SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Joan A. Madden **PART** 11

Justice

Index Number : 100485/2008
DAVIS, SYLVIA
vs.
CPS 1 REALTY GP LLC
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

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

FILED

JUL 29 2013

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: July 24, 2013

_____, **J.S.C.**

1. **CHECK ONE:** ..... ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**
2. **CHECK AS APPROPRIATE:** .....**MOTION IS:** ☐ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**
3. **CHECK IF APPROPRIATE:** ..... ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER**

☐ **DO NOT POST** ☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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SYLVIA DAVIS,

Plaintiff,

-against-

CPS 1 REALTY GP LLC and TISHMAN CONSTRUCTION CORP.,

Defendants.

Index No.: 100485/08

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CPS 1 REALTY GP LLC and TISHMAN CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

VENETIAN ENTERPRISES, INC.,

Third-Party Defendant.

Third-Party
Index No.: 590247/08

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VENETIAN ENTERPRISES, INC.,

Second Third-Party Plaintiff,

-against-

ATLANTIC-HEYDT CORPORATION,

Second Third-Party Defendant.

Second Third-Party
Index No.: 590396/10

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Joan A. Madden, J.:

In this action arising from a workplace accident, plaintiff Sylvia Davis moves for partial summary judgment as to liability on her Labor Law §§ 240 (1) and 241 (6) claims against defendants CPS 1 Realty GP LLC (CPS) and Tishman Construction Corporation (Tishman) (together, defendants). Defendants oppose the motion and cross-move for summary judgment dismissing plaintiff's Labor Law § 240 (1) claim. Third-party defendant/second third-party

plaintiff Venetian Industries (Venetian) also opposes plaintiff's motion.

BACKGROUND

This is an action to recover damages for injuries allegedly sustained by plaintiff when she fell while walking down a ramp at a construction site located at the Plaza Hotel in New York, New York (the building) on February 6, 2006. At the time of the accident, plaintiff was employed as a laborer by Venetian, a company performing demolition work on the project. On the date of the accident, CPS was the owner of the building, and defendant Tishman served as the project's construction manager. Just before the accident, plaintiff had taken a hoist car to the 10th floor of the building. The accident occurred after plaintiff exited the hoist car onto a platform and was walking down a ramp leading from platform to the 10th floor of the building.

The record indicates that platform is level with the hoist car while the ramp leading from the platform to the 10th floor of the building slants downward, and that the difference in elevation from the platform to the building's 10th floor is two to four feet. In this connection, Anthony Fedor, Tishman's site safety manager, testified that "[w]hen you get out of the elevator [i.e. hoist] there is a flat platform that you would walk down before you got to the pitch going down" [and that].. a "planked ramp" was provided to get from the platform to the 10th floor below (Fedor Dep., at 23-24). Mr. Fedor estimated that the distance between the lift platform and the 10th floor was "three to four feet" (Fedor Dep., at 23-24). He also testified that the platforms like the one used by plaintiff on the day of the accident existed on every floor that had a personnel hoist.

Tishman's Vice President, Michael Pinellis, estimated the difference between the hoist platform and the floor below to be two to four feet, depending on the floor.

This testimony is consistent with a diagram drawn by Robert O'Reilly, who was employed by Atlantic-Heydt as carpenter/ foreman on the project, which shows the ramp extending downward from the platform.(Plaintiff's notice of motion, Exh. 15).

Plaintiff testified that the accident occurred when she "stepped on the ramp and the plank just went down and caught [her] foot and [she] just fell" (Plaintiff's Dep., at 72). In addition, plaintiff explained, in pertinent part:

> "My foot had went through the [center plank] hole where the plank had given way. My foot was in there but I didn't realize until I went to step again and I fell"

(*id.* at 73). When asked to describe what part of her foot got caught, plaintiff testified that "[her] ankle was in the hole where the plank was" (*id.* at 75). Plaintiff further testified, "[i]t went through the hole ... [t]he plank went down and my foot went down ... the plank is down in the back of me, and in front of me is the raised plank. Before I could catch [myself] I fell forward. I could not brace myself" (*id.* at 74-75).

Plaintiff described the ramp as being comprised of wooden planks with wooden railings on either side of the ramp. Plaintiff noted that she had taken the route down the ramp approximately five times prior to the time of the accident, including on the morning before she fell. Plaintiff never found the ramp to be unstable, nor did she recall ever having any problems walking up or down the ramp. Plaintiff testified that the ramp was used to get from the hoist platform to the 10th floor below. She testified that the platform was higher than the 10th floor and described the differential as "pretty high," stating also that "[i]t was quite a distance. If the ramp was not there you would have to get something to stand on to get up to the platform" (*id.* at 60-61).

Hugh Kieran Ennis, an employee of Atlantic-Heydt and general foreman on the project, testified that Atlantic is engaged in the business of installing scaffolding, hoist cars, sidewalk bridges, platforms and landings, ramps and shoring. He testified that Atlantic installed the ramps and the landings at the premises for use during the project.

Mr. Ennis explained that each ramp was typically constructed of approximately six or seven 13-foot long by nine-inch-wide wooden planks, which were laid down next to each other and then nailed into a horse head supporting structure that was located underneath the ramp's platform. The planks, which were approximately two inches thick, were not nailed to each other. The ramps were used to transport materials from one place to another, as well as personnel. Mr. Ennis testified that he received "numerous" calls regarding damaged ramps at the building due to various demolition vehicles "smashing into the ramps constantly" (Ennis Dep., at 40-41). Some of the damage complaints were in regard to planks becoming loose after being hit by a machine, or because of normal wear and tear.

Mr. O'Reilly, the Atlantic-Heydt carpenter foreman on the project, testified that he inspected every ramp as soon as it was installed. When a ramp was reported as damaged, Mr. O'Reilly was in charge of preparing a ticket to get it fixed. He explained that sometimes the ramps were damaged due to the friction created by the tires of the Bobcats and buggies that utilized the ramps. Mr. O'Reilly also noted that, in the event that a worker is injured on the project, the project's safety officer fills out an accident report.

Mr. Fedor, Tishman's site safety manager, testified that Atlantic constructed the hoists on the project, as well as the hoist platforms and ramps. He testified that debris from the work site was either removed by putting the debris into a debris chute, or by placing the debris into four-

wheeled steel dumpsters and taken by ramp to the hoists which would take the debris down to the street.

An accident report, dated February 6, 2006, states that the subject accident occurred as plaintiff "began to walk down the ramp that leads into the building ... one of the planks came loose and fell down off the steel that was supporting it... [plaintiff's] leg went into the hole about 8 inches ... then she fell face down" (Plaintiff's notice of motion, exhibit 12, accident report).

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 Univ. Med. Ctr.*, 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 Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

PLAINTIFF'S LABOR LAW § 240 (1) CLAIM AGAINST DEFENDANTS

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[1] 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.

"'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-Elec. Co.*, 81 NY2d 494, 501 [1993]). The statute does not apply merely when work is performed at elevated heights, but also applies where the work itself involves risks related to differences in elevation (*Binetti v MK W. St. Co.*, 239 AD2d 214, 214-215 [1st Dept 1997]; *see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 500-501]).

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 Hous. Servs. of N.Y. 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]).

Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards such as falling from a height, and must be liberally construed to accomplish the purpose for which it was framed [citations omitted]" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006]). "As has been often stated, the purpose of Labor Law § 240 (1) is to protect workers

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[1]There is no dispute that CPS is an "owner" and Tishman, as construction manager, is a "contractor" for the purposes of Labor Law §§ 240 (1) and 241 (6)(*Kenny v. George A. Fuller Co.*, 87 AD2d 183 [2d Dept 1982], *appeal denied*, 58 NY2d 603 (1982).

by placing responsibility for safety practices at construction sites on owners and general contractors, 'those best suited to bear that responsibility' instead of on the workers, who are not in a position to protect themselves" (*John v Baharestani*, 281 AD2d at 117, quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 500).

However, "[a]lthough 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 [citation omitted]" (*Melo v Consolidated Edison Co. of N.Y.*, 246 AD2d 459, 460 [1st Dept 1998], *affd* 92 NY2d 909 [1998]; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]; *Hill v Stahl*, 49 AD3d 438, 442 [1st Dept 2008]; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 2007] *lv denied*, 10 NY3d 710 [2008]). "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.*; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d at 263).

Here, as the ramp was used as means for workers and materials to access the 10th floor located two to four feet below the hoist platform, it constitutes a safety device within the meaning of Labor Law § 240 (1), and as a defect in the ramp caused plaintiff to sustained an elevation related injury, she is entitled to summary judgment as to liability (*see Arrasti v. HRH Const. LLC*, 60 AD3d 582, 583 [1st Dept 2009][holding that "ramp from which plaintiff fell while wheeling a loaded A-frame cart full of construction materials was the sole means of access to the concrete floor, which was approximately 18 inches below the hoist platform, and was thus a device to protect against an elevation-related risk within the meaning of Labor Law § 240(1)"];

Megna v. Tishman Constr. Corp. of Manhattan, 306 AD2d 163 [1st Dept 2003][trial court properly granted plaintiff partial summary on his Labor Law § 240(1) claim when plaintiff was injured after falling between two feet and 16 inches when temporary two-step wooden staircase collapsed]).

Moreover, *Torkel v. NYU Hospitals Center,* (63 AD3d 587 [1st Dept 2009]) on which defendants rely is not controlling here. In *Torkel*, plaintiff was injured when he tried to regain control of a container of debris that he was carrying down a makeshift ramp which collapsed causing him to spill debris on his leg and fall over on the sidewalk. In granting summary judgment dismissing plaintiff's Labor Law § 240(1) claim, the First Department wrote "given that the bottom of the ramp was resting on the street and the top was resting on an adjacent sidewalk curb, the height differential from top to bottom was at most 12 to 18 inches, we agree with defendants that plaintiff was not exposed to an elevation related hazard.." *id.*

In contrast to the circumstances in *Torkel*, and as in *Arrasti,* the ramp at issue here was used to permit workers to access a lower level of the worksite, and not as a sidewalk ramp to move materials from the sidewalk curb to the street. Moreover, the record shows that height differential between the platform to the 10th floor below which necessitated the use of the ramp was between two to four feet. Notably, since *Torkel* was decided, the First Department has reiterated that:

> There is no bright-line minimum height differential that determines whether an elevation hazard exists. (Thompson v St. Charles Condominiums, 303 AD2d 152, 154 [1st Dept 2003], lv dismissed 100 NY2d 556 [2003]; see e.g. Arrasti v HRH Constr. LLC, 60 AD3d 582, 583 [1st Dept 2009] [finding that 18 inches was sufficient to create an elevation hazard]; Lelek v Verizon N.Y., Inc., 54 AD3d 583, 584 [1st Dept 2008] [noting that defendants

> were not relieved of liability under Labor Law § 240 (1) despite that the plaintiff's fall was only 2 ½ to 3 feet].) Rather, the relevant inquiry is whether the hazard is one "directly flowing from the application of the force of gravity to an object or person." (Prekulaj v Terano Realty, 235 AD2d 201, 202 [1st Dept 1997], citing Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494 [1993].)

Auriemma v. Biltmore Theatre, LLC, 82 AD3d at 9.

Next, that plaintiff fell through, rather than off, the ramp does not prevent her from recovering under Labor Law § 240(1) since the ramp failed to perform its function of supporting workers and materials at a elevation of between two to four feet (see Becerra *v City of New York*, 261 AD2d 188, 190 [1st Dept 1999]["a partial fall through planks that are the functional equivalent of an elevated platform or scaffold ... is covered by Labor Law § 240 (1)"]; *see also Carpio v. Tishman Construc Corp. of New York*, 240 AD2d 234 [1st Dept 1997][partial summary judgment was warranted on plaintiff's Labor Law § 240(1) claim when plaintiff was injured when he partially fell through a hole at a construction site]; *Gramigna v. Morse Deisel, Inc.*, 210 AD2d 115 [1st Dept 1994][Labor Law § 240 applied where plaintiff was injured while stepping from a higher level of scaffolding that was approximately two feet off above lower level and the plank on the lower level broke causing one leg to go down and the other leg to be stuck at the higher level of the scaffold]; *compare Papapiertro v. Rock-Time, Inc.*, 265 AD2d 174 [1st Dept 1995][Labor Law § 240 was not implicated where plaintiff fell onto scaffold but not off or through it])[2].

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[2]In fact, it has been held that section 240(1) is applicable when a plaintiff does not fall from the structure at all as long as the injuries or the risk of injury is caused by the differences in elevation. *(see Suwareh v. State of New York*, 24 AD3d 380 [1st Dept 2005](holding that Labor Law § 240(1) applied where worker sustained injuries when hot tar he was hoisting to roof of building fell and he lost his balance but did not fall off the roof).

Furthermore, the First Department has held that "[i]t is irrelevant whether the structure constituted a staircase, ramp, or passageway [as long as] it was a safety device that failed to afford [plaintiff] proper protection from a gravity-related risk." (*Ervin v. Consol Edison of New York*, 93 AD3d 485 [1st Dept 2012])(*see also, Auriemma v. Biltmore Theatre, LLC*, 82 AD3d 1, 8-10 [1st Dept 2011]; *compare Paul v Ryan Homes, Inc.*, 5 AD3d 58, 60 [4th Dept 2004][ramp between garage floor and threshold of house deemed a passageway from one place of work to another and not a "tool" used in performance of plaintiff's work]).

Finally, contrary to defendants' position, summary judgment should not be denied on the ground that plaintiff was the sole witness to the accident. In this connection, defendants' reliance on *Grant v. Steve Mark, Inc.*, (96 AD3d 614 [1st Dept 2012]) is misplaced. In *Grant,* the court found that the record raised a triable issue of fact as to whether plaintiff, who was alone in a closet when she fell from an A-frame ladder, was the sole proximate cause of her own injuries. In contrast, here, there is no issue regarding whether plaintiff misused the ramp and plaintiff testified that after she fell, other workers who helped her up observed the plank on which she fell in an upright position and defendants provide no evidence to the contrary.[3] In any event, even assuming that plaintiff was the only witness to the accident, summary judgment is appropriately granted here as defendants have failed to raise a triable issue of fact as to how the accident happened (*Mannino v. J.A. Jones Const. Group, LLC,* 16 AD3d 235 [1st Dept 2005]).

Accordingly, plaintiff is entitled to summary judgment as to liability on the Labor Law § 240 (1) claim, and defendants' cross motion seeking to dismiss the Labor Law § 240 (1) claim

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[3]To the extent defendants rely on the testimony of Atlantic's witness, Mr. O' Reilly that it was unlikely that the accident occurred as described by plaintiff, such reliance is misplaced as he was not a witness to the accident and has not been qualified as an expert.

must be denied.

PLAINTIFF'S LABOR LAW § 241 (6) CLAIM AGAINST DEFENDANTS

Labor Law § 241 (6) requires owners, contractors, and their agents to "provide reasonable and adequate protection and safety" for workers performing the inherently dangerous activities of construction, excavation and demolition work. This statute is a "hybrid" provision "since it reiterates the general common-law standard of care and then contemplates the establishment of specific detailed rules through the Labor Commissioner's rule-making authority" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 503 [1993]). To recover under Labor Law § 241 (6), a plaintiff must: (1) plead and prove the violation of a concrete specification of the New York State Industrial Code, containing a "specific, positive command" (*Gasques v State of New York*, 15 NY3d 869, 870 [2010] [internal quotation marks and citation omitted]; and (2) show that the violation was a proximate cause of the accident (*Ares v State of New York*, 80 NY2d 959, 960 [1992]). Comparative negligence is a defense to liability under section 241 (6) (*Long v Forest-Fehlhaber*, 55 NY2d 154, 159-161, *rearg denied* 56 NY2d 805 [1982]; *Spages v Gary Null Assoc., Inc.*, 14 AD3d 425, 426 [1st Dept 2005]).

At issue here are the alleged violations of Industrial Code sections 23-1.7 (e) (1) and 23-1.22 (b) (2) and (3).[4]

Section 12 NYCRR 23-1.7 (e) of the Industrial Code provides that:

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[4]Although plaintiff lists multiple violations of the Industrial Code in her bill of particulars, in her papers she only addresses these Industrial Code violations, and thus the remaining violations are deemed abandoned (*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]; *Musillo v Marist Coll.*, 306 AD2d 782, 784 [3d Dept 2003]).

> (e) Tripping and other hazards.
>
> (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from other obstructions or conditions which cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

Sections 23-1.7(e)(1) has been held to be sufficiently specific to provide a basis for liability under Labor Law §241(6) (*Corbi v. Ave. Woodward Corp.*, 260 AD2d 255 [1st Dept 1999]).

"Although the regulations do not define the term 'passageway,' courts have interpreted the term to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area" (*Steiger v LPCiminelli, Inc.*, 104 AD3d 1246 [4th Dept 2013] [citation omitted]; *see also Meslin v New York Post*, 30 AD3d 309, 310 [1st Dept 2006]). Under this definition, 12 NYCRR 23-1.7(e)(1) is applicable to the facts here and the uncontroverted evidence shows that plaintiff tripped on a condition created by the raised plank that caught her foot and caused her to fall forward.

Plaintiff's section 241(6) claim is also predicated on an alleged violation of Industrial Code section 12 NYCRR 23-1.22 (b) (2) and (3) which are sufficiently specific to support a Labor Law § 241 (6) claim (*see Arrasti v HRH Constr. LLC*, 60 AD3d 582, 583 [1st Dept 2009]; *O'Hare v City of New York*, 280 AD2d 458, 458 [2d Dept 2001]).

Industrial Code 12 NYCRR 23-1.22 (b) (2) and (3), which set standards for construction of runways and ramps to be used by individuals, state, as follows:

> (2) Runways and ramps constructed for the use of persons only shall be at least 18 inches in width and shall be constructed of planking at least two inches thick full size or metal of equivalent strength. Such surface shall be substantially supported and braced to prevent excessive spring or deflection. Where planking

is used it shall be laid close, butt jointed and securely nailed.

(3) Runways and ramps constructed for the use of wheelbarrows, power buggies, hand carts or hand trucks shall be at least 48 inches in width. Such runways and ramps shall be constructed of planking at least two inches thick full size or metal of equivalent strength. Such runways and ramps shall be substantially supported and braced to prevent excessive spring or deflection. Where planking is used on such runways and ramps, it shall be laid close, butt jointed and securely nailed. Such runways and ramps shall be provided with timber curbs at least two inches by eight inches full size, set on edge and placed parallel to, and secured to, the sides of such runways and ramps. Bracing for such runways and ramps shall be installed at a maximum of four foot intervals.

Here, plaintiff testified that when she "stepped on the ramp ... the plank just went down, " (Plaintiff's Dep., at 72). Since the plank comprising the ramp moved under the weight of plaintiff's step, the record shows it was not "substantially supported and braced to prevent excessive spring or deflection," and/or "securely nailed" as required by section 23-1.22 (b) (2) and (3). In addition, a review of the testimony in the case reveals that the ramp was used by persons, as well as carts and buggies. Moreover, defendants submit no evidence that ramps complied with these provisions and, in particular, fail to provide evidence that the plank in issue was securely nailed at the time of the accident.

Next, "[a]lthough the affirmative defense of comparative negligence was validly raised, evidentiary proof sufficient to raise a triable issue was not submitted in response to plaintiff's prima facie demonstration of entitlement to judgment as a matter of law" (*Keena v. Gucci Shops*, 300 AD2d 82, 83 [1st Dept 2002]; *see Parrales v. Wonder Works Constr. Corp.*, 55 AD3d 579, 582 [2d Dept 2008]). In this connection, while plaintiff testified that she walked on the ramp on the morning of the accident, defendants submit no evidence that plaintiff had notice of any defect with the ramp before she fell.

Accordingly, plaintiff is entitled to summary judgment on her Labor Law § 241(6) claim

(*see Valasquez v. 795 Columbus LLC*, 103 AD3d 541, 541-542 [1st Dept 2013][affirming grant of summary judgment on Labor Law § 241(6) claim where testimony established that defendant was vicariously liable for negligence of plaintiff's foreman in directing plaintiff to work on mud covered floor in violation of 12 NYCRR 23-1.7[d] and conclusory affidavit to the contrary was insufficient to raise issue of fact]; *Harris v Arnell Constr. Corp.* 47 AD3d 768, 768 [2d Dept 2008] [trial court properly granted summary judgment on worker's § 241(6) claim where record showed that there was a violation of 12 NYCRR 23-1.13 (b) (3)and (b)(4) which proximately caused the worker's injuries and defendant failed to raise an issue of fact as to worker's comparative negligence]).

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the motion by plaintiff Sylvia Davis for summary judgment is granted, and she is entitled to summary judgment as to liability on her claims under Labor Law § 240 (1) and § 241 (6) against defendants CPS 1 Realty GP LLC and Tishman Construction Corporation; and it is further

ORDERED that the cross motion for summary judgment by defendants CPS 1 Realty GP LLC and Tishman Construction Corporation's dismissing plaintiff's Labor Law § 240 (1) is denied; and it is further

ORDERED that the parties shall proceed to mediation.

DATED: July 24, 2013

FILED

JUL 29 2013

NEW YORK
COUNTY CLERK'S OFFICE

J.S.C.