

Molloy v City of New York

2014 NY Slip Op 31514(U)

June 11, 2014

Sup Ct, New York County

Docket Number: 107400/09

Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

JAMES MOLLOY and JACQUELINE MOLLOY,

Plaintiffs,

INDEX NO. 107400/09

- against-

MOTION SEQ. NO. 001

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES, COOPER UNION COLLEGE, THE
COOPER UNION FOR THE ADVANCEMENT OF
SCIENCE AND ART, F.J. SCIAME CONSTRUCTION
CO., INC. AND POLO ELECTRIC CORP,
Defendants.

FILED

JUN 17 2014

NEW YORK
COUNTY CLERK'S OFFICE

The following papers were read on this motion by defendants for summary judgment pursuant to CPLR 3212.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits (Memo) _____	_____
Reply Affidavits — Exhibits (Memo) _____	_____

Cross-Motion: Yes No

Motion sequence numbers 001 and 002 are hereby consolidated for purposes of disposition.

This personal injury action involving a steamfitter arises from an accident that occurred on June 12, 2008, when plaintiff James Molloy (Molloy or plaintiff) tripped and fell while walking in the sub-cellar of the building being constructed at 41 Cooper Square, New York, NY (the building) which is known as the Cooper Union New Academic Building. Now before the Court is a motion by defendant Polo Electric Corp. (Polo Electric), pursuant to CPLR 3212, for summary judgment dismissing all claims as against it. Plaintiffs Molloy and Jacqueline Molloy bring a cross-motion for partial summary judgment as to defendants' liability under Labor Law § 241(6) (Motion Seq. 001). Also before the Court is a motion by defendants The City of New York (the

City), New York City Department of Citywide Administrative Services (City Administrative Services), Cooper Union College, the Cooper Union for the Advancement of Science and Art (Cooper Union), and F.J. Sciamè Construction Co., Inc. (Sciamè) (collectively, the Cooper Union defendants) for summary judgment dismissing all claims and cross-claims as against them (Motion Seq. 002). Discovery in this matter is complete and the Note of Issue has been filed.

BACKGROUND

On the date of his accident Molloy was employed as a steamfitter by nonparty Richards Conditioning Corp. (Richards Conditioning), the HVAC contractor for the project. Cooper Union owned the premises located at 41 Cooper Square pursuant to a long-term lease with the City. In 2007 Cooper Union contracted with Sciamè to be the general contractor on the project, in connection with the demolition and erection of the New Academic Building for the Cooper Union for the Advancement of Science and Art. Sciamè contracted with Polo Electric in 2007 to perform electrical work in connection with the project.

On the morning of his accident Malloy testified that he arrived at work at 6:30 a.m. and after changing into his work clothes in the shanty, he and his partner reported to the sub-cellar to work (Malloy tr at 41). Plaintiff maintains that upon arrival to the sub-cellar, which was the size of about a football field and-a-half, there was three or four inches of water around the whole floor (*id.* at 42). Molloy was deposed twice in this action, on June 22, 2011 as well as July 13, 2011, and submits an affidavit dated August 5, 2013 in which he describes the accident as follows: "[A]s I was getting ready to begin work, walking in my work area, I tripped over a hose for the pumps I couldn't see because of the water 4 inches deep on the floor and the poor lighting conditions" (Molloy affidavit ¶ 6). As to these lighting conditions, Molloy stated that when he got to the sub-cellar:

"I could not see where I was going very well, because of the poor lighting conditions, with circuit breakers failing throughout the morning, the lights in

portions of the sub-cellar going on and off more than once in the half hour I was present prior to the accident, and, regardless of whether the closest lighting was functional at the time of the accident, there was barely any light where I was working" (*id.*, ¶ 5).

Molloy avers that as a result of his fall he suffered injuries to his knee, and, on May 26, 2009 he filed a summons and complaint against defendants alleging liability under Labor Law §§ 240(1), 241(6), 200, as well as common-law negligence. Malloy's wife, Jacqueline Molloy, brings a derivative claim for loss of services.

STANDARDS OF LAW

Summary Judgment

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Meridian Management Corp. v Cristi Cleaning Service Corp.*, 70 AD3d 508, 510 [1st Dept 2010], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (*see Ostrov v Rozbruch*, 91 AD3d 147, 152 [1st Dept 2012], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212 [b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d

323, 325 [1st Dept 2006]).

When deciding a summary judgment motion, the Court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). 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]; CPLR 3212[b]).

Labor Law § 200

Labor Law § 200, which is a "codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]), states, in relevant part:

(1) [a]ll 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. 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.

To establish liability under this statute, a plaintiff must demonstrate either: (1) that the accident is the result of the means and methods used by the owner or contractor under circumstances under which the owner or contractor "exercised supervisory control over the injury-producing work" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]; or (2) that the accident is the result of a dangerous condition that the owner or general contractor created or had actual or constructive notice of, regardless of whether the defendant supervised and controlled the plaintiff's work (*id.*; *Murphy v Columbia Univ.*, 4 AD3d 200, 202 [1st Dept 2004]).

Labor Law § 241(6)

Labor Law § 241(6) provides, in pertinent part, that:

"All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

(6) All 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 the persons employed therein or lawfully frequenting such places."

In order to establish a Labor Law § 241(6) claim, "a plaintiff is required to plead and prove a specific violation of the Industrial Code" (*Kowalik v Lipschutz*, 81 AD3d 782, 783 [2d Dept 2011]).

12 NYCRR 23-1.30 states:

"Illumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10 foot candles in any area where persons are required to work nor less than five foot candles in any passageway, stairway, landing or similar area where persons are required to pass."

DISCUSSION

Labor Law § 200 and Common Law Negligence

The Cooper Union defendants argue that Sciame did not have notice of the dangerous condition that caused Molloy's accident. In support, the Cooper Union defendants submit the deposition testimony of John Fitzpatrick (Fitzpatrick), Sciame's field superintendent, who testified that Sciame used brooms, as well as pumps connected to hoses, to remove water from the sub-cellar (Fitzpatrick tr at 46-47, 31, 57).

Polo Electric argues in support that it is entitled to dismissal of the charges against it as it had no notice of the condition consisting of hoses submerged in water in the sub-cellar. Polo Electric also argues that there is no evidence that it was ever notified of any issues regarding the lighting conditions in the sub-cellar.

Here, plaintiffs do not oppose the portion of Polo Electric's motion seeking dismissal of

plaintiffs' Labor Law § 200 and common-law negligence claims as against it. As such, plaintiffs have abandoned these claims and Polo Electric is entitled to dismissal of same (*see Gary v Flair Beverage Corp.*, 60 AD3d 413, 413 [1st Dept 2009]). Plaintiffs do, however, oppose the application of the Cooper Union defendants for dismissal of the common-law negligence and Labor Law § 200 claims as against them. Specifically, plaintiffs argue that there is a question of fact, based on the testimony of Sciame's own witness, Fitzpatrick, as to whether Sciame created and had notice of the condition that plaintiffs allege caused the accident. That is, Fitzpatrick acknowledged that Sciame used pumps attached to hoses to drain flooding in the sub-cellar.

Since Sciame placed the hose on the sub-cellar floor that allegedly caused Molloy's accident, the Court finds that there is a question of fact as to whether Sciame created the condition involved in his accident, or had notice of it. Thus, the portion of the Cooper Union defendants' motion that seeks dismissal of plaintiffs' Labor Law § 200 and common-law negligence claims as against Sciame is denied. However, the portion of the motion that seeks dismissal of the same claims as against the other Cooper Union defendants--the City, City Administrative Services, Cooper Union College, and Cooper Union--is granted as there is no evidence in the record that any of these parties created or had notice of the alleged dangerous condition involved in Molloy's accident.

Labor Law § 240(1)

The Cooper Union defendants argue that plaintiffs' Labor Law § 240(1) claims should be dismissed because Molloy's accident did not involve a gravity-related risk. In addition to arguing the absence of a gravity-related risk, Polo Electric also argues that plaintiffs' Labor Law § 240(1) claim should be dismissed as against it because it was not an owner or general contractor on the project. Without reaching the latter argument, it is clear that Molloy's accident did not involve a gravity-related risk and as such, plaintiffs' claims under Labor Law § 240(1) should be dismissed as against all defendants.

Labor Law § 241(6)

I. Polo Electric

The threshold issue for Polo Electric is whether it may be considered Sciamè's agent, such that liability is possible under Labor Law § 241(6). "A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured" (*Samaroo v Patmos Fifth Real Estate, Inc.*, 102 AD3d 944, 946 [2d Dept 2013] [internal quotation marks and citation omitted]). Plaintiffs argue that Polo Electric is a statutory agent for Labor Law § 241(6) purposes because Polo Electric was the subcontractor responsible for lighting the sub-cellar where Molloy was injured. In support, plaintiffs cite, among others, to *White v Village of Port Chester* (92 AD3d 872 [2d Dept 2012]) and *Bove v New York City Hous. Auth.* (181 AD2d 427 [1st Dept 1992]). In *White*, where the plaintiff tripped on a concealed brick, the Court found that several of the defendant contractors were not entitled to summary judgment on the plaintiffs' Labor Law § 241(6) claims as against them, as they "failed to establish, prima facie, that they lacked the authority to supervise and control the work giving rise to the injured plaintiff's accident" (92 AD3 at 877). In *Bove*, where the plaintiff fell into an unlit elevator shaft, the Court held that summary judgment on the plaintiff's Labor Law § 241(6) claim was appropriate against two contractors "whose contractual obligations with [the property owner] required them, respectively, to provide adequate temporary lighting and safety barriers for the elevator shaft, making them statutory 'agents'" (181 AD2d at 427-428).

Polo Electric argues that it lacked supervisory control over Molloy's work, submitting a portion of Molloy's deposition transcript in which he testifies that only his supervisor at Richards Conditioning gave him assignments and oversaw his work (Molloy June 22, 2011 tr at 27, 31). Further, Polo Electric argues that it cannot be a statutory agent, as Sciamè retained control over the conditions of the worksite. In support, Polo Electric refers to the testimony of Fitzpatrick, Sciamè's field superintendent, who testified that Sciamè's responsibilities included

overseeing and inspecting the work of various subcontractors, such as Polo Electric (Fitzpatrick tr at 163-164).

Additionally, Polo Electric argues that Molloy's accident was caused by the dangerous condition of a garden hose submerged under pooling water. Here, Polo Electric refers to Molloy's June 22, 2011 deposition, at which Molloy described his accident:

"We opened up our toolbox and we were getting ready – we opened up to get ready for our day and everything and a little – I think I was moving a ladder or something. The laborers were working down there putting the temporary hoses and trying to get the water out that accumulated over the floor. Sciame had a big crew of people down there trying to get the water condition out of there so we can work. We were like standing by and then I went to – they had some hoses run and I kind of took a trip over a hose because I couldn't see that because the water was over the hose. It's a garden size hose that they use to discharge water out. That's what I fell over because they had that with the water and then I was shocked and there were some other people working right next to me, right near me, and I got up and my pants were all soaked. I was all soaked from the water and these other people come over and they helped me up" (Molloy June 22, 2011 tr at 44-45).

Polo Electric notes that no party argues that it was responsible for pumping water out of the sub-cellar. Here, Polo Electric is not a statutory agent subject to liability under Labor Law § 241(6). First, it makes a clear showing that it did not control Molloy's work by submitting Molloy's own testimony that he only took instructions from his Richards Conditioning supervisor. Second, it makes a showing, through Fitzpatrick's testimony, that Sciame retained supervisory control over the sub-cellar where Molloy's accident occurred. Neither of these showings has been rebutted.

This case is distinguishable from *Bove* in that there is no contractual obligation for Polo Electric to provide lighting to protect Molloy and other workers, as there was for the contractors in *Bove*. *White* is also distinguishable, as Polo Electric has, unlike the contractors in *White*, made a showing that it lacked supervisory control over Molloy's work (92 AD3 at 877). Thus, as Polo Electric is not an owner or a general contractor, or an agent of either, it is entitled to dismissal of plaintiffs' Labor Law § 241(6) claim as against it.

II. The Cooper Union Defendants

Here, the threshold question for plaintiffs' cross-motion for summary judgment against the Cooper Union defendants is whether it is improper, as the motion seeks affirmative relief against nonmoving parties. Specifically, plaintiffs brought their cross-motion on Polo Electric's motion for summary judgment (Motion Seq. 001), however plaintiffs seek relief against the Cooper Union defendants, non-moving parties with respect to that motion. In support of their argument that plaintiff's cross-motion is improper, the Cooper Union defendants cite to *Mango v Long Is. Jewish-Hillside Med. Ctr.* (123 AD2d 843, 844 [2d Dept 1986]), which held that "[a] cross-motion is an improper vehicle for seeking affirmative relief from a nonmoving party."

Plaintiffs, in a 50-page affirmation in opposition to the Cooper Union defendants' motion for summary judgment, do not mention this issue. However, plaintiffs do argue, in their affirmation in support of the cross-motion that the cross-motion is proper. First, plaintiffs cite to, *inter alia*, *Filannino v Triborough Bridge & Tunnel Auth.* (34 AD3d 280, 281 [1st Dept 2006] [internal quotation marks and citation omitted]) for the proposition that a court may allow an untimely cross-motion for summary judgment if the court is deciding a timely motion for summary judgment that seeks relief on "nearly identical" grounds. Second, plaintiffs, cite to *Snolis v Clare* (81 AD3d 923, 926 [2d Dept 2011]), among others, in referring to the catch-all principle that a court deciding a summary judgment motion has discretion, under CPLR 3212(b), to search the record and award summary judgment to a nonmoving party.

However, the issue, as raised by the Cooper Union defendants, is that plaintiffs' cross-motion is not properly a cross-motion as against them. The Cooper Union defendants also proffer that plaintiffs' cross-motion should be denied as it is untimely. The Appellate Division, First Department has recently clarified these principles in *Kershaw v Hospital for Special Surgery* (114 AD3d 75 [1st Dept 2013]), which denied a cross-motion as untimely, noting that:

"Allowing movants to file untimely, mislabeled 'cross motions' without good cause shown for the delay, affords them an unfair and improper advantage. Were the motions properly labeled they would not be judicially considered without an

[* 10]

explanation for the delay. Moreover, the exception discussed in *Filannino* allowing the courts to consider proper but untimely cross motions, at least as to issues shared with the original motion, addresses the dissent's concern that a cross-moving party might be caused to file its motion late because it had insufficient time before the deadline occurred.

We are concerned that the respect for court orders and statutory mandates and the authoritative voice of the Court of Appeals are undermined each time an untimely motion is considered simply by labeling it a 'cross motion' notwithstanding the absence of a reasonable explanation for its untimeliness. We therefore affirm the branch of the motion court's order which denied [the defendant] summary judgment as untimely made without consideration of its merits" (*id.* at 88-90).

Thus, plaintiffs' cross-motion should, as a technical matter, be denied as against the Cooper Union defendants, as it is not a proper cross-motion as against them. Additionally, denial of plaintiffs' cross-motion is also the proper result when addressing the merits of same, as there is a question of fact as to the applicability of the Industrial Code regulation under which plaintiffs seek summary judgment.

Plaintiffs argue that they are entitled to summary judgment on their Labor Law § 241(6) claims against the Cooper Union defendants, as they violated 12 NYCRR 23-1.30. This provision is sufficiently specific to serve as a predicate for liability under Labor Law § 241(6) (*Capuano v Tishman Constr. Corp.*, 98 AD3d 848, 850 [1st Dept 2012]). In support of its argument that defendants' violation of 12 NYCRR 23-1.30 proximately caused Molloy's injuries, plaintiffs rely on Molloy's testimony, as well as an affidavit, sworn in New Jersey on August 1, 2013, from Molloy's coworker, Ron Mercier (Mercier), who stated:

"Lighting conditions were very bad. The various trades installed their own temporary lighting, which over loaded the circuit and caused the breaker to trip, eliminating all artificial light. At the time of the accident, there was no artificial lighting, causing an extreme hazard . . . In my opinion, the poor lighting and the various debris, cords and hoses were each substantial contributing factors which caused [Molloy's] fall" (Mercier affidavit, ¶¶ 4, 7).

Plaintiffs also proffer, as expert testimony, an affidavit from Stanley Fein, a professional engineer sworn to on August 7, 2013. In preparing his opinion, Fein states that he reviewed Mercier's affidavit, Molloy's affidavit and deposition testimony, the

deposition testimony of Sciame's Fitzpatrick, and the deposition testimony of Polo Electric's Sotrios Gournas (Gournas), as well as photographs of the sub-cellar taken by Molloy more than a week after his accident (Fein affidavit, ¶ 2). Fein opined:

"The poor lighting in the area of the accident, as described by the testimony and depicted in the properly authenticated photographs, prevented Mr. Molloy from seeing his footing well enough to safely traverse the unlit area of the sub-basement to his worksite, causing him to trip and fall on the hose for the sump-pump. The lighting depicted in the photographs was clearly insufficient, and was significantly less than five foot candles . . . As the testimony and photographs demonstrate, there was no artificial lighting whatsoever in the immediate area of the accident, and the ambient lighting coming through holes in the ceiling of the subbasement provided less than 5 foot candles for persons working in the area of the accident. The lighting conditions at the accident location constituted a violation § 23-1.30. The poor lighting hindered Mr. Molloy's attempt to negotiate the walkway or to see tripping hazards in his path, so was a proximate cause of the accident . . . I am able to conclude within a reasonable degree of professional certainty, that the poor lighting in the area of the accident was a proximate cause of Mr. Molloy's accident and injuries" (Fein affidavit, ¶¶ 3, 5-6).

The Cooper Union defendants argue that, under CPLR 2309(c), the Mercier affidavit should be disregarded because it was taken out of state, and was not accompanied by a certificate of conformity. As to the Fein affidavit, the Cooper Union defendants argue that it is conclusory and that Fein lacks a factual basis on which to opine, as he has never visited the accident site. More substantively, the Cooper Union defendants refer to Molloy's June 22, 2011 deposition, in which he testified that he could not remember if lighting affected his ability to see:

- "Q: When you first stepped out into the sub-cellar that morning, were the lights on?
A: It was on and off. It wasn't like a steady light. Maybe they move those stringers or bulbs around or reshuffled them someplace else to get better light . . .
Q: Did you actually see anyone moving any stringers of light that morning?
A: No. I didn't notice it.
- Q: Do you specifically remember the lights actually going off that morning from when you got down there until your accident?
A: That morning, I can't remember. You know, there is such – it was such chaos and everything.
Q: Do you specifically remember having any difficulty seeing where you were going in terms of the lighting?
A: I can't remember" (Molloy June 22, 2011 tr at 50-51).

The Cooper Union defendants also submit an affidavit Michael Simonetti (Simonetti), a foreman for nonparty Par Plumbing, who was present in the sub-cellar at the time of Molloy's

accident. Simonetti states in his affidavit, "[t]he accident occurred in an area where there was temporary lighting which was adequately illuminating the area. I did not notice any problem with the lighting" (Simonetti Affidavit at ¶ 6). Here, Simonetti's affidavit and Molloy's wavering testimony show that there is question of fact as to whether insufficient lighting was a proximate cause of Molloy's accident. As such, the Cooper Union defendants are not entitled to summary judgment as to plaintiffs' Labor Law § 241(6) claims as against them, nor is plaintiff entitled to summary judgment on its cross-motion as triable issues of fact remain regarding the adequacy of the lighting.

III. The Cooper Union Defendants' Cross-Claims Against Polo Electric

Polo Electric moves for summary judgment dismissing the cross-claims of the Cooper Union defendants, but fails to make any specific arguments regarding these claims. As such, Polo Electric fails to make a prima facie showing of entitlement to judgment on the cross-claims, and the branch of its motion that seeks dismissal of these cross-claims must be denied.

CONCLUSION

Accordingly, it is

ORDERED that defendant Polo Electric Corp.'s motion for summary judgment is granted only to the extent that plaintiffs' complaint is dismissed as against it; the branch of the motion that seeks dismissal of all cross claims as against Polo Electric Corp. is denied; and it is further,

ORDERED that the motion by defendants the City of New York, New York City Department of Citywide Administrative Services, Cooper Union College, The Cooper Union for the Advancement of Science and Art, and F.J. Sciame Construction Co. is resolved as follows:

- Plaintiffs' Labor Law § 240(1) claim is dismissed as against all defendants;
- The branch of the motion seeking dismissal of plaintiffs' Labor Law § 200 and common-law negligence claims as against defendants City of New York, New York City Department of Citywide Administrative Services, Cooper Union

College, and The Cooper Union for the Advancement of Science and Art is granted;

- The branch of the motion seeking dismissal of plaintiffs' Labor Law § 200 and common-law negligence claims as against F.J. Sciamè Construction Co. is denied;
- The branch of the motion seeking dismissal of plaintiffs' Labor Law § 241(6) as against the defendants the City of New York, New York City Department of Citywide Administrative Services, Cooper Union College, The Cooper Union for the Advancement of Science and Art, and F.J. Sciamè Construction Co. is denied; and it is further;

ORDERED that plaintiffs' cross-motion for partial summary judgment as to liability on their Labor Law § 241(6) claim is denied; and it is further,

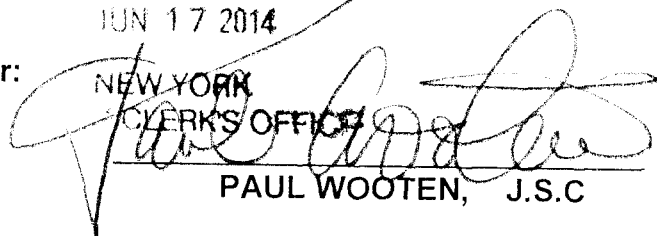
ORDERED that defendant Polo Electric Corp. is directed to serve a copy of this order with Notice of Entry upon all parties and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 6-11-14

FILED

JUN 17 2014

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