Weeks v New York & Presbyt. Hosp.
2020 NY Slip Op 30982(U)
April 20, 2020
Supreme Court, New York County
Docket Number: 153332/2015
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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CHRISTIAN WEEKS,

Plaintiff,

- v -

THE NEW YORK AND PRESBYTERIAN HOSPITAL, TURNER CONSTRUCTION COMPANY

Defendant.

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INDEX NO. 153332/2015

MOTION DATE 12/19/2019

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 198, 199, 200

were read on this motion to/for JUDGMENT – SUMMARY.

This is an action to recover damages for personal injuries allegedly sustained by a laborer on March 27, 2015 when, while working on a concrete pour at a construction site located at 68th Street and York Avenue in New York, New York (the Premises), he suffered severe burns when the foundation concrete that he was shoveling leaked through his boots.

Defendants the New York and Presbyterian Hospital (the Hospital) and Turner Construction Company (Turner) (together, defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint against them.

Plaintiff Christian Weeks cross-moves, pursuant to CPLR 3025 (b), for an order granting him leave to amend/supplement the bill of particulars to include alleged violations of Industrial Code 12 NYCRR 23-1.7 (h) and 12 NYCRR 23-1.8 (c) (2) and (4) as a predicate for the Labor Law § 241 (6) claim.

BACKGROUND SUMMARY

On the day of the accident, the Hospital owned the Premises where the accident occurred. The Hospital hired Turner to serve as the construction manager on a project at the Premises, which involved the construction of an ambulatory care center facility (the Project). Turner hired nonparty Civetta to perform the foundation and concrete work for the Project, and plaintiff was employed by Civetta as a laborer.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was employed by Civetta as a laborer (plaintiff's tr at 13, 28). Plaintiff's duties on the Project entailed acting as a shovel man during concrete pours (*id.* at 13, 30). Plaintiff was given his work instructions and was supervised by either his supervisor, Nicky Danika, or a coworker, both Civetta employees (*id.* at 40, 275).

Plaintiff testified that he and approximately 10 other Civetta laborers were working in a square area called a "rat slab" (the Rat Slab) at the time of the accident (*id.* at 36-37). The Rat Slab was to become part of the building's foundation (*id.* at 38). Plaintiff maintained that Turner provided Civetta's workers with "gloves, glasses, vests, all safety gear" (*id.* at 41). Turner also provided him with "a regular concrete boot" (*id.* at 140). Plaintiff noted that at the time of the accident, he was wearing both construction boots and rubber boots that did not extend over his knees (*id.* at 143, 144). Plaintiff explained that he "put on [his] concrete boots . . . and clipped them properly" (*id.* at 153). He also put his pants inside his boots to tighten the boots (*id.* at 154). Plaintiff maintained that he was not "given the proper protective gear" for his work because something to cover his body and legs sufficient for the depth of the concrete was lacking

(*id.* at 154). To that effect, plaintiff was not provided with waders, which are waist-high plastic pants (*id.* at 42, 43).

Plaintiff explained that the accident occurred as he was mixing concrete and pouring it into the Rat Slab via a pump and hose, which he would then level out with a shovel (*id.* at 159, 187). Plaintiff maintained that the consistency of the subject concrete seemed unusual at that time (*id.* at 158). Plaintiff described the concrete as coming out "very hard and very thick and it was clogging inside the hoses," in a way that he had never observed in the past (*id.*).

Plaintiff testified that the accident occurred when the concrete that he was standing in began "seep[ing] through the boots," burning his skin (*id.* at 209). The concrete continued up over his knees, and, ultimately, up his "whole leg" (*id.* at 213). As soon as he felt the burning sensation, plaintiff tried to pull himself out of the concrete, but he could not manage to do so (*id.* at 207). He testified that "[he] was stuck in the concrete, and [he] suffered third degree burns" (*id.* at 208). Eventually, someone had to pull him out of the concrete (*id.* at 228-229).

Plaintiff testified that his father, who was also a laborer at the site, observed plaintiff being pulled out of the concrete (*id.* at 370). Plaintiff's father told him that the concrete was "very deep" at the time of the accident (*id.* at 371). Plaintiff noted that there was a hose within approximately ten feet of his work area, but he did not use it to wash off because "[t]he damage was already done" (*id.* at 182, 183).

Deposition Testimony of James Rengstl (Turner's Project Superintendent)

James Rengstl testified that he served as Turner's project superintendent on the Project, and that his duties included day-to-day scheduling and managing specific areas of the construction site (Rengstl tr. at 7). On the day of the accident, Turner was "in the excavation and

foundation phase, trying to develop foundation walls and foundation slabs to prepare for the next phase" of the Project (*id.* at 15).

Rengstl explained that the Rat Slab is "a slab that levels an area to prepare for . . . a waterproofing substrate, so you're covering up the rock" (*id.* at 16). The usual depth of a rat slab is "4-to-6 inches typically," and it is poured like any other concrete pour (*id.*). Rengstl further explained that a concrete accelerant is added to the cement to allow it to "cure faster" (*id.* at 20). When concrete starts to cure, it "stiffins" within several hours, making it harder to move about within a rat slab (*id.* at 22). Rengstl could not state the depth of the Rat Slab at the time of the accident (*id.* at 28).

Rengstl testified that Turner had site representation to make sure that the workers on the Project were wearing "personal protection equipment" to guard against burns caused by exposure to the concrete (*id.* at 29). While Turner instructed Civetta's workers in regard to the importance of wearing such equipment, Turner did not provide the equipment to them (*id.* at 30, 31). However, if a laborer needed "something small" like gloves or glasses, Turner provided them (*id.* at 30). Rengstl did not specifically know what protective equipment was provided to the Civetta laborers on the day of the accident (*id.* at 33-34). He admitted that the lack of proper sealing in plaintiff's boots may have been a contributing cause of plaintiff's accident (*id.* at 99).

Deposition Testimony of Lawrence Forella (Turner Foreman)

Lawrence Forella testified that he served as foreman for Turner on the day of the accident. He testified that if he observed an unsafe condition or practice at the Project, he "would stop it or have management go over there and tell them you are doing this the wrong

way" (Forella at 14). He explained that cement contains toxic substances, and that if one gets concrete on their skin, they "should wash it off" (*id.*).

Forella testified that the workers were pouring concrete in the Rat Slab at the time of the accident (*id.* at 27, 28). During the pour, the workers wore their boots taped to their pants and "rubber bands, so the concrete can't go down the boot" (*id.* at 30). Forella maintained that Civetta supplied boots for their workers (*id.* at 32).

Deposition Testimony of Michael Krause (Civetta Employee)

Michael Krause testified that he was employed as a laborer by Civetta on the day of the accident (Krause tr at 20, 21). That day, he was directly involved in the subject concrete pour (*id.* at 22). This involved concrete, which was piped in from a truck, being poured into the Rat Slab (*id.* at 46). The men involved with the pour had a difficult time during the pour "because there was leaking out of the extensions of the pipe" (*id.* at 49).

Krause testified that both Civetta and Turner provided boots and personal protective equipment to the workers (*id.* at 120-121). Civetta and Turner also provided safety training, however, the workers were never properly instructed as to what to do if their skin came into contact with concrete (*id.* at 56). Krause testified that at times, while the concrete in the Rat Slab could be as high as waist deep, the men were not provided with waders, although he had asked for them (*id.* at 50, 51-52, 53). He was told that only boots were available to the men (*id.* at 52). The men were also not provided with any duct tape to seal the boots (*id.* at 123).

The Incident Reports

The Supervisor's Accident/Incident Investigation Form

On the supervisor's accident/incident investigation form (the Supervisor's Investigation Form), it is noted that "although [the Civetta workers involved in the accident] were wearing appropriate PPE, including rubber boots, concrete got on their pants and boots. The concrete was not immediately cleaned off, causing burns" (plaintiff's opposition to defendants' motion, exhibit C, the Supervisor's Investigation Form).

Non-Mandatory Investigative Tool Document

In a non-mandatory investigative tool document (the Tool Document) pertaining to the accident, in a section describing the root causes of the accident, it is noted that one of the reasons for the accident was the need for "additional PPE" because "some areas of concrete were too deep to walk in with standard slush boots" (plaintiff's opposition to defendants' motion, exhibit E, the Tool Document).

The Workers' Compensation Claim Reporting Guide

In the Workers' Compensation claim reporting guide (the WC Guide), it is noted that six workers were injured in the accident, and that "[c]oncrete caused burns" to the workers (plaintiff's opposition to defendants' motion, exhibit J, the WC Guide).

Affidavit of Ronald D. Schaible, CIH, CSP, CHMM

In his expert affidavit submitted by plaintiff, Ronald D. Schaible states that:

> "It is my professional opinion within a reasonable degree of certainty that the incident occurred as a result of a failure by Defendants to provide proper and adequate PPE for the hazards of wet cement which is a known corrosive chemical, and a failure by the owner and general contractor to adequately oversee the work

being performed and to ensure workers were provided reasonable and adequate protection and safety for the known corrosive chemical hazard"

(plaintiff's opposition to defendants' motion, exhibit K, Schaible aff).

Affidavit of Rahul Ratankonda, P.E.

In his affidavit, defendants's expert, Rahul Ratankonda, stated that the concrete used for the pour was "an ordinary mixture used in construction" (see defendants` reply, Ratankonda aff). He asserted that plaintiff was provided with proper protective equipment and a wash off station within 10 feet of the Rat Slab. Plaintiff had been told to immediately wash off any concrete that came into contact with his skin. Ratankonda maintained that the accident was caused solely from "[p]laintiff's improper use of PPE and failure to use a water hose to wash off any concrete that may have gotten into his boots" (*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" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016]). "Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must "'assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions' (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). If there is any

doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*O'Brien v Port Authority N.Y. & N.J.*, 29 NY3d 27, 37 [2017]).

The Labor Law § 240 (1) Claim

Defendants move for summary judgment dismissing plaintiff's Labor Law § 240 (1) claim. 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]).

Here, plaintiff does not oppose that part of defendants' motion seeking to dismiss the Labor Law § 240 (1) claim against them. Therefore, the Labor Law § 240 (1) claim is deemed abandoned (*see 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]).

Accordingly, summary judgment on plaintiff's Labor Law § 240(1) claim must be granted to defendants.

The Labor Law § 241 (6) Claim Against Defendants

Defendants move for dismissal of plaintiff's Labor Law § 241 (6) claim. Labor Law § 241 (6) provides, in pertinent part:

> "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 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]).

While plaintiff asserts multiple alleged Industrial Code violations in his bill of particulars, he only opposes the parts of defendants' motion which seeks dismissal of those parts of the Labor Law § 241 (6) claim predicated upon alleged violations of Industrial Code sections 23-1.7 and 23-1.8. Accordingly, the unaddressed Industrial Code provisions are deemed abandoned, and defendants are entitled to summary judgment dismissing those abandoned provisions (*Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014]; *Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is

inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section"]).

In addition, as noted by defendants, plaintiff cited to entire sub-parts of the Industrial Code, i.e., sections 23-1.7 and 23-1.8, which contain multiple subsections, rather than particularizing which specific subsections defendants allegedly violated; those alleged violations would, absent a motion to amend the bill of particulars, be deemed abandoned/waived as well (*see McLean v Tishman Constr. Corp.*, 144 AD3d 534, 535 [1st Dept 2016] [when "plaintiff failed to specify any particular subsection[s] or subdivision[s]" of the Industrial Code provisions allegedly violated, the Court deemed them to be abandoned]). However, plaintiff cross-moves for an order granting him leave to amend the bill of particulars to assert violations of Industrial Code sections 23-1.7 (h) and 23-1.8 (c) (2) and (4). Because the allegations surrounding the circumstances of plaintiff's accident have been long known to defendants as evidenced in defendants' summary judgment motion papers, there is no prejudice to them by allowing the amendment even though the note of issue has been filed and the particularization of the sections merely expands upon plaintiff's previous bill of particulars (*Gjeka v Iron Horse Transp., Inc.*, 151 AD3d 463, 464 [1st Dept 2017] [holding trial court properly allowed plaintiffs leave to amend their bill of particulars in support of their Labor Law § 241 (6) claim to assert specific section of Industrial Code in absence of prejudice or surprise even though the note of issue had been filed]). Accordingly, plaintiff's motion to amend his bill of particulars to assert subsections of Industrial Code sections 23-1.7 and 23-1.8 will be granted.

Industrial Code 12 NYCRR 23-1.7 (h)

Section 23-1.7 (h) states:

> "*Corrosive substances.* All corrosive substances and chemicals shall be so stored and used as not to endanger any person. Protective equipment for the use of such corrosive substances and chemicals shall be provided by the employer."

Defendants' expert opines that the concrete used for the pour was an "ordinary mixture" without directly addressing whether that mixture constitutes a "corrosive substance." Plaintiff's expert avers that the wet cement "is a known corrosive chemical." In reply, defendants' expert does not refute that the concrete being handled by plaintiff was a "corrosive chemical." Therefore, section 23-1.7 (h) is applicable in this case, but there is conflicting evidence as to whether the concrete was "used as not to endanger" plaintiff.

Accordingly, defendants are not entitled to summary judgment dismissing plaintiff's Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code section 23-1.7 (h).

Industrial Code 12 NYCRR 23-1.8 (c) (2) and (4)

Section 23-1.8 (c) (2) and (4) state:

> (2) Foot protection. Every person required to work or pass in water, mud, wet concrete or in any other wet footing shall be provided with waterproof boots having safety insoles or with pullover boots or rubbers over safety shoes.
>
> * * *
>
> (4) Protection from corrosive substances. Every employee required to use or handle corrosive substances or chemicals shall be provided with and shall be required to wear appropriate protective apparel as well as approved eye protection."

As to section 1.8 (c) (2), while plaintiff testified that he was, in fact, provided with boots and rubbers, it is unclear from the record as to whether his boots were waterproof with safety insoles, or that he was provided with "pullover boots or rubbers" *and* "safety shoes," as this provision requires. Therefore, a question of fact exists as to whether section 23-1.8 (c) (2) was violated by defendants. Accordingly, defendants are not entitled to summary judgment

dismissing plaintiff's Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.8 (c) (2).

Likewise, as to section 23-1.8 (c) (4), a question of fact remains whether the boots provided to plaintiff were "appropriate protective apparel" as required under that section. Accordingly, defendants are not entitled to summary judgment dismissing plaintiff's Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code section 23-1.8 (c) (4).

Defendants' remaining arguments on this issue have been considered and they are unavailing.

The Common-Law Negligence and Labor Law § 200 Claims

Defendants move for summary judgment on plaintiff's common-law negligence and Labor Law § 200 claims.

> Labor Law § 200 (1) states, in pertinent part, as follows:
>
> "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."

Labor Law § 200 "is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], *citing 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 discussed previously, plaintiff was injured when the concrete that he was shoveling leaked into his work boots, causing him to sustain serious burns. Therefore, the accident was caused due to the means and methods of the work.

There is no evidence in the record indicating that the Hospital was responsible for supervising the means and methods involved in the concrete pour work, nor did it provide plaintiff with personal protective equipment. Accordingly, the Hospital is entitled to summary judgment on plaintiff's common-law negligence and Labor Law § 200 claims.

Turner argues that it is entitled to dismissal of these claims because it had no control over plaintiff's work i.e. the concrete pour. However, a question of facts exists as to whether Turner had more than just general supervisory control over the injury-producing work in this case, because there is evidence that it may have supplied plaintiff with inadequate personal protective equipment. The evidence is plaintiff's testimony that Turner provided him with his boots and "all safety gear" (plaintiff's tr at 41, 42, 45). In addition, plaintiff's coworker testified that both Civetta and Turner provided boots and protective equipment to the workers, and that they were not provided with necessary waders, even though they requested them. Further, while Rengstl, Turner's foreman, testified that Turner did not provide personal protection equipment to Civetta's workers, he also testified that Turner had representation on site to make sure that the workers on the Project were wearing personal protection equipment designed to guard against burns caused by exposure to concrete.

Accordingly, Turner is not entitled to summary judgment on plaintiff's common-law negligence and Labor Law § 200 claims.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the cross motion of plaintiff Christian Weeks, pursuant to CPLR 3025 (b), for an order granting him leave to amend/supplement the bill of particulars to include alleged violations of Industrial Code sections 23-1.7 (h) and 23-1.8 (c) (2) and (4) as a predicate for his Labor Law § 241 (6) claim is granted; and it is further

ORDERED that the parts of the motion of defendants the New York and Presbyterian Hospital (the Hospital) and Turner Construction Company (together, defendants), pursuant to CPLR 3212, for summary judgment dismissing the Labor Law § 240 (1) claim and those parts of

the Labor Law § 241 (6) claim predicated on alleged violations of the abandoned Industrial Code provisions against defendants are granted, and these claims are dismissed as against defendants; and it is further

ORDERED that the part of defendants' motion, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law § 200 claims against the Hospital is granted, and the motion is otherwise denied.

4/20/20
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE