SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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MICHAEL GAJADHAR,

Plaintiff,

- v -

52-03 CENTER LLC,52-03 CENTER GC LLC,52-03 CENTER (LIHTC) LLC,TFC HPS NORTH TOWER GC LLC,TFC HPS NORTH TOWER LLC,TF CORNERSTONE INC.

Defendant.

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INDEX NO. 153554/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 74

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, and after oral argument, which took place on July 30, 2024, where Edward W. Ford, Esq. appeared for Plaintiff Michael Gajadhar ("Plaintiff"), and Zachary Nastro, Esq. appeared for Defendants 52-03 Center LLC, 52-03 Center GC LLC (collectively "Defendants"), Plaintiff's motion seeking summary judgment on his Labor Law § 241(6) claim against Defendants is denied.

I. Background

This is a personal injury action for damages sustained by Plaintiff allegedly as a result of Defendants' violation of New York Labor Law § 241(6) (*see generally* NYSCEF Doc. 1). Plaintiff was injured on April 7, 2021 while working on a construction site located at 52-03 Center Blvd., Long Island City, New York (the "Premises"). Plaintiff was employed as an ironworker for non-party K&M Architectural Glass ("K&M"). The Premises were owned by 52-03 Center LLC. The

general contractor was 52-03 Center GC LLC. 52-03 Center GC LLC hired K&M as a subcontractor.

Plaintiff claims he was injured around 12:00 after lunch (NYSCEF Doc. 37 at 46:13-15). He was assigned to load and to unload materials and equipment from a K&M truck (*id.* at 47:6-9). The surface of the truck on which Plaintiff was working consisted of wood (*id.* at 52:12-16). Plaintiff testified when he came back from lunch, the truck was free of debris (*id.* at 64-65). He began lifting heavy duty frames which weighed approximately 250 pounds to place them in the truck (*id.* at 65). Plaintiff alleges he tripped on a piece of debris on the truck (*id.* at 72). Plaintiff claims the debris was a piece of broken wood (*id.* at 73). He did not know where the piece of broken wood came from (*id.* at 75). He also described the condition which caused him to trip as a "wood shim" (*id.* at 81). He testified the shims were used as backing on small A-frames to ensure loose material did not fall through the hole of the A-frame (*id.* at 81). He alleged the truck was very dark and he did not see the shim on the floor (*id.* at 87). Donald Hartley, a representative of Defendants, testified that there were lights around the loading dock (NYSCEF Doc. 38 at 81). Mr. Hartley testified he had a light meter on his phone and used it to ensure lighting on the worksite was sufficient (*id.* at 109-110).

Plaintiff's co-worker, Miguel Stewart, testified that the truck where Plaintiff was injured was parked at the loading dock, which is an open area (NYSCEF Doc. 46 at 24). He testified that inside the truck, a 20-foot trailer, was dark, but the loading dock was lit (*id.* at 25-26). Mr. Stewart did not know what caused Plaintiff to fall but testified that the truck was usually dirty because they were working with "cardboard and plastic" (*id.* at 39). Ultimately, he testified he was not sure what caused Plaintiff to fall (*id.* at 40). Mr. Stewart likewise testified he did not remember seeing any pieces of wood on the truck (*id.* at 47).

Plaintiff argues he is entitled to summary judgment on his § 241(6) claim predicated on Industrial Code § 1.7(e)(2) which governs protection from tripping hazards. He also seeks summary judgment for a violation of Industrial Code § 23-1.30 which requires proper illumination for safe working conditions. In opposition, Defendants argue that Plaintiff has failed to establish his prima facie entitlement to summary judgment. Defendants argue that Plaintiff's accident did not occur in a "working area" as required under § 23-1.7(e)(2). This is because Plaintiff's accident occurred on a truck owned by his employer, not on a loading dock or anywhere else on the Premises managed by Defendants. Moreover, Defendants argue that the wood which allegedly caused Plaintiff to trip was integral to his work. Defendants further argue that Plaintiff provides only speculation regarding the cause of his accident. Defendants also argue at a minimum there is an issue of fact as to whether there was adequate lighting at the Premises. In reply, Plaintiff argues that the truck bed should be considered a "working area" for purposes of § 23-1.7(e)(2) because it was in constant use for the loading and unloading of construction material.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980];

Pemberton v New York City Tr. Auth., 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

B. Industrial Code § 1.7(e)(2)

The Court finds there are issues of fact which prevent granting summary judgment on Plaintiff's § 23-1.7(e)(2) claim. As a preliminary matter, there is conflicting testimony between Plaintiff and his co-worker Miguel Stewart. While Plaintiff is attributing the cause of his fall to broken pieces of wood, Mr. Stewart testified he did not see any wood on the truck. Moreover, the incident report authored makes no mention of any slip on any debris (*see* NYSCEF Doc. 48). The Worker's Compensation report states that Plaintiff "lost his footing" (NYSCEF Doc. 47). The medic report narrative likewise makes no mention of any slip (NYSCEF Doc. 49). Based on these varied accounts of how Plaintiff was injured, and viewing the facts in the light most favorable to the non-movant, the Court is unable to grant summary judgment on Plaintiff's § 23-1.7(e)(2) claim. There is an issue of fact as to whether debris even caused the accident. Moreover, if debris did cause the accident, there is an issue of fact as to whether the debris was caused by Plaintiff's own work and was therefore "an integral part of the work he was performing" (*Collins v Switzer Const. Group, Inc.*, 69 AD3d 407 [1st Dept 2010] citing *Appelbaum v 100* Church, 6 AD3d 310 [1st Dept 2004]). In any event, there is an issue of fact as to whether the truck, which was fully owned by Plaintiff's employer and was used merely to store materials, can be considered a "working area" within the meaning of § 1.7(e)(2) (*Smith v Hines GS Props., Inc.*, 29 AD3d 433 [1st Dept 2006]).

C. Industrial Code § 23-1.30

The Court likewise denies Plaintiff's motion for summary judgment under § 23-1.30. Here, there is insufficient evidence for the Court to find a violation of § 23-1.30. As a preliminary matter, there is no expert testimony measuring the lighting or replicating the conditions upon which Plaintiff allegedly fell. Second, there are conflicting accounts as to the lighting. The truck where Plaintiff was injured was located outside during the daytime and Mr. Stewart and Mr. Hartley testified that the lighting outside of the truck was sufficient. These conflicting accounts and the lack of any conclusive scientific evidence precludes the Court from granting summary judgment (*see generally Martin v Briggs*, 235 AD2d 192 [1st Dept 1997] ["key to summary judgment is 'issue-finding rather than issue determination.'"]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/20/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	x DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE