

Hall v Clinton Hill Apts. Owners Corp.

2025 NY Slip Op 31665(U)

April 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 12760/2015

Judge: Heela D. Capell

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At an IAS Term, Part 19, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 27 day of April, 2025.

P R E S E N T:

HON. HEELA D. CAPELL,

Justice.

-----X

EUGENE HALL and NICOLE HALL,

Plaintiffs,

-against-

Index No.: 12760/2015

CLINTON HILL APTS. OWNERS CORP., MARK GREENBERG REAL ESTATE CO. LLC, CHABELA LAWRENCE, KORIE NICOLE ENYARD and KELLER WILLIAMS, INC. REALTORS,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

194-235, 243-246, 247-250,
252-256, 259-260

Opposing Affidavits (Affirmations) _____

242, 251

Affidavits/ Affirmations in Reply _____

261-268, 269-276, 277-284,
285-292, 293-300, 302, 304

Other Papers: _____

305

Upon the foregoing papers, plaintiffs Eugene Hall and Nicole Hall ("Plaintiffs"), move for an order, pursuant to CPLR 3212: (1) granting partial summary judgment as to liability on their Labor Law § 241 (6) cause of action as against defendants Clinton Hill Apts. Owners Corp. ("Clinton Hill"), Mark Greenberg Real Estate Co., LLC ("Greenberg"), Estate of Chabela

Lawrence s/h/a Chabela Lawrence (“Lawrence”), and Korie Nicole Enyard (“Enyard”) (collectively, “Defendants”); and (2) granting partial summary judgment on their Labor Law § 200 and common law negligence causes of action as against Enyard (motion [mot.] sequence [seq.] number [no.] 13). Defendants Clinton Hill and Greenberg cross-move for an order, pursuant to CPLR 3212, granting summary judgment dismissing Plaintiffs’ complaint in its entirety insofar as asserted against them and denying Plaintiffs’ motion (mot. seq. nos. 14 and 17). Defendants Lawrence (in mot. seq. no. 15) and Enyard (in mot. seq. no. 16) separately cross-move for an order, pursuant to CPLR 3212, granting summary judgment dismissing Plaintiffs’ complaint in its entirety insofar as asserted against them.

Plaintiffs’ motion (mot. seq. no. 13) is denied.

The motions of defendants Clinton Hill and Greenberg (mot. seq. nos. 14 and 17) are granted only to the extent that plaintiffs’ common-law negligence and Labor Law § 200 causes of action, insofar as asserted against them, are dismissed. Defendants Clinton Hill and Greenberg’s motions are otherwise denied.

Defendant Lawrence’s motion (mot. seq. no. 15) is granted only to the extent that plaintiff’s common-law negligence and Labor Law § 200 causes of actions, insofar as asserted against her, are dismissed. Defendant Lawrence’s motion is otherwise denied.

Defendant Enyard’s motion (mot. seq. no. 16) is granted, and Plaintiffs’ complaint, insofar as asserted against her, is dismissed.

BACKGROUND

Plaintiff Eugene Hall (“Plaintiff”) pleads causes of action premised on common-law negligence and violations of Labor Law §§ 200 and 241 (6), based on injuries suffered on September 10, 2015, when he was allegedly electrocuted while grouting tiles in the kitchen of

premises located at 165 Clinton Avenue, Apartment 4C, Brooklyn New York (NY Cts Elec Filing [NYSCEF] Doc No. 203 at 1; NYSCEF Doc. No 205 at 13; NYSCEF Doc No. 207 at 110, 114). Lawrence was the owner of Apartment 4C and had hired Enyard as a real estate agent to sell the apartment (NYSCEF Doc No. 228 at 13). Enyard was an independent contractor affiliated with defendant Keller Williams, Inc. Realtors at the time of Plaintiff's accident (*id.* at 11-12). Clinton Hill was the owner of the property at 165 Clinton Hill (NYSCEF Doc No 246 at 18), and Greenberg was the management company affiliated with Clinton Hill (*id.* at 58).

According to Plaintiff's deposition testimony, Enyard retained him to do renovation work in Apartment 4C (NYSCEF Doc No. 205 at 32). Pursuant to Enyard's instructions, Plaintiff was hired to apply compound to holes in walls, "do some tile work," paint, and replace flooring in the bedroom (*id.* at 33-34). Plaintiff testified that Enyard provided him with materials, including metal tiles to be placed in the kitchen as a backsplash behind the stove (*id.* at 36). He also testified that Enyard paid him, although the cost of the materials was deducted from the price of the work (NYSCEF Doc No. 206 at 46). Plaintiff noted that while Lawrence was sometimes present in the apartment and would talk to him about the job or provide him with instructions to hurry up, she didn't tell him what tools to use or how to do any of the work (*id.* at 61, 63). Similarly, Enyard did not instruct him on how to perform the work or provide him with any tools, other than the materials to be used on the job, including the tiles, flooring, paint, compound, and a blade for his tile cutter (*id.* at 68-70). Plaintiff further testified that Enyard did not show him what to do at the apartment, and that she neither managed nor supervised him (NYSCEF Doc No. 217 at 327). He further testified that he did not consider Enyard his manager and that she did not correct any of the work or tell him to do any work in a different manner (*id.* at 327-328). He did, however, testify that Enyard was in control of the work, in that she would "[m]ake sure the apartment [wa]s open so

[he] could come in” and “make sure it [wa]s locked when [he would] go out” (*id.* at 328). Furthermore, Plaintiff claims that there was no written contract for the work; instead, Plaintiff and Enyard allegedly reached an oral agreement (NYSCEF Doc. No. 205 at 38).

On the day of the accident, Plaintiff was alone in the apartment all day, working in the kitchen (NYSCEF Doc No. 206 at 78, 80). After returning from lunch, he began working on tiling the backsplash behind the stove (NYSCEF Doc No. 207 at 104). In order to access the area behind the stove, Plaintiff “moved the stove ... pulled it off the wall, so [he] could get behind the oven” (*id.* at 105). He testified that, although he pulled the stove “approximately ... three to four, maybe two” feet from the wall, the stove was plugged in and remained plugged in when his accident occurred (*id.* at 105-107). Plaintiff did not receive an electric shock when he initially pulled the stove out and moved it with his bare hands (NYSCEF Doc No. 216 at 239-240). He began leaning against the stove on his right side in order to apply grout to the tiled wall area behind the stove (NYSCEF Doc No. 207 at 108-110). Approximately fifteen to twenty minutes later, as the metal trowel Plaintiff was using made contact with the wall, Plaintiff was electrocuted. According to Plaintiff, he “heard a hum” and “couldn’t move” (*id.* at 114). Plaintiff testified that he was stuck and his “body [was] lifting up slowly, until [he] hit the hood, the noise went louder” (*id.* at 114). After feeling stuck for “approximately 4 to 5 minutes”, eventually Plaintiff “just popped right off” and “hit the floor” (*id.* at 114).

Plaintiff testified that before beginning the job, Enyard informed him that the apartment had previously experienced an electrical fire. However, Plaintiff noted that he “didn’t see [any] wire, nothing exposed throughout the whole apartment” (NYSCEF Doc No. 208 at 150-151, 153). When asked about the source of the electricity that injured him, Plaintiff stated that he believed it was “[e]lectricity from the oven, when it was plugged in” and that he thought the electricity was

not properly grounded (*id.* at 152). Plaintiff admitted that he was not a licensed electrician and that no one had ever informed him of a defect with the grounding of the outlet into which the stove was plugged. He also stated that he had never disassembled the outlet in question (*id.* at 158). Plaintiff testified that the kitchen lights were on during and after the accident, and that no breakers or fuses had been tripped (NYSCEF Doc No. 211 at 241). He further testified that none of the work he was hired to perform involved electrical tasks (NYSCEF Doc No. 219 at 373). Additionally, he stated that there was no exposed wiring behind the stove or on the wall (NYSCEF Doc No. 220 at 383). The outlet behind the stove was missing a plate, and Plaintiff did not place any metal tiles near the outlet or touch it with the trowel (NYSCEF Doc No. 222 at 443, 445). Plaintiff also did not notice any exposed electrical wiring in the hood above the stove (*id.* at 448).

DISCUSSION

Labor Law § 200 and Common Law Negligence

In their motion for partial summary judgment with respect to their Labor Law § 200 cause of action as asserted against Enyard, Plaintiffs contend that it is uncontested that Enyard had actual or constructive notice of the dangerous condition in Apartment 4C (an electric power circuit that was neither de-energized and grounded nor guarded by effective isolation). Plaintiffs further contend that Enyard, in effect, conceded that she had constructive notice of the alleged dangerous condition in that she failed to ascertain the voltages within the subject apartment or discuss de-energizing or grounding electrical circuits located therein.

In opposition, and in support of the branch of their own motion which seeks summary judgment dismissing Plaintiffs' Labor Law § 200/common law negligence causes of action, Clinton Hill and Greenberg argue that they have established that they neither directed nor supervised Plaintiff's work, and that they had no knowledge that any work was being performed

in the apartment. They further argue that there was no evidence that any dangerous or defective condition existed or was created by them. As such, they argue that Plaintiffs' Labor § 200/common law negligence causes of action should be dismissed insofar as asserted against them.

Similarly, Lawrence argues, in support of the branch of her motion which seeks summary judgment dismissing Plaintiffs' Labor Law § 200 cause of action, that there is no evidence that Lawrence had any actual knowledge of the alleged defective wiring, and that, as any alleged defect was latent and was neither visible nor apparent, any constructive notice could not be imputed to her. Enyard echoes these arguments in opposition to Plaintiffs' motion for partial summary judgment as to their Labor Law § 200 claim insofar as asserted against her, and in support of her motion for summary judgment dismissing said claim. Enyard argues that she was not an owner of the subject premises or an agent of Lawrence, and thus had no ability to supervise or control the Plaintiff's work. Furthermore, Enyard asserts that she had no actual knowledge of any alleged defect in the outlet, and because any such defect was latent, constructive notice could not be imputed to her.

"Labor Law § 200 is a codification of the common-law duty imposed on owners, contractors and their agents to provide workers with a safe place to work" (*Mondragon-Moreno v Sporn*, 189 AD3d 1574, 1576 [2d Dept 2020], quoting *Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). "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" (*Southerton v City of New York*, 203 AD3d 977, 979-98 [2d Dept 2022], quoting *Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]).

Where plaintiffs allege that their injuries result from the means or methods by which work is performed, “to be held liable under Labor Law § 200, ‘a defendant must have the authority to exercise supervision and control over the work’” (*Narvarra v Hannon*, 197 AD3d 474, 476 [2d Dept 2021], quoting *Torres v City of New York*, 127 AD3d at 1165). “A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed” (*Roblero v Bais Ruchel High School, Inc.*, 175 AD3d 1446, 1448 [2d Dept 2019], quoting *Ortega v Puccia*, 57 AD3d 54, 62 [2d Dept 2008]). “Although property owners often have a general authority to oversee the progress of the work, mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200” (*Medina-Arana v Henry Street Property Holdings, LLC*, 186 AD3d 1666, 1668 [2d Dept 2020], quoting *Ortega v Puccia*, 57 AD3d at 62).

“When a claim is based on an alleged dangerous condition of a work site, [a] defendant may be liable where he or she had actual or constructive notice of the condition or created the condition” (*Wright v Pennings*, 233 AD3d 827, 830 [2d Dept 2024]). “To provide constructive notice, the defect must be visible and apparent and exist for a sufficient length of time prior to the accident to permit the defendant to discover and remedy it” (*Vella v One Bryant Park LLC*, 90 AD3d 645, 646 [2d Dept 2011], quoting *Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). “When a defect is latent and would not be discoverable upon a reasonable inspection, constructive notice may not be imputed” (*Alexandridis v Van Gogh Contracting Co.*, 180 AD3d 969, 973 [2d Dept 2020], quoting *Schnell v Fitzgerald*, 95 AD3d 1295, 1295 [2d Dept 2012]). “In moving for summary judgment on the ground that [a] defect was latent, a defendant must establish, prima facie, that the defect was indeed latent-i.e., that it was not visible or apparent

and would not have been discoverable upon a reasonable inspection” (*Agosto v Museum of Modern Art*, 219 AD3d 674, 676 [2d Dept 2023]).

Here, to the extent that Plaintiffs allege that Plaintiff’s injuries resulted from a dangerous condition, Defendants met their burden establishing that they had no actual or constructive notice of any alleged defect with the stove, outlet, or electrical system. Enyard averred that she “was not aware of any defects relating to the electrical system in the apartment” (NYSCEF Doc No. 255 at 3), and a representative for Clinton Hill, Heribel Goris, similarly testified that he had no knowledge of any prior electrical problems in the apartment (NYSCEF Doc No. 246 at 41). Plaintiff also conceded that he did not observe any exposed wires or frayed cords on the stove, outlet, or the metal stove hood, or any indication of any electrical issue throughout the apartment at any time while working at the premises (NYSCEF Doc No. 208 at 150-151; NYSCEF Doc No. 218 at 309-10; NYSCEF Doc No. 220 at 383; NYSCEF Doc No. 222 at 448; NYSCEF Doc No. 211 at 243). Plaintiff further testified that he had extensive experience in home repairs, had previously worked behind the stove to place tiles without injury, had moved the stove himself without protective measures or incident on the day of the accident, and had been working between the stove and the wall for 15-20 minutes without any issues or concerns (NYSCEF Doc No. 205 at 15; NYSCEF Doc No. 206 at 75-76, NYSCEF Doc No. 207 at 84, 106-107, 109, 110, 117; NYSCEF Doc No. 211 at 242). The foregoing testimony sufficiently establishes, prima facie, that any defect with respect to the outlet or stove, or the electricity to either was latent, and that constructive notice cannot be imputed to Defendants (*see e.g. Carrillo v Circle Manor Apartments*, 131 AD3d 662, 664 [2d Dept 2015]; *Nicoletti v Iracane*, 122 AD3d 811, 812 [2d Dept 2014]; *Lopez v Dagan*, 98 AD3d 436, 438-439 [1st Dept 2012]; *McCole v City of New York*, 221 AD2d 605, 606 [1st Dept 1995]; *Lema v Iris Erenstein Properties, L.L.C.*, 84 Misc 3d 1216[A], 2024 NY Slip Op 51454[U],

at *11 [Sup Ct, Kings County 2024]). In opposition, Plaintiffs failed to raise a triable issue of fact as to Defendants' actual or constructive notice of any dangerous condition.

Rather, Plaintiffs argue that "Eugene Hall's physical positioning between the metal tiled wall – which shared an electrical oven, the metal oven's vent/hood and Eugene Hall himself, constituted an electrical circuit causing him to be electrocuted" (NYSCEF Doc No. 261 at 4). To the extent that Plaintiffs claim that Plaintiff's injury resulted from the means and method of Plaintiff's work – to wit, the injured Plaintiff's position between the metal tiles and the oven in the presence of an energized or ungrounded circuit, Enyard met her prima facie burden to establish that she did not have any control over the means and methods of Plaintiff's work sufficient to impose Labor Law § 200 liability. Enyard averred that she "did not have any involvement in the performance or supervision of his work at any time," (NYSCEF Doc No. 255 at 2) and "never had authority to direct or control the work Plaintiff was performing in the apartment" (*id.* at 3). Although Plaintiff testified that Enyard was "in control" of his work, he clarified that by this, he meant she was responsible only for ensuring the apartment was open so he could perform his tasks, and locked when he left (NYSCEF Doc No. 218 at 328). He also conceded that Enyard did not instruct him on what work to do at the apartment, nor did she manage or supervise his work (*id.* at 327). In fact, Plaintiff stated that he did not consider Enyard to be his manager, and that she neither corrected his work nor directed him to perform any tasks differently (*id.* at 327-328).

In opposition, Plaintiffs failed to raise a triable issue of fact with respect to any degree of control exercised by Enyard, arguing only that "Enyard retained Eugene Hall to perform renovation work" and that "Enyard accompanied Eugene Hall to purchase materials for the work involved" (NYSCEF Doc. No. 285 at 8). However, the determinative factor with respect to the issue of control is not whether a party "furnishes equipment but whether it has control of the work

being done and the authority to insist that proper safety practices be followed” (*Kehoe v Segal*, 272 AD2d 583, 584 [2d Dept 2000]). Here, in light of Plaintiff’s testimony indicating that he received no direction or instructions from Enyard, and did not consider her to have the authority to insist on alternative methods of performing the work or to stop the work, Plaintiffs failed to establish that Enyard retained any control of the means and methods of Plaintiff’s work sufficient to impose liability pursuant to Labor Law § 200 (*see Marquez v L&M Development Partners, Inc.*, 141 AD3d 694, 699 [2d Dept 2016]).

Similarly, Lawrence, Clinton Hill, and Greenberg have all met their prima facie burden establishing that they lacked the requisite control or supervision over Plaintiff to impose liability under Labor Law § 200. Plaintiff testified that Lawrence let him know “what she wanted done,” but did not explain or direct him on how to perform his work (NYSCEF Doc No. 222 at 468). He testified that Lawrence primarily focused on urging him to speed up the work due to concerns about timeliness, but she did not specify which tools to use or how to perform the tasks (NYSCEF Doc No. 206 at 61-63). Plaintiff further testified that he had never spoken to anyone employed by Clinton Hill or Greenberg about the accident and had never heard of them prior to the incident (NYSCEF Doc No. 212 at 274; NYSCEF Doc No. 219 at 358). Heribel Goris, a supervisor at Clinton Hill Coops and at the time of the deposition, the supervisor of the premises at 165 Clinton Avenue, testified that he had no knowledge of Lawrence, any renovations in Apartment 4C, or any involvement in such renovations (NYSCEF Doc No. 246 at 12, 13, 31). Lawrence, Clinton Hill, and Greenberg therefore established, prima facie, that they lacked the authority to supervise or control Plaintiff’s work to a degree that would impose liability under Labor Law § 200 (*see McFadden v Lee*, 62 AD3d 966, 967-968 [2d Dept 2009]). In opposition, Plaintiffs failed to raise

a triable issue of fact as to the degree of control or supervision exercised by Lawrence, Clinton Hill, or Greenberg.

Accordingly, the branch of Plaintiffs' motion seeking summary judgment with respect to their Labor Law § 200 and common law negligence claims as against Enyard is denied. The branches of Defendants' respective motions seeking summary judgment dismissing Plaintiffs' Labor Law § 200 and common law negligence claims as against Clinton Hill, Greenberg, Lawrence and Enyard are granted and said claims are hereby dismissed as against them (*see Lombardi v Stout*, 80 NY2d 290, 295 [1992]).

Labor Law § 241 (6)

As to Plaintiffs' Labor Law § 241 (6) cause of action, Plaintiffs argue that they have established that Defendants violated Industrial Code (12 NYCRR) § 23-1.13 and that such violation was a proximate cause of Plaintiff's injuries. In this regard, Plaintiffs contend that Plaintiff's testimony demonstrated that he was electrocuted when his metal trowel came into contact with the metal backplash, which is sufficient to establish, as a matter of law, that the Defendants violated Labor Law § 241 (6). Plaintiffs further contend that they have established that Plaintiff's work at the time of the accident placed him within the protected class of workers as provided by Labor Law § 241 (6) and that Clinton Hill, Greenberg, and Lawrence are statutorily liable as owners, while Enyard is statutorily liable as an agent of the owner.

In opposition to this portion of Plaintiffs' motion and in support of their own motion for summary judgment seeking dismissal of Plaintiffs' Labor Law § 241 (6) claim against them, Clinton Hill and Greenberg argue that Plaintiff failed to prove his injuries resulted from an electric shock and did not demonstrate that he was working near power lines, power facilities, or a power circuit sufficient to fall under Industrial Code § 23-1.13. Lawrence also argues, in opposition to

Plaintiffs' motion and in support of her own motion to dismiss Plaintiffs' Labor Law § 241 (6) claim against her, that Plaintiff was not engaged in construction, excavation or demolition activities that would bring him within the purview of Labor Law § 241 (6). She further argues that, even if Plaintiff were engaged in an activity that fell within the protections of Labor Law § 241 (6), Lawrence would be exempt from any liability thereunder as the owner of a single-family residential unit who did not exert any control over the manner in which the work was performed. Further, in any event, Lawrence contends that there remain issues of fact as to how the accident occurred that preclude an award of summary judgment in Plaintiffs' favor.

Enyard, in opposition to Plaintiffs' motion and in support of her motion to dismiss Plaintiffs' Labor Law § 241 (6) claim against her, argues primarily that she is not an appropriate Labor Law defendant, as she was not an owner, contractor, or agent of the property where Plaintiff was injured, and did not direct, supervise, or control the work being performed by Plaintiff. She further contends that Plaintiff's work was not protected under Labor Law, and that Plaintiffs' Labor Law § 241 (6) cause of action against her must be dismissed on these grounds.

Protected Work under Labor Law § 241 (6)

"Labor Law § 241 (6) imposes a [non-delegable] duty of reasonable care upon owners and contractors 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" (*Song v CA Plaza, LLC*, 208 AD3d 760, 761 [2d Dept 2022] [internal quotation marks omitted]). Here, Lawrence and Enyard contend that the work in which Plaintiff was engaged (applying grout) did not bring Plaintiff under the protection of Labor Law § 241 (6). In *Nagel v D & R Realty Corp.* (99 NY2d 98, 102 [2002]), the Court of Appeals noted that "[t]he Industrial Board of Appeals has defined construction work as '[a]ll work of the types performed in the

construction, erection, alteration, repair, maintenance, painting or moving of buildings or other structures ... The Industrial Code definition of ‘construction work’ ... must be construed consistently with this Court’s understanding that section 241 (6) covers industrial accidents that occur in the context of construction, demolition and excavation” (*id.* at 102-103). As such, the Court of Appeals has indicated that the alteration of a structure comes within the ambit of Labor Law § 241 (6) (*see Saint v Syracuse Supply Co.*, 25 NY3d 117, 129 [2015] [“Since plaintiff was altering the billboard by installing the extension at the time of his injury, his claim comes within section 241 (6)]; *Joblon v Solow*, 91 NY2d 457, 466 [1998] [“Having concluded that Joblon was engaged in ‘altering’ under Labor Law § 240 (1) at the time of his injury, we likewise determine that the facts presented could support a claim under Labor Law § 241 (6) ... Because the Industrial Code includes ‘work of the types performed in the construction, erection, *alteration*, repair, maintenance, painting or moving of buildings or other structures’ in the definition of construction work (12 NYCRR 23-1.4[b][13][emphasis added]), we conclude that Plaintiff could state a claim under Labor Law § 241 (6)”).

In *Joblon*, the Court of Appeals concluded “that ‘altering’ ... requires making a *significant* physical change to the configuration or composition of the building or structure.” In keeping with this rule, the courts have found significant enough to amount to “altering” the act of hanging a clock (*Joblon*, 91 NY2d at 465 [“Bringing an electrical power supply cable of supporting the clock to the mail room, which required both extending the wiring within the utility room and chiseling a hole through a concrete wall so as to reach the mail room is more than a simple, routine activity and is significant to fall within the statute”]); boarding up a house (*Nucci v County of Suffolk*, 204 AD3d 817, 820 [2d Dept 2022] [“[T]he plaintiff’s work of boarding up the house, thus making it uninhabitable, was ‘altering’ the premises within the meaning of Labor Law § 240, as it constituted

significant physical change to the configuration or composition of the building”); moving and rebolting a 12-foot fence (*Rico-Castro v Do & Co New York Catering, Inc.*, 60 AD3d 749, 750 [2d Dept 2009] [“Olympic Fence was hired to move a 12-foot fence bolted to a concrete floor and re-bolt it in a new location for purposes of reconfiguring a warehouse. Such activity clearly goes beyond routine maintenance and constitutes an ‘alteration’ within the meaning of the statute”]); and changing an advertisement on a billboard that required the attachment of extensions (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 126 [2015] [“We have little difficulty concluding that the plaintiff’s work entails a significant change to the billboard because once the vinyl is removed the billboard is enlarged by the attachment of the extensions ...Nor, on the facts of this case, is the installation of the new advertisement a decorative modification because the work here entails far more than a mere change to the outward appearance of the billboard. Instead, the job requires a change to the billboard’s size and an adjustment of the frame to accommodate the unique shape of the advertisement”]).

Here, where Plaintiff was to engage in a number of tasks in the apartment, which included painting, repair of interior walls, and the addition of a tile backsplash in the kitchen as well as floor replacement, which resulted in a significant physical change to the apartment, Defendants have failed to establish, as a matter of law, that the scope of the work Plaintiff was hired to do did not fall within the purview of Labor Law § 241 (6) (NYSCEF Doc No. 205 at 33-37; NYSCEF Doc No. 304-304, 306-307; NYSCEF Doc No. 223 at 469) (*see Emery v Steinway*, 178 AD3d 613, 615 [1st Dept 2019]; *Pittman v S.P. Lenox Realty, LLC*, 91 AD3d 738, 739 [2d Dept 2012] [“We have previously determined that the application of a protective coating to the roof of a building is the ‘functional equivalent’ of painting, which is a specifically enumerated activity under 12 NYSCRR 23-1.4(b)(13) ...Under the circumstances of this case, the application of polyurethane to a wooden

floor likewise was the functional equivalent of painting”]; *cf. Lavigne v Glens Falls Cement Co., Inc.*, 92 AD3d 1182, 1183 [3d Dept 2012]).

Although Plaintiff concededly was grouting tiles at the time of his accident, “it is neither pragmatic nor consistent with the spirit of the statute to isolate the moment of injury and ignore the general context of the work. The intent of the statute was to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts” (*Prats v Port Authority of New York and New Jersey*, 100 NY2d 878, 882 [2003]). With respect to the project as a whole, Enyard testified that in order to get the apartment “ready to be put on the market,” it was necessary to make “[b]asic repairs to the property” (NYSCEF Doc No. 228 and 18) and characterized the job as “renovation work” “including tiling, flooring, and installation of a back splash in the kitchen” (NYSCEF Doc No 255). Under the circumstances presented here, Lawrence and Enyard have failed to establish, prima facie, that the scope of the work that Plaintiff performed over the course of the three weeks, including replacing flooring and installing tiles, was not the type of work contemplated to provide Plaintiff the protection of Labor Law § 241 (6), even if the specific act of grouting the tiles was ancillary to any alteration or repair work undertaken in the project as a whole (*see e.g. Nooney v Queensborough Public Library*, 212 AD3d 830, 831 [2d Dept 2023] [where plaintiff was replacing water-damaged ceiling tiles, “the City failed to establish, prima facie, that the tasks Nooney was performing at the time of the accident were associated with routine maintenance . . . rather than repair work, which may be covered, even if it was not part of a larger renovation project”]; *De Jesus v Metro-North Commuter R.R.*, 159 AD3d 951, 953 [2d Dept 2018] [“Since the plaintiff was engaged in activities ancillary to the repair of the catenary wires, the provisions of Labor Law § 241 (6) are also applicable to this case”]; *Moreira v Ponzo*, 131 AD3d 1025, 1027 [2d Dept 2015] [“Since the plaintiff was engaged in activities ancillary to the repair of

the building from which he fell, the provisions of Labor Law § 241 (6) are also applicable to the facts of this case”)).

Enyard as Statutory Agent

Where a defendant is neither the owner nor a general contractor, liability under Labor Law § 241 (6) only attaches if it is shown that the defendant “was a statutory agent of the owner or general contractor” (*Bopp v A.M. Rizzo Elec. Contractors, Inc.*, 19 AD3d 348, 350 [2d Dept 2005]). “A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured” (*Kavouras v Steel-More Contracting Corp.*, 192 AD3d 782, 784 [2d Dept 2021], quoting *Linkowski v City of New York*, 33 AD3d 971, 974-975 [2d Dept 2006]). A party’s status as a statutory agent under Labor Law § 241 (6) is “dependent upon whether it had the right to exercise control over the work, not whether it actually exercised that right” (*Williams v Dover Home Improvement, Inc.*, 276 AD2d 626, 626 [2d Dept 2000]). “To impose such liability, the defendant must have the authority to supervise or control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition” (*Rodriguez v JMB Architecture, LLC*, 82 AD3d 949, 951 [2d Dept 2011]). Further, “[o]nly upon obtaining the authority to supervise and control does the third party fall within the class of those having nondelegable liability as an ‘agent’ under section ... 241” (*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317 [1981]).

Here, Plaintiffs have failed to establish that Enyard was a statutory agent, and therefore an appropriate defendant under Labor Law § 241 (6). As discussed, Plaintiff confirmed in his testimony that Enyard did not show him what work to do at the apartment, and neither managed nor supervised his work (NYSCEF Doc No. 218 at 327-328). Indeed, Plaintiff noted that he did not consider Enyard his manager, and that Enyard did not correct any of his work or tell him how

to perform it (*id.*) (*see Gonzalez v Magestic Fine Custom Home*, 115 AD3d 796, 797 [2d Dept 2014] [Draghi demonstrated that it lacked the ability to control the activity which brought about the plaintiff's injury and therefore was not liable under Labor Law § 241 (6) where "Draghi did not hire any contractors and was not charged with 'the duty of co-ordinating all aspects of [the] construction project' [and] merely assumed a role of 'general supervision,' pursuant to which it checked the progress of the work and reported to Magestic."]; *Rodriguez v JMB Architecture, LLC*, 82 AD3d at 951 ["The role of JMB was only one of general supervision, which is insufficient to impose liability under the Labor Law ... no evidence was submitted demonstrating that JMB had any control or supervisory role over the work of the injured plaintiff, so as to enable it to prevent or correct any unsafe conditions and, thus, no triable issues of fact were raised as to JMB's liability"]]).

