

Torres v RP1185 LLC

2024 NY Slip Op 34795(U)

November 25, 2024

Supreme Court, Queens County

Docket Number: Index No. 709759/2020

Judge: Leonard Livote

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
COMMERCIAL DIVISION

Present: HONORABLE LEONARD LIVOTE

Justice

IA Part 33/CDA

-----X

ERICK TORRES,

Plaintiff(s),

-against-

RP1185 LLC, LENDLEASE (US)
CONSTRUCTION INC.,
J.F. LOMMA, INC. and
GLOBAL PRECAST INC.

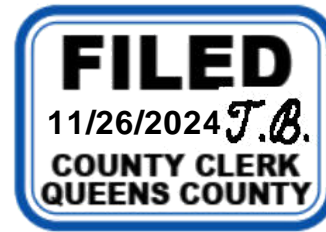
Defendant(s).

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Index No.709759/2020

Motion Date: 5/9/2023

Motion Seq. Nos.: 2 and 3



The following papers numbered below read on (1) this motion (sequence 2), by defendants RP1185 LLC (“RP1184”), Lend Lease (US) Construction LMB Inc. s/h/a LendLease (US) Construction Inc. (“Lend Lease”) and Global Precast Inc. (“Global”), for an Order, pursuant to CPLR §3212, dismissing all claims against defendants RP1185, Lend Lease and Global, and read on (2) this motion (sequence 3), by defendant J.F. Lomma Inc. of New Jersey s/h/s J.F. Lomma (“Lomma”) for an Order: (a) Pursuant to CPLR §3212, granting Lomma summary judgment dismissing the First Cause of Action alleging Common Law Negligence against it as Lomma owed no duty to plaintiff because it merely transported Global trailers to the construction site; (b) Pursuant to CPLR §3212 granting Lomma summary judgment dismissing the Second, Third and Fourth Causes of Action alleging Labor Law §§ 240(1), 241(6) and 200 claims against it as Lomma did not have the authority to control the activity bringing about the incident; (c) Pursuant to CPLR §3025(b) granting Lomma leave to amend its Verified Answer to assert Cross-Claims against defendants RP1185, Lend Lease and Global for Common Law Indemnity and for Contribution.

Sequence #2

Papers
Numbered

Notice of Motion - Affidavits - Exhibits.....

E79 - 95

Order to Show Cause - Affidavits - Exhibits.....	
Notice of Cross Motion - Affidavits - Exhibits..	
Answering Affidavits - Exhibits.....	E100, 104
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<u>Sequence #3</u>	<u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	E62 - 78
Order to Show Cause - Affidavits - Exhibits.....	
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Answering Affidavits - Exhibits.....	E103, 105 - 106
Reply - Affidavit - Exhibits.....	E107
Memorandum of Law.....	E102

Upon the foregoing papers, it is ordered that these motions are determined as follows.

PROCEDURAL BACKGROUND

On July 10, 2020, plaintiff commenced this action for personal injuries sustained by plaintiff Erick Torres in an accident at a construction site located at 1185 Broadway, New York, New York allegedly caused by the negligence of defendants. The complaint alleges four causes of action: (1) Common Law Negligence; (2) Violations of Labor Law §241(6); (3) Violations of Labor Law §240(1); and (4) Violations of Labor Law §200. Defendants RP1185, Lend Lease and Global appeared and answered on September 9, 2020 and defendant J.F. Lomma appeared and answered on October 28, 2020.

By stipulation filed October 27, 2020, plaintiff Erick Torres and defendant Lomma agreed that plaintiff would discontinue the Second, Third and Fourth Causes of Action as against defendant Lomma.

