SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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JANUSZ BUKOWSKI,

Plaintiff,

-against- Index No.: 153456/2013

JACOB BIENSTOCK, STANLEY BIENSTOCK, THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY, METROPOILITAN TRANSPORTATION AUTHORITY, METROPOLITAN ENTERPRISES, INC., MTA CAPITAL CONSTRUCTION COMPANY, SKANSKA/TRAYLOR JV, SKANSKA USA INC., TRAYLOR BROS, INC., SSK CONSTRUCTORS JOINT VENTURE, SCHIAVONE SHEA AND KIEWIT (SSK) CONSTRUCTORS JV, SCHIAVONE CONSTRUCTION CO. LLC, J.F. SHEA CONSTRUCTION, INC. and KIEWIT CONSTRUCTORS INC.,

Defendants.

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HON. J. MACHELLE SWEETING, J.S.C.

In Motion Sequence 002, defendants the City of New York, New York City Transit Authority, Metropolitan Transportation Authority (MTA), Metropolitan Enterprises, Inc., MTA Capital Construction Company, Skanska/Traylor JV, Skanska USA Inc., Traylor Bros., Inc., SSK Constructors Joint Venture as named and as incorrectly sued herein as “Schiavone Shea and Kiewit (SSK) Constructors JV,” Schiavone Construction Co. LLC, J.F. Shea Construction, Inc., and Kiewit Constructors Inc., move, pursuant to CPLR 3212, for an order granting summary judgment and dismissing plaintiff’s complaint.

FACTUAL ALLEGATIONS

Plaintiff's Deposition

Plaintiff testified that he was employed as a laborer by non-party Brandenberg on May 3, 2012, the date of his alleged accident. He had been working for four days at a demolition project located at 300 East 72nd Street, in connection with the Second Avenue Subway project. Plaintiff maintains that the foreman on the project was named Chris Noga ("Noga").

Plaintiff recalls that a safety meeting was held daily by someone from outside of Brandenberg. After the safety meeting, Noga would open up his truck where he kept his tools, provide workers with tools, and instruct the workers.

Plaintiff maintains that on his first day at the project, he was told by Noga to remove plaster and wooden planking on the fourth floor. He recalls that cement and sand were being pulled up with a rope, that bricks were being demolished, and that walling was being removed. Plaintiff recalls that there was scaffolding on the outside of the building and on the steps. When he arrived on the fourth floor, Noga instructed the workers to clean up the floor which had wooden beams that were already demolished. Plaintiff maintains that he and the crew members were able to clean the beams on the floor, as instructed by Noga.

Plaintiff testified that prior to the subject accident, Noga provided instructions to break up large stones with a sledgehammer. The large stones and rocks were located above and below a window in the wall. Plaintiff recalls that a worker who drove to the site with Noga was breaking the wall from the outside of the building and pushing stones inside to the interior. Once the rocks were pushed inside to the interior, plaintiff proceeded to break them into smaller pieces with a sledgehammer. Plaintiff recalls that the wooden beams had already been removed in the

morning. After the stones were broken, they were loaded in wheelbarrows and dumped into a shoot.

Plaintiff testified that he was unable to continue to complete the task of breaking up stones because bricks started falling down from above where he was standing. Plaintiff maintains that the bricks fell from eight feet above him and were preceded by a noise. He remains unsure why the bricks fell. Plaintiff believes that if he had not moved when he saw the bricks falling, the bricks would have struck him. Plaintiff recalls taking a step backwards as the bricks fell. Although he wanted to turn around, he stepped with his left foot on possibly a piece of debris or cracked brick. Plaintiff proceeded to hit his left knee on a metal wheelbarrow owned by Brandenberg which was full of bricks. Plaintiff fell over the wheelbarrow and fell onto the ground.

Plaintiff maintains that he had not utilized the sledgehammer on the wall itself and that several layers of the wall had already been removed. Plaintiff testified that he did not know whether the activity of demolishing the window dislodged the bricks, but he believes that the bricks came off of the wall and that he could not see anyone working above where he was standing.

Sean Menge's Deposition

Sean Menge ("Menge") testified that he works for Kiewit as a shaft excavation concrete manager. As of May of 2012, Menge's titled position was Surface Operations Manager Project Engineer. At that time, his duties included daily coordination for the 72nd Street Station project which was part of the Second Avenue project.

Menge maintains that Kiewit was a minor partner with two other corporations: Schiavone Construction and JF Shea Construction, and that Kiewit had been contracted for the subway at the Second Avenue project. MTA Capital was the owner designer for the project and Kiewit excavated for the new station at 72nd Street.

Menge testified that Bradenberg is a demolition subcontractor which was hired to perform building demolition at the ancillary and entrance locations because there were existing buildings at each of these locations which needed to be demolished. Brandenberg's work included demolishing a building located at 300 East 72nd Street. Menge maintains that he had oversight with respect to Brandenberg's work and would visit the site periodically to check the status. However, he was not aware that he or anyone on behalf of his company provided instructions to Brandenberg's employees on-site during his visits.

Menge maintains that his superintendent, J. Pearce ("Pearce"), was employed by Kiewit Infrastructure, and had responsibility over Brandenberg. Pearce would have attended Brandenberg's daily site meetings and would have sent Menge status reports which could include safety issues. In May of 2012, to his knowledge, there were no other contractors onsite while Brandenburg was demolishing the building.

Menge testified that on the date of plaintiff's accident, he was unaware of the progress of the demolition work at 300 East 72nd Street. Menge recalls that scaffolding was placed to prevent material coming from outside of the perimeter of the site and to provide access to workers. If work was being performed in a dangerous condition, Menge could stop the work, get the parties involved, and address the complaint. He maintains that the foreman's report to

Pearce had no information about any accident involving plaintiff. He did not know if Brandenberg had anyone on site in charge of onsite safety.

DISCUSSION

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006).

Defendants first contend in their reply brief that plaintiff's opposition to the motion for summary judgment is untimely. Defendants argue that the motion for summary judgment was filed on November 29, 2019 and that plaintiff failed to oppose the motion or seek any adjournment and that the motion was marked fully submitted without opposition on January 15, 2020.

Defendants argue that thereafter, plaintiff's counsel sought an adjournment of the motion to allow plaintiff time to submit opposition and that defendants allowed plaintiff to choose their own deadline for opposition. Defendants contend that plaintiff chose February 28, 2020, with a return date of March 17, 2020, and the agreed to stipulation was "so-ordered" by the Honorable Suzanne Adams requiring plaintiff to submit opposition on or before February 28, 2020. Defendants argue that the Court scheduled oral argument for March 26, 2020, and at no time prior to the February 28, 2020 deadline, or prior to the return date of March 17, 2020, did plaintiff contact defense counsel or request an adjournment from the court.

In opposition, plaintiff admits that he did not submit opposition by February 28, 2020, but contends that prior to the March 26, 2020 return date, (which was the beginning of the Covid-19 pandemic) plaintiff requested a further adjournment of the motion. Plaintiff argues that on March 25, 2020, plaintiff served defendants' counsel with plaintiff's opposition papers, but the papers could not be filed due to existing administrative orders resulting from the pandemic.

Good cause having been shown, this court will accept the papers submitted in opposition to defendants' motion for summary judgment, as defendants have not shown any prejudice as a result of the delay in plaintiff filing opposition papers. Furthermore, defendants have had the opportunity to submit reply papers on their own behalf. *See Seradilla v Lords Corp.,* 117 AD3d 648, 649 (1st Dept 2014); *Prato v Artz*, 79 AD3d 622, 623 (1st Dept 2010).

Labor Law § 200

Defendants contend that plaintiff's claim, pursuant to Labor Law § 200, must be dismissed.

Labor Law § 200 (1) provides, in pertinent part, as follows:

> "[a]ll 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."

In his "Affirmation in Opposition," plaintiff acknowledges that the facts of this case do not implicate Labor Law § 200 (1) and states that plaintiff is not opposing that branch of defendants' motion. Therefore, that branch of defendants' motion seeking to dismiss plaintiff's allegation of a violation of Labor Law § 200 is granted.

Labor Law §§ 240 (1) and 241 (6) as to defendants the City of New York, New York City Transit Authority, Metropolitan Enterprises, Inc., Skanska/Traylor JV, Skanska USA Inc., Traylor Bros, Inc., Schiavone Construction Co. LLC, J.F. Shea Construction, Inc., and Kiewit Constructors Inc.

Defendants contend that plaintiff fails to allege that these specific defendants had any supervisory control or authority over the work which plaintiff was conducting at the time of his injury or that they can be deemed an agent pursuant to the Labor Law.

"Liability for violations of Labor Law § 240 (1) and § 241 (6) may be imposed against contractors and owners, and those parties who have been delegated the authority to supervise and control the work such that they become statutory agents of the owners and contractors. The title by which a party is known is not determinative, however, and a party with essentially the same duties as a contractor or as an agent of the owner will be held to have the responsibilities of a contractor or owner under the Labor Law." *Aranda v Park E. Constr*., 4 AD3d 315, 316 (2d Dept 2004) (citations omitted). "[T]he core inquiry is whether the defendant had the authority to supervise or control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition." *Myles v Claxton*, 115 AD3d 654, 655 (2d Dept 2014) (internal quotation marks and citations omitted); *see also Diaz v Trevisani*, 164 AD3d 750, 754 (2d Dept 2018) (holding "[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 quotation marks and citation omitted]).

Here, plaintiff failed to meet his burden in establishing that the Labor Law applies to the City of New York, New York City Transit Authority, Metropolitan Enterprises, Inc., Skanska/Traylor JV, Skanska USA Inc., Traylor Bros, Inc., Schiavone Construction Co. LLC, J.F. Shea Construction, Inc., and Kiewit Constructors Inc. Accordingly, that branch of defendants' motion seeking to

dismiss the violations of Labor Law 240 (1) and 241 (6) as against the City of New York, New York City Transit Authority, Metropolitan Enterprises, Inc., Skanska/Traylor JV, Skanska USA Inc., Traylor Bros, Inc., Schiavone Construction Co. LLC, J.F. Shea Construction, Inc., and Kiewit Constructors Inc., is granted.

Labor Law § 240 (1)

Defendants contend that plaintiff's claim of a violation of Labor Law 240 (1) must be dismissed as against SSK Constructors Joint Venture and the MTA because the accident was not the type of elevation related accident which this section of the Labor Law is intended to guard against as plaintiff did not fall from an elevation and was not struck by a falling object.

Labor Law § 240 (1) provides in part:

> "[a]ll 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."

With regard to Labor Law § 240 (1), the Court of Appeals has held:

> "[t]hroughout our section 240 (1) jurisprudence we have stressed two points in applying the doctrine of strict (or absolute) liability. First, that liability is contingent on a statutory violation and proximate cause. As we said in *Duda* (32 N.Y.2d at 410), "[v]iolation of the statute alone is not enough; plaintiff [is] obligated to show that the violation was a contributing cause of his fall," and second, that when those elements are established, contributory negligence cannot defeat the plaintiff's claim."

Blake v Neighborhood Hous. Servs. of N.Y. City, Inc., 1 NY3d 280, 287 (2003), *quoting Duda v Rouse Constr. Corp.*, 32 NY2d 405 [1973].

Furthermore, “for section 240 (1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute.” *Narducci v Manhasset Bay Assoc*., 96 NY2d 259, 268 (2001).

The Appellate Division, First Department, has held that "[t]he failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident." *Cherry v Time Warner, Inc*., 66 AD3d 233, 235 (1st Dept 2009) (internal quotation marks and citations omitted).

Here, defendants argue that that the alleged accident is not height related and is one which resulted from the type of ordinary and usual peril a worker is exposed to at a construction site. Defendants contend the accident was also not proximately caused by an inadequate safety device. They argue that plaintiff’s accident did not involve exposure to an elevation related risk as plaintiff alleges that his accident occurred when he turned into a wheelbarrow and fell. Defendants argue that the purpose of the job which plaintiff and his co-workers were performing involved the demolition of the subject wall which involved hand demolition. They argue that the hand demolition of the wall involved deliberately dropping debris to the floor and that securing the rocks would be contrary to the objective of plaintiff’s work.

In opposition, plaintiff contends that if the protection of Labor Law § 240 (1) extends to those workers injured while trying to prevent themselves from falling from a height, it should be extended to include workers injured while trying to prevent themselves from being hit by a falling object.

Here, a question of fact exists as to whether plaintiff was provided proper protection from overhead dangers and whether his accident could have been prevented by SSK, the general contractor or MTA, the owner. It remains unclear from plaintiff's testimony what caused the bricks to fall. It is also unclear if the subject bricks were being demolished at the time of plaintiff's accident, whether they could have been adequately secured during the undertaking, or if a safety net or other device, could have been utilized to prevent bricks from falling.

Furthermore, while the bricks may not have struck plaintiff's body, the falling of the bricks allegedly caused plaintiff to shift in a manner to avoid being struck, which ultimately caused him to fall over a wheelbarrow and become injured. *See Pesca v City of New York*, 298 AD2d 292, 293 (1st Dept 2002) (holding "[a]lthough plaintiff did not fall from the ramp, the injuries he allegedly sustained in preventing himself from falling may be compensable under Labor Law § 240 (1) if shown to have resulted from a failure to provide a proper safety device in accordance with the requirements of that statute"); *Carrion v Lsg 365 Bond St. Llc*, 62 Misc 3d 1203(A), *3 (Sup Ct, NY County, 2018) (holding "Labor Law 240 (1) aims to protect workers from such hazards, courts liberally construe[] [it] to accomplish the purpose for which it was framed. The test is two-fold: there must be a violation, and the violation must be a contributing cause of the accident" [internal quotation marks and citation omitted]).

Here, a question of fact exists as to whether the bricks which fell could have been secured wand whether they contributed to plaintiff moving and tripping. Accordingly, this court denies that branch of defendants' motion seeking summary judgement as to the claim of a violation of Labor Law § 240 (1) as against SSK Constructors Joint Venture and MTA.

Labor Law § 241 (6)

Defendants contend that plaintiff's claims made pursuant to Labor Law § 241 (6) must be dismissed.

Labor Law § 241 (6) provides, in pertinent part:

> "[a]ll contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
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> * * *
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> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

Labor Law § 241 (6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection for workers and to comply with specific safety rules which have been set forth by the Commissioner of the Department of Labor. *St. Louis v Town of N. Elba*, 16 NY3d 411, 413 (2011). In order to demonstrate liability, pursuant to Labor Law § 241 (6), it must be shown that the defendant violated a specific, applicable regulation of the Industrial Code, rather than a provision containing only generalized requirements. *Nostrom v A.W. Chesterton Co*., 15 NY3d 502, 507 (2010).

Defendants contend that plaintiff has failed to establish that the following sections of the Industrial Code, were violated: Sections 23-1.5; 23-1.8; 23-1.18; 23-1.19; 23-1.20; 23-1.28; 23-1.33; 23-2.1; 23-2.6; 23-3.22; and 23-3.4. As plaintiff has failed to even address these sections of the Industrial Code in his opposition to this motion, that part of plaintiff's complaint alleging violations of the above code sections is deemed abandoned and is dismissed. *See Genovese v Gambino*, 309 AD2d 832, 833 (2d Dept 2003) (holding that where plaintiff did not oppose that

branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned).

Industrial Code § 23-1.7 (a) (1)

Defendants contend that summary judgment must be granted as to plaintiff's allegation that SSK Constructors Joint Venture and the MTA violated Industrial Code § 23-1.7 (a) (1). This section, entitled "Protection from general hazards" provides:

> "(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."

Section 23-1.7 (a) (1) has been held to be a sufficiently specific section of the Industrial Code. *See Portillo v Roby Anne Dev., LLC*, 32 AD3d 421, 422 (2d Dept 2006).

Defendants contend that the evidence provided through plaintiff's own testimony establishes that there were no bricks, materials, or objects above plaintiff and that he was not in an area normally exposed to falling objects.

In opposition, plaintiff contends that he was required to work in an area exposed to falling material or objects. Plaintiff testified that he was instructed to break up large stones with a sledgehammer and that large stones and rocks were located above and below the window where he was working and inside of the wall. Plaintiff testified that a worker was breaking the wall from the outside of the building and pushing the stones inside.

Here, as plaintiff was removing stones with a sledgehammer, it appears that there may have been a danger of falling objects or materials at the subject site. However, it remains unclear from the testimony whether this type of overhead protection could have been implemented at the site and whether this section was applicable to plaintiff's work. Therefore, this court declines to dismiss that part of plaintiff's complaint alleging a violation of Industrial Code § 23-1.7 (a) (1).

Industrial Code § 23-1.7 (e) (2)

Defendants move for summary judgment as to plaintiff's allegation of a violation of Industrial Code § 23-1.7 (e) (2). Industrial Code § 23-1.7 (e) (2) provides:

> "(2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed."

Section 23-1.7 (e) (2) has been held to be a specific provision of the Industrial Code to support a Labor Law 241 § (6) claim. *See Singh v Young Manor, Inc*., 23 AD3d 249, 249 (1st Dept 2005); *McDonagh v Victoria's Secret, Inc.,* 9 AD3d 395, 396 (2d Dept 2004).

Defendants contend that any debris on the floor at the time of the accident was present because of the activity in which plaintiff and his co-workers were performing, and therefore, no violation existed of Industrial Code § 1.7 (e) (2). Defendants contend that plaintiff testified that he did not see the object that he tripped on before or after the accident, and that he believes that it was either a piece of the brick wall or window stone which he and his crew were in the process of demolishing.

Plaintiff contends that there exists a question of fact as to whether this regulation was violated, as the brick that he tripped over could be considered debris, material or a sharp projection. Plaintiff testified that there were bricks on the floor in front of him in the vicinity of his accident and that his foot stepped on something which may have been debris.

Here, plaintiff fails to demonstrate that the subject brick on which he allegedly stepped, did not result from the ongoing work to demolish the wall. Plaintiff testified that he was assigned to clean debris on the first day of his project and that his foreman told him to clean up debris on the floor. *See Torres v Triborough Bridge & Tunnel Auth.,* 193 AD3d 665, 665 (1st Dept 2021) (holding that "Industrial Code § 23-1.7(e)(2) was inapplicable, since the demolition debris resulted directly from the ongoing work being performed, which plaintiff had been assigned to clean up, and thus constituted an integral part of that work"); *Solis v 32 Sixth Ave. Co. LLC*, 38 AD3d 389, 390 (1st Dept 2007) (holding "[n]or is 12 NYCRR § 23-1.7 (e) (2) applicable, because the debris covering the scaffold resulted directly from the masonry work plaintiff and his coworker were performing, and thus constituted an integral part of that work" [citations omitted]).

Therefore, because plaintiff fails to demonstrate that the debris did not result from the subject demolition work, that branch of defendants' motion for summary judgment seeking to dismiss Industrial Code § 23-1.7 (e) (2) is granted.

Industrial Code § 23-3.3

Defendants contend that plaintiff's allegation that Industrial Code section 23-3.3 was violated must be dismissed. Section 23-3.3, which is entitled "demolition by hand" provides:

> "(b) Demolition of walls and partitions.
> (3) Walls, chimneys and other parts of any building or other structure shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration.
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> * * *
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> "(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.

Industrial Code § 23-3.3 has been held to be a specific regulation to serve as a predicate for a Labor Law § 241 (6) claim. *See Vasquez v Urbahn Assoc. Inc.,* 79 AD3d 493, 494 (1st Dept 2010).

Defendants argue that the brick that allegedly fell was intentionally loosened and removed from the wall and, therefore, defendants did not violate Industrial Code § 23-3.3. Defendants contend that plaintiff was not struck by any falling debris or injured due to any instability brought about by the demolition work, but was instead injured when he tripped on a piece of brick or stone that he was crushing. Defendants maintain that the alleged falling brick was intentionally being loosened, and that bracing or securing the wall and the individual bricks would have precluded and prevented the knocking down of the wall in its entirety which was the goal of the work.

In opposition, plaintiff contends that even though he was not hit directly by the falling debris, there remain questions of fact as to whether the violation of these regulations was a proximate cause of plaintiff's injuries. Plaintiff argues that the photographs submitted by defendants clearly show walls that had bricks which were significantly loosened and in danger of falling or collapsing, and hazards that might have been detected through continuing inspections. Plaintiff argues that he was on the ground and was not demolishing the bricks above him, and that the bricks may have fallen due to the structural instability of the work.

Here a question of fact exists as to whether Industrial Code § 23-3.3 (b) (3) and (c) were violated. While section 23-3.3 (b) (3) requires that walls, chimneys and other parts of any building or other structure shall not be left unguarded so that they fall, it is unclear why the bricks fell and whether this section would be applicable if demolition were taking place. Furthermore, while section 3.3 (c) provides that during hand demolition operations, continuing inspections were to be made as the work progressed to detect hazards resulting from weakened walls or from loosened material, it remains unclear if these inspections did take place prior to plaintiff's accident.

Accordingly, this court denies that branch of defendants' motion seeking summary judgment as to Industrial Code §§ 23-3.3 (b) (3) and 23-3.3 (c).

CONCLUSION and ORDER

Accordingly, it is

ORDERED that the branch of defendants the City of New York, New York City Transit Authority, Metropolitan Transportation Authority, Metropolitan Enterprises, Inc., MTA Capital Construction Company, Skanska/Traylor JV, Skanska USA Inc., Traylor Bros., Inc., and SSK Constructors Joint Venture's motion for summary judgment dismissing the claim of a violation of Labor Law § 200 is **GRANTED**; and it is further

ORDERED that the branch of defendants' motion seeking to dismiss the claims of violations of Labor Law §§ 240 (1) and 241 (6) as against the City of New York, New York City Transit Authority, Metropolitan Enterprises, Inc., Skanska/Traylor JV, Skanska USA Inc., Traylor Bros, Inc., Schiavone Construction Co. LLC, J.F. Shea Construction, Inc., and Kiewit Constructors Inc., is **GRANTED**; and it is further

ORDERED that the branch of defendants' motion seeking to dismiss Industrial Code Sections 23-1.5; 23-1.8; 23-1.18; 23-1.19; 23-1.20; 23-1.28; 23-1.33; 23-2.1; 23-2.6; 23-3.22; 23-3.4. and 23-1.7 (e) (2), is **GRANTED**; and it is further

ORDERED that the branch of defendants' motion seeking to dismiss the violations of Industrial Code Sections 23-1.7 (a) (1); 23-3.3 (b) (3); and 23-3.3 (c), is **DENIED**; and it is further

ORDERED that the branch of defendants' motion seeking summary judgement as to the claim of a violation of Labor Law § 240 (1) as against SSK Constructors Joint Venture and MTA is **DENIE;** and it is further

ORDERED that any further or pending motions or proceedings in this case are transferred to the Transit Part.

Dated: July 7, 2022

HON. J. MACHELLE SWEETING, J.S.C.