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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BARON ERBY,

Plaintiff,

- v -

36 LLC, UA BUILDERS CORP., WE WORK MANAGEMENT LLC

Defendant.

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INDEX NO. 161985/2015

MOTION DATE 07/18/2019

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 142, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 162

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

This is an action to recover damages for personal injuries allegedly sustained by a laborer on September 17, 2015, when while installing ductwork at 315 West 36th Street in Manhattan, an air conditioning unit next to where he was working detached from a ceiling mount, striking him in the head and causing him to fall from a ladder.

In motion sequence number 005 defendants move pursuant to CPLR 3212 for summary judgment in their favor on plaintiff's Labor Law § 200, 240(1), and 241(6) claims and plaintiff cross moves for summary judgment on his Labor Law § 240(1) claim.

BACKGROUND

On the day of the accident Defendant 36 LLC owned the building and defendant 315 West 36 was its tenant (Ex B para 6; Ex K at 8–27). 315 West 36 hired defendant UA Builders Corp. (UA Builders) to act as its general contractor for office space build out work on the second through tenth floors for its parent company defendant, WeWork Management LLC (Ex K at 22-31). UA

Builders hired Erby's employer, non-party All Air HVAC (All Air), to perform the mechanical, electrical and plumbing work associated with the build out, including the air-conditioning installation work (Ex L at 55-48).

Erby was injured while on the fourth rung from the bottom of an A-frame ladder, working underneath a permanent, ceiling-mounted air-conditioning unit (Ex J at 43, 75-82). At the time of the accident Erby was installing ductwork next to, but not on, the air conditioning unit itself (Ex J at 59-62). While Erby was connecting a "canvas connector"[1] to an air conditioning duct, one side of the permanently installed air conditioning unit above him suddenly and unexpectedly detached from the ceiling and struck him on the head, causing him to lose his balance and fall from the ladder (Ex J at 82-99). Erby was not in contact with the air conditioning unit when it detached from the ceiling mount (Ex J at 84, 192-194) and there was nothing wrong with the ladder he was using (Ex J at 39). Regarding supervision, Erby testified that only All Air's foreman supervised his work and that he had never heard of 36 LLC or UA Builders (Ex J at 110 – 113).

UA Builder's chief operating officer testified at his deposition that All Air installed the air conditioning unit that detached from the ceiling and struck Erby and provided the support rods for its installation (Ex L at 54-60).

Defendants move for summary judgment dismissing the complaint on the ground that Erby's injury was not caused by any negligence committed by defendants. Defendants argue that Erby's injury was caused by the sudden and unexpected detachment of a permanently installed overhead air conditioning unit that Erby's employer, All Air, installed. Moreover, Erby admitted during his deposition testimony that there was nothing wrong with the ladder he was using when

[1] A canvas connector is a type of flexible connection or joint, like an accordion.

he was injured. Defendants aver that the partial detachment of the permanently mounted air conditioning unit was unforeseeable and not proximately caused by the absence or inadequacy of a safety device prescribed by the Labor Law. Therefore, Erby's common-law negligence and § 200 claims should be dismissed since they fail under both the "manner and means" and "dangerous condition" standards. Defendants argue that Erby's § 240(1) claim should be dismissed since it fails under both a "falling object" and "falling worker" theory of liability. Finally, defendants argue that Erby's § 241(6) claims should be dismissed since the Industrial Code provisions upon which his claim rests are either insufficiently specific, inapplicable, or were not violated.

In support of their arguments, defendants submit the expert affidavit of Shawn Z. Rothstein. In his affidavit, Rothstein opines that Labor Law § 240(1) was not violated because the air conditioning unit did not partially detach from the ceiling due to the absence of or inadequacy of a safety device. Rather, the air conditioning unit, which partially separated from the ceiling, was permanently secured and held in place by four support rods that permanently anchored the unit to the ceiling. The rods were permanently mounted to the ceiling and affixed to the ceiling with the intention to remain permanently in place. The rods were not, and did not, function as safety devices, as contemplated by Labor Law § 240(1).

Rothstein avers that there was no Labor Law § 240(1) violation because there was no foreseeable risk that the permanently mounted air conditioning unit assembly might detach or separate from the ceiling. The air conditioning unit was in its final condition, i.e., completed, and therefore was not in need of temporary support. Further, according to Rothstein, given that the air conditioning unit's installation as a permanent fixture was complete, there was no foreseeable need to furnish an elevation safety device to prevent the unit from falling. Rothstein notes that the

unforeseeability that the unit would detach from the ceiling is established by the fact that Erby was not touching the AC unit at the time of the accident.

Regarding Erby's use of a ladder at the time of the accident, Rothstein notes that, at his deposition, Erby acknowledged that he did not experience any problems with the ladder while he was on it before the accident. Erby also testified that he had placed the ladder on a clean level flat surface. Rothstein also notes that Erby did not testify that the ladder moved in any way, i.e., it did not tilt, shift, shake, wobble, slide, slip, kick out, etc., before he fell. Thus, according to Rothstein, Erby did not fall because the ladder failed to perform its function of supporting him. Rather, he fell because he got knocked in the head by the air conditioning unit, which, in turn, caused him to lose his balance and fall off of the ladder.

Erby opposes defendants' motion and cross moves for summary judgment on his Labor Law § 240(1) claim. In support of his cross-motion Erby argues that it is undisputed that he was struck in the head by an unsecured air conditioning unit that suddenly fell from a height causing him to fall from a ladder. Erby argues that he is entitled to summary judgment as a matter of law pursuant to Labor Law § 240(1) because the air conditioning unit was not, but should have been, secured with stays braces or ropes, to prevent it from falling from a height while he performed the work of installing ductwork to the unit. In addition, Erby argues that he is entitled to summary judgment pursuant to § 240(1) because the ladder he was provided was not an adequate safety device to perform his elevated work. Erby contends that he should have been provided with a scaffold or a hoist such as a scissor lift. According to Erby, a scaffold or hoist provides a more stable surface and safer footing which would have given him more stability to perform his work which involved frequent pushing-and-pulling as he installed the canvas connector to the ductwork

and unit. Therefore, according to Erby it is undisputed that his accident was gravity and/or elevation related, and was caused by defendants' failure to provide an adequate safety device.

Erby contends that defendants' arguments that Labor Law § 240(1) does not apply to this case are in correct. Erby argues that defendants' failure to properly secure an overhead object that consequently falls from a height is a well-established violation of Labor Law § 240(1). Further, Erby argues that the air conditioning unit should have been secured with ropes, stays, or other devices and it fell because it was not.

In support of these arguments, Erby submits the affidavit of expert Kathleen Hopkins, who states that the defendants failed to "furnish or erect, or cause to be furnished or erected, scaffolding, hoist such as a scissor lift, stays, braces, irons, ropes, and other devices that were so constructed, placed and operated as to give proper protection to" Erby. She also stated that Erby "was not provided with a work site that was so equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety". Finally, Hopkins states that "due to the fact that the HVAC unit was anchored to the existing and old concrete ceiling with unknown concrete strength the HVAC unit should have been shored by stays, braces, irons or their equivalent to prevent the HVAC unit from falling before being connected to the canvas connection".

In opposition to Erby's cross motion, defendants note that Hopkins never addresses the fact that the air conditioning unit which partially detached from the ceiling was permanently installed, and that there was no need for temporary supports for a permanently installed unit. Further, given that the unit was a permanently installed fixture, it was not foreseeable that it would suddenly partially detach. Likewise, although Hopkins refers to the air conditioning unit being affixed to

"existing and old concrete ceiling of unknown strength,", such statements are not supported by the record. Finally, defendants note that Erby has not address their motion to dismiss his Labor Law § 246(1) claims.

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]). 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]).

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]).

Defendants argue that they did not supervise Erby's work rather Erby's employer All Air was his supervisor. Defendants also argue that they did not create the dangerous condition, because All Air installed the air conditioning unit. Defendants aver that they had no actual or

constructive notice that the installation of the air conditioning unit was a dangerous condition since Erby's own deposition testimony establishes that the unit's detachment from the ceiling was sudden and unexpected.

The evidence establishes that Defendants did not supervise plaintiff's work and they did not have actual or constructive notice that the air conditioning unit was in danger of detaching from the ceiling. Consequently, defendants have established their prima facie entitlement to summary judgment dismissing Erby's common law and Labor Law § 200 claims and Erby offers no arguments in opposition.

Accordingly, defendants must be granted summary judgment on Erby's common law and Labor Law § 200 claims.

Labor Law § 240(1) Claims

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 c 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]).

With respect to falling objects, the injured worker must demonstrate the existence of a hazard contemplated under that statute "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], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Essentially, the plaintiff must demonstrate that at the time the object fell, it either was being "hoisted or secured" (*Narducci*, 96 NY2d at 268), or "required securing for the purposes of the undertaking" (*Outar v City of New York*, 5 NY3d 731, 732 [2005]; see *Quattrocchi v F.J. Sciame Constr. Corp.*, 11 NY3d 757, 759 [2008]). Labor Law § 240 (1) does not automatically apply simply because an object fell and injured a worker; "[a] plaintiff must show that the object fell . . . because of the absence or inadequacy of a safety device of the kind enumerated in the statute" (*Narducci*, 96 NY2d at 268).

Here, the object that fell, or became partially detached, the air conditioning unit, was not being hoisted or secured when it detached. Rather, at the time of the accident, the air conditioning

unit had been permanently installed to the ceiling. Therefore, defendants have established prima facie entitlement to dismissal of Erby's Labor Law § 240(1) claim as it refers to falling objects.

In opposition, Erby argues he should have been provided with safety equipment to protect him from the falling air conditioning unit. However, a permanently installed air conditioning unit is not the type of falling object contemplated by Labor Law § 240(1).

In *Fabrizi v 1095 Ave. of the Ams., L.L.C.*, (22 NY3d 658, 663 [2014]), the plaintiff was injured in the course of repositioning a "pencil box," a device that serves as an access point for telecommunication wires. The pencil box was connected to a section of conduit piping running from the floor to the ceiling. To relocate the box, the plaintiff first disconnected it from a structure called a "Kindorf support," which resembles a giant bracket. After he did that, the plaintiff cut the galvanized steel conduit above the box and removed the box from the lower conduit and the Kindorf support. Once that was done, the top conduit, which was 8 to 10 feet long and weighed 60-80 pounds, was left hanging above plaintiff as he knelt below to drill holes in the concrete floor for the relocated Kindorf support. The only thing securing the top conduit to the ceiling at that point was a compression coupling, which, in plaintiff's mind, was inadequate. Plaintiff's concern about the compression coupling proved prophetic when, about 15 minutes into his drilling, the top conduit came loose from the compression coupling and fell to the floor, crushing plaintiff's thumb. In reversing the First Department and dismissing plaintiff's Labor Law 240(1) claim, the Court of Appeals held such claim it should have dismissed as a matter of law because the device plaintiff claimed his employer should have provided him that would have prevented his accident, a set-screw coupling, did not constitute a statutory safety device of the kind enumerated in the statute. The Court explained its reasoning as follows:

> "The compression coupling, which plaintiff claims was inadequate, is not a safety device 'constructed, placed and operated as to give

> proper protection' from the falling conduit. Its only function was to keep the conduit together as part of the conduit/pencil box assembly. Plaintiffs argument that the coupling itself is a safety device, albeit an inadequate one, extends the reach of section 240(1) beyond its intended purpose to any component that may lend support to a structure. It cannot be said that the coupling was meant to function as a safety device in the same manner as those devices enumerated in section 240(1)."
>
> "It follows that defendants' failure to use a set screw coupling is not a violation of section 240(1)'s proper protection directive. A set screw coupling, utilized in the manner proposed by plaintiff, is not a safety device within the meaning of the statute. Plaintiff concedes that compression and set screw couplings are 'basic couplings' that serve identical purposes, namely, to function as support for the conduit/pencil box assembly, not to provide worker protection. Given that either coupling would have served the purpose, it is of no moment that defendants utilized compression couplings rather than set screw couplings as part of the assembly"

(id. at 663-664).

Here, to the extent Erby argues that the air conditioning unit should have been permanently secured with a certain type of support rods, ropes, stays or other equipment, he does not explain how those are safety devices suitable for a permanently installed air conditioning unit (*see also Ruiz v Ford*, 160 AD3d 1001, 1003 [2d Dept 2018] [tires that fell on plaintiff, were not materials that were being hoisted or secured for the purposes of the undertaking, nor was it expected, under the circumstances of this case, that the tires would require securing for the purposes of the undertaking at the time one or more tires fell; therefore, Labor Law § 240(1) did not apply]). Here, since the air conditioning unit was not being hoisted or secured for the purpose of Erby attaching ductwork, it did not require securing.

Finally, the detachment of the air conditioning unit was not foreseeable, and therefore, Labor Law § 240(1) does not apply (*see Paguay v Cup of Tea, LLC*, 165 AD3d 964, 966 [2d Dept 2018] ["In order for liability to be imposed under Labor Law § 240(1), there must be a foreseeable risk of injury from an elevation-related hazard . . ., as defendants are liable for all normal and

foreseeable consequences of their acts"] [internal quotation marks and citation omitted]). Therefore, Labor Law § 240(1), as it relates to falling objects does not apply.

With respect Erby's falling worker claim, pursuant to Labor Law § 240(1), defendants argue that there is no evidence that the ladder provided to Erby was inadequate or malfunctioned. At his deposition, Erby testified that he had previously used the ladder, it was stable and steady and reached the ductwork he was working on. Notably, Erby did not testify that, after he was hit by the detached air conditioning unit, the ladder swayed or gave way or in any way malfunctioned contributing to his fall. Defendants argue that Erby was hit by a sudden and unexpected detached air conditioning unit, causing him to lose his balance, and to fall from the ladder. Therefore, defendants argue that there is no falling worker violation of Labor Law § 240(1), since the ladder provided to Erby was a proper safety device.

In opposition and in support of his motion, Erby's expert opines that Erby was improperly on an unsecured 6 to 8-foot ladder. However, given the facts of this case, even if the ladder had been secured, upon being struck by the air conditioning unit Erby would still have lost his balance and fallen off the secured ladder. Thus, since Erby did not fall off the ladder because it failed to provide proper protection, Erby's Labor Law § 240(1) falling worker claim must be dismissed.

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

The Labor Law § 241 (6) Claims

Labor Law § 241 (6) claims. Labor Law § 241 (6) provides, in relevant part:

> "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:
>
> * * *

> (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"

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]).

Although Erby alleges multiple violations of the Industrial Code in his bill of particulars, he does not move for summary judgment in his favor on any of these claims, nor does he oppose dismissal of these claims. Therefore, Erby's 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"]).

Even if Erby had opposed summary judgment, the provisions he asserts are inapplicable. Erby contends that 12 NYCRR 23-1.5 (a)(b)(c) were violated. However, those sections of the Industrial Code refer to general employer responsibilities and are not sufficiently specific. Moreover, these subparagraphs were not violated based on Erby's own deposition testimony in which he stated that he had "everything [he] needed" to safely perform his work duties and had no issues or problems with the ladder he was using when he was injured. Therefore, for all these reasons, 12 NYCRR 23-1.5(a), (b), (c)(1) and (c)(2) fail to support Erby's § 241(6) claim.

Erby's claim that 12 NYCRR 23-1.5(c)(3) was violated is also without merit as it provides: "All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." However, by Erby's own admission the ladder he was using was safe and suitable for his work; it was, therefore, "sound and operable" and not "damaged." As for the support rods that permanently anchored the air conditioning unit to the ceiling, they do not constitute a "safety device," "safeguard," or "equipment" as used in the regulation. Therefore, 12 NYCRR 23-1.5(c)(3) fails to support Erby's § 241(6) claim.

Industrial code 12 NYCRR 23-1.7(a) does not apply to the facts of this case because Erby was not injured doing work that would normally expose him to overhead falling materials. Industrial Code 12 NYCRR 23-1.7(b)(1)(i)-(iii) also does not apply in this case since Erby did not "step or fall" into an "opening" in the surface of the job site. And Industrial Code 12 NYCRR 23-

1.7 (d), which involves slippery surfaces, does not apply because there was no testimony that any surface was slippery at the time of Erby's accident. In addition, section 12 NYCRR 23-1.7(e)(1), which involves tripping hazards in pathways, does not apply because Erby's injury did not involve tripping. Finally, 12 NYCRR 23-1.7(e)(2), which applies to keeping work areas free of debris, is inapplicable since there is no claim that Erby's fall was precipitated by debris in his work area.

Accordingly, defendants must be granted summary judgment on Erby's Labor Law § 241(5) claim.

Accordingly, it is

ORDERED that defendants' motion to for summary judgment dismissing the complaint is granted and the complaint is dismissed with costs and disbursement to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff's cross motion for summary judgment on his Labor Law Labor Law § 240 (1) claim is denied; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

5/11/20
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION

APPLICATION: [ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER
[ ] SETTLE ORDER [ ] SUBMIT ORDER

CHECK IF APPROPRIATE: [ ] INCLUDES TRANSFER/REASSIGN [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE