SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD Justice

PART 35

TROCHE, EDWIN

-v-

RELATED COMPANIES

INDEX NO. 110011/2008

MOTION DATE 1.14.2013

MOTION SEQ. NO. 003

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

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendants Bethune West Associates, LLC, Plaza Construction Corp., and The Related Companies for summary judgment dismissing the complaint of the plaintiff Edwin Troche is granted, in its entirety, and the complaint is hereby dismissed; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

ORDERED that the Clerk may enter judgment accordingly.

This constitutes the decision and order of the Court.

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

Dated: 1.28.2013

HON. CAROL EDMEAD 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 35

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EDWIN TROCHE,

Plaintiff,

-against-

BETHUNE WEST ASSOCIATES, LLC, PLAZA CONSTRUCTION CORP., and THE RELATED COMPANIES,

Defendants,

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Index No.: 110011/2008

Motion Seq. #001

HON. CAROL R. EDMEAD, J.S.C.

MEMORANDUM DECISION

In this personal injury action, defendants Bethune West Associates, LLC ("Bethune") and Plaza Construction Corp. ("Plaza"), and The Related Companies ("Related") (collectively, "defendants") move for summary judgment dismissing the complaint of the plaintiff Edwin Troche ("plaintiff").

Factual Background

On December 17, 2007, plaintiff was allegedly injured while working for Cross Count Construction, LLC ("Cross"), at a construction site located at 12th Street and the West Side Highway in Manhattan. The site was owned by Bethune and managed by Plaza. According to plaintiff, he was working as a laborer on the second floor when he stepped onto a nail which punctured his foot.

Plaintiff alleges claims against defendants for negligence and violations of Labor Law §§ 200 and 241, as well as violations of the Industrial Code §§ 23-1.7; 1.7(e) (2); 22.1.7 (f); 22-1.8; 22-1.8(c) (2); 22-1.5 and 23-2.1.

The deposition testimony upon which defendants rely for dismissal is as follows:

Plaintiff testified that "Jessie" and "Neil" were his supervisors, who gave him instructions on what to do at the site (EBT, pp. 20, 24). Cross also employed carpenters and a concrete crew. When plaintiff first started at the site, he performed "lugging" work, which involved "separating all the different size woods, clean[ing] them, stack [ing] them off the building so the crane could take it up" (id., p. 28). In order to "clean the wood" he used a hammer to remove nails in the wood (id., p. 34-35). When plaintiff arrived to the site on the day of the accident, Jesse told him to work on the third floor to continue "lugging" (id., pp. 39-40). Plaintiff also performed "stripping" (which is "when you grab a bar, you strip what is holding up the concrete") and "organizing everything" (id., pp. 36, 41).[1] There were other workers on the third floor as well, including a crew from Plaza, shop stewards, foreman, and other workers from his union and other unions (Local 6A/cement and concrete; Local 731/foundation) who were working for Cross as well (id., p. 42). After the wood is stripped from the form by the stripping crew, leaving the floor a "mess," plaintiff comes "in to sort everything in order, different sizes, different lengths . . ." into piles; the wood still has nails in it (id., pp. 49-50). At about 2:00 p.m., Jessie told plaintiff to "come and strip this from the ceiling here . . . ASAP" (id., p. 51).

Plaintiff then "went over there, started stripping and stacking everything up in a rush . . . I went to go pick up one of the stringers to go toss it around there . . . As soon as I start stripping, I turn, go to move that stringer to work. I turn around. The nail [on the wood that was previously stripped by another worker from the ceiling] went straight through the foot." (Id., p. 53-54). The

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[1] Plaintiff later stated that he "wasn't stripping," on the third floor but that a stripping crew of two men were on the third floor (EBT, p. 48, 51).

"rib" (wood) was among hundreds on the floor (id., p. 56), and there were a few nails in the rib (id., p. 57). Jessie had been standing on the stool stripping and plaintiff was "with the other strip bar. We are trying to strip. That's when I grabbed the stringer, threw it away from me, and I stepped on the nail" (id., p. 61). Just before the accident, plaintiff grabbed the stringer "that was in the way. Then, that is when the nail went into my foot" (id., p. 63).

Plaza's project superintendent, Raymond Romani, testified at his deposition that Cross's work on the date in question was to, *inter alia*, continue "stripping operations of the third floor deck from the second floor" (EBT, p. 32). Romani stated that Cross was "removing the concrete form work that supported the third floor concrete deck, and they perform that operation while standing on the second floor" (id., p. 33). Cross had a superintendent, a surveyor, carpenters, foremen, laborers, lather laborers (who "install the reinforcing steel in concrete", operator oilers (id., pp. 34-35, 44). "Legs" and "stringers" "are components that make-up the overall form work for a concrete deck" (id., p. 46). The leg is a vertical member; the stringer is a horizontal member (id., p. 47). A series of legs are installed in a vertical position to hold up form work for the "next lift of concrete you're going to pour" and in between those legs "runs a horizontal framing member, wood, called a stringer in a line above the legs" (id., pp. 47-48). "Stringers are on top of the legs"; stringers are installed on the floor, and when you raise the legs, the stringer goes with it" (id., p. 48). On this project, all the ribs, plywood, forms, and column forms are made out of wood and are all nailed together (Id., p. 50).

Romani walked the site on a daily basis to assist in coordinating the trades (id., p. 56) ensuring that the work by the subcontractors was being performed in accordance with the contract (id., p. 57). Regarding safety, during his daily walk, "if I saw something being done in

an unsafe manner, I would have rectified, bring it to the foreman's attention in charge of this operation to rectify it, remediate it" (id., p. 58). If he saw something hazardous, Romani had the authority to "stop it and bring it to someone's attention, like one other guy" (id., pp. 58-59). Romani had the authority to stop work at the site if he "recognized an immediate hazard."(Id. 63-64).

Cross was required to keep the work areas and passageways in which its employees were working free from debris, such as nails (id., pp. 102-104). Romani believed that plaintiff was a laborer for Cross (id., pp. 124-125). Further, "Removing plywood and form work is part of stripping. He may have been asked to remove the plywood, it's part of their work, removing plywood" (id., p. 155). According to Romani, "it would not be conducive to him [plaintiff] to perform his work if the pile was there or if something was in his way obstructing him, and he would clean it, that's what he does, he cleans things" (id., p. 158). When asked if he saw any forms with nails sticking out from them laying on the floor in a passageway or work area when he observed Cross doing its stripping procedures, Romani replied "Never in a passageway. In the work area, is where they're performing the work, so where they're stripping the form work, is where you would see forms with nails on them" . . . [u]ntil it is promptly pulled away and stacked . . . . (id., pp. 152-153).

In support of dismissal, defendants argue that plaintiff's complaint must be dismissed because the activity in which he was engaged when the accident occurred was integral to the work being performed. Under caselaw, there is no liability under Labor Law § 241(6) because the injury-producing object, *i.e.*, the nail which caused plaintiff's injury, was integral to the work plaintiff was doing, *to wit*, stripping pieces of wood which had previously been nailed together as

part of the wooden deck. That the nails had been hammered into the wood by his coworkers does not change the outcome.

In any event, there is no merit to plaintiff's Labor Law § 241(6) claim because the sections of the Industrial Code alleged in plaintiff's bill of particulars are either inapplicable to the facts or do not state a sufficiently concrete standard to support a Labor Law § 241(6) claim. There is no liability under 22 NYCRR 23-1.7(e)(2), which requires that areas be free from dirt and debris "insofar as may be consistent with the work being performed" because the nail which caused plaintiff's injury was an integral part of the work being performed, not debris, scattered tools and materials, or a sharp projection." And, 22 NYCRR 23-2.1, entitled "Maintenance and Housekeeping," addresses the storage of material or equipment and disposal of debris, and here, the pieces of ribs and stringers lying on the floor were not building materials being stored. And, the wood was not debris being disposed, but was being stacked for re-use in building the deck.[2]

