Roman v Port Auth. of N.Y. & N.J.
2017 NY Slip Op 31589(U)
July 27, 2017
Supreme Court, New York County
Docket Number: 159624/13
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

----------X **DECISION AND ORDER**

ROBERT ROMAN,

Index No.: 159624/13
Motion Seq. No. 002

Plaintiff,

-against-

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, NAVILLUS TILE, TISHMAN CONSTRUCTION CORPORATION and THE LOWER MANHATTAN DEVELOPMENT CORPORATION,

Defendants.

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DEBRA A. JAMES, J.S.C.:

In a Labor Law action, plaintiff Robert Roman's (Roman) seeks damages for injuries he allegedly suffered in the course of his work as a laborer on the construction of the Vehicle Security Center (VSC) at the new World Trade Center, New York, New York. Plaintiff moves, under CPLR 3212, for summary judgment as to liability on his Labor Law §§ 240 (1) and 241 (6) claims, as well as his Labor Law § 200 and common-law negligence claims.

CONCLUSION

The motion of plaintiff Robert Roman's for summary judgment shall be denied.

BACKGROUND

Defendant, the Port Authority of New York and New Jersey (the Port Authority, owns The World Trade Center property. Defendant Tishman Construction Corporation (Tishman) was the construction manager for the VSC project.

Roman's accident occurred on May 23, 2013, when he was a laborer for nonparty PMC Rebar. His duties were to bring L-bars, which are L-shaped pieces of rebar, to lathers, who worked with the rebar, or, in Roman's words, "tied steel". The L-bars were in boxes that were, according to Roman, six feet long and weighed 70 pounds.

At the end of Roman's route between where the L-bars were stored and where the lathers were bending them, he had to enter a "narrow space" between a scaffold and a wall. Each time he entered this space, Roman had to reposition the L-bars, holding them upright, so that he could move them through the narrow passageway, which, according to Roman, was approximately 10 feet long and 18 inches wide.

His process was to walk to the end of the passageway, take the L-bars out of the box, and "pass them in one by one" to the lathers who were waiting in a "hole that was located in the lower portion of the wall". According to his deposition testimony, on one trip, when he made the left turn to enter the narrow

passageway, his right foot dislodged a plank covering a pipe-chase opening and got lodged between the plank and the opening; he fell back, hitting his head on the scaffolding and briefly losing consciousness. When he regained consciousness, the L-bars were on top of his right shoulder and his midsection, and he described the dimensions of the hole as six feet long and "18, 13 inches wide", in which his right leg went through, from his foot to halfway up his calf; part of his torso were wedged in the hole. He was unable to push the L-bars off of himself or get out of the hole.

Roman's co-worker, Elijah Mercado (Mercado) arrived at the scene and, along with another co-worker, Richard Muhammed (Muhammed), tried unsuccessfully to help Roman out of the hole. Eventually, after approximately 30 minutes, two co-workers and two emergency medical technicians (EMTs) pulled him out of the hole. Plaintiff alleges that, as a result of the accident, he injured his back, as well as his right shoulder and his right knee.

DISCUSSION

"Summary judgment must be granted if the proponent makes 'a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut

that showing" (Brandy B. v Eden Cent. School Dist., 15 NY3d 297, 302 [2010], quoting Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a prima facie showing, the court must deny the motion, "'regardless of the sufficiency of the opposing papers'" (Smalls v AJI Indus., Inc., 10 NY3d 733, 735 [2008], quoting Alvarez, 68 NY2d at 324).

A. Labor Law § 240 (1)

Labor Law § 240 (1) provides, in relevant part:

> "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 this duty to provide safety devices is nondelegable (Gordon v Eastern Ry. Supply, 82 NY2d 555, 559 [1993]), and that absolute liability is imposed where a breach has proximately caused a plaintiff's injury (Bland v Manocherian, 66 NY2d 452, 459 [1985]). A statutory violation is present where an owner or general contractor fails to provide a worker engaged in section 240 activity with "adequate protection against a risk arising from a physically significant elevation differential" (Runner v New York Stock Exch., Inc., 13

NY3d 599, 603 [2009]). Where a violation has proximately caused a plaintiff's injuries, owners and general contractors are absolutely liable "even if they do not have a continuing duty to supervise the use of safety equipment" (Matter of East 51st St. Crane Collapse Litig., 89 AD3d 426, 428 [1st Dept 2011]).

