

Lazaro v BOP MW Residential Mkt., LLC
2019 NY Slip Op 31148(U)
April 17, 2019
Supreme Court, New York County
Docket Number: 162602/2015
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 47EFM

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VICTOR LAZARO,

Plaintiff,

INDEX NO. 162602/2015

- v -

MOTION DATE 01/10/2019,
01/10/2019

BOP MW RESIDENTIAL MARKET, LLC, BROOKFIELD
PROPERTIES HOLDINGS INC., HUNTER ROBERTS
CONSTRUCTION GROUP, L.L.C., BOP MW RESIDENTIAL
AFFORDABLE LLC

MOTION SEQ. NO. 001 002

Defendant.

DECISION AND ORDER

-----X

HON. PAUL A. GOETZ:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 46, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 were read on this motion to/for PARTIAL SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 52, 70, 71, 72 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

This is an action to recover damages for personal injuries sustained by a carpenter on September 11, 2015 when, while working at a new building under construction at 435 West 31st Street, New York, New York (the Premises); he was allegedly struck by a metal crate.

In motion sequence number 001, plaintiff moves, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law §§ 240 (1) and 241 (6) causes of action against defendants BOP MW Residential Market, LLC, Brookfield Properties Holdings Inc. (Brookfield), Hunter Roberts Construction Group, L.L.C. (Hunter), and BOP MW Residential Affordable LLC (collectively, defendants). In motion sequence number 002, defendants move, pursuant to CPLR 3212, for summary judgment dismissing the complaint against them in its entirety. Motion sequence numbers 001 and 002 are consolidated for disposition.

BACKGROUND

On the day of the accident, BOP MW Residential Market, LLC and BOP MW Residential Affordable LLC co-owned the Premises where the accident occurred. Prior to the date of the accident, BOP MW Residential Market, LLC entered into a construction management agreement with Hunter for the construction of a new building (the Project). Hunter retained plaintiff's employer, non-party Navillus Contracting Inc. (Navillus), to erect the concrete superstructure for the Project.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was a journeyman carpenter employed by Navillus. On that day, he was assigned to adjust jacks that had been erected on the seventh floor of the Premises. Plaintiff described the jacks as expandable metal poles ranging in height from approximately 6 feet to 14 feet. Each jack was spaced 4 or 6 feet apart and had either a latch or pin that could be manipulated manually to adjust its height. Plaintiff explained that in preparation for the concrete pour to create the eighth floor on the deck above, laborers employed by Navillus had installed hundreds of jacks on the seventh floor to serve as vertical supports. Plaintiff further explained that he was tasked with manually adjusting the height of each jack, so that the jacks were level with a mark designated by the engineers.

Plaintiff testified that as he was working alone in the middle of the seventh floor "shooting the legs" with a laser level (affirmation of plaintiff's counsel, exhibit 3, plaintiff tr at 61), he was struck by the "leg" of a metal crate that had been stacked less than two feet away from him (*id.* at 81). Plaintiff described the crates as upturned tables that were used to store and transport the jacks between floors. Each crate weighed between 40 and 50 pounds. Rather than nesting one inside the other, the two crates were stacked one atop the other and placed on top of wood debris, which

made them “unsteady” (*id.* at 251). Plaintiff maintained that he did not know who had stacked the crates. He expressed that he “never saw” the top crate tumbling or falling down prior to the accident (*id.* at 79), and that he never came into contact with either crate prior to being struck on the left clavicle by the top crate (*id.* at 81). There were no witnesses to the accident. Plaintiff also asserted that he received all his instruction from a Navillus foreman, Tony English (English).

Plaintiff’s Signed Statement

According to plaintiff’s unsworn but signed and witnessed statement dated September 24, 2015, the area in which he was working was “dry and free of debris and defects” (affirmation of defendants’ counsel, exhibit I at 1 [capitalization removed]). The statement sets forth the events leading up to the accident, in pertinent part, as follows:

“I was in the process of jacking-up the beam by turning the handle on the jack away from me. This was lifting up the metal leg which [was] about 2 feet 10 inches long and made of metal. They weight [sic] 40-50 lbs. As I was lifting one leg, another leg which was to my left swung around and struck me to [sic] my left shoulder. I was looking the other way and did not see it coming. This leg was soldered to the same table I was jacking up. The metal table is about 3 feet x 3 feet and the legs are vertical, soldered on them. They look similar to a table being flipped upside down. I do not know what caused the leg to spin”

(*id.* at 1-2 [capitalization removed]). In addition, the statement read, “the leg was about 5 feet off the ground, shoulder height, when it struck me” (*id.* at 2).

Deposition Testimony of John Pesci (Pesci) (Hunter Robert’s Superintendent)

Pesci testified that he was the junior of Hunter’s two superintendents on the Project on the day of the accident. Brookfield had hired Hunter to oversee the construction. Although he met weekly with Brookfield staff, Brookfield did not maintain any onsite personnel on the Project. Pesci explained that his duties involved making sure that “the owner is getting what he is paying for, make sure they are following the schedule” (affirmation of plaintiff’s counsel, exhibit 6, Pesci

tr at 10-11). Pesci further explained that he did not inspect the work, stating that the “[m]eans and methods belong to the subs, how they building [sic] it, how they install it. We rely on their expertise in building the building. We don’t tell them how to build it” (*id.* at 11).

To complete the concrete superstructure, Pesci testified that Navillus used crates to transport screw jacks between floors at the Premises. The crates were loaded with material and hoisted by crane to the appropriate floor where they were then unloaded, separated and restacked together. Pesci believed that DOKA manufactured the support system Navillus used on the Project, but he was unsure if DOKA had manufactured the crates, as well. Pesci asserted that he had never seen an empty crate stacked one on top of the other on any floor where Navillus had been working prior to the date of plaintiff’s accident. Pesci also testified that Hunter employed safety inspectors at the site who had the authority to stop any unsafe work.

Affidavit of Anthony “Tony” English (Navillus Foreman)

In his affidavit, English stated that he was the Navillus foreman on the day of the accident, which occurred on the seventh floor of the southwest residential tower under construction. English averred that several hundred jacks, which were used as vertical supports to support the deck above, had been installed on the seventh floor. He explained that the jacks used to support the eighth floor deck from below would be broken down by Navillus’ laborers once the concrete had hardened. At that time, the laborers would then place the jacks into metal crates, stack the full crates two high, and bind them together for rigging and hoisting by crane up to the next floor. English recalled that Aluma manufactured the crates used at the Premises. He described the crates, when empty, as resembling “table[s] that had been turned upside down. They had four protruding legs. When stacked, the bottom corners of the top crate would sit in the top of the legs of the bottom crate” (affirmation of defendants’ counsel, exhibit C, English aff, ¶ 5). English further

added, “[t]he crates, when stacked could not be secured together because if they were, the materials in the bottom crate could not be accessed (*id.*).

English averred that he had given plaintiff “the job of using a stick and a laser to raise previously erected jacks to the height required by the engineering plans” before the concrete pour on the eighth floor deck could take place (*id.*, ¶ 2). Although English did not personally witness the accident, he spoke to plaintiff once he learned of it. Plaintiff told him that “one of the legs on the top crate that had been used to transport the jacks had struck him in his left shoulder area as he was jacking up a jack” (*id.*, ¶ 6). At that time, English observed that the two crates were stacked one atop the other, that there were jacks in the bottom crate, that the crates were not resting on any debris, and that the stacked crates reached the bottom of plaintiff’s chest. English also averred he had not been told that a crate had fallen onto plaintiff, or that plaintiff had been knocked to the ground.

Affidavit of Plaintiff’s Expert Jeremiah Midkiff (Midkiff)

Midkiff, a certified site safety professional familiar with New York safety standards and practices, opined that the empty jack crates were not “properly secured” in violation of unnamed safety standards (affirmation of plaintiff’s counsel, exhibit F [Midkiff aff] at 1). Because they were sitting atop construction debris, the empty crates were “precariously balanced and unstable” with the top crate subject to lateral movement (*id.* at 2). The instructions from DOKA partially read, “[e]mpty pallets must not be stacked on top of one another” (*id.* [italics removed]), and here, two empty crates had been stacked one atop the other. Midkiff concluded that the crates “must be lashed or otherwise secured to one another so that they are stable” (*id.* at 2). Midkiff further concluded that the top crate should not have been “placed on the edges of the platform so as to endanger the plaintiff who was below” (*id.*).

Affidavit of Defendants' Expert John P. Coniglio (Coniglio)

Coniglio averred that he is a safety professional with over 40 years of experience in the construction industry. Coniglio stated that there was no normal or customary industry standard to lash together or bind the two crates when in use on an active construction floor (affirmation of defendants' counsel, exhibit H, Coniglio aff, ¶ 20). Binding the crates together would have been contrary to Navillus' work of setting up and removing the jacks, which was "precisely" the work taking place at the time of the accident (*id.*, ¶ 21). Based upon English's affidavit, Coniglio averred that there is no reason to conclude there was debris in the area where plaintiff had been working. Coniglio also stated that plaintiff's reliance on DOKA's instructions prohibiting the stacking of empty pallets is misplaced because the provision plaintiff cites refers to storage outdoors, whereas the accident occurred inside a building under construction. Coniglio further averred that DOKA permitted indoor storage of pallets stacked six high. He concluded that there was no Labor Law § 240 violation because "there were no industry safety standards or protocols which required the subject crates to be lashed together for the purpose of the work that Plaintiff and others were engaged in at the Building" (*id.*, ¶ 30).

DISCUSSION

It is well-established that "[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" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016]). 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" (*Sumitomo Mitsui Banking Corp. v Credit Suisse*, 89 AD3d 561, 563 [1st Dep't 2011], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable issue of fact, the

motion for summary judgment must be denied (*O'Brien v. Port Auth. of N.Y. and N.J.*, 29 NY3d 27, 37 [2017], citing *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

The Labor Law § 240 (1) Claim

Plaintiff moves for partial summary judgment on liability on the Labor Law § 240 (1) claim, and defendants move for summary judgment dismissing the same claim. Labor Law § 240 (1) provides in pertinent 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.”

It is well settled that “Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder 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*” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993] [emphasis in original]; *see also Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [stating that “the purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction work site elevation differentials”]). As such, the statute applies to incidents involving a “falling worker” or a “falling object” [*Harris v City of New York*, 83 AD3d 104, 108 [1st Dept 2011] [internal quotation marks omitted]].

The statute also “is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed” (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 521 [1985], *rearg denied* 65 NY2d 1054 [1985] [internal quotation marks and citation

omitted)). However, “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)” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). “[T]he single decisive question is whether [a] plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner*, 13 NY3d at 603). Therefore, in order to prevail on a Labor Law § 240 (1) claim, a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the injury (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]). Once a plaintiff establishes that a violation of the statute proximately caused his or her injury, then an owner or contractor is subject to “absolute liability” (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011], citing *Misseritti v Mark IV Constr. Co.*, 86 NY2d 487, 490 [1995], *rearg denied* 87 NY2d 969 [1996]).

As discussed earlier, under the first version described at his deposition, plaintiff testified that he was injured when one of two stacked metal crates sitting atop construction debris fell on him. Under this version of events, Labor Law § 240 (1) is implicated because the crate was required to be secured “for the purposes of the undertaking” (*Matthews v 400 Fifth Realty LLC*, 111 AD3d 405, 406 [1st Dept 2013] [internal quotation marks and citation omitted] [concluding that the grate that fell on plaintiff was “part of the work of the construction project in which plaintiff was engaged”])).

However, plaintiff’s signed statement indicates that he was injured when a leg on the table he was “jacking up” swung around and struck him.¹ Under this alternative version, Labor Law §

¹ Ordinarily, an “unsworn statement constitutes inadmissible hearsay,” but the statement is not the only admissible evidence offered in opposition (*see Edwards v Rosario*, 166 AD3d 453, 454 [1st Dept 2018]).
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240 (1) is not implicated because the lateral or horizontal movement of an object that strikes a plaintiff “is not attributable to the sort of elevation related risk that Labor Law § 240 (1) was meant to address” (*Toefer v Long Is. R.R.*, 4 NY3d 399, 408 [2005] [concluding that the plaintiff was not exposed to an elevation-related risk because “the object that struck him inexplicably flew at him either upwards or horizontally”]; *Tsatsakos v Citicorp*, 295 AD2d 500, 501 [2d Dept 2002] [dismissing the plaintiff’s Labor Law § 240 (1) claim because the suspended scaffold that swung and struck the plaintiff “swung laterally into the window”]).

Accordingly since a question of fact exists as to how the accident occurred, and whether Labor law § 240 (1) applies, neither plaintiff nor defendants are entitled to summary judgment on the Labor Law § 240 (1) claim. In any event, these two conflicting versions raise credibility issues that cannot be resolved on a motion for summary judgment (*see Encalada v McCarthy, Chachanover & Rosado, LLP*, 160 AD3d 475, 476 [1st Dept 2018]).

The Labor Law § 241(6) Claim

Plaintiff moves for partial summary judgment on liability on the Labor Law § 241 (6) claim, and defendants move for summary judgment dismissing the claim. Labor Law § 241 (6) reads, in relevant part, that:

“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, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.”

The statute imposes a duty upon owners, contractors and their agents “to ‘provide reasonable and adequate protection and safety’ for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]). “The duty to comply with the Commissioner’s safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable” (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). In addition, “[t]he [Industrial Code] provision relied upon by [a] plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles” (*id.*, citing *Ross*, 81 NY2d at 504-505). Therefore, in order to prevail on a Labor Law § 241 (6) claim, “a plaintiff must establish a violation of an implementing regulation which sets forth a specific standard of conduct” (*see Ortega v Everest Realty LLC*, 84 AD3d 542, 544 [1st Dept 2011]), and that the violation was a proximate cause of the injury (*see Egan v Monadnock Constr., Inc.*, 43 AD3d 692, 694 [1st Dept 2007], *lv denied* 10 NY3d 706 [2008]). The injury also must have occurred “in an area in which construction, excavation or demolition work is being performed” (*Rhodes-Evans v 111 Chelsea LLC*, 44 AD3d 430, 433 [1st Dept 2007] [internal quotation marks omitted]).

Although plaintiff alleges violations of Industrial Code sections 23-1.7 and 23-2.1 in the verified bill of particulars, he addressed only section 23-2.1 (a) in his papers. Moreover, plaintiff failed to address the other Industrial Code sections in his opposition. Thus, plaintiff has abandoned his reliance on these other Industrial Code provisions, including section 23-2.1 (b), as predicates (*see Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014]; *Rodriguez v Dormitory Auth. of the State of N.Y.*, 104 AD3d 529, 530-531 [1st Dept 2013]; *Cardenas v One State St., LLC*, 68 AD3d 436 [1st Dept 2009]).

Accordingly, plaintiff is not entitled to summary judgment on that part of the Labor Law § 241 (6) claim predicated on sections 23-1.7 and 23-2.1 (b), and defendants are entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated on these abandoned provisions.

Industrial Code 12 NYCRR § 23-2.1 (a)

Section 23-2.1 (a), which refers to the storage of material or equipment, reads:

“(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.”

Section 23-2.1 (a) is sufficiently specific to serve as a predicate for a Labor Law 241 (6) claim (*see Scannell v Mt. Sinai Med. Ctr.*, 256 AD2d 214, 214 [1st Dept 1998]). As applied herein, neither section 23-2.1 (a) (1) nor (a) (2) are applicable to the facts.

Here, although the crate that allegedly struck plaintiff was being stored for future use, the accident did not occur within a “passageway, walkway, stairway or other thoroughfare,” such that section 23-2.1 (a) (1) applies (*see Guallpa v Leon D. DeMatteis Constr. Corp.*, 121 AD3d 416, 419 [1st Dept 2014] [determining that section 23-2.1 (a) (1) was inapplicable where the “plaintiff’s injury occurred in an open work area, not in a passageway or a walkway”]; *Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 410 [1st Dept 2013] [same]; *Ghany v BC Tile Contrs., Inc.*, 95 AD3d 768, 769 [1st Dept 2012] [same]; *cf. Rodriguez v DRLD Dev., Corp.*, 109 AD3d 409, 410 [1st Dept 2013] [denying summary judgment where the plaintiff raised an “issue of fact as to whether the boards [that fell on him] were stored in a ‘safe and orderly manner’”]).

Accordingly, plaintiff is not entitled to summary judgment on that part of the Labor Law § 241 (6) claim predicated on section 23-2.1 (a) (1), and defendants are entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-2.1(a)(1).

With regard to section 23-2.1 (a) (2), it should be noted that it is not alleged that the crate fell because the floor beneath it buckled (*see Marrero*, 106 AD3d at 410 [finding a violation of section 23-2.1 (a) (2) where the plywood floor beneath the plaintiff, who was pushing an A-frame cart containing sheetrock and two 500-pound beams, collapsed]). Likewise, there is no evidence that the crates were placed precariously close to the edge of a floor, platform or scaffold, so as to fall on plaintiff (*see Desena v North Shore Hebrew Academy*, 119 AD3d 631, 635 [2d Dept 2014] [concluding that section 23-2.1 (a) (2) was inapplicable where the plaintiff was injured when a stone block fell off a pallet and struck his foot]).

Accordingly, plaintiff is not entitled to summary judgment on that part of the Labor Law § 241 (6) claim predicated on section 23-2.1 (a) (2), and defendants are entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated upon an alleged violation of section 23-2.1 (a) (2).

The Common-Law Negligence and Labor Law § 200 Claims

Defendants also move for summary judgment dismissing the common-law negligence and Labor Law § 200 claims against them. Labor Law § 200 (1) provides, in relevant part:

“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 statute codifies the common-law duty that an owner or general contractor provide construction workers with a safe work site (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Claims brought under this section “fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed” (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]). If the accident arises out of a dangerous premises condition, liability may be imposed if defendant created the condition or failed to remedy a condition of which it had actual or constructive notice (*see Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]). “Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury producing work” (*Cappabianca*, 99 AD3d at 144). Thus, even though a defendant may possess the authority to stop the construction work for safety reasons or exercise general supervisory control over the work site, such authority is insufficient to establish the degree of supervision and control necessary to impose liability (*see Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 407 [1st Dept 2018] [finding a defendants’ stop work authority insufficient to establish that the defendant actually “exercised any control over the manner and means of plaintiff’s work”]; *Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007] [concluding that overseeing job site activities and monitoring project milestones insufficient evidence of the requisite degree of supervision and control necessary to impose liability under common-law negligence or Labor Law § 200]).

As described above, under one version of the accident, plaintiff was struck by an empty metal crate that had been stacked on top of another crate with both crates resting on top of debris. Under an alternative version of the accident, plaintiff was struck by a leg he was jacking up.

Consequently, under either version of the accident, the condition arose from the means and method in which Navillus performed its work (*see Villanueva*, 162 AD3d at 406 [stating that “[w]here a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises”]), rather than a dangerous condition inherent in the property (*see Dalanna v City of New York*, 308 AD2d 400, 400 [1st Dept 2003]).

Moreover, defendants have established that they did not exercise supervisory control over the work that caused the accident, i.e. the placement of the debris and the crates on the floor and the manner by which plaintiff performed the work. Plaintiff and Pesci testified that the laborers employed by Navillus were responsible for moving, placing, loading and unloading the crates used to transport the screw jacks between floors on the Project. Plaintiff further testified that he received all his instructions from a Navillus foreman.

Accordingly, defendants are entitled to dismissal of the common-law negligence and Labor Law § 200 claims against them.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby


ORDERED that plaintiff Victor Lazaro’s motion (motion sequence number 001), pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law §§ 240 (1) and 241 (6) against defendants BOP MW Residential Market, LLC, Brookfield Properties Holdings Inc., Hunter Roberts Construction Group, L.L.C. and BOP MW Residential Affordable LLC. (collectively, defendants) is denied; and it is further

ORDERED that those parts of defendants’ motion (motion sequence number 002), pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor

Law §§ 200 and 241 (6) claims against them is granted, and these claims are dismissed as against said defendants, and the motion is otherwise denied; and it is further

Dated: 4/17/19

ENTER:



J.S.C.

Hon. Paul A. Goetz, JSC

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE