SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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INDEX NO. 159374/2015

SCOTT LINDEMANN,

MOTION DATE 02/08/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

VNO 100 WEST 33RD STREET LLC,ICON INTERIORS, INC.,

DECISION + ORDER ON MOTION

Defendant.

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ICON INTERIORS, INC.

Third-Party
Index No. 595849/2015

Plaintiff,

-against-

CENTRE STREET SYSTEMS, INC.

Defendant.

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VNO 100 WEST 33RD STREET LLC

Second Third-Party
Index No. 595864/2018

Plaintiff,

-against-

HI TECH DATA FLOORS, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133

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

Upon the foregoing documents, Defendants VNO100 West 33rd Street LLC and Icon Interiors, Inc.'s motion for summary judgment is granted[1].

[1] The Court would like to thank Joyce D. Campbell Priveterre, Esq. for her assistance in this matter.

Facts

On August 5, 2014, plaintiff, then a journeyman carpenter employed by Third-Party Defendant Centre Street Systems, Inc. (Centre), a sub-contractor retained by Defendant/Third-Party Plaintiff Icon (Icon) to provide construction-related work at a building owned by Defendant VNO100 West 33rd Street LLC (VNO), was injured when he tripped and fell over a raised computer floor. Icon had retained Second Third-Party Defendant Hi Tech Data Floors, Inc. (Hi Tech) for the installation of the raised flooring at the site and Plaintiff alleges that when he stepped up to reach a drop outlet from the ceiling, he was caused to fall on the medal pedestal that supported the unfinished flooring. Plaintiff further alleges that the computer floor was raised approximately 15 to 18 inches and that he sustained injuries to his back and lower extremities because of his fall.

Summary Judgment Standard

Courts have held that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue of fact. *See Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978] *citing Moskowitz v Garlock*, 23 AD2d 943. However, only the existence of a *bona fide* issue raised by evidentiary facts and not conclusory allegations will suffice to defeat summary judgment. *See Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290; *Rosenberg v Del-Mar Div., Champion Int. Corp.*, 56 AD2d 576, 577.

Labor Law § 200

It is well-settled law that an owner or general contractor will not be found liable under common law or Labor Law § 200 where it has no notice of any dangerous condition which may have caused the plaintiff's injuries, nor the ability to control the activity which caused the dangerous condition. *See Russin v Picciano & Son*, 54 NY2d 311[1981]; *see also Rizzuto v*

Wenger Contr. Co., 91 NY2d 343, 352 [1998]; *Singleton v Citnalta Constr. Corp.*, 291 AD2d 393, 394 [2002].

Moreover, "General supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability for common-law negligence and under Labor Law § 200." (*Dos Santos v STV Engrs., Inc.*, 8 AD3d 223, 224, [2004], *lv denied,* 4 NY3d 702, 790 [2004]).

Plaintiff avers that VNO and Icon had constructive notice that the pedestal supporting the raised flooring constituted a visible defect on the site. Defendants argue that the metal pedestals supporting flooring that was still in the process of being installed were integral to the work being performed and not inherently dangerous. VNO and Icon further respond that they exercised no control over Plaintiff's work.

The record supports Defendants' contention that they exercised no authority to control or supervise Plaintiff's work. In support of their motion, Defendants submitted, among other things, transcripts of the deposition testimony of Plaintiff which demonstrate that Plaintiff had no communication with anyone from Icon. NYSCEF Doc. No. 108, Pg. 65, lines 2-5. Nor did anyone from Icon ever supervise his work. NYSCEF Doc. No. 108, Pg. 66, lines 9-20. Similarly, Plaintiff acknowledged that he never met anyone that owned the subject premises nor had his work been supervised by the owner. NYSCEF Doc. No. 108, Pg. 99, lines 6-12. Indeed, Plaintiff's own testimony unambiguously establishes that the means and methods of his work were the sole responsibility of his foreman- employed by Centre. NYSCEF Doc. No. 108, Pg. 63, lines 10-23, Pg. 64, lines 16-20.

Moreover, no liability will attach under common law or Labor Law § 200 where the allegedly dangerous condition was open and obvious and not inherently dangerous. *Sanchez v*

BBL Constr. Servs., LLC, 202 AD3d 847, 850 ; *Reyes v Astoria 31st St. Devs., LLC*, 190 A.D.3d 872; *Salgado v Rubin*, 183 AD3d 617; *Ortega v Puccia*, 57 AD3d 54.

