was not supported by either an affidavit or signed deposition transcript by the moving party as required by CPLR 3212. It was also noted that the plaintiff's transcripts, and those of Stephen Grimes, and the non-party witness, James Pavelchak, were not signed. Counsel for the defendant now affirms that Justin Squires' transcript from the hearing conducted pursuant to General Municipal Law §50-H was signed, as was the transcript of Fred Berg, Steven Grimes and James Pavelchak, however, due to law office failure, the signature pages were not included with the moving papers. The Suffolk County Water Authority (Water Authority), in making this application for reargument, has failed to submit a copy of the plaintiff's opposition and its reply with the moving papers, thereby submitting an incomplete copy of the papers to be considered.

Counsel for the plaintiff affirms that his copy of the Berg transcript, submitted with the prior application, contained both a signed, and an unsigned, signature page. Additionally, counsel for plaintiff has also submitted a copy of the plaintiff's papers previously submitted in opposition to motion (002).

Accordingly, reargument is granted. This court has considered the exhibits annexed to the motion, inclusive of copies of the summons and complaint and plaintiff's verified bill of particulars; photographs; and the transcript of the hearing conducted pursuant to GML § 50-h of Justin Squires on March 12, 2008; and the transcripts of the examinations before trial of Justin Squires dated September 8, 2009, Fred Berg on behalf of the Suffolk County Water Authority dated September 24, 2009, and Steven Grimes and James Pavelchak, both dated July 15, 2010.

Justin Squires testified at his municipal hearing that the accident occurred on January 11, 2007 while he was jacking a water main underneath the railroad tracks at a Suffolk Water Authority pump station located on West Prospect, Southampton Village. It was his first day at the site. At the time, he was employed as a laborer for Grimes Contracting, which had subcontracted with Suffolk Water Authority for the job. Steven Grimes was his supervisor and was present at the time of the occurrence. Patrick McGarrity, Raymond Kelly, Phil Robinson, Jamie Pavelchak and Dave Brown, co-employees of Grimes Contracting, were also present. Jimmy Johnson, an an inspector from the Water Authority, was at the site, as were inspectors from the Long Island Rail Road.

Squires testified that he and his co-workers were jacking a 24-inch casing pipe underneath the railroad tracks just outside of the property, and sliding a water main through the casing. A boring machine, used to jack the pipe, was laid on a set of tracks placed inside the hole which had been excavated and shored earlier that morning. The casing, lowered with the use of the excavator, was placed onto the tracks in the hole. There was an auger inside the casing which was to be connected to the boring machine. Squires testified that Steven Grimes drove the boring machine forward, and that he (Squires) installed the four to six-inch long steel pin to attach the boring machine to the auger, which he had done on numerous other occasions. Thereafter, a hydraulic lever on the back of the boring machine was pulled, causing the auger to spin and pull dirt through the casing. The dirt was pushed outside the boring machine as the casing drove into the wall of the hole.

Squires continued that Steven Grimes, who was operating the boring machine, had to answer a telephone call. He put the boring machine into neutral and asked Jamie Pavelchak to run the boring machine. Pavelchak, Squires and Kelly had been shoveling dirt into a bucket to remove it from the hole, when Grimes asked Pavelchak to take over. Pavelchak then finished pushing the length of pipe over the next few minutes. Squires testified that he told Pavelchak to stop as the remaining portion of the casing had been pushed through the wall. He stated that he then told Pavelchak that he was going to pull the pin out of the auger to separate the auger from the boring machine. He continued that Pavelchak, who was about five feet from him, nodded to him.

Squires testified that the boring machine could be left running while the pin is being pulled, but the machine has to be in the neutral position with the clutch pushed in. He stated he saw Pavelchak put the machine into the neutral position and wiggle the shifter. Squires then reached his right arm into the machine to pull the pin after he ascertained that the metal paddle wheel inside the machine was stopped. He stated that the wheel had one-inch steel plate paddles which turned flush with the inside of the machine, and exerted 15,000 pounds of pressure. Squires continued that he noticed out of the corner of his eye that Pavelchak was "messing with the gear shifter." Squire's arm, however, was in the machine up to his shoulder. During the ensuing one or two seconds, he realized what was going to happen. He tried to remove his arm from the machine, which was still in up to his elbow, when the paddle wheel engaged and began to turn. The wheel caught his arm between the opening in the machine and the paddle, but he was able to pull it out, screaming. Squires stated that when he stood up, his arm dropped about six inches above his elbow, so he pulled it to his body. He had pain and was bleeding. He testified that the machine broke his arm and severed muscles in his arm.

Squires also testified that the auger was owned by Grimes Contracting. While working, he used tools and equipment supplied by Grimes Contracting. He also testified that prior to the accident, he saw Jimmy Johnson from the Water Authority. Squires stated that after the accident, Jamie Pavelchak told him that he didn't realize that he was going into the machine. At his deposition, Squires testified that the boring machine was loud, and he didn't

know if Pavelchak heard him when he said he was going to pull the pin. He also stated that Steven Grimes instructed him concerning the use of the machines and his job. He stated that Jimmy Johnson from the Water Authority never instructed him concerning how the work was to be done in terms of putting the pipe under the railroad tracks, and only inspected the site after the work had been done. He also stated that the Water Authority did not supervise or direct his work.

Fred Berg testified that he has been employed by the Suffolk County Water Authority for twenty three years and currently held the title of superintendent of distribution and construction. He stated that the Water Authority had an annual contract with Grimes Contracting. On January 11, 2007, Grimes Contracting was doing work for the Suffolk County Water Authority. He stated that the Water Authority does not own the land under the tracks, but it has an agreement with the Long Island Rail Road permitting the Water Authority to traverse the railroad right of way. He testified that the railroad supervised the location by having flaggers positioned in the railroad right of way, in the area where the work was being performed, to make sure that the trains were able to run safely. Suffolk County Water Authority paid the Long Island Rail Road for these services. He continued that Jim Johnson, the inspector for the Water Authority, was responsible for scheduling the job and visited the site on the date of the accident. He stated that on the date of the accident, the only workers at the site were from the Long Island Railroad, the Water Authority and Grimes Contracting.

Berg further testified that no one from the Suffolk County Water Authority directed or controlled the work being done by Grimes Contracting. Grimes was told to perform the jacking, however, Grimes was not directed how to operate the machines. Berg stated that pursuant to the contract with Grimes, Grimes was to furnish certain equipment and expertise to run the equipment, and to perform the contract and the work as required. The Water Authority did not inspect the machine being used at the time of the accident. Berg also testified that there was no one present from the Water Authority at the time of the accident, and the only person assigned to the site was Jim Johnson.

Steven Grimes testified that he is the owner of Roadwork Construction Corp. and currently employs Justin Squires who was previously employed by Grimes Construction. Grimes testified that he was the owner of Grimes Construction, which supplied laborers to Grimes Contracting, which was owned by his stepmother. He sold Grimes Construction to his father and stepmother around the date of the subject accident, then started Roadwork Construction Corp. Squires continued to work for Grimes' father after the accident. In 2007, Grimes Construction was in the business of water main construction. Grimes Contracting has a contract with the Suffolk County Water Authority. On the date of the accident, Grimes Contracting was working its first day at the West Prospect Street Pump Station project, located in Southampton Village. The project, which was estimated to take three days, involved placing a horizontal jack from the pump station to an adjacent property. There were three employees from Grimes Contracting, Patrick McGarrity, Dave Brown and Phil Robinson, and four employees from Grimes Construction, Steven Grimes, Justin Squires, Jamie (Jimmy) Pavelchak, and Ray Kelly. Grimes testified that everyone knew all the steps that had to be done for doing a jack. Whomever is closest to the next task, does it. Grimes Contracting supplied its own equipment.

