

Soler v City of New York
2023 NY Slip Op 35214(U)
April 25, 2023
Supreme Court, Richmond County
Docket Number: Index No. 151640/2021
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Part C2

-----X
EDWARD SOLER,

Present:

*Plaintiffs,***Hon. Orlando Marrazzo, Jr.***-against-***DECISION AND ORDER**THE CITY OF NEW YORK, NEW YORK CITY
BOARD OF EDUCATION, THE NEW YORK CITY
DEPARTMENT OF EDUCATION, THE NEW YORK
CITY SCHOOL CONSTRUCTION AUTHORITY and
LEON D. DEMATTEIS CONSTRUCTION
CORPORATION,

Index No. 151640/2021

Motion Nos. 002
003
004
005*Defendants.*
-----X

The following papers numbered 1 to 8 including e-filed documents listed on NYSCEF document numbers 38-98 were marked submitted on the 1st day of March, 2023:

Notice of Motion (002) for Summary Judgment

By Plaintiff, with Supporting Papers and Exhibits

(dated December 20, 2022) 1

Affirmation in Opposition

By Defendants

(dated February 22, 2023) 2

Reply Affirmation

By Plaintiff, with Memorandum of Law

(dated February 28, 2023) 3,4

Notice of Motion (003 and 004) for Summary Judgment

By Defendants with Supporting Papers, Exhibits and Memorandum of Law

(dated December 20, 2022) 5,6

Notice of Cross-Motion (005) to Amend Bill of Particulars and in Opposition to Defendants' Motion for Summary Judgment

By Plaintiff with Supporting Papers, Exhibits and Memorandum of Law

(dated February 8, 2023)..... 7,8

Upon the foregoing papers, plaintiff's motion (002) for partial summary judgment on the issue of liability under Labor Law §240(1) is denied. Defendants' motions (003 and 004)¹ for summary judgment are granted only to the extent that causes of action asserted under Labor Law §200 and common-law negligence are dismissed as against defendant/owner NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY. Plaintiff's cross-motion (005) for leave to amend the Bill of Particulars to include specific Industrial Code violations under Labor Law §241(6) is granted.

FACTS

Plaintiff EDWARD SOLER (hereinafter "plaintiff") commenced this Labor Law action to recover damages for injuries he sustained while working as a bricklayer during the construction of a new, four-story school building at 45 Waverly Place on Staten Island. Plaintiff was a union mason for 30 years and employed by non-party Navillus Contracting at the time of the subject accident. He had been working at the subject jobsite daily for four to five months prior to the accident. Immediately prior to the subject incident, plaintiff was descending a ladder from the floor he was working on, to the floor below when the ladder slipped out beneath him, causing him to fall. It is alleged that the ladder was unsecured and lacked cleats on bottom which are supposed to prevent the ladder from slipping. As a result of said fall, plaintiff alleges to have sustained, *inter alia*, a left distal fracture and underwent open reduction and internal fixation of an intra-articular three-part distal radius fracture.

Defendant NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY (hereinafter "SCA"), which was the owner of the property, hired defendant LEON D. DEMATTEIS (hereinafter "DEMATTEIS") as the general contractor to build the school. DEMATTEIS

¹ Defendants' motions 003 and 004 are identical.

contracted with 20-25 subcontractors for the construction project, which included plaintiff's employer.

In specific regard to plaintiff's work, a scaffold had been erected around the building's exterior and plaintiff was required to place cinderblocks to form the exterior wall while standing on the scaffold. In order to access elevated work locations, there were several stair towers erected inside the building. From the ground level, plaintiff first used a stair tower to access the exterior scaffold where he was working on the date of the accident. While plaintiff was working on the scaffold, he wore a harness and lanyard attached to a safety line. However, he was required to unhook his harness when leaving the area.

On the date of the accident, plaintiff was going for his lunch break and used a ladder to descend from the working area to the floor below instead of using the stair tower. According to plaintiff, he stepped off the scaffold onto a platform consisting of wooden planks. The planks led to a steel "Q decking", which is where he accessed the subject ladder. He began descending the ladder when the ladder suddenly slid away from the wall causing him to fall to the ground.

As a result of said incident, plaintiff commenced the subject action against the above-named defendants alleging violations of Labor Law §240(1), §241(6), §200 and common-law negligence and that said violations proximately caused his injuries.

Following the completion of discovery, plaintiff now moves for partial summary judgment on the issue of liability under Labor Law §240(1) as against defendants/owners THE CITY OF NEW YORK, NEW YORK CITY BOARD OF EDUCATION and/or NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY and the general contractor DEMATTEIS and contends that the ladder he used was unsecured, *i.e.*, it was not tied-off at the top or secured to any structure to prevent it from tipping and/or falling and it lacked the required cleats to secure the

bottom portion of the ladder from slipping or moving. Accordingly, under this section of the Labor Law, both the owner and general contractor are statutorily liable when it is shown that a worker fell from an elevated worksite due to the absence of, or an inadequate safety device provided to him and that such device or absence of, was a contributing cause of his fall.

In support, plaintiff submits his own EBT testimony wherein he explained, *inter alia*, in detail, the events leading up to subject occurrence. He also submits EBT testimony from DEMATTEIS supervisor, Daniel Henderson, who arrived at the subject location only minutes after plaintiff's fall. Mr. Henderson's testimony indicates, *inter alia*, that he was advised by others at the site that plaintiff was climbing down the ladder when it fell. He was further advised that the ladder was in the process of being set up, but that it was not completed. According to Mr. Henderson's testimony, once you start setting up a ladder, you complete the process because you want the ladder to be safe for use and that it is never a safe practice to direct a laborer to partially set up a ladder. Moreover, plaintiff stated that the ladder had been in place for at least two hours prior to his fall since the same ladder was present earlier in the morning when he took his coffee break.

Mr. Henderson's testimony also indicates that the ladder would have to be tied to the nearest structure and cleated at the bottom to prevent it from slipping. When Mr. Henderson arrived at the location where plaintiff fell, he observed that the ladder was not cleated and he did not recall observing anything to indicate that it was tied off at the top.

Plaintiff also submits the EBT transcript of Michael King, Navillus' project manager, who was not on site at the time of plaintiff's accident and only learned about the facts of the accident from other employees. He was also told that the ladder had not been properly secured and he could not recall observing anything at the scene afterwards to indicate otherwise. In addition, an accident

report prepared one day following the accident by an investigator from Gallagher Bassett, also indicates that the ladder was not secured correctly.

Mr. Henderson further testified that had no information indicating the plaintiff was specifically told not to go on the landing or Q decking. Moreover, Mr. King testified that while plaintiff would have been present for safety talks, the talks would not have specifically addressed walking from the scaffold onto the landing. According to plaintiff, this corroborates his claim that he was never told that he was not permitted to use the subject ladder or that he was only permitted the use the stair tower to access or exit the work area.

Thus, the aforementioned proof confirms that the ladder plaintiff used was unsecured in that it was not tied to any surface and that it did not have the required cleats secured to the bottom, both of which caused the ladder to slip out from under him. According to plaintiff, said failure is the proximate cause of his injuries. Accordingly, plaintiff argues he is entitled to judgment as a matter of law under Labor Law §240(1).

Plaintiff further argues that any negligence on his part is not available to defendants as a defense. Instead, defendants would have to establish that his actions were the sole proximate cause of his injuries. According to plaintiff, where there is a statutory violation by defendants, it is conceptually impossible for plaintiff's acts or omissions to be the sole proximate cause of the accident and that it was the failure to secure the ladder in this case that contributed to his fall. Moreover, the mere fact that plaintiff used the landing next to the scaffolding and the ladder instead of the stair tower is insufficient to establish a defense since case law confirms that even when a worker is instructed to avoid using unsafe equipment, or when a worker is injured in an area of the work site where he is not supposed to be, said acts merely amount to comparative negligence which is not a defense to a Labor Law §240(1) claim. Here, plaintiff contends that there is no proof that

he was specifically told that he was to exclusively use the stair tower to access his work area rather than use the ladder immediately adjacent to the work area. Accordingly, plaintiff argues that his motion for partial summary judgment must be granted.

In opposition to plaintiff's motion for partial summary judgment, defendants argue that plaintiff was the sole proximate cause of the accident and, accordingly, defendants cannot be liable under Labor Law §240(1), and any claims thereunder must be dismissed. According to defendants, plaintiff, in accessing the subject ladder, improperly crossed safety wires and accessed a prohibited area on the jobsite just to get to his lunch break quicker. In doing so, defendants argue that plaintiff disregarded all of his years of experience, job-site training, and custom and practice in the construction industry. Also, defendants argue that plaintiff was provided with on-site safety training regarding working on a scaffold, fall protection and specific instructions not to climb from an exterior scaffold into the building, which plaintiff chose to disregard in this case.

According to defendants, the scaffold was properly constructed and secured with multiple points of egress and ingress. Said means of egress was disregarded by plaintiff when he improperly accessed an incomplete Q-decking platform that was clearly an unauthorized area as indicated by the safety wires which plaintiff traversed in order to access the subject ladder. Rather than follow onsite instructions, he disregarded the provided safety devices and took an unauthorized shortcut which ultimately led to his accident and that was the sole proximate cause of his injuries.

In support, defendants also rely on testimony of DEMATTEIS' project superintendent, Daniel Henderson, and Navillus' Michael King to establish, *inter alia*, that entering the interior of the building by crossing safety wires to access a ladder located in a prohibited area was not an accepted practice on the site and that plaintiff was the only one who disregarded safety protocols.

Alternatively, defendants further argue that conflicting proof and testimony regarding the happening of the subject occurrence, *i.e.*, an incident report, post-accident records along with plaintiff's EBT testimony and the testimony of the defendants and non-parties, together raise triable issues of fact and require the denial of partial summary judgment in plaintiff's favor. In addition, caselaw relied upon by plaintiff is clearly distinguishable from the facts herein, including cases which held that a plaintiff's own choice to use an improper ladder when a proper ladder available, was the sole proximate cause of plaintiff's injuries (*see Torres v. Mazzone Admin Group*, 46 AD3d 1030 [3rd Dept. 2007]). Moreover, there are numerous cases which held that a worker's choice to misuse a piece of equipment despite knowing that the equipment was not suited for the task, and where proper equipment was available, his actions are the sole proximate cause of his injuries (*see Calle v. City of New York*, 212 AD3d 764 [2nd Dept. 2023]). Thus, plaintiff's motion must be denied.

In their own motions (003 and 004, which are identical), defendants move for summary judgment dismissing plaintiff's claims under Labor Law §200, common-law negligence, §240(1) and §241(6).

Defendants argue that summary judgment must be granted dismissing plaintiff's claims under Labor Law §200 and common-law negligence since none of the defendants supervised or controlled plaintiff's work at any time at the worksite, nor did they create or have notice of any injury-causing circumstance. According to defendants, where a defect is not inherent but is created by the manner in which the work is performed, *e.g.*, including the equipment used, the claim under Labor Law §200 is one for means and methods and not for a dangerous condition existing on the premises. Liability thereunder and under common-law negligence rests on whether the owner and/or contractor exercised supervision or control over the injury-producing work. In this case,

defendants argue that they did not supervise plaintiff's work but that his foreman, Kevin Wilson, or labor foreman from Navillus, Miguel Douglas, supervised plaintiff. Accordingly, defendants claim they are not liable under either Labor Law §200 or under common-law negligence and said claims must be dismissed.

Defendants also seek summary judgment dismissing plaintiff's Labor Law §240(1) claims and argue that the sole proximate cause of plaintiff's accident was his own misuse of a provided safety device, his accessing a prohibited area and the failure to follow safety instructions. According to defendants, plaintiff was provided all proper protections to allow him to work safely on the scaffold and to safely enter and exit his work area. Plaintiff, however, disregarded proper safety procedures and improperly accessed an incomplete area that was unauthorized for use and blocked by safety wires. It was this area that plaintiff traversed and used the ladder that was in the process of being set up for use. Defendants argue that where a worker by his own choice, and without any instruction, chooses to misuse a piece of equipment despite knowing that the equipment was not suited to the task and proper equipment was available to him on the site, his actions are the sole proximate cause of his injuries. In this case, instead of using the stair tower available to egress his work area, plaintiff climbed from foot planks next to the scaffold, onto an unfinished Q-decking in order to access the subject ladder. Accordingly, it was his own actions which caused his injuries. Therefore, Labor Law §240(1) has no applicability here and must be dismissed.

In regard to Labor law §241(6), defendants argue that plaintiff has failed to demonstrate that a violation of a specific Industrial Code caused his injuries. According to defendants, the Bill of Particulars fails to cite to any applicable Industrial Code regulations except for section 23-1.16(b) which is not relevant in this case but involves the provision of a safety belt or harness. The

plaintiff was actually provided with and used appropriate safety belt and harness while working on the exterior scaffold. Thus, any claim under Labor Law §241(6) must be dismissed.

Plaintiff opposes defendants' motion for summary judgment and cross-moves (005) to amend his Bill of Particulars to include specific Industrial Code regulations and defendants' violation of said regulations under Labor Law §241(6). These include 12 NYCRR §23-1.21(b)(4)(i),(ii); 12 NYCRR §23-1.21(c)(2) and 12 NYCRR §23-1.5(c)(3), each of which requires owners and contractors and their agents to provide reasonable and adequate protection and safety for workers at a jobsite. More specifically, plaintiff contends that these regulations, respectively, pertain to the securing and footing of a ladder; the required use of cleats; and corrective action if equipment is damaged, *etc.* Plaintiff contends that each regulation is sufficiently specific to support a cause of action under Labor Law §241(6).

Plaintiff further contends that an amendment to the Bill of Particulars to include these Industrial Code regulations is not prejudicial to defendants since they are each well aware of the claims made in the complaint relating to the subject unsecured ladder. Moreover, none of the amendments are said to allege a new theory of liability. Accordingly, the amendments should be permitted.

Plaintiff also opposes defendants' motion seeking dismissal of his Labor Law §240(1) claims since they failed to establish that he was the sole proximate cause of injuries. According to plaintiff, once a statutory violation has been established, plaintiff's conduct cannot be deemed the sole proximate cause. For instance, where a ladder fails to provide a worker with the proper protection, *e.g.*, a ladder that is not properly secured, a *prima facie* violation has been established and said violation is the proximate cause of a plaintiff's injuries.

Moreover, plaintiff argues that no one instructed him that he was required to use the stair tower instead and should not have accessed the subject ladder from the landing next to the scaffold where he was working. Unless specific evidence exists demonstrating he received instructions to use one device over another, his choice cannot constitute the sole proximate cause of his injuries.

In opposition to dismissal of his causes of action under Labor Law §200 and common-law negligence, plaintiff contends that property owners and general contractors are liable in cases such as this, for injuries occurring as a result of a dangerous condition existing on the premises and regardless of their control or supervision of the work. More specifically, plaintiff argues that it has been held that where a worker has been provided with a defective piece of equipment, having either created the condition or having actual notice of it, the defendant is possessed with the authority to remedy the condition. In addition, remedial efforts do not involve control over the dangerous condition, but the authority to remedy defective, dangerous condition. Accordingly, dismissal under this section of the Labor Law and under common-negligence standards is inappropriate.

DISCUSSION

It is well established that the proponent of a summary judgment motion must make a *prima facie* showing of its entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once that initial burden has been satisfied, it is incumbent upon the party opposing the motion to adduce sufficient evidence of the existence of triable issues of fact (*id.*). Consequently, the court's only role in deciding a motion for summary judgment is to determine whether any

triable issues of fact exist. “[I]ssue-finding, rather than issue-determination, is the key to the procedure” (Sillman v. Twentieth Century Fox Film Corp., 3 NY2d 395, 404 [1957] [internal quotation marks omitted]). However, “only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment” (Rotuba Extruders v. Ceppos, 46 NY2d 223, 231 [1978]). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient to raise a triable issue of fact (see Zuckerman v. City of New York, 49 NY2d 557 [1980]). Nevertheless, since summary judgment represents the procedural equivalent of a trial, the presence of any doubt as to whether or not there is a material issue of fact, or where an issue of fact is merely “arguable,” the motion should be denied (see Phillips v. Kantor & Co., 31 NY2d 307, 311 [1972]).

More specifically in regard to Labor Law §240(1), more commonly known as the “Scaffold Law”, imposes a non-delegable duty upon owners, contractors, and their agents to provide adequate safety protection for workers at, *e.g.*, an elevated work site, and is to be liberally construed to accomplish its intended purpose: placing “ultimate responsibility for safety practices” on the owner and general contractor, rather than on individual workers “who are scarcely in a position to protect themselves from accident” (see Zimmer v. Chemung County Performing Arts, 65 NY2d 513, 520 [1985] [internal quotation marks omitted]). To this end, the duty has been made nondelegable to such an extent that an owner or contractor will be held liable for any injury proximately caused by a violation of the section even though the injuring-producing work was being performed by an independent contractor over which it exercised no supervision or control, and notwithstanding the injured worker’s possible contributory negligence (see Gordon v. Easter Ry. Supply, 82 NY2d 555, 559, 562 [1993]).

Under this provision, owners and contractors are held absolutely liable whenever a worker's injury is proximately caused by the failure to provide him or her with ladders, scaffolding, hoists or other named devices that are so constructed, placed or operated as to provide proper protection to workers at, *e.g.*, a construction site, from harm directly flowing from the application of the force of gravity to an object or person (*see* Ross v. Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]). Accordingly, a *prima facie* case of liability requires a plaintiff to demonstrate both that the statute was violated, and that the statutory violation was a proximate cause of his or her injuries (*see* Zimmer, 65 NY2d at 519).

Notwithstanding the mandated "liberality" in construction, it must be noted that not every worker who falls at a construction site or injured by a falling object is entitled to the extraordinary protections afforded by Labor Law §240(1) (*see* Blake v. Neighborhood Hous Servs of NY City, 1 NY3d 280, 288 [2003]; Narducci v. Manhasset Bay Assoc., 96 NY2d 259, 267 [2001]). Accordingly, the mere fact that, *e.g.*, a worker fell, is insufficient, by itself, to establish that the device failed to provide proper protection (*see* Alava v. City of New York, 246 AD2d 614, 615 [2d Dept. 1998]). Similarly, the mere fact that an accident occurred does not establish either a statutory violation or causation (*see e.g.* Rocovich v. Consolidated Edison, Co., 78 NY2d 509, 514-515 [1991]). Both a violation of the section and proof of its role in producing plaintiff's injury is required before strict liability will attach (*see e.g.* Duda v. Rouse Constr. Corp., 32 NY2d 405, 410 [1973]).

Here, in the opinion of this Court, the plaintiff has established his right to summary judgment on the issue of liability against defendants by submitting proof establishing the subject ladder was neither secured nor cleated. In opposition, however, defendants have raised triable issues of fact as to whether plaintiff was the sole proximate cause of his injuries.

More specifically, the sole proximate cause defense generally applies where the worker misused, removed, or failed to use an available safety device that would have prevented the accident, or knowingly chose to use an inadequate device despite the availability of an adequate device (*see Robinson v. East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]).

Prohibitive here of summary judgment in favor of either plaintiff or defendants in regard to Labor Law §240(1) is extraordinarily conflicting proof in regard to whether plaintiff was specifically advised that he was required to use the stair tower (the alleged safe means of access provided to all employees) as proper ingress and egress to his work area. In this regard, EBT testimony of the parties, affidavits of witnesses, incident reports and photographs of the subject jobsite, together, provide conflicting proof and are sufficient, to raise triable issues of fact. The same is true in regard to whether plaintiff knew that he was not supposed to enter the area where the subject ladder was being set up, such as the unfinished, steel Q-decking which required him to climb over steel safety wires blocking access to the subject ladder. While plaintiff argues that he was not specifically told he was not to enter that area, proof submitted by defendants indicates otherwise, *e.g.*, daily toolbox meetings conducted by plaintiff's employer at which the employees discussed various jobsite safety issues. Since it is not the function of this Court in deciding a motion for summary judgment to make credibility determinations, plaintiff's motion as well as defendants' motion must be denied (*see Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

With regard to defendants' motion insofar as it seeks summary judgment dismissing plaintiff's causes of action alleging common-law negligence and a violation of Labor Law §200, Labor Law §200 is a codification of the common-law duty of property owners and general contractors to provide construction workers with a safe place to work (*see Eliassian v. GF*

Construction, Inc., 190 AD3d 947, 950 [2nd Dept. 2021] [quotation marks and citation omitted]).

“To be held liable under Labor Law §200 and common-law negligence for injuries arising from the manner in which the plaintiff’s work is performed, a defendant must have authority to exercise supervision and control over the work” (*id.* at 950). In this case, there is no proof that defendants exercised supervision and control over the work plaintiff was performing. Accordingly, liability cannot be imposed against defendants on this basis.

Nevertheless, where a worker’s injuries arise from a dangerous condition on the premises, a defendant may be liable under Labor Law §200 if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition whereby the defect was visible and apparent for a sufficient length of time prior to the accident to permit defendants to discover and remedy it (*see Cain v. Ameresco*, 195 AD3d 677, 680 [2nd Dept. 2021] [quotation marks and citation omitted]; *see Dacira v. Genting New York, LLC*, 173 AD3d 831, 835 [2nd Dept. 2019]; *see Gordon v. Am. Museum of Natural History*, 67 NY2d 836, 838 [1986]).

Here, in the opinion of this Court, while there is no proof indicating that SCA, as the owner of the property, created or had notice of the unsecured ladder, triable issues of fact remain, however, in regard to DEMATTEIS. In this regard, proof indicates that DEMATTEIS laborers (*e.g.*, Wilson Mejia) were instructed to erect the subject ladder by a DEMATTEIS foreman (Joe Ottillo). There is also testimony that the ladder had been partially set up for at least two hours prior to the time of plaintiff’s fall. Thus, it cannot be said as a matter of law that DEMATTEIS did not create and/or have notice of the condition of the subject ladder. Accordingly, summary judgment dismissing Labor Law §200 and common-law negligence claims against defendant DEMATTEIS is denied. The cause of action in this regard is dismissed, however, against the SCA as the owner.

As for plaintiff's claims under Labor Law §241(6), it is well-established that this section requires owners and contractors to provide reasonable and adequate protection and safety for workers at a jobsite and they must comply with specific rules and regulations promulgated by the Commissioner of the Department of Labor. In order to maintain a viable claim under Labor Law §241(6), it is required that the particular regulation upon whose violation plaintiff chooses to rely must constitute a "specific" rather than a "general" safety requirement (*see* Ross v. Curtis-Palmer Hydro-Electric, 81 NY2d 494 [1993]). Thus, the Court of Appeals had held that Labor Law §241(6) requires "that a claimant demonstrate that his injury was caused by a violation of a specific safety regulation related to plaintiff's work and which imposed an affirmative duty upon the project owner" (Brown v. New York City Economic Dev Corp., 234 AD2d 33, 34 [1st Dept. 1996]).

Accordingly, plaintiff now seeks leave to amend his Bill of Particulars to add specific industrial code regulations in support of his claims under Labor Law §241(6) (*i.e.*, 12 NYCRR §23-1.21[b][4][i],[ii]; 12 NYCRR §23-1.21[c][2] and 12 NYCRR §23-1.5[c][3]). It is well-settled that leave to amend a bill of particulars is freely given in the absence of prejudice or surprise even though the note of issue had already been filed (*see* Grande v. Peteroy, 39 AD3d 590, 591 [2nd Dept. 2007]). Here, there is no proof that defendants would suffer any prejudice or surprise in granting leave to amend to add specific Industrial Code regulations which relate to the securing and footing of the ladder, including the required use of cleats. Furthermore, the alleged violations of these code regulations contain no new factual allegations or raise new theories of liability (*see* Dowd v. City of New York, 40 AD3d 908,911 [2nd Dept. 2007]). Finally, defendants have not

submitted any opposition in regard to allowing these amendments. Accordingly, the motion for leave to amend is granted.

Accordingly, it is hereby

ORDERED that plaintiff's motion (002) for partial summary judgment on the issue of liability under Labor Law §240(1) is denied; and it is further

ORDERED that defendants' identical motions (003 and 004) for summary judgment dismissing plaintiff's causes of action under Labor Law §240(1), §241(6), Labor Law §200 and common-law negligence are granted only to the extent that the causes of action under Labor Law §200 and common-law negligence are severed and dismissed as against defendant NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY; and it is further

ORDERED that plaintiff's cross-motion (005) for leave to amend the Bill of Particulars is granted; and it is further

ORDERED that the Clerk enter judgment accordingly.

ENTER,



Hon. ORLANDO MARRAZZO, JR., J.S.C.

DATED:

4/25/23