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 7/30/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 73, 75

were read on this motion to/for JUDGMENT - SUMMARY.

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"), Defendants' motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part.[1]

I. Background

For a more thorough recitation of the facts, the reader is referred to this Court's Decision and Order on Motion Sequence 002. For purposes of this motion, Defendants seek dismissal of Plaintiff's Labor Law § 200 claims and Plaintiff's Labor Law § 241(6) claims predicated on violations of Industrial Code §§ 23-1.7(e)(2), 23-1.7(d), and 23-1.30.

[1] Plaintiff has abandoned his Labor Law § 240(1) claim and therefore this cause of action is dismissed. Moreover, Plaintiff has not opposed dismissal of his Labor Law § 241(6) claims predicated on violations of OSHA regulation § 1926, and Industrial Code §§ 23-1.5, 1.7(a)(b)(c) and (e)(1), and 2.1. As these claims are abandoned, and for the sake of brevity, the Court omits any analysis or discussion of these claims from its Decision and Order.

Defendants argue that Plaintiff's § 23-1.30 claims must be dismissed because Plaintiff's accident location was illuminated by sufficient light. Defendants argue Plaintiff's § 23-1.7(d) claim should be dismissed because the wood which allegedly caused Plaintiff to trip was not a "foreign substance", but an integral part of the work performed. Defendants further argue Plaintiff's § 23-1.7(e)(2) claim should be dismissed because Plaintiff only speculates as to what caused him to fall. Finally, Defendants argue the Labor Law § 200 claim should be dismissed because Defendants did not supervise the means and methods of Plaintiff's work in a sufficient manner to establish liability.

In opposition, Plaintiff argues he has identified a wooden block as the cause of his fall and there is no speculation. Plaintiff further argues there exists a question of fact as to whether there was a violation of Industrial Code § 23-1.7(d) because the wooden block which Plaintiff allegedly fell on was not an integral part of the floor. Plaintiff asserts that his testimony as to the darkness of the truck raises an issue of fact as to whether Defendants violated § 23-1.30. Plaintiff argues there is an issue of fact as to whether Defendants violated Labor Law § 200 because there is a dispute as to whether Defendants had constructive notice of dangerous tripping hazards and insufficient lighting in the truck.

In reply, Defendants argue that there were several possible causes of Plaintiff's injury, which would invite speculation by the jury. Defendants assert that there was sufficient natural light for workers to complete their job and therefore the § 23-1.30 claim must be dismissed. Defendants argue the wooden shim was not a "foreign substance" but a byproduct of the ongoing work and therefore should not be considered a foreign substance under § 23-1.7(d). Defendants largely repeat their arguments as to why Plaintiff's § 23-1.7(e)(2) claim should be dismissed. Finally, as to the Labor Law § 200 claims, Defendants argue that they cannot be held liable simply because

they retained the right to inspect and review job safety and they reassert there was sufficient lighting.

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. Labor Law 241(6) Claims

i. Industrial Code § 1.7(e)(2)

In Motion Sequence 002, this Court denied Plaintiff's motion for summary judgment on his § 1.7(e)(2) claims due to the numerous issues of fact as to whether wooden debris caused Plaintiff to fall. For the same reasons there were issues of fact requiring denial of Plaintiff's motion for summary judgment, those same issues of fact warrant denying Defendants' motion for summary judgment on Plaintiff's § 1.7(e)(2) claim (*see also Bacova v Paramount Leashold, L.P.*, 223 AD3d 428 [1st Dept 2024] [inconsistent testimony as to what caused fall was issue of fact]).

ii. Industrial Code § 23-1.30

The Court finds there are issues of fact as to whether there was a violation of § 23-1.30. Just as Plaintiff failed to submit any data or measurements regarding lighting at the time of Plaintiff's accident, so too has Defendants failed to submit sufficient evidence to make out a *prima facie* entitlement to summary judgment. Even if Defendants did make a *prima facie* case without any sort of data as to lighting, the conflicting testimony as to the adequacy of lighting creates an issue of fact precluding summary judgment (*see also McKinney v Empire state Dev. Corp.*, 217 AD3d 574 [1st Dept 2023]).

iii. Industrial Code § 23-1.7(d)

Defendants' motion seeking to dismiss Plaintiff's Labor Law § 241(6) claim predicated on § 23-1.7(d) is denied. Pursuant to 12 NYCRR § 23-1.7(d), "[e]mployers shall not suffer or permit any employee to use a floor…which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

The Court of Appeals has recently revisited the application and scope of 12 NYCRR § 23-1.7(d) (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310 [2024]). In *Bazdaric*, in determining an unsecured plastic cover constituted a 'foreign substance' within the meaning of 12 NYCRR § 23-1.7(d), the Court of Appeals considered certain factors including whether the covering was integral to the work at hand and whether it was inherently slippery (*id.* at 314). In *Bazdaric*, the plaintiff, who was painting, slipped and fell on unsecured plastic covering an escalator (*id.*). The Court of Appeals found the plastic covering was a foreign substance because it was not a component of the escalator and was not necessary to the escalator's functionality (*id.* at 319). Further, the Court of

Appeals determined that the plastic covering was slippery upon contact and therefore constituted a slippery condition.

Here, there are issues of fact as to whether the alleged wood which caused Plaintiff to fall was integral to the work and inherently slippery. As a preliminary matter, a loose and unsecured piece of wood on the floor may cause an individual's footing to slip and therefore it may be inherently slippery. Nor was the loose wood a component of the truck or necessary to its functionality. Moreover, there are issues of fact as to where the wood debris came from and whether it was integral to the work at hand. If a jury finds that the wood debris fell from the A-frame carts which Plaintiff was loading onto the truck, then the debris may have been integral to the work. However, the record before the Court does not establish conclusively where the wood debris came from and thus the Court is unable to grant summary judgment (*see generally Martin v Briggs*, 235 AD2d 192 [1st Dept 1997] ["key to summary judgment is 'issue-finding rather than issue determination.'"]).

C. Labor Law § 200

The Court finds there are issues of fact which preclude granting Defendants summary judgment dismissing Plaintiff's Labor Law § 200 claims. Although Defendants may not have exercised the requisite supervision or control over Plaintiff, there is an issue of fact as to whether Defendants created a dangerous condition by failing to provide sufficient lighting for workers who were loading and unloading materials from trucks onto the premises (*see McKinney v Empire State Dev. Corp.*, 217 AD3d 574 [1st Dept 2023]). Moreover, Defendants have failed to establish that they lacked constructive notice of potentially inadequate lighting, as Mr. Hartley testified that he had supervised the loading and unloading of equipment at the loading dock on multiple occasions.

However there is no testimony that he ever inspected the lighting conditions in the truck to ensure workers were not loading and unloading material in dangerous levels of darkness.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment is granted in part and denied in part; and it is further

ORDERED that Defendants' motion for summary judgment is granted to the extent that Plaintiff's Labor Law § 240(1) claim is dismissed; and it is further

ORDERED that Defendants' motion for summary judgment is granted to the extent that Plaintiff's Labor Law § 241(6) claims predicated on violations of OSHA regulation § 1926, and Industrial Code §§ 23-1.5, 1.7(a)(b)(c) and (e)(1), and 2.1 are dismissed; and it is further

ORDERED that Defendants' motion for summary judgment is otherwise denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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		DENIED	x	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE