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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DORIS LING-COHAN J.S.C. Justice

PART 36

Rodriguez

-v-

One NY Plaza Co, LLC et al.,

INDEX NO. 102199/2010

MOTION DATE

MOTION SEQ. NO. 004

The following papers, numbered 1 to 4, were read on this motion to/for Summary judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits | No(s). 1, 2, 3

Answering Affidavits — Exhibits | No(s). 4

Replying Affidavits | No(s).

Upon the foregoing papers, it is ordered that this motion is for summary judgment by plaintiff is decided in accordance with the attached memorandum decision.

(consolidated for disposition with Motion Seq # 005)

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

FILED

JAN 23 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1/17/14

, J.S.C.

DORIS LING-COHAN

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: IAS PART 36

----------X

JUAN RODRIGUEZ,

Plaintiff,

-against-

ONE NY PLAZA CO., LLC, BROOKFIELD PROPERTIES HOLDINGS, INC. and BROOKFIELD PROPERTIES MANAGEMENT, LLC,

Defendants.

----------X

Index No.: 102199/10
DECISION/ORDER

Motion Seq. No.: 004 & 005

HON. DORIS LING-COHAN, J.S.C.:

In this Labor Law/negligence personal injury action, plaintiff Juan Rodriguez (Rodriguez) moves for partial summary judgment on the complaint (motion sequence number 004). Defendants One NY Plaza Co., LLC (One NY Plaza), Brookfield Properties Holdings, Inc. and Brookfield Properties Management, LLC (the Brookfield defendants; collectively, defendants) move separately for summary judgment to dismiss the complaint (motion sequence number 005). Rodriguez also cross-moves for leave to serve and file a supplemental bill of particulars, *nunc pro tunc* (also motion sequence number 005). The motions and cross-motion are consolidated for disposition and decided as follows.

BACKGROUND

On January 20, 2009, Rodriguez's right hand was injured when the wheel of a bin full of debris that he was moving down a ramp from a building, located at One New York Plaza in the County, City and State of New York (the building), became caught in a drain cover in the floor of said ramp, and caused the bin to tip over, onto his hand. *See* Notice of Motion (motion sequence number 004), Gear Affirmation, ¶ 7. Although they have not admitted the exact nature of the

relationships, defendants appear to be the building's owner(s) and/or management companies. *Id.*; Exhibit G (Answer).

At his deposition, Rodriguez testified that, at the time of his injury, he was employed as a laborer by non-party Fortune Interior Dismantling (Fortune) and was engaged in removing concrete debris from the building's lobby and loading it into a garbage truck. *See* Silver Affirmation in Opposition to Motion (motion sequence number 004), Exhibit F, at 24-27, 39-40. Rodriguez further stated that he and a co-worker were pushing the debris in a yellow, metal cart that had been supplied by Fortune. *Id.* at 34-35. Rodriguez also stated that they were pushing the "very heavy" cart down the building's handicap access ramp, from the lobby level to the street, with himself on the right side of the cart and his co-worker on the left, and that the ramp had been lined with plywood sheets on its walls and floor to protect it during the demolition project. *Id.* at 16-18, 40-41, 47-50. Rodriguez testified that there was a small, rectangular hole in the plywood sheeting on the floor of the ramp where a drain was located, and that a wheel of the cart became caught in it, because the drain's cover was loose, which resulted in the cart turning over onto its right side, and wrenching his hand. *Id.* at 47-52. Rodriguez has also submitted an affidavit in support of his motion. *See* Notice of Motion (motion sequence number 004), Exhibit B, ¶¶ 1-12.

Defendants were deposed by property manager Joseph Syslo (Syslo), who identified the subject drain in the floor of the building's handicap access ramp from photographs, and acknowledged that the cover that was normally screwed over it was missing. *See* Silver Affirmation in Opposition to Motion (motion sequence number 004), Exhibit G, at 20-28.

Rodriguez commenced this action asserting causes of action for: 1) negligence; and 2)

violations of the Labor Law, including sections 200, 240 and 241. *See* Notice of Motion, Exhibit F. In his bill of particulars, Rodriguez identified 12 NYCRR §§ 23-1.7 (b) (1) (1) and 1.7 (e) (1), as being among the Industrial Code provisions that support the Labor Law § 241 (6) portion of his second cause of action. *Id.*; Exhibit E.

Now before the court are: (1) Rodriguez's motion for partial summary judgment on the portion of his second cause of action that is based on defendants' alleged violations of Labor Law §§ 240 (1) and 241 (6) (motion sequence number 004); (2) defendants' motion for summary judgment to dismiss the complaint; and (3) Rodriguez's cross motion for leave to file an amended bill of particulars, *nunc pro tunc*, that to include 12 NYCRR §§ 23-1.22 (b) (3), as an Industrial Code provision that supports Rodriguez's Labor Law § 241 (6) cause of action (motion sequence number 005).

DISCUSSION

Summary judgment is a drastic remedy to be employed only when there is no doubt as to the absence of triable issues of fact. Andre v. Pomery, 35 NY2d 361, (1974). To grant summary judgment it must be *clear* that no material and triable issue of fact is presented. S*ee Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957). The moving party bears the burden of proving, by competent, admissible evidence, that no material and triable issues of fact exist. *See e.g. Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 (1st Dept 2002). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *See e.g. Zuckerman v City of New York*, 49 NY2d 557, 562 (1980);

Pemberton v New York City Tr. Auth., 304 AD2d 340, 342 (1st Dept 2003). The court should draw all reasonable inferences in favor of the non-moving party, and should not pass on issues of credibility. *Dauman Displays, Inc. v. Masturzo*, 168 AD2d 204 (1st Dept 1990).

Plaintiff's Motion for Partial Summary Judgment

Labor Law § 240(1)

The first branch of Rodriguez's motion seeks partial summary judgment on the portion of his second cause of action that is based on Labor Law § 240 (1). Labor Law § 240(1) provides, in pertinent part, that:

> "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 Court of Appeals has held that the hazards contemplated by the statute "are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured." *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 (1991). The Court also notes that this statute "exists solely for the benefit of workers and operates to place the ultimate responsibility for safety violations on owners and contractors, not the workers." *Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 342 (2008). Finally, the Court requires a "plaintiff to show that the statute was violated and that the violation proximately caused his

injury." *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 (2004).

Here, Rodriguez argues that he has made a prima facie showing of entitlement to summary judgment on his Labor Law § 240 (1) claim, because his work exposed himself to the risk inherent in the building's handicap access ramp, which was caused by the elevation differential between the building's lobby and street levels, and the uncovered drain hole in the ramp's floor. *See* Notice of Motion (motion sequence number 004), Gear Affirmation, ¶¶ 18-24. Defendants respond that Rodriguez has not met his burden of proof, because, "in order ... to [make] a valid Labor Law § 240 (1) claim, [Rodriguez] is required to show that he was exposed to the risk of falling from an elevated worksite or being hit by an object falling from an elevated worksite," but that he has failed to do so. *See* Silver Affirmation in Opposition, ¶ 68.

Defendants, however, are misplaced in their argument, as the Court of Appeals in *Runner v New York Stock Exchange*, 13 NY3d 599 (2009), construed §240(1) more expansively than it had in the past, and determined that there can be liability under such statute, *even where the worker had not fallen and was not struck by a falling object.* Rather, according to the Court of Appeals, the decisive issue is "whether [a] plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential". *Id.* at 603. The Court of Appeals specifically stated that, "[t]he relevant inquiry - one which may be answered in the affirmative even in situations where the object does not fall on the worker - is...whether the harm flows directly from the application of the force of gravity to the object". *Id.* at 604; *see also Fernandes v Equitable Life Assur. Society of the U.S.*, 4 AD3d 214 (1st Dept 2004)(§240[1] protection provided to a worker who did not fall, but was injured when he lost his balance attempting to prevent himself from falling).

Moreover, in *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, (18 NY3d 1 [2011]), the Court of Appeals also discussed its earlier decision in *Runner, supra.*, which involved an 800-pound reel of wire being moved down a ramp, and declined to dismiss the plaintiff's Labor Law § 240 (1) claim, on the ground that the elevation differential involved was *de minimus*, "given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent." However, the Court did *not* find that the plaintiff in *Runner* had made out a *prima facie* case of his Labor Law § 240 (1) claim. Instead, as it observed later in *Wilinski*, the Court determined that, "[al]though the risk .... 'ar[ose] from a physically significant elevation differential,' it remains to be seen whether plaintiff's injury was 'the direct consequence of [defendants'] failure to provide adequate protection against [that] risk.'" *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d at 10. Thus, it was incumbent on the plaintiff to demonstrate that the lack of a safety device was the proximate cause of his injury.

Similarly, here, while plaintiff has put forth facts to establish that his accident occurred due to an elevation differential (as he was pushing a "very heavy" cart *down* the ramp, when the wheel of the cart became caught in the drain because the drain cover became loose and it was not protected by plywood, unlike the rest of the ramp), plaintiff failed to establish, in his submissions, as a matter of law, that his injuries were the direct consequence of defendants' failure to provide adequate protection against such risk, to warrant the granting of summary judgment in Rodriguez's favor on his Labor Law § 240(1) claim. When asked at his deposition where did the accident happen, Rodriguez answered: "[g]oing down the ramp...". (Motion sequence number 004, Exhibit F, Plaintiff EBT at 47, lines 14-16). According to Rodriguez, "because [he] was pushing, this sudden movement,...it was hard [to control and his] hands also

twisted", causing his injuries. (Motion sequence number 004, Exhibit F, Plaintiff EBT at 59, lines 17-22). The photo supplied, at Exhibit C to the Notice of Motion for Summary Judgment, appears to show that the drain was part of the ramp. Arguably, because of the gravitational force involved, plaintiff sustained his injuries, after the cart "flipped to the side". EBT at 50, lines 14-15. Thus, "given the weight of the object and the amount of force it was capable of generating", a jury could find that Rodriguez's injuries were sustained due to the force of gravity. *See Runner*, *supra* at 604. Thus, while the Labor Law § 240 (1) should not be dismissed at this juncture, it would be improper to grant summary judgment on that claim in favor of either party, as there are clearly factual issues, which warrant a trial. Accordingly, the court denies the portion of Rodriguez's motion which seeks summary judgment on his Labor Law §240(1) claim.

Labor Law §241(6)

Rodriguez also seeks summary judgment on the portion of his second cause of action that is based on defendants' alleged violation of Labor Law § 241 (6). That statute imposes a non-delegable duty on "owners and contractors to '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-Elec. Co.*, 81 NY2d 494, 501-502 (1993). In order to prevail on a claim under Labor Law § 241 (6), it is incumbent on a plaintiff to demonstrate that the defendant violated a regulation containing "concrete specifications" applicable to the facts of the case. *Id.* at 505. Here, as previously mentioned, Rodriguez initially identified 12 NYCRR §§ 23-1.7 (b) (1) (i) and 1.7 (e) (1), in his bill of particulars as the Industrial Code provisions to support his Labor Law § 241 (6) claim, and

also cross-moved for leave to include 12 NYCRR § 23-1.22 (b) (3), as another Industrial Code provision to support that claim. All three provisions have been held sufficiently specific to support a Labor Law § 241 (6) claim. *See e.g. O'Connor v Lincoln Metrocenter Partners*, 266 AD2d 60 (1st Dept 1999) (12 NYCRR 23–1.7(b) (1) (i) sufficiently specific to support a Labor Law § 241 (6) claim); *Picchione v Sweet Constr. Corp.*, 60 AD3d 510 (1st Dept 2009) (12 NYCRR § 23-1.7 (e) (1) sufficiently specific to support a Labor Law § 241 (6) claim); *Arrasti v HRH Constr. LLC*, 60 AD3d 582 (1st Dept 2009) (12 NYCRR § 23-1.22 (b) (3) sufficiently specific to support a Labor Law § 241 (6) claim). This does not end the inquiry, however.

Rodriguez argues that 12 NYCRR 23–1.7(b) (1) (i) should support the Labor Law § 241 (6) portion of his claim because the provision requires that hazardous openings at worksites shall be securely covered, and "the undisputed facts ... are that the drain cover was not secured into place." *See* Notice of Motion (motion sequence number 004), Gear Affirmation, ¶ 34. The provision does indeed state as follows:

> "(b) Falling hazards.
> (1) Hazardous openings.
> (i) Every 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 (rule)."

However, in *Messina v City of New York* (300 AD2d 121, 123 [1st Dept 2002]), the Appellate Division, First Department, specifically held that the "hazardous openings" contemplated by 12 NYCRR 23–1.7(b) (1) (i) are "openings large enough for a person to fit" through. Here, it is undisputed that the instant drain was not of such a size. Therefore, 12 NYCRR 23–1.7(b) (1) (i) cannot support the Labor Law § 241 (6) portion of Rodriguez's claim, as a matter of law.

12 NYCRR § 23-1.7 provides that:

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

Here, Rodriguez argues that such code provision supports the Labor Law § 241 (6) portion of his claim because there is no triable issue of fact concerning whether the ramp in which he was injured was in fact a "passageway", as defined in 12 NYCRR § 23-1.7(e)(1). *See* Notice of Motion (motion sequence number 004), Gear Affirmation, ¶ 38. Defendants respond that the provision is inapplicable; first, because Rodriguez testified that he did not trip, and second, because the ramp on which his accident occurred was not a "passageway" within the statutory meaning. *See* Silver Affirmation in Opposition, ¶¶ 79-83. The court disagrees with defendants' argument that the ramp was not a "passageway", but agrees that no evidence has been presented to suggest that plaintiff's accident was a result of him tripping. Significantly, Rodriguez testified that he did not trip and, thus, 12 NYCRR § 23-1.7(e)(1) is not applicable. (Motion sequence number 004, Exhibit F, at 72, lines 11-15). Similarly, in a recent decision in this court, by the Honorable Judith Gische, 12 NYCRR § 23-1.7 (e) (1) was held inapplicable to support a Labor Law § 241 (6) claim, where the plaintiff failed to allege that a tripping hazard existed, and instead, merely indicated that he had "slipped" at his work place. *Manzano v Riverbend Housing Co., Inc.*, 2010 NY Slip Op 32035(U) (Sup Ct NY County 2010). Similarly here, although Rodriguez alleges the presence of an uncovered drain, he does not claim that he himself "tripped," but, rather that he sustained injury to his hand when the cart overturned, after the

wheel to the cart became caught in the drain. Thus, 12 NYCRR § 23-1.7 (e) (1) does not support Rodriguez's Labor Law § 241 (6) claim.

In his cross motion, Rodriguez seeks leave to amend his bill of particulars (and to deem it served *nunc pro tunc*), to include 12 NYCRR § 23-1.22 (b) (3), as a basis for his Labor Law § 241 (6) claim. "It is well established that leave to amend a pleading shall be freely granted absent prejudice or surprise resulting from the delay," unless "the proposed pleading fails to state a cause of action ... or is palpably insufficient as a matter of law." *Davis & Davis, P.C. v Morson*, 286 AD2d 584, 585 (1st Dept 2001). Here, Rodriguez argues that amending his bill of particulars is justified because 12 NYCRR § 23-1.22 (b) (3) applies to the facts of this case, and because such amendment would not prejudice defendants. *See* Notice of Cross Motion (motion sequence number 005), Gear Affirmation, ¶¶ 10-15. Defendants disagree. *See* Silver Affirmation in Opposition to Cross Motion, ¶¶ 3-10. After review, the court agrees with Rodriguez.

12 NYCRR § 23-1.22 (b) (3) provides as follows:

> "(b) Runways and ramps.
>
> ***
>
> (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, Rodriguez argues that "the failure of the defendant[s] to securely cover the entirety of the ramp-way was a violation of 12 NYCRR § 23-1.22 (b) (3) and a proximate cause of plaintiff's injuries, in that the wheel of the debris loaded cart became entrapped within the drain-hole when the unsecured drain cover was displaced, which would not have occurred if the ramp-way had been covered and secured as mandated by the code provision." *See* Notice of Cross Motion (motion sequence number 005), Gear Affirmation, ¶ 62. Defendants respond that Rodriguez's injury did not occur on the ramp, but four feet beyond its end. Affirmation in Opposition to Cross Motion, ¶ 35. However, as Rodriguez correctly points out, this allegation is clearly belied by the submitted photographs, which show that the uncovered drain lay within the building's ramp. *See* Notice of Motion (motion sequence number 004), Exhibits C, D. Therefore, the court rejects defendants' argument in oppositon, as there is sufficient merit to grant Rodriguez's cross motion, to permit him to serve and file, *nunc pro tunc*, his amended bill of particulars, which includes 12 NYCRR § 23-1.22 (b) (3), as a ground to support Rodriguez's Labor Law § 241 (6) claim. However, for the reasons discussed earlier in this decision, as Rodriguez has not demonstrated the element of proximate cause at this juncture, Rodriguez has failed to make out a prima facie case with respect to his Labor Law § 241 (6) claim. Accordingly, while Rodriguez's cross motion to amend his bill of particulars is granted, the portion of his motion which seeks summary judgment on his Labor Law § 241(6) claim is denied.

Defendant's Motion for Summary Judgment

In their motion, defendants seek summary judgment to dismiss the entirety of Rodriguez's complaint. Defendants raise the same arguments with respect to Rodriguez's Labor

Law §§ 240 (1) and 241 (6) claims, as were discussed in the preceding section of this decision. The court, therefore, rejects those arguments for the reasons already stated. The court also noted that Rodriguez failed to establish the element of proximate cause with respect to those claims. The parties do not raise any additional argument with respect to proximate causation in either defendants' motion for summary judgment, or Rodriguez's cross motion. Therefore, the court concludes that this issue should be litigated at the trial of this action, and denies defendants' motion for summary judgment which seeks to dismiss the portions of Rodriguez's second cause of action that is based on violations of Labor Law §§ 240 (1) and 241 (6).

The balance of Rodriguez's complaint consists of his first cause of action, which alleges common-law negligence, and the remainder of his second cause of action, which alleges defendants' violation of Labor Law § 200. Defendants' motion does not raise any arguments with respect to Rodriguez's common-law negligence claim, but only argues with respect to Rodriguez's Labor Law § 200 claim. Therefore, that portion of defendants' motion that seeks summary judgment dismissing Rodriguez's first cause of action for common-law negligence is denied.

In *Ortega v Puccia* (57 AD3d 54, 61 [2d Dept 2008]), the Appellate Division, Second Department, cogently summarized the law governing Labor Law § 200 as follows:

> "Labor Law § 200 (1) is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work ... .
>
> Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed. These two categories should be viewed in the disjunctive.
>
> Where a premises condition is at issue, property owners may be held liable

> for a violation of Labor Law § 200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident.
>
> By contrast, when the manner of work is at issue, 'no liability will attach to the owner solely because [he or she] may have had notice of the allegedly unsafe manner in which work was performed.' Rather, when a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work [internal citations omitted]."

Here, defendants argue that "plaintiff's Labor Law § 200 claim cannot survive given the fact that he admitted during the course of his deposition that defendants did not supervise, control or direct the work he was performing at the time of the accident." *See* Notice of Motion (motion sequence number 005), Silver Affirmation, ¶ 67. Rodriguez responds that defendants made no showing that they did *not* supervise or control his work. *See* Notice of Cross Motion, Gear Affirmation, ¶ 35.

As discussed above, the issue of "supervision and control" , however, is only implicated where a Labor Law § 200 claim is based upon the "means and manner" of the work performed. It is irrelevant where the claim is of a dangerous/defective premises condition, as claimed herein. Thus, defendants' "supervision and control" argument to dismiss Rodriguez's Labor Law § 200 claim is without merit. Significantly, defendants assert no argument and provide no admissible proof, as required on a motion for summary judgment, as to whether they "created the dangerous condition that caused the accident or had actual or constructive notice" of that condition. " *King v JNV Limited*, 275 AD2d 733, 734 (2d Dept 2000); *see also Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 (1986); *Madrid v. New York*, 42 NY2d 1039 (1977). It is well established that a defendant does not carry its burden in moving for "summary judgment

by pointing to gaps in plaintiff[s'] proof", but must affirmatively demonstrate the merit of its claim or defense. *Bryan v. 250 Church Assoc., LLC,* 60 AD3d 578 (1st Dept 2009)(citation omitted); *see also Torres v. Industrial Container*, 305 AD2d 136 (1st Dept 2003). Therefore, defendants' motion for summary judgment as to Rodriguesz's Labor Law § 200 claim, is denied.

DECISION

Accordingly, for the foregoing reasons, it is

ORDERED that the motion, pursuant to CPLR 3212, of plaintiff Juan Rodriguez (motion sequence number 004) is granted only to the extent that the portion of plaintiff's Labor Law § 241(6) claim, which relies upon 12 NYCRR § 23-1.7(b)(1)( ) and 12 NYCRR 23-1.7(e)(1) is dismissed; and it is further

ORDERED that the motion, pursuant to CPLR 3212, of defendants One NY Plaza Co., LLC, Brookfield Properties Holdings, Inc. and Brookfield Properties Management, LLC (motion sequence number 004) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3043 (c), of plaintiff Juan Rodriguez (motion sequence number 005), is granted and the amended bill of particulars in the proposed form annexed to the moving papers shall be deemed served, upon service of a copy of this order with notice of entry; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy upon defendants, with notice of entry.

Dated: New York, New York
January 17, 2014

Hon. Doris Ling-Cohan, J.S.C.

J:\Summary Judgment\rodriguezvonenyplaza.frank lane.wpd