SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

PRESENT: **HON. PHILLIP HOM** **PART 14**

Justice

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PETER GONZALEZ,

Plaintiff,

- v -

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, BOARD OF EDUCATION OF CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, and CITY OF NEW YORK,

Defendants.

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INDEX NO. 720168/2019

MOTION DATE 04/11/2024

MOTION SEQ. NO. 005 & 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 85, 86, 87, 88, 89, 90, 91, 92, 107, 108, 109, 131

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 130, 132, 145, 146

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is ordered that plaintiff's motion for, among other things, partial summary judgment (Seq No 5), and defendants' motion for summary judgment (Seq No 6), are determined as follows:

Plaintiff Peter Gonzalez ("Plaintiff") commenced this action for personal injuries allegedly sustained on November 7, 2018, when he fell from a ledge while cleaning construction and demolition debris at Frederick Douglas VI Academy, located at 8-21 Bay 25th Street, Far Rockaway, New York (the "premises"). Plaintiff alleges that the defendants New York City Department of Education ("DOE") and City of New York ("City") owned the premises. Plaintiff further alleges that defendant Board of Education of City of New York ("BOE") owned, managed, maintained, or controlled the premises, and that defendant New York City School Construction Authority ("Construction Authority") (collectively "Defendants"), acting as general contractor, was responsible for completing work at the premises. The Construction Authority retained non-party Whitestone Construction Corp. ("Whitestone") for masonry services at the premises. Plaintiff, a laborer, was an employee of Whitestone.

The plaintiff testified that he had worked for Whitestone for eight months, performing demolition work, masonry tending, and cleaning. His foreman was "Merrick," and his supervisor was "Douglas," who both assigned him his duties as a laborer. The plaintiff had never heard of the defendants while working at the construction project and had no interactions with individuals he

believed to be employed by them. On the day of the alleged accident, the plaintiff stated that it had rained previously. He arrived at the site at 3:30 p.m. and was instructed by Merrick to clean the scaffold around the school. At 4:30 p.m., Merrick directed him to clean the schoolyard alone, using a broom and garbage bags provided by Whitestone and his own shovel. While cleaning the schoolyard, the plaintiff was the only worker present. He needed to clean an area in front of the school's main entrance, including a staircase, a landing, and a stone wall with a ledge about four-five feet high. To clean the ledge, the plaintiff climbed onto it, starting from the bottom of the stairs, and working his way up. After sweeping the landing, he attempted to clean the top of the wall. While standing on the ledge for about seven minutes, the plaintiff walked backward while sweeping. As he moved his right foot to step onto the ledge behind him, he did not realize the ledge had ended. With no support for his foot, he lost his balance, slipped, and fell backward onto the landing, sustaining injuries.

Rosaly Lalane (Lalane) testified on behalf of the Construction Authority. As a project officer, Lalane testified that the area in question was not within the scope of work, and no contract work was designated for that location. Additionally, she explained that workers must wear hardhats depending on the height and that once a certain height is reached, OSHA regulations mandate that workers be tied off or use a ladder. She further testified that if a person were to work from "that surface," they should have been provided with a ladder or platform and some kind of lighting. However, she also testified that she was confused as to why someone would need to climb the ledge, which she estimated to be about four feet high, to clean it.

As a result of the accident, the plaintiff commenced the instant action asserting causes of action for violations under Labor Law §§ 240 (1), 241 (6), 200, and common-law negligence against the defendants. The defendants assert affirmative defenses, among others, as to sole proximate cause and comparative fault.

Plaintiff now moves (Seq 5) for partial summary judgment on his Labor Law §§ 240 (1) and 241 (6) causes of action, dismissing the Defendants' affirmative defense as to sole proximate cause and comparative fault, and setting this matter down for a trial on damages. The Defendants move (Seq 6) for summary judgment dismissing the Plaintiff's complaint.

"[T]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *see also Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). The evidence must be viewed in a light most favorable to the non-moving party (*see Rivera v Town of Wappinger*, 164 AD3d 932, 935 [2d Dept 2018]: *Boulos v Lerner-Harrington*, 124 AD3d 709, 709 [2d Dept 2015]). Only if a prima facie demonstration has been made, does the burden shift to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of a material issue of fact which requires a trial of the action (*see Giuffrida*, 100 NY2d at 81; *Alvarez*, 68 NY2d at 320; *Roos v King Constr.*, 179 AD3d 857 [2d Dept 2020]). Thus, where the movant does not satisfy this initial burden, summary judgment is denied regardless of the sufficiency of the opposing papers (*see Roos*, 179 AD3d at 859; *Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

Labor Law § 240 (1)

The Court will first address the branches of the plaintiff's and defendants' motions for summary judgment as to liability on the Labor Law § 240 (1) cause of action.

Under Labor Law § 240 (1), "[a]ll contractors and owners … shall furnish or erect, or cause to be furnished or erected … 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" (*see also Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500 [1993]).

The statute "imposes a nondelegable duty [and absolute liability] upon owners and general contractors and their agents to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (*Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 728 [2d Dept 2020], quoting *Caiazzo v Mark Joseph Contr., Inc.*, 119 AD3d 718, 720 [2d Dept 2014]; *see also Caracciolo v SHS Ralph, LLC*, 226 AD3d 859, 860 [2d Dept 2024]; *Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]).

To recover on a cause of action pursuant to Labor Law § 240 (1), a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the accident (*see Caracciolo*, 226 AD3d at 860; *Ennis v Noble Constr. Group, LLC*, 207 AD3d 703, 704 [2d Dept 2022]; *Von Hegel*, 180 AD3d at 728)

To this end, claims under Labor Law § 240 (1) apply to both 'falling worker' and 'falling object' cases (*see Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]; *see also Castano v Algonquin Gas Transmission, LLC*, 213 AD3d 905, 907 [2d Dept 2023]). To establish liability for a "falling worker" case under Labor Law § 240 (1), the injured worker "must demonstrate the existence of an elevation-related hazard contemplated by the statute and a failure to provide the worker with an adequate safety device" (*Berg v Albany Ladder Co., Inc.*, 10 NY3d 902, 904 [2008], citing *Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 681-682 [2007]).

The argument that the plaintiff was the sole proximate cause of his injury, is established with proof that adequate safety devices were available to the plaintiff, that the plaintiff knew of that availability and was expected to use them, that the plaintiff chose not to use them for no good reason, and that the plaintiff would not have been injured had that choice not been made (*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]; *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]).

A. Plaintiff's Motion

Here, Plaintiff fails to establish, prima facie, entitlement to judgment as a matter of law as to liability alleging violation of Labor Law § 240 (1) cause of action. Plaintiff testified that he was instructed by his foreman, Merrick, to stand on a four-foot ledge while cleaning. However, this is based solely on the Plaintiff's testimony about Merrick's instructions. In the absence of

corroborating testimony or sworn statement from Merrick, the court finds that this statement constitutes inadmissible hearsay. A party may not rely on inadmissible hearsay to meet its initial burden on a summary judgment motion (*see Vaughn v Westfield, LLC,* 216 AD3d 849, 850 [2d Dept 2023]; *GMP Fur Trade Fin., LLC* v *Brenner,* 169 AD3d 649, 650-51 [2d Dept 2019]; *Kramer v Oil Servs., Inc.,* 56 AD3d 730, 730 [2d Dept 2008]).

Additionally, to recover under Labor Law § 240 (1), the plaintiff must establish that he stood on the ledge because it was necessary to do so in order to carry out the task he had been given and that there is a safety device of the kind enumerated under this section that could have prevented his fall, because "liability is contingent upon . . . the failure to use, or the inadequacy of such a device" (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339-340 [2011], quoting *Narducci*, 96 NY2d at 267; *see also Broggy*, 8 NY3d at 681). Plaintiff fails to offer admissible evidence to establish that it was necessary for him to stand on the ledge in order to carry out his task. While that assertion is enough for the plaintiff to ward off summary judgment, it is not sufficient by itself for the plaintiff to win on summary judgment (*see Ortiz*, 18 NY3d at 339-340; *Vaughn*, 216 AD3d at 850).

Furthermore, Plaintiff's argument that Defendants' failure to provide adequate safety devices, thus causing the plaintiff's fall, is insufficient to establish entitlement to summary judgment (*see Berg*, 10 NY3d at 904). Specifically, Plaintiff argues that he should have been provided a ladder or a platform to aid in cleaning on the ledge. Plaintiff relies on Lalane's testimony where she testified that if the person was to work from "that surface," they should have been given a ladder or a platform. However, she also testified that the stone was not that high, and that she is "a little bit confused as to why this person would need to get on top of this was to clean it if this is about, I will assume probably four feet." Thus, the court finds that issues of fact exist as to whether the Defendants' failure to provide adequate safety devices would have prevented the Plaintiff's fall.

Next, to the extent Plaintiff seeks to dismiss the Defendants' affirmative defense, as discussed above, triable issues of fact remain as to sole proximate cause precluding summary judgment in favor of the plaintiff. Therefore, the Court denies this branch of Plaintiff's motion for partial summary judgment.

B. Defendants' Motion

Here, Defendants fail to establish, prima facie, entitlement to judgment as a matter of law dismissing the cause of action alleging a violation of Labor Law § 240 (1). The courts must take into account the practical differences between "the usual and ordinary dangers of a construction site, and . . . the extraordinary elevation risks envisioned by Labor Law § 240 (1)" (*Ortiz,* 18 NY3d at 339, quoting *Toefer v Long Is. R.R.*, 4 NY3d 399, 407 [2005]). However, while a worker may reasonably be expected to protect himself by exercising due care in stepping down from a ledge, here, the plaintiff testified that his task of cleaning the demolition debris on the ledge, required him to stand onto the ledge, four feet above the ground. This testimony contradicts Lalane's testimony that the ledge, which was four feet high, did not require the plaintiff to get on top of it to clean. As such, triable issues of fact exist as to whether it was necessary for the Plaintiff to climb onto the ledge to carry out his task.

Additionally, Defendants fail to demonstrate that no safety device of the kind enumerated in the statute would have prevented Plaintiff's fall under the circumstances, as Lalane testified that the Plaintiff should have been given a ladder or a platform. Thus, for the reasons previously stated, the Court finds that issues of fact exists as to whether Defendants' failure to provide adequate safety devices would have prevented the Plaintiff's fall (*see Kandatyan v 400 Fifth Realty, LLC*, 155 AD3d 848, 851 [2d Dept 2017]).

Lastly, Defendants do not identify a proper alternative safety device and present no evidence of Plaintiff's awareness of such device or the expectation that he use it, so they fail to demonstrate he was the sole proximate cause of his injury (*see Santiago v Hanley Group, Inc.*, 216 AD3d 833, 834 [2d Dept 2023]; *Lochan v H & H Sons Home Improvement, Inc.*, 216 AD3d 630, 633 [2d Dept 2023]; *Poalacin v Mall Props., Inc.*, 155 AD3d 900, 907 [2d Dept 2017]). Nonetheless, any argument that Plaintiff himself was to blame for his fall because he should have been more careful, or not walked backwards, touches on the issue of comparative negligence, which is not a defense to a Labor Law § 240 (1) claims (*see Hoyos v NY-1095 Ave. of the Ams., LLC*, 156 AD3d 491, 496 [1st Dept 2017]). Therefore, the Court denies this branch of the Defendants' motion for summary judgment.

Labor Law § 241 (6)

The court will now address the branches of Defendants' and Plaintiff's motions for summary judgment on the cause of action alleging a violation of Labor Law § 241 (6). "Labor Law § 241 (6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. To establish liability under Labor Law § 241 (6), a plaintiff or claimant must demonstrate that [their] injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case" (*see Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 737 [2d Dept 2023], quoting *Guaman v 178 Ct. St., LLC*, 200 AD3d 655, 657-658 [2d Dept 2021]). Critically, however, the predicate Industrial Code provision must set forth specific safety standards (*see St. Louis v Town of N. Elba*, 16 NY3d 411, 414 [2011]; *Rodriguez v 250 Park Ave., LLC*, 161 AD3d 906 [2d Dept 2018]; *Hricus v Aurora Contrs., Inc.*, 63 AD3d 1004, 1005 [2d Dept 2009]).

At the outset, in his pleadings, the Plaintiff predicates his Labor Law § 241 (6) claim upon alleged violations of 12 NYCRR 23-1.5 (a) – (c), 23-1.6, 23-1.7 (b) (1), 23-1.7 (d), 23-1.7 (e) (1) – (2), 23-1.8 (c) (1), 23-1.22, 23-1.23, 23-1.30, 23-1.32, 23-1.33, 23-1.33 (a), 23-2.1 (a) and (b), 23-3.3, 23-3.3 (f) – (g), 23-3.3 (1), 23-4, and 23-4.2. Notably, Plaintiff's motion sought liability solely under 12 NYCRR 23-1.30, while his opposition to the defendants' motion addressed 12 NYCRR 23-1.30, 23-1.7 (d), and 23-1.7 (e) (1) – (2). Thus, the court determines that the Plaintiff has abandoned his reliance on provisions of the above Industrial Code sections, other than 12 NYCRR 23-1.30, 23-1.7 (d), and 23-1.7 (e) (1) – (2), by failing to address those provisions in his opposition to that branch of defendants' separate motion for summary judgment (*see Cruz*, 218 AD3d at 737; *Torres v Accumanage, LLC*, 210 AD3d 718, 722 [2d Dept 2022]; *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]). Additionally, although Plaintiff also alleged violations of various sections of the Occupational Health and Safety Administration (OSHA) regulations, it is well settled that liability under Labor Law § 241 (6) cannot be based on

OSHA violations (*see Wetter v Northville Indus. Corp.*, 185 AD3d 874, 876 [2d Dept 2020]; *Marl v Liro Engrs., Inc.*, 159 AD3d 688, 689 [2d Dept 2018]). Therefore, the court's determination will be limited to 12 NYCRR 23-1.30, 23-1.7 (d), and 23-1.7 (e) (1) – (2).

A. 12 NYCRR 23-1.30

12 NYCRR 23-1.30 provides: "Illumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10-foot candles in any area where persons are required to work nor less than five-foot candles in any passageway, stairway, landing or similar area where persons are required to pass." 12 NYCRR 23-1.30 is applicable and sufficiently specific to support a claim pursuant to Labor Law § 241 (6) (*see Herman v St. John's Episcopal Hosp.*, 242 AD2d 316, 317 [2d Dept 1997]; *Dickson v Fantis Foods*, 235 AD2d 452, 452-453 [2d Dept 1997]).

Here, Plaintiff testified that the area where he was working was outside, had no lighting, and it was after sunset. Lalane testified that, based on the photos of the accident site, lighting should have been provided. As such, based on Plaintiff's and Lalane's testimony, Plaintiff has established his prima facie burden on his Labor Law § 241 (6) cause of action as is predicated on an alleged violation of 12 NYCRR 23-1.30.

In opposition and in support of their motion, Defendants rely on an affidavit from Whitestone's superintendent, Douglas Fonden ("Fonden"). Fonden affirms that it was daylight, and that he received no complaints about the lighting in the subject location. The Defendants also submit inspection reports with photographs of the construction project at the premises showing daylight conditions. However, the Court notes that none of the photographs in this inspection report depict the ledge and staircase where the alleged accident occurred. In fact, Defendants' photographs in the incident report depict the subject ledge and staircase without adequate lighting conditions. As such, the court finds that the defendants failed to raise an issue of fact and failed to make a prima facie showing that the lighting at the job site sufficiently complied with the requirements of 12 NYCRR 23-1.30 (*see Favaloro v Port Auth. of N.Y. & N.J.*, 191 AD3d 524, 525 [1st Dept 2021]; *Fritz v Sports Auth.*, 91 AD3d 712, 713 [2d Dept 2012]). Therefore, the Court grants this branch of the Plaintiff's motion for partial summary judgment, and denies this branch of the Defendants' motion for summary judgment.

B. 12 NYCRR 23-1.7 (d)

In support of their motion, Defendants assert that the statute is inapplicable and was not violated because the Plaintiff does not allege that he slipped. 12 NYCRR 23-1.7 (d) provides: "Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform, or other elevated working surface 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." This section is sufficiently specific to act as a predicate for Labor Law § 241 (6) liability (*see Zukowski v Powell Cove Estates Home Owners Assn., Inc.*, 187 AD3d 1099, 1103 [2d Dept 2020]).

