

**Glynn v 42nd and 10th Assoc., L.L.C.**

2016 NY Slip Op 30055(U)

January 8, 2016

Supreme Court, New York County

Docket Number: 155367/12

Judge: Paul Wooten

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. PAUL WOOTEN**  
Justice

**PART 7**

**MARTIN GLYNN,**  
Plaintiff,

-against-

**42<sup>ND</sup> AND 10<sup>TH</sup> ASSOCIATES, L.L.C., THE RELATED COMPANIES, L.P., TISHMAN CONSTRUCTION CORPORATION, RELATED 42 CONSTRUCTION, L.L.C. and W5 GROUP, LLC d/b/a WALDORF DEMOLITION,**

**Defendants.**

INDEX NO. 155367/12

MOTION SEQ. NO. 002

**42<sup>ND</sup> AND 10<sup>TH</sup> ASSOCIATES, L.L.C., THE RELATED COMPANIES, L.P. and TISHMAN CONSTRUCTION CORPORATION,**

**Third-Party Plaintiffs,**

-against-

**W5 GROUP, LLC d/b/a WALDORF DEMOLITION,**

**Third-Party Defendants.**

THIRD-PARTY INDEX NO. 590143/13

The following papers were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits (Memo) \_\_\_\_\_

Replying Affidavits (Reply Memo) \_\_\_\_\_

**PAPERS NUMBERED**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

Motion sequence numbers 002 and 003 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries sustained by a carpenter when he stumbled on debris while working at a construction site located at 440 West 42<sup>nd</sup> Street, New York, New York (the Premises) on August 16, 2010.

In motion sequence 002, defendants 42<sup>nd</sup> and 10<sup>th</sup> Associates, L.L.C. (42<sup>nd</sup> and 10th), The Related Companies, L.P. (The Related Companies), Related 42 Construction L.L.C.

(Related 42 Construction) and Tishman Construction Corporation (Tishman) (collectively, the Related defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint against them, as well as summary judgment in favor of 42<sup>nd</sup> and 10<sup>th</sup>, The Related Companies and Tishman on the third-party claim for contractual indemnification against defendant/third-party defendant W5 Group, LLC d/b/a Waldorf Demolition (Waldorf).

In motion sequence number 003, defendant/third-party defendant Waldorf moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint against it.

Also before the Court is a cross-motion by the plaintiff, pursuant to CPLR 3212, for summary judgment in his favor as to liability on that part of the Labor Law § 241(6) claim predicated on alleged violations of Industrial Code 12 NYCRR 23-1.7(e)(1) and (2) as against the Related defendants. Plaintiff also cross-moves, pursuant to CPLR 3212, for summary judgment in his favor as to liability on common-law negligence and Labor Law § 200 claims, as well as those parts of the Labor Law § 241(6) claim predicated on alleged violations of Industrial Code 12 NYCRR 23-1.7(e)(1) and (2) as against Waldorf.

#### BACKGROUND

On the day of the accident, 42<sup>nd</sup> and 10<sup>th</sup> owned the Premises where the accident occurred. In addition, Related 42 Construction served as the general contractor, and Tishman served as the construction manager, on a project underway at the Premises, which entailed developing and constructing a multi-story mixed-use building (the Project). Related 42 Construction hired Waldorf, pursuant to a written subcontract, to “provide all labor and materials to clean, cart away and dispose of all debris from all areas of the building from March 1, 2010 until completion of the finished flooring in each area/room” (the Waldorf subcontract) (the Related defendants’ notice of motion, exhibit H, the Waldorf subcontract, exhibit A.1). Plaintiff was employed by nonparty Component Assembly Systems, Inc. (CAS) as a carpenter on the Project. He was injured when he stumbled on some discarded fall protection, specifically, an angle iron, which was concealed by netting and cable.

### *Plaintiff's Deposition Testimony*

Plaintiff testified that he was working for CAS as a carpenter and shop steward on the day of the accident. On that day, his CAS foreman directed him to install insulation and vapor barriers around the windows located on the 26<sup>th</sup> floor of the building. Plaintiff's work was directed solely by his foreman. Plaintiff testified that he was not familiar with 42<sup>nd</sup> and 10<sup>th</sup>. He also maintained that he never had any dealings with Tishman or Related 42 Construction. Plaintiff was aware, however, that Waldorf was hired to remove debris from the job site, and that its duties included "removing garbage . . . putting garbage in[to] dumpsters and sweeping, cleaning" (plaintiff's tr at 29).

Plaintiff testified that he had been working for approximately four hours before the accident occurred. He explained that, in order to perform this work, it was necessary for him to use an A-frame ladder. After he moved his ladder to the location where he was to begin work, plaintiff made sure that the ladder was level and secure. He also checked the floor for "anything in the way" (*id.* at 53). At this time, plaintiff noticed a pile of discarded fall protection lying on the floor, which he described as "debris" (*id.*). This debris consisted of orange netting and cable, which had been removed from the perimeter of the building, so that the window panels could be installed. Plaintiff testified that his work area was adequately lit, and that he had an unobstructed view of said debris. In addition, prior to the time of the accident, plaintiff noticed debris and garbage "all over the place" (*id.* at 143).

Plaintiff testified that the accident happened as he was walking backwards with the ladder while simultaneously pushing the debris away with his feet. When he had moved the pile of debris about one foot, he stepped backwards onto a piece of steel that was hidden under the aforementioned netting and cable, which caused his left ankle to roll over and bend inward. Plaintiff described the obscured piece of steel as a four-foot-long angle iron, which was part of a "safety device that's installed before they pour the concrete on the floor in order to hold up the safety netting from the hoist" (*id.* at 54-55). Plaintiff noted that the CAS workers were "probably

not a day or two behind [the workers who discarded the fall protection]" (*id.* at 154). Following the accident, plaintiff picked up the debris with his hands, moved it out of his way and continued with his work.

When asked at his deposition if the accident occurred in a "passageway," plaintiff responded, "It was an open area" (*id.* at 166). He also testified, in pertinent part, as follows:

"It was an open area . . . we were building apartments, so it was an open area, like I said, from concrete wall to concrete wall, including the ramp, its probably 50, 60 feet. The building was wide open basically. There was no walls up on that floor. But below there were" (*id.* at 166-167).

*Deposition Testimony of Bruce Silver (Tishman's General Superintendent)*

Bruce Silver testified that, as construction manager, Tishman did not direct or control the means and methods of any of the workers at the site. In addition, Tishman did not provide any of the safety equipment used on the Project. Silver explained that the trades were not responsible for removing their own garbage from the site, and that, instead, they piled their debris in the middle of the room for Waldorf to remove. Silver asserted that it was also Waldorf's responsibility to remove discarded fall protection from the site. Silver considered the discarded fall protection to be "debris" (Silver tr at 39). When removing said fall protection, it was customary for Waldorf to roll up angle irons and cables in the orange netting before placing it all into a mini-container, which was provided by Waldorf. Silver described Waldorf's mini-containers as "metal triangular steel containers about four feet high with four wheels" (*id.* at 33).

*Deposition Testimony of Diego Tantillo (Waldorf's Senior Employee)*

Diego Tantillo testified that Waldorf was solely responsible for removing all debris from the areas where work was being performed. He explained that Silver "would communicate [with him] what was happening at the job site in terms of where [clean-up] work was being performed" (Tantillo tr at 25). Tantillo's job on the Project was to "supervise the job . . . and make sure everything was always . . . up and up and clean all the time. Everything was clean" (*id.* at 20). Tantillo's duties also included "[w]alk[ing] the job" to make sure that "the job was

clean” (*id.* at 22). Tantillo inspected the site “[a]t least two, three times a day,” starting on the roof and working his way down to each floor (*id.* at 60).

Tantillo also testified that, not only did Waldorf employees follow behind the trades as they worked, at the end of each work day, Waldorf employees broom-cleaned each floor in preparation for the arrival of the trades the next day. Waldorf provided its own mini-containers for the disposal of the debris and garbage, and there was a container on every floor where work was being performed.

Tantillo further explained that Waldorf’s scope of work included the cleaning up and disposal of discarded fall protection, which included orange netting, angle irons and cable. Tantillo testified, “If it was on the floor we took it out” (*id.* at 48). Tantillo noted that the safety nets were taken down, along with anything that held up the safety nets, when it was time to install the windows.

#### 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 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *DeRosa v City of New York*, 30 AD3d 323, 325 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2002]).

Initially, plaintiffs do not oppose that part of the Related defendants’ motion to dismiss the complaint against the Related Companies. Therefore, the Related Companies are entitled

to dismissal of the complaint as asserted against them. As such, in the remainder of this decision, the term “the Related defendants” will refer to the remaining defendants only. In addition, plaintiff does not oppose those parts of the Related defendants’ motion seeking dismissal of the common-law negligence and Labor Law § 200 claims against them. Therefore, the Related defendants are entitled to dismissal of these claims against them.

***The Labor Law § 241(6) Claim (motion sequence numbers 002, 003 and plaintiff’s cross motions)***

In separate cross-motions, plaintiff moves for summary judgment in his favor as to liability on those parts of the Labor Law § 241(6) claim predicated on alleged violations of Industrial Code 12 NYCRR 23-1.7(e)(1) and (2) as against the Related defendants and Waldorf. The Related defendants and Waldorf move for dismissal of the Labor Law § 241(6) claim against them. Labor Law § 241 provides, in pertinent part, as follows:

“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, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.”

Labor Law § 241(6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection and safety to workers (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]). However, Labor Law § 241(6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant’s motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.*).

Although plaintiff lists multiple violations of the Industrial Code in his bill of particulars,

with the exception of Industrial Code sections 23-1.7(e)(1) and (2), plaintiff failed to specifically address the other Industrial Code violations, and thus they are deemed abandoned (*see Gary v Flair Beverage Corp.*, 60 AD3d 413, 413 [1st Dept 2009]; *Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003]; *Musillo v Marist Coll.*, 306 AD2d 782, 783 n [3d Dept 2003]). As such, the Related defendants and Waldorf are entitled to summary judgment dismissing those parts of plaintiff's Labor Law § 241(6) claim predicated on those abandoned provisions.

It should also be noted that, as 42<sup>nd</sup> and 10<sup>th</sup> is the undisputed owner of the Premises where the accident took place, and Related 42 Construction was the general contractor on the Project, these parties may be liable for plaintiff's injuries under Labor Law § 241(6). However, it must be determined whether Tishman, as construction manager, and Waldorf, as the subcontractor in charge of clean-up at the site, are also proper Labor Law defendants.

As to Tishman, while

"a construction manager of a work site is generally not responsible for injuries under Labor Law § 240 (1) [and 241 (6)], one may be vicariously liable as an agent of the property owner for injuries sustained under the statute in an instance where the manager had the ability to control the activity which brought about the injury" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]; *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]).

Here, Tishman may not be held liable under Labor Law § 241(6) as a statutory agent, because the record is clear that it did not supervise or control the work that brought about the injury in this case, i.e., the removal of debris at the site. Thus, as it is not a proper Labor Law defendant, Tishman is entitled to dismissal of the Labor Law § 241(6) claim against it.

As to Waldorf,

"[w]hen the work giving rise to [the duty to conform to the requirements of Labor Law § 240 (1)] has been delegated to a third party, that third party then obtains the concomitant authority to supervise and control that work and becomes a statutory 'agent' of the owner or general contractor" (*Russin v Louis N. Picciano & Son*, 54 NY2d at 318; *see also Walls v Turner Constr. Co.*, 4 NY3d at 863-864).

As the record is clear that Waldorf was in charge of all debris removal at the site, and as plaintiff was injured when he tripped on debris, Waldorf is to be considered a proper Labor Law

defendant for the purposes of the statute.

*Industrial Code 12 NYCRR 23-1.7(e)(1) and (2)*

Industrial Code 12 NYCRR 23-1.7(e)(1) and (2) are sufficiently specific to sustain a claim under Labor Law § 241 (6) (see *O'Sullivan v IDI Constr. Co., Inc.*, 28 AD3d 225, 225 [1st Dept 2006], *affd* 7 NY3d 805 [2006]).

Industrial Code sections 23-1.7(e)(1) and (2) provide, in pertinent part:

“(e) Tripping and other hazards

(1) **Passageways.** All passageways shall be kept free from . . . debris and from any other obstructions or conditions which could cause tripping.

\* \* \*

(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.”

Here, plaintiff clearly testified that the accident occurred in an open work area, and not a passageway. Therefore, section 1.7(e)(1) does not apply to the facts of this case. That said, section 1.7(e)(2), which refers to tripping hazards in working areas, does apply to the facts of this case, as plaintiff was injured when he tripped over debris, which was present in the accident area for at least a day prior to the accident.

