Coombes v Shawmut Design & Constr.
2018 NY Slip Op 30719(U)
April 24, 2018
Supreme Court, New York County
Docket Number: 155497/2014
Judge: James E. d'Auguste

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

X----------X

DEREK COOMBES AND ROISIN COOMBES,

Plaintiffs,

-against-

SHAWMUT DESIGN & CONSTRUCTION and APPLE, INC.,

Defendants.

X----------X

SHAWMUT DESIGN & CONSTRUCTION and APPLE, INC.,

Third-Party Plaintiffs,

-against-

ROCKMOR ELECTRIC ENTERPRISES,

Third-Party Defendant.

X----------X

ROCKMOR ELECTRIC ENTERPRISES,

Second Third-Party Plaintiff,

-against-

CORD CONTRACTING CO., INC.,

Second Third-Party Defendant.

X----------X

DECISION AND ORDER
Index No. 155497/2014
Mot. Seq. Nos. 003-006

Hon. James E. d'Auguste

Motion Sequence Numbers 003, 004, 005, and 006 are consolidated for disposition. In this action for personal injuries asserting violations of the New York State Labor Law ("Labor Law"), plaintiffs Derek Coombes and Roisin Coombes move, pursuant to CPLR 3212, for an order granting partial summary judgment on the issue of liability under Labor Law Sections 240(1) and 241(6) against defendants Shawmut Design & Construction ("Shawmut") and Apple,

Inc. ("Apple") (Mot. Seq. No. 006). Defendants/third-party plaintiffs Shawmut and Apple move, pursuant to CPLR 3212, for an order granting summary judgment on plaintiffs' Labor Law Sections 240, 241(6), and 200 claims, including plaintiffs' common law negligence claim; and granting summary judgment in their favor on their contractual and common-law indemnification claims against third-party defendant/second third-party plaintiff Rockmor Electric Enterprises ("Rockmor") (Mot. Seq. No. 005). Rockmor moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing plaintiffs' complaint, and dismissing the third-party complaint of Shawmut and Apple as against it (Mot. Seq. No. 004). Second third-party defendant Cord Contracting Co., Inc. ("Cord") moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing the second third-party complaint of Rockmor and all cross-claims as against it (Mot. Seq. No. 003).

Factual and Procedural History

Plaintiff Derek Coombes was allegedly injured on October 26, 2011 while working as an electrician for Rockmor on a project to construct a new Apple retail store at Grand Central Station in Manhattan ("Grand Central"). Shawmut was the general contractor for the project and Apple was the owner. Plaintiff testified at his deposition that his employer, Rockmor, was responsible for doing all the electrical work. On the date of the accident, plaintiff was working at another project when he received a call to come to Grand Central. When plaintiff arrived at Grand Central, he spoke to his foreman, Jack Gergoric, with whom he had worked with on several prior occasions. Plaintiff testified that he took no direction from anyone other than Gergoric. Gergoric assigned plaintiff to work with another employee, Carlos Diaz, in the basement of Grand Central to pull wire from a panel to feed circuits to another part of the building. Plaintiff s job entailed "get[ting] wire on a cart, bring[ing] it over by the panel,"

"put[ting] drag lines through [a] pipe," and then "pull[ing] certain wires through" the pipe. NYSCEF Doc. No. 76, Tr. 28:25-29:22. Plaintiff was standing on the ground while working and, in order to feed electrical wires to Diaz, plaintiff would exit the room. Plaintiff would climb from the ground up on top of a platform, which was approximately three feet high and made of concrete, and back to the ground to exit the room. On the platform, there was building material that had some metal studs, as well as a scaffold and ladder. Plaintiff testified that as he stepped off the platform, he "got caught in one of these studs" and that he was not sure "whether it was a piece of material on the platform" or a stud. *Id.*, Tr. 34:3-9. He "felt something move," then he "spun around and came down on [his] elbow." *Id.* He felt that he lost his footing and he "thought it was a stud that slipped from [his] foot." *Id.*, Tr. 36:11-14.

Plaintiff testified that he went in and out of the room approximately eight to ten times before the accident occurred. Plaintiff also testified that there was no debris on the platform and that there was no one else in the room when he fell. Plaintiff made no complaints to anyone prior to the accident.

Plaintiffs commenced this action on June 4, 2014 by filing a summons and complaint against Shawmut and Apple seeking recovery for violations of Labor Law Sections 200, 240(1), and 241(6), and common law negligence. Shawmut and Apple subsequently brought a third-party action asserting claims for contribution, common law indemnification, contractual indemnification, and breach of contract for failure to procure insurance against Rockmor. Rockmor then brought a second third-party action asserting claims for contribution, common law indemnification, contractual indemnification, and breach of contract for failure to procure insurance against Cord.

Deposition Testimony of Leszek Piotrowksi

Leszek Piotrowksi testified that he has been employed as a general superintendent for Shawmut for over eight years. On the date of the accident, he was the project superintendent. As Shawmut's project superintendent, his role was to oversee the sequence of the work taking place on the second shift which was the night work from demolition until "the fit-out period." NYSCEF Doc. No. 83, Tr. 13:25-14:6. Shawmut did not have personnel physically doing the work since it was the general construction manager on the project and coordinated between the sub-contractor Metro North and Apple. The project began in August 2011.

Piotrowksi testified that the room in which the accident happened was wide open and accessible on both sides of the alcove. Cord stored some carpentry materials in the room. Piotrowksi testified that there were a few minor electrical things stored in the room such as a wire spool rack and a piece of conduit, but those were minor things that people constantly moved when they were cleaning up the floors. There was no specific space for any of the trades to store their materials, so the trades and Metro North agreed that they would only bring in the necessary materials within two or three days of the delivery date. Piotrowksi further testified that no one, including plaintiff, ever complained to him about the carpentry materials or minor electrical materials stored in the room or the condition of the room prior to the accident.

Deposition Testimony of Jack Gergoric

Jack Gergoric testified that he was the foreman for Rockmor at the time of the accident. As the foreman, he was responsible for looking through prints, ordering materials, setting workers up for the job, dealing with clients, and dealing with safety issues such as holding meetings and making sure equipment was safe. For the construction project at issue, Rockmor was installing all new electric, including lighting, among other things. Rockmor was solely

responsible for the safety of its workers, and neither Shawmut nor Apple provided safety devices to Rockmor. Plaintiff only took directions from Rockmor.

Gergoric testified that he learned about plaintiff's accident when he walked into the room where plaintiff was working and plaintiff stated that he fell. Gergoric's understanding was that plaintiff fell off the platform. He estimated that the platform was approximately two and a half feet high. Rockmor, however, would only provide a ramp or step stool for this height if a worker asked for one. Gergoric testified that plaintiff never complained about the platform nor did he ask for a step stool or any other method to go up and down the platform. If plaintiff had made such a request, Rockmor would have fulfilled his request. Plaintiff was not the first worker to pull wire in the room since the work had been going on for multiple days. No one else had any problems going up or down the platform prior to plaintiff's accident, and no one, including plaintiff, asked for another way to perform the work.

Discussion

I. Labor Law Section 240(1) Claim

In Motion Sequence No. 006, plaintiffs move for partial summary judgment in their favor as to liability on their Labor Law Section 240(1) claim against defendants Shawmut and Apple. In Motion Sequence No. 005, defendants move for summary judgment dismissing this claim as against them. In Motion Sequence No. 004, Rockmor moves for summary judgment dismissing plaintiffs' complaint as against defendants.

Labor Law Section 240(1), also known as the Scaffold Law, provides, in relevant part, the following:

> 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.

It is well established that Labor Law Section 240(1) applies to "extraordinary elevation risks," and not the "usual and ordinary dangers of a construction site." *Rodriguez v. Margaret Tietz Ctr. for Nursing Care*, 84 N.Y.2d 841, 843 (1994). To establish liability under Labor Law Section 240(1), the plaintiff must establish the following two elements: (1) a violation of the statute, *i.e.*, that the owner or general contractor failed to provide adequate safety devices; and (2) that the statutory violation was a proximate cause of the plaintiff's injuries. *Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d 280, 289 (2003). Where a plaintiff is the sole proximate cause of an injury, liability does not attach under the statute. *Id.* at 290.

Plaintiffs argue that they are entitled to summary judgment in their favor as to liability on their Labor Law Section 240(1) claim because they have sufficiently established that, due to the failure of Shawmut and Apple to provide safety devices, plaintiff fell while stepping off of a platform, which was approximately three feet high, causing his injuries. In opposition to plaintiffs' motion and in support of their own motion, defendants and Rockmor contend that the circumstances that caused plaintiff's accident are not contemplated by Section 240(1) as it falls within the usual and ordinary danger of a construction site and plaintiff was not subject to an elevation-related risk.

In *Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509 (1991), the Court of Appeals explained that:

> [t]he contemplated hazards are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured.

78 N.Y.2d at 514.

The Court of Appeals also stated that these

> "special hazards" . . . however, do not encompass any and all perils that may be connected in some tangential way with the effects of gravity. Rather, the "special hazards" referred to are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured.

Ross v. Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494, 501 (1993) (emphasis omitted); *see also Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 603 (2009) ("[T]he single 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.").

Based upon the foregoing, it is evident that Labor Law Section 240(1) does not apply to the circumstances of this case. Plaintiff testified that he was not actually working on the platform, but was walking over it, and stepped off of it to get to the room in which he was working. He also testified that he thinks what caused him to fall and sustain injuries was a stud that he slipped on. He further testified that he had gone up on to the platform and stepped down off of it at least eight to ten times prior to his accident without any issues. Thus, plaintiff "was exposed to the usual and ordinary dangers of a construction site, and not the extraordinary elevation risks envisioned by Labor Law § 240 (1)." *Rodriguez*, 84 N.Y.2d at 843; *see also Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 99 (2015) (finding that the injuries that the plaintiff sustained when he slipped on a patch of ice and fell to the floor while using stilts to install insulation in a ceiling were not the direct consequence of an elevation-related risk within the scope of Labor Law Section 240(1)); *Cohen v. Memorial Sloan-Kettering Cancer Ctr.*, 11 N.Y.3d 823, 825 (2008) (finding that Labor Law Section 240(1) did not apply where injuries sustained by a worker while installing pipe racks in ceiling when he attempted to climb off a ladder and fell due to protruding pipes from a nearby unfinished wall because

injuries were a result of the usual and ordinary dangers at a construction site not elevation-related hazard).

In light of the foregoing, defendants and Rockmor have demonstrated that plaintiff's injuries did not result from an elevation-related hazard. Therefore, that branch of plaintiffs' motion for partial summary judgment on the issue of liability on their Labor Law Section 240(1) claim is denied, and those branches of defendants' and Rockmor's motions seeking summary judgment dismissing plaintiffs' Labor Law Section 240(1) claim are granted.

II. Labor Law Section 241(6) Claim

In Motion Sequence No. 006, plaintiffs move for partial summary judgment in their favor as to liability on their Labor Law Section 241(6) claim against defendants Shawmut and Apple. In Motion Sequence No. 005, defendants move for summary judgment dismissing plaintiffs' Labor Law Section 241(6) claim as against them. In Motion Sequence No. 004, Rockmor moves for summary judgment dismissing plaintiffs' complaint as against defendants.

Labor Law Section 241(6) provides, in relevant 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 Section 241(6) imposes a nondelegable duty on "owners and contractors to 'provide reasonable and adequate protection and safety' for workers." *Ross*, 81 N.Y.2d at 501. However, Labor Law Section 241(6) is not self-executing, and in order to show a violation of this statute, 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. *See id.* at 501-02.

Plaintiffs' complaint alleges violations of Industrial Code provisions 12 NYCRR 23-1.5 and 12 NYCRR 23-1.7(f). Additionally, plaintiffs' supplemental bill of particulars alleges violations of Industrial Code provisions 12 NYCRR 23-1.7(e) and 12 NYCRR 23-2.1(a). Defendants and Rockmor, however, contend that the cited Industrial Code provisions are inapplicable or were not violated.

A. 12 NYCRR 23-1.5

It is well settled that Section 23-1.5 "merely establishes a general safety standard that does not give rise to the nondelegable duty imposed by Labor Law § 241 (6)." *Sparkes v. Berger*, 11 A.D.3d 601, 602 (2d Dep't 2004); *see also Greenwood v. Shearson, Lehman & Hutton*, 238 A.D.2d 311, 312 (2d Dep't 1997) (holding that "12 NYCRR 23-1.5 is a regulation that relates to general safety standards and, accordingly, will not provide a basis for a claim under Labor Law § 241 (6)"). Thus, defendants are entitled to dismissal of that part of plaintiffs' Labor Law Section 241(6) claim that is predicated on an alleged violation of 12 NYCRR 23-1.5.

B. 12 NYCRR 23-1.7(e)

Section 23-1.7(e) ("Tripping and other hazards.") provides as follows:

> (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.

Sections 23-1.7(e)(1) and 23-1.7(e)(2) have been held to be sufficiently specific to serve as a basis for a Labor Law Section 241(6) claim. *Boss v. Integral Constr. Corp.*, 249 A.D.2d 214, 215 (1st Dep't 1998); *Jara v. New York Racing Ass'n, Inc.*, 85 A.D.3d 1121, 1123 (2d Dep't 2011).

In *Dalanna v. City of New York*, 308 A.D.2d 400 (1st Dep't 2003), a plumber "tripped over a protruding bolt while carrying a pipe across an outdoor 50-foot-long concrete slab." 308 A.D.2d at 400. In that case, the Appellate Division, First Department held that neither Section 23-1.7(e)(1) nor 23-1.7(e)(2) applied:

> [t]he slab, although regularly traversed to bring pipes to the tanks, remained a common, open area between the job site and the street, and thus was not [a] "passageway" covered by 12 NYCRR 23-1.7 (e) (1), and at best was a "working area" covered by 12 NYCRR 23-1.7 (e) (2). However, the bolt, which was embedded in the ground, was not "dirt," "debris," "scattered tools and materials" or a "sharp projection [ ]," as required by the latter provision.

Id. at 401 (second alteration in original) (citations omitted). Although this regulation is sufficiently specific, Section 23-1.7(e)(1) does not apply to the instant case because plaintiff did not fall in a "passageway." *See Dalanna*, 308 A.D.2d at 401. Instead, plaintiff fell in a room while stepping off of a platform. While plaintiff testified that in order to feed electrical wires to his coworker, he would exit the room, he also testified that as he stepped off the platform, he thought he slipped on a metal stud, which caused his injuries. In addition, Section 23-1.7(e)(2) is inapplicable since plaintiff's accident did not occur as a result of accumulations of dirt and debris, scattered tools and materials, or sharp projections. *See Dalanna*, 308 A.D.2d at 401. In light of the foregoing, defendants are entitled to dismissal of that part of plaintiffs' Labor Law Section 241(6) claim that is predicated on an alleged violation of Section 23-1.7(e).

C. 12 NYCRR 23-1.7(f)

The Industrial Code regulation governing "vertical passage," Section 23-1.7(f), states that "[s]tairways, 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." Section 23-1.7(f) is sufficiently specific to support a Labor Law Section 241(6) claim. *See Miano v. Skyline New Homes Corp.*, 37 A.D.3d 563, 565 (2d Dep't 2007). Courts have held that Section 23-1.7(f) only applies to a "working level [above or] below ground requiring a stairway, ramp or runway." *Harrison v. State of New York*, 88 A.D.3d 951, 953 (2d Dep't 2011); *see Torkel v. NYU Hosps. Ctr.*, 63 A.D.3d 587, 590 (1st Dep't 2009); *Lavore v. Kir Munsey Park 020, LLC,* 40 A.D.3d 711, 713 (2d Dep't 2007); *Amantia v. Barden & Robeson Corp.*, 38 A.D.3d 1167, 1168-69 (4th Dep't 2007). Here, plaintiff was injured when he fell while walking across a platform that did not require a stairway, ramp, or runway to exit the room, and he was not injured while attempting to access a working level above or below ground. As a result, Section 23-1.7(f) does not apply in this instance. *See Lavore*, 40 A.D.3d at 713 (holding that Section 23-1.7(f) was inapplicable where the plaintiff fell when descending from the side of a truck bed); *Amantia*, 38 A.D.3d at 1169 (holding that Section 23-1.7(f) did not apply where the plaintiff fell while descending from the cargo floor of a truck, which was not a working level above ground). Accordingly, defendants are entitled to summary judgment dismissing that part of plaintiffs' Labor Law Section 241(6) claim that is predicated on an alleged violation of Section 23-1.7(f).

D. 12 NYCRR 23-2.1(a)

Section 23-2.1(a) has been held to be sufficiently specific to sustain a claim under Labor Law Section 241(6). *Rodriguez v. DRLD Dev., Corp.*, 109 A.D.3d 409, 410 (1st Dep't 2013);

Dacchille v. Metro. Life Ins. Co., 262 A.D.2d 149, 149 (1st Dep't 1999). Industrial Code Section 23-2.1(a) (Storage of material or equipment.) provides as follows:

> (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.

Here, Section 23-2.1(a) does not apply because plaintiff's accident did not occur in a "passageway, walkway, stairway or other thoroughfare," as the regulation requires. *See, e.g.*, *Castillo v. 3440 LLC*, 46 A.D.3d 382, 383 (1st Dep't 2007). Moreover, plaintiff's accident was not caused due to material being stored in an unsafe manner or at an unsafe capacity. As such, defendants are entitled to summary judgment dismissing that part of plaintiffs' Labor Law Section 241(6) claim that is predicated on an alleged violation of Section 23-2.1(a).

Since plaintiffs have failed to identify a specific and applicable Industrial Code regulation to support a cause of action under Labor Law Section 241(6), those branches of defendants' and Rockmor's motion seeking summary judgment on plaintiffs' Labor Law Section 241(6) claim are granted. *See Owens v Commercial Sites*, 284 A.D.2d 315, 315 (2d Dep't 2001) (holding "that the plaintiff's failure to identify a violation of any specific provision of the State Industrial Code precludes liability under Labor Law § 241 (6)").

III. Labor Law Section 200 and Common Law Negligence Claims

In Motion Sequence No. 005, defendants move for summary judgment dismissing plaintiffs Labor Law Section 200 and common law negligence claims as against them. In Motion Sequence No. 004, Rockmor moves for summary judgment dismissing plaintiffs'

complaint as against defendants.

Labor Law Section 200(1) provides:

> 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. The board may make rules to carry into effect the provisions of this section.

Labor Law Section 200 is merely a codification of the common law duty imposed on owners and general contractors to maintain a safe work site (*Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 352 (1998)), and, therefore, the same standards apply to both Labor Law Section 200 and common law negligence theories of recovery. To prevail on a claim under Labor Law Section 200 and common law negligence, where the injury arises out of the means or methods of the construction work, the plaintiff must establish that the defendant supervised or controlled the activity giving rise to the injury. *Hughes v. Tishman Constr. Corp.*, 40 A.D.3d 305, 306 (1st Dep't 2007); *Cahill v. Triborough Bridge & Tunnel Auth.*, 31 A.D.3d 347, 350 (1st Dep't 2006). Nonetheless, general supervision over the work, including coordination of the trades and inspection of quality of the work, is insufficient to impose liability under either theory. *Hughes*, 40 A.D.3d at 306.

Plaintiffs have not opposed that branch of defendants' motion for summary judgment seeking dismissal of plaintiffs' Labor Law Section 200 and common law negligence claims. As plaintiffs do not oppose those parts of defendants' motions seeking dismissal of their Labor Law Section 200 and common law negligence claims against them, defendants are entitled to dismissal of said claims against them. *See, e.g., Rivera v. Anilesh*, 32 A.D.3d 202, 204-05 (1st Dep't 2006), *aff'd*, 8 N.Y.3d 627 (2007). Moreover, defendants did not supervise or control

plaintiff's work. Plaintiff testified that he worked only under the direction of the Rockmor foreman, Gergoric, who confirmed plaintiff's testimony.

IV. Third-Party and Second Third-Party Complaints

In Motion Sequence No. 005, defendants Shawmut and Apple move for summary judgment in their favor on their contractual and common law indemnification claims as against third-party defendant Rockmor. In Motion Sequence No. 004, Rockmor moves for summary judgment seeking dismissal of Shawmut and Apple's third-party complaint as against it. In Motion Sequence No. 003, Cord moves for summary judgment dismissing Rockmor's second third-party complaint as against it.

As the main action has been dismissed against defendants Shawmut and Apple, the third-party complaint is dismissed as moot. *See Cardozo v. Mayflower Ctr., Inc.*, 16 A.D.3d 536 (2d Dep't 2005). Defendants' third-party causes of action for common law and contractual indemnification against Rockmor have been rendered academic. *See Hoover v. Int'l Bus. Machs. Corp.*, 35 A.D.3d 371, 372 (2d Dep't 2006). Rockmor's second third-party complaint is also dismissed as moot. *See id.*

Accordingly, it is hereby

ORDERED that second third-party defendant Cord Contracting Co., Inc.'s motion for summary judgment dismissing the second third-party complaint of Rockmor Electric Enterprises and all cross-claims as against it (Mot. Seq. No. 003) is granted, and the complaint and all cross-claims against said defendant are hereby dismissed; and it is further,

ORDERED that the motion for summary judgment by third-party defendant Rockmor Electric Enterprises dismissing plaintiffs' complaint and dismissing the third-party complaint of defendants/third-party plaintiffs Shawmut Design & Construction and Apple, Inc. as against it

(Mot. Seq. No. 004) is granted, and the complaint and third-party complaint against said defendant are dismissed; and it is further,

ORDERED that those branches of the motion for summary judgment by defendants/third-party plaintiffs Shawmut Design & Construction and Apple, Inc. dismissing plaintiffs' Labor Law Sections 240(1), 241(6), and 200 claims and plaintiffs' common-law negligence claim (Mot. Seq. No. 005) is granted, and the complaint against said defendants is dismissed; and it is further,

ORDERED that those branches of the motion for summary judgment by defendants/third-party plaintiffs Shawmut Design & Construction and Apple, Inc. seeking summary judgment on their contractual and common law indemnification claims as against third-party defendant Rockmor Electric Enterprises (Mot. Seq. No. 005) is denied; and it is further,

ORDERED that plaintiffs' motion for partial summary judgment on the issue of liability under Labor Law Sections 240(1) and 241(6) against defendants Shawmut Design & Construction and Apple, Inc. (Mot. Seq. No. 006) is denied; and it is further,

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of this Court.

Dated: April 24, 2018

Hon. James E. d'Auguste, J.S.C.