Gaffney v BOP NE Tower Lessee LLC
2020 NY Slip Op 30536(U)
February 25, 2020
Supreme Court, New York County
Docket Number: 157474/2016
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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JAMES GAFFNEY JR., Index No.: 157474/2016

Plaintiff,

-against- **DECISION AND ORDER**

BOP NE TOWER LESSEE LLC and TISHMAN CONSTRUCTION CORPORATION OF NY,

Defendants.

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David B. Cohen, J.:

This is an action to recover damages for personal injuries allegedly sustained by an ironworker on August 31, 2016, when he was struck by a piece of steel that was in the process of being hoisted by the hook of a crane, causing him to fall from the elevated platform that he was working on.

Plaintiff James Gaffney Jr. moves, pursuant to CPLR 3212, for summary judgment on liability in his favor on the Labor Law § 240 (1) claim, as well as that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 23-8.1 (f) (2), as against defendants BOP NE Tower Lessee LLC (BOP) and Tishman Construction Corporation of NY (Tishman) (together, defendants).

BACKGROUND FACTS

On the day of the accident, Tishman was serving as the construction manager on the Manhattan West Project located at the Premises (the Project), pursuant to a construction management agreement with BOP. Tishman hired plaintiff's employer, nonparty Metropolitan

Walters, to serve as the structural steel subcontractor on the Project. Nonparty Total Safety served as the site safety manager for the Project.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was employed by Metropolitan Walters as a union laborer on the Project. As a member of the raising gang, plaintiff was responsible for erecting and connecting steel thereat, as well as for unloading trucks and sorting steel. Plaintiff's foreman on the Project was Randy Jacobs, and his connecting partner was someone named Adenharishon.

Plaintiff explained that at the time of the accident, the men were hoisting a 25-foot long steel beam. Plaintiff was standing on a huge box that weighed approximately 80,000 pounds. As one of the connectors on the Project, it was plaintiff's job to connect the hook of the crane to the steel beam. In order to perform this work, it was necessary for plaintiff to stand on top of the box, which placed plaintiff approximately 5 feet off the ground.

Plaintiff maintained that as the men were in the process of "hoisting the beam . . . [and] holding on to it," the men encountered issues in getting the steel beam off of the load that it was resting on (plaintiff's tr at 81). He explained that as they were trying to lift it for the second time, the end of the steel beam "dislodged" and "shot up over [plaintiff's] head and came down on top of [him]" (*id.* at 80). Plaintiff testified that the end of the beam struck the "whole side" of him, including his left shoulder, "crush[ing] him all the way down" onto the Q-decking (*id.* at 88). Plaintiff further explained that as the beam was falling, he "tried to move out of the way" (*id.* at 81-82). When he was asked why the beam came down on him, plaintiff replied, "[g]ravity" (*id.* at 85).

Plaintiff also testified that it was his foreman who had instructed him to move the subject steel beam by attaching it to the hook of the crane. While plaintiff testified that he was aware that tag lines were available at the site, he asserted that his foreman did not give him "any instruction as to whether or not to use a tag line to perform that task" (*id.* at 94-95). Plaintiff noted that having access to a tag line would not have prevented the accident, as "[t]he piece [of steel] came out [at] a hundred miles per hour; so, the tag line would have been useless for it" (*id.* at 95). In addition, when he used his hands to connect the steel to the hook, he had "way more control" over the steel beam than he would have had with a tag line (*id.*).

Affidavit of Adenharishon Jacobs-Lahache (Plaintiff's Coworker)

In his affidavit, Adenharishon Jacobs-Lahache stated that he was a connector working with plaintiff on the day of the accident. He explained that at the time of the accident, the men "were shaking out steel, which essentially means taking steel off a pile and moving it to other locations before connection" (Jacobs-Lahache aff). He stated that a mobile crane was being used to "hoist the steel from the bundle" (*id.*). Jacobs-Lahache further stated:

> "At the time of the accident we were trying to move a steel beam off the top of the bundle that was approximately 20-25 feet long and weighed at least a few thousand pounds. [Plaintiff] and I rendered our hooks but the piece was not coming off easily. When the crane started to bring the piece up a second time, it suddenly accelerated and shot out, striking Jim on his shoulder, knocking him off the elevated box beam that he was standing on. He fell about 5 feet onto the Q-decking below"

(*id.*). Notably, Jacobs-Lahache asserted that "[t]here were no other places or devices for [plaintiff] to stand on to render his hook and help with the piece going in the air, other than where he was at the time of the accident" (*id.*).

