At an IAS Term, Part 81 (MOA) of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 13th day of January, 2023.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

----------X

JORGO SPIROLLARI,

Plaintiff,

-against-

BREUKELEN OWNERS CORP. and SMRC MGMT LLC,

*Defendant*s.

----------X

Index No.: 525474/2018

DECISION AND ORDER

Motion Sequence #4, #5

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

	Papers Numbered (NYSCEF)
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	87-98, 101-104,
Opposing Affidavits (Affirmations)	111-113,
Reply Affirmation or Affidavit	115, 116-118,
Memorandum of Law	100, 105, 114

Upon the foregoing papers, and after oral argument with no opposition, the Court finds as follows:

Plaintiff Jorgo Spirollari (hereinafter the "Plaintiff") alleges causes of action for violations of New York State Labor Law §§200 and 241(6) and common law negligence against Defendants Breukelen Owners Corp. ("Breukelen") and SMRC Mgmt, LLC. ("SMRC") (hereinafter referred to individually or collectively as the "Defendants"). Plaintiff alleges in his Verified Bill of Particulars that he was injured on October 23, 2018 while working at 57 Montague Street, Brooklyn, New York (hereinafter the "Premises"). Specifically, the Plaintiff alleges that he suffered personal injuries while using a table saw when a piece of wood shot into his eye.

The Defendants now move (motion sequence #4) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the complaint. The Defendants argue that the Plaintiff's negligence and Labor Law 200 and 241(6) claims must be dismissed against them as neither Breukelen or SMRC directed or controlled the Plaintiff's work. Specifically, the Defendants contend that the Plaintiff was hired by Blerim Xeneili a/k/a Aleko Zeneli, a handyperson that previously worked at the Premises, to work on a project in Unit 12F for the owner of that unit. Defendants contend that they had no knowledge of this activity and that Zeneli was not working on their behalf or at their direction. The Defendants also argue that the Plaintiff's Labor Law 241(6) claims should be dismissed as the Plaintiff failed to plead and prove that the Defendants violated sufficiently specific provisions of the Industrial Code.[1]

The Plaintiff opposes the Defendants' motion and cross-moves (motion sequence #5) for an order pursuant to CPLR 3212 granting the Plaintiff summary judgment against the Defendants with respect to the issue of liability relating to the Plaintiff's Labor Law 241(6) and 200, and common law negligence claims. The Plaintiff argues that he was hired and supervised by an employee of the owner of the Premises, Defendant Breukelen, and also supervised by the managing agent of the Premises, Defendant SMRC.[2]

---

[1] The Defendants also seek dismissal of the Plaintiff's claims based upon New York Labor Law §240(1). The Plaintiff in opposition does not address this claim, therefore the motion is granted and the Plaintiff's Labor Law §240(1) claim is dismissed. See *Elam v. Ryder Sys., Inc.*, 176 A.D.3d 675, 675, 107 N.Y.S.3d 718 [2d Dept 2019].

[2] The Defendants in opposition to the Plaintiff's cross-motion contend that the Plaintiff's cross-motion is untimely. The Court rejects the Plaintiff's contention that it had 120 days from note of issue to file and serve its cross-motion. "In Kings County, a party is required to make its motion for summary judgment no more than 60 days after the note of issue is filed, unless it obtains leave of the court on good cause shown." *Munoz v. Agenus, Inc.*, 207 AD3d 643, 645, 173 N.Y.S.3d 18 [2d Dept 2022], quoting *Gonzalez v. Pearl*, 179 AD3d 645, 113 N.Y.S.3d 584 [2d Dept 2020], *quoting Popalardo v. Marino*, 83 A.D.3d 1029, 1030, 922 N.Y.S.2d 158 [2d Dept 2011]. Plaintiff did not provide good cause for the untimeliness. As such, the Plaintiff's motion was untimely. However, "an untimely motion or cross-motion for summary judgment may be considered by the Court where a timely motion for summary judgment was made on nearly identical grounds." *Sheng Hai Tong v. K & K 7619, Inc.*, 144 AD3d 887, 888, 41 N.Y.S.3d 266 [2d Dept 2016]. In this matter, since the timely motion by the Defendants for summary judgment and the Plaintiff's cross-

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff,* 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], *citing Andre v. Pomeroy,* 35 NY2d 361, 364, 362 N.Y.S.2d 131 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], *citing Alvarez v. Prospect Hospital*, 68 NY2d320, 324, 508 N.Y.S.2d 923 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Garnham & Han Real Estate Brokers v. Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick,* 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, "[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case..." if they can show "...that the defendant's negligence was a proximate cause of the alleged injuries." *Tsyganash v. Auto Mall*

---

motion both related to the viability of the Plaintiff's Labor Law 241(6) and 200 and common law negligence claims, the cross-motion necessarily relates to the same subject matter and issues. Accordingly, the cross-motion will be addressed. However, the timeliness of that aspect of the Plaintiff's cross motion relating to additional Industrial Code provisions asserted by the Plaintiff will be discussed further herein. See *Dojce v. 1302 Realty Co., LLC,* 199 AD3d 647, 648, 157 N.Y.S.3d 478 [2d Dept 2021]; *Sheng Hai Tong v. K & K 7619, Inc.,* 144 A.D.3d 887, 41 N.Y.S.3d 266 [2d Dept 2016].

Fleet Mgmt., Inc., 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Labor Law § 200, Common Law Negligence

Liability under Labor Law § 200, relates to two different theories of liability. Liability may be found if the construction site at the premises is dangerous or unsafe or if the Defendant exercised supervision and control over the means and methods of the work. Under the theory of unsafe premises "a property owner may be held liable in common-law negligence and under Labor Law § 200 when the owner has control over the work site and either created the dangerous condition causing an injury, or failed to remedy the dangerous or defective condition while having actual or constructive notice of it." *Korostynskyy v. 416 Kings Highway, LLC*, 136 AD3d 758, 759, 24 N.Y.S.3d 747, 748 [2d Dept 2016]. For injuries arising from the manner in which work is performed, the liability must be premised upon one having the authority to exercise supervision and control over the work. *See Lombardi v Stout*, 80 NY2d 290, 295 [1992]; *Hernandez v Pappco Holding Co.*, 136 AD3d 981, 982 [2nd Dept, 2016]; *Torres v City of New York*, 127 AD3d 1163, 1165 [2nd Dept, 2015]; *Gallello v MARJ Distribs. Inc.*, 50 AD3d 734, 735 [2nd Dept, 2008]. "A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed." *Torres v Perry St. Dev. Corp.*, 104 AD3d 672, 676 [2nd Dept, 2013] quoting *Ortega v Puccia*, 57 AD3d 54, 62 [2nd Dept, 2008]. "[T]he 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 is insufficient to impose liability under Labor Law §200 or for common-law negligence." *Banscher v Actus Lend Lease, LLC*, 132

AD3d 707, 709 [2nd Dept, 2015], quoting *Gasques v State of New York*, 59 AD3d 666, 668 [2009], *affd.* 15 NY3d 869 [2010].

Turning to the merits of the Defendants' application in relation to the Plaintiff's Labor Law 200 and common law negligence claims, the Defendants argue that they cannot be held liable for the Plaintiff's injuries as they contend that they did not supervise or control the work of the Plaintiff and did not provide the Plaintiff with the equipment that he used. In support of this position, the Defendants rely on the deposition testimony of both the Plaintiff and the deposition of Egland Berkeley Hodge, an employee of Defendant Breukelen.

During his deposition, when asked who employed him to work at the Premises, the Plaintiff stated, "Blerim Zeneli." (Exhibit E, Page 23) When asked how long he had been employed by Zeneli prior to his accident, he stated, "[a] week." (Exhibit E, Page 24). When asked to identify the location in which he performed his work at the Premises, the Plaintiff answered, "[i]t was in 12F." (Exhibit E, Page 53) When asked if the work was limited to unit 12F only, the Plaintiff stated, "[y]es." (Exhibit E, Page 53). When asked if he had ever worked in that unit or the building previously, the Plaintiff stated, "[n]o." (Exhibit E, Page 53). When asked if he had ever spoken to anyone else in the building regarding his work, the Plaintiff stated, "[n]o." (Exhibit E, Page 54). When asked if he had entered into any type of contract with Mr. Zeneli, the Plaintiff stated, "[n]o." (Exhibit E, Page 54). When asked if he knew whether Mr. Zeneli worked at the building, the Plaintiff stated, "I don't know." (Exhibit E, Page 57). When asked how Mr. Zeneli was involved in the renovation, the Plaintiff stated, "[a]s far as I know he took the job from the lady of that unit and then he told me you are doing the job." (Exhibit E, Page 58). When asked to describe what occurred on the day of the accident, the Plaintiff stated that "[h]e [Zeneli] told me that I could do moldings and I can do the cabinets of the kitchen." (Exhibit E, Page 71) The Plaintiff then stated

that "[h]e [Zeneli] asked me if I know how to do that, because if you do, I can pay you." (Exhibit E, Page 71). The Plaintiff also stated that "[t]he material for that type of work was there and that is the first day that I saw that table saw." (Exhibit E, Page 71). The Plaintiff stated that "I asked him if he has goggles and he told me no, he doesn't." (Exhibit E, Page 71). When asked whether anyone other than himself and Mr. Zeneli were inside unit 12F on the date of the accident, the Plaintiff stated "[n]o." (Exhibit E, Page 72). When asked if Mr. Zeneli was present when his accident occurred, the Plaintiff stated "[n]o." (Exhibit E, Page 76).

When asked what his role was at the Premises, Egland Berkeley Hodge stated, "[s]uperintendent." (Exhibit F, Page 6). When asked how many buildings he was a superintendent for, Mr. Hodge stated, "[o]ne." (Page 6). When asked how long he had worked at the Premises, Mr. Hodge stated, "I became the superintendent just around somewhere before 2000." (Exhibit F, Page 8). When asked if he had been working for SMRC at the time of the alleged accident, Mr. Hodge stated, "[y]es." (Exhibit F, Page 9).When asked what his duties were, Mr. Hodge stated, "I'm in charge of the staff." (Exhibit F, Page 11). When asked how many staff members he supervised, Mr. Hodge stated, "[t]here are nine." When asked if the people that worked under him worked within his capacity as an employee of SMRC, he stated, "[y]es." (Exhibit F, Page 42). When asked what the handyperson's responsibilities were, Mr. Hodge stated that "[t]he handyman takes charge from me." (Exhibit F, Page 43). When asked to specify, Mr. Hodge stated, "[i]f I've got a radiator problem, if I've got a leak problem, you know, if I want him to help more with the porter, it depends." (Exhibit F, Page 43). When asked if there are rules for residents at the Premises in relation to work performed in their units, Mr. Hodge answered, "[y]es." (Exhibit F, Page 58). When asked how the management notifies him regarding tasks to be performed in the building, Mr. Hodge stated, "[t]hey e-mail or they would call the office or call to say that the work was

approved for X or Y apartment." (Exhibit F, Page 59). When asked when he first learned of the Plaintiff's accident, Mr. Hodge stated, "[w]hen I came back from vacation." When asked who was in charge when he was on vacation, he stated, "[t]he manager, the management and the board president." When asked who that was, Mr. Hodge stated, "I'm not sure, but it's Larry Menisky." (Exhibit F, Page 62). When asked if he was familiar with the owner of unit 12F, Mr. Hodge stated, "[o]h, 12F, Miss Mim, yes." (Exhibit F, Page 63). When asked if he saw any of the work being performed in unit 12F, Mr. Hodge stated, "[n]o, I didn't see them do the work." (Exhibit F, Page 73). Mr. Hodge then stated, "[t]hat's their work, not the building's." (Exhibit F, Page 73). When asked what Zeneli's responsibilities included, Mr. Hodge stated, "I see him cleaning the floor, I see him paint the building, paint the building floor." (Exhibit F, Page 95). As to whether Zeneli could hire his own workers, Mr. Hodge stated, "he works for Breukelen Owners Corp. who can he hire?" (Exhibit F, Page 96). As to Zeneli's lack of authority to hire persons to work at the Premises, Mr. Hodge initially stated, "[h]e works under me, so I don't understand what you're asking me." When asked the question again, Mr. Hodge stated, "[t]hat's correct." (Exhibit F, Page 97). When asked if he knew the Plaintiff, Mr. Hodge stated, "[n]o." (Exhibit F, Page 99). When asked if Zeneli was reprimanded for hiring the Plaintiff, Mr. Hodge stated, "[y]eah, he lost his job." (Exhibit F, Page 101).

SMRC contends that it did not supervise or control the work directly, and specifically claims that SMRC, as managing agent, had no authority to do so as Defendant Owner's agent. Defendants point to the fact that the Plaintiff stated that he only had contact with Zeneli and that Zeneli provided the table saw, material and instruction and did not provide goggles to the Plaintiff. Defendants contend that Zeneli was hired by the unit owner in relation to the work performed and that the Defendants had no knowledge of the activity. Defendants represent that Zeneli was

terminated after the incident. They also contend that they did not cause or create a dangerous condition.

Plaintiff contends that the Defendants have failed to establish that the Defendants did not supervise and control the work through Zeneli. Plaintiff contends that Zeneli was clearly in the employ of Breukelen as a handy person. The Plaintiff also argues that, according to Mr. Hodge, SMRC as managing agent supervised staff, including Zeneli, and their activities, at the Premises, on behalf of Breukelen. It is clear that Plaintiff is pursuing his claim under a theory of direction and supervision of the means and methods of the work and not based upon an unsafe premises theory. Plaintiff contends that Hodge was an employee of the SMRC. Hodge stated that his role as superintendent was to supervise the workers at the Premises. Plaintiff argues that insofar as Hodge represented that Zeneli worked for Breukelen, SMRC, by and through its superintendent, directed and supervised the means and methods of the work on behalf of Breukelen, Zeneli's employer. In essence, the Plaintiff contends that both Defendants had oversight of Zeneli who provided materials and equipment, and directed and supervised the means and method of the work.

As stated above, when the Plaintiff's claim involves the means and methods of the work, defendant's *prima facie* burden in relation to a motion to dismiss will relate to "whether they had the authority to supervise and control the work." *Chowdhury v. Rodriguez*, 57 A.D.3d 121, 129, 867 N.Y.S.2d 123, 129-30 [2nd Dept, 2008]. Although the Defendants contend that Zeneli was engaged on a "side job" and was working on his own when he engaged the services of the Plaintiff, the Defendants have not established the true nature of the relationship between Zeneli and the Defendants on that day. Hodge was competent to testify as to the general relationship between SMRC and Breukelen, however, Hodge was admittedly absent on the day of the accident, so it is unclear whether Zeneli was working for Breukelen and supervised by SMRC in relation to the

work or Zeneli was actually engaged in independent activity. Defendants do not address the dangerous nature of the work, the actions of Zeneli or the Plaintiff's purported injury. The Defendants have provided no other testimony in relation to the interplay between SMRC and Breukelen other than that of Hodge, who was not present on the date of the incident. Hodge's testimony, taken as true, provides that Zeneli was employed by Breukelen, Hodge was employed by SMRC and that Hodge, as an employee of SMRC, supervised and directed Breukelen employees. For this reason, the Defendant's motion is denied in relation to dismissal of the Plaintiff's Labor Law 200 and common law negligence claims. Similarly, the Plaintiff has failed to make a *prima facie* showing relating to his Labor Law 200 and common law negligence claims for purposes of summary judgment. The Plaintiff contends that SMRC supervised Zeneli through SMRC's employ of a superintendent, and Zeneli was an employee of Breukelen when he oversaw the Plaintiff's work. However, other than the Plaintiff's testimony, who stated that he only communicated with Zeneli, there is no testimony by anyone else who was present on the day of the accident. As such, the Plaintiff failed to prove his contention relating to the interplay among Zeneli, Breukelen and SMRC.

It is clear however that owners and property managers can be subject to liability in relation to Labor Law 200 and common law negligence claims as a consequence of their direction and control. "Since there was evidence at the trial that the owner and managing agent exercised their authority and control to exclude the Plaintiff and his co-workers from the interior of the building, that the Plaintiff was told to use the fire escape to access the roof and the building superintendent saw the Plaintiff and his co-workers using the fire escape, the jury could rationally conclude that the owner and the managing agent had the requisite control over the activity that produced the injury." *Carballo v. 444 E. 87th St. Owners Corp.*, 14 AD3d 526, 527, 789 N.Y.S.2d 170 [2d Dept

2005]; *See Morales v. 50 N. First Partners, LLC*, 208 AD3d 475, 476, 172 N.Y.S.3d 480 [2d Dept 2022]. A finder of fact could determine that if Zaneli maintained control and supervision over the means and methods of the Plaintiff's work, he did so as an employee of Breukelen, supervised and directed by SMRC on behalf of Breukelen.

Labor Law § 241(6)

Labor Law § 241 (6) imposes on owners and contractors a non-delegable duty "to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed." *Perez v. 286 Scholes St. Corp.*, 134 AD3d 1085, 1086, 22 N.Y.S.3d 545, 546 [2d Dept 2015]; *Lopez v. New York City Dept. of Envtl. Protection,* 123 AD3d 982, 983, 999 N.Y.S.2d 848, 850 [2d Dept 2014]. To establish liability under Labor Law § 241 (6), a plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision mandating compliance with concrete, or clear, specifications. *See Misicki v. Caradonna*, 12 NY3d 511, 515, 882 N.Y.S.2d 375, 377 [2009]; *Ross v. Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494, 505, 601 N.Y.S.2d 49, 55 [1993]; *La Veglia v. St. Francis Hosp.*, 78 AD3d 1123, 912 N.Y.S.2d 611 [2d Dept, 2010]; *Pereira v. Quogue Field Club of Quogue, Long Is.*, 71 AD3d 1104, 898 N.Y.S.2d 220 [2d Dept 2010].

Turning to the merits of the Defendants' motion to dismiss the Plaintiff's claims made pursuant to Labor Law 241(6), the Court finds that the Defendants may be held liable pursuant to Labor Law 241(6). "Since section 241(6) imposes a nondelegable duty on property owners, plaintiff need not show that defendants exercised supervision or control over the work site in order to establish a right of recovery under section 241(6)." *St. Louis v. Town of N. Elba*, 16 N.Y.3d 411, 413, 947 N.E.2d 1169, 1170 [2011]; *see also Romero v. J & S Simcha, Inc.,* 39 A.D.3d 838, 839,

835 N.Y.S.2d 306, 307 [2d Dept 2007]; *see also Soho Plaza Corp. v. Birnbaum,* 108 AD3d 518, 519, 969 N.Y.S.2d 96 [2d Dept 2013]; *Burgos v. Premiere Properties, Inc.,* 145 AD3d 506, 507, 42 N.Y.S.3d 161 [2d Dept 2016]. It is clear that, "[c]ooperative corporations and their agents are 'owners' who are potentially liable under Labor Law §§ 240 (1) and 241 (6) when a contractor's employee is injured while performing construction work in an apartment within a building owned by the cooperative corporation (*see Guryev v. Tomchinsky,* 20 N.Y.3d 194, 201, 957 N.Y.S.2d 667, 981 N.E.2d 273; *DeSabato v. 674 Carroll Street Corp.*, 55 A.D 656, 658-659, 868 NYS2d 209)." *Soho Plaza Corp. v. Birnbaum*, 108 AD3d 518, 522, 969 N.Y.S.2d 96 [2d Dept 2013]. "As owners, such cooperative corporations or their agents are subject to statutory liability for the breach of the nondelegable duties imposed upon them by Labor Law §§ 240 (1) and 241 (6), even where they are only vicariously liable (*see McCarthy v. Turner Constr., Inc.*, 17 N.Y.3d 369, 374, 929 N.Y.S.2d 556, 953 N.E.2d 794; *Rizzuto v. L.A. Wenger Contr. Co., Inc.*, 91 N.Y.2d 343, 350, 670 N.Y.S.2d 816, 693 N.E.2d 1068; *Rocovich v. Consolidated Edison Co.,* 78 N.Y.2d 509, 513, 577 N.Y.S.2d 219, 583 N.E.2d 932)." *Id.* Additionally, the fact that the work was performed within a unit, and not otherwise in a common area of the building, does not absolve the Defendants of potential liability pursuant to Labor Law 241(6). *See DeSabato v. 674 Carroll St. Corp.,* 55 A.D.3d 656, 659, 868 N.Y.S.2d 209, 211 [2d Dept 2008]. The Defendants do not specifically address which provisions of the Industrial Code they seek to have dismissed in their motion. There is no argument relating to inapplicability or causation. Defendants contend that they have no liability as owner or managing agent in light of the facts of this case. The Court disagrees and the Defendants' motion is denied for failure to make a *prima facie* showing in relation to the Plaintiff's 241(6) claims.

As an initial matter, the Court finds that Plaintiff's application for summary judgment pursuant to 241(6) in relation to Industrial Code provisions 23-1.12 [guarding of power-driven machinery] and 23-9.2 [general requirements] is denied as untimely. Defendant has objected to these new provisions and there is no application in relation to whether the Third Supplemental Bill of Particulars is permissible. The fact remains that the basis upon which the Court permitted Plaintiff's cross-motion was premised upon the fact that the cross-motion was based on grounds similar to those made by Defendants. When Defendants filed their motion these provisions were not known to them. Defendants were unable to address them in their motion to dismiss. Moreover, the Court has already determined that the Plaintiff failed to show good cause for the late filing. The Court makes no finding as to the propriety of the Third Supplemental Bill of Particulars. In any event, the Plaintiff failed to make a *prima facie* showing in relation to both of these provisions. Plaintiff's motion relating to these provisions is accordingly denied.

We turn to the Plaintiff's motion for summary judgment pursuant to the Plaintiff's Labor Law 241(6) claim based upon the alleged violation of Industrial Code 23-1.5(c)(3). The Court finds that there is an issue of fact that should be resolved at trial. Industrial Code 23-1.5(c)(3) provides that "[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." Courts have held that Industrial Code 23-1.5(c)(3) "is sufficiently concrete and specific to support [a] plaintiff's Labor Law § 241(6) cause of action." *Perez v. 286 Scholes St. Corp.*, 134 AD3d 1085, 1086, 22 N.Y.S.3d 545, 547 [2d Dept 2015]. However, the Plaintiff has not established that there was a violation of this provision as there is no support for the contention that the table saw was not operable or needed to be repaired.

As to the Plaintiffs Labor Law 241(6) claim based upon the alleged violation of Industrial Code 23-1.8(a), the Court finds that the Plaintiff's application should be granted. This "Industrial Code provision requires the furnishing of eye protection equipment to employees who, *inter alia*, are 'engaged in any ... operation which may endanger the eyes.'" *Montenegro v. P12, LLC,* 130 AD3d 695, 696, 13 N.Y.S.3d 241, 243 [2d Dept 2015]. This provision has been found to be specific for purposes of a Labor Law 241(6) claim. *See Buckley v. Triborough Bridge & Tunnel Auth.,* 91 A.D.3d 508, 509, 937 N.Y.S.2d 25 [1st Dept 2012]; *Zamajtys v. Cholewa*, 84 AD3d 1360, 1361, 924 N.Y.S.2d 163 [2d Dept 2012].

In this proceeding, the Plaintiff testified that he asked for but was not offered goggles or other eye protection. The Court in *Melchor v. Singh* held that

> The plaintiff also established his prima facie entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 241 (6) insofar as asserted against the respondents. Labor Law § 241 (6) imposes a nondelegable duty of reasonable care upon an owner or general contractor to provide reasonable and adequate protection to workers (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]). A violation of an explicit and concrete provision of the Industrial Code by a participant in a construction project constitutes some evidence of negligence, for which the owner or general contractor may be held vicariously liable (*see Fusca v A & S Constr., LLC*, 84 AD3d 1155, 1156 [2011]; *Mulhern v Manhasset Bay Yacht Club*, 22 AD3d 470, 471 [2005]; *Edwards v C&D Unlimited*, 295 AD2d 310, 311 [2002]). The plaintiff demonstrated his prima facie entitlement to judgment as a matter of law on the issue of liability under that statute, insofar as asserted against the respondents, by showing that there were violations of relevant Industrial Code sections, and that such violations were a proximate cause of his injuries (*see Harris v Arnell Constr. Corp.*, 47 AD3d 768 [2008]; *Carriere v Whiting Turner Contr.*, 299 AD2d 509, 511 [2002]; *Blair v Cristani*, 296 AD2d 471, 472 [2002]; *Beckford v 40th St. Assoc. [NY Partnership]*, 287 AD2d 586, 587 [2001]).

Melchor v. Singh, 90 AD3d 866, 870, 935 N.Y.S.2d 106 [2d Dept 2011]; see also *Ennis v. Noble Constr. Grp., LLC*, 207 AD3d 703, 172 N.Y.S.3d 98 [2d Dept 2022].

In this case, the provision clearly states as follows:

(a) Eye protection. Approved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons while employed in welding, burning or cutting operations or in chipping, cutting or grinding any material from which particles may fly, or while engaged in any other operation which may endanger the eyes. Industrial Code 23-1.8(a).

Based on the Plaintiff's testimony, who is the only witness to the accident, he was cutting wood with a table saw without the benefit of eye protection. The failure to provide eye protection to the Plaintiff while he was performing this task is a clear violation of Industrial Code 23-1.8(a) and the very nature of the alleged injury establishes as a matter of law that the violation was a proximate cause of the accident. Questions of comparative negligence may be addressed at trial.

Based upon the foregoing, it is hereby Ordered that:

The Defendants' motion (motion sequence #4) for summary judgment is granted solely to the extent that the Plaintiff's Labor Law 240(1) claim is dismissed.

The Plaintiff's motion (motion sequence #5) for summary judgment on the issue of liability is granted as against the Defendants solely in relation to the Plaintiff's Labor Law 241(6) claim concerning the violation of Industrial Code Provision 23-1.8(a).

Any relief not explicitly granted herein is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.