At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 21st day of July, 2017.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

SETH STRILEY,

Plaintiff,

-vs-

MAINES PAPER AND FOOD SERVICE,
W&D LEASING, LLC and WD LEASING NY, LLC
Defendants.

DECISION AND ORDER

Index No. 2012-0239
RJI No. 2016-0634-J

APPEARANCES:

COUNSEL FOR PLAINTIFF:

STANLEY LAW OFFICE
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Syracuse, NY 13203

COUNSEL FOR DEFENDANTS:

GALE, GALE & HUNT, LLC
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EUGENE D. FAUGHNAN, J.S.C.

The matter comes before the Court upon the Motion by Maines Paper & Food Service, Inc., W & D Leasing and WD Leasing NY, LLC ("Defendants") for an Order under CPLR 2004 permitting the late filing of a dispositive motion, and then for Summary Judgment on that Motion, dismissing the Complaint of Plaintiff, Seth Striley ("Striley").

This claim arises out of injuries sustained by Striley at a construction site in Ithaca, New York on August 25, 2009, while Striley was working for Peter A. Rotella Corporation ("Rotella"). Striley filed a Summons and Verified Complaint on March 16, 2012 alleging that he suffered injuries while "manually moving a 200 lb metal grate from an elevated worksite when he was caused to fall." The Complaint alleges that Defendants negligently, and in violation of the Labor Law, failed to provide Plaintiff with reasonable and adequate protection. On or about April 30, 2012, Defendants served their Answer with Affirmative Defenses and a Counterclaim.

On the day of the accident, Striley reported to a work site owned by the Defendants. He did not receive any formal training or safety instructions from his employer. On that day, he was cleaning out a catch basin that had become clogged with dirt and silt. To get to the catch basin, a large grate had to be removed first. A co-worker for Rotella, Art Clark, operated an excavator to remove the grate and place it on a high pile of dirt next to the basin. The parties disagree on the size and purpose of the pile. Plaintiff characterized it as "a huge pile of dirt and debris that had been pushed by bulldozers into the pile." (April 24, 2017 Attorney Affirmation from Robert Quattrocci, at ¶8). Defendants disputes it was a debris pile, and rather it "had been placed there in order to divert water into the catch basin." (Thater affidavit at ¶9).

After Striley was done cleaning the catch basin, he attempted to replace the grate, but this time he did not have the assistance of the excavator, as Mr. Clark had left the work area with the excavator. Therefore, Striley attempted to maneuver the grate back down that dirt pile himself. In so doing, he either lost his footing, or the dirt began to slide. Striley ended up tripping over a

piece of rebar, falling to the ground with the grate pinning his arm underneath it.

The parties engaged in discovery including depositions of Plaintiff, and C. Michael Grzebin, Jr., a representative of Rotella. Following discovery, Plaintiff filed an RJI and Note of Issue and Certificate of Readiness on December 29, 2016. Thereafter, Defendants filed the instant Motion on March 27, 2017, which was more than 60 days after the filing of the Note of Issue. The Motion was given a return date of May 5, 2017.

Plaintiff then filed opposition papers on May 4, 2017, raising arguments that the Defendants' Motion was late, and should not be considered, and also opposing Defendants' Summary Judgment Motion on the merits. At oral argument, Plaintiff also requested that his papers be considered a Cross Motion seeking a finding that Defendants' Motion was untimely. In light of that request, Defendants requested an opportunity to respond the Plaintiff's recently submitted papers. Therefore, the Court adjourned the motion to July 21, 2017.

No additional written submission were received in connection with Defendants' Motion or Plaintiff's opposition/Cross Motion. But, the parties did appear at the adjourned oral argument, and the Court Reserved Decision.

Defendants acknowledge that their Motion was filed beyond the time limit established by Sixth Judicial District rules (60 days from the filing of the Note of Issue), but argue that counsel had sought clarification from Chambers, and based upon the information they received, believed they had 120 days to file their Summary Judgment Motion. Defendants also argue that they should be granted Summary Judgment, contending: 1) Plaintiff's common-law negligence and Labor Law §200 claims should be dismissed because Defendants did not exercise sufficient control over Plaintiff's work to impose liability, 2) Plaintiff's Labor Law §240(1) claim should be dismissed because the injuries were not due to an elevation related hazard, and 3) Plaintiff's Labor Law §241 claims should be dismissed because the work site was in compliance with all

applicable labor regulations.

Plaintiff contends that the Defendants' Motion is untimely and should not be considered at all. If Defendants' Motion is considered, Plaintiff argues that there are questions of fact concerning all the causes of action, which would preclude Summary Judgment for Defendants.

LEGAL STANDARD AND ANALYSIS

A. SHOULD DEFENDANTS' MOTION BE DENIED AS UNTIMELY?

CPLR 3212(a) provides that a party may make a motion for summary judgment and that "the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown." The Sixth Judicial District, where this Court is based, has set the date for the filing of summary judgment motion to be no more than 60 days after the filing of the Note of Issue. That information is contained at the bottom of all Judicial Assignment Notices that are sent to the parties in any particular case, and it is also located on the website for the Sixth Judicial District.

In this case, the Note of Issue was filed on December 29, 2016, making any Summary Judgment motions due by no later than February 27, 2017. However, Defendants' Motion was not made until March 27, 2017, which was beyond the 60 day requirement of the Sixth Judicial District, but well within the maximum 120 days allowed under CPLR 3212(a).

Defendants' counsel readily concede that they received the Judicial Assignment Notice containing the notice of the 60 day rule, but that they failed to see the information concerning the filing of Summary Judgment Motions. (Thater Affidavit at ¶12). Defendants' counsel, however,

did contact Chambers on January 27, 2017 inquiring whether the Court had any local or chamber rule concerning Summary Judgment Motions. As this Court does not have any individual rules concerning such motions, counsel was informed there were no local or chambers rules. Further, upon asking if the parties should follow the CPLR, counsel was told to indeed follow the CPLR.

Defendants' counsel also sent a follow up letter to the Court on January 30, 2017 stating that Defendants planned on filing a motion within 120 days of the filing of the Note of Issue, unless the Court directed it be filed sooner. Since no response was received, counsel concluded that the 120 day rule applied. (*Id.* at ¶17).

Defendants' counsel acknowledges that his office failed to read the notice on the Judicial Assignment Notice, but argues that the late filing should be permitted because he detrimentally relied on information from Chambers leading him to conclude that he had 120 days to make the motion. Therefore, Defendants seek an extension for "good cause shown", or that the January 30, 2017 letter be treated as a request for an extension.

The standard for considering Defendants' motion to permit the late filing of the Summary Judgment Motion is found in *Brill v. City of New York*, 2 NY3d 648 (2004), where the Court of Appeals stated that "that 'good cause' in CPLR 3212 (a) requires a showing of good cause for the delay in making the motion--a satisfactory explanation for the untimeliness--rather than simply permitting meritorious, nonprejudicial filings, however tardy." (*Brill*, at 652). However, as noted by Plaintiff, law office failure does not constitute good cause (see *Podlaski v. Long Is. Paneling Ctr of Centereach, Inc.*, 58 AD3d 825 (2nd Dept. 2009)), and counsel has an obligation to learn of the rules, which were available online. Thus, if the only issue was that counsel was unaware of the rule, the Court would find it insufficient to constitute "good cause."

In the current situation, there is neither a rule of this IAS part, or this Judge, or as far as this Court is aware, this County, that addresses the timing of Summary Judgment Motions.

Rather, the rule is promulgated by the Sixth Judicial District. The response from Chambers considered "local or chambers" rule to refer to the same question-as to any derogation by this Court of the established summary judgment deadlines. The answer to that question is "no", but it does not mean the Sixth Judicial Rules do not apply. In addition, CPLR rules would apply to all other aspects of motion practice (e.g. method of filing, time for reply papers etc.).

Nevertheless, the Court also recognizes that Defendants' inquiry could be read in the disjunctive-that is to say, two distinct questions. Without getting into the semantics or details as to any distinction between "local rule" or "chamber rule", Defendants question can be viewed as inquiring specifically as to whether the 120 time deadline from the CPLR applied. It does appear that there may have been a mis-communication.

While it is true that it is incumbent upon counsel to be familiar with the rules in the jurisdiction where they are practicing, it is also true that there is a "strong preference for deciding cases on the merits." *Passeri v. Tomlins*, 141 AD3d 816 (3rd Dept. 2016), *quoting Wade v. Village of Whitehall*, 46 AD3d 1302, 1303 (3rd Dept. 2007). In this case, based upon the particular facts presented, the Court finds that Defendant has provided "good cause" and the late filing of the Motion is excused. This is not a case of pure law office failure, which would not be good cause. Here, counsel has set forth the various steps it took to learn of the correct deadline, and provided an adequate explanation as to how, and why, those efforts were ultimately unsuccessful.

Accordingly, Defendants' Motion to Extend the time to file a Summary Judgment Motion (or put another way-excuse the late filing) is GRANTED. The Court will now consider the merits of the underlying Motion for Summary Judgment.

B. DEFENDANTS' MOTION TO FOR SUMMARY JUDGMENT

When seeking summary judgment, the movant must make a *prima facie* case showing its entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. *Amedure v. Standard Furniture Co.*, 125 AD2d 170 (3rd Dept. 1987); *Bulger v. Tri-Town Agency*, 148 AD2d 44 (3rd Dept. 1989). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. *Dugan v. Sprung*, 280 AD2d 736 (3rd Dept. 2001); *Sheppard-Mobley v. King*, 10 AD3d 70, 74 (2nd Dept. 2004) *aff'd as mod.* 4 NY3d 627 (2005); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination *(see, Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact" *Boston v. Dunham,* 274 AD2d 708, 709 (3rd Dept. 2000) *see, Boyce v. Vazquez*, 249 AD2d 724, 726 (3rd Dept. 1998).

1. Plaintiff's claims under common law negligence and Labor Law §200

Labor Law §200 "merely codified the common-law duty imposed upon an owner or general contractor to provide construction site [workers] with a safe place to work." *Russin v. Louis N. Picciano & Son*, 54 NY2d 311, 316-217 (1981) (citation omitted); *Mitchell v. T. McElligott, Inc.*, 152 AD3d 928 (3rd Dept. 2017). Further, "[a]n implicit precondition to this duty to provide a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition." *Russin,* 54 NY2d at 317 (citation omitted).

There are two categories of cases under Labor Law §200. The first is when the accident was caused by the means and manner of the work being performed. The second is when the

injuries were caused by a dangerous physical condition on the work site. *See, Ortega v. Puccia*, 57 AD3d 54 (2nd Dept. 2008). The Courts have noted that "to impose liability upon a general contractor for an injury resulting from a subcontractor's unsafe work practices, there must be a showing of supervisory control and actual or constructive knowledge of the unsafe manner of performance ...; when an injury is caused by a dangerous condition at the job site, a showing of control of the place of injury and actual or constructive notice of the unsafe condition is required." *Card v. Cornell Univ.*, 117 AD3d 1225, 1226 (3rd Dept. 2014) (internal citations omitted); *see e.g. Harrington v. Fernet*, 92 AD3d 1070, 1071 (3rd Dept. 2012).

Here, the parties disagree on whether the accident was caused by the manner in which the work was being performed, or by an unsafe condition. Defendants contend that the injury occurred due to the manner and method of work (manipulating the grate down the dirt pile), and they did not have sufficient supervision or control to impose liability. Plaintiff claims that the dirt/debris pile was the dangerous condition, and that the Defendants were on the work site daily, so they had actual or constructive notice of the condition.

However, despite Plaintiff's characterization, the accident occurred because of the way the grate was placed upon it, and the lack of an excavator or some other equipment, to move it back into place. Plaintiff's own testimony acknowledged that the accident may not have occurred if the grate was placed on the ground instead of the dirt pile. Thus, the injury occurred due to the manner and method of the work being performed.

Plaintiff testified that his supervisors from Rotella instructed him where to work, and gave him his assignment(s). Rotella would lay out the plan for work for the day. Defendants' representatives would appear on site occasionally, and did not have supervisory role over Plaintiff's work. The evidence shows that no employees of Defendants exercised control over Plaintiff's work. "Although property owners often have a general authority to oversee the progress of the work, mere general supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose

liability under Labor Law § 200." *Ortega, supra* at 62. Here, the accident was due to the way the Plaintiff was performing his work, which was not supervised or controlled by Defendants. Therefore, Defendants cannot be found liable under Labor Law §200 or common law negligence, and that part of Defendants' Motion for Summary Judgment is GRANTED.

2. Plaintiff's claim under Labor Law §240(1)

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

> "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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 noted that "[i]t is settled that section 240 (1) 'is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed'" *Rocovich v. Consolidated Edison Co*, 78 NY2d 509, 513 (1991) (citations omitted). Thus, the section has been interpreted as imposing nondelegable duties, and absolute liability for a breach which has proximately caused an injury. *Id.*

"[T]he purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction work site elevation differentials, and, accordingly, ... there will be no liability under the statute unless the injury producing accident is attributable to the latter sort of risk." *Runner v. New York Stock Exchange,* 13 NY3d 599, 603 (2009) *citing Rocovich, supra.* Absolute liability will only be imposed after a violation of the statute is found. *Narducci v. Manhasset Bay Assocs.*, 96 NY2d 259 (2001).

To succeed under Labor Law § 240(1), a plaintiff must demonstrate that the statute was

violated and that the violation was the proximate cause of his injury. *Cahill v. Triborough Bridge and Tunnel Auth.*, 4 NY3d 35 (2004). A plaintiff must also demonstrate that the injury sustained is the type of elevation-related hazard to which the statute applies, and that there was a failure to use, or an inadequacy of, a safety device and that the fall or the application of an external force was a foreseeable risk of the task being performed. *See Narducci v. Manhasset Bay Assocs.*, *supra* (2001). "[I]t is settled that 'the extraordinary protections of the statute in the first instance apply only to a narrow class of dangers.'" *Nicometi v. Vineyards of Fredonia, LLC.*, 25 NY3d 90, 96-96 (2015) , *quoting Melber v. 6333 Main St., Inc.*, 91 NY2d 759, 762 (1998), and also *citing Cohen v. Memorial Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 (2008) and *Toefer v. Long Island. R.R.*, 4 NY3d 399, 407-408 (2005); *Eddy v. John Hummel Custom Bldrs., Inc.*, 147 AD3d 16 (2nd Dept. 2016). The protections "do not encompass any and all perils that may be connected in some tangential way with the effects of gravity" (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]), and "not all gravity-related risks fall within the parameters of the statute." *Davis v. Wyeth Pharms, Inc.*, 86 AD3d 907, 908 (3rd Dept. 2011), *quoting Sereno v. Hong Kong Chinese Rest.*, 79 AD3d 1414, 1414 (3rd Dept. 2010). In *Melber*, the Plaintiff was walking on stilts and tripped over an electrical conduit. The Court of Appeals found that to be a general hazard of the workplace and not an elevation hazard.

In *Davis v. Wyeth Pharm.*, *supra*, the Third Department found that §240(1) did not apply when the plaintiff was using a pallet jack to move a filtration unit, slipped, and grabbed the unit which tipped over onto his leg. The court noted, however, that the unit was being moved horizontally, and there was no evidence that the accident would not have happened if the unit was sitting directly on the ground. Therefore, the Court found plaintiff's injuries not related to an elevation risk.

Plaintiff contends that this case is similar to the facts presented in *Runner, supra.* In *Runner*, the Plaintiff and his co-workers were moving a reel of wire down a set of stairs, and Plaintiff was holding a rope which was wrapped around a metal bar and placed in a door jamb to prevent the reel from rolling down the stairs. The weight of the reel pulled the plaintiff into the

metal bar, and injured his hands as they jammed against the bar. The Court found that Labor Law §240(1) was applicable. The Court concluded that the question was "whether the harm flows directly from the application of the force of gravity to the object." *Runner*, 13 NY3d at 604; *see also Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1 (2011) (Plaintiff injured when two 10 foot high metal pipes toppled onto him). Striley contends that the metal grate, placed at the height it was on the dirt pile, was capable of generating significant force if it fell, and that the Plaintiff was not provided with appropriate safety equipment to afford him proper protection (no hoist or excavator was available to replace the grate) and therefore, Labor Law §240(1) should apply to this elevation related risk.

Defendants argue that Plaintiff fell when the dirt began to shift under his feet and his foot caught on a piece of rebar in the dirt and therefore, it was not an elevation related risk, but a trip/slip injury. As such, per Defendants, it is not a valid claim under Labor Law §240(1). *See, Nicometi, supra*; *Bonaparte v. Niagara Mohawk Power Corp.* 188 AD2d 853 (3rd Dept. 1992). In *Nicometi*, the Court of Appeals held that §240(1) did not apply where the plaintiff was working on stilts, and slipped on a patch of ice. The Court concluded that plaintiff's "injuries resulted from a slip on ice, which-under these facts-is a separate hazard unrelated to the elevation risk that necessitated the provision of a safety device in the first instance." *Nicometi*, 25 NY3d at 101. The Third Deparment, in *Bonaparte, supra*, denied §240(1) application where plaintiff was walking on a scaffold fell because his foot got caught on an electrical cable and he fell onto the scaffold. The court noted that the injuries resulted from "walking on a surface which was cluttered with construction equipment, materials and debris, a risk wholly unrelated to elevation." *Bonaparte*, 188 AD2d at 853.

Since this is Defendants' Motion for Summary Judgment, the Court must consider the evidence in the light most favorable to the Plaintiff. In so doing, the Court concludes that there are questions of fact precluding Summary Judgment.

Striley's testimony was that as he was trying to keep the grate from sliding down the

bank, the grate "had a hold of [his] arm and [flipped him] over" and that the "weight of it picked [him] up and slingshotted [him] down." (Striley deposition at pp. 80-81). If the finder of fact were to credit that view of the facts, the case would seem close to *Runner*, because the weight of the object pulled Striley down, and §240(1) could apply. Further, there is some evidence that Striley's injuries may have come from the grate landing on top of him. Striley was working on a slope, and moving the grate from one height to another. Had it been on the flat ground, Plaintiff may not have ended up being pinned by it. So, if the finder of fact were to conclude it was not the trip which caused the injury, but the grate coming down upon the Plaintiff from at an elevated height, then §240(1) may also be applicable.

The Court also recognizes that the finder of fact may ultimately determine that the cause of injury was a trip/slip and fall on the dirt pile not associated to any elevation risk, and this case would be more analogous to *Nicometi*, and not a valid §240(1) claim. The finder of fact could conclude that the same result may have occurred if the grate were on the flat ground, like *Davis v. Wyeth Farms.*

Thus, there are different views of the fact, that could lead to different conclusions on the applicability of the Plaintiff's Labor Law §240(1) claim. Since there are questions of fact, the Court cannot conclude that Defendants are entitled to Summary Judgment.

Accordingly, the Defendants' motion for Summary Judgment on the Labor Law §240(1) is DENIED.

3. Plaintiff's claims under Labor Law 241(6)

Labor Law § 241 provides, in relevant part:

"All contractors and owners and their agents . . . 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."

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.*, *supra* at 501-502 quoting Labor Law § 241[6]. 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).

In order to maintain a viable claim under Labor Law § 241 (6), the plaintiff must allege a violation of a provision of the Industrial Code that mandates compliance with "concrete specifications," as opposed to a provision that "establish[es] general safety standards." *Ross*, 81 NY2d at 505. Here, Plaintiff alleges that 12 NYCRR 23-2.1(a)(b) and 23-1.7(e) have been violated.

12 NYCRR 23-2.1 provides the following:

> (a) Storage of material or equipment.
>
> (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.
>
> (2) Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge.
>
> (b) Disposal of debris. Debris shall be handled and disposed of by methods that will not endanger any person employed in the area of such disposal or any person lawfully frequenting such area.

Defendants argue that the pile was not building material, but it was a pile to divert water. They also argue that the area around the pile was not a passageway, stairway or thoroughfare. Defendants also argue that part (b) of the above section applies to prevent injuries to people who are passing by the work site, or disposing of the debris. Plaintiff was doing neither.

From the outset, the parties have disagreed as to how to characterize this pile. Certainly, it contained at least some building material, as Plaintiff testified that he tripped over rebar in the pile. That gives some credence to his contention that this was a debris pile. Plaintiff also testified that the hill came from a bulldozer pushing all the debris into a pile. (Striley deposition at p. 78). The Court finds there are questions of fact that will need to be resolved as to the nature of this pile and the duties, if any, that would have been imposed upon Defendants under 12 NYCRR 23-2.1.

In addition, 12 NYCRR 23-1.7(e), provides that:

> (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.
> (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.

Plaintiff contends that the debris pile had existed on the site for sometime and was unstable. Plaintiff also submitted the affidavit from his expert that the debris pile was in violation of the industrial code. Defendants again argue that it was a water diversion pile, and not a debris pile. Therefore, they contend that the regulation does not apply to this situation.

The Court finds there are questions of fact that will need to be resolved as to the nature of this pile and the duties, if any, that would have been imposed upon Defendants under 12 NYCRR 23-1.7.

Based upon the foregoing, Defendants' Motion for Summary Judgment on the Plaintiff's cause of action under Labor Law §241(6) is DENIED.[1]

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision by the Court shall not constitute notice of entry (see CPLR 5513). Parties to submit a settled order for the Court's signature within 30 days.

Dated: September 27, 2017
Ithaca, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice

[1] Although Plaintiff listed numerous other alleged violations of the Labor Law in his Complaint and Bill of Particulars, his response to this motion only asserted violations of the regulations discussed herein. Accordingly, the other alleged violations of regulations are deemed waived.

The following papers were received and reviewed by the Court in connection with this motion:

1) Defendants' Notice of Motion dated March 24, 2016 [sic] with attached Affidavit of Kevin T. Hunt, Esq., sworn to on March 24, 2017, with attached Exhibits; Memorandum of Law dated March 24, 2016 [sic]
2) Attorney Affirmation from Robert A. Quattrocci, dated April 24, 2017, with attached Exhibits, in opposition to Defendants' Motion; Affidavit of Joseph Szlamczynski, sworn to on April 25, 2017; Memorandum of Law dated April 24, 2017
3) Reply Affidavit of Kevin T. Hunt, Esq., sworn to on July 17, 2017, and Affidavit of Otey Marshall, sworn to on July 14, 2017.