Andujar v Port Auth. of N.Y. & N.J.
2017 NY Slip Op 32224(U)
October 20, 2017
Supreme Court, New York County
Docket Number: 150509/2012
Judge: Kelly A. O'Neill Levy

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KELLY O'NEILL LEVY **PART** 19
Justice

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JULIAN ANDUJAR,

Plaintiff,

- v -

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, SILVERSTEIN PROPERTIES, INC., WORLD TRADE CENTER MEMORIAL FOUNDATION INC, BOVIS LEND LEASE LMB INC,

Defendants.

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INDEX NO. 150509/2012

MOTION DATE

MOTION SEQ. NO. 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 101

were read on this application to/for Summary judgment

Upon the foregoing documents, it is

This action arises out of a construction site accident that occurred on May 25, 2011 at the National September 11th Memorial and Museum site at the World Trade Center in Lower Manhattan.[1] Plaintiff Julian Andujar, a carpenter, alleges that he fell off a vertical lift in the course of his work at the site, sustaining injuries.

Defendants The Port Authority of New York and New Jersey ("Port Authority"), National September 11 Memorial And Museum At The World Trade Center Foundation, Inc., d/b/a 9/11 Memorial s/h/a World Trade Center Memorial Foundation Inc. ("Foundation"), and Lend Lease (US) Construction LMB, Inc. s/h/a Bovis Lend Lease LMB Inc. ("Lend Lease," and,

[1] The construction at the site is referred to as "The Museum Project."

along with Port Authority and Foundation, collectively "Defendants") move, pursuant to CPLR 3212, for summary judgment dismissing the complaint, including the Labor Law §§ 240 (1), 241 (6), 200, and common-law negligence claims filed by plaintiff Julian Andujar.[2] Plaintiff opposes.

BACKGROUND

On the day of his accident, Plaintiff, a carpenter employed by subcontractor Component Assembly Systems, Inc. ("Component"), was working on the Museum Project. Port Authority owned the premises known as the National September 11th Memorial and Museum (the Museum), including the construction site. Port Authority retained Lend Lease to perform services in connection with the Museum and Foundation retained Lend Lease to act as construction manager in connection with the Museum Project.

Plaintiff's Deposition Testimony

Plaintiff testified that he began working for Component in March 2010 (plaintiff tr. at 12). On the day of the accident, May 25, 2011, he was employed by Component to do insulation work on the Museum Project. He had been working on the Museum Project for approximately three days before the accident occurred (*id.* at 17). His duties included installing insulation panels to a cement wall. Vincent Gangemi, his supervisor and a Component foreman, directed Plaintiff to use a vertical lift and was the sole source of instruction as to how to perform his work. The lift was manually operated and the platform was raised and lowered through use of a joystick. The lift had an enclosed work platform, surrounded by waist-high guardrails with tie-off points, and it would "beep" when it was either fully extended or "touche[d] down" on the

[2] Plaintiff discontinued the action against Silverstein Properties, Inc. by stipulation dated August 19, 2014.

ground (*id.* at 33-34). Plaintiff used the same kind of vertical lift on prior occasions and had raised and lowered the platform more than ten times on May 25th prior to the accident. Plaintiff also testified that as he entered the lift, he was wearing a safety harness and lanyard that he tied off on the platform rails.

The accident occurred "[m]ore or less like…ten minutes after" lunch, which ended at 12:30 (*id.* at 21). Plaintiff used the lift to descend from a height of approximately 20 feet (*id.* at 44) to retrieve more washers for his work. Plaintiff was in the lift and as he lowered the platform, the lift came to a stop and made a "boom" sound—"as if it had already arrived" but he did not hear a beep—and, as a result, he believed the platform was fully lowered (*id.* at 45-46, 53). Plaintiff disconnected his lanyard from the lift, and, after removing his fall protection, stepped off the lift and fell between seven to eight feet (*id.* at 48), thereby sustaining injuries. It was dark (*id.* at 47, 54) and plaintiff could not see well (*id.* at 54), stating, "Everything was black, dark. Dark. There is no light" (*id.* at 47). There was a light on the floor of the room in which plaintiff worked that flashed up onto the wall near the lift (*id.* at 50), but when he was stepping out of the lift, the light was "[a] little bit away" (*id* at 50) and there were no lights on the lift (*id.* at 34). When plaintiff stepped out of the lift, he did not see the ground but rather "saw was everything was black" (*id.* at 47).

Deposition of Lois Justry (Port Authority Supervising Safety Engineer)

Port Authority Supervising Safety Engineer Lois Justry testified that she performed "regular walks through" of the site approximately two or three days per week with "insurance people, site safety manager [Duane Fitzpatrick of Lend Lease] for the CM [Lend Lease, the construction manager]" and "look for safety infractions." (Justry tr. 20-21). She testified that the Port Authority does not install lighting equipment for the use of construction workers, "so it

would have to be another contractor," H. O'Kane or Five Star (*id.* at 33-34). She recalled having brought portable illumination with her during walk-throughs in the spring and summer of 2011 (*id.* at 35). She believed that she was notified on the date of plaintiff's accident that somebody fell from a lift and did not personally go to elevation 242 (the site of plaintiff's fall) to see the location of the accident (*id.* at 37-38) and that there was an incident report (*id.* at 47).

Deposition of Dwayne Fitzpatrick (Lend Lease Former Safety Personnel)

Dwayne Fitzpatrick worked for Lend Lease from 1994 to May of 2014 and was associated with the project from approximately December 2008 to May 2014 in a safety title (Fitzpatrick tr. 9). He testified that Lend Lease did not provide any safety equipment or illumination equipment to the subcontractors on the job and did not have anyone go around measuring the illumination in use by the subcontractors to see if it was bright enough (*id.* at 24-25).

Deposition of Luis F. Mendes (National September 11th Memorial & Museum)

Luis F. Mendes of the Foundation testified that the Foundation did not provide any safety equipment or artificial illumination to the construction workers for the museum project.

Affidavit of Vincent Gangemi (Component Foreman and Plaintiff's Supervisor)

As mentioned above, Vincent Gangemi was a Component foreman and Plaintiff's supervisor on the day of the accident. He states that Plaintiff did not report that there was any defective condition with the vertical lift nor did Plaintiff indicate that he was prevented from fully lowering the platform due to a mechanical defect. Mr. Gangemi conducted a post-accident inspection of the lift and concluded that the lift was in good working order with no defects. Based upon his discussion with Plaintiff and his inspection of the vertical lift, Mr. Gangemi concluded that Plaintiff fell solely due to operator error.

Affidavit of Les Winter (Professional Engineer)

Les Winter, P. E., is an electrical engineer, licensed in New York and New Jersey. He cites Industrial Code Rule 23, Section 23-1.30 ("Illumination") and opines that the Section's recommended ten foot-candle[3] level would have been sufficient to allow the Plaintiff to have seen the floor from the lift. Mr. Winter thus concludes that based on Plaintiff's testimony that it was dark, the work space was insufficiently illuminated and had the space been adequately illuminated, Plaintiff would have been able to see that the lift had not yet reached the proper level of descent.

DISCUSSION

"[T]he '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.'" *Meridian Mgt. Corp. v. Cristi Cleaning Serv. Corp.*, 70 A.D.3d 508, 510 (1st Dep't 2010), *quoting Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once the moving party meets this requirement, "the burden then shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial." *Ostrov v. Rozbruch*, 91 A.D.3d 147, 152 (1st Dep't 2012), *citing Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment is issue-finding, rather than making credibility determinations or findings of fact. *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 503, 505 (2012).

[3] A foot-candle is a unit of illumination.

Timeliness of Motion

As a preliminary matter, the court finds that the motion was timely filed within 120 days after the filing of the Note of Issue pursuant to CPLR 3212(a) and in accordance with this part's rules.[4]

Plaintiff's Labor Law § 240 (1) Claim

Defendants move for dismissal of Plaintiff's Labor Law § 240 (1) claim, arguing that plaintiff's actions constituted the sole proximate cause of the accident. Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v. Morse Diesel*, 98 A.D.2d 615, 615 [1st Dep't 1983]), 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.

"'Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person.'" *John v. Baharestani*, 281 A.D.2d 114, 118 (1st Dep't 2001) (quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501 [1993]).

> Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein.

[4] Part 19 Rules are available at http://www.nycourts.gov/courts/1jd/supctmanh/Uniform_Rules.pdf.

Narducci v. Manhasset Bay Assoc., 96 N.Y.2d 259, 267 (2001); *Hill v. Stahl*, 49 A.D.3d 438, 442 (1st Dep't 2008); *Buckley v. Columbia Grammar & Preparatory*, 44 AD3d 263, 267 (1st Dep't 2007).

"[F]or plaintiff to recover under section 240(1), the threshold issue to be resolved is whether there was a violation of the statute. If a violation exists, the court must determine whether that violation was the proximate cause of plaintiff's injuries." *Quattrocchi v. F.J. Sciame Const. Corp.*, 44 AD3d 377, 381 (1st Dep't 2007). *See also Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d 280, 287 (2003); *Felker v. Corning Inc.*, 90 N.Y.2d 219, 224-225 (1997); *Torres v. Monroe Coll.*, 12 A.D.3d 261, 262 (1st Dep't 2004).

It is undisputed here that Plaintiff was injured after he removed his fall protection and alighted the vertical lift after the lift stopped and he heard a sound indicating that he had reached the ground. Defendants argue that they are not liable for Plaintiff's injuries under Labor Law § 240 (1) because Plaintiff, who removed his harness prior to stepping off the lift, was the sole proximate cause of his injuries. *Robinson v. East Med. Ctr.*, LP, 6 N.Y.3d 550, 554 (2006) (where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability under Labor Law § 240 (1)); *Montgomery v. Federal Express Corp.*, 4 N.Y.3d 805, 806 (2005); *Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 39 (2004) (where an employer has made available adequate safety devices and an employee has been instructed to use them, the employee may not recover under Labor Law § 240 (1) for injuries caused solely by his violation of those instructions); *Blake v. Neighborhood Hous. Servs. of N.Y. City Inc.*, 1 N.Y.3d at 290). However, "the Labor Law does not require a plaintiff to have acted in a manner that is completely free from negligence. It is absolutely clear that 'if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it.'" *Hernandez v. Bethel United*

Methodist Church of N.Y., 49 A.D.3d 251, 253 (1st Dep't 2008) (quoting *Black v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d at 290)).

In opposition, Plaintiff argues that the accident would not have occurred but for the lack of illumination which did not allow him to see the ground. *See Barreto v. Metropolitan Transportation Authority*, 25 N.Y.3d 426 (2015) (inadequate lighting in asbestos abatement enclosure where plaintiff fell into unprotected manhole). Plaintiff testified at his deposition that the lift stopped moving and made a "strong" noise indicating to him the platform had reached the ground (Plaintiff tr. at 45) and he then removed his belt (*id.* at 46) and stepped off the lift. When asked if he was able to see the ground, Plaintiff testified that what he "saw was everything was black" (*id.* at 47).

Plaintiff's conduct in removing his harness goes to the issue of comparative fault, which is not a defense to a Labor Law § 240 (1) cause of action because the statute imposes absolute liability once a violation is shown. *Bland v. Manocherian*, 66 N.Y.2d 452, 460 (1985); *Dwyer v. Central Park Studios, Inc.*, 98 A.D.3d 882, 884 (1st Dep't 2012); *Tavarez v. Weissman*, 297 A.D.2d 245, 247 (1st Dep't 2002) (Where "the owner or contractor fails to provide adequate safety devices to protect workers from elevation-related injuries and that failure is *a* cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence"). "[E]ven if plaintiff could be found recalcitrant for failing to use a harness, defendants' 'failure to provide [a] proper safety [device] [could be] a more proximate cause of the accident'" *Berrios v. 735 Ave. of the Ams.*, LLC, 82 A.D.3d 552, 553 (1st Dep't 2011) (quoting *Milewski v. Caiola*, 236 A.D.2d 320, 320 [1st Dep't 1997]).

The court finds that there has been no showing that there was a violation of Labor Law § 240 (1) and therefore need not conduct a proximate cause analysis here. While the alleged lack

of illumination arguably contributed to the accident, in the absence of evidence that the owner did not supply adequate safety devices as required by Labor Law § 240 (1), a lack of adequate lighting is not a basis to support this particular claim. Plaintiff was supplied with adequate safety devices and it is undisputed that he removed his fall protection and exited the vertical lift before hearing the descent alarm indicating that the lift had reached the ground. Accordingly, Defendants are entitled to dismissal of the Labor Law § 240 (1) claim against them.

Plaintiff's Labor Law § 241 (6) Claim

Defendants further move for dismissal of Plaintiff's Labor Law § 241 (6) claim. Labor Law § 241 (6) 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 N.Y.2d at 501-502. 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.*

Plaintiff alleges in his complaint violation of Rule 23 of the Industrial Code generally. While he lists violations of numerous specific sections of the Industrial Code in his bill of

particulars, namely sections 23-1.5, 23-1.7, 23-1.7(f), 23-1.15, 23-1.16, 23-1.16(a)(b), 23-1.17, 23-1.30, 23-7.1(b,c), and 23-9.6, with the exception of sections 23-1.30 and 23-1.7 (f), he does not address particular Industrial Code violations in his opposition papers, and with the exception of those two sections, they are deemed abandoned. See *Cardenas v. One State St.*, LLC, 68 A.D.3d 436, 438 (1st Dep't 2009)(plaintiff's reliance on Industrial Code provisions cited in his bill of particulars not addressed in the motion court or on appeal deemed abandoned); *Genovese v. Gambino*, 309 A.D.2d 832, 833 (2d Dep't 2003) (where plaintiff did not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his wrongful termination claim was deemed abandoned). Accordingly, Port Authority is entitled to summary judgment dismissing Plaintiff's Labor Law § 241 (6) claim predicated on those abandoned provisions. The court now turns to those two sections that plaintiff does address.

Industrial Code 12 NYCRR 23-1.30

Industrial Code 12 NYCRR 23-1.30 provides:

> 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.

As a preliminary matter, Industrial Code 12 NYCRR 23-1.30 contains sufficiently specific directives to sustain a cause of action under Labor Law § 241 (6). *See Murphy v. Columbia Univ.*, 4 A.D.3d 200, 202 (1st Dep't 2004), *Dickson v. Fantis Foods, Inc.*, 235 A.D.2d 452, 452-53 (2d Dep't 1997).

Pursuant to the construction management agreement between Lend Lease and the Foundation, Lend Lease, as Construction Manager, was to "provide, install, and retain a temporary lighting system" (Section 14.5.1) and "provide, install, and maintain a temporary

power network of sufficient size and capability in order to properly execute the Work" (Section 14.5.2) and "[t]emporary electric service shall remain energized beyond the normal working hours of Construction Manager as required to provide electric current for night lighting..." (Section 14.5.4), however Lend Lease's safety personnel testified that the company did not in fact provide illumination equipment and plaintiff contends that the light source provided was insufficient.

As that information together with the affidavit of expert Les Winter, P.E. and plaintiff's deposition testimony, raises a question as to whether adequate lighting was provided, defendants are not entitled to dismissal of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.30.

Industrial Code 12 NYCRR 23-1.7 (f)

Industrial Code 12 NYCRR 23-7 (f) provides:

> (f) Vertical passage. Stairways, ramps or runways shall be provided as the means of access to working levels above or below ground except where the nature or the progress of the work prevents their installation in which case ladders or other safe means of access shall be provided.

Industrial Code 12 NYCRR 23-1.7 contains sufficiently specific directives to support a Labor Law § 241 (6) a cause of action. *See Betke v. Archwood Estates, Inc.*, 261 A.D.2d 427 (2d Dep't 1999); *Boss v. Integral Const. Corp.*, 249 A.D.2d 214 (1st Dep't 1998). However, the above provision is inapplicable to the instant case because Plaintiff had been using an aptly-provided vertical lift as directed by his supervisor. Thus, Defendants are entitled to dismissal of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.7 (f).

Plaintiff's Labor Law § 200 and Common-law Negligence Claims

Defendants also move for dismissal of the common-law negligence and Labor Law § 200 claims against them. 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 A.D.2d 122, 122 (1st Dep't 2000); *see also Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 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.

There are two distinct standards applicable to section 200 cases, depending whether the accident is the result of the means and methods used by the contractor to do its work, or whether the accident is the result of a dangerous condition. *See McLeod v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 A.D.3d 796, 797-798 (2d Dep't 2007).

In order to find an owner or his agent liable under Labor Law § 200 for defects or dangers arising from a subcontractor's method or materials, it must be shown that the owner or agent exercised some supervisory control over the injury-producing work. *Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 352 (1998); *Comes v. New York State Elec. & Gas Corp.*, 82 N.Y.2d 876, 877 (199) (no Labor Law § 200 liability where plaintiff's injury was caused by lifting a beam and there was no evidence that defendant exercised supervisory control or had any input into how the beam was to moved); *Ortega v. Puccia*, 57 A.D.3d 54, 61 (2d Dep't 2008).

Moreover, "general supervisory control is insufficient to impute liability pursuant to Labor Law § 200, which liability requires actual supervisory control or input into how the work is performed." *Hughes v. Tishman Constr. Corp.*, 40 A.D.3d 305, 311 (1st Dep't 2007); *Burkoski v. Structure Tone, Inc.*, 40 A.D.3d 378, 381 (1st Dep't 2007) (no Labor Law § 200 liability where defendant construction manager did not tell subcontractor or its employees how to

perform subcontractor's work); *Smith v. 499 Fashion Tower, LLC*, 38 A.D.3d 523, 524-525 (2d Dep't 2007); *Natale v. City of New York*, 33 A.D.3d 772, 773 (2d Dep't 2006).

When the accident arises from a dangerous condition on the property, the proponent of a Labor Law § 200 claim must demonstrate that the defendant created or had actual or constructive notice of the allegedly unsafe condition that caused the accident, and the plaintiff need not demonstrate that the defendant exercised supervision and control over the work being performed. *See Murphy v. Columbia Univ.*, 4 A.D.3d 200, 202 (1st Dep't 2004) (to support a finding of a Labor Law § 200 violation, it was not necessary to prove general contractor's supervision and control over the plaintiff's work because the injury arose from the condition of the work place created by or known to contractor, rather than the method of the work).

In opposition to Defendants' motion, Plaintiff argues that inadequate lighting at the accident location rendered his workplace unsafe, invoking the "dangerous condition" standard. Plaintiff asserts that, but for the alleged insufficient illumination, he would not have fallen. *See Hernandez v. Columbus Centre, LLC*, 50 A.D.3d 597 (1st Dep't 2008). Moreover, the Port Authority's supervising safety engineer, accompanied by Lend Lease's site safety manager, brought portable illumination with her during walk-throughs of the site in the spring and summer of 2011.

Providing adequate lighting at jobsites is critical to the safety of all who work at and pass through them and it is foreseeable that accidents might occur without it. Here, defendants have failed to show that they lacked constructive knowledge about the insufficient lighting, rendering dismissal of this claim unwarranted. *See McCullogh v. One Bryant Park*, 132 A.D.3d 491, 492 (1st Dep't 2015). The alleged lack of illumination supports the contention that the dangerous condition existed and presents an issue of fact as to plaintiff's Labor Law § 200 and common-

law negligence claims. Accordingly, the branch of defendants' motion seeking dismissal of those claims is denied.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the motion of defendants The Port Authority of New York and New Jersey, National September 11 Memorial And Museum At The World Trade Center Foundation Inc., d/b/a 9/11 Memorial s/h/a World Trade Center Memorial Foundation, Inc., and Lend Lease (US) Construction LMB, Inc. s/h/a Bovis Lend Lease LMB Inc. for summary judgment dismissing the complaint is granted only to the following extent:

Plaintiff's Labor Law § 240 (1) claim is dismissed; and

The branches of plaintiff's Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code sections 23-1.5, 23-1.7, 23-1.7(f), 23-1.15, 23-1.16, 23-1.16(a)(b), 23-1.17, 23-7.1(b,c), and 23-9.6 are dismissed.

The clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

10-20-17
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☐ DENIED	☒	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	DO NOT POST		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE