

Vidal v JRC Mgt., LLC

2022 NY Slip Op 34634(U)

June 28, 2022

Supreme Court, Queens County

Docket Number: Index No. 706681/2019

Judge: Maurice E. Muir

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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR

Justice

GABRIEL VIDAL

Plaintiff,

-against-

JRC MANAGEMENT, LLC, JRC REALTY, LLC
and TOMPKINS SQUARE APTS., LLC

Defendants.

IAS Part - 42

Index No.: 706681/2019

Motion Date: 9/30/21

Motion Cal. No.: 37

Motion Seq. No.: 2

JRC MANAGEMENT, LLC, JRC REALTY, LLC,
and TOMPKINS SQUARE APTS., LLC,

Third-Party Plaintiffs,

-against-

J.C. CONSTRUCTION GROUP, INC.,

Third-Party Defendant.



JRC MANAGEMENT, LLC, JRC REALTY, LLC,
and TOMPKINS SQUARE APTS., LLC,

Second Third-Party Plaintiffs,

-against-

CAJAL ENTERPRISES, INC. d/b/a JC CONSTRUCTION
GROUP, INC and/or d/b/a JC CONSTRUCTION, INC.,

Second Third-Party Defendants.

The following papers numbered EF33 to EF168 (Sequence Number “2”) read on this motion by Gabriel Vidal (“Mr. Vidal” or “plaintiff”) for an order: 1) pursuant to CPLR § 3212(a), summary judgment on the issue of liability pursuant to Labor Law §§ 240(1) and 241(6)

against JRC Realty, LLC and JRC Management, LLC (collectively referred to herein as “JRC” or “defendants”), the owner and managing agent of the subject premises, respectively; and 2)) pursuant to CPLR § 3212(c), setting this matter down for an immediate trial on damages. Moreover, JRC and Tompkins Square Apartments LLC (“TSA”) cross move for an order: 1) pursuant to CPLR § 3212 granting TSA summary judgment dismissing all claims against that entity; 2) pursuant to CPLR § 3212 granting JRC summary judgment dismissing plaintiff’s claims arising under the common law and/or Labor Law § 200; 3) pursuant to CPLR § 3212 granting JRC summary judgment dismissing plaintiff’s claims against JRC arising under Labor Law § 241(6); 4) pursuant to CPLR § 3212 granting JRC summary judgment dismissing plaintiff’s claims against JRC arising under Labor Law § 240; 5) pursuant to CPLR § 3212 granting JRC summary judgment, either absolute or conditional, against the Second Third-Party Defendant, Cajal Enterprises, Inc. d/b/a J. C. Construction Group. Inc. (“JC Construction” or “general contractor”), on the grounds of contractual indemnification; 6) pursuant to CPLR § 3212 granting JRC summary judgment, either absolute or conditional, against Third-Party Defendant, J C Construction, on the grounds of common law indemnification.

	Papers Numbered
Notice of Motion-Affidavits-Exhibits-Service.....	EF33-44
Affirmation in Opposition.....	EF81
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Upon the foregoing papers it is ordered that the motion and cross-motion (Sequence “2”) are combined herein for disposition, and determined as follows:

The plaintiff commenced this action against the defendants, asserting causes of action to recover damages for violations of Labor Law §§ 200, 240(1), 241(6) and the provisions of the Industrial Code and OSHA regulations. Admittedly JRC Realty owns the subject premises and JRC Management, LLC is the managing agent. On or before April 12, 2018, JRC hired J.C. Construction Group, Inc. (“JC Construction”) to demolish and/or renovate an apartment located at 150 East 7th Street, New York, New York (“subject premises”). At the time of the subject accident, the plaintiff was employed by Jose Cajal (“Mr. Cajal”), who is the owner of JC Construction. The plaintiff testified, upon examination before trial (“EBT”), that on December

12, 2018, while reviewing the blueprints of the construction project located at the subject premises, a heavy roll of “BX” metal clad live electrical wire (“BX cable”) that was inadequately “duct taped” to an exposed overhead ceiling joist, fell and struck him: He also testified that the exposed end of the live BX cable came into contact with his right eye, causing him to be electrocuted and thrown across the room. At the time of the accident, there were no electricians working in the apartment. Plaintiff did not know who used duct tape in an attempt to secure the live BX cable to the exposed overhead ceiling joist. Moreover, the defendants failed to turn off the electricity before the workers started working at the subject premises.

Moreover, Mr. Cajal avers that his company performed the demolition work at the subject premises; and the power should have been turned off to the apartment. Additionally, the “BX” metal clad live electrical wire was not properly secured to prevent it from falling. [Plaintiff] didn't have protective eye wear . . . and the wire had power. Furthermore, pursuant to a written invoice prepared by JC Construction, the kitchen and bathroom were completely renovated by removing the old fixtures, including light fixtures and replacing them with new fixtures. The electricity in the apartment remained turned on while the renovation work was underway. Neither JRC Management nor JRC Realty did anything to make sure that the electricity was turned off while the renovation work was underway or provide any warnings to the workers. The electrical wires in the ceiling were not secured by any safety devices to prevent them from falling.

Now, the plaintiff moves for partial summary judgment as to liability in his favor on his claims pursuant to Labor Law §§ 240 and 241(6) and CPLR § 3212 (c). In moving for partial summary judgment on his claims pursuant to Labor Law § 240, plaintiff argues that the live BX cable that fell from the ceiling was an object that required securing for the purposes of the undertaking, and the failure of the defendants to properly secure it was a violation of the statute, which was a proximate cause of his injuries. JRC opposes the motion and cross moves, along with TSA for summary judgment in their favor. Moreover, the plaintiff opposes the cross motion.

I. Plaintiff's Motion for Partial Summary Judgment

Pursuant to Labor Law 240(1), it provides, in relevant part, the following:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding,

hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

Labor Law § 240(1) imposes upon owners, general contractors, and their agents a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites. (*see Escobar v. Safi*, 150 AD3d 1081, 1082 [2d Dept 2017]; *see also Haimes v. New York Telephone Co.*, 46 NY2d 132 [1978]; *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). To prevail on a motion for summary judgment in a Labor Law § 240(1) “falling object” case, the plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking. (*see Fabrizi v. 1095 Ave. of the Ams., L.L.C.*, 22 NY3d 658, 662-663 [2014]; *Romero v. 2200 N. Steel, LLC*, 148 AD3d 1066, 1067 [2d Dept 2017]; *Sanchez v. 74 Wooster Holding, LLC*, 201 AD3d 755 [2d Dept 2022]). Labor Law § 240(1) does not automatically apply simply because an object fell and injured a worker; a plaintiff must show that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute. (*see Fabrizi v. 1095 Ave. of the Ams., L.L.C.*, 22 NY3d at 663; *see also Narducci v. Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]). Furthermore, this statute is to be construed as liberally as possible for the accomplishment of the purpose of imposing absolute liability for a breach, which proximately causes an injury (*see Saint v. Syracuse Supply Co.*, 25 NY3d 117 [2015]; *Nicometi v. Vineyards of Fredonia, LLC*, 25 NY3d 90 [2015]; *McCarthy v. City of New York*, 173 AD3d 1165 [2d Dept 2019]), and it “imposes a nondelegable duty upon owners, general contractors, and their agents to provide safety devices necessary to protect workers from the risks inherent in elevated work sites” (*Martin v. Hillside Enters, LLC*, 185 AD3d 809, 810 [2d Dept 2020] quoting *Vaucan v. Hawthorne Village, LLC*, 155 AD3d 924, 925 [2d Dept 2017]; *see also McCarthy v. Turner Constr. Inc.*, 17 NY3d 369 [2011]; *Vicuna v. Vista Woods, LLC*, 168 AD3d 1124 [2d Dept 2019]). Liability is imposed where there exists a hazard contemplated under the statute; a failure to utilize a, or the use of an inadequate, safety device enumerated therein; and “plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v. New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see Wilinski v. 334 East 92nd Housing Development Fund Corp.*, 18 NY3d 1 [2011]; *Zoto v. 259 W. 10th, LLC*, 189 AD3d 1523 [2d Dept 2020]; *Lemus v. New York B Realty Corp.*, 186 AD3d 1351 [2d Dept 2020]).

Here, the plaintiff established his *prima facie* entitlement to judgment as a matter of law through the submission of his deposition testimony, which indicated that he was struck by an unsecured live BX cable that fell from the ceiling joist onto him -- as he was walking through the subject apartment. (*see Zimmer v. Chemung County Performing Arts, Inc.*, 65 NY2d 513 [1985]; *Passos v. Noble Constr. Group, LLC*, 169 AD3d 706, 707 [2d Dept 2019]; *Escobar v. Safi*, 150 AD3d 1081 [2d Dept 2017]; *Carrion v. City of New York*, 111 AD3d 872, 873 [2d Dept 2013]). Contrary to the defendants' contentions, in light of the nature and purpose of the work being performed at the time of the accident, there was a significant risk that the improperly-secured bundle of live BX cable would fall, causing injury to a worker on the ground, such as the plaintiff. Accordingly, the owner, general contractor and their agents were obligated under Labor Law § 240(1) to use appropriate safety devices to properly secure the BX cable (*see Narducci v. Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]; *Bornschein v. Shuman*, 7 AD3d 476, 478 [2d Dept 2004]; *Salinas v. Barney Skanska Constr. Co.*, 2 AD3d 619 [2d Dept 2003]; *Orner v. Port Auth. of N.Y. & N.J.*, 293 AD2d 517 [2d Dept 2002]). In view of the fact that there are no triable issues of fact regarding the cause of the plaintiff's injury or the absence of safety equipment to secure the live BX cable, that branch of plaintiff's motion for partial summary judgment, pursuant to Labor Law § 240(1) claim, is granted; and the defendants' cross-motion is denied. (*see Salinas v. Barney Skanska Constr. Co.*, *supra*; *Wallace v. Stonehenge Group*, 1 AD3d 589 [2d Dept 2003]; *Outar v. City of New York*, 286 AD2d 671, 672 [2d Dept 2001]).

With regard to that branch of plaintiff's motion seeking summary judgment, pursuant to Labor Law § 241(6), the plaintiff limits his motion only to alleged violations of the Industrial Codes subdivision, which regulates the protections of workers from eye injuries (12 NYCRR § 23-1.8(a) and §19.4(a)); electrical hazards (12 NYCRR § 23-1.3(b)(3) and 12 NYCRR § 23-1.3(b)(4); and object that are stored too close to an elevated edge (12 NYCRR § 23-2.1(a)(1) and (2)). Pursuant to Labor Law § 241(6), it provides, in relevant part, the following:

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, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

In essence, Labor Law § 241(6) imposes a nondelegable duty on owners, contractors and their agents to provide reasonable and adequate protection and safety to persons employed in

construction, excavation or demolition work, and to comply with the safety rules and regulations promulgated by the Commissioner of the Department of Labor. (*see Misicki v. Caradonna*, 12 NY3d 511, 515 [2009], quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]; *see also Rizzuto v. L.A. Wenger Contr. Co.*, 91 NY2d 348 [1998]; *Moscato v. Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717 [2d Dept 2019]; *Seals v. Trident Structural Corp.*, 142 AD3d 1152 [2d Dept 2016]). The ultimate responsibility for safety practices at building construction sites lies with the owner and general contractor (*see Allen v. Cloutier Constr. Corp.* 44 NY2d 290 [1978]; *Chowdhury v. Rodriquez*, 57 AD3d 121 [2d Dept 2008]). Furthermore, “[i]n order to recover damages on a cause of action alleging a violation of Labor Law § 241(6), a plaintiff must establish the violation of an Industrial Code provision, which sets forth specific safety standards” (*La Veglia v. St. Francis Hosp.*, 78 AD3d 1123, 1125 [2d Dept 2010], quoting *Hricus v. Aurora Contrs., Inc.*, 63 AD3d 1004, 1005 [2d Dept 2009]). Plaintiff’s Labor Law § 241(6) claim is predicated on the alleged violations of the following Industrial Code sections: 12 NYCRR 23-1.8 (a); § 23-1.13(b)(3) and (b)(4); 12 NYCRR 23-2.1 (a) (1) and 23-2.1(a)(2), which are addressed in turn.

Pursuant to 12 NYCRR 23-1.8 (a), it provides that “[a]pproved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons . . . while engaged in any other operation which may endanger the eyes” (*see Montenegro v. P12, LLC*, 130 AD3d 695 [2d Dept 2015]; *McByrne v. Ambassador Constr. Co., Inc.*, 290 AD2d 243, 243-44 [1st Dept 2002] (*emphasis added*); *Guryev v. Tomchinsky*, 87 AD3d 612, *affd* 20 NY3d 194 [2011]; *Pedras v. Authentic Renaissance Modeling & Contr., Inc.*, 16 AD3d 567 [2d Dept 2005]; *Cappiello v. Telehouse Intl. Corp. of Am.*, 193 AD2d 478, 479 [1st Dept 1993]; *Quiros v. Five Star Improvement, Inc.*, 134 AD3d 1493 [4th Dept 2015]). It is well established that, because the determination of legal causation turns upon whether the injury was a foreseeable result of a defendants’ conduct, the issue is generally for the fact finder to resolve (*Kriz v. Schum*, 75 NY2d 25, 34 [1989]). However, a plaintiff need only show that his injury was substantially caused by the defendants’ negligent conduct (*Kush v. City of Buffalo*, 59 NY2d 26, 32-33 [1983]) and “need not demonstrate . . . that the precise manner in which the accident happened . . . was foreseeable” (*Derdiarian v. Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]). Here, the live BX cable was “duct taped” to an exposed overhead ceiling joist, which fell and struck the plaintiff’s right eye causing him to be electrocuted and thrown across the room. It was clearly foreseeable that the fallen live BX cable could strike plaintiff’s head and, therefore, possibly his eye[s] when it fell

(see *Rapp v. Zandri Constr. Corp.*, 165 AD2d 639 [3d Dept 1991]; cf., *Santiago v. New York City Hous. Auth.*, 101 AD2d 735, 736, *affd* 63 NY2d 761). As such, the court grants that branch of plaintiff's motion based upon a violation of 12 NYCRR 23-1.8 (a) and denies the defendants' cross-motion with respect to said provision. (see *Montenegro v. P12, LLC*, 130 AD3d 695 [2d Dept 2015]; *Quiros v. Five Star Improvement, Inc.*, 134 AD3d 1493 [4th Dept 2015]).

Furthermore, the plaintiff contends that the defendants violated 12 NYCRR § 23-1.13(b)(3), which regulates electrical hazards and is subtitled "Investigation and Warning," provides that:

Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool or machine into physical or electrical contact therewith. *The employer shall post and maintain proper warning signs where such a circuit exists. He shall advise his employees of the locations of such lines, the hazards involved and the protective measures to be taken.* (Emphasis added)

Relatedly, 12 NYCRR § 23-1.13(b)(4), subtitled "Protection of Employees" provides that:

No employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means.

Here, the court finds that these subdivisions were also violated as it applies to a worker, who is in proximity to an electric power circuit that has not been "de-energized" or "insulated." (see *DelRosario v. United Nations Federal Credit Union*, 104 AD3d 515 [1st Dept 2013]; *Wolodin v. Lehr Construction Corp.*, 177 AD3d 496 [1st Dept 2019]). Moreover, there is no evidence that the defendants warned the plaintiff about the live BX cable. As such, that branch of plaintiff's motion based upon a violation of Industrial Code §§ 23-1.13(b)(3) and (4), are granted and the defendants' cross-motion with respect to said provision is denied.

Additionally, the plaintiff argues that the defendants violated 12 NYCRR § 23-2.1(a)(1), which provides, in relevant part: "[a]ll building materials shall be stored in a safe and orderly manner." "[T]he provisions of 12 NYCRR § 23-2.1(a) contain specifications sufficiently concrete to sustain a Labor Law §241(6) claim" (*Aragona v. State of New York*, 74 AD3d 1260, 1261-1262 [2d Dept 2010]; *Randazzo v. Consolidated Edison Co.*, 271 AD2d 667, 668 [2d Dept 2000]; *Castillo v. 3440 LLC*, 46 AD3d 382, 383 [1st Dept 2007]). As such, the court finds that

from the facts of this case, this subdivision was also violated in that the coil of BX cable was not stored in a safe and orderly manner. In addition, the defendants have also violated subdivision 23-2.1(a)(2), which provides that “material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold, as to endanger any person beneath such edge”. Plaintiff made a *prima facie* showing that this provision applies, by testifying that the heavy roll of “BX”, metal- clad live electrical wire was inadequately “duct taped” to an exposed overhead ceiling joist that was 9 feet, 7 inches tall (*see Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 410 [1st Dept 2013]). Moreover, the court finds that the defendants failed to present any evidence sufficient to raise a triable issue of fact relating to the *prima facie* case of plaintiff’s Labor Law § 241(6) claim.

Furthermore, the defendants’ contention that plaintiff’s motion is premature, is without merit. Defendants argue that the motion is premature because discovery is not complete as they have not had an opportunity to develop their third-party claims against J C Construction. It matters not that J C Construction may be “the sole actively negligent party,” as liability on the part of J C Construction does not negate liability by JRC: It is well settled law that an owner has a non-delegable duty to provide proper protection to a worker from an elevation related danger. (*see Gordon v. Eastern Ry. Supply, Inc.*, 82 NY2d 555 [1993]). Additionally, “summary judgment is not premature merely because discovery has not been completed” (*Sterling National Bank v. Alan B. Brill, P.C.*, 186 AD3d 515 [2d Dept. 2020]; *U.S. Bank N.A. v. Wiener*, 171 AD3d 1241, 1242 [2d Dept. 2019]; *Harrinarain v. Sisters of St. Joseph*, 173 AD3d 983 [2d Dept 2019]; *Lopez v. Suggs*, 186 AD3d 589 [2d Dept 2020]). “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” (*Lopez v. WS Distrib., Inc.*, 34 AD3d 759, 760 [2d Dept. 2006]; *see also Martinez v. Kuhl*, 165 AD3d 774 [2d Dept 2018]; *Niyazov v. Hunter, EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]; *Ortiz v. Fage USE Corp.*, 69 AD3d 914 [2d Dept 2010]; *see also Martinez v. Kuhl*, 165 AD3d 774 [2d Dept 2018]; *Niyazov v. Hunter, EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]). The opponent must offer an evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively within the plaintiff’s knowledge and control (*see also, Espada v. City of New York*, 74 AD3d 1276 [2d Dept 2010]). Here, defendants failed to offer an evidentiary basis to show that discovery may lead to relevant evidence and that the facts essential to justify opposition to the motion are exclusively within the knowledge and control of the plaintiff. (*Garcia v. Lenox*

Hill Florist III, Inc., 120 AD3d 1296, 1297-98 [2d Dept 2014], quoting *Martinez v. Kreychmar*, 84 AD3d 1037, 1038 [2d Dept 2011]; *Cavitch v. Mateo*, 58 AD3d 592, 593 [2d Dept 2009]; see *Rodriguez v. Farrell*, 115 AD3d 929 [2d Dept 2014]; *Robinson v. Bond St. Levy, LLC*, 115 AD3d 928 [2d Dept 2014]).

With respect to that branch of plaintiff's motion for an immediate trial on damages, CPLR § 3212(c) provides that “[i]f it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages . . . the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion . . .” Here, this case still has outstanding liability issues on the Labor Law § 200 claim. Thus, with unresolved liability issues, the court cannot grant an immediate trial on damages (CPLR § 3212(c); see generally *Tache-Haddad Enterprises v. Melohn*, 224 AD2d 213 [2d Dept 1996]; *Brown v. Micheletti*, 97 AD2d 529 [2d Dept 1983]; *Sosnowski v. Kolovas*, 127 AD2d 756 [2d Dept 1987]).

II. Cross Motion for Summary Judgment by JRC Realty, LLC, JRC Management and Tompkins Square Apts, LLC

From the onset, it must be noted that JCR withdrew portions of the relief it initially sought: In particular, JRC no longer seeks summary judgment, either absolute or conditional, against J. C. Construction Group, Inc. on the grounds of either common law or contractual indemnification. Notwithstanding the same, those branches of JRC's cross motion, which seeks to dismiss plaintiff's Labor Law § 200 and common law negligence claims are denied. Labor Law § 200 is a codification of the common-law duty to provide workers with a reasonably safe place to work (see *Comes v. New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Lombardi v. Stout*, 80 NY2d 290, 294 [1992]; *Bianchi v. New York City Transit Authority*, 192 AD3d 745 [2d Dept 2021]). “Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (*DeFelice v. Seakco Const. Co., LLC*, 150 AD3d 677, 678 [2d Dept 2017], quoting *Ortega v. Puccia*, 57 AD3d 54, 61 [2d Dept 2008]; see *Chowdhury v. Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]). Where a worker's injury arises out of the condition of the premises, liability may not be imposed unless the owner “either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident” (*Ortega*

v. Puccia, 57 AD3d at 61; *see Baumann v. Town of Islip*, 120 AD3d 603, 605 [2d Dept 2014]). Here the defendants had a duty to keep their property in a reasonably safe condition and provide workers with a safe place to work (*see Carlson v. Lyon*, 289 AD2d 835, 836 [3d Dept 2001]; *Fehrenbacher v. Berl*, 240 AD2d 466, 467 [2d Dept 1997]). However, the electricity in the apartment remained turned on while the renovation was being performed. Moreover, JRC failed to ensure that the electricity was turned off while the renovation was being performed; and JRC failed to provide any warning to the workers about the electricity being turned on. In addition, contrary to the defendants' contention, the plaintiff's alleged injuries stem from a dangerous condition on the premises (*see Baumann v. Town of Islip*, 120 AD3d at 604-605; *Mikelatos v. Theofilaktidis*, 105 AD3d 822, 823 [2d Dept 2013]; *Sullivan v. RGS Energy Group, Inc.*, 78 AD3d 1503 [4th Dept 2010]; *see also Slikas v. Cyclone Realty, LLC*, 78 AD3d 144, 148 [2d Dept 2010]), and not from the manner in which work was performed (*cf. Cody v. State of New York*, 82 AD3d 925, 928 [2d Dept 2011]). Further, defendants failed to establish, *prima facie*, that they lacked notice of the alleged dangerous condition in the subject apartment. (*see Toalongo v. Almarwa Center, Inc.*, 202 AD3d 1128 [2d Dept 2022]; *Khan v. Khan*, 197 AD3d 1165 [2d Dept 2021]; *Denardo v. Ziatyk*, 95 AD3d 929, 930 [2d Dept 2012]; *Medina v. La Fiura Dev. Corp.*, 69 AD3d 686 [2d Dept 2010]). Since defendants failed to meet their *prima facie* burden, the court denies those branches of their motion which are for summary judgment dismissing the Labor Law § 200 and common-law negligence causes of action, without regard to the papers submitted in opposition (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *DeFelice v. Seakco Const. Co., LLC*, 150 AD3d 677, 678-79 [2d Dept 2017]). For reasons provided above, the remaining branches of the cross motion by defendants which are for summary judgment in their favor dismissing plaintiff's Labor Law §§ 240(1) and 241(6) claims are also denied.

Lastly, counsel for Tompkins Square Apts. LLC. correctly argues that at common law, liability for an accident such as the one claimed at bar is predicated on a defendant owning the premises; and in the case of the Labor Law, a proper defendant must be either a contractor, owner or agent. Moreover, it is well-settled that only owners, contractors, and their agents are subject to liability under the Labor Law. (*Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]). Here by the plaintiff's own submission, Tompkins Square Apts. LLC did not own the subject premises, nor did it operate, contract with regard to, act as agent, manage, or in any way assume a duty with regard to that property. As such, the court finds that any and all claims against Tompkins Square Apts. LLC must be dismissed. (*Russin v Louis N. Picciano & Son*, 54

NY2d 311 [1981]; *see e.g., Paulino v. 580 8th Ave. Realty Co., LLC*, 138 AD3d 631 [1st Dept 2016]; *Lamar v. Hill Intern, Inc.*, 153 AD3d 685 [2d Dept 2017]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment against JRC Management, LLC and JRC Realty, LLC, is granted on the issue of liability pursuant to Labor Law §§ 240(1) and 241(6); and it is further,

ORDERED, that plaintiff's motion for summary judgment, pursuant to CPLR § 3212 (c), setting this matter down for an immediate trial on damages, as the only triable issues of fact relate to the amount or extent of damages, is denied; and it is further,

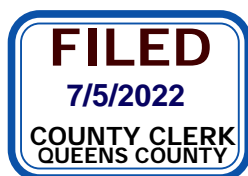
ORDERED, that Thompson Square Apartments LLC cross motion for summary judgment, pursuant to CPLR § 3212, dismissing all claims against that entity is granted; and it is further,

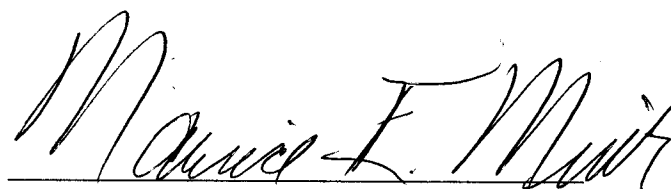
ORDERED, that JRC Management, LLC and JRC Realty, LLC cross motion for summary judgment dismissing plaintiff's claims arising under the common law and/or Labor Law §§§ 200, 240 and 241(6) is denied; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon all parties on or before August 15, 2022.

Dated: June 28, 2022

Long Island City, New York




MAURICE E. MUIR, J.S.C.