At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of March 2023.

PRESENT:
HON. CARL J. LANDICINO, Justice.

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JUAN CARLOS RIVERA VIVANCO,

Plaintiff,

-against-

ZNKO CONSTRUCTION, G&C CRANE SERVICE LLC and SULLIVAN HEIGHTS, LLC, INC.

Defendants.

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ZNKO CONSTRUCTION, INC. and SULLIVAN HEIGHTS, LLC,

Defendant/Third-Party Plaintiff,

-against-

STEELFAB NY, INC.

Third-Party Defendant.

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DECISION AND ORDER

Index No.: 517138/2017

Motion Sequence #4

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	89-97, 107-109,
Opposing Affidavits (Affirmations)	101-104,
Reply and Sur-Reply Affidavits (Affirmations)	105

After a review of the papers and oral argument, the Court finds as follows:

Plaintiff Juan Carlos Rivera Vivanco (the "Plaintiff") moves (motion sequence #4) pursuant to CPLR 3212 for summary judgment on the issue of liability relating to Plaintiff's Labor Law 240(1) and 241(6) claims against Defendants Sullivan Heights ("Sullivan"), and ZNKO Construction ("ZNKO") (collectively the "ZNKO Defendants"). The Plaintiff contends that he was injured while working for Third Party Defendant Steelfab NY, Inc. ("Steelfab") at a

construction site located at 195 Sullivan Place, Brooklyn, New York (the "Project" or "Premises"). The Plaintiff contends that on August 9, 2017, he was standing on a ladder and working with another Steelfab employee as they were attempting to secure a metal beam. The Plaintiff alleges that there were difficulties securing the sides of the beam with nuts and bolts, and the crane cable that was holding and moving the beam into position was released prior to their ability to secure the beam. Plaintiff contends that he had warned his supervisor not to release the beam and alleges that when it was released the beam fell on him and knocked him off the ladder he was standing on. In support of his motion, the Plaintiff relies on his own deposition, the deposition testimony of Oswaldo Arturo Quinduisaca Chillogalli,[1] the deposition testimony of Mordechi Binik, the job manager at 195 Sullivan Place for ZNKO Construction, and the deposition testimony of Vlad Rubis, an employee of Defendant G & C Crane Service.

The ZNKO Defendants oppose the motion and argue that it is premature as they have not had the opportunity to depose the Plaintiff's supervisor and co-workers employed by Steelfab. The Third-Party Complaint against Steelfab was filed on May 22, 2018 and the answer to the Third Party Complaint was filed on September 26, 2018. Sullivan and ZNKO also contend that the Plaintiff's motion should be denied as the Plaintiff has failed to show that he was not provided with an adequate safety device. Defendant Sullivan and ZNKO also contend that there are issues of fact as to whether the beam at issue was vertical or horizontal and that as such, there are issues of fact as to whether the accident was an elevated risk as required for purposes of a Labor Law 240(1) claim. As to the Plaintiff's 241(6) claims, Defendants Sullivan and ZNKO contend that the Plaintiff has not shown that Industrial Code 12 NYCRR 23-8.2(c)(3) was violated as the Plaintiff

[1] On August 9, 2018, an order was issued whereby this action was joined with the related action, Oswaldo Arturo Quinduisaca Chillogalli v. ZNKO Construction, et al, Supreme Court Kings County, Index No.:520927/2017.

has not provided sufficient evidence to show that a lack of tag lines was the proximate cause of his accident.

Labor Law § 240(1)

Labor Law § 240 (1) is designed to protect employees on construction sites from elevation-related risks. This section provides that:

> All contractors and owners and their agents ... 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) provides exceptional protection for workers against the special hazards that arise when the work site itself is either elevated or positioned below the level where materials are being hoisted." *Walker v. City of New York*, 72 A.D.3d 936, 937, 899 N.Y.S.2d 322, 323 [2nd Dept, 2010]. In order to prevail on a Labor Law 240 (1) cause of action, "[a] plaintiff must establish that the statute was violated and that the violation was a proximate cause of his [or her] injuries" *Delahaye v Saint Anns School*, 40 AD3d 679, 682, 836 N.Y.S.2d 233 [2d Dept 2007]; *see Berg v. Albany Ladder Co., Inc.*, 10 NY3d 902, 904, 861 N.Y.S.2d 607 [2008]; *Robinson v. East Med. Ctr., L.P.*, 6 NY3d 550, 814 N.Y.S.2d 589 [2006]. "Liability may, therefore, be imposed under the statute only where the "plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential." *Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 97, 30 N.E.3d 154, 158 [2015].

Plaintiff sat for deposition on April 27, 2020 and May 4, 2020 (NYSCEF Docs. # 92, 93). When asked when he started working for Steelfab, the Plaintiff stated, "[y]es, I think it was in 2016

that I went to work for SteelFab." (Plaintiff's Motion, Exhibit B, Page 39). When asked how long he had been working for Steelfab before his accident, the Plaintiff stated, "I believe that with SteelFab, that I was working already one year or more than a year." (Plaintiff's Motion, Exhibit B, Page 39). When asked if he was employed to install the steel beams that SteelFab also manufactured, the Plaintiff stated, "[y]es, only the installation of those." (Plaintiff's Motion, Exhibit B, Page 40). When asked how many days a week he worked for Steelfab, the Plaintiff stated, "[a]lways worked five day." (Plaintiff's Motion, Exhibit B, Page 42). When asked who his immediate supervisor was, the Plaintiff stated, "Jose." (Plaintiff's Motion, Exhibit B, Page 47). When asked if he spoke with Jose in Spanish, the Plaintiff stated, "[y]es." (Plaintiff's Motion, Exhibit B, Page 48). When asked if he received training when he started working for Steelfab, the Plaintiff stated, "[n]o." When asked if the work he was doing was work he was already trained for, the Plaintiff stated, "[y]es." (Plaintiff's Motion, Exhibit B, Page 49). When asked if he had worked on other projects for Steelfab prior to the project at 195 Sullivan Place, the Plaintiff stated, "I would say between four or five projects prior to this." (Plaintiff's Motion, Exhibit B, Page 50).

In describing the work he performed for Steelfab at the Project, the Plaintiff initially stated that "the crane will hold a security cable in order to pick up the beam, and then it will be lift in order to put it in the place where Joshua and I, we will be able to secure with bolts -- with nuts and bolt." (Plaintiff's Motion, Exhibit B, Page 52). When asked if there were meetings to discuss safety procedures, the Plaintiff stated, "[v]ery little." (Plaintiff's Motion, Exhibit B, Page 55). When asked how many days he had been working on the project prior to the date of his alleged accident, the Plaintiff stated, "I don't know exactly how many days, but I think we were more or less between the third, fourth week, more or less." (Plaintiff's Motion, Exhibit B, Page 66). When asked the status of the Project on that day, the Plaintiff stated "[a]t that point, then we start doing the next floor -- the upper floor." (Plaintiff's Motion, Exhibit B, Page 70). When asked what safety devices

he had with him that day, the Plaintiff stated that, "I had the helmet. I had the goggles. I had the safety harness." As to whether he had a safety line, the Plaintiff stated "[a]t that moment no. There was no need." (Plaintiff's Motion, Exhibit B, Page 76). As to what the purpose of the safety harness was on that day, the Plaintiff stated, "we were on the higher floor." (Plaintiff's Motion, Exhibit B, Page 77). As to what the process was to install vertical columns and horizontal beams, the Plaintiff stated, "[f]irst, the columns, and then the beam." (Plaintiff's Motion, Exhibit B, Page 78). When asked if all of the vertical columns had been installed prior to the accident, the Plaintiff stated, "[y]es." (Plaintiff's Motion, Exhibit B, Page 78). When asked how many beams had already been installed, the Plaintiff stated, "[b]efore the accident, we installed about 25 beams, and I do have pictures of that." (Plaintiff's Motion, Exhibit B, Page 80).