Contrary to Defendants' contentions, Plaintiff testified that the ground was wet from rain the night before, that he fell, and that he "lost [his] footing. [He] slipped. [His] left foot slipped." Inasmuch as this section applies to slipping hazards, the Defendants failed to establish, prima facie, that 12 NYCRR 23-1.7 (d) is inapplicable. Therefore, the Court denies this branch of the defendants' motion for summary judgment.

C. 12 NYCRR 23-1.7 (e) (1) – (2)

In support of their motion, Defendants assert that 12 NYCRR 23-1.7 (e) is inapplicable because, among other things, Plaintiff did not trip. 12 NYCRR 23-1.7 (e) (1) – (2) apply to tripping hazards and are "sufficiently specific to support a claim pursuant to Labor Law § 241 (6)" (*Lopez v New York City Dept. of Envtl. Protection*, 123 AD3d 982, 984 [2d Dept 2014]; *Jara v New York Racing Assn., Inc.*, 85 AD3d 1121, 1123 [2d Dept 2011]).

Here, as articulated previously, Plaintiff testified that he "slipped," that he fell, and that his "left foot slipped." Based upon the Plaintiff's testimony, the court finds that Plaintiff did not trip. Inasmuch as these subsections apply to tripping hazards, defendants have demonstrated that 12 NYCRR 23-1.7 (e) (1) – (2) are inapplicable (*id*., *see Zastenchik v Knollwood Country Club*, 101 AD3d 861, 863 [2d Dept 2012]).

In opposition, Plaintiff contends that he testified that it had rained previously, and the area was covered with mud, rocks, and demolition debris, and those conditions caused him to slip and fall. The Plaintiff further contends that the Defendants failed to provide any requisite evidence that the Plaintiff's work area was free of slipping and tripping hazards. The court finds that the Plaintiff failed to proffer any admissible evidence that the Plaintiff tripped as contemplated by the statute. Moreover, Plaintiff's argument that the Defendants failed to show that the subject location was free of slipping and tripping hazards cannot be sustained by pointing out gaps in the Defendant's proof (*see Cruz v 1142 Bedford Ave., LLC*, 192 AD3d 859, 863 [2d Dept 2021]; *V.W. v Middle Country Cent. Sch. Dist. at Centereach*, 175 AD3d 638, 639 [2d Dept 2019]; *Iannucci v Kucker & Bruh, LLP*, 161 AD3d 959, 960 [2d Dept 2018]). As such, the Plaintiff fails to raise an issue of fact as to whether 12 NYCRR 23-1.7 (e) (1) – (2) are applicable. Therefore, the Court grants this branch of the defendants' motion for summary judgment.

Labor Law § 200 and Common-Law Negligence

Lastly, the Court will address the branch of the Defendants' motion for summary judgment on the causes of action alleging a violation of Labor Law § 200 and common-law negligence. In support of their motion, Defendants claim that they are entitled to dismissal of these causes of action because they did not control the means and method of Plaintiff's work, and had no notice of the alleged dangerous condition.

Labor Law § 200 "is a codification of the common-law duty to provide workers with a safe work environment" (*Robles v Taconic Mgt. Co., LLC*, 173 AD3d 1089, 1092 [2d Dept 2019]; *see also Ortega v Puccia*, 57 AD3d 54, 60 [2d Dept 2008]). "Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is

performed" (*Robles*, 173 AD3d at 1092, quoting *Ortega*, 57 AD3d at 61). "To be held liable under Labor Law § 200 for injuries arising from the manner in which work is performed, a defendant must have the authority to exercise supervision and control over the work" (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]; *see also Cruz*, 218 AD3d at 736-737). "Where a claim is based on an alleged dangerous condition on the premises, an owner or contractor is liable where it created the dangerous condition or had actual or constructive notice of its existence" (*Gargan v Palatella Saros Bldrs. Group, Inc.*, 162 AD3d 988, 989 [2d Dept 2018], quoting *Niewojt v Nikko Constr. Corp.*, 139 AD3d 1024, 1025 [2d Dept 2016]; *see also Mendez v Vardaris Tech, Inc.*, 173 AD3d 1004, 1005 [2d Dept 2019]). "A defendant has constructive notice of a defect when it is visible and apparent, and has existed for a sufficient length of time before the accident such that it could have been discovered and corrected" (*Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d 613, 617 [2d Dept 2023]). A defendant will be found to have "failed to establish that they lacked constructive notice of the dangerous condition that caused plaintiff's injury, [if] they submitted no evidence of the cleaning schedule for the work site or when the site had last been inspected before the accident" (*Spencer v Term Fulton Realty Corp*., 183 AD3d 441, 443 [1st Dept 2020]).

Here, Defendants failed to establish their prima facie entitlement to judgment as a matter of law dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence as asserted against them. To the extent that Plaintiff's claims are based on the "means and methods" liability standard, the Defendants, based on the Plaintiff's testimony, established that they did not have the authority to supervise or control the means and methods of the plaintiff's work (*see Samperi v City Safety Compliance Corp*., 225 AD3d 723, 725 [2d Dept 2024]; *Rodriguez v Mendlovits*, 153 AD3d 566, 569 [2d Dept 2017]).

However, with regards to the "dangerous condition" liability standard, the Defendants failed to establish, prima facie, that they lacked constructive notice. Notwithstanding the admissibility of the inspection report and the incident report, although the Defendants submit an inspection report performed of the construction project, it does not depict the subject location where the alleged accident occurred in comparison to the incident report. Thus, the Defendants failed to submit sufficient admissible evidence as to the last time they inspected the subject area, or otherwise demonstrate that the alleged defective condition could not have been discovered upon a reasonable inspection (*see Bessa v Anflo Indus., Inc.*, 148 AD3d 974, 978 [2d Dept 2017]). Additionally, the inspection report of the construction project is insufficient to meet their burden on their motion for summary judgment as "[m]ere reference to general cleaning [or inspection] practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice" (*Griffin v PMV Realty, LLC*, 181 AD3d 912, 913 [2d Dept 2020]*; see also Samperi*, 225 AD3d at 725; *Spencer*, 183 AD3d at 443). Therefore, the Court denies this branch of the Defendants' motion for summary judgment.

In accordance with the foregoing, it is hereby **ORDERED** that the branch of Plaintiff's motion (Seq 5) for partial summary judgment against the Defendants, based on their alleged violation of Labor Law § 241 (6) as predicated upon Industrial Code section 23-1.30, is granted, and the branch of the Defendants' motion (Seq 6) dismissing Plaintiff's Labor Law § 241 (6) as predicated upon Industrial Code sections 23-1.30 is denied; and it is further

ORDERED that the remaining branches of Plaintiff's motion (Seq 5) for partial summary judgment are denied; and it is further

ORDERED that the branch of the Defendants' motion (Seq 6) for summary judgment dismissing the Plaintiff's Labor Law § 241 (6) claim as predicated upon Industrial Code sections 23-1.5 (a) – (c), 23-1.6, 23-1.7 (b) (1), 23-1.7 (e) (1) – (2), 23-1.8 (c) (1), 23-1.22, 23-1.23, 23-1.32, 23-1.33, 23-1.33 (a), 23-2.1 (a) and (b), 23-3.3, 23-3.3 (f) – (g), 23-3.3 (1), 23-4, and 23-4.2 is granted; and it is further

ORDERED that the remaining branches of Defendants' motion (Seq 6) for summary judgment are denied; and it is further

ORDERED that any requested relief and/or remaining contentions not expressly addressed herein have nonetheless been considered and are hereby expressly rejected; and it is further

ORDERED that Plaintiff shall serve, via NYSCEF, a copy of this Order with Notice of Entry upon all parties (Seq 5), within seven (7) days from the date of entry; and it is further

ORDERED that Defendants shall serve, via NYSCEF, a copy of this Order with Notice of Entry upon all parties (Seq 6), within seven (7) days from the date of entry.

This constitutes the Decision and Order of this Court.

Dated: September 27, 2024

PHILLIP HOM, J.S.C.

FILED
10/1/2024
COUNTY CLERK
QUEENS COUNTY