

**Linares v City of New York**

2021 NY Slip Op 33704(U)

September 30, 2021

Supreme Court, Bronx County

Docket Number: Index No. 303086/2015

Judge: Kim Adair Wilson

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, NEW YORK : Part IA-12

-----X  
ENRIQUE LINARES,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF EDUCATION, and NEW YORK  
CITY SCHOOL CONSTRUCTION AUTHORITY,  
Defendants.

-----X  
**Kim Adair Wilson, J.:**

**DECISION AND ORDER**  
Index No. 303086/2015  
**Motion Seq. #001**

**HON. KIM ADAIR WILSON**  
**J.S.C.**

"NOTICE OF MOTION," dated and filed June 10, 2019, by Jennifer R. Freedman, Esq., counsel for defendants The City of New York, The New York City Department of Education and New York City School Construction Authority, seeks an "Order, pursuant to CPLR § 3212, granting defendants summary judgment dismissing plaintiff's complaint in its entirety." Also submitted is a "NOTICE OF CROSS MOTION," dated and filed December 12, 2019, by John M. Shaw, Esq. (Gorayeb & Associates, P.C.), counsel for plaintiff, in opposition to defendants' motion and seeking an "Order granting partial summary judgment in favor of plaintiff, ENRIQUE LINARES, pursuant to Labor Law Section 240(1) against defendants, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION AND NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY [and] to set this matter down immediately for a jury trial for an assessment of damages." In opposition to plaintiff's cross-motion, defendants' counsel submits a "DEFENDANTS' AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT," dated and filed January 29, 2020 and in further support of their motion, the defendants submit a "DEFENDANTS' REPLY AFFIDAVIT," dated and filed January 30, 2020. The defendants' motion and plaintiff's cross-motion are consolidated for disposition and are decided as set forth below.

**Factual Background**

Defendant SCA had two projects at PS 396, located at 1930 Andrews Avenue South in Bronx County ("subject site") – one for exterior masonry and one for a boiler conversion. Defendant SCA contracted with Urban Group, plaintiff Linares' employer, to serve as general contractor of the exterior masonry project that involved replacing the roof and parapet, and flood elimination. The project required scaffolding around the school with a sidewalk bridge below covering the sidewalk. Urban Group hired subcontractors to erect the scaffolding. Subsequently, the boiler conversion project commenced, which required the placement of the temporary boiler onto the school's premises. In order to place the boiler, a portion of the scaffolding and sidewalk bridge had to be removed. Plaintiff Linares served as a helper in this part of the project. At the time of his accident, the scaffolding had been removed and the

sidewalk bridge was in the process of being removed. To dismantle the bridge, the wood planks and metal beams on top of the bridge had to be removed. Once they were detached and unsecured, they were handed down to Mr. Linares, who was standing on the ground, to place the planks and beams onto a truck to be reused. On November 11, 2014, a metal divider fell from the sidewalk bridge and struck plaintiff Linares, causing him to sustain personal injuries.

By "SUMMONS" and "VERIFIED COMPLAINT," dated July 15, 2015, plaintiff commenced this personal injury action against the defendants alleging that, on November 11, 2014, the defendants' negligence and violation of Labor Law §§ 200, 240(1) and 241(6), the Industrial Code of the State of New York and the Occupational Safety & Health Administration caused him to sustain personal injuries. **This Court notes that plaintiff Linares discontinued his Labor Law § 200/common-law negligence claims against defendants The City of New York ("City") and The New York City Department of Education ("DOE"); and discontinued his Labor Law §§ 240(2) and 240(3) claims against all defendants. Plaintiff maintains his Labor Law §§ 240(1) and 241(6) claims against all defendants and his Labor Law § 200/common-law negligence claim solely against defendant New York City School Construction Authority ("SCA").**

#### Summary Judgment

The defendants move for CPLR 3212 summary judgment dismissal of plaintiff's complaint, in its entirety, alleging that the defendants violated Labor Law §§ 240(1), 241(6) and 200 on the grounds that 1) his accident falls outside the ambit of the Labor Law statutes; and 2) the Industrial Code provisions cited by plaintiff are inapplicable. Plaintiff Linares opposes the defendants' motion and cross-moves for partial summary judgment on his Labor Law § 240(1) claim against the defendants, and to set the matter down for a jury trial for an assessment of damages.

It is well settled that the proponent of a motion for summary judgment, must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Diaz v Nunez*, 5 AD3d 302 [1<sup>st</sup> Dept 2004]). Once the movant demonstrates entitlement to judgment, the burden shifts to the opponent to rebut that prima facie showing (*Bethlehem Steel Corp v Solow*, 51 NY2d 870 [1980]). The Court's role in summary judgment is issue finding, not issue determination (*Sanchez v National Railroad Passenger Corp.*, 92 AD3d 600 [1<sup>st</sup> Dept 2012]; *Clearwater Realty Co. v Hernandez*, 256 AD2d 100 [1<sup>st</sup> Dept 1998]). Courts will grant summary judgment only if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).

Claims under Labor Law §§ 240(1), 241(6) and 200 may be brought solely against owners, contractors and their agents (see Labor Law § 240[1]; 241). “A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured” [internal citations omitted]. “To impose...liability [under the Labor Law], the defendant must have the authority to control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition” (*Diaz v Trevisani*, 164 AD3d 750, 754 [2<sup>nd</sup> Dept 2018] citing *Linkowski v City of New York*, 33 AD3d 971, 975 [2006]).

### **Plaintiff's Testimony**

Plaintiff Linares testified, during his 50-H hearing (May 1, 2015) and deposition (August 15, 2017), that he was employed full-time by Urban Group as a helper; he began working for them in May of 2014. On November 11, 2014, plaintiff and his co-workers were involved in dismantling the sidewalk or protection bridge at 1930 Andrews Avenue, the subject site. On that day, the plaintiff reported to work at 8AM to continue the job; the job had begun the day before. He was wearing long pants, a long sleeve shirt, a sweatshirt, gloves, a hardhat, construction boots and eye protection. The weather was nice, clear, and cool. Urban Group provided him with all the tools, materials and equipment needed for the job. His supervisors were Andrew, Glen and Abraham, all employees of Urban Group. However, at the subject site, he reported solely to Andrew and Glen, who informed him of his job assignment and how to perform it. His only communication with defendant SCA was regarding his salary and benefits, although he was paid by Urban Group. His job at the site was to stand on the sidewalk and grab and place the wood planks and metal beams into a van that was parked behind him. His co-worker, Gregorio, who was standing on the scaffolding, passed the materials down to plaintiff. He described the wood planks as ten to twelve feet long, one foot wide and one-and-a-half inches thick, and the metal beams as twelve feet long, five inches wide, three or four inches thick, weighing about two hundred pounds. At approximately between 1PM and 2PM, plaintiff was standing on the sidewalk and leaning toward his right, grabbing onto a wood plank with both hands, passed to him by Gregorio. He then heard someone suddenly say, “be careful.” He then observed, from the corner of his eye, a metal divider<sup>1</sup>, falling from the protection bridge towards his left side. The divider weighed about fifty to one hundred pounds and measured at about twelve feet long, five or six inches wide and three to four inches thick. When he moved, he felt an impact to his foot. He does not know how the metal divider fell; he was not grabbing the dividers – only the metal beams and wood planks.

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<sup>1</sup> This Court notes that plaintiff, during his 50-h Hearing, he describes the falling object as a “metal divider.” However, during his deposition, he describes it as a “metal beam.”

### Defendants' Testimony

At the outset, this Court notes that defendants' counsel states, by affirmation, that "[p]laintiff never requested the deposition that of a witness on behalf of defendants, City of New York and New York City Department/Board of Education."

Jigar Patel testified on behalf of defendant SCA. During his deposition on March 19, 2018, and by affidavit, dated May 24, 2019, Mr. Patel testified that he is currently employed by SCA and have been working for them for three years. However, in November 2014, at the time of plaintiff's accident, he was employed by the DLR Group and served as a consultant to the SCA<sup>2</sup>. In that role, he was assigned to SCA to manage construction projects at Bronx schools. He was assigned to PS 396 during the entire project and was at the site, three to four times per week for three to four hours per day. He attended meetings, performed inspections, checked the work progress, met with the principal, approved payments, and discussed safety issues with Urban Group.

On the day of plaintiff's accident, Mr. Patel was not at the subject site. He testified that he received a call from Andrew, who was employed by Urban Group and working as the "site super." Mr. Patel recalled that Andrew informed him that the plaintiff was "receiving the plank from the guy and he just landed on his leg or somewhere." Mr. Patel subsequently called Mohammed Sayeed who was at the subject site using the computer in Mr. Patel's trailer; Mr. Sayeed was not supervising any of the work at the site. In fact, he states that no one from SCA was supervising the site at the time of plaintiff's accident. Mr. Patel went to the site on the following day and ultimately, he prepared a five-page accident report. Mr. Patel testified that, after the accident, he neither investigated nor queried further about plaintiff's accident. He suggested to Urban Group that it hold the "toolbox talk," to address safety concerns, which is supposed to occur weekly. As it pertains to overhead protection, Mr. Patel testified that there was netting above the deck of the sidewalk bridge to prevent things from falling onto the lower deck.

Mr. Patel further stated that the SCA neither provided Urban Group's employees with tools, materials or personal protective equipment, nor provided them with instructions and directions regarding the work at any time. Urban Group, as the general contractor, was responsible for the means, manner and methods by which its employees performed their work. Mr. Patel stated that the SCA safety inspector was Syed Tambour but SCA had no employees at the school and performed no physical work; it was not involved with the dismantling of the sidewalk bridge and it did not create any condition that may have caused or contributed to plaintiff's accident. He further testified that he received no complaints regarding the manner in which the bridge was being dismantled prior to plaintiff's accident

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<sup>2</sup> By affidavit, dated May 24, 2019, contrary to his testimony, Mr. Patel attests that he is currently employed by the Liro Group and assigned to the SCA as a full-time project officer; the same position held in SCA at the time of plaintiff's accident.

or that it was dangerous; and he was unaware of any accidents prior to plaintiff's accident. Mr. Patel was also unaware of who or what entity owned the subject site.

Muhammad Sharif<sup>3</sup> attests, by affidavit dated May 23, 2019, that he is currently employed by non-party Hill International, Inc. and assigned to SCA as a full-time project officer. He worked in this same capacity on November 11, 2014, the day of plaintiff's accident. He was at the subject site that day, but did not personally witness plaintiff's accident. He was at the site working in the SCA trailer; he was not involved in the ongoing construction projects. He learned of plaintiff's accident when he received a telephone call from Mr. Patel, who requested that he speak with Urban Group about what occurred. After allegedly speaking with a supervisor and learning of plaintiff Linares' injury claim, Mr. Sharif wrote an email to Mr. Patel and took photographs of the alleged accident scene and/or the sidewalk bridge in the process of being dismantled. The email, dated November 12, 2014, addressed to Mr. Jigar, states the following in pertinent part:

*Detail: Contractor was removing plants to adjust scaffold/bridge to accommodate boiler delivery by ITC Two person were at top of bridge, on in the middle at frame scaffold and M. Enrique was standing at ground level...They were bringing down a 10' plank...which was slipped from Mr. Enrique's hand, hit the floor and then hit his ankle.*

By affidavit, dated August 7, 2018, Christopher Dickerson, a Senior Insurance Specialist, employed by the City of New York, and who worked in that same position at the time of plaintiff's accident, states, in pertinent part, that the "City of New York owned I.S. 396, located at 1930 Andrews Avenue, Bronx, New York, on November 11, 2014." In a second affidavit, dated May 31, 2019, Mr. Dickerson attests that he possesses personal knowledge of the operations of the City and the DOE. He states that his search of the records maintained by the City yielded that it had no employees working at the subject site; it had no contracts with Urban Group or any other contractors to dismantle the bridge at the subject site; it provided no tools, materials, or equipment; and it did not supervise, instruct or direct any contractors at the subject site. He also states that there were no records of complaints relative to the sidewalk bridge, the lack of personal protective equipment possessed by the contractors' employees, or the means, manner, or methods by which the contractors performed the work at the subject site; and it does not possess any accident reports of plaintiff's accident or any other accidents relative to the dismantling of the sidewalk bridge.

### **Labor Law § 200**

The defendants move for summary judgment dismissal of plaintiff Linares' Labor Law § 200/common-law negligence claim solely against defendant SCA on the basis that SCA neither exercised supervision or control over the work performed at the site, nor possessed

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<sup>3</sup> This Court notes that in Jigar Patel's deposition transcript, "Mohammed Sayeed" is identified as the person Mr. Patel called, after learning of plaintiff's accident, and who was at the site working in his trailer. Defendants' counsel, however, submits an affidavit from "Muhammad Sharif," who attests that he received the call from Mr. Patel.

actual or constructive notice of the dangerous condition. In opposition, plaintiff Linares contends that defendant SCA was responsible for site safety and had a site safety inspector on site. Labor Law § 200 states the following in pertinent part:

**§ 200. General duty to protect health and safety of employees; enforcement**

1. 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.

The Court of Appeals describes this section as 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” (*Comes v New York State Electric and Gas Corp.*, 82 NY2d 87 [1993]). In *Cappabianca v Sanska USA Bldg. Inc.*, the First Department held that “[c]laims for personal injury under the statute and the common law 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 Sanska USA Bldg. Inc.*, 99 AD3d 139 [1<sup>st</sup> Dept 2012]) see *Cook v. Orchard Park Estates, Inc.*, 73 A.D.3d 1263, 1264, 902 N.Y.S.2d 674 [2010]). Here, plaintiff’s accident is not the result of a defect or dangerous condition existing on the premises, but instead, as a result of the latter. 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 (*Id.* citing *Foley v. Consolidated Edison Co. of N.Y., Inc.*, 84 A.D.3d 476, 477, 923 N.Y.S.2d 57 [2011]; *Dalanna v. City of New York*, 308 A.D.2d 400, 764 N.Y.S.2d 429 [2003]).

Jigar Patel testified that defendant SCA had safety inspectors on site but did not control the means and methods of the work. In opposition, plaintiff asserts that SCA required that it “be the sole judge of the quality and suitability of the work, materials, process of manufacture, and methods of construction.” Mr. Patel was at the site three or four hours a day on a daily basis performing inspections and discussing safety issues with Urban Group. Plaintiff Linares, however, testified that he only received instructions as to his work assignments and how to perform them from his supervisors, Andrew, Glen and Abraham, all of whom worked for Urban Group; and that Urban Group provided him with all the tools, materials and equipment needed for the job. In fact, his only communication with defendant SCA was regarding his salary and benefits, although he was paid by Urban Group. Upon review and analysis of the foregoing, this Court determines that defendant SCA has made a prima facie showing that it had no control or supervisory authority over the plaintiff’s work. The defendant cannot be held liable under Labor Law § 200 for common-law negligence since it only had the “right to generally supervise the work, stop the contractor’s work if a

safety violation is noted, or to ensure compliance with safety regulations and contract specifications..." (*Austin v Consolidated Edison, Inc.*, 79 AD3d 682, 684 [2<sup>nd</sup> Dept 2010] [citations omitted]). Plaintiff Linares presents no opposition sufficient to raise a triable issue of fact. **Accordingly, this branch of defendants' motion seeking summary judgment dismissal of plaintiff's Labor Law § 200/common-law negligence claim solely against defendant New York School Construction Authority is granted.**

### **Labor Law § 240(1)**

Defendants move for summary judgment dismissal of plaintiff's Labor Law § 240(1) negligence claim against all defendants. Plaintiff Linares opposes defendants' motion and cross-moves for partial summary judgment in his favor, and against all defendants, on his Labor Law Section § 240(1) claim. This Court notes that plaintiff's cross-motion is untimely. However, this Court determines that it will consider the cross-motion since defendants' timely motion is still pending (*James v Jamie Towers Housing Co., Inc.* 294 AD2d 268 [1<sup>st</sup> Dept. 2002]); and the defendants are not prejudiced given plaintiff's similarly sought relief of partial summary judgment on his Labor Law § 240(1) claim (*Paredes v 1668 Realty Associates, LLC*, 110 AD3d 700 [2<sup>nd</sup> Dept 2013]).

Labor Law § 240(1) states the following in relevant part:

#### §240. Scaffolding and other devices for use of employees

1. 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.

"The intent of the statute was to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts" (*Prats v Port Authority of New York and New Jersey*, 100 NY2d 878, 882 [2003]). Hence, its purpose "is to protect workers by placing ultimate responsibility for safety practices on owners and contractors instead of workers themselves" (*Abbatiello v Lancaster Studio Assoc.*, 3 NY3d 46, 50 [2004] quoting *Panek v County of Albany*, 99 NY2d 452, 457 [2003]). In other words, the statute imposes upon an owner or contractor, a nondelegable duty to furnish "adequate safety devices...and those who fail to furnish such devices are absolutely liable for injuries that proximately result from an employee's elevation-related accident" (*DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 45 [1<sup>st</sup> Dept 2014] (citations omitted) regardless of whether it actually exercised supervision or control over the work. In order to find liability under Section 240(1), the risks to the plaintiff cannot be ordinary construction hazards, but rather must be due to "the relative elevation at which the task must be performed or at which materials or loads must be positioned or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 at 514, *supra*). Consequently, the statute applies to both falling objects and falling worker cases (see *Harris*

*v City of New York*, 83 AD3d 104 [1st Dept 2011]). To prevail on a falling objects case pursuant to statute, “the plaintiff 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 herein” (*Majerski v City of New York*, 193 AD3d 715 [2<sup>nd</sup> Dept 2021] citing *Berman-Rey v Gomez*, 153 AD3d 653, 655, 59 NYS3d 789).

The defendants contend that Labor Law § 240(1) is inapplicable to plaintiff’s accident because it did not result from an elevation-related hazard subject to statute, but instead, that plaintiff’s fall onto the sidewalk and the falling beam constitute the “usual and ordinary dangers” at a construction site. They assert that none of the safety devices enumerated in the statute were necessary or required because if one of the devices was used to secure the beam, then the bridge could not have been dismantled; and the beam was part of the dismantling process and the “target of demolition.” Plaintiff Linares disagrees. He avers that an unsecured 100-pound steel or metal divider / beam fell from an approximate height of twenty feet onto the sidewalk, which constitutes a “falling object” within the statute’s purview and made contact with his foot, causing him to sustain serious injuries. Plaintiff is correct that falling objects fall within the ambit of the statute. In *Metus v Ladies Mile Inc.* [plaintiff assembling a sidewalk bridge, handed co-worker, who was on top of a sidewalk bridge, a sheet of tin when it became dislodged, fell from the bridge, and struck plaintiff in the face], the First Department determined that the tin was a falling object and fell under the protections of Labor Law § 240(1) (*Metus v Ladies Mile Inc.*, 51 AD3d 537, 538 [1<sup>st</sup> Dept 2008]). Upon review and analysis of the foregoing, this Court determines that, while the metal beam was a target of demolition, the divider/beam, contrary to the defendants’ contention, was not targeted to simply fall freely, particularly in the absence of a protective device below. Significantly, defendants offer no expert opinion to support its position that a protective device to prevent plaintiff from being struck by a falling object was unnecessary and thus, they fail to establish that it was not a proximate cause of plaintiff’s accident and alleged injuries. **Accordingly, this branch of defendants’ motion seeking summary judgment dismissal of plaintiff’s Labor Law § 240(1) claim against them is denied.**

As to plaintiff Linares’ cross-motion, he seeks an order granting partial summary judgment in his favor, and against the defendants, on his Labor Law § 240(1) claim on the basis that he cannot be the sole proximate cause of his accident because he was struck by an unsecured divider/beam. The defendants, in opposition, reiterate that none of the safety devices enumerated in the statute were necessary or required because such device would have prevented the dismantling of the bridge, again, without an expert opinion. They also submit the email of Mr. Sharif to Mr. Patel. Mr. Sharif states, in relevant part, that the “*plank...slipped from Mr. Enrique’s hand, hit the floor and then hit his ankle.*” This description of events, however, is inconsistent with plaintiff’s explanation of events provided during his deposition. The beam in plaintiff’s hand was not involved in his alleged accident. He testified that he was holding a beam in his hand when a metal divider fell from above and struck his foot. Upon review and analysis of the foregoing, this Court determines that plaintiff

established prima facie entitlement to judgment as a matter of law through his testimony that an unsecured 100-pound steel or metal divider/beam fell from an approximate height of twenty feet and struck him, causing him to sustain personal injuries. Inasmuch as it is patently evident that an inadequate safety device, or the lack thereof, was a proximate cause of plaintiff's accident and alleged injuries when he was struck by the falling object, plaintiff is entitled to partial summary judgment against the defendants. Moreover, the defendants submit no legally sufficient evidence to establish that plaintiff's own actions played a role in the cause of the accident or was a sole proximate cause of his injuries. **Accordingly, plaintiff Linares' cross-motion for partial summary judgment as to liability is granted.**

### **Labor Law § 241(6)**

The defendants move for summary judgment dismissal of plaintiff's Labor Law § 241(6) negligence claim against all defendants.

Labor Law § 241(6) states the following in relevant part:

§241(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. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work...shall comply therewith.

Labor Law § 241(6) imposes a nondelegable statutory duty of reasonable care upon contractors, owners, and their agents to provide adequate safeguards to persons engaged in construction, excavation or demolition work even in the absence of supervision or control (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]; *Ross v Curtis-Palmer Hydro-Elec Co.*, 81 NY2d 494 [1993]), and to protect workers engaged in duties connected to such inherently hazardous work (*Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82 [1<sup>st</sup> Dept 2018] citing *Nagel v D & R Realty Corp.*, 99 NY2d 98, 101, 752 NYS2d 581, 782 NE2d 558 [2002]). When stating a claim under Labor Law § 241(6), a plaintiff must identify a specific Industrial Code provision mandating compliance with concrete specifications (*Walker v Metro-North Commuter R.R.*, 11 AD3d 339 [1<sup>st</sup> Dept 2004]) and demonstrate a violation of that Code rule or regulation (*Morris v Pavarini Constr.*, 9 NY3d 47, 50 [2007]).

Defendants argue that the Industrial Code Sections cited by plaintiff Linares are inapplicable to the facts and to his claims. They contend, at the outset, that they did not violate any Industrial Codes, and the sections identified by the plaintiff are not "sufficiently specific" to support a Labor Law § 241(6) claim – they are general safety standards. They assert that the plaintiff's prior workday at the site, while performing the same work, was uneventful – no pieces of material fell off the sidewalk bridge.

In opposition, plaintiff Linares focuses in and asserts that defendants violated Industrial Code Sections 23-1.7(a)(1), 23-3.3(c) and (e) and 23-5.1(h). This Court accordingly determines that plaintiff has abandoned the remaining alleged violations<sup>4</sup>. Defendants assert that 12 NYCRR 23-3.3(e) is inapplicable since the plaintiff's accident was not relative to the method by which to remove the metal divider from the bridge. This Court agrees. The defendants argue that 12 NYCRR 23-5.1(h) is inapplicable because plaintiff was dismantling a sidewalk bridge, not a scaffold. Plaintiff contends that "sidewalks bridges are unequivocally the function/equivalent of a scaffold" and it is, therefore, applicable. Assuming arguendo that a sidewalk bridge and a scaffold are one and the same, the statute states, in pertinent part, that it "shall be erected and removed under the supervision of a designated person." Given this Court's determination that the defendants neither supervised nor controlled the work, the "designated person" would have been an employee of Urban Group, plaintiff's employer, and therefore, defendants did not violate 12 NYCRR 23-5.1(h). Defendants further argue that 12 NYCRR 23-1.7(a)(1)(2)<sup>5</sup> is inapplicable because the plaintiff was not working in an area where objects or materials routinely fell. This Court disagrees since a proximate cause of plaintiff's injury is due to a falling object. This Court also disagrees that 12 NYCRR 23-3.3(c)<sup>6</sup> is inapplicable since defendants had an onsite supervisor responsible for conducting inspections to detect posed hazards such as "loosened material" or unsecured metal dividers. To reiterate, the remaining Industrial Violation Codes allegedly violated by defendants, except 12 NYCRR 23-1.7(a)(1)(2) and 12 NYCRR 23-3.3(c), are dismissed. **Accordingly, summary judgment dismissal of defendants' motion**

<sup>4</sup> Plaintiff alleges that the defendants violated 12 NYCRR §§: 23-1.3(45); 23-1.5(a), (b),(c)(1)(2)(3); 23-1.7(a)(1)(2), (b)(1)(i)(ii)(iii),(d),(3),(f); 23-1.8; 23-1.22(b)(2); 23-1.30; 23-1.32; 23-1.33(a); 23-2.2; 23-2.3(a)(1)(2),(c); 23-2.4; 23-2.5(a); 23-2.6(a); 23-3.2(a),(b),(c),(d); 23-3.3(b)(c)(d)(e)(f)(g)(h)(i)(j)(k)(l)(m); 23-3.4(a),(b)(c); 23-5.1(e)(5),(f)(h),(j)(1); 23-8.1(a),(b)(1)(2)(3)(4)(5), (d)(1)(2)(3), (e)(1)(5), (f)(1)(i)(ii)(iii)(iv)(v), (2)(1)(ii), (4)(f)(6); 23-8.2(f)(3), (g)(1)(i)(ii)(2)(i)(ii)(iii), (h); 23-8.5(b), (c)(1)(2)(3)(i)(ii)(iii), (e), (f), (h), (i), (j), (k), (l), (m), (n).

<sup>5</sup> 12 NYCRR 23-1.7. Protection from general hazards  
(a) Overhead hazards.

(1) Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. Such overhead protection shall consist of tightly laid sound planks at least two inches thick full size, tightly laid three-quarter inch exterior grade plywood or other material of equivalent strength. Such overhead protection shall be provided with a supporting structure capable of supporting a loading of 100 pounds per square foot.

(2) Where persons are lawfully frequenting areas exposed to falling material or objects but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas.

<sup>6</sup> 12 NYCRR 23-3.3. Demolition by hand.  
(c) Inspection.

During hand demolition operations, continuing inspections shall be made by designated persons as the work progresses to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material. Persons shall not be suffered or permitted to work where such hazards exist until protection has been provided by shoring, bracing or other effective means.

**seeking summary judgment dismissal of plaintiff's Labor Law § 241(6) claim against all defendants is denied.**

Defendants seek dismissal of plaintiff's Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI) claims. Plaintiff submits no opposition. **This branch of defendants' motion is granted.**

Accordingly, it is hereby

**ORDERED** that the branch of defendants' motion seeking summary judgment dismissal of plaintiff's Labor Law § 200/common-law negligence claim solely against defendant New York School of Construction Authority is **GRANTED** as stated herein, and it is further

**ORDERED** that the branch of defendants' motion seeking summary judgment dismissal of plaintiff's Labor Law § 240(1) claim against all defendants is **DENIED** as stated herein, and it is further

**ORDERED** that plaintiff's cross-motion for partial summary judgment on the issue of liability on his Labor Law § 240(1) claim is **GRANTED** as stated herein, and it is further


**ORDERED** that the branch of defendants' motion seeking summary judgment dismissal of plaintiff's Labor Law § 241(6) claim against all defendants is **DENIED** as stated herein, and it is further

**ORDERED** that the County Clerk is directed to convert the above captioned matter to electronic form pursuant to NYCRR 202.5-b(b)(2)(iv).

Movants are directed to serve a copy of this Order with Notice of Entry, upon the parties within thirty (30) days of entry of this Order.

This constitutes the Decision and Order of this Court.

Dated: September 30, 2021  
Bronx, New York

  
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Hon. Kim Adair Wilson, J.S.C.