Deposition Testimony of Robert Knudsen (Tishman's Rigging and Hoisting Superintendent)

In his deposition, Robert Knudsen testified that Tishman was the construction manager on the Project, and that he served as Tishman's rigging and hoisting superintendent on the day of the accident. As such, he was responsible for inspecting the rigging equipment and tools for damage, as well as walking the site to make sure that the work was being performed in accordance with the contracts and in a safe manner. Knudsen explained that Metropolitan Walters was hired to perform the structural steel work at the Project, and that its foreman was in charge of its crew, as well as the crew's safety.

Knudsen testified that after the accident, he went to the accident location and spoke to Jacobs-Lahache about what had happened to plaintiff. He told Knudsen that plaintiff's crew was "shaking out [steel beams] and when a piece got stuck [on another piece of steel] it jumped," and then plaintiff "jumped to get out of the way" (Knudsen tr at 46, 47, 53).

Affidavit of Augustine Clery (Total Safety's Site Safety Manager)

In his affidavit, Augustine Clery stated that on the day of the accident, he was employed by Total Safety, the site safety manager for the Project. Clery stated that after the accident, he spoke with plaintiff and visited the accident location. Thereafter, he took photographs of the accident location and prepared two accident reports. He maintained that plaintiff told him that the accident occurred when "a steel beam got stuck and shifted towards him during the shake out operation and he fell on the q-decking" (Clery aff).

Medcor Patient Care Report

After the accident, plaintiff saw the onsite medic for the Project, and plaintiff provided a description of his accident (*see* the Medcor Report). The Medcor Report states that plaintiff was "grazed by a steel joist (I beam) that jumped while he was shaking it out. Beam impacted his

superior left shoulder and his medial left back" (Defendants' opposition, exhibit A, Medcor Report). The Medcor Report also indicates that the subject steel beam "pushed him off the surface he was standing [on]," which caused him to fall two or three feet to the ground (*id.*).

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 movant'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], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also 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 Labor Law § 240 (1) Claim Against Defendants

Plaintiff moves for summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against defendants. 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]). 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]).

Here, plaintiff is entitled to recover damages from defendants for their violation of Labor Law § 240 (1) under a falling objects theory, because the piece of steel that swung up and then fell down onto him "was 'a load that required securing for the purposes of the undertaking at the time it fell'" (*Cammon v City of New York*, 21 AD3d 196, 200 [1st Dept 2005] [citation omitted]; *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"]). Here, the safety device, i.e., the hoisting mechanism that was moving the subject steel beam at the time of the accident, failed to adequately control the piece of steel during the hoisting process.

In opposition, defendants argue that Labor Law § 240 (1) does not apply to the facts of this case because the accident was not gravity-related, as the statute requires. To that effect, defendants assert that gravity did not play a role in the instant accident because the piece of steel initially shot *upwards* after getting stuck *(see De Jesus v Metro-North Commuter R.R.*, 159 AD3d 951, 952-953 [2nd Dept 2018] [the Court deemed that the plaintiff's injuries were not the direct consequence of the application of the force of gravity, when, while standing on the ground, the fallen tree that he was cutting away from some catenary wires was propelled upward by the sudden release in tension of the catenary wires, splitting in two and striking plaintiff's leg]; *Quishpi v 80 WEA Owner, LLC*, 145 AD3d 521, 522 [1st Dept 2016] [no Labor Law 240 (1) liability where the plaintiff was injured when, as he was attempting to sever a horizontal beam from a left vertical beam, "the beam sprang up and hit him in the face"]). "In order to recover under section 240 (1), the hazard to which plaintiff was exposed must have been one 'directly flowing from the application of the force of gravity to an object or person'" (*Medina v City of New York*, 87 AD3d 907, 909 [1st Dept 2011] [gravity did not play a role in the plaintiff's accident where the rail that struck the plaintiff was "propelled by the kinetic energy of the sudden release of tensile stress in the steel rail"]).

Importantly, however, the instant case can be distinguished from the above-mentioned cases in that, in those cases, the plaintiffs were injured as the objects were moving upwards, here, while the steel beam may have initially shot upwards, plaintiff suffered his injury as the steel beam was in the process of falling downwards onto him.[1]

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[1] It should be noted that as plaintiff testified that the steel beam fell down onto him, this case can also be distinguished from those cases where Labor Law § 240 (1) did not apply when the object that struck the plaintiff did not fall from a height, but rather, swung laterally into him

In addition, Labor Law § 240 (1) also applies to this case because plaintiff was not provided with proper fall protection to prevent him from falling off the elevated platform that he was standing on while he performed his work. As such, "'plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential'" (*Gory v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 113 AD3d 550, 551 [1st Dept 2014] [Labor Law § 240 (1) applied where the elevated stairway plaintiff was using at the time of the accident was the "sole means of access to the floors of the building," and where the plaintiff's injuries were caused by defendant's failure to provide guard rails]).

Further, in light of the nature of plaintiff's work, which made it foreseeable that the steel beam might get caught and the hoisting mechanism might fail to control its load, additional safety devices, like tag lines or a railing on the elevated platform, were necessary 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"]). "'[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

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(*see Desharnais v Jefferson Concrete Co., Inc.*, 35 AD3d 1059, 1060 [3d Dept 2006] [no Labor Law § 240 (1) liability where the plaintiff was injured when he was struck by a spreader bar that "did not actually fall, but shifted and swung around"; *Tsatsakos v Citicorp*, 295 AD2d 500, 501 [2d Dept 2002] [no Labor Law § 240 (1) liability where a scaffold swung back laterally and struck the plaintiff because the plaintiff, though standing on the 48th floor, was not threatened with or injured by any gravity-related peril]).

without the use of additional precautionary devices or measures'" (*Nimirovski v Vornado Realty Trust Co.*, 29 AD3d 762, 762 [2d Dept 2006] quoting *Conway v New York State Teachers' Retirement Sys.*, 141 AD2d 957, 958-959 [3d Dept 1988]).

Defendants also argue that Labor Law § 240 (1) does not apply to the facts of this case because the beam that plaintiff was standing on was only two or three feet above ground, and, as such, plaintiff was not exposed to an elevated-related risk requiring protective safety equipment in the first place (*see Torkel v NYU Hosp. Ctr.*, 63 AD3d 587, 590 [1st Dept 2009] [no Labor Law § 240 (1) liability where the plaintiff fell off a ramp that collapsed]; *Toefer v Long Is. R.R.* (4 NY3d 399, 408 [2005] [the Court of Appeals held that "[a] four-to-five foot descent from a flatbed trailer or similar surface does not present the sort of elevation-related risk that triggers Labor Law § 240 (1)'s coverage"]).

However, while courts have held that falling from a short distance like the bed of a truck is not the kind of elevation-related hazard contemplated by the statute, they have also held that Labor Law § 240 (1) applies in short distances cases "where some risk-enhancing circumstance implicates the protections of the statute" (*Intelisano v Sam Greco Constr., Inc.*, 68 AD3d 1321, 1323 [3d Dept 2009] [where the plaintiff's work of unloading bundles of insulation required him to get on top of bundles and attach a strap around them to a crane, the Court found that the "circumstance[s] constitute[d] an elevation-related risk greater than merely falling from the bed of a trailer"]; *see also Flores v Metropolitan Transp. Auth.*, 164 AD3d 418, 419 [1st Dept 2018] [where the "plaintiff fell off a flatbed truck after a load of steel beams, without tag lines, was being hoisted above him by a crane," the Court found that Labor Law § 240 (1) applied, nevertheless, because "[t]he risk of the hoisted load or beams without tag lines triggered the

protections set forth in [the statute]"]). In this case, plaintiff's risk of falling from the elevated platform was enhanced in light of the fact that he was hoisting an extremely heavy steel beam without the use of tag lines at the time of the accident, while also standing on a platform with no rails to protect him from falling.

Defendants further argue that plaintiff should not recover under Labor Law § 240 (1) because plaintiff was the sole proximate cause of his accident. To that effect, defendants assert that plaintiff should not have put himself in a position of danger by working from the top of the beam when he did not absolutely have to. Where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability under Labor Law § 240 (1) (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]). "[T]he duty to see that safety devices are furnished and employed rests on the employer in the first instance" (*Aragon v 233 W. 21st St.*, 201 AD2d 353, 354 [1st Dept 1994]). "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]).

Initially, it should be pointed out that both plaintiff and Jacobs-Lahache asserted that there were no other appropriate places for plaintiff to stand while rendering his hook, and defendants have failed to put forth sufficient evidence to establish that it was not necessary for plaintiff to perform his work from atop the subject platform. In any event, any alleged negligence on plaintiff's part for utilizing said platform goes to the issue of comparative fault, and comparative fault is not a defense to a Labor Law § 240 (1) cause of action, because the

statute imposes absolute liability once a violation is shown (*Bland v Manocherian*, 66 NY2d 452, 460 [1985]; *Vail v 1333 Broadway Assoc., L.L.C.*, 105 AD3d 636, 637 [1st Dept 2013] ["Given that the scaffold was inadequate in the first instance, any failure by plaintiff to hydrate himself could not be the sole proximate cause of his injuries"]; *Berrios v 735 Ave. of the Ams., LLC*, 82 AD3d 552, 553 [1st Dept 2011] [Court held that "even if plaintiff could be found recalcitrant for failing to use a harness, defendants' 'failure to provide proper safety [equipment] was a more proximate cause of the accident'"] [citations omitted]; *Milewski v Caiola*, 236 AD2d 320, 320 [1st Dept 1997] [Court held that "even if plaintiff could be deemed recalcitrant for not having used the harness, no issue exists that the failure to provide proper safety planking was a more proximate cause of the accident"]).

"[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*, 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" (*Tavarez v Weissman*, 297 AD2d 245, 247 [1st Dept 2002] [internal quotation marks and citations omitted]).

In addition, defendants have not demonstrated that plaintiff was recalcitrant in that he was specifically instructed to use a different 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]; *see also Hoffman v SJP TS, LLC*, 111

AD3d 467, 467 [1st Dept 2013] [the plaintiff was not at fault for not tying off his safety harness, where "there was no appropriate anchorage point to which the lanyard could have been tied-off"]).

It should also be noted that defendants maintain that plaintiff may be the sole proximate cause of his accident because there is some evidence in the record that he might have jumped from the platform, rather than having been knocked off. However, even if plaintiff was forced to jump to avoid the approaching piece of steel and not actually struck by it, his injuries would nevertheless still be the result of a gravity-related risk. As the Court of Appeals has held in the case of *Runner v New York Stock Exch., Inc.* (13 NY3d 599, 604 [2009]), plaintiff is not deprived of the protection of section 240 (1) merely because he was not struck by a falling object. Rather, "[t]he relevant inquiry - one which may be answered in the affirmative even in situations where the object does not fall on the worker - is rather whether the harm flows directly from the application of the force of gravity to the object" (*id.*).

In *Runner*, the plaintiff and several of his coworkers were instructed to move a large reel of wire, which weighed approximately 800 pounds, down a set of about four stairs. To prevent the reel from rolling freely down the stairs, the workers tied one end of a 10-foot length of rope to the reel and then wrapped the rope around a metal bar which was positioned horizontally across a door jamb at the same level as the reel. The plaintiff and his coworkers held the loose end of the rope while two other workers began to push the reel down the stairs. As the reel began to descend, it pulled the plaintiff and his coworkers, who were acting as counterweights, toward the metal bar. The plaintiff injured both his hands when they were jammed into the bar (*id.* at 602).

In finding that the plaintiff was entitled to recovery under Labor Law § 240 (1), the Court of Appeals reasoned:

> "Here, as the District Court correctly found, the harm to plaintiff was the direct consequence of the application of the force of gravity to the reel. Indeed, the injury to plaintiff was every bit as direct a consequence of the descent of the reel as would have been an injury to a worker positioned in the descending reel's path. The latter worker would certainly be entitled to recover under section 240 (1) and there appears no sensible basis to deny plaintiff the same legal recourse"

(*id.* at 604; *see also Strangio v Sevenson Envtl. Servs., Inc.*, 15 NY3d 914, 915 [2010]; *Apel v City of New York*, 73 AD3d 406, 407 [1st Dept 2010] [Labor Law § 240 (1) applied where, after a crane hoisted up a spud, and as plaintiff was attempting to secure it by inserting a pin into the spud, the crane dropped the spud, which caused the pin to "[come] up 'like a seesaw,' 'snapping' plaintiff's left arm"]).

Finally, contrary to defendants' argument, the minor inconsistencies in plaintiff's testimony "[do] not relate to a material issue," and, thus, they do not preclude an award of partial summary judgment as to liability in plaintiff's favor (*Leconte v 80 E. End Owners Corp.*, 80 AD3d 669, 671 [2d Dept 2011]; *Anderson v International House*, 222 AD2d 237, 237 [1st Dept 1995]).

Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards . . . 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 citations omitted]).

Thus, plaintiff is entitled to summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against defendants.

The court has considered defendants' remaining arguments on this issue and finds them unavailing.

The Labor Law § 241 (6) Claim

Plaintiff moves for summary judgment in his favor on that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 23-18.1 (f) (2). Labor Law § 241 (6) provides, in pertinent part, as follows:

> "All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

Labor Law § 241 (6) imposes a nondelegable duty on "owners and contractors to 'provide reasonable and adequate protection and safety' for workers" (*Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494, 501 [1993]). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.* at 503-505).

Initially, while plaintiff asserts multiple alleged Industrial Code violations in his bill of particulars, with the exception of sections 23-8.1 (f) (2), plaintiff does not move for summary judgment in his favor on those alleged violations.

Industrial Code 23-8.1 (f) (2)

Section 23-8.1 (f) (2) (i) and (ii) provide:

"(f) Hoisting the load.

(2) During the hoisting operation the following conditions shall be met:

(i) There shall be no sudden acceleration or deceleration of the moving load unless required by emergency conditions.

(ii) The load shall not contact any obstruction."

Initially, section 23-8.1 (f) (2) (i) and (ii) are sufficiently specific to support a Labor Law claim (*see Long v Tishman/Harris*, 50 AD3d 356, 356 [1st Dept 2008]; *McCoy v Metropolitan Transp. Auth.*, 38 AD3d 308, 309 [1st Dept 2007]).

Here, it is clear from the deposition testimony in the record that the accident was caused due to the sudden acceleration of the hoisting mechanism and the steel load's contact with an obstruction, causing it to get stuck.

Thus, plaintiff is entitled to summary judgment in his favor on that part of the Labor Law § 241 (6) claim predicated on alleged violations of section 23-8.1 (f) (2).

The court has considered defendants' argument that hoisting was not underway at the time of the accident and finds it to be without merit.

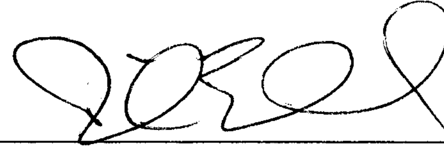
CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiff James Gaffney Jr.'s motion, pursuant to CPLR 3212, for summary judgment in his favor on liability on the Labor Law § 240 (1) claim, as well as that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 23-8.1 (f)

(2), as against defendants BOP NE Tower Lessee LLC and Tishman Construction Corporation of NY is granted.

Dated : February 25, 2020



HON. DAVID B. COHEN

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J.S.C.