In opposition, the Related defendants and Waldorf argue that the Labor Law § 241(6) claim should be dismissed against these defendants, because plaintiff's accident was caused by his own deliberate acts, making him the sole proximate cause of his injury. In support of this argument, they aver that plaintiff should have notified the appropriate contractors to clean up the subject debris, or moved it away with his hands, rather than kicking it away with his feet. These defendants also argue that they may not be held liable for plaintiff's injury, because the risk to plaintiff was “readily observ[able] by the reasonable use of [his] senses” (see *Gasper v Ford Motor Co.*, 13 NY2d 104, 110 [1963], quoting *McLean v Studebaker Bros. Co.*, 221 NY

475, 478 [1917]).

Initially, the sole proximate cause defense cannot be invoked under the instant circumstances, because it “requires a showing that the injured worker refused to use the safety devices that were provided by the owner or employer” (*Stolt v General Foods Corp.*, 81 NY2d 918, 920 [1993]; *Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288 [1st Dept 2008]). Here, there were no safety devices at issue. In addition, defendants’ open and obvious argument fails, because, while some of the debris at issue was plainly visible, the debris that actually caused the accident, the angle iron, was not.

Thus, with the exception of Tishman, who is not a proper Labor Law defendant, plaintiff is entitled to summary judgment in his favor as to liability on that part of the Labor Law § 241(6) claim predicated on an alleged violation of section 23-1.7(e)(2) as against the Related defendants and Waldorf. Accordingly, with the exception of Tishman, the Related defendants and Waldorf are not entitled to dismissal of the same.

***The Common-Law Negligence and Labor Law § 200 Claims Against Waldorf (motion sequence number 003 and plaintiff’s cross motion)***

Plaintiff cross-moves for summary judgment in his favor as to liability on the common-law negligence and Labor Law § 200 claims against Waldorf. Waldorf moves to dismiss said claims against it. Labor Law § 200 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’ [citation omitted]” (*Cruz v Toscano*, 269 AD2d 122, 122 [1st Dept 2000]; see also *Russin v Louis N. Picciano & Son*, 54 NY2d at 316-317). Labor Law § 200(1) states, in pertinent part, as follows:

“1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. 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.”

Claims involving Labor Law § 200 generally fall into two broad categories: those where

workers are injured as a result of the methods or manner in which the work is performed, and those where workers are injured as a result of a defect or dangerous condition existing on the premises (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]; *Markey v C.F.M.M. Owners Corp.*, 51 AD3d 734, 736 [2d Dept 2008] ["Liability pursuant to Labor Law § 200 may be based either upon the manner in which the work is performed or actual or constructive notice of a dangerous condition inherent in the premises"]). Where an accident is the result of a contractor's or worker's means or methods, it must be shown that a defendant exercised actual supervision and control over the activity, rather than possessing merely general supervisory authority (*Mitchell v New York Univ.*, 12 AD3d 200 [1st Dept 2004]); *Reilly v Newireen Assoc.*, 303 AD2d 214 [1st Dept 2003]; *Abelleira v City of New York*, 120 AD3d 1163, 1164-1165 [2d Dept 2014]).

Where the accident is the result of a dangerous or defective condition at the worksite, it must be shown that the owner or contractor either caused the dangerous condition, or failed to remedy a dangerous or defective condition of which it had actual or constructive notice (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1 [1st Dept 2011]). "The notice must call attention to the specific defect or hazardous condition and its specific location, sufficient for corrective action to be taken" (*Mitchell v New York Univ.*, 12 AD3d at 201). Supervision and control need not be proven where the injury arose from a dangerous condition at the worksite (*see Murphy v Columbia Univ.*, 4 AD3d 200 [1st Dept 2004]).

Here, plaintiff's accident was caused due to Waldorf's failure to properly remove the fall protection debris that caused plaintiff to trip and become injured. Therefore, the accident was the result of the means and methods of Waldorf's work, and not due to a defect inherent in the Premises. Accordingly, an analysis of the accident under a means and methods theory is proper. Here, it is undisputed that Waldorf was the sole entity charged with cleaning up and disposing of debris at the site. In addition, the accident resulted from the presence of debris, which was not disposed of in a timely manner.

Thus, plaintiff is entitled to summary judgment in his favor on the common-law negligence and Labor Law § 200 claims against Waldorf, and Waldorf is not entitled to dismissal of said claims against it.

***The Related Defendants' Third-Party Contractual Indemnification Claim Against Waldorf (motion sequence number 002)***

The Related defendants move for summary judgment in favor of 42<sup>nd</sup> and 10<sup>th</sup>, the Related Companies and Tishman on the third-party contractual indemnification claim against Waldorf. “A party is entitled to full contractual indemnification provided that the ‘intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances’” (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; see *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]; *Torres v Morse Diesel Intl., Inc.*, 14 AD3d 401, 403 [1st Dept 2005]).

With respect to contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of its vicarious liability, and that “[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant’ [citation omitted]” (*De La Rosa v Philip Morris Mgt. Corp.*, 303 AD2d 190, 193 [1st Dept 2003]; *Keena v Gucci Shops*, 300 AD2d 82, 82 [1st Dept 2002]).

*The Indemnification Provision Contained in the Waldorf Subcontract*

Section 12.2 of the Waldorf subcontract, entitled “Indemnity Requirements” provides, in pertinent part, as follows:

“To the fullest extent permitted by law, [Waldorf] shall indemnify, defend and hold harmless General Contractor, Owner, Lender, Architect, Construction Manager, and any Additional Insureds . . . from and against all losses, claims . . . causes of action, lawsuits, costs, damages, and expenses . . . due to: (i) any personal injury . . . ; (ii) any negligent or wrongful act or omission of [Waldorf], its employees . . . for whom [Waldorf] is responsible” (the Related defendants’ notice of motion, exhibit H, the Waldorf subcontract, section 12.2).

Here, as discussed previously, Waldorf was solely responsible for debris removal at the

Premises, and the accident was caused due to Waldorf's failure to properly remove the fall protection debris. Thus, as the accident was the result of Waldorf's negligence, pursuant to the indemnification provision contained in the Waldorf subcontract, the subject Related defendants are entitled to summary judgment in their favor on the third-party contractual indemnification claim against Waldorf. In light of this determination, it is not necessary for the court to consider the Related defendants' remaining arguments on this issue.

#### CONCLUSION

Accordingly, it is

ORDERED that the parts of defendants/third-party plaintiffs 42<sup>nd</sup> and 10<sup>th</sup> Associates, L.L.C., The Related Companies, L.P. (The Related Companies), Related 42 Construction L.L.C. and Tishman Construction Corporation's (Tishman) motion (collectively, the Related defendants) (motion sequence number 002), pursuant to CPLR 3212, for summary judgment dismissing the complaint against the Related Companies and Tishman are granted, and the complaint is severed and dismissed as against these defendants, with costs and disbursements to these defendants as taxed by the Clerk of Court, and the Clerk is directed to enter judgment accordingly in favor of these defendants; and it is further,

ORDERED that the portions of the Related defendants' motion, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law § 200 claims, as well the Labor Law § 241(6) claim against them, with the exception of the part of the Labor Law § 241(6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.7(e)(2), as against the remaining Related defendants are granted, and these claims are dismissed as against these remaining Related defendants; and it is further,

ORDERED that the part of the Related defendants' motion for summary judgment in favor of 42<sup>nd</sup> and 10<sup>th</sup>, The Related Companies and Tishman on the third-party claim for contractual indemnification against defendant/third-party defendant W5 Group, LLC d/b/a Waldorf Demolition (Waldorf) is granted; and it is further,

ORDERED that the part of Waldorf's motion, pursuant to CPLR 3212 (motion sequence number 003), for summary judgment dismissing the Labor Law § 241(6) claim against it is granted, with the exception of that part of the Labor Law § 241(6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.7(e)(2), and the motion is otherwise denied; and it is further,

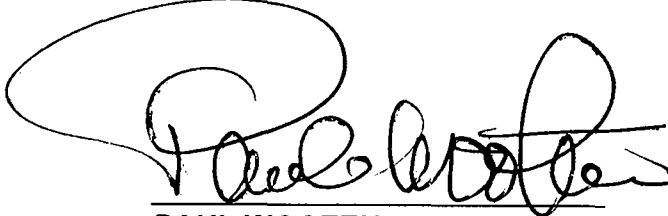
ORDERED that the parts of plaintiff Martin Glynn's cross-motions, pursuant to CPLR 3212, for summary judgment in his favor as to liability on that part of the Labor Law § 241(6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.7(e)(2) as against Waldorf and the Related defendants, with the exception of Tishman and The Related Companies, are granted; and it is further,

ORDERED that the portion of plaintiff Martin Glynn's cross motion, pursuant to CPLR 3212, for summary judgment in his favor as to liability on his common-law negligence and Labor Law § 200 claims against Waldorf is granted, and the remainder of the cross-motions are otherwise denied; and it is further,

ORDERED that counsel for plaintiff 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: 1/8/16

  
PAUL WOOTEN, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: :  DO NOT POST  REFERENCE