SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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DENNIE LUCIANO and JESSICA LUCIANO, Index No.: 154273/2015

Plaintiffs,

-against-

ONE CITY BLOCK LLC,

Defendant.

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Cohen, J.:

Motion sequence numbers 001 and 002 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by a union steamfitter on April 21, 2015, when, while installing pipes in the ceiling of the "Google Building" located at 111 Eighth Avenue, New York, New York (the Premises), the elevated scissor lift that he was working on was struck by a falling pipe and toppled over.

In motion sequence number 001, plaintiffs Dennie Luciano (plaintiff) and Jessica Luciano move, pursuant to CPLR 3212, for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim against defendant One City Block LLC (One City).

One City cross-moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint against it in its entirety. In the complaint, plaintiffs assert claims sounding in common-law negligence and Labor Law §§ 240 (1), 241 (6) and 200.

In motion sequence number 002, One City moves, pursuant to CPLR 3126, for dismissal of the complaint in its entirety on the ground that plaintiffs allegedly failed to provide certain discovery, i.e., an audio recording and transcript; or alternatively, precluding plaintiffs from

utilizing said audio recording and transcript at trial.

BACKGROUND

On the day of the accident, One City owned the Premises where the accident occurred. Through its building management company, non-party Taconic Management Company (Taconic), One City hired non-party Infinity Mechanic (Infinity) to perform certain pipework at the Premises. Plaintiff was employed as a steamfitter by Infinity.

That day, as part of a construction project to install water risers (the Project), plaintiff was running air conditioning lines along the ninth floor ceiling from one side of the Premises to the other. The air conditioning lines consisted of 21-foot black steel pipes that would be paired by welding on the ground, and then lifted toward the ceiling as 42-foot sections. Once each 42-foot section of pipe was raised to its correct height, it was to be permanently hung from the ceiling by four hangers, which were to be connected to the pipe via four corresponding anchors mounted to the ceiling. Eventually, all of the sections of pipe were to be welded together in place to form one continuous run of pipe hanging approximately two feet below the ceiling.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was working for Infinity as a steamfitter. Plaintiff explained that his Infinity foreman, Michael Warren, gave him his daily instructions and directed his work. Plaintiff noted that all of the equipment that he needed to perform his work on the Project was already at the work site when he began his work day. When plaintiff was asked at his deposition if "there [was] ever any equipment that [he] wanted to use at the jobsite that they just didn't have available to [him]," plaintiff replied, "No" (plaintiff's tr at 117). Plaintiff testified that he and his co-workers were provided with chain blocks for the

purpose of safely raising and lowering the pipes, as well as scissor lifts, which allowed them to position themselves near the various anchor points. Plaintiff testified that he was aware that scissor lifts were to be used to lift "person[s]," and that the chain blocks were to be used to lift the pipes (*id.* at 73). Plaintiff maintained that he had used the lift that was involved in the accident in the days before the accident, and that he had never had any mechanical problems with said lift.

Plaintiff testified that all of the anchors were already in place and ready to receive the pipes when he arrived at the site, noting that he had not personally installed the "Drop-In Shields" that held the anchors in the ceiling (*id.* at 99). In addition, the section of pipe that ultimately fell on him had been previously raised to the correct height for installation by the use of chain blocks/lifts. Accordingly, plaintiff then used hangers, threaded rods and nuts to begin attaching the subject pipe to the previously installed anchors. After all four hangers for the subject section of pipe were attached to their corresponding anchors with threaded rods, one chain block was removed, while the other remained in place, in accordance with proper procedure.

Plaintiff testified that as he was in his scissor lift and moving parallel to the end of the pipe and where Warren was waiting, he observed the pipe suddenly and inexplicably drop down from the ceiling and head "towards [his] lift" (*id.* at 107). The first thing he heard was "[a] loud crack" as "the pipe was coming towards [him]" (*id.*). When the pipe struck plaintiff's lift, the lift toppled over. Plaintiff remained in the basket of the scissor lift until it landed on the ground.

Plaintiff maintained that prior to the accident, Warren never told him "to wait or stay in place for any period of time" (*id.* at 93). Later, Warren told plaintiff that "the [chain] blocks

[had] broken," and that the "Drop-In Shields [had] pulled out from the ceiling" (*id.* at 115).

Deposition Testimony of Brian Sensi (Project Manager for Benchmark Builders)

Brain Sensi testified that he was the project manager for Benchmark Builders, an entity also working at the Premises at the time of the accident. He asserted that shortly after the accident, one of his supervisors told him that plaintiff was injured as he "was improperly trying to lift a pipe with his man lift," and that said action overloaded one of the anchor points, causing it to "come loose from the slab, and overload[] the man lift and knock[] the man lift over" (Sensi tr at 24).

Deposition Testimony and Affidavit of Michael Warren (Infinity Foreman)

In his deposition and affidavit, Warren testified that he was Infinity's foreman on the day of the accident. He asserted that neither One City, nor its building manager, Taconic, ever controlled the means and methods of any of the work performed by Infinity's workers. To that effect, said workers got their instructions solely from Warren.

Warren asserted that the lift at issue in this case was a "new" scissor lift (Warren tr at 17). He explained that the pipe installation work required raising the pipes to the ceiling with chain lifts/blocks and then attaching them to the ceiling with single rod hangers. Thereafter, the chain blocks were removed. He maintained that plaintiff was the worker responsible for drilling the holes and inserting the anchors in the area of the ceiling where the subject pipe fell.

Warren further explained that at the time of the accident, his men "were raising the pipe involved in [plaintiff's] accident . . . [and] bringing that pipe up so that one open end of that pipe [could] be fairly close to the open end of one of the pipes that was already up" (*id.* at 19-20). The men intended to get the pipe "to be within an eighth of an inch of the other pipe," so that it

could be matched up to a welded joint (*id.* at 20). Once the section of pipe at issue was newly raised, the men realized that it was necessary to move it closer to the previously mounted pipes. Accordingly, Warren lowered his scissor lift, so that he could retrieve a second chain block. He intended to reattach it to the pipe, so that it could be moved toward the other pipe safely.

Warren maintained that while he was procuring the second chain block, he then heard a beeping noise, which he assumed came from the lift, followed by a loud clanking noise. He believed that the "ding" that he heard was plaintiff's "manlift hit[ting] the pipe" (*id.* at 25). When he then looked in the direction of the sound, he observed the pipe falling and striking plaintiff's lift, causing it to tip over. He also observed that "the chain block that was holding the end of the pipe [had] pulled out of the ceiling" (*id.* at 70). In addition, the anchors supporting the pipe had also "rip[ped] out of the ceiling" (*id.* at 72).

Warren testified that he did not actually see the pipe come into contact with plaintiff's lift. He also testified that he "figured [the other workers] were going to wait" for him to get the chain block before doing anything, as "[t]hat was the general practice," (*id.* at 23). When asked if he ever told plaintiff "immediately before the accident not to move his lift," Warren replied, "No" (*id.* at 69). He also admitted that when he first heard the beeping noise, he did not yell to plaintiff "to stop what he was doing" because there was "[n]o time" (*id.* at 69-70).

Warren testified that a "pull test" was later done on the anchors, at which time it was determined that the "shields [for the anchors] weren't driven in far enough" by plaintiff when he installed them (*id.* at 30).

Affidavit of Charles Temple (Safety Expert)

In is affidavit, Charles Temple, a safety expert, maintained that the specific anchors that

were supplied for hanging the pipes on the Project were the appropriate ones for the task at issue, and that each of them was rated to hold thousands of pounds more than the weight of the pipes being installed. He also maintained that "the tools and materials supplied by Infinity Mechanical to be used when installing the steel pipes were appropriate for the task" (Temple aff). In addition, "[b]ased on the post-incident testing, [plaintiff] had installed the anchors improperly such that their load bearing capacity was significantly diminished" (*id.*). He also asserted that plaintiff's "attempt to move the . . . pipe section by contacting the pipe . . . was an unsafe and improper action" (*id.*). Further, no defect in the lift caused or contributed to the pipe falling or the lift tipping over.

DISCUSSION

"'The 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'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

The Common-Law Negligence and Labor Law §§ 200 and 241 (6) Claims

One City cross-moves for dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against it. As plaintiffs do not oppose those parts of One City's motion which seeks to dismiss these claims, these unopposed claims are deemed abandoned (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012]; *Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]).

Thus, One City is entitled to dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against it.

The Labor Law § 240 (1) Claim

Plaintiffs move for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim against One City. One City cross-moves for dismissal of said claim against it. Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 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 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec.*

Co., 81 NY2d 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 NY2d 259, 267 [2001]; *Hill v Stahl*, 49 AD3d 438, 442 [1st Dept 2008]; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 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 NY3d 280, 287 [2003]; *Felker v Corning Inc.*, 90 NY2d 219, 224-225 [1997]; *Torres v Monroe Coll.*, 12 AD3d 261, 262 [1st Dept 2004]).

Initially, plaintiffs may recover damages for a violation of Labor Law § 240 (1) under a falling objects theory, because the object that fell on the ladder, i.e. the pipe, which was in the process of being installed and that fell on plaintiff, "was 'a load that required securing for the purposes of the undertaking at the time it fell [citation omitted]'" (*Cammon v City of New York*, 21 AD3d 196, 200 [1st Dept 2005]; *Gabrus v New York City Hous. Auth.*, 105 AD3d 699, 699 [2d Dept 2013] [the plaintiff was entitled to summary judgment in his favor on his Labor Law § 240 (1) claim where he demonstrated that the load of material that fell on him while being hoisted to the top of the building was inadequately secured]; *Dedndreaj v ABC Carpet & Home*, 93 AD3d 487, 488 [1st Dept 2012] ["[p]laintiff established his prima facie entitlement to summary judgment by showing that defendants' failure to provide an adequate safety device

proximately caused a pipe that was in the process of being hoisted to fall and strike him"]).

In addition, as there were no protective devices in place, such as hangers, nets or ropes, to secure the pipe from falling during its installation, Labor Law § 240 (1) is applicable, because plaintiff's injuries were "'the direct consequence of [defendants'] failure to provide adequate protection against [that] risk'" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1,10 [2011] [citation omitted]).

Further, as "[plaintiff's] scissor[] lift did not prevent [him and the lift] from falling" after being struck by the pipe, "[One City is also] liable under section 240 (1)" (*Kash v McCann Real Equities Devs.*, 279 AD2d 432, 432 [1st Dept 2001]; *Dean v City of Utica*, 75 AD3d 1130, 1131 [4th Dept 2010] [Section 240 (1) applied where "the scissor lift tipped over upon being struck by the garage door"]). "Proof of a collapse of a safety device constitutes a prima facie showing that [Labor Law § 240 (1)] was violated and that the violation was a proximate cause of [the accident]" (*Dos Santos v State of New York*, 300 AD2d 434, 434 [2d Dept 2002] [Labor Law § 240 (1) liability where "[t]he decedent was standing on top of an elevated lift truck to paint the underside of an overpass when the truck toppled and threw him to the pavement"]).

"Whether the device provided proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his materials" (*Nelson v Ciba-Geigy*, 268 AD2d 570, 572 [2d Dept 2000]; *Peralta v American Tel. and Tel. Co.*, 29 AD3d 493, 494 [1st Dept 2006] [unrefuted evidence that the unsecured ladder moved, combined with evidence that no other safety devices were provided, warranted a finding that the owners were liable under Labor Law § 240 (1)]).

Here, not only did the subject lift fail to prevent plaintiff from falling, given the nature of

the work that he was performing at the time of the accident, wherein it was foreseeable that a pipe might break loose from a newly installed anchor system and fall prematurely, a lift was not the proper safety device for the job at hand. "'[T]he availability of a particular safety device will not shield an owner or general contractor from absolute liability if the device alone is not sufficient to provide safety without the use of additional precautionary devices or measures'" (*Nimirovski v Vornado Realty Trust Co.*, 29 AD3d 762, 762 [2d Dept 2006] [scaffold alone, as a safety device, was inadequate to protect the plaintiff, "where it was foreseeable that pieces of metal being dropped to the floor could strike the scaffold and cause it to shake"], quoting *Conway v New York State Teachers' Retirement Sys.*, 141 AD2d 957, 958-959 [3d Dept 1988]; *Dasilva v A.J. Contr. Co.*, 262 AD2d 214, 214 [1st Dept 1999] [where the plaintiff "was injured when the unsecured A-frame ladder he was standing on was struck by a section of pipe he had cut, causing him to fall," the Court found that "the absence of adequate safety devices was a substantial and, given the nature of the work being performed, foreseeable cause of plaintiff's fall and injury"]).

As such, additional safety devices to prevent plaintiff from falling were required (*see Ortega v City of New York*, 95 AD3d 125, 131 [1st Dept 2012]; *Bush v Goodyear Tire & Rubber Co.*, 9 AD3d 252, 253 [1st Dept 2004]). For example, a tie off point for the lift and a safety harness or horizontal safety line; or other means of vertical elevation, like a device with rails, such as a Baker scaffold, would have been more suitable for the job in order to prevent plaintiff from falling (*see Ortega v City of New York*, 95 AD3d 125, 131 [1st Dept 2012] [where the plaintiff was working on an elevated work platform that "was taller than it was wide and rested upon wooden planks atop an uneven, gravel surface," the Court considered that "[i]t was

foreseeable both that the plaintiff could fall off the elevated work platform and that the . . . rack could topple over"]; *Nimirovski*, 29 AD3d at 762-763 [as it was foreseeable that pieces of metal being dropped to the floor could strike the scaffold and cause it to shake, additional safety devices were required to satisfy Labor Law § 240 (1)]).

In opposition to plaintiffs' motion, One City argues that plaintiffs are not entitled to judgment in their favor, because they have not shown that the lift was defective. However, plaintiffs are not required to demonstrate that a safety device was defective, as "[i]t is sufficient for purposes of liability under section 240 (1) that adequate safety devices to . . . protect plaintiff from falling were absent" (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 291 [1st Dept 2002]; *McCarthy v Turner Constr., Inc.*, 52 AD3d 333, 333-334 [1st Dept 2008] [where plaintiff sustained injuries "when the unsecured ladder he was standing on to drill holes in a ceiling tipped over," the plaintiff was not required to demonstrate, as part of his prima facie showing, that the ladder he was working on at the time of the accident was defective]).

One City also argues that it is entitled to dismissal of the Labor Law § 240 (1) claim against it, because plaintiff's own conduct constituted the sole proximate cause of his accident. "When the defendant presents some evidence that the device furnished was adequate and properly placed and that the conduct of the plaintiff may be the sole proximate cause of his or her injuries, partial summary judgment on the issue of liability will be denied because factual issues exist" (*Ball v Cascade Tissue Group-N.Y., Inc.*, 36 AD3d 1187, 1188 [3d Dept 2007]; *Robinson v East Med. Ctr., LP*, 6 NY3d 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)]).

Here, plaintiff testified that as he was moving the lift from one end of the pipe to the

other, the pipe suddenly fell and struck the lift, causing it to topple over. One City argues that plaintiff ignored Warren's instruction to wait for him to return with chain blocks, taking it upon himself to attempt to improperly lift the pipe into place via the lift. However, One City does not offer any evidence, other than mere speculation, to refute plaintiff's showing or to raise a bona fide issue as to how the accident occurred (*see Pineda v Kechek Realty Corp.*, 285 AD2d 496, 497 [2d Dept 2001]; *Hauff v CLXXXII Via Magna Corp.*, 118 AD2d 485, 486 [1st Dept 1986]). To that effect, Warren testified that prior to the accident, he did not, in fact, instruct plaintiff not to move his lift. In addition, while Warren testified that he had heard the sound of the pipe and the lift hitting each other, he was not an eye-witness to the accident. As such, it was not possible for him to accurately speak to whether the lift hit the pipe first, or, rather, the pipe hit the lift first.

In addition, while One City asserts that plaintiff was the person responsible for not installing the subject shield and anchor properly, plaintiff testified that he did not install the devices that failed, and therefore, caused the accident. In any event, plaintiff cannot be held solely responsible for the accident, because, first and foremost, the accident was caused due to the fact that the pipe was not first properly secured during the installation process in place, so as to prevent it from falling. In addition, One City failed to provide sufficient safety devices to keep plaintiff from falling from the lift while he performed the subject work (*Baugh v New York City Sch. Constr. Auth.*, 140 AD3d 1104, 1106 [2d Dept 2016] [where "the plaintiff was provided with only an unsecured ladder and no safety devices, the plaintiff [could] not be held solely at fault for his injuries"]; *Seferovic v Atlantic Real Estate Holdings, LLC*, 127 AD3d 1058, 1059 [2d Dept 2015]).

Moreover, even assuming plaintiff hit the pipe with his lift, or that he improperly installed

the subject anchor and shield, such actions, at most, go 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 (*Bland v Manocherian*, 66 NY2d 452, 460 [1985]; *Velasco v Green-Wood Cemetery*, 8 AD3d 88, 89 [1st Dept 2004] ["Given an unsecured ladder and no other safety devices, plaintiff cannot be held solely to blame for his injuries"]). "[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 AD3d 251, 253 [1st Dept 2008], quoting *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d at 290).

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 [internal quotation marks and citations omitted]" (*Tavarez v Weissman*, 297 AD2d 245, 247 [1st Dept 2002]; *see Ranieri v Holt Constr. Corp.*, 33 AD3d 425, 425 [1st Dept 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]).

One City also has not demonstrated that this is a case of a recalcitrant worker, wherein a plaintiff was specifically instructed to use a safety device and refused to do so (*see Durmiaki v International Bus. Machs. Corp.*, 85 AD3d 960, 961 [2d Dept 2011]; *Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288 [1st Dept 2008]). "Nor, even if plaintiff had disobeyed

an instruction to [wait for Warren to return with the chain blocks], would [One City's] liability for failing to provide adequate safety devices be reduced" (*McCarthy*, 5 AD3d at 334). "An instruction to avoid an unsafe practice is not a sufficient substitute for providing a worker with a safety device to allow him to complete his work safely" (*Vasquez v Cohen Bros. Realty Corp.*, 105 AD3d 595, 598 [1st Dept 2013]; *see Stolt v General Foods Corp.*, 81 NY2d 918, 920 [1993] [noting that "an instruction by the employer or owner to avoid using unsafe equipment or engaging in unsafe practices is not itself a 'safety device;'"Court found that recalcitrant worker defense did not apply where the plaintiff disobeyed his supervisor's instructions not to use a broken ladder unless someone was available to secure it for him]).

Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards such as falling from a height, and must be liberally construed to accomplish the purpose for which it was framed" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006] [internal citation omitted]). "As has been often stated, the purpose of Labor Law § 240 (1) is to protect workers by placing responsibility for safety practices at construction sites on owners and general contractors, 'those best suited to bear that responsibility' instead of on the workers, who are not in a position to protect themselves" (*John*, 281 AD2d at 117, quoting *Ross*, 81 NY2d at 500).

Thus, plaintiffs are entitled to partial summary judgment as to liability on the Labor Law § 240 (1) claim against One City, and One City is not entitled to dismissal of said claim against it.

Finally, One City moves for dismissal of the complaint in its entirety on the ground that plaintiffs allegedly willfully withheld an audio recording during discovery that plaintiffs now

identify as a post-accident conversation between plaintiff and Warren. In this conversation, Warren allegedly admitted that the anchors that were supporting the subject pipe were improperly installed. Despite One City's discovery demand for any written or recorded statements of any of the parties on May 17, 2016, One City claims that it did not learn of said audio recording until plaintiff submitted it in opposition to One City's cross motion to dismiss the complaint against it.

However, in light of the fact that the court was able to determine the issue of Labor Law § 240 (1) liability without consideration of the evidence allegedly contained in the subject audio recording, and in light of the fact that plaintiff has not opposed the dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against One City, the court denies One City's motion in the interests of justice.

The court has considered One City's additional arguments on this issue and finds them to be unavailing.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiffs Dennie Luciano and Jessica Luciano's motion (motion sequence number 001), pursuant to CPLR 3212, for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim against defendant One City Block LLC (One City) is granted; and it is further

ORDERED that the parts of One City's cross motion, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims against it are granted, and these claims are dismissed as against One City, and the cross motion is otherwise denied; and it is further

ORDERED that One City's motion (motion sequence number 002), pursuant to CPLR 3126, for dismissal of the complaint in its entirety is denied; and it is further

Dated: March 28, 2019

ENTER:

David B. Cohen, J.S.C.

HON. DAVID B. COHEN
J.S.C.