On the date of the accident, Grimes stated that while he was pushing with the boring machine, he received a telephone call, and had to get off the machine. Because it was cold outside, he left the machine running after he put it in neutral gear, and left the hole. He did not recall giving directions to anyone, and he was not aware at the time if anyone got on the machine after he left. Due to the noise from the boring machine and the excavator, he had

to move to a location far enough away to hear while on the phone. He was on the phone for about five minutes when Pat McGarrity came running to him and told him to call an ambulance because Justin had been injured. He stated that after the accident, Jimmy Pavelchak told him that Squires reached in before he was ready. It was the custom and practice in 2007 that before reaching in to take the pin out, the auger is released and backed off to relieve the pressure. The operator would stand, and the laborer would make eye contact with the operator. He did not know if Pavelchak and Squires made eye contact just prior to the incident. Grimes stated that the clutch on the boring machine has to be engaged to put it into neutral. Once it is in neutral, the auger will not normally turn due to the weight of the paddles.

Grimes continued that normally, Squires would have been the person to run the machine for him, and he had trained him in the use of the machine. He continued that Jimmy Pavelchak worked with Grimes for some time, was familiar with the operation of the machine, and had a history of using the boring machines through his employment with other contractors. Grimes testified that there were two inspectors from the Water Authority, Jim Johnson and Carl Pfeifer, and that Johnson usually inspected the Southampton site.

James Pavelchak testified that he was a laborer employed by Grimes Construction and supervised by Steven Grimes. With reference to the boring machine, he stated that to remove the pin, the machine must be in neutral, but the machine does not need to be turned off. Typically, the clutch is held down so there is no mistake, even when the machine is in neutral. Once the paddles have rotated to a position to give free access to the pin, the machine is placed in neutral and the clutch is held down. Someone, usually the person removing the pin, looks into the machine at the paddles to ascertain the position, then looks to the operator who will then take it out of gear. Then, if the paddle is in good position, it is throttled down and the clutch is pulled back. The operator then asks the person removing the pin if the machine has stopped rotating. This is done by screaming over the noise of the machine.

Pavelchak testified that on the date of the accident, Grimes was operating the boring machine when he had to take a phone call and told him "push the pipe the rest of the way." He said that he and the others knew what had to be done, so he got onto the platform of the machine and pushed the pipe the rest of the way. He then throttled the machine down, pulled the clutch back, put the gear shift into neutral, and checked it to make sure it was in neutral. He stated that when the machine is in neutral, the wheel is not locked in place and it moves back and forth. It was at that point that he started to get off the machine and heard a scream. By intuition, he immediately grabbed the clutch and held it to stop the machine from moving. When he looked in front of the machine, he saw Justin had pulled his arm out and was holding it. Prior to the incident, he did not signal anyone to do anything. He testified that Justin thought he gave him a head nod, but he had not done so.

Based upon the foregoing evidentiary submissions, it is determined that the Suffolk County Water Authority has not established prima facie entitlement to summary judgment dismissing the complaint on the cause of action premised upon common law negligence, Labor Law §200 and Labor Law § 241(6). The Water Authority has not submitted a copy of the contract or agreement it entered into with Grimes Construction or Grimes Contracting. It has not submitted copies of the agreements or contracts entered into with the Long Island Rail Road. Therefore, this court cannot determined, as a matter of law, who the owner of the site of the accident was, whether easements were granted to the Water Authority, what the terms and conditions of those agreements or contracts were, and whether the Water Authority had the responsibility and/or authority to supervise and control the job site pursuant to those agreements. Such factual issues preclude summary judgment to the extent set forth.

COMMON LAW NEGLIGENCE AND LABOR LAW §200

Labor Law §200 provides in pertinent part that "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...." (***Trbaci v AJS Construction Project Management, Inc, et al,*** 22 Misc3d 1116(A), 880 NYS2d 227 [Sup Ct, Kings County 2009]). "New York State Labor Law §200 is merely a codification of the common law duty placed upon owners and contractors to provide employees with a safe place to work" (***Kim v Herbert Constr. Co.,*** 275 AD2d 709, 713 NYS2d 190 [2d Dept 2000]).

In causes of action sounding in common law negligence and violations of Labor Law §200, liability is limited to those who exercise control or supervision over the plaintiff's work, or who have actual or constructive notice of an unsafe condition that causes an accident (***Markey et al v C.F.M.M. Owners Corp. et al,*** 51 AD3d 734, 858 NYS2d 293 [2d Dept 2008]; ***Aranda v Park East Constr.,*** 4 AD3d 315, 772 NYS2d 70 [2004]; ***Akins v Baker,*** 247 AD2d 562, 669 NYS2d 63 [2d Dept 1998])" (***Marin v The City of New York, et al,*** 15 Misc3d 1003A, 798 NYS2d 710 [Sup Ct, Kings County 2004]). An implicit precondition to the common law duty imposed upon an owner or general contractor to provide construction workers with a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury and have actual or constructive notice of the alleged unsafe condition (***Ramos v HSBC Bank et al,*** 29 AD3d 435, 815 NYS2d 504 [1st Dept 2006]). In order to prevail on a claim under Labor Law §200, a plaintiff is required to establish that a defendant exercised some supervisory control over the operation (***Mendoza v Cornwall Hill Estates, Inc.,*** 199 AD2d 368, 605 NYS2d 308 [2d Dept 1993]).

In this action, the Water Authority has not established prima facie, whether it owned the property, where the incident occurred, and what its duties and responsibilities were pursuant to its agreements with Grimes and the Long Island Rail Road. Although Berg testified that it did not supervise or control the activity or the job site, without a copy of the contracts or agreements by the Water Authority with Grimes and the Long Island Rail Road, this court cannot determine whether or not the Water Authority was charged with the responsibility and authority to supervise and control the site and/or manner and method of the job, and whether it is the owner, or the general contractor, or both. Additionally, the specific site of the accident has not been identified. Berg testified that the work was taking place on either side of the railroad. One side was owned by the Water Authority, and there was an easement with the Long Island Rail Road to be on the other side of the railroad. These factual issues preclude summary judgment.

Accordingly, that branch of the motion by the Suffolk County Water Authority which sought summary judgment dismissing that the cause of action premised upon common law negligence and Labor Law §200 is denied.

LABOR LAW §240

New York State Labor Law §240 (1) Scaffolding and other devices for use of employees provides: "[a]ll 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."

"New York State Labor Law §240 (1) is applicable to work performed at heights or where work itself involves risks related to differentials in elevation" (*see,* ***Plotnick et al v Wok's Kitchen Incorporated, et al,*** 21 AD3d 358, 800 NYS2d 37 [2d Dept 2005]; ***Handlovic v Bedford Park Development, Inc.,*** 25 AD3d 653, 811 NYS2d 677 [2d Dept 2006]). 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 the force of gravity to an object or person" (***Cruz v The Seven Park Avenue Corporation et al,*** 5 Misc3d 1018A, 799 NYS2d 159 [Sup Ct, Kings County 2004]). In ***Ortega et al v Puccia et al,*** 2008 NY Slip Op 8350, 2008 NY App Div Lexis 8140 [2d Dept October 28, 2008], the court set forth that Labor Law §240 is intended to protect workers from gravity-related occurrences stemming from the inadequacy or absence of enumerated safety devices. The duties articulated in §240 are nondelegable, and liability is absolute as to the general contractor or owner when its breach of the statute proximately causes injury.

"Labor Law §240 (1) provides exceptional protection for workers against the special hazards that arise when the work site itself is either elevated or is positioned below the level where materials or load are being hoisted or secured (*citations omitted*). These special hazards do not encompass any and all perils that may be connected in some tangential way with the effects of gravity.... Rather, they are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured ...." (***Natale v City of New York et al,*** 33 AD3d 772, 822 NYS2d 771 [2d Dept 2006]). It is well settled that not every hazard or danger encountered in a construction zone falls within the scope of N.Y. Labor Law §240 (1) as to render the owner or contractor liable for an injured worker's damages. Rather Labor Law §240 (1) is aimed at only elevation-related hazards, and accordingly, injuries resulting from other types of hazards are not compensable under that statute even if proximately caused by the absence of a required safety device (see, ***Conway et al v Beth Israel Medical Center,*** 262 AD2d 345. 691 NYS2d 576 [2d Dept 1999]).

It is determined as a matter of law that the occurrence complained of herein was "a general hazard of the workplace, not one contemplated to be subject to Labor Law §240 (1)" (*see,* ***O'Keefe v Tishman Westside Construction of New York,*** 2007 NY Misc Lexis 4783; 237 NYLJ 125 [Sup Ct, New York County 2007]). The plaintiff was not involved in an activity in a gravity related occurrence, despite the fact that he was working in the excavated area of the job site.

Accordingly, upon reargument, that branch of the motion which sought summary judgment dismissing the cause of action premised upon violation of N.Y. Labor Law §240 (1) as asserted against the Suffolk County Water Authority is granted.

LABOR LAW §241(6)

New York State Labor Law §241(6) provides in 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, when constructing or demolishing buildings or doing any excavating in connection therewith shall comply with the requirements set forth in the provision. Labor Law §241(6) provides that "[a]ll 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 persons employed therein or lawfully frequenting such places."

"Labor Law §241(6), which was enacted to provide workers engaged in construction, demolition, and excavation work with reasonable and adequate safety protections, places a nondelegable duty upon owners and general contractors, and their agents to comply with the specific safety rules set forth in the Industrial Code (citing ***Ross v Curtis Palmer Hydro-Elec. Co.,*** 81 NY2d 494, 601 NYS2d 49). Liability may be imposed under §241(6) even where the owner or contractor did not supervise or control the work site (***Navin et al v SJP TS, LLC et al,*** 2010 NY Slip Op 30988U, 2010 NY Misc Lexis 1904 [Sup Ct, New York County]). Unlike Labor Law §200, Labor Law §241(6) does not require the plaintiff to show that the defendant exercised supervision or control over the work site (***Mendoza v Cornwall Hill Estates,*** 199 AD2d 368, 605 NYS2d 308 [2d Dept 1993]). The absolute liability imposed upon owners and general contractors pursuant to Labor Law §241(6) does not apply to prime contractors having no authority to supervise or control the work being performed at the time of the injury (***Hornicek et al v Lane, Inc.,*** 265 AD2d 631, 696 NYS2d 557 [3d Dept 1999]), but liability can be imposed upon a subcontractor only when it supervises or controls the area involved or the work that gives rise to the injury (***DaSilva v Jantron Industries, Inc.,*** 155 AD2d 510, 547 NYS2d 370 [2d Dept 1989]).

As set forth above, the Suffolk County Water Authority has not submitted copies of the agreements entered into with Grimes and the Long Island Rail Road to enable this court to determine who the owner of the premises was at the time of the accident, if the Water Authority had a prescriptive easement over the property where the accident occurred, and what its duties and responsibilities were with regard to the work being performed at the site. It has not been established whether the Water Authority was the general contractor for the job, and whether it retained authority to direct and control the work site pursuant to the agreements. The plaintiff has pleaded specific violations of the Industrial Code. The absolute liability imposed upon owners and general contractors pursuant to Labor Law §241(6) does not apply to prime contractors having no authority to supervise or control the work being performed at the time of the injury. This factual issue has not been established prima facie by the Water Authority, precluding summary judgment.

Accordingly, upon reargument, that branch of Suffolk County Water Authority's motion (003) which sought summary judgment, dismissing the cause of action premised upon violation of Labor Law §241(6) and various provisions of the Industrial Code, is denied.

Dated: August 1, 2011

J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION