

Camas v Cascade 553 LLC

2023 NY Slip Op 32391(U)

June 29, 2023

Supreme Court, Kings County

Docket Number: Index No. 525109/18

Judge: Ingrid Joseph

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 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 29th day of June, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
ANGEL CAMAS,

Plaintiff,

-against-

Index No.: 525109/18
Motion Seq. 5, 6, 7

CASCADE 553 LLC and EMPIRE ID CONSTRUCTION
CORP.,

Defendants.

-----X

CASCADE 553 LLC and EMPIRE ID CONSTRUCTION
CORP.,

Third-Party Plaintiffs,

-against-

ORDER

CAPITAL CONCRETE NY INC.,
Third-Party Defendant.

-----X

CASCADE 553 LLC and EMPIRE ID CONSTRUCTION
CORP.,

Second Third-Party Plaintiff,

-against-

Y.N.H. CONSTRUCTION INC.,
Second Third-Party Defendant.

-----X

CAPITAL CONCRETE NY INC.,
Third Third-Party Plaintiff,

-against-

Y.N.H. CONSTRUCTION INC.,
Third Third-Party Defendant.

-----X

The following e-filed papers read herein:
Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

Opposing Affidavits (Affirmations) _____
Affidavits/ Affirmations in Reply _____

NYSCEF Doc Nos.:

83-84, 103-104, 121, 126-127, 139
143-144, 147, 151, 163,
170-171, 174, 178, 190, 197, 200
203, 205, 208, 211, 212

Upon the foregoing papers, plaintiff Angel Camas moves for an order, pursuant to CPLR § 3212, granting him partial summary judgment with respect to liability on his Labor Law §§ 240 (1) and 241 (6) causes of action (Motion Seq. 5).

Third-party defendant/third third-party plaintiff Capital Concrete NY Inc. (Capital) moves for an order, pursuant to CPLR § 3212, granting it summary judgment dismissing the complaint and the third-party complaint (Motion Seq. 6).

Defendants/third-party plaintiffs/second third-party plaintiffs Cascade 553 LLC (Cascade) and Empire ID Construction Corp. (Empire) (collectively defendants) move for an order, pursuant to CPLR § 3212, granting them summary judgment dismissing all claims against them and granting them summary judgment on their third-party claims against Capital (Motion Seq. 7).

This action is premised on common-law negligence and violations of Labor Law §§ 200, 240 (1) and 241 (6) wherein Plaintiff allegedly suffered injuries as the result of an accident that occurred on October 8, 2018, during the construction of a building when a construction form on which he was standing shifted and fell to the ground and caused him to fall to the ground. Cascade owned the premises at issue and, prior to the accident, hired Empire to construct a building at the subject location. Empire hired Capital to perform concrete work on the project and Capital, in turn, hired Great Maintenance to provide labor for some of its concrete work. Plaintiff was employed by Great Maintenance.

According to plaintiff's deposition testimony, a Great Maintenance supervisor he knew named Ronald hired him to work on the project. On the date of the accident, plaintiff states that he arrived at the worksite at 6:40 a.m. to begin work at 7:00 a.m. and was instructed by Ronald to assist with the removal or stripping of forms from the concrete elevator walls. Plaintiff states that the forms were made of wood with metal frames and were approximately two feet wide by eight feet long and the elevator walls were approximately 14 feet high. Plaintiff claims that he did not see any ladders, scaffolds, or scissor lifts on the jobsite and that in order to strip the forms from the wall, he would stand on the frame of the form next to the one he intended to remove and use a lever to pry the neighboring form from the wall. Plaintiff claims his accident occurred at approximately

11:40 a.m., when the form on which he was standing loosened from the wall and he fell five or six feet to the ground with the form. Although plaintiff was wearing a harness with a yo yo, which he was unable to attach to the wall because there was nothing on the wall, so he attached it to the form he was standing on and the harness provided no protection when both he and the form fell to the ground.

In opposition, defendants and Capital submitted the deposition testimony of Ufredo Patino, dated March 25, 2022, who worked as a supervisor for Capital. Patino testified that he was in charge of interviewing and hiring staff for the project, that he arrived at the jobsite on October 8, 2018, at approximately 7:00 a.m., and that he interviewed Great Maintenance employees that were brought to the worksite by Ronald Zapata. Patino stated that he knew plaintiff from working on other projects, but that plaintiff was not one of the workers that Zapata brought to the jobsite. Patino further testified that after interviewing the workers, he gave a safety talk to all the employees present, and that he did not see plaintiff at that safety talk nor did he, see plaintiff at any time before he left for the day. Patino states that he stayed at the jobsite until around 10:00 a.m. to 11:00 a.m. Patino testified that under Capital's policy, which applied to employees of its subcontractors, workers were not allowed to work if they arrived more than 15 minutes late. Finally, although Patino conceded that there was an electronic timecard for plaintiff that showed that he worked on October 8, 2018, this timecard also showed that he clocked in at 5:06 p.m. and clocked out at 5:09 p.m.

In support of its own motion (Motion Seq. 6) and in opposition, Capital argues that Plaintiff's timecard and Patino's testimony create an issue of fact as to whether Plaintiff was actually working at the site when the accident occurred. Capital has also submitted an affidavit from Frank Gamgeni, Capital's concrete safety manager, who states that he was unaware of any ladders or scaffolds being defective or damaged or of any accidents involving a worker falling from a height on the date of the accident.

Labor Law § 240 (1) imposes absolute liability on owners and contractors or their agents when they fail to protect workers employed on a construction site, from injuries proximately caused by risks associated with falling from a height or those associated with

falling objects (*see Wilinski v 334 E. 92nd Housing Dev. Fund Corp.*, 18 NY3d 1, 3 [2011]; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). To make a prima facie showing of liability under Labor Law § 240 (1), a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries (*see Debenedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021]; *Cruz v Roman Catholic Church of St. Gerard Magella in Borough of Queens in the City of N.Y.*, 174 AD3d 782, 783 [2d Dept 2019]). Here, plaintiff has demonstrated his prima facie entitlement to summary judgment through his testimony showing that defendants failed to insure he was provided with any safety devices necessary to perform his work at an elevation and that he suffered an injury when the form on which he was standing moved and caused him to fall five to six feet to the ground (*see Swiderska v New York Univ.*, 10 NY3d 792, 793 [2008]; *DeGraff v Colantonio*, 202 AD3d 1297, 1300 [3d Dept 2022]; *Lojano v Soiefer Bros. Realty Corp.*, 187 AD3d 1160, 1163 [2d Dept 2020]; *see also Hernandez v 767 Fifth Partners, LLC*, 199 AD3d 484, 485 [1st Dept 2021]; *Debenedetto*, 190 AD3d at 936; *Cruz*, 174 AD3d at 783). Since plaintiff's prima facie showing is made out by his own testimony, an expert affidavit is not required to make out this showing under the circumstances in this case (*see McCallister v 200 Park, L.P.*, 92 AD3d 927, 928-929 [2d Dept 2012]; *see also Rubio v New York Proton Mgt., LLC*, 192 AD3d 438, 439 [1st Dept 2021]). Additionally, Gamgeni's conclusory assertions fail to demonstrate an issue of fact with respect to plaintiff's accident or to otherwise demonstrate that plaintiff's actions were the sole proximate cause of the accident since Gamgeni makes no positive assertion that there were any ladders or scaffolds or other safety devices readily available for plaintiff's use or that plaintiff had been informed that such devices were available and that he was required to use them (*see Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1167-1168 [2020]; *Gallagher v New York Post*, 14 NY3d 83, 88 [2010]; *Pacheco v Halsted Communications, Ltd.*, 144 AD3d 768, 769 [2d Dept 2016]; *Przyborowski v A&M Cook, LLC*, 120 AD3d 651, 653 [2d Dept 2014]; *Rice v West 37th Group, LLC*, 78 AD3d 492, 495-498 [1st Dept 2010]).

Nevertheless, this court finds from the deposition testimony of Capital's employee supervisor Ufredo Patino that he knew plaintiff from other jobs, that he was responsible for interviewing Great Maintenance's employee before they starting working at the jobsite, that plaintiff was not one of the employees he interviewed, that Capital's policy barred workers employed by it and its subcontractors from working at the jobsite if the workers were more than 15 minutes late, and that he did not see plaintiff on the jobsite during the morning of the accident is sufficient to demonstrate a factual issue as to whether plaintiff was employed within the meaning of the Labor Law at the time of the accident (*see Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 135 AD3d 790, 791 [2d Dept 2016]; *Torres v Perry St. Dev. Corp.*, 104 AD3d 672, 674 [2d Dept 2013]). While the fact that Patino may have left the jobsite at some point prior to the time of the accident may reduce the impact of Patino's testimony, Patino's testimony is still sufficient to demonstrate a factual issue in this respect, particularly based on the fact that plaintiff stated that he was on the worksite beginning at 6:40 a.m. That plaintiff may have swiped an electronic time card is not determinative either since the timecard only shows that plaintiff was present at the jobsite from 5:06 p.m. to 5:09 p.m.

Contrary to plaintiff's contentions, the determination of the Workers' Compensation Board (Board) that plaintiff suffered a work related injury on October 8, 2018 does not collaterally estop defendants and Capital from arguing that plaintiff was not employed at the time of the accident since Capital and defendants were not parties or in privity with parties to the Board's proceedings (*see Liss v Trans Auto Sys.*, 68 NY2d 15, 21-23 [1986]; *Netzahull v All Will LLC*, 145 AD3d 492, 493 [1st Dept 2016]; *see also Cullen v Moschetta*, 207 AD3d 699, 700 [2d Dept 2022]).¹ The court notes that, although the Appellate Division, Second Department held recently, in *Valazquez-Guadalupe v Ideal Bldrs. & Constr. Servs., Inc.* 188 N.Y.S.3d 537 2023 NY Slip Op 02025 (2d Dept 2023), that the Board's determination that an entity is plaintiff's employer and is conclusively

¹ Although Capital was initially a party to the Board's proceedings, the Board dismissed it from the proceedings prior to the determination relied upon by plaintiff.

binding even on entities who were not parties to the Board's proceedings, *Valquez-Guadalupe* holding does not impact the determination here. This is because the Board's binding finding that Great Maintenance was plaintiff's employer within the meaning of the Workers' Compensation Law is a finding distinct from the issue of whether plaintiff was employed within the meaning of the Labor Law at the time of the accident (*see Torres*, 104 AD3d at 674-675; *see also Vera v Low Income Mktg. Corp.*, 145 AD3d 509, 510-511 [1st Dept 2016] [finding no identity of issue between Board determination of employment under Workers' Compensation Law and employment for purposes of a Labor law action]).²

With respect to plaintiff's Labor Law § 241 (6) cause of action, under that section, an owner, general contractor or their agent may be held vicariously liable for injuries to a plaintiff where the plaintiff establishes that the accident was proximately caused by a violation of an Industrial Code section stating a specific positive command that is applicable to the facts of the case (*Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 349-350 [1998]; *Honeyman v Curiosity Works, Inc.*, 154 AD3d 820, 821 [2d Dept 2017]).

Here, defendants have demonstrated, prima facie, that Industrial Code (12 NYCRR) §§ 23-1.2 (a); 23-1.7 (b); 23-1.7 (d); 23-1.7 (e); 23-1.15 (a-e); 23-1.17 (a-e); 23-1.21 (a-f); 23-1.24 (a-c); 23-2.1 (a); 23-5.1 (a-k); 23-5.2; 23-5.3 (a-h); 23-5.4 (a-e); 23-5.5 (a-h); 23-5.6 (a-g); 23-5.8 (a-h); 23-5.9 (a-g); 23-5.10 (a-f); 23-5.11 (a-e); 23-5.12 (a-d); 23-5.13 (a-d); 23-5.14 (a-e); 23-5.15 (a-b) and 23-16 (a-d) alleged to be violated by plaintiff fail to state specific standards or are inapplicable to the facts of this case (*see generally Rizzuto*, 91 NY2d at 349-350; *Honeyman*, 154 AD3d at 821). Since plaintiff has abandoned reliance on these regulations by failing to address them in his moving and opposition

² The court further notes that, in light of a recent amendment, the Workers' Compensation Law now provides that a "[d]etermination by the board shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship" (Workers Compensation Law § 11 [2]; L 2022, ch 835, § 3). Assuming that this amendment is binding on pending cases arising from accidents that occurred before the December 30, 2022 effective date of the amendment (*see People v Anderson*, 306 AD2d 536, 536-537 [2d Dept 2003] [procedural statutes will generally be applied retroactively], *lv denied* 1 NY3d 594 [2004]), it would likewise preclude finding that defendants and Capital are bound by the Board's determination since the determination of an employer-employee relationship between plaintiff and Great Maintenance is an issue distinct from whether plaintiff was employed within the meaning of the Labor Law at the time of the accident (*see Vera*, 145 AD3d at 510-511; *Torres*, 104 AD3d at 674-675).

papers, defendants are entitled to dismissal of the section 241 (6) claim to the extent that it is predicated on those Industrial Code sections (*see Debenedetto*, 190 AD3d at 936; *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]).

Plaintiff, however, has addressed Industrial Code (12 NYCRR) § 23-1.16 (b), which requires that a worker using a harness have an appropriate secure location to tie off his or her tail line and that such “attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.” Contrary to defendants’ assertions, the Occupational Safety and Health Administration (OSHA) regulation that only requires personal fall protection when workers are subject to a fall hazard six feet or higher (29 CFR 1926.501) is not an impediment to liability under Labor Law § 241 (6) (*see DaSilva v Toll First Ave., LLC*, 199 AD3d 511, 512 [1st Dept 2021]; *Cruz v Cablevision Sys. Corp.*, 120 AD3d 744, 746-747 [2d Dept 2014]; *Flynn v Turner Constr. Co.*, 2016 WL 11540929[U], *6 [Sup Ct, New York County 2016]; *see also Rizzuto*, 91 NY2d at 351 n; *Shaw v RPA Assocs, LLC*, 75 AD3d 634, 636-637 [2d Dept 2010]). Further, plaintiff’s testimony that he had or was provided with a harness, but that the only place on which he could tie off onto was the form on which he was standing that collapsed, suggests that section 23-1.16 (b)’s requirement that a worker have a proper place on which to tie off a harness was violated (*see King v Villette*, 155 AD3d 619, 623 [2d Dept 2017]; *Anderson v MSG Holdings, L.P.*, 146 AD3d 401, 404-405 [1st Dept 2017], *lv dismissed* 29 NY3d 1100 [2017]). Nevertheless, section 23-1.16 (b), by providing that the arrangement of the attachments shall not allow a fall to exceed five feet, cannot be seen as intending to protect employees working at heights that are five feet or less. Since plaintiff, in his own testimony, estimates that he fell five or six feet, his testimony presents factual issues as to whether a violation of section 23-1.16 (b) was a proximate cause of the accident and thus requires denial of the motions by plaintiff, defendants and Capital in this respect.

Plaintiff has also addressed Industrial Code (12 NYCRR) § 23-2.2 (a), which requires that, “[f]orms, shores and reshores shall be structurally safe and shall be properly braced or tied together so as to maintain position and shape.” Contrary to the contention of defendants and Capital, plaintiff’s belated allegation that section 23-2.2 (a) was violated

is not a bar to its consideration since the claimed violation does not involve any new factual allegations, raise any new theories of liability, or cause prejudice to defendants (*see Simmons v City of New York*, 165 AD3d 725, 729 [2d Dept 2018]; *Ross v DD 11th Ave., LLC*, 109 AD3d 604, 606 [2d Dept 2013]). Section 23-2.2 (a) does state a specific command to the extent that it requires that forms be “braced or tied together so as to maintain position and shape” (*see Morris v Pavarini Constr.*, 22 NY3d 668, 671 [2014]; *Ross*, 109 AD3d at 606). However, in the absence of expert proof addressing whether the bracing requirement would apply during the stripping/removal process and whether such bracing would be expected to support a worker standing on a form, no party has demonstrated their prima facie entitlement to summary judgment with respect to section 23-2.2 (a) (*see Morris v Pavarini Constr.*, 9 NY3d 47, 51 [2007]; *Ross*, 109 AD3d at 606; *cf. Morris*, 22 NY3d at 673-675).³

Aside from these factual issues relating to whether Industrial Code (12 NYCRR) §§ 23-1.16 (b) and 23-2.2 (a) were violated here, the above noted factual issue as to whether plaintiff was employed within the meaning of the Labor Law at the time of the accident also precludes summary judgment in plaintiff’s favor on his Labor Law § 241 (6) cause of action.

With respect to plaintiff’s common law negligence and Labor Law § 200 cause of action, defendants and Capital have demonstrated their prima facie entitlement to dismissal of these causes of action by showing that the accident occurred because of the means and methods of the work and that defendants did not exercise more than general supervisory authority over the injury producing work (*see Abelleira v City of New York*, 201 AD3d 679, 680 [2d Dept 2022]; *Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 670-673 [2d Dept 2018]; *Goldfien v County of Suffolk*, 157 AD3d 937, 938 [2d Dept 2018]). Since plaintiff

³ Defendants did submit an affidavit from engineer who asserts that Industrial Code (12 NYCRR) § 23-2.2 (a) was not violated because “There is no evidence that the concrete formwork was in any way unstable causing Plaintiff’s accident” (Defendant Engineer Aff. at ¶ 12). This conclusory statement, however, ignores plaintiff’s testimony that the form on which he was standing moved and/or fell to the ground and caused plaintiff to fall to the ground. Nothing in the affidavit of defendants’ engineer suggests that section 23-2.2 (a) would not apply under the circumstances of this case.

has not opposed this aspect of the motions by defendants and Capital, plaintiff's common-law negligence and section 200 causes of action are dismissed.

In addressing the third-party issues in this case, neither defendants nor Capital are entitled to summary judgment with respect to defendants' contractual indemnification claims against Capital. Defendants have demonstrated that they were not negligent and that Empire's contract with Capital contains a broadly worded indemnification provision requiring Capital to indemnify defendants for claims "arising" or "resulting" from Capital's work on the project to the extent that such work was performed by Capital or one of its subcontractors (*see Mogrovejo v HG Hous. Dev. Fund Co., Inc.*, 207 AD3d 461, 463-464 [2d Dept 2022]). While plaintiff's testimony suggests that he was employed on the project and that his injury occurred while performing Capital's work on the project, Capital, has demonstrated through Patinos' testimony the existence of factual issues as to whether plaintiff was employed on the project and whether his injuries arose from Capital's work on the project. Therefore, defendants and Capital's respective motions with respect to the defendants' contractual indemnification claims must be denied (*see Muhjaj v 77 Water St.*, 148 AD3d 1165, 1168 [2d Dept 2017]; *see also Piccone v Metropolitan Tr. Auth.*, 205 AD3d 628, 629 [1st Dept 2022]; *Hogan v 590 Madson Ave., LLC*, 194 AD3d 570, 572 [1st Dept 2021]; *Adagio v New York State Urban Dev. Corp.*, 168 AD3d 602, 602 [1st Dept 2019]).⁴

That portion of Capital's motion seeking dismissal of the common-law indemnification and contribution claims must also be denied.⁵ Capital has failed to demonstrate, *prima facie*, the absence of issues of fact as to whether plaintiff was employed

⁴ *Garcia v 13 W. 38, LLC* (73 Misc 3d 434, 446 [Supt Ct, Bronx County 2021], *modified on other grounds* 214 AD3d 408 [1st Dept 2023]), relied upon by defendants, is distinguishable in that the injured plaintiff, although working without the permission of defendant elevator repair company and thus not "employed" within the meaning of the Labor Law, was concededly injured while performing the elevator repair company's work on the project (*Garcia*, 73 Misc 3d at 437-438).

⁵ The court notes that, while defendants' notice of motion indicates that they are seeking summary judgment on their contribution and common-law indemnification claims against Capital, their affirmation and memorandum of law in support of their motion did not address those claims and only addressed their contractual indemnification and insurance procurement claims against Capital. Thus, this court finds that defendants' motion is limited to the contractual indemnification and insurance claims.

on the project and the extent of its supervision and control over the work of Great Maintenance's workers. While Patino, in his testimony, does not provide a great deal of detail regarding the level of supervision Capital exercised over Great Maintenance's workers, his testimony that he interviewed Great Maintenance before they could start working on the project suggests that Capital may have exercised more than general supervision over the work of Great Maintenance's employees. Gamgeni's affidavit, in which he states that he walked the jobsite to ensure the use and installation of proper fall protection and personal protection equipment, is also insufficient to demonstrate that Capital did not supervise or control the means and methods of the work of Great Maintenance's employees (*Nugra v Aramalla*, 191 AD3d 683, 686 [2d Dept 2021]; *Uddin v A.T.A. Constr. Corp.*, 164 AD3d 1402, 1405 [2d Dept 2018]; *State of New York v Defoe Corp.*, 149 AD3d 889, 889-890 [2d Dept 2017]).

In addressing the insurance procurement claims, Capital has demonstrated that it obtained a general liability insurance policy naming defendants as additional insureds required by the Empire's contract with Capital and defendants concede they are currently being afforded a defense and indemnity without reservation of rights under this policy. Empire's contract with Capital, however, also required that Capital obtain an excess policy naming defendants as additional insureds. Capital, while it asserts it obtained such a policy, the copy of the policy and copies of the certificates of insurance submitted by Capital relate to its general liability policy. On the other hand, although defendants contend that Capital failed to obtain the requisite excess coverage, they have failed to submit evidentiary proof that no such coverage was obtained. Therefore, the motions by defendants and Capital must be denied in this respect (*see Goya v Longwood Hous. Dev. Fund Co., Inc.*, 192 AD3d 581, 586 [1st Dept 2021]; *Sicilia v City of New York*, 127 AD3d 628, 629 [1st Dept 2015]; *Ginter v Flushing Terrace, LLC*, 121 AD3d 840, 844 [2d Dept 2014]; *Karnikolas v Elias Taverna, LLC*, 120 AD3d 552, 556 [2d Dept 2014]; *see also Crtuch v 421 Kent Dev., LLC*, 192 AD3d 982, 984-985 [2d Dept 2021]).

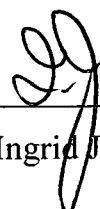
Accordingly, it is hereby

ORDERED, that Plaintiff's motion (motion sequence number 5) is denied.

Capital's motion (motion sequence number 6) is granted only to the extent that plaintiff's common-law negligence and Labor Law § 200 causes of action are dismissed and to the extent that the Labor Law § 241 (6) cause of action is dismissed with respect to Industrial Code (12 NYCRR) §§ 23-1.2 (a); 23-1.7 (b); 23-1.7 (d); 23-1.7 (e); 23-1.15 (a-e); 23-1.17 (a-e); 23-1.21 (a-f); 23-1.24 (a-c); 23-2.1 (a); 23-5.1 (a-k); 23-5.2; 23-5.3 (a-h); 23-5.4 (a-e); 23-5.5 (a-h); 23-5.6 (a-g); 23-5.8 (a-h); 23-5.9 (a-g); 23-5.10 (a-f); 23-5.11 (a-e); 23-5.12 (a-d); 23-5.13 (a-d); 23-5.14 (a-e); 23-5.15 (a-b) and 23-16 (a-d). Capital's motion is otherwise denied.

Defendants' motion (motion sequence number 7) is granted only to the extent that plaintiff's common-law negligence and Labor Law § 200 causes of action are dismissed, that all cross claims and counterclaims against them are dismissed, and to the extent that the Labor Law § 241 (6) cause of action is dismissed with respect to Industrial Code (12 NYCRR) §§ 23-1.2 (a); 23-1.7 (b); 23-1.7 (d); 23-1.7 (e); 23-1.15 (a-e); 23-1.17 (a-e); 23-1.21 (a-f); 23-1.24 (a-c); 23-2.1 (a); 23-5.1 (a-k); 23-5.2; 23-5.3 (a-h); 23-5.4 (a-e); 23-5.5 (a-h); 23-5.6 (a-g); 23-5.8 (a-h); 23-5.9 (a-g); 23-5.10 (a-f); 23-5.11 (a-e); 23-5.12 (a-d); 23-5.13 (a-d); 23-5.14 (a-e); 23-5.15 (a-b) and 23-16 (a-d). Defendants' motion is otherwise denied.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**