As to the beams the Plaintiff stated, "[i]t's being hold by two cables by the crane." (Page 80). When asked about the accident, the Plaintiff stated, "[a]t that point, we went to install the last beam which was actually in front of the building." (Plaintiff's Motion, Exhibit B, Page 81). When asked if he was standing on a ladder at the time of his accident, the Plaintiff stated, "[y]es, because at that moment, the height was between 12, 15 feet high." (Plaintiff's Motion, Exhibit B, Page 83). In describing the installation, the Plaintiff stated, "[m]y side was steady." The Plaintiff then stated that, "[o]n the other side, Joshua was trying to put the nuts and the bolts." (Plaintiff's Motion, Exhibit B, Page 85). "The foreman decide to disengage the cables because he's the one in charge to say what to do when it comes to the cables." (Plaintiff's Motion, Exhibit B, Page 85). "It hit my leg, and under those circumstances -- I was really in panic -- it throw me to the floor, and due to the hit into my leg, it throw me off the ladder." (Plaintiff's Motion, Exhibit B, Pages 85-86). The Plaintiff then stated that, "[i]t probably happens to be that Joshua never was able to install the bolts and the nuts on his side." (Plaintiff's Motion, Exhibit B, Page 86).

When asked if the a-frame ladder he was using had been opened or closed, the Plaintiff stated, "[i]t was closed." (Plaintiff's Motion, Exhibit B, Page 90). When asked if the ladder was leaning against the cinder block wall, the Plaintiff stated, "[y]es." (Plaintiff's Motion, Exhibit B, Page 90). When asked why the ladder was not open, the Plaintiff stated, "[f]or what I was going to do, it was much safer leaning against the wall and much more secure." When asked if the beam was secured in any other way or merely sitting on the wall, the Plaintiff stated, "[a]t that moment, we just have to make sure that it's sitting in that corner safe, and then, of course, on the other side, we have to start to attach the bolts and the nut." When asked whether the procedure was to have the beam suspended by the crane while the nuts and bolts are attached, the Plaintiff stated, "[y]es, that is correct." (Plaintiff's Motion, Exhibit B, Page 92). When asked if his foreman released the cables holding the beam, the Plaintiff stated, "[n]o. Jose gave the orders to disengage the cables." (Plaintiff's Motion, Exhibit B, Page 93). When asked if the beam at issue had been secured with nuts and bolts prior to its fall, the Plaintiff stated, "[t]hat beam never had any bolts. That's the reason why it went down." (Page 100). When asked if he was aware that the beam had no bolts when the cable was disconnected, the Plaintiff stated "[n]o." (Plaintiff's Motion, Exhibit B, Page 100). When asked if the beam moved prior to causing his accident, the Plaintiff stated, "[w]ell, at the moment of the accident, because we were told by the foreman to remove the cable, one side of the beam -- my side of the beam was secure sitting on the wall. The other side was being secured by the metal rod." (Plaintiff's Motion, Exhibit B, Page 102). Again, as to whether he had a lifeline, Plaintiff stated, "[n]o. I had a harness with me, but was no place for me to put some more safety." (Plaintiff's Motion, Exhibit C, Page 180).

Oswaldo Chillogalli sat for his deposition on October 1, 2020 and October 6, 2020 (NYSCEF Docs. # 94, 95). When asked what his responsibilities were at the Project, Mr. Chillogalli stated, "I had no specific job, I was doing a little bit of everything." (Page 42). When

asked what his role was at the job site, Mr. Chillogalli stated, "[s]o, to install the beams, they come together, and I have to separate them, for them to put the cable for the crane to lift it." (Page 43). When asked what the numbers on the beams refer to, Mr. Chillogalli stated, "[t]hey are separated by floor, they are for different places, different numbers, and different words." (Page 45) When asked if there were any problems or defects with the beams, Mr. Chillogalli stated, "[y]es, some of them did not enter correctly, the space was not big enough." (Page 73). When asked what is done when this is the case, he stated "[s]ometimes you have to cut them, sometimes you have to change them for them to make the connection, and sometimes you just place them and hit them with a hammer." (Page 73). When asked if the crane helped to move the beams into place, Mr. Chillogalli stated, "[y]es." (Page 78). When asked what he was doing immediately before the accident, Mr. Chillogalli stated, "[h]elping a beam to be connected." When asked if it was horizontal or vertical, Mr. Chillogalli stated, "[h]orizontal." (Page 80). When asked who he had been helping, Mr. Chillogalli stated,"[t]here are two people that connect them, one is Juan and the other one was Joshua, but the beam had a problem, that is why I went to help them out." (Page 80). When asked how the accident occurred, Mr. Chillogalli stated, "somebody loosened the cable on the crane to lift it, I don't know who said to move it, but because it is heavy, it has a lot of weight on one side, it moved and it hit me." When asked to explain, Mr. Chillogalli stated, "[t]he crane is holding the beam with the cable of steel at the height that you need it." (Page 86). When asked if the beam hit him, he stated "[n]o, it hit the ladder and I hit against the beams that were on the ground." (Page 86). When asked what happened when the beam hit the ladder, Mr. Chillogalli stated, "I only remember that I fell backwards and I lost consciousness because I hit my head." (Page 108). When asked if he had seen the beam hit anyone else, he stated, "I could not see it, so they told me, but I could not see it." (Page 108).

Mordechi Binik's deposition was taken on October 26, 2020 (NYSCEF Docs. #96). When asked who he was employed by on the date of the alleged accident, Mr. Binik stated "ZNKO." (Page 6). When asked what his position was at the time, Mr. Binik stated, "[j]ob manager." (Page 7). When asked what his responsibility was at the Project, Mr. Binik stated, "[t]o make sure that the job, if anyone has any questions, I'll try to get them answers in coordination with the subs." (Page 8). When asked if he was on site every day, Mr. Binik stated, "[y]es." (Page 8). When asked what Defandant ZNKO Construction's role was on the Project, Mr. Binik stated, "[g]eneral contractor." (Page 8). When asked how far along the project was at the time of the accident, Mr. Binik stated, "putting together the steel of the first floor to second floor, the roof of the first floor to second floor." (Page 12). When asked where he was when he was informed of the accident, Mr. Binik stated, "I don't remember, but I remember I had left the site a little bit before that and I got a call there was accident, so I just, right away, came back." (Page 17). When asked what he had been told at that time, Mr. Binik stated, "they were in the middle of erecting steel and basically that two people who were erecting the steel didn't pay attention to it and someone -- the steel basically, they had like a piece of metal to hold it together, they put up one screw and when they put up the second, the steel sweeped out." (Pages 18-19). When asked if he performed an investigation after the accident, Mr. Binik stated, "[y]es." (Page 21). When asked what he did, Mr. Binik stated, "I had spoken to the foreman on site." (Page 21). When asked if he remembered seeing any lifelines at the Project for the attachment of safety harnesses, Mr. Binik stated, "I think I did see." (Page 44). When asked where, he stated, "I don't remember to be honest." (Page 45).

Vlad Rubis appeared for his deposition on November 2, 2020 (NYSCEF Docs. # 97). When asked what his position was for G&C Crane Service, Mr. Rubis stated, "[a] crane operator." (Page 12). When asked how long he had been employed there, Mr. Rubis stated, "[e]ight and a half years." (Page 12). When asked if when he was lifting beams using the crane and they were being

secured whether he had a visual of what was occurring inside the Project, Mr. Rubis stated, "[n]ot visible." (Page 34). When asked if he relied on the Steelfab supervisor Jose to inform him as to when the beams were secured, Mr. Rubis stated, "[y]es. That's his job." (Page 35). Mr Rubis then stated that "[h]e's the one to instruct me on the following movement I must perform at that moment." (Page 36). When asked about the instructions he received from the Project foreman, Mr. Rubis stated, "[w]hen the foreman tells me 'cable down," I lower it." Mr. Rubis also stated that "when it's secured, they tell me "cable down to disconnect.'" (Page 40). When asked how he learned about the accident, Mr. Rubis stated, "I received an instruction, 'cable down to disconnect." Mr Rubis then stated that "[t]hey disconnected." Then Mr. Rubis stated that the "[f]oreman then told me, 'Cable up and boom down and swing to the left.'" Mr. Rubis then stated that "I boomed down, cabled down." Mr. Rubis then stated that the foreman told him to stop and "I heard on the radio and I think I did see something going on because I was stuck before a second lift occurred, and I didn't hear any additional instruction." (Page 41).

The ZNKO Defendants contend that the motion is premature. As an initial matter, the Court finds that the motion is not premature. "A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant." *Reynolds v. Avon Grove Properties*, 129 AD3d 932, 933, 12 N.Y.S.3d 199, 201 [2d Dept 2015]. "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 Distribution, Inc.*, 34 A.D.3d 759, 760, 825 N.Y.S.2d 516, 517 [2d Dept 2006].

In the instant matter, the ZNKO Defendants have not made diligent efforts to obtain the purported discovery they contend they require to address this motion. As an initial matter, the

Third Party Complaint was filed on May 22, 2018. Steelfab filed its answer to that complaint on September 26, 2018. This motion sequence #4 was filed on February 1, 2021, more than one year and eight months thereafter, the ZNKO Defendants first moved (motion sequence #6) for 1) vacatur of the Note of Issue, and 2) a stay to permit completion of discovery and compelling Steelfab to comply with discovery demands, including a deposition, or 3) striking Steelfabs' answer and a preclusion order against Steelfab. By Order dated November 9, 2022 the Hon. Lawrence Knipel, J.S.C. denied the application to vacate the Note of Issue and Ordered Steelfab to be deposed "by 12/30/2022" or be subject to sanction.

The Court notes that the ZNKO Defendants' motion sequence #6 was the first attempt to obtain discovery from Steelfab by Court intervention. ZNKO in support of their contention that they had previously made efforts to obtain discovery from Steelfab present three letters (certified) to Steelfab on 9/14/20, 10/9/20 and 11/5/20. The ZNKO Defendants do not show that they pursued discovery in any other manner in order to support any diligent efforts to do so. See *Cueva v. 373 Wythe Realty, Inc.*, 111 AD3d 876, 877, 976 N.Y.S.2d 516, 517 [2d Dept 2013]; *Companion Life Ins. Co. of New York v. All State Abstract Corp.*, 35 AD3d 519, 829 N.Y.S.2d 536 [2d Dept 2006]. Accordingly, the ZNKO Defendants' contention that the motion should be denied as premature is without merit, as indicated. *See Garcia v. Lenox Hill Florist III, Inc.*, 120 AD3d 1296, 1297, 993 N.Y.S.2d 86 [2d Dept 2014]; *Yiming Zhou v. 828 Hamilton, Inc.*, 173 AD3d 943, 944, 103 N.Y.S.3d 472 [2d Dept 2019].

As to the merits of the Plaintiff's application, the Court finds that the Plaintiff has made a *prima facie* showing. The Plaintiff contends that the incident at issue was caused by a falling beam that was in the process of being secured in place. "In a case such as this, involving a fall from a ladder, this showing may be made by demonstrating that the subject ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor

in causing the plaintiff's injuries." *Robinson v. Bond St. Levy, LLC,* 115 AD3d 928, 929, 983 N.Y.S.2d 66 [2d Dept 2014]; see also *Spaulding v. Metro. Life Ins. Co.,* 271 AD2d 316, 706 N.Y.S.2d 412 [1st Dept 2000]. The Plaintiff has shown, through his own deposition testimony and the deposition testimony of Mr. Chillogalli, that the ladder was not properly secured to sustain the force of the beam and that the beam was released when it was unsafe to do so. *See Durmiaki v. Int'l Bus. Machines Corp.,* 85 A.D.3d 960, 925 N.Y.S.2d 628 [2d Dept 2011]. What is more, the testimony of Mr. Binik on behalf of ZNKO does not serve to assert that there were lifelines set up or other protective devices at the Project that the Plaintiff would have been able to attach and affix himself to, in order to prevent him from being thrown from the ladder he was using. Labor Law 240(1) supports the contention that "[w]here the furnished protective devices fail to prevent foreseeable external force from causing a worker to fall from an elevation, that worker is entitled to judgment as a matter of law under the statue." *Cruz v. Turner Constr. Co.,* 279 AD2d 322, 720 N.Y.S.2d 10 [1st Dept 2001]; *see also Coque v. Wildflower Ests. Devs., Inc.,* 31 AD3d 484, 818 N.Y.S.2d 546 [2d Dept 2006]; see also *Rapalo v. MJRB Kings Highway Realty, LLC*, 163 A.D.3d 1023, 1024, 82 N.Y.S.3d 63 [2d Dept 2018].

In opposition, the ZNKO Defendants have failed to raise a material issue of fact that would prevent this Court from granting the Plaintiff's motion for summary judgment on the Plaintiffs' Labor Law 240(1) claim. The ZNKO Defendants have not shown that the necessary safety devices were in place for the task at hand or that the accident occurred as a direct result of the Plaintiff's actions. *See Morocho v. Plainview-Old Bethpage Cent. Sch. Dist.,* 116 A.D.3d 935, 936, 984 N.Y.S.2d 120, 122 [2d Dept 2014]; *Bornschein v. Shuman*, 7 AD3d 476, 478, 776 N.Y.S.2d 307, 309 [2d Dept 2004]; *see also Portillo v. Roby Anne Dev., LLC.,* 32 AD3d 421, 422, 819 N.Y.S.2d 566, 568 [2d Dept 2006]; and *Gikas v. 42-51 Hunter St., LLC*, 134 A.D.3d 987, 988, 24 N.Y.S.3d 87, 89 [2d Dept 2015]. As such, the ZNKO Defendants have failed to raise a material issue of fact

as to their liability relating to Plaintiff's Labor Law 240(1) claim. *See Escobar v. Safi*, 150 AD3d 1081, 1083, 55 N.Y.S.3d 350, 353 [2d Dept 2017].

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 [2nd Dept, 2015]; *Lopez v New York City Dept. of Envtl. Protection,* 123 AD3d 982, 983 [2nd 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 [2009]; *Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494, 505 [1993]; *La Veglia v St. Francis Hosp.*, 78 AD3d 1123 [2nd Dept, 2010]; *Pereira v Quogue Field Club of Quogue, Long Is.*, 71 AD3d 1104 [2nd Dept, 2010].

Turning to the merits of the Plaintiff's claim made pursuant to Labor Law §241(6), the Court finds that the Plaintiff has met not his *prima facie* burden. The Plaintiff contends that summary judgment should be granted as to his Labor Law 241(6) claim in relation to the violation of Industrial Code provisions NYCRR § 23-8.2(c)(3). Industrial Code provisions NYCRR § 23-8.2 is entitled "Special Provisions for Mobil Cranes" Section (c)(3) provides as follows:

> (c) Hoisting the load.
> (3) Loads lifted by mobile cranes shall be raised vertically so as to avoid swinging during hoisting except when such operations are permitted by the capacity chart. A tag or restraint line shall be used when rotation or swinging of any load being hoisted by a mobile crane may create a hazard.

In the instant proceeding, the Plaintiff testified regarding the installation of the beams and how the failure to properly secure the beam prior to releasing the wire caused the beam to fall and

knock him off the ladder. However, the Plaintiff's testimony was unclear regarding the use of tag lines and the Plaintiff did not present sufficient evidence that there was a failure to utilize a tag or restrain line in violation of NYCRR § 23-8.2(c)(3), or that this failure was a proximate cause of the accident. See *Wein v. E. Side 11th & 28th, LLC*, 186 AD3d 1579, 1581, 132 N.Y.S.3d 19, 22 [2d Dept 2020].

Based upon the foregoing, it is hereby Ordered that:

The Plaintiff's motion (motion sequence #4) is granted solely to the extent that summary judgment is granted as to Plaintiff's Labor Law 240(1) claim as against Defendants Sullivan Heights, LLC, Inc. and ZNKO Construction.

The foregoing constitutes the Decision and Order of the Court.

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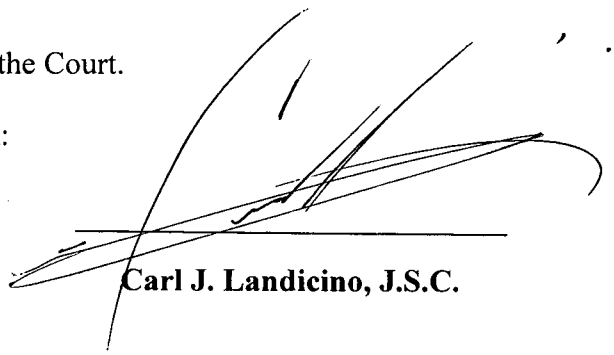

Carl J. Landicino, J.S.C.