Additionally, in support of Enyard's motion to dismiss Plaintiffs' Labor Law § 241 (6) claim as against her, Enyard has made a prima facie showing that she was not a statutory agent of Lawrence. Enyard averred that she "did not have any involvement in the performance or supervision of his work at any time" (NYSCEF Doc No. 255 at 2) and "never had authority to direct or control the work plaintiff was performing in the apartment" (*id.* at 3). Although Plaintiffs allege that Enyard can be viewed as the statutory agent of Lawrence because she provided materials and "hired" Plaintiff, the determinative factor with respect to the issue of control is not whether a party "furnishes equipment but whether it has control of the work being done and the authority to insist that proper safety practices be followed" (*Kehoe v Segal*, 272 AD2d at 584). As Plaintiff's own testimony indicates that Enyard had no ability to control the work or the authority to insist that proper safety practices be followed, Plaintiffs have failed to raise a triable issue of

fact in opposition. Accordingly, this branch of Enyard's motion is granted and the Labor Law § 241 (6) cause of action is dismissed as against her.

Homeowner's Exemption

"The homeowner's exemption to liability under Labor Law § 241 (6) is available to owners of one and two-family dwellings who contract for but do not direct or control the work" (*Nai Ren Jiang v Yeh*, 95 AD3d 970, 970 [2d Dept 2012] [internal quotation marks omitted]). "In order to be entitled to the protection of the homeowner's exemption, the homeowner must demonstrate (1) that the work was conducted at a dwelling that is a residence for only one or two families, and (2) that the homeowner did not direct or control the work" (*Navarra v Hannon*, 197 AD3d 474, 478 [2d Dept 2021], quoting *Sanders v Sanders-Morrow*, 177 AD3d 920, 921 [2d Dept 2019]). The exemption, however, "was not intended to insulate from liability owners who use their one- or two-family houses purely for commercial purposes" (*Pawelic v Siegel*, 220 AD3d 883, 884 [2d Dept 2023]). "For example, '[r]enovating a residence for resale or rental plainly qualifies as work being performed for a commercial purpose'" (*Argueta v Hall & Wright, LLC*, 230 AD3d 1200, 1203 [2d Dept 2024], quoting *Pawelic*, 220 AD3d at 884). "Applicability of the exemption turns on whether the site and purpose of the work was connected to the owner's residential use of the property" (*Marquez v Mascioscia*, 165 AD3d 912, 913 [2d Dept 2018]). "Where an owner engages in both commercial and residential uses of the property, a determination as to whether the exemption applies ... must be based on the owner's intentions at the time of the injury" (*Walsh v Kenny*, 219 AD3d 1555, 1556 [2d Dept 2023] [internal quotation marks omitted]).

Here, it is undisputed that the apartment at issue was a one family residence, and, as discussed, Lawrence established that she did not direct or control the work done by the injured Plaintiff. However, in opposition, Plaintiffs raised a triable issue of fact as to whether the

homeowner's exemption applies and serves to exempt Lawrence from liability under Labor Law § 241 (6), as Plaintiff's and Enyard's testimony indicate that the work done in the apartment was undertaken to prepare the apartment for sale (NYSCEF Doc No. 205 at 20-21; NYSCEF Doc No. 218 at 304-305; NYSCEF Doc No. 228 at 13, 18). Although it is uncontested that Lawrence was residing in the apartment at the time of the renovation, it is also uncontested that she placed the apartment for sale soon after the renovation (NYSCEF Doc No. 228 at 13, 18, 32). Here, Lawrence has failed to submit any evidence regarding her intent at the time the work was performed by Plaintiff, specifically whether the work was related to her residential use of the premises or solely for the commercial purpose of reselling the apartment. Accordingly, the branch of Lawrence's motion to dismiss Plaintiff's Labor Law § 241 (6) claim pursuant to the homeowners' exemption is denied (*see Pawelic*, 220 AD3d at 884; *Parrino v Rauert*, 208 AD3d 672 [2d Dept 2022]; *Parrino v Rauert*, 208 AD3d 672, 675 [2d Dept 2022] [triable issues of fact existed as to the purpose of the work performed and defendant homeowner's intentions at the time of the injury]).

Applicability of Industrial Code § 23-1.13 (b) (3) and (4)

Industrial Code § 23-1.13 (b) (3) and (4) provide, in relevant part:

(3) Investigation and warning. Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool or machine into physical or electrical contact therewith. The employer shall post and maintain proper warning signs where such a circuit exists. He shall advise his employees of the locations of such lines, the hazards involved and the protective measures to be taken ...

(4) Protection of employee. No employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means (12 NYCRR 23-1.13 [b] [3] and [4]).

These provisions of the Industrial Code are sufficiently specific to support a Labor Law

§ 241 (6) claim (*see Wittenberg v Long Island Power Authority*, 225 AD3d 730, 733 [2d Dept 2024]; *Hernandez v Ten Ten Co.*, 31 AD3d 333, 333-334 [1st Dept 2006]).

Here, with respect to the accident, Plaintiffs argue that “[Plaintiff’s] physical positioning between the metal tiled wall – which shared an electrical outlet – the metal oven, the metal oven’s vent/hood and [Plaintiff] himself, constituted an electrical circuit causing him to be electrocuted” (NYSCEF Doc No. 261 at 4). In other words, Plaintiff was performing work on the wall that completed the electrical circuit between himself and the metal oven.

Plaintiff’s testimony, however, establishes that numerous factual issues exist regarding the circumstances of the accident. In this regard, Plaintiffs have presented testimony suggesting that, at times, Plaintiff was positioned between the stove and the wall for fifteen to twenty minutes before the accident, while also indicating that the accident occurred immediately when his trowel made contact with the metal tiles on the wall (NYSCEF Doc No. 207 at 109, 114). There is also conflicting testimony as to whether or not Plaintiff was leaning on the stove at the time of the accident (NYSCEF Doc No. 207 at 108; NYSCEF Doc No. 208 at 123, 127), and whether the stove and/or the hood of the stove, which was either on or off, electrocuted him (NYSCEF Doc No. 208 at 152; NYSCEF Doc No. 211 at 231, 232; NYSCEF Doc No. 216 at 242; NYSCEF Doc No. 217 at 257-258; NYSCEF Doc No. 222 at 447).

In addition to the discrepancies in Plaintiff’s account of the accident, Plaintiffs have further failed to proffer any evidence that the accident occurred as a result of any improper grounding or de-energizing of any circuit, beyond Plaintiff’s own speculation (NYSCEF Doc No. 208 at 155, 158). Moreover, even assuming a violation of these provisions of the Industrial Code, Plaintiffs have failed to establish that any such violation, rather than Plaintiff’s conduct in, for example, failing to unplug the stove or moving the stove sufficiently far from the wall so as to prevent

leaning on it (NYSCEF Doc No. 207 at 86, 105, 108), was the proximate cause of his injuries. As such, Plaintiff has failed to establish, as a matter of law, that Defendants violated these provisions of the Industrial Code and that any such violations were the proximate cause of his accident (*see e.g. Rolewcz v State*, 73 AD3d 1269, 1270 [3d Dept 2010]; *Lorefice v Reckson Operating Partnership, L.P.*, 269 AD2d 572, 573 [2d Dept 2000]). Accordingly, that branch of Plaintiffs' motion seeking summary judgment with respect to their Labor Law § 241 (6) cause of action is denied.

In light of the foregoing issues of fact, Lawrence, Clinton Hill, and Greenberg have similarly failed to establish as a matter of law that sections 23-13(b)(3) and (4) of the Industrial Code are not applicable herein (*see Wittenberg v Long Island Power Authority*, 225 AD3d 730, 733 [2d Dept 2024] [Defendants "failed to demonstrate either that 12 NYCRR 23-13(b)(3) and (4) were inapplicable to the facts of this case, or that the alleged violation of these regulations was not a proximate cause of the accident"]; *Addonisio v City of New York*, 112 AD3d 554, 556 [1st Dept 2013] ["The City failed to demonstrate the inapplicability of, or its compliance with, Industrial Code (12 NYCRR) § 23-1.13(b)(4)"]; *see e.g. Carpentieri v 1438 South Park Avenue Co., LLC*, 215 AD3d 1236, 1237 [4th Dept 2023]; *Winters v Uniland Development Corp.*, 174 AD3d 1293, 1295 [4th Dept 2019]; *Adams v Owens-Corning Fiberglass Corp.*, 260 AD2d 877, 878-879 [3d Dept 1999]). Defendants did not proffer any evidence to show that the work area was inspected for electrical power circuits that could come into contact with Plaintiff before the work began or that any such circuits were de-energized and grounded or guarded, in compliance with Industrial Code § 23-1.13 (b) (3) and (4). Nor did Defendants establish that any potential violation was not a proximate cause of Plaintiff's injuries here. Accordingly, the branches of the motions of

Lawrence, Clinton Hill, and Greenberg seeking summary judgment dismissing Plaintiffs' Labor Law § 241 (6) cause of action are denied.

All arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this court, regardless of whether they are specifically discussed herein.

Accordingly, it is

ORDERED that Plaintiffs' motion (mot. seq. no. 13) is denied;

ORDERED that defendants Clinton Hill and Greenberg's motions (mot. seq. nos. 14 and 17) are granted only to the extent that Plaintiffs' common-law negligence and Labor Law § 200 causes of action, insofar as asserted against them, are dismissed. Defendants Clinton Hill and Greenberg's motions are otherwise denied;

ORDERED that defendant Lawrence's motion (mot. seq. no. 15) is granted only to the extent that Plaintiff's common-law negligence and Labor Law § 200 causes of actions, insofar as asserted against her, are dismissed. Defendant Lawrence's motion is otherwise denied; and it is

ORDERED that defendant Enyard's motion (mot. seq. no. 16) is granted, and Plaintiffs' complaint, insofar as asserted against her, is dismissed.

This constitutes the decision and order of the court.

E N T E R



HON. HEELA D. CAPELL, J.S.C.

HON. HEELA D. CAPELL, J.S.C.