Defendants RP11855, Lend Lease and Global move for summary judgment (motion sequence 2) on several grounds including that (1) defendants RP11855, Lend Lease and Global did not direct or control the work of plaintiff or his employer non-party Jemco Erectors (“Jemco”); (2) defendants RP1185 and Lend Lease did not unload the precast panels and the lever binder and chains securing it; (3) defendants RP1185 and Lend Lease did not transport the precast panels to the site, secure them to the trailer or own the trailer; (4) Jemco had the responsibility for unloading the precast concrete panels and releasing the panels from the flatbed trailer; (5) Defendant Global did not have any employees at the 1185 Broadway project; and (6) The load on the trailer was Lomma’s responsibility once it left Global’s yard.

In support of the motion, defendants RP1185, Lend Lease and Global submit, *inter alia*, the pleadings, a Statement of Material Facts and the deposition transcripts of (1) plaintiff Erick Torres, (2) Tony Di Roma, employed as a project coordinator for Global, (3) Darren Gould, employed as a supervisor for Global, (4) Dominick Peluso, a superintendent for the general contractor Lend Lease, (5) Graciano Guerrero, a truck driver and rigger for Lomma.

In addition, defendants RP1185, Lend Lease and Global maintain that Labor Law §241(6) is inapplicable because plaintiff was not engaged in a hoisting or rigging operation at the time of the incident and therefore the Industrial Code sections cited by plaintiff were not violated. Defendant Global claims that it is not a proper “labor law” defendant because it did not have the power to enforce safety standards at the job site. Plaintiff opposes the motion, in part, as described *infra*.

Defendant Lomma opposes co-defendants’ motion solely to the extent of objecting to Item 14 in their Statement of Material Facts which states that defendant Lomma had the responsibility for the precast panels on the trailer once the trailer left Global’s yard in Canada. Defendant Lomma maintains that defendant Global’s witness, Tony DiRoma, testified that the precast panels are secured to Global trailers by Global employees in the Global facility in Canada and the trailers are trucked to a facility in New Jersey where Lomma’s trucks are then attached to the Global trailers and brought to the project site.

Plaintiff does not oppose the motion dismissing the Second Cause of Action against all defendants conceding that the facts as alleged do not support a cognizable Labor Law §240(1) claim. Plaintiff does not oppose the motion dismissing the First and Fourth Causes of Action alleging Common Law Negligence and a violation of Labor Law §200, as asserted against defendants RP1185 and Lend Lease only. Plaintiff does not oppose the motion for summary judgment dismissing the Third Cause of Action alleging a violation of Labor Law §241(6) based on Industrial Code 2.2(a), 23-6.1(b), OSHA, New York City Building Codes and the Federal Motor Carrier Safety Regulations.

Plaintiff does oppose dismissal of the Third Cause of Action based on violations of the Industrial Code (12 NYCRR) §§ 23-6, 23-6.1, 23-6.1(c), 23-6.1(d), 23-6.2, 23-6.2(a)-(d), 23-8, 23-8.1(b), 23-8.1(d), 23-8.1(e), 23-8.1(f), 23-8.1(k), and 23-8.1(1).

Defendant Lomma moves for summary judgment, seeking dismissal of the complaint asserted against it and moves to amend its Verified Answer to add a Cross-Claim against defendants RP1185, Lend Lease and Global, for Common Law Indemnity and for Contribution. Defendant Lomma claims that it owed no duty to plaintiff as Lomma did not agree to, nor perform any work or services of any kind at the project other than deliver trailers to the site. Further defendant Lomma argues that there is no evidence that defendant Lomma’s driver, Graciano Guerrero, ever tightened the binders

on the chains attaching the Global precast panels to the Global trailers. Thus, according to defendant Lomma, plaintiff's Negligence claim and Labor Law §§200, 240(1) and 241(6) claims against Lomma must be dismissed against it.¹

FACTUAL BACKGROUND

The construction site premises is owned by defendant RP1185. Defendant Lend Lease was the general contractor for the project, a Ritz Carlton Hotel. According to the testimony of defendant Lend Lease's superintendent Dominick Peluso, he was in charge of the concrete super structure operation for the building. His responsibilities included coordinating activities among the trades, making sure work is being done as it should, quality control, on time and on budget. He oversaw overall supervision for the job site and would walk the job site on a day-to-day basis. If work was not being performed in a safe manner, he had the authority to stop the activity. Lend Lease subcontracted with defendant Global, a Canadian company, to manufacture, supply, deliver and install architectural precast concrete wall panels for the construction project.

Defendant Global uses its trailers to load the panels and it hires trucking companies to make the deliveries. Global subcontracted the trucking, installation and delivery of the concrete panels to non-party Jemco, plaintiff Erick Torres' employer. Jemco subcontracted with defendant Lomma, a New Jersey Corporation, to transport the panels from a Lomma facility in New Jersey to the project site. Global employees secured the panels with chains on top and snap binders on the side and they inspected the trailers to ensure the panels were safe to be transported. The trailers, connected to tractors, were driven from Canada to defendant Lomma's facility in New Jersey. It is unclear from the evidence submitted which entity was responsible for driving the flatbed trucks from Global's facility in Canada to Lomma's facility in New Jersey.

Defendant Global's project coordinator, Tony Di Roma, testified that his responsibilities for this construction site were to run it from start to finish, including overseeing the day-to-day activities involved in terms of management, scheduling and fabrication. He testified that Global did not have actual employees at the site, only a quality control person who would come down two to three times a week. Global's shipping foreman, Darren Gould testified that he supervises workers and coordinates the trucks picking up Global trailers and that he is responsible for overseeing and securing the concrete panels with chains and binders to Global's trailers. He testified that the panels are chained down and secured with binders. He testified a pipe is used with the lever action binders and that he trains his employees to "keep the pipe to your side" because it is possible for the pipe to rebound and strike a worker and it is possible for the binder itself to pop off when a pipe is used. Darren Gould testified that how a concrete panel load is secured to the trailer is made by Global and how that load is unsecured

¹ By Stipulation filed October 27, 2020, plaintiff discontinued the Second, Third and Fourth Causes of Action against defendant Lomma.

depends on how it was secured. Mr. Gould testified that when the time the trailer is picked up in Canada, the panels are secure, and the driver of the trailer is not responsible for securing the concrete panels but that the driver does a circle check to be sure that the trailer is in good order and the chains are tight. It is his understanding that most drivers will re-adjust the load when trailers are switched to different trucks and if the chains are not tight, the driver tightens them. Mr. Gould supervised the loading of precast panels to the trailer that was used at this Ritz Carlton project.

It is undisputed that defendant Lomma's tractors driven by its drivers brought the Global trailers from New Jersey to the construction site. As part of its duties, Lomma ensured that the panels were secured so that they did not move or shift off the trailer. Mr. Graciano Guerrero testified that he is employed by defendant J.F. Lomma as a rigger and truck driver and, on January 10, 2020, he transported a trailer for Lomma carrying Global concrete panels secured with chains on top and snap binders on the side.. He testified he had no recollection of that specific date. His duties as a truck driver included making sure the equipment is safe to drive on the road, making sure the load is secure and tied down so it will not move and transporting the load. If a load is tied down, he ensures that the tie downs are sufficiently tight. He testified that if a load is already secured, he still makes sure the load is tied properly. He does not change the securing mechanism although he might "release the snap and the binder and retie it" but not change the position or the setting of the tie downs. He further testified regarding two types of binders: a snap binder for which a load bar or pipe is used and which requires strength because it can snap back if the load is secured tightly, and a ratchet binder which is easier to use, is safer and requires tying. According to this witness, once or twice, he has unsecured a snap binder and resecured it tighter, using a load bar. Once at the construction site at 1185 Broadway, New York, New York, he would back the trailer up to the designated spot and the riggers would get on the flatbed and take the binding off and either do the rigging then or later.

In the affidavit of Graciano Guerrero, submitted in support of Lomma's motion for summary judgment, he avers that the loads from Global always came to the Lomma facility in New Jersey already secured by Global. He further avers that he does not remember ever tightening any of the snap binders on the loads of Global precast concrete panels that he delivered to the site.

Once at the construction site, Jemco received and unloaded the precast panels from the trailers and hoisted them for installation. Plaintiff was employed by Jemco as a rigger. According to plaintiff Erick Torres' testimony, on January 10, 2020, at 10:30 p.m., he and his partner were releasing and rigging the concrete panels secured to the flat-bed trailer at the construction project in order to hoist them to the twentieth (20th) floor, or thereabouts. Plaintiff testified that releasing the precast panels from the truck was part of his rigging duties in his employment with Jemco. Plaintiff states that working as a team, his partner had just put the cable rigging from the crane on the panel, put tension on the cable and plaintiff loosened the tension of the chains and binders which attached the

panels to the flatbed. This had been done several times already that night prior to the accident. Plaintiff testified that he pulled the lever with his hand to release the pressure on the panel and he alleges that he was struck with something and lost consciousness. Releasing the panels is the last thing plaintiff remembers about the incident. He did not recall using a pipe to loosen the lever that day. At his deposition, plaintiff stated that the use of lever binders was dangerous. He said the mechanism to loosen and tighten the tension on the chain with a pipe is hard to control and when the lever is moved, and the tension is released, the pipe has a tendency to “pop” and swing rapidly with great force due to the release of pressure. Plaintiff opined that the use of a ratchet binder was easier and much safer.

Lend Lease’s superintendent Dominick Peluso was on site the night of the accident and when he arrived at the location, plaintiff was on the ground unconscious. He testified he came to learn that plaintiff got hurt taking the chains off when he was hit with a breaker bar. According to Mr. Peluso, a breaker bar is a tool used to tighten or loosen chains used to secure a load.

SUMMARY JUDGMENT

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tending sufficient evidence to demonstrate the absence of any material issues of fact” (*Matter of Aaron Manor Rehabilitation & Nursing Ctr., LLC v Zucker*, 42 NY3d 46, 57 [2024] quoting *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). 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 (*Alvarez v Prospect Hospital*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure of the movant to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966 [1988]; *Winegrad v New York Med. Ctr.*, 64 NY2d 851 [1985]).

Common Law Negligence and Labor Law § 200:

Based on the above, the First Cause of Action alleging Common Law Negligence remains only against defendant Global and defendant Lomma and the Fourth Cause of Action alleging a violation of Labor Law § 200 remains only as against defendant Global.

Defendant Global argues that it should be granted summary judgment as it did not direct or control Jemco Erector’s work, including plaintiff’s releasing of the precast panels and the unloading of the precast panels and as it did not have any employees at the project site. Global contends that the load on the trailer was the responsibility of defendant Lomma once it left Global’s yard. It argues that defendant Global is not a

proper labor law defendant because it did not have the power to enforce safety standards at the job site. Plaintiff opposes the motion.

Defendant Lomma argues that it is entitled to summary judgment as, it claims, there is no dispute that Lomma's role was limited to merely providing tractors to transport the Global trailers to the project site, that it had no on-site presence and that it owed no duty to plaintiff. Defendant Lomma maintains that it provided no labor or supervision concerning the performance of any construction work at the project. Plaintiff opposes the motion.

Labor Law § 200 "is the codification of the common-law duty of an owner or general contractor to provide construction site workers with a safe place to work" (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; (*Saitta v Marsah Props., LLC*, 211 AD3d 1062, 1063 [2d Dept 2022]). 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 (*see Lombardi v Stout*, 80 NY2d 290, 295 [1992]; *Guallpa v Canarsie Plaza, LLC*, 144 AD3d 1088, 1092 [2d Dept 2016]). A defendant has the authority to supervise or control the work under Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed (*Titov v V&M Chelsea Prop., LLC*, 230 AD3d 614, 617 [2d Dept 2024]; *Ortega v Puccia*, 57 AD3d 54, 62 [2d Dept 2008]).

Liability on common-law negligence and Labor Law § 200 causes of action "generally falls into two broad categories: instances involving the manner in which the work is performed, and instances in which workers are injured as a result of dangerous or defective premises conditions at a work site" (*Cantalupo v Arco Plumbing & Heating, Inc.*, 194 AD3d 686, 689 [2d Dept 2021]). "When there are allegations involving the manner in which the work was performed, a property owner will be held liable only if it possessed the authority to supervise or control the means and methods of the work" (*Cantalupo v Arco Plumbing & Heating, Inc.*, 194 AD3d at 689, citing *Moscatti v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 720 [2d Dept 2019]). "The determinative factor is whether the party had the right to exercise control over the work, not whether it actually exercised that right" (*Kavouras v Steel-More Contr. Corp.*, 192 AD3d 782, 784 [2d Dept 2021]). "Unless a defendant has supervisory control and authority over the work being done when the plaintiff is injured, there is no statutory agency conferring liability under the Labor Law" (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 293 [2003]).

A defendant that is not an owner, general contractor, or agent pursuant to the Labor Law with regard to a plaintiff's work may nonetheless be held liable to the plaintiff under a theory of Common Law Negligence where the work defendant performed created the condition that is alleged to have caused plaintiff's injury (*Delaluz v Walsh*, 228 AD3d 619, 622 [2d Dept 2024]; *Sledge v S.M.S. Gen. Contrs., Inc.*, 151 AD3d 782, 783 [2d

Dept 2017]). An award of summary judgment in favor of a subcontractor dismissing a negligence claim may be improper as a subcontractor “may be held liable for negligence where the work it performed created the condition that caused the plaintiff’s injury even if it did not possess any authority to supervise and control the plaintiff’s work or work area” (*Cando v Ajay Gen. Contr. Co. Inc.*, 200 AD3d 750, 753 [2d Dept 2021] quoting *Poracki v St. Mary’s R.C. Church*, 82 AD3d 1192, 1195 [2d Dept 2011]).

Here, based on the deposition testimony, defendant Global established, *prima facie*, that it did not have employees at the site and did not direct or control Jemco’s work, including plaintiff’s releasing of the precast panels and the unloading of the precast panels. Defendants have demonstrated that defendant Global Precast is not a statutory agent of Lend Lease and thus is not liable to plaintiff under Labor Law §§200, 241(6) as it did not have the authority to supervise and control the work at the construction site out of which the claims arose. The Labor Law §200 claim has been discontinued against defendant Lomma. In opposition to the motion seeking dismissal of the Second Cause of Action alleging a violation of Labor Law §200, plaintiff failed to raise a triable issue of fact regarding Global’s supervision or control (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Navarra v Hannon*, 197 AD3d 474, 477 [2d Dept 2021]). Plaintiff’s argument that defendant Global is liable pursuant to Labor Law §200 because it had the authority to supervise and control the selection of binders, is unavailing.

Regarding the First Cause of Action alleging Common Law Negligence, defendant Global’s submissions and defendant Lomma’s submissions in support of their respective motions demonstrate entitlement to judgment as a matter of law. In opposition, plaintiff fails to raise an issue of fact. As plaintiff’s negligence claim sounds in the means and methods in which the work was performed, plaintiff’s allegations that a lever binder is dangerous and potentially even more dangerous than a ratchet binder, is insufficient to raise an issue of fact. Plaintiff submits no evidence in admissible form that the chains or binders were defective. Moreover, there is no evidence in admissible form that Global’s work in securing the panels and Lomma’s working in checking and potentially re-securing the panels so that they were secured on the trailer, caused or created the condition that was the proximate cause of plaintiff’s injury (*Delaluz v Walsh*, 228 AD3d at 622).

Labor Law §241(6):

Defendants RP1185, Lend Lease and Global move for dismissal of the Labor Law § 241(6) claim against them. Labor Law §241(6) imposes a nondelegable duty on owners, contractors and their agents to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]; *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]; *Alexandridis v Van Gogh Contr. Co.*, 180 AD3d 969, 973 [2d Dept

2020], quoting *Fucci v Douglas S. Plotke, Jr., Inc.*, 124 AD3d 835, 836 [2d Dept 2015]). To impose such liability, the defendant must have the authority to control the activity bringing about the injury to enable it to avoid or correct the unsafe condition (*Delahaye v Saint Anns School*, 40 AD3d 679, 683 [2d Dept 2007]; see *Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]). A party is deemed to be an agent of an owner or general contractor under the Labor Law when [he or she] has supervisory control and authority over the work being done where a plaintiff is injured (*Navarra v Hannon*, 197 AD3d 474, 475 [2d Dept 2021], quoting *Sanders v Sanders-Morrow*, 177 AD3d 920, 922 [2d Dept 2019]).

To succeed on a motion for summary judgment under this section, a defendant must establish either that the Industrial Code sections allegedly violated cannot serve as a predicate for liability pursuant to Labor Law §241(6), because they merely set forth general standards of care for employers or they do not involve a provision that sets forth applicable safety requirements or standards, the violation of which was a proximate cause of plaintiff's accident (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]; *Toalongo v Almarwa Center, Inc.*, 202 AD3d 1128 [2022]; *Llamas v Yu Yu Chen*, 195 AD3d 702 [2021]; *Rodriguez v 250 Park Ave., LLC*, 161 AD3d 906 [2018]), or that such sections do not apply to the facts of the case or were not violated (*Wein v East Side 11th & 28th, LLC*, 186 AD3d 1579 [2020]; *Quizhpi v South Queens Boys & Girls Club, Inc.*, 166 AD3d 683 [2018]; *Tuapante v LG-39, LLC*, 151 AD3d 999 [2017]; *Cruz v Cablevision Systems Corp.*, 120 AD3d 744 [2014]). "Whether a regulation applies to a particular condition or circumstance is a question of law for the court" (*Harrison v State of New York*, 88 AD3d 951, 953 [2d Dept 2011]).

Defendants RP1185, Lend Lease and Global seek summary judgment dismissing the remaining Industrial Code sections cited by plaintiff as follows: Industrial Code (12 NYCRR) §§ 23-6, 23-6.1, 23-6.1(c), 23-6.1(d), 23-6.2, 23-6.2(a) - (d), 23-8, 23-8.1(b), 23-8.1(d), 23-8.1(e), 23-8.1(f), 23-8.1(k), and 23-8.1(1).

As above stated, Global's submissions are sufficient to establish prima facie entitlement to summary judgment dismissing the plaintiff's Labor Law §241(6) claims asserted against it, as the deposition testimonies demonstrate that Global is not the owner, general contractor, or agent of the owner or general contractor at the site and did not direct or control Jemco's work (*Fiore v Westerman Constr. Co., Inc.*, 186 AD3d 570, 571-572 [2d Dept 2020]; *Sanders v Sanders-Morrow*, 177 AD3d at 920, 922 [2d Dept 2019]; *Marquez v L & M Dev. Partners, Inc.*, 141 AD3d 694, 697 [2d Dept 2016]). In opposition, plaintiff fails to raise an issue of fact as to Global's authority to control the activity bringing about plaintiff's injury so as to enable it to avoid or correct the unsafe condition (*Southerton v City of New York*, 203 AD3d 977, 979 [2d Dept 2022]).

The Industrial Code Regulations subparts 23-6 and 23-8 provide detailed rules to be followed when hoists or cranes are used (*Toefer v Long Island RR*, 4 NY3d 399, 409-

410 [2005]). Plaintiff alleges that provisions of Industrial Code (12 NYCRR) § 23-6 *et seq.* addressing the operation, loading and rigging of material hoisting and Industrial Code (12 NYCRR) § 23-8 *et seq.*, addressing the use and operation of mobile and tower cranes, were violated. Plaintiff provides no facts to support such a claim.

Industrial Code (12 NYCRR) §23-6.1(a) provides that this Subpart applies "to all material hoisting equipment" except for hoisting equipment covered under separate regulations such as "cranes, derricks, aerial baskets, excavating machines used for material hoisting and forklift trucks. Industrial Code (12 NYCRR) §23-6.1(c) and (d) require, *inter alia*, that only trained persons shall operate hoisting equipment and that material hoisting equipment shall not be loaded in excess for which it was designed and suspended loads are to be securely slung and properly balanced before being set in motion. Industrial Code (12 NYCRR) §23-6.2(a) – (d) sets forth requirements for "Rigging, rope and chains for material hoists."

Defendants have demonstrated entitlement to summary judgment on the Labor Law §241(6) claim premised on sections 23-6.1 and 23-6.1(c)(1) of the Industrial Code as those provisions have been found to be insufficiently specific to impose liability (*Cardenas v American Ref-Fuel Co.*, 244 AD2d 377, 378 [2d Dept 1997]). Defendants also met their initial burden on the motion of establishing that Industrial Code (12 NYCRR) §23-6.2(a) - (d), entitled "Rigging, rope and chains for material hoists" which concerns standards for hoisting, is inapplicable to the facts of this case because, based on his own testimony, plaintiff's alleged facts do not connect any of these subparts to his injuries (*see e.g., Honeyman v Curiosity Works, Inc.*, 154 AD3d 820, 821-822 [2d Dept 2017]). In opposition, plaintiff fails to raise an issue of fact regarding these provisions of the Industrial Code.

Defendants RP1185 and Lend Lease have demonstrated, based on their admissible evidence, that they are entitled to summary judgment on plaintiff's claim predicated upon an alleged violation of 12 NYCRR §23-8.1(b), (d) –(f), (k), (l) since defendants established that the violations of these particular hoisting provisions are not applicable to the facts of this case and thus were not the proximate cause of plaintiff's accident. In opposition, plaintiff failed to raise an issue of fact whether there was a violation of the above cited Industrial Code provisions, as there was no claims that there was a sudden acceleration or movement of the hoisted load or that any alleged sudden acceleration of the hoisted load was a proximate cause of his injuries (*Giraldo v Highmark Ind., LLC*, 226 AD3d 874, 876-877 [2d Dept 2024]; *Decaire v New York City Health & Hosps. Corp.*, 57 AD3d 823, 825 [2d Dept 2008]). Plaintiff's arguments that these Industrial Code provisions apply because he and his partner were in the process of rigging the panels to the tower crane, lack merit as he does not address the specific provisions or causally relate any of the provisions to his injuries. Plaintiff has cited no specific statute of OSHA, the New York City Building Code or Federal Motor Carrier Safety Regulations.

Based on the foregoing, it is

ORDERED, that the motion of defendants' RP1185, Lend Lease and Global (sequence 2) for summary judgment dismissing the Complaint as asserted against them, is granted and the Complaint is dismissed; and it is

ORDERED, that defendant Lomma's motion (sequence 3) for summary judgment dismissing the Complaint as asserted against it is granted and the Complaint is dismissed; and it is

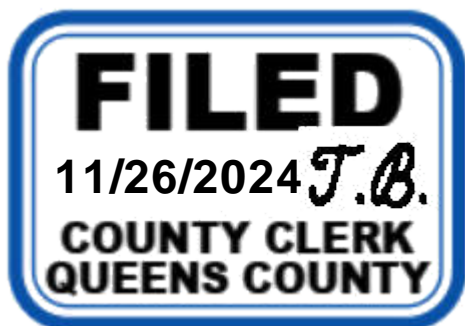
ORDERED, that defendant Lomma's motion to amend its Answer to add Cross-Claims against defendants RP1185, Lend Lease and Global is denied as moot; and


ORDERED, that any further relief requested is denied; and

ORDERED, that the Clerk is directed to enter judgment accordingly.

This constitutes the Order of the Court.

Dated: November 25, 2024





Leonard Livote, J.S.C.