Claims under this statute are typically sorted as "falling worker" or "falling object" cases. Here, we have both a falling worker, Roman, and a falling object, the bundle of L-bars, but neither of them fell very far. However, the length of the fall is not always dispositive of the question of liability (see e.g., Wilinski v 334 E. 92nd Hous. Dev. Fund Corp., 18 NY3d 1, 5 [2011] [holding, in the falling object context, that a plaintiff's whose injuries are "caused by a falling object whose base stands at the same level as the worker" are not categorically barred from recovering under the statute]).

The question on this motion is whether Roman was injured as a result of a physically significant elevation differential with respect to the hole in the floor.

In Burke v Hilton Resorts Corp. (85 AD3d 419 [1st Dept 2011]), the court determined that plaintiff, who fell 15 feet through an unprotected hole, was entitled to summary judgment on his Labor Law § 240 (1) claim (*id.* at 419-420; see also Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., *Inc.*, 104 AD3d

446, 450 [1st Dept 2013] [holding that "section 240 (1) is violated when workers fall through unprotected floor openings"]).

Here, if plaintiff had fallen through the opening, Burke and Alonzo would be applicable. This is especially true because the next floor was "about 35 to 40 feet" below the hole. However, given that Roman did not fall through the hole, but was wedged there, and that it is not clear that Roman, or any worker, could have fallen through the hole[1], it cannot be determined on these papers whether Roman subjected to the type of gravity related risk contemplated by the statute (see Coaxum v Metcon Constr., Inc., 93 AD3d 403, 404 [1st Dept 2012] [denying summary judgment as to liability under the statute where there was "conflicting evidence concerning its size and whether its depth was sufficient to render it a gravity-related hazard"]). As a result, the branch of the motion for summary judgment on the Labor Law § 240 (1) claim must be denied.

Labor Law § 241 (6)

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

> "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

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[1]While Roman estimated that it was 13 to 18 inches wide, defendants submit photographs, which, they contend, show that the opening was only four feet long and 8 to 10 inches wide.

> adequate protection and safety to the persons employed therein or lawfully frequenting such places."

It is well settled that this statute requires owners and contractors and their agents "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], quoting Labor Law § 241 [6]). While this duty is nondelegable and exists "even in the absence of control or supervision of the worksite" (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 348-349 [1998]), "comparative negligence remains a cognizable affirmative defense to a section 241 (6) cause of action" (St. Louis v Town of N. Elba, 16 NY3d 411, 414 [2011]).

To maintain a viable claim under Labor Law § 241 (6), plaintiffs must allege a violation of a provision of the Industrial Code that requires compliance with concrete specifications (Misicki v Caradonna, 12 NY3d 511, 515 [2009]). The Court of Appeals has noted that "[t]he Industrial Code should be sensibly interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the workplace" (St. Louis, 16 NY3d at 416).

In its bill of particulars, Roman alleges that defendants violated the following provisions of the Industrial Code: 12 NYCRR § 23-1.5, 12 NYCRR § 23-1.7, 12 NYCRR § 23-1.13, 12 NYCRR § 23-1.15, 12 NYCRR § 23-1.16, and 12 NYCRR § 23-1.17. Here, Roman only argues that defendants have violated various subsections of 12 NYCRR § 23-1.7, namely: 12 NYCRR § 23-1.7 (b) (1) (i), 12 NYCRR § 23-1.7 (e) (1), and 12 NYCRR § 23-1.7 (e) (2).[2]

12 NYCRR § 23-1.7 (b) (1) is entitled "Protection from general hazards; Falling hazards; Hazardous openings," and its first subsection provides: "Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a railing constructed and installed in compliance with this Part (rule)." This rule "is adequately specific and concrete" to serve as a predicate to liability under Labor Law § 241 (6) (Claus v John Hancock Mut. Life Ins. Co., 254 AD2d 102, 103 [1st Dept 1998]).

On its face, this provision may seem to apply to the facts of this case, as the subject hole might be considered "a hazardous opening into which a person may step." However,

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[2] Roman also refers to a "motion for leave to amend the bill of particulars," but no reference to this relief or CPLR 3025 is made in his notice of motion. Nor does he attach a proposed amended bill of particulars. Thus, his application for this relief is insufficient. However, defendants do not object to Roman's use of specific provisions under 12 NYCRR § 23-1.7, and argue on the merits of the provisions' applicability.

caselaw interpreting 12 NYCRR § 23-1.7 (b) (1) (I) must be considered.

In Keegan v Swissotel N.Y. (262 AD2d 111 [1st Dept 1999]), plaintiff stepped on what he believed to be a firm surface, but "[i]nstead it was a partially covered 18-inch square hole" (*id.* at 112). The plaintiff "slipped through the opening up to his buttocks and he hit his knee cap . . . resulting in injuries" (*id.*). The First Department in Keegan overturned the dismissal of the plaintiff's Labor § 241 (6) claim, predicated on an alleged violation of 12 NYCRR § 23-1.7 (b) (1) (i), following a jury verdict for the defense (*id.* at 113-114).

In Piccuillo v Bank of N.Y. Co. (277 AD2d 93 [1st Dept 2000]), the plaintiff stepped into a "hand-hole, an approximately 12-inch wide and 8-inch deep opening used by electricians to provide access to wiring and ducts embedded in floors" (*id.* at 94). The court held that this hole was not "the type of hazardous opening for which defendants would have been required to provide a cover" pursuant to 12 NYCRR NYCRR § 23-1.7 (b) (1) (*id.*).

Cerverizzo v City of New York (111 AD3d 535 [1st Dept 2013]) is distinguishable on its facts, as the plaintiff Cerverozzo's accident did not involve a hole into which the worker stepped or fell, but instead involved debris which caused the plaintiff to

trip (see Cerverizzo v City of New York, 2012 WL 10008000 [Sup Ct, Bronx County 2012]). However, the First Department, in upholding the trial court's dismissal of the plaintiff's Labor Law § 241 (6) claims predicated on 12 NYCRR § 12-1.7 (b) (1) (i), stated broadly that the dirt and debris that plaintiff tripped over was not a hole "large enough for a person to fit through" (111 AD3d at 536, citing Messina v City of New York, 300 AD2d 121, 123-124 [1st Dept 2002]).

In Messina, the plaintiff was performing electrical work on the roof of old Yankee Stadium, when he stepped into an "open drainpipe hole that measured approximately 12 inches in diameter and 7 to 10 inches deep" (*id.* at 121-122). The First Department reversed the trial court's denial of the defendants' motion for summary judgment dismissing the plaintiff's section 241 (6) claim predicated on a 12 NYCRR § 23-1.7 (b) (1) (i) violation, finding that the drainpipe hole was not a hazardous opening, as contemplated by the rule (*id.* at 124). The Court, reading 12 NYCRR 23-1.7 (b) as a whole, noted that it mandates safety measures, such as "planking installed below the opening, safety nets, harnesses and guard rails," which "bespeak of protections against falls from an elevated area to a lower area through openings large enough for a person to fit" (*id.* at 123).

Finally, in Urban v No. 5 Times Sq. Dev., LLC (62 AD3d 553 [1st Dept 2009]), plaintiff stepped into a gap between the entrance to a catwalk and a catwalk, and the court found that 12 NYCRR § 23-1.7 (b) (1) (i) was not applicable, as a 10-to-12-inch gap is not a 'hazardous opening' for purposes of that regulation" (*id.* at 556).

Here, unlike Piccuillo, Cerverizzo, Messina and Urban, the opening in question was above a 35-40-foot drop. Thus, the cases interpreting 12 NYCRR § 23-1.7 (b) (1) (I) are difficult to reconcile. That is, the 18-inch square hole that was a hazardous opening under this provision in Keegan is unlikely to be large enough for a person -- specifically, a construction worker -- to fall through. Yet such standard is the one set out in Messina and Cerverizzo for defining a hazard opening under the provision. As Messina and its progeny were decided later than Keegan, the court must abide by the "large enough for a person to fit through" rule.

Here, conflicting testimony suggests that the hole was 6 feet long and 18 inches wide or four feet long and 10 to 18 inches wide. The court cannot determine, as a matter of law, that such a hole is "large enough for a person to fit through." The court, then, is constrained by Messina and its progeny and

cannot find, as a matter of law, that defendants' violated 12 NYCRR § 23-1.7 (b) (1) (i).

12 NYCRR § 23-1.7 (e) is entitled "Tripping and other hazards." Its first subsection, "Passageways," provides: "[a]ll 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." 12 NYCRR § 23-1.7 (e). The rule's second subsection, "Working areas," provides: "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."

Initially, 12 NYCRR § 23-1.7 (e) (2) is sufficiently specific to serve as a predicate to liability under Labor Law § 241 (6) (Lenard v 1251 Ams. Assoc., 241 AD2d 391 [1st Dept 1991]). As to whether the site of Roman's injury was a work area under the rule, Roman cites Maza v University Ave. Dev. Corp. (13 AD3d 65 [1st Dept 2004]). In Maza, the Appellate Division found, without much elaboration, that an indoor courtyard at a construction site was a working area, rather than a passageway, for 12 NYCRRR § 23-1.7 (e) purposes. However, the trial court decision makes clear that the plaintiff was working on a scaffold

in the courtyard, although not at the time of his accident, when he was apparently simply walking through the courtyard (Maza v University Ave. Dev. Corp., 2004 WL 5382567 [Sup Ct, Bronx County 2004]).

Roman also cites Velasquez v 795 Columbus LLC (103 AD3d 541 [1st Dept 2013]), which involved a plaintiff whose injuries allegedly arose from wet conditions at an excavation cite. This court disagrees that Velasquez is not particularly helpful in this context, because the First Department held: "Although 12 NYCRR 23-1.7 (e), which protects workers from tripping hazards, is inapplicable to the facts of this case, we find that 12 NYCRR 23-1.7 (d), which protects workers against slipping hazards, is an applicable predicate" (id. at 541).

As to 12 NYCRR § 23-1.7 (e) (1), which is also sufficiently specific, Roman argues that the area where his accident happened, in addition to being a work area, was also a passageway. In support of his passageway argument, Roman cites to Aragona v State of New York (74 AD3d 1260 [2d Dept 2010]), where the Second Department found that a "corridor created by lumber and construction material" could be a passageway under the rule (*id.* at 1260).

Defendants tacitly concede that plaintiff's accident happened in both a work area and a passageway, as they do not

contest either description. Instead, defendants argue that plaintiff did not trip, that no debris caused his accident, and that the pipe chase was integral part of the work being performed. The court notes that it seems plain from plaintiff's testimony that his foot fell into a hole, he tripped, fell, and got stuck in the hole. Defendants, however, argue that there is some more technical aspect to the act of tripping that plaintiff fails to meet.

Before reaching that argument, the court will narrow its focus to 12 NYCRR § 23-1.7 (e) (1), as 12 NYCRR § 23-1.7 (e) (2) is plainly not applicable. The crucial distinction between the way 12 NYCRR § 23-1.7 (e) treats passageways and work areas is that the rule prohibits tripping hazards in passageways comprised not only of dirt, debris, and sharp projections, but also "any other obstructions or conditions which could cause tripping." In contrast, for work areas, the rule only prohibits specifically enumerated hazards without a catchall (see Dalanna v City of New York, 308 AD2d 400, 401). While Roman, at his deposition, talked about debris being scattered in the general area, he does not allege that such debris was a factor in his accident. As a result, there is no violation of violated 12 NYCRR § 23-1.7 (e) (2).

While a pipe-chase opening with an unsecured cover is not debris, it is a condition which could cause tripping. Thus, this court returns to the question of whether the plaintiff tripped. Defendants cite to Cappabianca v Skanska USA Bldg. Inc. (99 AD3d 139 [1st Dept 2012]) and Marrero v 2075 Holding Co. LLC (106 AD3d 408 [1st Dept 2013]) as instances where the First Department has narrowly interpreted tripping under this rule. Cappabianca reinstated the plaintiff's section 241 (1) claim, but dismissed 12 NYCRR § 23-1.7 (e) (2) as a potential predicate because the plaintiff slipped off of a wet pallet, instead of tripping on "on an accumulation of dirt or debris" (99 AD3d at 147). However, plaintiff did not allege a violation of 12 NYCRR § 23-1.7 (e) (1), so it has no application to our analysis of that provision.

Meanwhile, Marrero, which involved steel beams that fell on a worker, is likewise inapposite, as it only involved allegations that defendants violated 12 NYCRR § 23-1.7 (e) (2). The Court in Marrero dismissed that Industrial Code rule as a predicate, as the plaintiff's "accident was not caused by materials or tools scattered on the floor" (106 AD3d at 410). Again, this reasoning does involve 12 NYCRR § 23-1.7 (e) (1), and is, thus, inapposite to the court's analysis of that provision. The court also notes that there is no support in the caselaw for the proposition that Roman did not trip.

Defendants also argue that the 12 NYCRR § 23-1.7 (e) (1) does not apply because Roman did not trip over dirt, debris, or scattered tools. This argument overlooks the extra statutory protection the Legislature has afforded passageways, as opposed to general work areas, namely, the prohibition of "other obstructions or conditions which could cause tripping." Defendants cite to Maza and Velasquez. In Maza, the First Department dismissed the plaintiff's 12 NYCRR § 23-1.7 (e) (1) claim, finding that he had not been in a passageway at the time of the accident (13 AD3d at 65-66), while in Velazquez, the Court found that 12 NYCRR 23-1.7 (e) was generally not applicable, as the plaintiff's accident involved a slipping hazard, rather than a tripping hazard (103 AD3d at 541). Thus, neither Maza nor Velazquez support defendants' misinterpretation of 12 NYCRR § 23-1.7 (e) (1).

Finally, defendants argue that the pipe chase was an integral part of the work, citing to Johnson v 923 Fifth Ave. Condominium, 102 AD3d 592 [1st Dept 2013]) and Rajkumar v Budd Contr. Corp., 77 AD3d 595, 909 NYS2d 453 [1st Dept 2010]). Johnson involved an allegation that 12 NCYRR 23-1.7 (e) (2) was violated, and the First Department found that the plywood the plaintiff tripped over "had been purposefully laid over the sidewalk to protect it and that therefore constituted an integral

part of the work" (102 AD3d at 593). In Rajkumar, the First Department held that neither subdivision of 12 NYCRR § 23-1.7 (e) applied, reasoning:

> "Plaintiff described the main lobby in which his accident occurred as a big open space, and we conclude that such an area would not fit within the term of '[p]assageway,' as set forth in subdivision (e) (1). Further, subdivision (e) (2) of Industrial Code (12 NYCRR) § 23-1.7 pertains to such tripping hazards as dirt, debris and scattered tools and materials in a work area. Here, the plaintiff did not trip over loose or scattered material, but rather, over brown construction paper that was purposefully laid over newly installed floors to protect them. Such paper covering constituted an integral part of the floor work on the renovation project, and could not be construed to be a misplaced material over which one might trip

(77 AD3d at 595-596 [internal citations omitted]).

The pipe chase and unsecured planking that Roman tripped on is distinguishable from the plywood in Johnson and the brown paper in Rajkumar in that there is nothing integral about an unsecured wooden covering. The testimony of John Metz, the safety manager of nonparty Ferreira Construction, Inc. (Ferrreira), who worked at the subject site, makes this clear:

Q: Was [the subject] penetration properly covered?
A: In my professional opinion, no.
Q: Why not?
A: It was not secured.
Q: When you say secured, how would it have been properly secured?
A: This is a 2 by 12 that they apparently used to cover the hole [motioning at a photograph] . . . . It would

> have been nailed in all four corners. They drill and they put a nail and a wire, [to secure] it to the concrete deck.

If Roman needed to traverse the subject passageway, there is no reason that there could not have been secured planking in the area of the pipe chase. As a result, the pipe-chase opening with unsecured planking was not an integral part of work.

As the pipe-chase opening with unsecured planking was a tripping hazard, plaintiff has established that the Port Authority violated 12 NYCRR § 23-1.7 (e) (1) is present. The Port Authority is a proper Labor Law defendant, as it does not contest that it is the owner of the subject property. However, 12 NYCRR § 23-1.7 (e) (1) violation is merely some evidence of negligence and therefore questions of fact remain for the jury whether The Port Authority's negligence was a substantial factor in bringing about Roman's injuries. See Rizzuto v L.A. Wenger Contracting Co., Inc., 91 NY2d 343 (1998).

As to Tishman, Roman argues that, although it was a construction manager, rather than a general contractor, on the VSC project, it was an agent of the Port Authority, as it had supervisory control and authority over the work being performed. Roman cites to Walls v Turner Constr. Co. (4 NY3d 861 [2005]), which, in the section 240 (1) context, held that a construction manager "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" (*id.* at 863-864).

There is neither deposition testimony nor documents that a prima facie showing that Tishman had the ability to control the activity which brought about the injury. Thus, the branch of Roman's motion that seeks summary judgment as to liability on its Labor Law § 241 (6) claim as against Tishman must be denied. Moreover, as Roman has not shown that defendants' Navillus and the Lower Manhattan Development Corporation are owners, agents of the owner, or the general contractor for the VSC project, Roman is not entitled to summary judgment against such parties.[3]

Labor Law § 200 and Common-Law Negligence

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" (Comes v New York State Elec. & Gas Corp., 82 NY2d 876, 877 [1993]). Cases under Labor Law § 200 fall into two broad categories: those involving injury caused by a dangerous or defective condition at the worksite, and those caused by the manner or method by which the work is performed (Urban, 62 AD3d at 556).

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[3] While defendants argue that Lower Manhattan Development Corporation should be dismissed from the case, they do not move or cross-move for this relief.

Where the alleged failure to provide a safe workplace arises from the methods or materials used by the injured worker, "liability cannot be imposed on [a defendant] unless it is shown that it exercised some supervisory control over the work" (Hughes v Tishman Constr. Corp., 40 AD3d 305, 306 [1st Dept 2007]). "General supervisory authority is insufficient to constitute supervisory control; it must be demonstrated that the [owner or] contractor controlled *the* manner in which the plaintiff performed his or her work, i.e., how the injury-producing work was performed" (*id.*).

In contrast, where the defect arises from a dangerous condition on the work site, an owner or contractor "is liable under Labor Law § 200 when [it] created the dangerous condition causing an injury or when [it] 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, 9 [1st Dept 2011] [internal quotation marks and citation omitted]; see also Minorczyk v Dormitory Auth. of the State of N.Y., 74 AD3d 675, 675 [1st Dept 2010]). In the dangerous-condition context, "whether [a defendant] controlled or directed the manner of plaintiff's work is irrelevant to the Labor Law § 200 and common-law negligence claims" (Seda v Epstein, 72 AD3d 455, 455 [1st Dept 2010]).

Initially, Roman argues that the pipe chase represented a dangerous condition, rather than the method and manner of work. However, the First Department has held that, where a worker fell through a hole covered by unsecured plywood, the "accident arises out of the means and methods of the work, as opposed to a dangerous condition" (Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc., 104 AD3d at 449). Given the factual similarity between the conditions here and in Alonzo, the court is compelled to find that Roman's accident arose out of the means and methods of the work. Thus, Roman must show supervisory control in order to make a prima facie showing of entitlement to judgment. He has not done that. As a result, the branch of Roman's motion seeking summary judgment as to liability on his Labor Law § 200 and common-law negligence claims must be denied.

CONCLUSION

Accordingly, it is

ORDERED that plaintiff Robert Roman's motion for summary judgment is denied.

Dated: July 27, 2017

ENTER:

J.S.C.

DEBRA A. JAMES