Jablonski v Archstone Bldrs., LLC
2017 NY Slip Op 32269(U)
October 23, 2017
Supreme Court, New York County
Docket Number: 154224/2014
Judge: Kelly A. O'Neill Levy
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ROBERT JABLONSKI,

Plaintiff,

- v -

ARCHSTONE BUILDERS, LLC, L&M 825, LLC, L&M LL C.O FRI,

Defendants.

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INDEX NO. 154224/2014

MOTION DATE

MOTION SEQ. NO. 002 and 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this application to/for summary judgment.

This is a personal injury action to recover damages sustained by a stone worker on May 24, 2013 after he pushed a cart carrying stone slabs over an extension cord, resulting in one of the slabs sliding and falling off the cart onto his left big toe.

Defendant Archstone Builders, LLC (Archstone) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint, including Labor Law §§ 240 (1), 241 (6), 200, and common-law negligence claims, filed by plaintiff Robert Jablonski (Plaintiff), and dismissing any cross-claims against it (mot. seq. 002). Likewise, defendant L&M 825, LLC, (L&M) moves for summary judgment dismissing same, including any cross-claims against it (mot. seq. 003). Plaintiff opposes, and defendants oppose each other. The motions are consolidated for disposition.

BACKGROUND

On the day of Plaintiff's accident, L&M was the owner of the premises located at 821 Madison Avenue in Manhattan. The premises were leased by non-party Valentino USA, Inc. (Valentino) and Valentino retained Archstone to perform general contracting services for the interior renovations and build-out of a retail store at the premises. In addition, Valentino accepted a proposal from Setex Inc. (Setex) to furnish and install terrazzo[1] and tile as part of the construction project. Plaintiff was employed as a stone worker for Setex.

Archstone's responsibilities included supervising and directing its employees and subcontractors relating to the work contained in its contract with Valentino dated June 29, 2012 (the Contract). Archstone was also responsible for coordinating all portions of the work under the Contract and was responsible for and had control over the construction means and methods. Accordingly, Archstone had a laborer at the project on a daily basis, but it claims that its laborer did not direct or supervise Plaintiff's work.

Plaintiff's Deposition Testimony

Plaintiff testified that as a stone worker for Setex on the construction project, his duties included unloading slabs of marble from a delivery truck and installing them at the job site. Because some of the slabs weighed as much as 450 pounds and were as large as 3 feet by 12 feet, Plaintiff would use a metal cart[2] to move them. In order to protect the slabs, Plaintiff placed Styrofoam on the platform of the cart before loading the cart with slabs. He would then place the slabs on the Styrofoam and lean them against the rail of the cart.

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[1] A composite material used for floor and wall treatments.

[2] While Plaintiff testified that he did not know whether he used an A-frame cart, it is not in dispute that Plaintiff used an A-frame cart to transfer the slabs at the time of the accident.

On the day of the accident, Plaintiff and his co-worker loaded four slabs onto the cart. Upon transporting the slabs, Plaintiff's coworker was guiding the cart and Plaintiff was pushing the cart when its wheels ran over an extension cord and the cart "jumped up," causing an unsecured slab to fall off the cart and onto Plaintiff's foot (Jablonski Tr. at 36).

Plaintiff further testified that the slabs were not affixed to the cart. There was no chain or rope to keep them from moving while being transported, and he was not provided any straps or devices to affix the slabs to the cart. Typically, the Styrofoam would prevent the slab from moving.

Testimony of Robert Marrero (Archstone, Labor Foreman)

Robert Marrero testified on behalf of Archstone. He testified that at the time of Plaintiff's accident he was a laborer for Archstone and that Archstone was the general contractor for the construction project. As such, Archstone "supervised the whole construction at that site" and "did a whole build out," i.e., "ran the whole project" (Marrero Tr. at 10, 12). Mr. Marrero's duties primarily included maintaining "the place clean in a safe working environment," and he would pass out "toolbox papers," i.e., safety instructions to all the subcontractors going to the site (*id.* at 12, 36). He never saw or dealt with any of the contracts between Archstone and L&M or any of the subcontractors, and he was not sure whether Archstone subcontracted Setex.

Regarding the accident, Mr. Marrero testified that the accident involved the company doing the terrazzo work. He heard the incident as it occurred, as he was "two or three feet away" (*id.* at 21). He testified that he observed that a portion of the Styrofoam was not cut to the size of the platform of the A-frame cart, thus did not adequately support the terrazzo slab and resulted in the Styrofoam snapping and breaking under the slab's weight and causing the slab to land on Plaintiff's foot. He also testified that there were "no straps or devices to keep the terrazzo on the A-frame" cart (*id.* at 60).

Mr. Marrero further testified that there were electrical cords in the area which belonged to the terrazzo workers which said workers used to "power the winch that they were using to raise the terrazzo up" (*id.* at 30).

Testimony of Marc LaPointe (Larstrand Corporation, Director of Architecture)

Marc LaPointe testified that he was employed by non-party Larstrand Corporation as Director of Architecture. Larstrand Corporation is a management company that manages properties on behalf of owners Lawrence Friedland and the estate of Melvin Friedland, who are members of L&M. L&M was formed by the owner of properties located at 817 Madison to 827 Madison, and Valentino occupied one of those properties as a tenant. He testified that he visited the premises about once a month for ten to fifteen minutes, and his purpose was to monitor progress on the construction project. He also testified that Archstone was a general contractor for the job.

DISCUSSION

On a motion for summary judgment, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that there exist material factual issues. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). 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).

Plaintiff's Labor Law § 240 (1) Claim

Defendants move for dismissal of Plaintiff's Labor Law § 240 (1) claim against them. Initially, L&M contends that it is not liable under the Labor Law because it had nothing to do with the accident. Similarly, Archstone argues that it is not liable under the Labor Law because, per its contract, it was not responsible for supervising and directing the injury-producing work. However, 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."

As owner of the premises where the accident occurred, L&M may be liable for Plaintiff's injuries under Labor Law § 240 (1). Archstone may be similarly liable as the general contractor. Mr. Marrero testified that Archstone was the general contractor on the construction project and supervised the entire construction project on the site. He further testified that he was at the project every day.

L&M argues that after Valentino accepted the Setex proposal, a Modification[3] was made to the Contract, noting that terrazzo was now included in the construction project for the original price of $805,000. Thereafter, the terrazzo work that Plaintiff was performing was specifically listed and included in Archstone documents, including invoices, requisition summaries, the AIA Application and Certification for payment, Project Directory and Project Schedule. L&M also argues that

[3] Per the Contract, a "Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Constructive Change Directive or (4) a written order for a minor change in the Work issued by the Architect." Giliberti Aff. in Opp., Ex. E, § 7.1.

pursuant to the Contract, Archstone was responsible for the safety of employees "on the Work and other persons who may be affected thereby."

Archstone contends that the terrazzo work was specifically excluded from its contract with Valentino, and further, that the documentary evidence offered by L&M is inadmissible hearsay. *See Ortiz v. Igby Huntlaw LLC*, 146 A.D.3d 682, 683 (1st Dep't 2017), *leave to appeal denied,* No. 2017-672, 2017 WL 4051778 (N.Y. Sept. 14, 2017) (General contractor, whose contract specifically excluded painting the apartment, was entitled to summary judgment when plaintiff was injured while painting).

Notwithstanding Archstone's contentions, as general contractor of the construction project, Archstone may be liable for Plaintiff's injuries under Labor Law § 240 (1). *See Paljevic v. 998 Fifth Avenue Corp.*, 65 A.D.3d 896, 897 (1st Dep't 2009) (general contractor assumed responsibility for plaintiff's workplace safety where contract made contractor responsible for the safety of "employees on the Work *and other persons who may be affected thereby*," despite the fact that plaintiff's task was excluded from the general contractor's contract) (emphasis in original); *see also Candela v. City of New York*, 8 A.D.3d 45, 47 (1st Dep't 2004) (Hearsay may be used to oppose a summary judgment motion so long as it is not the only evidence submitted in opposition).

"'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."

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).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated and that this violation was a proximate cause of the plaintiff's injuries. *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).

As discussed previously, Plaintiff testified that he was injured as he was pushing a cart of large, heavy slabs toward an electrical hoist. When the wheel of the cart went over an extension cord, a slab fell off the cart and onto Plaintiff's foot, resulting in his injury.

There is an issue of fact as to whether defendants provided Plaintiff with proper protection from a reasonably preventable, gravity-related accident. *See Wilinski v. 334 East 92nd Housing Development Fund Corp.*, 18 N.Y.3d 1 (2011); *Runner v. New York Stock Exchange, Inc.*, 13 N.Y.3d 599, 603 (2009) (The "decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential"). In the instant case, the slabs placed in the cart, including the slab which fell on Plaintiff's foot, were not secured or attached to the cart but were merely leaned against the rail of the cart.

Further, as there were no protective devices, such chains or ropes, to secure the slabs from falling, Labor Law § 240 (1) may be applicable because there is a question of fact as to whether Plaintiff's injuries were "'the direct consequence of [defendants'] failure to provide adequate protection against [that] risk.'" *Wilinski*, 18 N.Y.3d at 10 (citation omitted); *see Landi v. SDS William St., LLC*, 146 A.D.3d 33, 33 (1st Dep't 2016) (defendants in construction project failed to

provide adequate protection against risk arising from a significant elevation differential, as thus defendants were liable on injured construction worker's labor law 240 [1] claim); *Marrero v. 2075 Holding Co. LLC*, 106 A.D.3d 408, 408 (1st Dep't 2013) (worker established his prima facie entitlement to summary judgment against owners and general contractor by showing that his injuries resulted from failure to protect against a risk arising from a significant elevation differential, where the worker testified that "he was walking across plywood planks covering fresh concrete, the planks buckled and shifted, causing A-frame cart containing drywall and two 500–pound steel beams to tip over and fall on his calf and ankle").

Defendants argue that Plaintiff's failure to cut the Styrofoam to the width of the platform makes Plaintiff the sole proximate cause of his accident. However, defendants' argument that Plaintiff was the sole proximate cause of his accident fails as there is an issue of fact as to whether they provided an adequate safety device in the first instance, and the availability of a safety device will not shield an owner or general contractor from absolute liability if the device alone is not sufficient. *Hoffman v. SJP TS, LLC*, 111 A.D.3d 467, 467 (1st Dep't 2013); *Nimirovski*, 29 A.D.3d 762, 762 (2d Dep't 2006) (quoting *Conway v. New York State Teachers' Retirement Sys.*, 141 A.D.2d 957, 958-959 [3d Dep't 1988]).

In any event, Plaintiff's alleged conduct goes to the issue of comparative fault, and comparative fault is not a defense to a Labor Law § 240 (1) cause of action because the statute imposes absolute liability once a violation is shown. *See Bland v. Manocherian*, 66 N.Y.2d 452, 460 (1985); *Guaman v. 1963 Ryer Realty Corp.*, 127 A.D.3d 454, 455 (1st Dep't 2015) ("Even if there were admissible evidence [that the 'plaintiff failed to attach his safety harness to the lifeline in the proper manner'] the scaffold fell as a result of the ropes supporting it being loosened, rendering plaintiff's alleged conduct contributory negligence which is not a defense to a Labor Law § 240 (1) claim"); *Dwyer v. Central Park Studios, Inc.*, 98 A.D.3d 882, 884 (1st Dep't 2012); *Velasco v.*

Green-Wood Cemetery, 8 A.D.3d 88, 89 (1st Dep't 2004) ("Given an unsecured ladder and no other safety devices, plaintiff cannot be held solely to blame for his injuries"); *Klein v. City of New York*, 222 A.D.2d 351, 352 (1st Dep't 1995). "[T]he 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 *Blake v. Neighborhood Hous. Servs. of N.Y.*, 1 N.Y.3d 280, 290 [2003]).

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." *Tavarez v. Weissman*, 297 A.D.2d 245, 247 (1st Dep't 2002) (internal quotation marks and citations omitted); *Ranieri v Holt Constr. Corp.*, 33 A.D.3d 425, 425 (1st Dep't 2006) (Court found that failure to supply plaintiff with a properly secured ladder or any safety devices was a proximate cause of his fall, and there was no reasonable view of the evidence to support defendants' contention that plaintiff was the sole proximate cause of his injuries); *Lopez v. Melidis*, 31 A.D.3d 351, 351 (1st Dep't 2006); *Torres v Monroe Coll.*, 12 A.D.3d 261, 262 (1st Dep't 2004) (Court noted that, even if another cause of the accident was plaintiff's own improper use of an unopened A-frame ladder leaned against the wall from atop the scaffold, defendant's failure to ensure that the scaffold plaintiff needed to use to perform his assigned task provided proper protection, and was properly secured and braced, constituted a proximate cause of the accident).

Plaintiff's Labor Law § 241 (6) Claim

Defendants move for dismissal of Plaintiff's Labor Law § 241 (6) claim against them. 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 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.*

Other than Industrial Code section 23-1.7 (e) (2), Plaintiff's opposition papers do not address the Industrial Code violations discussed in defendants' summary judgment papers, and thus, they are deemed abandoned. S*ee Genovese v. Gambino*, 309 A.D.2d 832, 833 (2d Dep't 2003); *Musillo v Marist Coll.*, 306 A.D.2d 782, 784 n 1 (3d Dep't 2003). As such, defendants are entitled to summary judgment dismissing Plaintiff's Labor Law § 241 (6) claim predicated on those abandoned provisions.

Industrial Code 12 NYCRR 23-1.7 (e) (2)

Industrial Code 12 NYCRR 23-1.7 (e) (2) provides:

(e) Tripping and other hazards.

> (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.

Initially, Industrial Code 12 NYCRR 23-1.7 (e) (2) contains sufficiently specific directives to sustain a cause of action under Labor Law § 241 (6). *Smith v. McClier Corp.*, 22 A.D.3d 369, 370 (1st Dep't 2005); *Murphy Columbia Univ.*, 4 A.D.3d 200, 202 (1st Dep't 2004); *Boss v. Integral Constr. Corp.*, 249 A.D.2d 214, 215 (1st Dep't).

Archstone argues that Section (e) (2) is inapplicable because the extension cord, which caused the cart to "jump," was an integral part of the work as it was used to power a hoist needed to lift the terrazzo. *See O'Sullivan v. IDI Const. Co., Inc.*, 28 A.D.3d 225, 226 (1st Dep't 2006) (finding no liability under Labor Law § 241[6] where plaintiff tripped over a permanently placed electrical pipe because the injury-producing object was an integral part of what was being constructed); *Isola v. JWP Forest Elec. Corp.*, 267 A.D.2d 157, 158 (1st Dep't 1999) (no liability under § 241[6] when plaintiff tripped over a section of electrical conduit lying on decking, which was to be covered by concrete and become a part of the floor structure); *Vieira v. Tishman Const. Corp.*, 255 A.D.2d 235, 235-236 (1st Dep't1998) (no § 241[6] liability where plaintiff tripped over wire mesh installed on top of a metal grid and which mesh becomes part of the structure of the floor when concrete is poured).

The instant situation is distinguishable from the cases cited by Archstone. The extension cord was not a permanent structure integrated or to be integrated into the construction project. Rather, the cord was a transient apparatus for powering an electric hoist until the installation of the terrazzo was completed. Thus, Defendants are not entitled to dismissal of the Labor Law § 241 (6) claim predicated on an alleged violation of Section 23-1.7 (e) (2).

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

Defendants 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 311, 316-317 (1981). 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 on whether the accident is the result of the means and methods used by the contractor to do its work, or whether it 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).

It is well settled that 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 (1993) (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 be 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).

Plaintiff concedes that defendants cannot be held liable under the means and methods standard. *See Hughes v. Tishman Construction Corp.*, 40 A.D.3d 305, 306 (1st Dep't 2007). Plaintiff rather argues that they may be liable under the dangerous condition standard because of the presence of the extension cord which caused the cart to jump and resulted in a slab falling off the cart and onto Plaintiff's foot.

The presence of the extension cord is not a dangerous condition inherent to the premises but rather was created by the manner of Plaintiff's employer's work. In other words, the extension cord would not have been at the site but for the manner and means of Plaintiff's injury-producing work. The extension cord was used to power an electric hoist in order to install the terrazzo, and the hoist and attendant cord were provided by Plaintiff's employer, Setex. *See Ocampo v. Bovis Land Lease LMB, Inc.*, 123 A.D.3d 456, 457 (1st Dep't 2014) (finding that plaintiff's claims where based on the "means and methods" of his work where ice resulted from plaintiff's work that required the use of "water to minimize the risks associated with asbestos"); *Cappabianca v. Skanska USA Bldg. Inc.*, 99 A.D.3d 139, 145 (1st Dep't 2012) (finding a wet floor was not a dangerous condition because it "would not have been present but for the manner and means of plaintiff's injury-producing work," over which defendants had no control); *Dalanna v. City of N.Y.*, 308 A.D.2d 400, 400 (1st Dep't

2003) (finding that a "protruding bolt was not a defect inherent in the property, but rather was created by the manner in which plaintiff's employer performed its work"). As Plaintiff admits, defendants cannot be held liable under the means and methods standard. Accordingly, defendants are entitled to summary judgment dismissing the common-law negligence and Labor Law § 200 claims against it.

Cross-claims Against Defendants

As discussed above, the record demonstrates that there is an issue of fact as to whether the terrazzo work was included in the Contract between Archstone and Valentino. Thus, Archstone is not entitled dismissal of the cross-claims against it.

As L&M does not raise any arguments in its moving papers to support dismissal of the cross-claims against it, it is not entitled to same.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the motion of Archstone Builders, LLC for summary judgment dismissing the complaint and cross-claims against it (mot. seq. 002) is granted only to the following extent: Plaintiff's Labor Law § 200 and the common-law negligence claims are 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 (a,b,c,d,f,g,h), 23-1.28, and 23-2.1 are dismissed, and Archstone's motion is otherwise denied; and it is further

ORDERED that the motion of L&M 825, LLC for summary judgment dismissing the complaint and cross-claims against it (mot. seq. 003) is granted only to the following extent: Plaintiff's Labor Law § 200 and the common-law negligence claims are 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 (a,b,c,d,f,g,h), 23-1.28, and 23-2.1 are dismissed, and L&M's motion is otherwise denied

The clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

10-23-17
DATE

KELLY O'NEILL LEVY, J.S.C.
HON. KELLY O'NEILL LEVY
J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION		
	[ ] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[X] OTHER	
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER		
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