SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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FREDDY SUMBA,

Plaintiff,

- v -

MANHATTAN HOUSE CONDOMINIUM, BOARD OF MANAGERS OF MANHATTAN HOUSE CONDOMINIUM,

Defendant.

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INDEX NO. 152563/2021

MOTION DATE 07/29/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

MANHATTAN HOUSE CONDOMINIUM, BOARD OF MANAGERS OF MANHATTAN HOUSE CONDOMINIUM

Plaintiff,

-against-

ADRIATIC PLUMBING & HEATING CORP.

Defendant.

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Third-Party
Index No. 596013/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 99, 100, 101, 102, 105, 106, 107, 108, 118, 122, 123, 139, 140, 141, 142, 143
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after oral argument, which took place on May 27, 2025, where Jenny Xu, Esq. appeared for Plaintiff Freddy Sumba ("Plaintiff"), Marc Silverstein, Esq. appeared for Defendants/Third-Party Plaintiffs Manhattan House Condominium and the Board of Managers of Manhattan House Condominium (collectively "Manhattan House"), and Dennis S. Heffernan, Esq. appeared for Third-Party Defendant Adriatic Plumbing & Heating Corp. ("Adriatic"), Plaintiff's motion for summary judgment is granted.

I. Background

On July 16, 2020, Adriatic employed Plaintiff as a mechanic's assistant at 200 East 66th Street, New York, New York (the "Premises") (NYSCEF Doc. 55 at 13-16). Manhattan House, which owns the common areas of the Premises, retained Adriatic as a plumber (NYSCEF Doc. 56 at 20; 33; 37-39). Adriatic was to remove and to demolish old iron pipes in a steam room in the basement (NYSCEF Doc. 55 at 25; 128-29; NYSCEF Doc. 56 at 43). Plaintiff used a sledgehammer to break the pipe, bagged the broken pipe pieces, and brought them upstairs (NYSCEF Doc. 55 at 29 and 34). Plaintiff had seen pieces of debris that fell outside of the bags (NYSCEF Doc. 55 at 59) Plaintiff was walking downstairs to the basement when he tripped on a piece of broken pipe on the staircase (NYSCEF Doc. 55 at 13-16, 43, 46, 48). The Adriatic mechanic present on the day of Plaintiff's accident could not remember if he saw debris or garbage on the stairway where Plaintiff fell (NYSCEF Doc. 57 at 33-34). Plaintiff seeks summary judgment on the issue of liability with respect to his Labor Law §241(6) claim. Adriatic and Manhattan House oppose Plaintiff's motion.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Labor Law § 241(6) imposes a non-delegable duty upon an owner and general contractor to "respond in damages" if a worker engaged in construction is injured due to inadequate safety and protection,

even if the worker sustains an injury because of another party's negligence (*Rizzuto v L.A. Wenger Contracting Co.,* 91 NY2d 343, 350 [1998]). A general contractor is not absolved of liability for lack of notice or for lack of an opportunity to cure the dangerous condition (*Gallina v MTA Capital Construction Company*, 193 AD3d 414 [1st Dept 2021]).

B. Was Plaintiff Engaged in Work Covered by 241(6)?

Manhattan House's argument that Plaintiff was not engaged in work covered by Labor Law §241(6) is without merit. Plaintiff was breaking down and removing large, old, cracked pipes from the boiler room. Using a sledgehammer to break apart and transport a large pipe from a boiler room, in the context of a multi-day project involving removing and installing heavy duty boiler pipes, constitutes construction work for purposes of Labor Law § 241(6) (*see, e.g. Saint v Syracuse Supply Co.*, 25 NY3d 117, 129 [installing and removing a billboard advertisement constituted altering building, making work fall within ambit of Labor Law § 241(6)]; *see also Rivera v Ambassador Fuel and Oil Burner Corp.*, 45 AD3d 275, 276 [1st Dept 2007] [cleaning fuel tank as part of project for installation of a new boiler gave rise to viable Labor Law § 241(6) claim]).

C. Integral to the Work Defense

Manhattan House's argument that the debris which allegedly caused Plaintiff's fall was integral to the work is misplaced (*see, e.g. Zyskowski v Chelsea-Warren Corp.*, 238 AD3d 498, 501 [1st Dept 2025]). The integral to the work defense does not "absolve a defendant of liability for the use of an avoidable dangerous condition or for failure to mitigate the danger…if preventive measures would not make it impossible to complete the work" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 321 [2024]).

The presence of debris from broken pipes on a stairway was "avoidable without obstructing the work or imperiling the worker" making the integral to the work defense inapplicable (*see*

Ruisech v Structure Ton Inc., 42 NY3d 1061, 1065 [2024] quoting *Bazdaric, supra* at 320). There is nothing in the record indicating Manhattan House and Adriatic "could not simultaneously conduct the work and comply with the commands of [Industrial Code] section 23-1.7(e)(1) and (2)" (*Lourenco v City of New York*, 228 AD3d 577, 580-81 [1st Dept 2024]). Indeed, Plaintiff could have been provided with more secure devices to carry the broken pipes up the staircase, or Manhattan House or Adriatic could have employed someone whose sole job was to clean specifically debris that spilled as the broken pipes were carried up the stairs. Instead Plaintiff was provided plastic garbage bags to transport sharp, demolished iron boiler pipes, which punctured the garbage bags, causing debris to fall out of the bag, and to accumulate on the staircase (NYSCEF Doc. 57 at 24)

D. Industrial Code § 23-1.7(e)(1)

Plaintiff is granted summary judgment on the issue of liability with respect to his alleged violation of Industrial Code § 23-1.7(e)(1). Industrial Code § 1.7(e)(1) mandates "[a]ll passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping." The stairway where Plaintiff tripped constitutes a passageway because it was the sole means of accessing and exiting Plaintiff's work area (*Tolk v 11 West 42 Realty Investors, L.L.C.*, 201 AD3d 491, 492 [1st Dept 2022]; *Rossi v 140 West JV Manager LLC*, 171 AD3d 668 [1st Dept 2019] ["area where plaintiff fell was, by definition, a passageway, as he tripped over….debris along the only route he could take"]).

Plaintiff met his prima facie burden of showing a violation of Industrial Code § 1.7(e)(1) (*Rossi, supra*; *see also Lester v JD Carlisle Development Corp., MD.*, 156 AD3d 577, 578 [1st Dept 2017]; *Serrano v Consolidated Edison Co. of New York Inc.*, 146 AD3d 405, 405-06 [1st Dept 2017]). Plaintiff's unrefuted deposition testimony establishes he tripped over a piece of

broken pipe on the staircase, and that prior to his fall he had observed the pipe pieces falling out of the garbage bags and accumulating as debris (NYSCEF Doc. 55 at 59, 165, 170).

Adriatic's claim that Industrial Code § 1.7(e)(1) is insufficiently specific is contradicted by First Department precedent (*see, e.g. Romano v New York City Transit Auth.*, 213 AD3d 506, 508 [1st Dept 2023]). Adriatic's argument that there is video footage prior to Plaintiff's fall depicting him yawning and appearing unsteady, which it claims are signs he was experiencing a medical condition or inebriated, are based on mere conjecture and speculation, which is insufficient (*see, e.g. Kijak v 330 Madison Ave. Corp.*, 251 AD2d 152, 154 [1st Dept 1998]). Adriatic's argument that nobody knew of the debris fails to consider Plaintiff's uncontroverted testimony that he, an Adriatic employee, noticed the recurring condition of broken pipes falling out of bags onto the passageway (*Gallina v MTA Capital Constr. Co.*, 193 AD3d 414, 415 [1st Dept 2021]). Moreover, Lukasz Biel, the Manhattan House employee monitoring Plaintiff's work, admitted he knew that debris came out of the old boiler pipe as it was broken up, that debris could be seen on the floor of the boiler room, and admitted video footage showed debris on the second and third steps near Plaintiff's fall (NYSCEF Doc. 60 at 54-57). He also admitted that the broken pipe pieces were sharp and puncturing holes in the garbage bags Plaintiff used to transport the broken pipes (NYSCEF Doc. 60 at 60). Finally, any argument that Plaintiff was comparatively negligent in causing his fall may be raised at trial to offset damages but is not a bar to summary judgment on the issue of liability (*see Piedra v 111 West 57th Property Owner LLC*, 219 AD3d 1235, 1236 [1st Dept 2023]).

D. Industrial Code § 23-1.7(e)(2)

Plaintiff's motion for summary judgment on the issue of liability with respect to a violation of Industrial Code § 23-1.7(e)(2) is granted. Industrial Code § 1.7(e)(2) requires "floors, platforms

and similar areas where persons work, or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials…as may be consistent with the work being performed." For the same reasons Plaintiff is granted summary judgment on the issue of liability with respect to the Labor Law § 241(6) claim predicated on a violation of § 21-1.7(e)(1), so too is he entitled to summary judgment with respect to the Labor Law § 241(6) claim predicated on a violation of § 21-1.7(e)(2) (*see, e.g. Castaldo v F.J. Sciame Construction Co. Inc.*, 222 AD3d 579 [1st Dept 2023]). The stairs constitute a working area where people pass pursuant to § 21-1.7(e)(2), and had to be kept free of debris, but they were not, causing Plaintiff to fall.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment with respect to his Labor Law § 241(6) predicated on violations of Industrial Code §§ 21-1.7(e)(1) and (e)(2) against Defendants Manhattan House Condominium and the Board of Managers of Manhattan House Condominium is granted; and it is further

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

This constitutes the Decision and Order of the Court.

7/28/2025
DATE

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

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