Defendants also argue that there is no factual basis to support the Labor Law §200 claim. The accident was a result of the method and manner in which plaintiff was performing his work. Defendants were not directing plaintiff's work at the time of the accident nor were defendants aware of the presence of a hazard or dangerous condition, which allegedly caused plaintiff's accident. The pieces of wood containing nails located on the floor where the accident happened was a result of the work being performed by plaintiff and, consequently, cannot be deemed a "hazardous condition" for a basis in liability under Labor Law §200. In any event, there is no

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[2] Plaintiff does not dispute defendants' arguments that (1) 22 NYCRR 23-1.7(f), entitled "Vertical passage" applies to "stairways, ramps, or runways" which is factually inapplicable to this case; 22 NYCRR 23-1.8(c)(2), entitled "Foot protection," applies when workers are required "to work or pass in water, mud, wet concrete, or in any other wet footing" and does not apply to the facts of this case; and 22 NYCRR 23-5, entitled "General Responsibility Employers," is inadequately specific to provide a basis for Labor Law §241(6) claim.

evidence that either Romani or any other Plaza employee, was aware of its presence, nor is there any evidence that the condition was present for a sufficient period of time so as to give Plaza adequate opportunity to correct the condition. Plaintiff was under the exclusive direction and control of his foreman and neither Romani or any other Plaza employee directed, supervised or controlled the work being performed when the accident occurred.

In opposition, plaintiff argues that different laborers performed different, distinct types of work. Strippers removed wood forms, cleaners removed the nails from the wood forms to prevent the carpenters from being injured by protruding nails, and luggers stacked the cleaned wood forms into various piles based on the size of the forms. Stripping work did not include removing the nails, but meant removing the wooden form that supported the third floor concrete deck. Plaintiff should not have been directed to perform the stripping work until after the wood forms had been cleaned by the other crew members and the floor area had been made safe.

Plaintiff worked as a cleaner prior to being directed to perform stripping work. On the morning of the accident, plaintiff was performing lugging work on the second floor while others were performing stripping work. Then "Jessie" instructed him to "come and strip this [wood] from the ceiling" to be used on the third floor. Since plaintiff was not performing the cleaning work of removing nails at the time of his accident, but was removing wood forms at the time of his accident, the removal of nails from wood was not integral to plaintiff's work.

Also, the presence of wood forms on the floor was not integral to plaintiff's work, since he was not performing the work necessary to eliminate to the cause of the injury. Stripping, which was what plaintiff was doing, does not involve clearing the work site. The stripped forms strewn on the floor were not integral to the construction. Plaintiff was not injured because a co-

worker left the wood form on the floor, or by a permanent fixture at the site, but because the forms had not been cleaned and lugged.

And, nails constitute "debris" and/or a "sharp projection" under 23-1.7(e)(2) and the improperly stored wood forms fall under 23-2.1(a) so as to support the 241(6) claim. The nail was not consistent with the work plaintiff was performing as a stripper worker. Had plaintiff been working as a cleaner or lugger, plaintiff would agree that nails were consistent with his work of removing the very hazard that caused his injuries. And, the forms left on the work site floor by another stripping crew that the cleaners and luggers failed to remove raises an issue as to whether defendants violated 23-2.1(a).

Further, argues plaintiff, defendants failed to establish that they lacked notice of the condition to warrant dismissal of the Labor Law § 200 claim. The absence of evidence is insufficient to satisfy their burden as the moving parties. Defendants never established that they inspected the third floor on the date of the accident pursuant to any policy, and lacked notice of any hazardous condition. In any event, an issue of fact exists as to whether defendants directed that the area be stripped, since they did not prove that they did not direct plaintiff's employer to work in the unsafe area. Nor have defendants shown that they did not control the manner and means of plaintiff's work. There is no evidence that defendants never directed Jessie that the stripping must be performed in the subject area. The denial that they employed Jessie and that Jessie was plaintiff's direct supervisor is insufficient. And, this is not a case where plaintiff was injured by a hazard the worker was directed to eliminate.

In reply, defendants maintain that (a) plaintiff and his coworkers held the title of "laborer" whose tasks included stripping, cleaning, lugging, etc. and (b) the materials in the area where the

accident occurred was created by plaintiff's coworkers/laborers in the performance of their work. Plaintiff's attempt to distinguish between the specific tasks of stripping, cleaning, stacking, and lugging, is belied by his own testimony. It was as a laborer that plaintiff described the different tasks he performed, such as stripping, cleaning, lugging, sorting, and stacking. The various tasks performed by the plaintiff as a laborer were not, as plaintiff argues, so separate and distinct as to constitute completely different work. The various tasks performed by plaintiff and his fellow laborers were often combined and performed at the same time.

Discussion

As the proponent of the motion for summary judgment, plaintiff must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor (CPLR §3212 [b]). This standard requires that the proponent of a motion for summary judgment make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Silverman v Perlbinder*, 307 AD2d 230, 762 NYS2d 386 [1st Dept 2003]). In order to defeat the motion for summary judgment, the opposing party must demonstrate disputed issues of fact sufficient to require a trial (*Silverman v Perlbinder*, 307 AD2d at 231).

Labor Law § 200 states in relevant part as follows:

> 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 [...] All machinery, equipment and devices in such places shall be so placed, operated, guarded and lighted as to provide reasonable and adequate protection to all such persons.

Labor Law § 200 codifies the owner's or general contractor's common-law duty to provide a safe construction site (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 950 NYS2d 35 [1st Dept 2012]). Personal injury claims under the statute and common law "fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca*, 99 AD3d at 143-144, *citing Cook v Orchard Park Estates, Inc.*, 73 AD3d 1263, 1264, 902 NYS2d 674 [3d Dept 2010]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it (*Cappabianca*, 99 AD3d at 144, *citing Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9, 919 NYS2d 129 [1st Dept 2011]). "Where the injury was caused by the manner and means of the work . . . the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work (*Cappabianca*, 99 AD3d at 144 ("Liability under section 200 only attaches where the owner or contractor had the 'authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition'" *citing Russin v Louis N. Picciano & Son*, 54 N.Y.2d 311, 317, 445 NYS2d 127, 429 N.E.2d 805 [1981] and *Foley v Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476, 477, 923 NYS2d 57 [1st Dept 2011]).

Here, the record evidence establishes that the contributing cause of plaintiff's accident was the nail protruding from a wood form that was placed in the location by a Cross employee. When plaintiff first started at the site, he performed "lugging" work, which involved "separating all the different size woods, clean[ing] them, stack [ing] them off the building so the crane could take it up" (id., p. 28). As pointed out above, plaintiff cleaned the wood by using a hammer to

remove nails in the wood (id., p. 34-35). The piece of wood, containing the nail that caused the plaintiff's injuries, was one of the materials being used by plaintiff's coworkers, and was present at the work area as a result of, and during the course of, the ongoing work at the construction site. The protruding nail was not a defect inherent in premises, but instead, resulted from the manner in which Cross employees performed their work (*see Cappabianca*, 99 AD3d at 144, citing *Dalanna v City of New York*, 308 AD2d 400, 764 NYS2d 429 [1st Dept 2003]). Thus, contrary to the plaintiff's contention, his accident arose from the manner in which the work was performed and not from a dangerous or defective premises condition.

Inasmuch as plaintiff's injury was the result of the manner in which Cross employees performed the work in question, liability does not attach under Labor Law § 200 as defendants did not control the activity that caused plaintiff's injuries. Plaintiff testified, and Romani confirmed, that plaintiff's supervisor "Jessie" directed plaintiff's work, as well as the work of plaintiff's co-workers, on the date of the accident. Romani did not know plaintiff or heard of plaintiff until he was noticed for his deposition. Therefore, since defendants did not control the work or activity that caused plaintiff's accident, defendants are not liable to plaintiff pursuant to Labor Law § 200 (*Cappabianca*, 99 AD3d at 144) ("Since . . . Skanska [the general contractor] did not control the work that caused the accident, the section 200 and related negligence claims were properly dismissed"); *Gonzalez v Turner Constr. Co.*, 21 AD3d 832, 833, 801 NYS2d 310 [1st Dept. 2006] (dismissal under Labor Law § 200 and negligence warranted where general contractor had no direct involvement in the performance of plaintiff's work or the manner in which his employer's rig was dismantled)).

Contrary to plaintiff's contention, plaintiff failed to raise an issue of fact as to whether

defendants directed that the area be stripped or whether they did not control the manner and means of plaintiff's work. Defendants' denial, coupled with plaintiff's testimony, that he received instructions solely from his supervisor as to the work he was to perform at the site, is sufficient. Therefore, dismissal of plaintiff's Labor Law §200 claim is warranted.

Labor Law § 241(6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), a plaintiff must prove a violation of a provision of the Industrial Code that sets forth a specific safety standard (*O'Sullivan v IDI Constr. Co.*, 28 AD3d 225, 813 NYS2d 373 [1st Dept 2006] *citing Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505 [1993]).

Inasmuch as plaintiff's Labor Law § 241 (6) claim is premised upon 22 NYCRR 23-1.7(e)(2), such claim lacks merit. 12 NYCRR 23-1.7 (e) (2) states as follows:

> (e) Tripping and other hazards.
>
> (2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

In "situations where the accumulated debris that causes a plaintiff's injury was generated as 'an integral part of the work being performed,' 12 NYCRR 23-1.7 (e) (2) is factually inapplicable" (*Colella v The Port Authority of New York and New Jersey*, 2012 WL 3767148 (Trial Order) [Supreme Court, New York County 2012], *citing Zieris v City of New York*, 93 AD3d 479, 940 NYS2d 72 [1st Dept 2012]). In *Zieris*, the plaintiff was engaged in "rivet removal," which was "ongoing in various parts of the bridge, and all falling parts could not be caught while plaintiff and his coworkers were actively engaged in the removal work" (id. at 480). The Court held that such evidence established that "the rivet stem resulted from the work

plaintiff was performing" and "constituted an integral part of plaintiff's work" and as such, 22 NYCRR 23-1.7(e)(2) "did not apply." Notably, the Court also held "unavailing" plaintiff's argument that "the rivet did not originate from the work that *he himself* was performing is unavailing, as rivets left by *his coworkers*, who were performing the same rivet removal work, could still be deemed an integral part of the work" (id.) (emphasis added).

The holding in *Zieris v City of New York* commands the same result. Here, plaintiff or his co-workers were "stripping" and removing the wooden forms which contained nails, leaving the floor in a "mess" and a nail in one of such wooden forms pierced plaintiff's foot as he was stacking up the wood (*Colella v The Port Authority of New York and New Jersey, supra*) ["the First Department does not factor the issue of who is responsible for debris removal into its analysis of 12 NYCRR § 23-1.7 (e) (2)")).

Specifically, plaintiff stated that he was working on the third floor doing "lugging" which included "sorting the various pieces of wood" and "clean[ing] it." In addition to doing "lugging," plaintiff was doing "other things, too," which included "organizing everything." Although it is unclear as to whether plaintiff performed "stripping" work,[3] he described his activities as

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[3] Plaintiff's testimony of the role he played in the stripping work on the third floor is unclear:

Q. When you began working on the third floor, you were doing lugging?
A. Yes, and other things, too.
Q. What were the other things you were doing?
A. Stripping.
Q. Anything else?
A. Organizing everything.
(EBT, pp. 40-41).
Q. Up until 2:00 on the third floor, did you do anything other than the stripping, the organizing and lugging that you mentioned before?
A. No.
Q. Besides yourself, was anyone else doing that work, lugging, stripping and the organizing?
A. Yes.
Q. Who else or how many other workers?
A. I don't know how many of them. It was a few of them.
(EBT, p. 47).

follows: "Once the wood is stripped off . . . that means the whole floor is a mess. That means when I come in to sort everything out in order, different sizes, different lengths, that is my job." When plaintiff separates them into piles, there are "still nails in it."

Therefore, the Court finds that the wooden form containing the nail was an integral part of the work being performed by plaintiff or his co-workers, and as such, 22 NYCRR 23-1.7(e)(2) does not apply so as to support plaintiff's Labor Law § 241 (6) claim

As to 22 NYCRR 23-2.1, entitled "Maintenance and Housekeeping," provides:

(a) Storage of material or equipment.

> (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.
>
> (2) Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge.

(b) Disposal of debris. Debris shall be handled and disposed of by methods that will not endanger any person employed in the area of such disposal or any person lawfully frequenting such area.

As to 22 NYCRR 23-2.1(a)(1) and (2), these subsections pertain to the "storage" of materials, and here,

Further, the record contains no indication that the wooden form containing the nail "was

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He then stated that he did not perform stripping work:
Footnote 3, cont'd.

Q. As you were removing the wood, stripping the forms off, were you also removing the nails, cleaning the wood?
A. I wasn't stripping.
Q. Who was doing that?
A. Stripper guys.
(EBT, p. 48).

obstructing a passageway such as might give plaintiff a claim under Industrial Code § 23-2.1 (a) (1) (*Tucker v Tishman Constr. Corp. of N.Y.*, 36 AD3d 417, 828 NYS2d 311 [1st Dept 2007]). Indeed, plaintiff's testimony indicates that the subject wooden form was located in his working area on the floor (*see Tucker, supra*); *Militello v 45 W. 36th St. Realty Corp.*, 15 AD3d 158, 789 NYS2d 23 [1st Dept 2005] (where plaintiff tripped on a pipe protruding from one of several uninstalled radiators in the middle of the floor, 23–2.1(a)(1) held inapplicable)). And, there is no indication that the subject wooden form was "debris" as contemplated by 22 NYCRR 23-2.1 (b), since the wooden forms were going to be re-used in building the deck. Plaintiff testified as follows:

> Q. How long did that work take you to sort out the various pieces of wood?
> ***
> A. Depends what you are stacking. Whether it's ribs, stringers. It takes different times because some have to be cleaned. . . .
> ***
> Q. If they had nails in them, is that something you had to remove before you would *send it up to the third floor*?
> A. Yes.
> ***
> Q. Who told you to do that? [use a hammer to remove the nails]
> A. The foreman.
> Q. Did he tell you why it was necessary to remove the nails from the wood before it was put to use?
> A. So the carpenters won't get hurt.
> (EBT, pp. 34-35) (emphasis added).

Therefore, as the subject wooden form was not "debris," 22 NYCRR 23-2.1 (b) also does not apply to support plaintiff's Labor Law §241(6) claim.

As to the remaining alleged Industrial Code violations, plaintiff does not dispute defendants' arguments that (1) 22 NYCRR 23-1.7(f), entitled "Vertical passage" applies to "stairways, ramps, or runways" which is factually inapplicable to this case; 22 NYCRR

23-1.8(c)(2), entitled "Foot protection," applies when workers are required "to work or pass in water, mud, wet concrete, or in any other wet footing" and does not apply to the facts of this case; and 22 NYCRR 23-5, entitled "General Responsibility Employers," is inadequately specific to provide a basis for Labor Law §241(6) claim. Therefore, the extent plaintiff's Labor Law §241 (6) is premised upon such sections, the claim lacks merit.

Plaintiff failed to raise an issue of fact as to any of the Industrial Code violations cited.

Based on the above, in the absence of any applicable Industrial Code violations to support plaintiff's Labor Law §241(6) claim, this claim is also unwarranted.

Conclusion .

Based on the foregoing, it is hereby

ORDERED that the motion by defendants Bethune West Associates, LLC, Plaza Construction Corp., and The Related Companies for summary judgment dismissing the complaint of the plaintiff Edwin Troche is granted, in its entirety, and the complaint is hereby dismissed; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

ORDERED that the Clerk may enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: January 28, 2013

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD