SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN **PART** IAS MOTION 58EFM

Justice

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INDEX NO. 152366/2017

ROLAND YOSUFUF,

Plaintiff,

MOTION SEQ. NO. 002

- v -

TRITON CONSTRUCTION COMPANY, TRITON CONSTRUCTION COMPANY, LLC, TRITON CONSTRUCTION CORP., TRITON CONSTRUCTION AND DEVELOPMENT, LLC, MEILMAN FAMILY REAL ESTATE, LLC,15TH STREET HOLDCO, LP, and ROCKHILL MANAGEMENT, LLC,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for SUMMARY JUDGMENT.

In this Labor Law action commenced by plaintiff Roland Yosufuf, defendants Triton Construction Company, LLC, Meilman Family Real Estate, LLC, 15th Holdco, L.P., Rockhill Management, LLC and S & E Bridge and Scaffold move, pursuant to CPLR 3212, for summary judgment dismissing the complaint, along with such other relief that this Court considers just and proper. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from an incident on August 4, 2016 in which plaintiff was allegedly injured when he slipped and fell on a stairway while working at a construction site ("the building" or "the site") located at 413-419 West 14th Street in Manhattan. Doc. 1. Plaintiff commenced the captioned action by filing a summons and complaint against defendants Triton

Construction Company, Triton Construction Company, LLC, Triton Construction Corp., Triton Construction and Development, LLC (collectively "Triton"), Meilman Family Real Estate, LLC ("Meilman"), 15th Street Holdco, L.P. ("Holdco"), Rockhill Management, LLC ("Rockhill"), and S&E Bridge and Scaffold ("S&E") on March 13, 2017. Doc. 1.[1]

In the complaint, plaintiff alleged that defendants, which owned, managed, and/or controlled the site, were negligent and committed violations of Labor Law sections 200, 240(1), and 241(6). Id. Specifically, claimed plaintiff, a supervisor for Triton directed him to go to the roof of the building, haul debris to the floor below, and throw the debris down a chute which had been installed on the top floor of the building. Id. As plaintiff was descending from the roof to the top floor of the building, he slipped on the stairs of a scaffold and was injured. Id.

In his bill of particulars, plaintiff alleged that he was injured during the scope of his employment as a laborer for Construction Force Services ("CFS") on August 4, 2016 at 419 West 14th Street between the roof and the fourth floor scaffold landing. Doc. 9.

In his supplemental bill of particulars, plaintiff alleged that defendants violated Labor Law sections 200, 240(1), and 241(6), as well as Industrial Code sections 23-1.20(a), (b), and (c), 23-1.5, 23-1.7, 23-1, 23-1.16(a)-(f), 23-1.17(2)(3), 23-1.21(b)(1) and 23-1(b)(3)(i), 23-1.21(b)(4)(ii), 23-1.21(b)(4)(iv), 23-5.1-5.9, 23-5.1023, and 23-5.11-5.18. Doc. 10.

At his deposition, plaintiff testified that he was employed as a laborer by CFS and that his duties included cleaning debris and moving materials. Doc. 45 at 19, 123-124. He began working at the site in July 2016 and used his own hard hat and work boots. Id. at 102-109, 112-114. Plaintiff discarded the boots after the alleged incident. Id. at 109-110. Each day, Jared Holmes of CFS directed him to go to a particular area to work. Id. at 115-118. Plaintiff's duties

[1] Plaintiff noted in his bill of particulars that, although each of the Triton entities named in the caption were served, and were believed to be related, only Triton Construction Company, LLC answered. Doc. 8, Doc. 9 at par. 16.

included cleaning the roof of the three or four story building. Id. at 121-122. He accessed the roof through an exterior stair tower, which extended from ground level to the roof and was "strictly a means of getting up and down from one level to the other." Id. at 122-123.

On the date of the alleged accident, Holmes directed plaintiff to remove debris from the roof, including concrete, brick, wood and aluminum. Id. at 125. Specifically, Holmes directed him to "to bag debris up" and then throw it down a garbage chute on the top floor of the building, which ran down to a dumpster at ground level. Id. at 124-128. According to plaintiff, one could only access the top floor of the building from the roof, or vice versa, by using the exterior stair tower. Id. at 129-130. Prior to the incident, plaintiff made three trips from the roof to the chute, each time carrying a bag weighing approximately 35-45 pounds. Id. at 130- 131. He had no difficulty performing this task during his prior trips to the chute that day, and did not see any debris on the steps of the exterior stair tower prior to the accident. Id. at 133.

During his third trip of the day down the stair tower, plaintiff fell on one of the metal treads. Id. at 134-136. He recalled that he was holding on to the bag of debris with both hands, over his right shoulder, and he took a step with his left foot when "the lip of [his] boot got stuck, it felt like a crack, it felt like it buckled a little bit, and then [he] tried to wiggle it out, and [he] stepped down with [his] right foot and the scaffold shook a little bit, and [he] lost balance, and [he] rolled [his] ankle, and just the next thing [he] remember[ed] [was] just waking up at the bottom of the stairs." Id. at 134-135, 171.

He maintained that, as he was walking straight down the stairs, the "side lip" of his left boot became caught in a "crease" in the stair and that, when he stepped down on the stair, it felt like it bent and the stair tower shook. Id. at 135-136, 159-162. Once his boot became caught in the stair, he had to wiggle it out and, while trying to pull out his boot, he lost his balance. Id. at

163. Plaintiff further stated that, after he pulled his boot out, "[his] right ankle rolled as [he] stepped onto the step", causing him to fall back onto the bag of debris, and he and the bag slid down the stairs. Id. at 164. Although plaintiff had seen the crease earlier that day, it did not interfere with his work. Id. at 136. Additionally, he never heard of any prior complaints about the stair tower and his boot had never gotten caught on the stairs prior to the incident. Id. at 137, 166.

Following the incident, plaintiff completed a C-3 form (a request for workers' compensation benefits) and he testified that he recognized his handwriting on the report, which was marked as an exhibit at his deposition. Doc. 45 at 138, Doc. 52. In the C-3 Report, plaintiff represented that the accident occurred when he "tripped on bent stair and pebbles and rocks on stairs." Doc. 45 at 138-139, Doc. 52. However, plaintiff could not recall exactly where the rocks and pebbles had been on the stairs and, when asked if the rocks and pebbles caused him to fall, he said he was "not too sure" and that he stood by his previous testimony that a crease or bend in the stair caused him to fall. Doc. 45 at 139-140.[2]

After plaintiff fell, his body came to rest on a landing. Id. at 140. At his deposition, plaintiff was shown photographs of the stair tower and, looking at one of the pictures, identified himself on his back and on top of the garbage bag at the bottom of the landing. Id. at 145-147, 152, Ex. B to Doc. 53. He also circled the alleged crease on one of the treads as depicted in the same photograph. Id. at 158.

Stephen Famoso, a project manager for Triton, the general contractor at the site, appeared for deposition on behalf of that entity. Doc. 47 at 8, 12-13. He testified that defendant Rockhill

[2] Although plaintiff had seen little rocks and/or pebbles on the stairs prior to his accident, he could not recall exactly where they were and never swept them off of the stairs. Id. at 166-167.

was a subsidiary of Rock Point Group, the owner of the building. Id. at 16-17.[3] He stated that, as general contractor, Triton scheduled work, communicated with subcontractors and the owner, and was responsible for site safety. Id. at 13. Although Famoso did not become project manager at the site until mid-August 2016, subsequent to plaintiff's accident, he testified that the project at the site involved the complete renovation of the building. Id at 12-15. Famoso supervised Triton staff members, including project superintendent Holmes, two project engineers, an assistant project super, and an administrator. Id. at 13-14. Holmes communicated with subcontractors, scheduled work, and made sure that work was being performed, although he did not have any authority to direct the means and methods of the subcontractors' work. Id. at 25. Triton contracted for all labor at the site and had no employees actually performing construction work there. Id. at 21. Famoso met with each contractor's project manager, sat in on project meetings, and performed daily inspections for the purpose of reporting to the owners. Id. at 21, 26. However, he did not direct the means and methods of work used by the subcontractors. Id. at 21-22. If he saw that a subcontractor was performing its work improperly, he would speak to the individual performing the work as well as his or her supervisor or foreman. Id. at 22.

As of August 2016, the interior of the building was being demolished and steel work was in progress to reframe openings and reinforce the structure. Id. at 15. The roof was also being demolished and new mechanical units were to be installed. Id. at 23. CFS, a subcontractor hired by Triton, removed debris created during the demolition process and also maintained the general cleanliness of the site. Id. at 29-30. Jason Tavares was the foreman for CFS in August 2016. Id. at 56.

[3] Famoso was not aware what involvement, if any, Meilman and Holdco had at the site. Doc. 47 at 17-18.

Although Famoso did not tell CFS employees how or where to clean, he saw its employees performing their duties, including CFS workers bringing bags of debris down from the roof to other portions of the building. Id. at 31. As of August 2016, there was an exterior stair tower, made of metal frames and steel, which ran from the ground level of the building up to the roof and which served as a secondary means of egress (the other being a staircase inside the building). Id. at 32-33. S&E was retained by Triton to install the stair tower. Id. at 34. When CFS removed debris from the roof to other portions of the building, it used both the exterior stair tower and the interior staircase. Id. at 36-37. Famoso identified Triton's daily report for August 4, 2016, which listed CFS as a subcontractor working that day. Id. at 37, 40.

Triton employed a licensed superintendent, Andy Corbon, who walked the job site, including the stair tower, to ensure compliance with safety standards. Id. at 39-42. If Corbon observed something wrong with the stair tower, he was expected to notify S&E to ask that it be repaired. Id. at 42-43. Although CFS was responsible for ensuring that the stair tower was clear of rocks, pebbles and other debris, Corbon was to report the presence of any such debris to Holmes. Id. at 43-44. Famoso was unaware of any complaints made to Holmes regarding the condition of the stair tower. Id. at 44. Additionally, although Famoso walked on the stair tower from the ground floor to the roof, he never saw any safety hazards. Id. at 45. He denied that the stair tower shook in an unsafe manner and he never observed any debris on it. D. at 45. If the stair tower had shaken, he would have notified S&E. Id. at 45-46.

Famoso identified the Triton Incident Report prepared by Holmes. Id. at 51-52. He also reviewed the photographs of the stair tower and identified it as the one present in August 2016. Id. at 52-53.

Teddy Barran appeared for a deposition on behalf of S&E. Barran, S&E's general supervisor, was responsible for supervising work performed on, among other things, system stair towers, which were prefabricated exterior staircases which provided access to buildings. Doc. 54 at 7, 12, 17. Exterior stair towers were generally metal units assembled with interlocking components. Id. at 13-16. Three stair units placed side-by-side created a tread approximately 33" wide. Id. at 14-15. Although Barran initially said that the units fit together "perfectly", he then conceded that there were "very minimal gaps" between the units. Id. at 34, 52-53. Each unit was checked for broken pieces or dents before being used. Id. at 53. The stair tower at the site was installed in March 2016 and, after it was assembled, Barran and Triton inspected it by walking from the bottom to the top and found that it was sturdy. Id. at 30-34. In the event of any problems with the stair tower, the general contractor would call S&E to make any appropriate repairs. Id. at 37. However, S&E never received any such complaints from Triton. Id. at 37-38. Indeed, during the time that it was installed, no repairs or adjustments were made to the stair tower. Id. at 39. Additionally, Barran was never notified of any accidents on the stair tower. Id. at 42. Finally, Barran testified that a photograph marked as Ex. B at (plaintiff's) deposition revealed nothing wrong with the stair tower sections. Id. at 48.

Plaintiff filed a note of issue on July 25, 2019. Doc. 24. By so-ordered stipulation entered November 13, 2019, the captioned action was consolidated for joint trial with the matter of *Roland Yosufuf v S&E Bridge & Scaffold, LLC, et. al.* pending in this Court under Index Number 157137/19. Doc. 36.

Defendants now move, pursuant to CPLR 3212, for summary judgment dismissing the complaint, along with such other relief as this Court deems just and proper. In support of the motion, they assert that plaintiff's claim pursuant to Labor Law: 1) section 200 must be

dismissed since they did not direct, control, or supervise plaintiff's work and did not create or have notice of the allegedly dangerous condition; 2) section 240(1) since plaintiff did not fall from a height and was not struck by a foreign object; and 3) 241(6) must be dismissed because they did violate the Industrial Code sections alleged by plaintiff. Doc. 42.

In support of their motion, defendants submit the affidavit of plaintiff's foreman, Jason Tavarez of CFS, who states, inter alia, that, on the date of the accident, he directed plaintiff to remove debris, consisting of wood 2x4s, from the roof and bring it to dumpsters on the ground. Doc. 55. After plaintiff had worked for approximately 30 minutes, plaintiff's co-worker, Doneric Daniel Perez Warner of CFS, notified Tavarez that plaintiff had had an accident. Id. Warner and Tavarez went to the location of the accident and found plaintiff on the stair tower. Id. Plaintiff told the men that he had fallen on green dust and debris on the stair tower. Id. Tavarez, who saw neither debris nor green dust on the stair tower that day, represents that he had worked at the site for approximately eight months as of the date of the accident and "never had any issues with the stair tower and never observed any debris on the stairs." Id.

Warner also submits an affidavit in support of the motion. Doc. 56. He did not witness the accident but learned of it while he was working at street level. Id. He then went to the stair tower with Tavares to see what had happened. Id. Warner saw plaintiff laying on his back on the stair tower between the 2nd and 3rd floors with other workers around him. Id. Plaintiff stated that he fell but did not provide any specifics regarding how. Id. Warner represents that he personally walked down the stair tower between five and ten times that day, as recently as 10-15 minutes prior to plaintiff's accident, and did not observe any water or debris on the stairs. Id. Nor did he see any water or debris on the stairs after plaintiff fell. Id. Although Warner worked

at the site for approximately two months prior to the incident, he "never had any issues with the stair tower and never observed any debris on the stairs." Id.

David Glabe, a Professional Engineer and expert in the area of stair construction, also submits an affidavit in support of the motion. Doc. 57. Glabe opines that the stair tower was erected and installed properly and was safe and fit for use outdoors at the time of the alleged occurrence. Id. Further, he states that the stair tower would not have buckled as plaintiff claims based on plaintiff's height and weight, coupled with the total failure load for the stair tower. Id. He also opines that defendants were not negligent and did not violate Labor Law sections 200, 240(1), or 241(6).

Brian Boggess, a biomechanical engineer, also submits an affidavit in support of defendants' motion. Doc. 58. He opines that the middle side lip of plaintiff's boot could not have become stuck in the seam between stairway sections on the stair tread given the extremely small size of the seam. Id. Boggess also states that plaintiff's injuries are inconsistent with the alleged mechanism of his accident. Id.

Plaintiff opposes the motion, arguing that it must be denied in all respects. Initially, plaintiff contends that defendants violated Labor Law section 240(1) by providing him with an inadequate safety device, i.e., the exterior stairway. Doc. 62. Additionally, he contends that, given defendants' violations of Industrial Code sections 23-1.7(e)(1), (e) (2), and (f) and 23-3.3(c), they are liable pursuant to Labor Law section 241(6). Id. Further, plaintiff maintains that issues of fact exist regarding whether defendants violated Labor Law section 200. Id.

Plaintiff also argues that the motion was filed one day after the deadline for doing so set by this Court's order dated November 9, 2019 and entered November 13, 2019. Doc. 36.

In opposition to the motion, plaintiff submits the affidavit of Kathleen Hopkins, a Certified Site Safety Manager, who asserts that Triton should have used wooden planks to cover the gap which caught plaintiff's boot. Doc. 63. Hopkins also maintains that the affidavits of Glabe and Boggess are speculative since they could not have concluded from the photographs marked at plaintiff's deposition that plaintiff's boot could not have been caught in the gap. Further, Hopkins opines that defendants violated Labor Law section: 1) 200 because they failed to provide plaintiff with a safe workplace and should have known about the defect in the stair; 2) 240(1) because the stairs did not provide plaintiff with the proper protection required for a safety device; and 3) 241(6) because the stair tower was a tripping hazard which violated Industrial Code sections 23-1.7(e)(1), (e) (2), and (f) as well as 23-3.3(c).

In reply, defendants argue that Hopkins' affidavit must be disregarded since she fails to set forth her qualifications for rendering her opinions and that, even if her affidavit is considered, it fails to raise an issue of fact warranting the denial of their motion. Doc. 65. Specifically, defendants assert that plaintiff fails to raise an issue of fact regarding whether: 1) the stair tower was defective and failed to provide plaintiff with proper protection pursuant to section 240(1); 2) a violation of the Industrial Code was a proximate cause of the incident which would have triggered liability pursuant to section 241(6); and 3) whether plaintiff's accident was caused by a violation of section 200. Id.

LEGAL CONCLUSIONS

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*). If the moving party makes a prima facie showing of entitlement to

judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]). Only if, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, will summary judgment be denied (*See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]); *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

Labor Law Section 240(1)

Labor Law section 240(1) provides that contractors and owners engaged "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" must provide "scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other safety devices which shall be so constructed, placed and operated as to give proper protection to a person so employed." Although the statute is liberally construed to accomplish its intended purpose (*see Blake v Neighborhood Housing Services of New York City, Inc.*, 1 NY3d 280 [2003]), absolute liability pursuant to section 240(1) is imposed "only where the 'plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential'" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

Here, defendants have established their prima facie entitlement to summary judgment on the section 240(1) claim by submitting, among other evidence, the affidavit of their expert engineer, Glabe, who opines that the external stairway was properly constructed, that the alleged "crease" in the stair was no larger than 0" - 3/8" wide, and that "[p]laintiff's accident was not attributable to the kind of extraordinary elevation-related risk contemplated by [section 240]".

Doc. 57. Defendants also submit the affidavit of their biomechanical engineer, Boggess, who opines that the accident could not have occurred in the manner alleged since plaintiff's boot could not have become stuck in the alleged "crease" found by Glabe to measure 0" – 3/8". Doc. 58.

In opposition, plaintiff correctly notes that the Appellate Division, First Department has held that "a fall down a temporary staircase is the type of elevation-related risk the statute was intended to cover, regardless of the distance the worker falls" (*McGarry v CVP 1 LLC*, 55 AD3d 441, 441 [1st Dept 2008] [citations omitted]). Additionally, plaintiff raises an issue of fact regarding whether section 240(1) was violated by submitting the affidavit of Hopkins, a Certified Site Safety Manager, who opines that the photograph of the stair marked at plaintiff's deposition clearly reveals the presence of a "tread entrapment space" which presented a gravity-related risk to plaintiff and which was a proximate cause of his injuries. Doc. 63.

Given the conflicting expert opinions regarding whether defendants violated section 240(1), this Court must deny the branch of their motion seeking dismissal of plaintiff's claim pursuant to that section *(See O'Brien v Port Auth. of NY & New Jersey*, 29 NY3d 27, 33-34 [2017]).

Labor Law Section 241(6)

Labor Law section 241(6):

> was enacted to protect workers from industrial accidents specifically in connection with construction, demolition or excavation work. (*Nagel v D & R Realty Corp.*, 99 NY2d 98, 102 [2002]). Section 241 (6) places a nondelegable duty upon owners and contractors "to provide reasonable and adequate protection and safety" for workers. The scope of that duty in section 241 (6) is circumscribed by the specific safety rules set forth in the Industrial Code. *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]) . . . [Therefore,] to establish liability under this provision, a plaintiff "must specifically plead and prove the violation of an applicable Industrial Code regulation." (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007]), *lv denied* 10 NY3d 710 [2008]).

(Garcia v 225 E. 57th St. Owners, Inc., 96 AD3d 88, 91 [1st Dept 2012]).

As noted above, plaintiff alleges the violation of numerous sections of the Industrial Code. Plaintiff's affirmation in opposition to defendants' motion attempts to raise questions of fact regarding violations of sections 23-1.7(e)(1), (e) (2), and (f) as well as 23-3.3(c) of the Industrial Code. Since plaintiff's opposition to the branch of defendants' motion seeking dismissal of the section 241(6) claim addresses only these sections, the claims predicated on all other Industrial Code sections alleged are dismissed as abandoned (*see Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014]). Further, since section 23-3.3(c) was not previously alleged in the complaint or bills of particular, it cannot form a basis for a claim pursuant to section 241(6) (*Ryerson v 580 Park Ave.*, 2019 NY Slip Op 32512[U], *4-5 [Sup Ct, NY County 2019]). Additionally, the claims predicated on Industrial Code sections 23-1.7(e)(1), (e) (2), and (f) are deemed abandoned since plaintiff's pleadings merely alleged the violation of section 23-1.7 without claiming the violation of any particular subdivision(s) or subsection(s) thereof. (*See McLean v Tishman Constr. Corp.*, 144 AD3d 534, 535 [1st Dept 2016]). Thus, plaintiff's claim pursuant to Labor Law section 241(6) must be dismissed.

Labor Law Section 200

Labor Law section 200 is a codification of the common-law duty of an owner or employer to maintain a safe place to work. (See *Jock v Fien*, 80 NY2d 965, 967 [1992]). It requires work places to be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety" of employees and that all machinery, equipment, and devices in such places be "placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons" (Labor Law §200 [1]).

There are two distinct standards applicable to section 200 cases, depending on the situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and/or (2) when the accident is the result of a dangerous condition that is inherent in the premises (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]; *see also Griffin v New York City Tr. Auth.*, 16 AD3d 202, 202 [1st Dept 2005]).

"Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work" (*LaRosa v Internap Network Servs. Corp.*, 83 AD3d 905, 909 [2d Dept 2011]). Specifically, "liability can only be imposed against a party who exercises actual supervision of the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]).

However, where an injury stems from a dangerous condition on the premises, an owner may be liable in common-law negligence and under Labor Law § 200 "'when the owner created the dangerous condition causing an injury or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice'" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

Here, defendants demonstrated that plaintiff's work was supervised solely by CFS, thereby establishing their entitlement to summary judgment dismissing the section 200 claim insofar as it is predicated on the means and methods of plaintiff's work, and plaintiff has failed to raise an issue of fact in this regard.

However, this Court finds that defendants failed to establish their prima facie entitlement to summary judgment on the section 200 claim insofar as it is predicated on the allegedly dangerous condition of the premises. Although defendants established that they were not aware of any prior complaints about the stairway, and that the stairway was properly constructed by S&E, they have adduced no evidence establishing when the stairway was last inspected prior to the accident and, thus, this branch of their motion is denied (*see Ohadi v Magnetic Constr. Group Corp.*, 182 AD3d 474, 476 [1st Dept 2020] citing *Pereira v New School*, 148 AD3d 410, 412-413 [1st Dept 2017]). Even assuming, arguendo, that defendants had established their entitlement to summary judgment on this ground, plaintiff's testimony that he saw the crease earlier on the day of his fall would have raised an issue of fact regarding whether defendants knew or should have known about the condition.

The parties' remaining contentions are without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

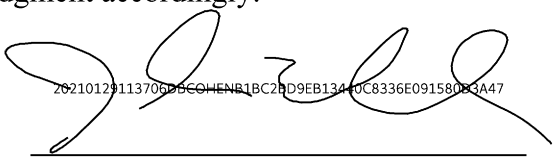
ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's claim pursuant to Labor Law section 240(1) is denied; and it is further

ORDERED that the branch of defendants' motion seeking dismissal of plaintiff's claim pursuant to Labor Law section 241(6) is granted; and it is further

ORDERED that the branch of defendant's motion seeking dismissal of plaintiff's claim pursuant to Labor Law section 200 is granted solely insofar as it is predicated on the means and methods of plaintiff's work, and is otherwise denied; and it is further

ORDERED that plaintiff's claim pursuant to Labor Law section 241(6) and plaintiff's claim pursuant to Labor Law section 200, insofar as it is predicated on the means and methods of plaintiff's work, are severed, and the remaining claims are continued; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



1/28/2021
DATE

DAVID BENJAMIN COHEN, J.S.C.

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