In the case at bar, there is no dispute that at the time of Plaintiff's accident, the installation of the raised computer flooring had not yet been completed and, thus, the instrument supporting the raised flooring, the medal pedestal, was plainly visible to Plaintiff. NYSCEF Doc. No. 108, Pg. 39, lines 4-12, NYSCEF Doc. No. 109, Pg. 35, lines 2-19. Notably, when asked whether the metal (pedestal) that protruded from the flooring was defective or not complete yet, Plaintiff responded "just not complete." *Id*. The Court finds that Plaintiff cannot credibly argue that the use of medal pedestals to suspend the flooring that his employer, Hi Tech, was retained to install, presented a defect or dangerous condition.

The record is bereft of any triable issue of fact concerning whether VNO or Icon supervised Plaintiff's work. Plaintiff has adduced no facts suggestive of an inference that medal pedestals created a dangerous condition at the subject premises. Nor has Plaintiff proffered any evidence that Defendants knew or should have known of a dangerous condition at the work site.

Accordingly, with respect to Labor Law § 200, Defendants VNO and Icon's motion for summary judgment is granted dismissing Plaintiff's Complaint in its entirety and dismissing all cross-claims against them.

Labor Law § 240(1)

Courts have routinely held that "an accident alone does not establish a Labor Law § 240 (1) violation or causation." (*Blake v Neighborhood Hous. Servs. of NY City, Inc.*, 1 NY3d 280, 289 [2003]). However, owners, contractors, and their agents will be held strictly liable "when they fail to provide adequate safety equipment and that failure causes a worker's injury in a gravity-related accident." *See Tria v Regis High Sch.*, 43 Misc. 3d 1230(A), 993 (N.Y.Sup.Ct. April 14, 2014).

In the instant matter, a review of the record demonstrates that Plaintiff's intention to plead a violation under this section is ambiguous, at best. The bald assertion that Defendants had a duty to comply with Labor Law § 240 (1) does not *ipso facto* create a cause of action. However, the Court notes that Plaintiff has not opposed that branch of Defendants' motion that pertains to any claims alleged under Labor Law § 240 (1). Accordingly, those claims are dismissed.

Labor Law § 241(6)

Although Plaintiff's Bill of Particulars asserts violations of Industrial Code Sections 23-1.5, 23-1.7(b), 23-1.7(e), 23-1.7(f), 23-1.30, 23-1.32, 23-1.33, 23-2.1 and 23-5.1(h), Plaintiff only opposes dismissal of the § 241(6) cause of action as it pertains to § 23-1.7(f). Specifically, Plaintiff avers that Defendants should have provided or constructed "vertical passage," that is, a means for him to access working levels either above or below ground level. VNO and Icon respond that Labor Law § 241 (6) liability cannot be predicated on Industrial Code Section 23-1.7(f) because the facts adduced at bar do not present the kind of height differential envisioned by the statute.

Plaintiff testified that when he attempted to reach the ceiling outlet, he had to step up between 15 to 18 inches and his foot caught the metal pedestal which suspended the flooring. NYSCEF Doc. No. 108, Pg. 34, lines 10-14. However, taken in the light most favorable to Plaintiff as the non-movant, there is no basis for his claim that Defendants were required to provide stairways, ramps or runways for a ceiling outlet located merely 15-18 inches above where he was standing. *See Francescon v Gucci Am., Inc.*, 105 AD3d 503 [1st Dept 2013].

Because the Court finds that § 23-1.7(f) does not apply to the facts presented, Plaintiff cannot maintain a cause of action pursuant to Labor Law § 241 (6), and summary judgment of this branch of Defendants' motion is warranted.

VNO's Proposed Amendment pursuant to CPLR § 3025

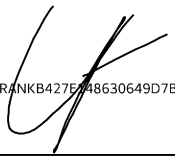
Given the Court's finding that Defendants' motion for summary judgment should be granted in its entirety, their motion for an Order to amend the Third-Party Complaint as against Hi Tech to add a claim for contractual indemnification is rendered moot.

ORDERED that Defendants' motion for summary judgment pursuant to Labor Law §§ 200 and 241(6) is granted in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment pursuant to Labor Law § 240(1) is granted as unopposed; and it is further

ORDERED that Plaintiff's claims pursuant to Industrial Code Sections 23-1.5, 23-1.7(b), 23-1.7(e), 23-1.7(f), 23-1.30, 23-1.32, 23-1.33, 23-2.1 and 23-5.1(h), are dismissed as unsupported by the record; and it is further

ORDERED that Defendants' motion for an Order pursuant to CPLR §3025 to add a claim for contractual indemnification is denied as moot.



6/27/2022
DATE

LYLE E. FRANK, J.S.C.

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