SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

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RAMON PALAGUACHI,

Plaintiff,

-against-

WFP TOWER B CO., LP.

Defendant.

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Index No. 157779/15
Motion Sequence 003/005

DECISION AND ORDER

SHERRY KLEIN HEITLER, J.S.C.

Motion Sequence 03 (MS 03) and 05 (MS 05) are consolidated for disposition.

In MS 03, Plaintiff Ramon Palaguachi (Plaintiff or Mr. Palaguachi) moves for summary judgment on his Labor Law 240(1) claim. In MS 05, defendant WFP Tower B Co. LP (Defendant or Tower B) moves for summary judgment dismissing the complaint in its entirety. Both motions are decided as more fully set forth below.

This action arises out of personal injuries Plaintiff allegedly sustained on December 24, 2014 while working at a demolition project located at 225 Liberty Street in Manhattan. The construction site was owned by Tower B. At the time of his accident Plaintiff worked as a laborer for Rite-Way Internal Removal (Rite-Way).[1] Plaintiff began working at the construction site approximately one month prior to his accident. Plaintiff and his colleagues were first assigned to interior demolition, specifically taking down walls on each floor. They then proceeded to remove the ceilings. This required Plaintiff and his colleagues to take down 25-foot sections of 4-inch diameter water pipe that was attached to the ceiling by hooks. To do this Plaintiff would climb up an A-frame ladder and cut the sections of pipe using a Sawzall. Thereafter Plaintiff cut the hooks, leaving the individual pipe sections to fall to the floor. Whenever Plaintiff and his colleagues

[1] Tower B filed a third-party action against Rite-Way which was resolved by a stipulation of discontinuance on or about June 6, 2017.

[1]

performed this work they were supposed to work in teams of two, with one laborer holding the ladder while the other cut the pipe. On the date of the accident Plaintiff was standing on the ladder cutting a length of pipe, but did not check to see if his partner, Francisco, was securing the ladder. In fact, Plaintiff conceded that his partner was not in the vicinity when he was injured. At some point a piece of falling pipe bounced off the ground and hit Plaintiff's ladder, causing him to fall to the ground. Plaintiff fractured and sustained other injuries to his right ankle.

Plaintiff was deposed on June 7, 2018.[2] In relevant part, he described his accident as follows (Deposition pp. 88-92, 97-98):

Q. While you were standing on the ladder, was Francisco holding the ladder?

A. Supposedly.

Q. Why do you say that?

A. Because when I fell, I think he was not there.

Q. We'll get to that. Were you using the Sawzall to cut through the iron water pipes when your accident happened?

A. Yes. . . .

Q. At the time that your accident happened, had you cut totally through either of the two pipes?

A. Of course. . . .

Q. How did the accident happen?

A. Okay. I put my ladder. I cut the pipe. I cut the hook. The pipes fell down. When the pipe fell, I realized I was down with the ladder. What happened is, when the pipe fell, the pipes jumped and pushed my ladder. . . .

Q. When you cut the hooks right before your accident happened, were you expecting that the pipes were going to fall?

A. If you cut the section – we go by sections. I cut the pipes, cut the hooks; that section goes down. I start another section. This is when the accident happened.

* * * *

Q. After you cut the pipe but before you cut the hooks, did you look to see if there was anyone standing in the area where the pipes were going to fall?

A. There was nobody, no.

Q. Did you look to see that there was nobody?

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[2] A copy of Plaintiff's deposition transcript is submitted as Defendant's exhibit D (Plaintiff's Deposition).

A. Yes. Yes. You always have to look in order to do that. Nobody was there.

Q. When you looked and you saw that there was nobody there, did you also look down to see if Francisco was holding the ladder?

A. Well he was supposedly [sic] to be there. I just looked forward to see.

Q. You did not look down to see if he was there?

A. No.

Q. You cut the hooks. Did you see the pipes fall?

A. It was, like, a thunder. You cut them, and they come down. When I realized, I was on the ground.

Mr. Luis Tenempaguay worked as the Rite-Way foreman at 225 Liberty Street in December of 2014. His affidavit is submitted in support of Defendant's motion.[3] According to Mr. Tenempaguay, it was important for laborers to make sure that their partner was holding onto the ladder when performing demolition work (Tenempaguay Affidavit, ¶ 3, 4):

> Like all Rite-Way employees on this job site, Mr. Palaguachi was given all of the necessary tools and equipment to complete this job safely. Like all Rite-Way employees on the job site, Mr. Palaguachi was told of the importance of working in pairs when doing demolition work on ladders.
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> Because the Rite-Way workers needed to move the ladders around to different areas on the floors where they were performing demolition work, they were given A-frame ladders and instructed to work in pairs. They were instructed to only climb the ladder while it was being held. They were also instructed to only do the demolition work standing on the ladder if it was being held.

Mr. Kevin Poltie was deposed on behalf of Tower B on November 5, 2018.[4] Mr. Poltie was the 225 Liberty Street property manager at the time of Plaintiff's accident, but he only first learned of the accident years later when he was instructed to appear for a deposition in this case. He does not recall what methods and means Rite-Way would have used to complete its demolition work except that the laborers would have used ladders and Sawzall's to cut the water pipes. Mr. Poltie testified that he had no personal knowledge of Plaintiff's accident.

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[3] Defendant's exhibit E (Tenempaguay Affidavit).

[4] A copy of his deposition transcript is submitted as exhibit C by Plaintiff in opposition to Defendant's motion. (Poltie Deposition). The court notes that Defendant does not rely upon Mr. Poltie's testimony in support of its motion or in opposition to Plaintiff's motion.

Based upon Plaintiff's own deposition testimony and Mr. Tenempaguay's affidavit, Defendant argues that Plaintiff was the sole proximate cause of his actions. Specifically, Defendant asserts that there is no evidence the ladder itself was defective, and the only reason Plaintiff fell was because he ignored instructions from his foreman to ascend the ladder and perform his duties only when it was being held by another laborer.

In opposition Plaintiff argues that a co-worker cannot be considered a "safety device" for purposes of the Labor Law, and as such, Plaintiff cannot be deemed the sole proximate cause of his actions.[5] Plaintiff also argues that there are issues of fact whether Tower B violated certain Industrial Code provisions in violation of Labor Law 241(6). Annexed to Plaintiff's papers is an affidavit from a purported expert, Certified Site Safety Manager Kathleen Hopkins.[6] Ms. Hopkins states that Plaintiff should have been provided with some kind of overhead protection to prevent him from being struck by falling objects. She also states that blocks, irons, ropes, and other devices would have properly secured the ladder, and that a pipe lift should have been used to lower the 25-foot long pipes to the ground in a controlled manner (Hopkins Affidavit, pp. 5-6).

In reply, Defendant submits an affidavit from Professional Engineer Robert O'Connor.[7] Mr. O'Connor avers that the use of overhead protection devices would have prevented the Plaintiff from cutting the pipes, that an A-frame stepladder is inherently self-securing and need not be bolstered by blocks or irons per industry standards, and that the use of a pipe lift would have unnecessarily placed other laborers in danger because they would have had to stand beneath the pipes.

In addition to Defendant's motion, Plaintiff separately moves for summary judgment under Labor Law 240(1). According to counsel, the mere fact that the ladder fell over after being struck

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[5] Plaintiff also argues that Defendant's motion is untimely. However, Plaintiff filed a note of issue before taking Mr. Poltie's deposition. As set forth above, his deposition was completed on November 5, 2018. Tower B promptly filed this motion just eleven days later.

[6] Ms. Hopkins affidavit is annexed to Plaintiff's opposition papers (Hopkins Affidavit).

[7] Mr. O'Connor's affidavit is annexed to Defendant's reply papers (O'Connor Affidavit).

by the pipe is enough to show that Defendant failed to provide Plaintiff with an adequate safety device. Defendant's opposition is that Plaintiff was the sole proximate cause of his injuries because he ignored instructions to wait for a partner before cutting the pipe.

DISCUSSION

"Summary judgment is a drastic remedy, to be granted only where the moving party has 'tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact' and then only if, upon the moving party's meeting of this burden, the non-moving party fails 'to establish the existence of material issues of fact which require a trial of the action.'" *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012) (quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]); *see also Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). "This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 (2014) (quoting *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]). "[R]ank speculation is not a substitute for the evidentiary proof in admissible form that is required to establish the existence of a triable question of material fact." *Castore v Tutto Bene Restaurant Inc.*, 77 AD3d 599, 599 (1st Dept 2010); *see also Kane v Estia Greek Rest., Inc.*, 4 AD3d 189, 190 (1st Dept 2004).

Labor Law 240(1)

Labor Law 240(1), commonly known as the scaffold law, creates a duty that is nondelegable, and owners, general contractors, and their agents who breach that duty may be held liable regardless of whether they actually exercised supervision or control over the injury-causing work. *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 (1993). Labor Law 240 provides:

> All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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.

The "purpose of this statute is to protect workers and to impose the responsibility for safety practices on those best suited to bear that responsibility . . . ." *Ross*, 81 NY2d at 500. Labor Law 240(1) is limited to specific gravity-related accidents, such as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured. *Id.* at 501.

To establish a claim under Labor Law 240(1), Plaintiff must show that the statute was violated and that the violation proximately caused his injury. *See Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 (2004). This means that Plaintiff cannot recover if he was the sole proximate cause of his injuries. "To raise a triable issue of fact as to whether a plaintiff was the sole proximate cause of an accident, the defendant must produce evidence that adequate safety devices were available, that the plaintiff knew that they were available and was expected to use them, and that the plaintiff unreasonably chose not to do so, causing the injury sustained." *Nacewicz v Roman Catholic Church of the Holy Cross*, 105 AD3d 402 (1st Dept 2013).

Defendant's sole proximate cause argument is without merit. Procedurally, Mr. Tenempaguay's assertions are hearsay in that his affidavit provides that Plaintiff was given certain instructions but does not identify the person or persons who gave such instructions. Also, the affidavit references Rite-Way procedures but the record does not contain a copy of same. *See Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 208 (affidavit that references unidentified business records is "inadmissible hearsay and lack[s] probative value"); *Vigay v Tishman Constr. Corp. of N.Y.*, 2014 NY Misc. LEXIS 4116, *15 (declining to consider affidavit concerning plaintiff's work instructions on the day of his accident that were not supported by any evidence); It is unclear why Mr. Tenempaguay, a foreman who directly supervised the Plaintiff and his colleagues, was not deposed, especially given that Mr. Poltie admitted having no knowledge of Plaintiff's accident.

In any event, a co-worker is not a "safety device" under the Labor Law, and Plaintiff's intentional or negligent failure to wait for his partner before ascending the ladder cannot therefore be deemed the equivalent of refusing to use an available safety device. *See Noor v City of New York*, 130 AD3d 536, 541 (1st Dept 2015) (quoting *McCarthy v Turner Constr., Inc.*, 52 AD3d 333, 334 [1st Dept 2008]) ("Plaintiff's failure to ask his coworkers to hold the ladder while he worked also did not constitute the sole proximate cause of the accident, since a coworker 'is not a safety device contemplated by the statute'"); *see also Kaminski v One*, 51 AD3d 473, 474 (1st Dept 2008); *Gutierrez v 610 Lexington Prop., LLC*, 2019 NY Misc. LEXIS 2909, *12 (Sup. Ct. NY Co. May 30, 2019, Freed, J.) (plaintiff's coworker not a safety device); *Hernandez v 2076-78 Creston Ave Owner LLC*, 2018 NY Misc. LEXIS 2565, *3 (Sup. Ct. Bronx Co. May 25, 2018, Suarez, J.) (Whether someone else was securing the ladder is also irrelevant. A co-worker is not a safety device contemplated by the statute"); *Kennedy v Pine Hill Coffee Serv.*, 4 Misc. 3d 351, 353 (Sup. Ct. Erie Co. May 7, 2004, Lane, J.) (plaintiff's "spotter" was not a safety device for Labor Law purposes). If anything, Plaintiff's failure to check if his partner was securing the ladder amounts to comparative negligence, which is not a defense to a Labor Law violation. *Hoyos v NY-1095 Ave. of the Ams., LLC*, 156 AD3d 491, 496 (1st Dept 2017); *Noor*, 130 AD3d at 541; *Velasco v. Green-Wood Cemetery*, 8 AD3d 88, 89 (1st Dept 2008) ("Plaintiff's use of the ladder without his coworker present amounted, at most, to comparative negligence, which is not a defense to a section 240(1) claim").

Defendant's reliance upon *Meade v Rock-McGraw, Inc.*, 307 AD2d 156 (1st Dept 2003) is misplaced. The plaintiff in *Meade* was replacing ceiling tiles in a closet when he was injured. He claimed that the ladder was inadequate for the job because it did not have rubber footing. However, testimony from the plaintiff's supervisor indicated that he used it improperly in the closed position. The trial court denied Plaintiff's motion for summary judgment on his Labor Law 240(1) claim and

the First Department affirmed. In so doing the court found that Plaintiff was the sole proximate cause of his injuries because he chose to place the ladder against the wall in a closed position, which constituted an improper use of the device. Here, the claim is not that Mr. Palaguachi misused the ladder, but that he failed to make sure his co-worker was securing it. As set forth above, this does not implicate a sole proximate cause defense. Accordingly, Defendant's motion to dismiss Plaintiff's Labor Law 240(1) claim is denied.

Plaintiff's motion for summary judgment is granted. First Department precedent indicates that where a ladder falls, even when struck by falling debris, the injured worker is entitled to summary judgment on a Labor Law 240(1) claim. For example, in *Smith v 21 W., Ltd. Liab. Co.*, 308 AD2d 312 (1st Dept 2003), the plaintiff was removing an air conditioning unit which required him to stand on a ladder and cut four rods that secured the unit to the ceiling. The unit fell, knocking him and the ladder to the floor. The court found these facts were enough to warrant summary judgment on the plaintiff's Labor Law 240(1) claim. In *Kosavick v Tishman*, 50 AD3d 287 (1st Dept 2008), the court granted plaintiff summary judgment where both he and the unsecured A-frame ladder he was standing on were suddenly struck by a section of unsecured pipe he had cut, causing him to fall. And in *Campuzano v Board of Education of New York City*, 54 AD3d 268 (1st Dept 2008), the court awarded summary judgment to a plaintiff who was struck by ceiling duct while performing asbestos abatement work. Plaintiff began by using a scaffold but switched to a ladder. While standing on the ladder a portion of the duct fell, hitting and knocking him to the ground.

It is of no moment that the ladder itself appeared to have been in working order, and that the ladder fell - according to Plaintiff - only after being struck by the falling pipe. *Dasilva v A.J. Contr. Co.*, 262 AD2d 214, 214 (1st Dept 1999) ("The striking of the ladder by a pipe cut during the ongoing demolition was not such an extraordinary event as to constitute a superseding cause . . . .");

see also Guaman v Ansley & Co., LLC, 135 AD3d 492, 492 (1st Dept 2016). The facts of this case also do not present a triable issue of fact, as Defendant contends. *Nazario v 222 Broadway, LLC*, 28 NY3d 1054 (2016), which the Defendant relies upon to show otherwise, does not apply here. In that case, the plaintiff was performing electrical work. As he reached up from an A-frame ladder he received an electric shock from an exposed wire and fell to the floor while holding the ladder. Unlike most cases where courts grant summary judgment to plaintiffs who fall from a ladder, the *Nazario* court found that there were questions of fact whether the ladder failed to provide proper protection. As my colleague has pointed out, the "issue is more complicated" when an electrical shock is involved. *Cutaia v Board of Mgrs. of the 160/170 Varick St. Condominium*, 2018 NY Misc. LEXIS 3335, *9 (Sup. Ct. NY Co. Aug. 3, 2018, Edmead, J). In other words, *Nazario* and its progeny are factually distinguishable from other Labor Law cases involving ladders.

Nor is summary judgment precluded by Plaintiff's decision not to look for his partner before cutting the pipe. As set forth above, the Plaintiff's admitted failure in this regard does not implicate the sole proximate cause defense since a coworker cannot be deemed a safety device for Labor Law purposes. What matters is that the collapse of his ladder was at least one of the proximate causes of his injuries. Whether Plaintiff was comparatively at fault does not raise an issue of fact. *See McCarthy*, 52 AD3d at 334 ("Nor, even if plaintiff had disobeyed an instruction to have [an] apprentice hold the ladder steady for him, would the owners' . . . liability for failing to provide adequate safety devices be reduced."); *see also Hernandez*, 2018 NY Misc. LEXIS 2565, *3.

Finally, Defendant submits two accident reports which purportedly contradict Plaintiff's testimony that the pipe fell to the ground and struck the ladder.[8] The first report is a shop steward accident report which provides that Plaintiff "was on a ladder cutting pipe. As the pipe was falling he jumped off the ladder a few feet down. When he landed he felt pain in his right foot." The

[8] See Defendant's exhibit A in opposition to Plaintiff's motion

report is undated, unsigned, and unclear as to who created it. The second report is a C-2 report completed by Plaintiff's employer, Rite-Way, as part of Plaintiff's Workers' Compensation claim. Nonetheless, in response to the question "How did the injury/illness occur?" Rite-Way responded, "Cutting pipe while on a lad [sic] when pipe started to move he jumped off ladder. When he stood up again felt pain in right foot." While this narrative appears to have been prepared by Rite-Way secretary Eva Pikramenos (the report is not signed or dated), neither she nor any other Rite-Way employees were questioned about the report nor did Defendant obtain an affidavit setting forth the source of the information provided. It is worth noting that Defendant never questioned the Plaintiff about either of these reports either. Moreover, the reports were first filed as part of these motions on or about August 31, 2018, before discovery was completed in November of 2018. For whatever reason, Mr. Tenempaguay was not deposed to authenticate the shop steward report, nor was a Rite-Way representative deposed to authenticate the C-2 report. Because both reports remain unverified, the court finds that they are of no probative value and that they do not present a triable issue of fact. *See Erkan v McDonald's Corp.*, 146 AD3d 466, 468 (1st Dept 2017) ("the unverified documents and unsworn statement are the only evidence to challenge details of plaintiff's version of the accident and therefore should not be considered.")

Accordingly, Plaintiff's motion for summary judgment on his Labor Law 240(1) claim is granted.

Labor Law 241(6)

Like Labor Law 240(1), Labor Law 241(6) imposes a nondelegable duty upon owners, contractors, and their agents to provide reasonable and adequate protection and safety to workers:

> All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
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> * * * *

> 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 [New York State Commissioner of Labor] may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

To recover damages on a Labor Law 241(6) cause of action, Plaintiff must establish a violation of an Industrial Code provision which sets forth specific safety standards and that such violation was a proximate cause of his accident. *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 350 (1998).

Plaintiff cites to a host of Industrial Code provisions in his bill of particulars. Of these, only two, 12 NYCRR 23-3.3(b)(3)[9] and 12 NYCRR 23-3.3(c)[10], are discussed in Plaintiff's motion papers.[11] Both are sufficiently specific to support a Labor Law 241(6) cause of action. *Mendez v Vardaris Tech, Inc.*, 2019 NY App. Div. LEXIS 4928, *5 (2nd Dept 2019). However, neither apply to the facts of this case. 12 NYCRR 23-3.3(b) is part of an Industrial Code section entitled "Demolition of walls and partitions." The Plaintiff in this case was not demolishing walls, nor was he injured because of "wind pressure or vibration." To the contrary, the pipes in question had to be left "unguarded" because it was intended and expected that they should fall to the ground after being cut. 12 NYCRR 23-3.3(c) similarly does not apply. A 12 NYCRR 23-3.3(c) violation occurs where the hazard arises from structural instabilities caused by the progress of demolition but not by the performance of the work itself. *See Medina v City of New York*, 87 AD3d 907 (1st Dept 2011);

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[9] 12 NYCRR 23-3.3(b)(3) provides that "[w]alls, chimneys and other parts of any building or other structure shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration."

[10] 12 NYCRR 23-3.3(c) provides: "[d]uring hand demolition operations, continuing inspections shall be made by designated persons as the work progresses to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material. Persons shall not be suffered or permitted to work where such hazards exist until protection has been provided by shoring, bracing or other effective means."

[11] Any claims based upon any other Industrial Code provisions are deemed to be abandoned and are dismissed accordingly.

Ortega v Everest Realty LLC, 84 AD3d 542 (1st Dept 2011). This case is similar to in *Smith v New York City Hous. Auth*, 71 AD3d 985 (2010). There, the plaintiff was using a jackhammer to demolish a four-foot wall when a cinderblock fell from the wall and injured him. The court dismissed plaintiff's 12 NYCRR 23-3.3(c) claim, holding that the falling block condition arose from the performance of the demolition work and not from structural instability caused by the progress of demolition. *Id.* at 987. Here too, Plaintiff's injuries were caused by the demolition itself - the intentional removal of pipes from the ceiling – and not the unintended collapse of structural elements like the ceiling itself. While it is true that an inspection may have revealed the Plaintiff was performing his duties without a partner, this is not what 12 NYCRR 23-3.3(c) was meant to prevent. Accordingly, Defendant's motion for summary judgment with respect to Plaintiff's Labor Law 241(6) claim is granted.

Labor Law 200 and Common Law Negligence Claims

Labor Law 200 codifies the common law duty imposed upon owners and general contractors to provide a safe workplace.[12] *See Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 352 (1998). Labor Law 200 claims are generally predicated upon a two-prong showing that the owner or contractor either had the "authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition," (*Russin v Picciano & Son*, 54 NY2d 311, 317 [1981]), or that it had actual or constructive notice of the defective condition which caused the plaintiff's injuries (*see Comes v N. Y. State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Philbin v A.C. & S., Inc.*, 25 AD3d 374, 374 (1st Dept 2006). Here, Plaintiff does not argue, and there is no evidence to show,

[12] Labor Law 200 provides in relevant part that "[a]ll 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."

that Defendant had any control over the Plaintiff or his work functions. Accordingly, Plaintiff's Labor Law 200 claims are dismissed. To the extent the complaint in this case also alleges common law negligence claims against Tower B, those claims are also dismissed as without merit.

CONCLUSION

In light of all of the foregoing, it is hereby

ORDERED that Plaintiff's motion for summary judgment on his Labor Law 240(1) claim is granted; and it is further

ORDERED that Defendant's motion for summary judgment is granted in part and denied in part; and it is further

ORDERED that Plaintiff's common law negligence, Labor Law 200, and Labor Law 241(6) claims are hereby severed and dismissed; and it is further

ORDERED that Plaintiff's Labor Law 240(1) claims shall continue to trial as set forth herein; and it is further

ORDERED that counsel for the parties appear for a pre-trial conference in Part 30 (60 Centre, Room 408) on September 9, 2019 at 9:30AM.

The Clerk of the Court shall enter judgment and mark his records accordingly.

This constitutes the decision and order of the court.

ENTER:

DATED: July 30, 2019

SHERRY KLEIN HEITLER, J.S.C.