Johnson v Residencia Esperanza Hous. Dev. Fund Corp.
2020 NY Slip Op 32996(U)
September 11, 2020
Supreme Court, Kings County
Docket Number: 502080/2018
Judge: Richard Velasquez

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11th day of SEPTEMBER, 2020

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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JOHNATHAN JOHNSON,

Plaintiff,

-against-

Index No.: 502080/2018
Decision and Order

RESIDENCIA ESPERANZA HOUSING DEVELOPMENT FUND CORP., and TRION REAL ESTATE MANAGEMENT LLC,

Defendants,

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The following *papers NYSCEF* Doc #'s 65 to 101 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	65-80; 81-93
Opposing Affidavits (Affirmations)	95-96; 97
Reply Affidavits	99; 101

After having heard Oral Argument on JULY 13, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Defendants, RESIDENCIA ESPERANZA HOUSING DEVELOPMENT FUND CORP. (hereinafter RESIDENCIA), and TRION REAL ESTATE MANAGEMENT LLC (hereinafter TRION), move this court pursuant to CPLR 3212 dismissing Plaintiff's Labor Law §§ 240(1) and 241(6) claims against Residencia Esperanza Housing Development

Fund Corp; and (b) dismissing Plaintiff's Labor Law §§ 200, 240(1) and 241(6) claims against Trion Real Estate Management LLC. (MS#4). Plaintiff also moves this court pursuant to pursuant to CPLR 3212 granting summary judgment in the Plaintiff's favor on the issue of liability on Plaintiff's claims under Labor Law Sections 200, 240(1) and 241(6), as well as Plaintiff's claims for common law negligence against Defendants. (MS#5).

Facts

This action arises from an incident where plaintiff allegedly sustained personal injuries on February 14, 2017 when he stepped from ground level into a sump pit filled with hot water causing him to sustain a burn injury to the right foot and ankle, while he was repairing a boiler at the premises. Plaintiff alleges negligence as well as violations of Labor Law §200, 240(1)and 241(6).

It is undisputed that Defendant RESIDENCIA is the owner of the building located at 616 West 137 Street (hereinafter the "Premises"). The premises is residential, containing 24 apartments and one rental unit. It is undisputed that at the time of the accident, Defendant RESIDENCIA premises was managed by Defendant TRION. Pursuant to the Residential Management Agreement between defendant TRION and defendant RESIDENCIA "Management" was defined as defendant TRION were responsible for resolving, and handling the day-to-day issues that arose and handling the day-to-day activities required to run the building effectively. (See Exhibit 7 of plaintiffs motion). Pursuant to said agreement Defendant RESIDENCIA, as the owner, was the entity responsible for satisfying any and all expenses that arose during TRION's management of the building. (*Id*). Whenever repairs needed to be done, TRION was

responsible for hiring vendors to conduct the repairs. (*Id.*) Mr. Clarke a non-party was the owner of Clarke Mechanical, a boiler service and repair company that was customarily retained for residential jobs dealing exclusively with cleaning and repairing residential boilers. Mr. Clarke testified that he was hired by TRION to repair the boiler, which included but was not limited to, diagnosing the issue(s) and replacing an automatic water feeder. Mr. Clarke in turn hired Plaintiff as a boiler technician/helper to complete the job.

It is alleged that Plaintiff and Mr. Clarke determined that in order to repair the boiler, they would have to replace the "lower water cutoff." In order to do so, they were required to drain, at least, a certain portion of the water contained in the boiler. When water was drained from the boiler, the drained water flowed into “pit” that was located in front of the boiler, which contained a "sump-pump". The dimensions of the “pit” are approximately two(2) feet deep and twenty to forty (20-40) inches wide. The purpose of the pit is to allow the water to drain out of the boiler, and the sum pump is to pump water out of the pit and into a condensate tank which is then supposed to redirect the water back into the boiler. The court notes there are pipes leading from the top of the boiler the whole way down into the “pit”. It is alleged that such pits are to be covered.

It is alleged on February 14, 2017 plaintiff arrived at the premises around 7PM and brought with him the new lower water cutoff part that was required to repair the boiler. It is alleged Plaintiff was wearing his own safety equipment, which included gloves, goggles, and construction safety boots, which were waterproof, leather, and went past his ankle. It is alleged Mr. Clarke arrived around 8:00 P.M. and found Plaintiff already working on the boiler. In order to complete the repairs and replace the “lower

water cut off" piece, it is alleged that Plaintiff and Mr. Clarke were required to drain the boiler to some extent in order to replace the lower water cut off. It is alleged that while the boiler was being drained into the unguarded and uncovered pit, after approximately 18 minutes elapsed, the pit began overflowing with water to approximately above the toes of Plaintiff's boots. It is alleged the amount of water that overflowed out of the pit, onto the surrounding floor was approximately 4-8 inches. The plaintiff alleges he was unable to see the pit as a result of the flooding, and that this "pit" not have a cover and all pits like this should have a cover. According to Mr. Clarke, the temperature of the water pit where Plaintiff's foot fell in was over 220 degrees Fahrenheit. It is alleged as a result of the overflow, plaintiff and Mr. Clarke stopped draining the boiler and began to change the lower water cutoff part. It is alleged while Plaintiff was changing the lower water cutoff with a wrench, one of the "nipples" on the boiler broke, and as a result, Plaintiff left the room to get a replacement which were by the stair case, and after obtaining the replacement, Plaintiff then began walking back to complete the job. It is alleged while walking back the Plaintiff fell into the unguarded, uncovered pit, causing Plaintiff's injuries. Plaintiff further alleges the lighting in the boiler room was inadequate and that contributed to his inability to see the pit along with the flooding. It is further alleged that Mr. Clarke informed the owners (RESIDENCIA) and managers (TRION) of the premises in 2016 that the cover for the pit was missing.

Arguments

Defendants in support of their motion contend, that Plaintiff's cause of action as to violations of Labor Law § 240(1) and 241(6) should be dismissed because the plaintiff was engaged in routine maintenance at the time of the accident and is therefore not protected by Labor Law § 240(1). Defendants also contend that 241(6) and the

enumerated industrial code sections are not applicable because they apply to openings that someone can fall through not into. Finally, the defendants contend that Labor Law 200 and common Law negligence should be dismissed as against the TRION defendant because they were a management company and not the owner and they did not supervise or control the method or means of the plaintiff's work.

Plaintiff in support of his motion contends Defendants are liable under Labor Law § 200 because they failed to provide Plaintiff with a safe workplace by allowing a dangerous premises condition to exist on their property, despite having notice of same dangerous condition. Plaintiff further contends the defendants are liable under Labor Law § 241(6) for violation of industrial code sections 12 NYCRR 23-1.7(b)(1)(i), 12 NYCRR 23-1.30, and 12 NYCRR 23-1.5(c)(3), which are meant to protect workers by preventing them from falling into hazardous openings, and by requiring sufficient illumination in and around where Plaintiff worked. Finally, plaintiff contends defendants are liable under 240(1) because they failed to provide Plaintiff with a protective device in violation of the statute, which was the proximate cause of his injuries.

Analysis

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). However, where the moving party fails to make

a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". *CPLR* §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id*. The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Zuckerman v. City of New York*, 49 NY2nd 557 [1990].) Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v. Algaze*, 84 NY2d 1019 [1995]).

Labor Law § 200 & Common Law Negligence

"Labor Law 200(1) is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work" (*Ortega v. Puccia*, 57 AD3d 54, 60, 866 NYS2d 323). "[W]hen a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work" (*id.* at 61, 866 NYS2d 323). *Goodwin v. Dix Hills Jewish Center,* 144 AD3d 744, 41 NYS3d 104, 2016 NY Slip Op. 07293. "As a threshold matter, there is no difference between asserting a claim based upon the common-law principles of negligence or one which

alleges that the defendant violated section 200 of the Labor Law Section 200 is nothing more than a codification of the common-law duty of an owner or general contractor to provide a safe place to work." *Rizzuto v. L.A. Wenger Contr. Co.*, 91 NY2d 343, 352, 670 NYS2d 816, 821, 693 NE2d 1068, 1073 (1998); *Rusin v. Jackson Hgts. Shopping Ctr.,* 27 NY2d 103, 313 NYS2d 715, 261 NE2d 635 (1970). In other words, a claim arising pursuant to the provision is "tantamount to a common-law negligence claim in a workplace context." *Mendoza v. Highpoint Assoc.*, IX, LLC, 83 AD3d 1, 9, 919 NYS2d 129, 135 (1st Dept.2011); *Quoting Lopez v. Dagan*, 98 AD3d 436, 440–41, 949 NYS2d 671, 675 (2012). "A defendant has the authority to supervise or control the work for purposes of Labor Law 200 when that defendant bears the responsibility for the manner in which the work is performed" (*Ortega v. Puccia*, 57 AD3d at 62, 866 NYS2d 323).

In the present case, there are numerous questions of fact as to whether the defendants had the authority to supervise or control the manner in which the plaintiff, performed its work, whether they had notice of the condition or whether they created the condition (*see Allan v. DHL Exp. (USA), Inc.,* 99 AD3d 828, 952 NYS2d 275*; Comes v. New York State Elec. & Gas Corp.,* 82 NY2d 876, 877, 609 NYS2d 168, 631 NE2d 110; *Russin v. Louis N. Picciano & Son,* 54 NY2d 311, 317, 445 NYS2d 127, 429 NE2d 805; *Jenkins v. Walter Realty, Inc.,* 71 AD3d 954, 898 NYS2d 56; *Enos v. Werlatone, Inc.,* 68 AD3d 712, 888 NYS2d 902; *Ortega v. Puccia,* 57 AD3d at 62–63, 866 NYS2d 323). In the present case Mr. Clarke testified that he informed RESIDENCIA and TRION that the cover for the pit was missing in 2016. Additionally, in opposition the defendant's, have not submitted anything establishing that they did not control the means, methods, and manner of work. Specifically, the defendants fail to annex the contract for the boiler

repair between the parties, if there was any contract, making it impossible for the court to determine whether or not there was an agreement and the terms of said agreement. The contract that was submitted between the two defendants establishes that TRION was hired by RESIDENCIA to manage and oversee all repairs and complaints made regarding the building. However, it is silent as to any supervision or authority regarding specific repairs that are to be performed. The lack of a contract between TRION and Clarke Mechanical being submitted to the court itself raises questions of fact as to who had the authority to supervise or control the work for purposes of Labor Law § 200. It is wholly unclear as to who, if anyone, was supervising or controlling the worksite. There are additional issues of material fact regarding the owner and management company having notice of the condition (i.e. the pit cover missing) existing on the premises. As previously mentioned Mr. Clarke testified that he informed the defendants of the pit cover missing in 2016. All of which are credibility issues which are best left for a jury.

Accordingly, Plaintiff's request for summary judgment as to Labor Law 200 and common law negligence are hereby denied as issues of fact exist. Defendant TRION's request to dismiss plaintiff's Labor Law 200 and common law negligence claims as against them as issues of fact exist, including but not limited to whether TRION had notice of the condition of the pit cover missing.

Labor Law § 240(1)

Labor Law § 240(1) 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."

"Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person." (*Runner v. New York Stock Exchange,* 13 NY3d 599, 604 [2009] [quoting *Ross v. Curtis–Palmer Hydro–Elec. Co.,* 81 NY2d 494, 501 (1993)]). In determining the applicability of the statute, the "relevant inquiry" is "whether the harm flows directly from the application of the force of gravity to the object." (*See Runner v. New York Stock Exchange,* 13 NY3d at 604.) "The dispositive inquiry ... does not depend upon the precise characterization of the device employed or upon whether the injury resulted from a fall, either of the worker or of an object upon the worker." (*Runner v. New York Stock Exchange,* 13 NY3d at 603.) "Rather, the single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential." (*Id.*) "The purpose of the strict liability statute is to protect construction workers not from routine workplace risks, but from the pronounced risks arising from construction work site elevation differentials, and, accordingly, that there will be no liability under the statute unless the injury producing accident is attributable to the latter sort of risk." (*See Runner v. New York Stock Exchange,* 13 NY3d at 603; *see also Davis v. Wyeth Pharmaceuticals, Inc.,* 86 AD3d 907, 909 [3d Dept 2011].)

To meet their burden on a motion for summary judgment on a Labor Law § 240(1) claim, defendants must establish, prima facie, "that the plaintiff's work did not constitute erection, demolition, repairing, altering, painting, cleaning, or pointing of a

building or structure within the meaning of Labor Law § 240(1)" (*Kearney v. Dynegy, Inc.*, 151 AD3d 1037, 57 NYS3d 520 [2 Dept., 2017]; *see also Tserpelis v. Tamares Real Estate Holdings, Inc.*, 147 AD3d 1001, 47 NYS3d 131 [2 Dept 2017]). "It is not important how the parties generally characterize the injured worker's role but rather what type of work the plaintiff was performing at the time of injury" (*Joblon v. Solow*, 91 NY2d 457, 672 NYS2d 286 [1998]). "While the reach of [Labor Law] section 240(1) is not limited to work performed on actual construction sites, the task in which an injured employee was engaged must have been performed during 'the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure' " (*Quituizaca v. Tucchiarone,* 115 AD3d 924, 982 NYS2d 524 [2 Dept., 2014], *quoting Martinez v. City of New York*, 93 NY2d 322, 690 NYS2d 524 [1999]; see also Holler v. City of New York, 38 AD3d 606, 832 NYS2d 86 [2 Dept 2007]). The Court of Appeals has held that "the term 'altering' in section 240(1) 'requires making a significant physical change to the configuration or composition of the building or structure' **this definition excludes 'routine maintenance'** and 'decorative modifications'. Whether a physical change is significant depends on its effect on the physical structure" (*Saint v. Syracuse Supply Co.,* 25 NY3d 117, 8 NYS3d 229 [2015], quoting Joblon v. Solow, 91 NY2d 457, supra, *see also Sanatass v. Consol. Investing Co.*, 10 NY3d 333, 858 NYS2d 67 [2008], *quoting Panek v. County of Albany*, 99 NY2d 452, 758 NYS2d 267 [2003]; *quotiong Deangelis v. Franklin Plaza Apartments, Inc.*, 59 Misc. 3d 1227(A), 108 NYS3d 688 (NY Sup Ct 2018).

Defendants contend that Plaintiff's cause of action as to violations of Labor Law § 240(1) should be dismissed because the plaintiff was engaged in routine maintenance

at the time of the accident and is therefore not protected by Labor Law § 240(1). Plaintiff contends he was exposed to an elevated risk while engaged in repairing or altering a building. "In determining whether a particular activity constitutes 'repairing,' courts are careful to distinguish between repairs and routine maintenance, the latter falling outside the scope of section 240(1)" (*Ferrigno v. Jaghab, Jaghab & Jaghab, P.C.*, 152 AD3d 650, 59 NYS3d 115 [2 Dept., 2017], *citing Esposito v. New York City Indus. Dev. Agency,* 1 NY3d 526, 770 NYS2d 682 [2003]). "There is no "bright line" rule regarding what tasks constitute repair work covered under Labor Law § 240(1), and what activities are deemed to be "routine maintenance," which is not covered. Rather, "the question of whether a particular activity constitutes a 'repair or routine maintenance' must be determined on a case-by-case basis" (*Riccio v. NHT Owners, LLC.*, 51 AD3d 897, 899 [2008]). In making such determinations, "courts must weigh various factors including the complexity and scope of the work. "Another factor which must be weighed is whether or not the job involves the replacement of a missing, malfunctioning, or worn out component. Such work is ordinarily deemed to be routine maintenance" (*Esposito v. New York City Indus. Dev. Agency,* 1 NY3d 526, 528 [2003]; *Deoki v. Abner Properties Co.*, 48 AD3d 510 [2008]; *English v. City of New York*, 43 AD3d 811 [2007]; *Barbarito v. County of Tompkins*, 22 AD3d 937 [2005]); *quoting, Owens v. City of New York*, 24 Misc 3d 1204(A), 890 NYS2d 370 [Sup. Ct. Kings County, 2009], *aff'd*, 72 AD3d 775, 898 NYS2d 493 [2 Dept., 2010]). For example, it has been held, "the mere replacement or tightening of a screw or pin in the arm of a nonmotorized "door closer" does not constitute repair work under Labor Law § 240(1)", in contrast, replacing the entire door track on a malfunctioning elevator constitute covered repair work, (*Thompson v. 1701*

Corp., 51 AD3d 904 [2 Dept 2008]); *see also Riccio*, 51 AD3d at 899; *Lofaso v. J.P. Murphy Assocs.*, 37 AD3d 769, 771 [2 Dept 2007]). "Generally, courts have held that work constitutes routine maintenance where the work involves 'replacing components that require replacement in the course of normal wear and tear' " (*Ferrigno v Jaghab, Jaghab & Jaghab, P.C.*, 152 AD3d at 653, *quoting Esposito v New York City Indus. Dev. Agency,* 1 NY3d at 528; *see Mammone v T.G. Nickel & Assoc., LLC*, 144 AD3d 761, 761-762 [2016]); *Quoting Dahlia v. S & K Distribution, LLC*, 171 AD3d 1127, 1128, 98 NYS3d 338 (2 Dept 2019); ***see also Wein v. Amato Properties, LLC*, 30 AD3d 506, 816 NYS2d 370 [2 Dept., 2006] [where plaintiff was replacing a defective safety valve on a boiler which constituted "routine maintenance" and not a repair within the meaning of Labor Law § 240(1)**]; *Sobenis v. Harridge House Assocs. of 1984*, 111 AD3d 917, 976 NYS2d 113 [2 Dept., 2013]; *Melski v. Fitzpatrick & Weller, Inc.,* 107 AD3d 1447, 967 NYS2d 304 [4 Dept., 2013]; *quoting Deangelis v. Franklin Plaza Apartments, Inc.*, 59 Misc3d 1227(A), 108 NYS3d 688 (N.Y. Sup. Ct. 2018).

The *Wein v. Amato Props., LLC*, 30 AD3d 506 (2nd Dept. 2006) case is similar to the present case. In *Wein*, the plaintiff, an oil burner repairman, was dispatched to replace a defective safety valve on a boiler at a residential building owned by the defendant. In *Wein*, the Second Department upheld summary judgment dismissing the plaintiff's Labor Law § 240(1) claim, finding that replacement of the defective safety valve constituted routine maintenance rather than a repair of the boiler. Applying the factors to the present case, the activity undertaken by plaintiff was "routine maintenance" within the meaning of Labor Law § 240 (1). The record in the present case, establishes that the specific component requires replacement due to normal wear

and tear, and is replaced by lossening "nipples" and using a wrench to lossen and replace the lower water cut off. (See Mr. Clarkes testimony). As such, the task the plaintiff was performing involved the replacement of a missing, malfunctioning, or worn out component and was routine maintenance. The Court of Appeals has held "[t]he work . . . involved replacing components that require replacement in the course of normal wear and tear, constitute routine maintenance and not 'repairing' or any of the other enumerated activities" (*Esposito*, 1 NY3d at 528). Likewise here, in the present case, the record establishes, Mr. Clarke determined that the cause of the banging and clanking a problem with the lower water cut off and the remedy was to replace the lower water cut off valve, by draining the water and removing some "nipples" and replacing the lower water cut off. *See, Abbatiello v. Lancaster Studio Assocs*., 3 NY3d 46, 53, 814 NE2d 784 (2004). Therefore, in the present case "the degree to which boiler sections in this case, the lower water cut off, are "components that require replacement in the normal course of wear and tear" has been established and such work is routine maintenance. See (*Esposito v. New York City Indus. Dev. Agency,* 1 NY3d at 528, 770 NYS2d 682, 802 NE2d 1080). In opposition, the plaintiff fails to raise a triable issue of fact.

Accordingly, defendants RESIDENCIA's and TRION's, motion for summary dismissal of Plaintiffs' Labor Law § 240(1) cause of action is hereby granted as the plaintiff was engaged in routine maintenance. Plaintiff motion for summary judgment as to liability as to Plaintiffs' Labor Law § 240(1) cause of action is hereby denied.

Labor Law § 241(6)

"**Labor Law** § **241**(**6**) imposes a nondelegable duty of reasonable care upon an owner or general contractor to provide reasonable and adequate protection to workers,

and a violation of an explicit and concrete provision of the Industrial Code by a participant in the construction project constitutes some evidence of negligence for which the owner or general contractor may be held vicariously liable ." (*Fusca v. A & S Construction,* LLC, 84 AD3d 1155, 1156 [2d Dept 2011][internal quotation marks and citations omitted].)

The defendants also established their prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging violations of Labor Law § 241(6). The defendants established, prima facie, that the work being performed by the plaintiff at the time of the accident was not connected to "construction, excavation, or demolition work, as defined in the Industrial Code, but was routine maintenance, and routine maintenance is not within the ambit of Labor Law § 241(6)" (*see Peluso v. 69 Tiemann Owners Corp.,* 301 AD2d 360, 755 NYS2d 17). Therefore, Labor Law § 241(6) is inapplicable to the present case (*see Esposito v. New York City Indus. Dev. Agency,* 1 NY3d 526, 770 NYS2d 682, 802 NE2d 1080; *Nagel v. D & R Realty Corp.,* 99 NY2d 98, 102, 752 NYS2d 581, 782 NE2d 558; *Gallello v. MARJ Distribs., Inc.,* 50 AD3d 734, 855 NYS2d 602; *Wein v. Amato Props., LLC,* 30 AD3d 506, 816 NYS2d 370); *quoting, Garcia-Rosales v. Bais Rochel Resort*, 100 AD3d 687, 688, 954 NYS2d 148, 150 (2 Dept 2012).

Accordingly, defendants motion to dismiss Plaintiff's Labor Law §§ 240(1) and 241(6) claims against Residencia Esperanza Housing Development Fund Corp. is hereby granted, for the reasons stated above. Defendants request to dismiss the plaintiff's 240(1) and 241(6) claims against defendant Trion Real Estate Management LLC are hereby granted, for the reasons stated above. Defendants request dismissing

Plaintiff's Labor Law §200 claim against defendant TRION is hereby denied, as issues of fact exist. (MS#4). Plaintiff's motion summary judgment on the issue of liability on Plaintiff's claims under Labor Law Sections 200, 240(1) and 241(6), as well as Plaintiff's claims for common law negligence against Defendants are hereby denied, for the reasons stated above. (MS#5).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
September 11, 2020

HON. RICHARD VELASQUEZ