SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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ENDER VIELMA, RUDY MONZON,

Plaintiffs,

- v -

DRMBRE-85 FEE LLC,85TH ESTATES COMPANY, 86TH STREET RETAIL LLC,KAY WATERPROOFING CORP.,

Defendants.

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INDEX NO. 160829/2019

MOTION DATE 10/30/2024, 10/30/2024

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 93, 94, 97, 99, 107, 108, 109, 110, 111, 112, 113, 114, 115

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 95, 98, 100, 102, 103, 104, 105, 106, 116

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

In this labor law action, plaintiffs Vielma (plaintiff) and Monzon allege that while plaintiff, an employee of Paguay Construction Corp., was performing repair work at 185 East 85th Street in New York, New York (the premises), he was caused to fall from a motorized scaffold and suffered serious injuries.

Motion sequence numbers 002 and 003 are hereby consolidated for disposition. In motion sequence 002, defendant/third-party plaintiff K Restoration and Roofing Corp. s/h/a Kay Waterproofing Corp. (Kay) moves, pursuant to CPLR 3212, for an order granting summary judgment and dismissing all claims and cross-claims as against it.

In motion sequence 003, plaintiffs move, pursuant to CPLR 3212, for an order granting summary judgment as to their claim of a violation of Labor Law § 241(6).

Despite Kay's objection to the late filing of plaintiffs' opposition papers in motion sequence 002, because Kay had the opportunity to submit reply papers, the late papers are considered (*see Kavakis v Total Care Sys.*, 209 AD2d 480, 480 [2d Dept 1994] ["(s)ince the defendant was able to submit reply papers, the Supreme Court did not improvidently exercise its discretion by considering the papers submitted by the plaintiff in opposition to [defendant's] motion, even though they were untimely"]).

BACKGROUND

Plaintiff's Deposition

Plaintiff began working for Paguay Construction in 2019. His work included changing bricks, painting, demolishing and polishing walls. Fernando Paguay (Paguay) was the owner of Paguay Construction.

Plaintiff was involved in an accident at the premises on October 24, 2019, at the building located at Lexington Avenue and 85th Street in Manhattan. Every morning while he worked there, he would receive instructions from Paguay regarding what had to be done. Miguel, Paguay's father, would sometimes provide instructions and supervise the workers. If the workers needed something, they could ask Miguel. No one else provided plaintiff with instructions. There were no other contractors at the site on the date of plaintiff 's accident and Paguay or Miguel provided him with tools and equipment.

The accident occurred at 5:00 p.m., while plaintiff was attempting to tie a scaffold on which he was standing to a sidewalk shed. Plaintiff had been painting balconies on which damaged bricks were being replaced. He was joined on the scaffold by a co-worker, and the scaffold was affixed and suspended with electronic motors by Paguay Construction. It had short

railings and an "L shape" so it could ascend and descend the building's facade without contacting the balconies.

Plaintiff was wearing a hard hat or a helmet, the scaffold had a safety belt, and a safety rope which descended from the roof of the building to the scaffold and had a hook and connected to the back of his harness. Plaintiff testified:

> "Q. Okay. And how did your accident occur?
>
> A. We were coming down, we usually did at 5:00 p.m., and the scaffold was far from the building, like three or four meters away, because we had to use the balconies, and it
> was also far from the pipe, or the plank, and the rope got tangled because that day it was very windy, and I couldn't reach the pipe to be able to tie the scaffold."
>
> ***
>
> "A. Because the scaffold was suspended in the air, in the air, and like one meter separated from the pipe, and I had to pull a rope to be able to secure it, but the harness didn't let me because it was tangled, so I removed the harness to be able to reach, and that's when I lost balance and I fell."

(NYCEF DOC. NO. 82, at 38-39).

Plaintiff further testified:

> "Q. What was the harness -- you said the harness was tangled, what do you mean by that?
>
> A. The safety rope had tangled and --in the bottom, because that day was very windy, it was tangled with other ropes, I don't know, and it didn't let me get close to the pipe to secure the scaffold, so I had to-- I had to remove the harness to be able to reach the pipe, and the safety was usually --was usually on, on that day it was loose, I don't know why, and I lost control and I fell backwards.
>
> Q. What was the pipe that you're describing, you said you're reaching for a pipe, what was the pipe?
>
> A. The pipe is, I'm not sure how it's referred to here, but it's like a wood where the safety rope is with planks. I call it pipe, but I don't know. The scaffold, it's called a scaffold."

(*Id.* at 39-40).

> "Q. You said you couldn't reach the pipe because the harness was preventing you, is that correct?
>
> A. Exactly, because where I was on the right side, there's a-- there was the motor, and it had the little -- the little thing that I had to reach because there's a safety line -- the safety rope that had been tangled, and it didn't let me reach because I was tangled, and I had to remove the harness to be able to reach that line."

(*Id.* at 43-44).

The scaffold was located around five meters high, or around 14 or 15 feet from the ground, and it was moving as a result of the wind and because it was not stable. Plaintiff maintained that a piece of wood should have been used to stabilize it, and that all of the other scaffolds had wood underneath them so that they remained stable.

Plaintiff connected his line every day before he ascended the scaffold and was told by Paguay every morning to utilize a safety harness. He maintained that on the day of his accident, there was a lot of wind and the safety line rope got tangled in the motor a few times. He later testified that, despite the wind, he could still work. When there was wind, Paguay would make the decision whether the workers should be lowered down.

Plaintiff testified that there was usually a person on the sidewalk shed that placed things in order, and when he pulled the rope to be able to tie it to the scaffold, it was loose and had been untied. When plaintiff pulled the loose rope, he lost his balance and fell backwards. Plaintiff maintained that the workers were otherwise trapped on the scaffold since his co-worker's rope was also tangled.

Plaintiff specifically testified that:

> "A. There was no other alternative, because if I didn't disconnect my harness from the safety cord, the scaffold would have remained in the open space hanging there and that was very risky.
>
> Q. Why was it risky?

A. The scaffold was losing its balance. That was very dangerous. We couldn't redress the scaffold because my safety cord was entangled."

NYSCEF DOC. NO. 83, at 21.

Plaintiff fell from the scaffold to the ground. He suffered injuries to his left wrist, hand, ribs, right leg, spine, and neck.

Deposition Jeffrey Heiser of Kay

Jeffrey Heiser (Heiser), vice-president of Kay, testified that Kay subcontracted the work to Paguay Construction. Kay's project manager was Justin Breton (Breton) who was located at the site on a daily basis. All of the work was completed by Paguay Construction, which supplied its own labor, but Kay provided the scaffolding. The sidewalk bridge was supplied by a third-party company.

Heiser learned of the subject accident from Breton and Paguay on the day following the accident. He recalled Breton telling him that a worker had his ropes entangled and that, instead of following normal procedures, he unhooked his safety line to untangle the ropes and fell. Heiser maintained that unhooking a safety line was an offense which could result in termination.

Affidavit of Fernando Paguay of Paguay Construction

Paguay submited an affidavit dated October 23, 2024, in which he states that he was president of Paguay Construction, which was hired as a subcontractor by Kay. He personally conducted an assignment and safety meeting each morning, including on the morning of the subject accident. At that time, he would provide each employee with their assignment for the day, as well as safety rules and regulations.

On each day, including the date of accident, Paguay advised plaintiff and his fellow employees that a safety harness had to be worn and properly tied off when a worker was on a scaffold and that, if a worker was observed on a scaffold without a safety harness properly tied

off, he or she would be terminated. Paguay opined that, due to plaintiff's disregard and violation of the explicit safety instructions given to him to wear a safety harness and be properly tied-off, his actions constituted the sole cause of his accident.

Affidavit Benjamin Lavon of GEI Consultants, Inc.

Benjamin Lavon (Lavon), Vice President of GEI Consultants, Inc., and a licensed professional engineer, submitted an affidavit dated October 25, 2024, stating therein that he specialized in the design of new construction and the repair and rehabilitation of structures. In order to prepare his affidavit, he analyzed and reviewed the pleadings, deposition transcripts of the parties, exhibits marked at the various depositions, and the verified bill of particulars.

Lavon stated that, based upon his review of the foregoing materials and his experience in the construction industry, he concluded with a reasonable degree of engineering certainty, that plaintiff's disconnection of the safety lanyard from his harness while on the scaffold was the sole proximate cause of his accident.

Lavon emphasized that plaintiff was present at a daily toolbox talk at which he was reminded of the proper procedures when utilizing a scaffold. Plaintiff was told many times not to remove or disconnect his safety harness and lanyard while on a scaffold, but ignored those warnings, resulting in his accident. Lavon further maintained that the Industrial Code and OSHA violations alleged by plaintiffs in the Bill of Particulars are not applicable to the accident.

Lavon represented that, Industrial Code § 23-1.16(b) required that the harness provided to a worker remain properly attached when the worker was on the scaffold, and that based on the testimony, plaintiff's harness was properly attached. However, plaintiff voluntarily disconnected his safety harness.

With regard to Industrial Code § 23-1.5(c), Lavon stated that this section prohibited employers from allowing an employee to use machinery not in good repair or unsafe working conditions. Lavon opined that plaintiff's testimony suggested that he would not have been allowed to use the scaffold if the working conditions were not safe.

LEGAL CONCLUSIONS

Summary Judgment Standard

"The 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 eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make such a showing "requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Id.*). Once this showing has been made, the burden shifts to the nonmoving party to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp*., 18 NY3d 499, 503 [2012] [internal quotations omitted]).

Labor Law § 240(1)

Labor Law § 240(1) imposes a nondelegable duty upon owners, general contractors, and their agents to provide workers with safety devices to protect from risks at elevated work sites (*See McCarthy v Turner Constr*., Inc., 17 NY3d 369, 374 [2011]).

Labor Law § 240(1) provides in part:

> [a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, 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.

"The failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident" (*Cherry v Time Warner, Inc*., 66 AD3d 233, 235 [1st Dept 2009] [internal quotation marks and citations omitted]; *see also Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 96 [2015]; *Saint v Syracuse Supply Co*., 25 NY3d 117, 124 [2015]; *Soto v J. Crew Inc*., 21 NY3d 562, 566 [2013]).

The Court of Appeals has held that "[n]ot every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Narducci v Manhasset Bay Assocs*., 96 NY2d 259, 267 [2001]; *citing Ross v Curtis-Palmer Hydro-Elec. Co*., 81 NY2d 494, 501 [1993]).

Furthermore, to show that a plaintiff's actions were the sole proximate cause of an injury, the defendant must establish that "plaintiff 'had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured'" (*Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 10 [1st Dept 2011], *quoting Cahill v Triborough Bridge & Tunnel Auth*., 4 NY3d 35, 40 [2004]). However, "if a statutory violation is

a proximate cause of an injury, the plaintiff cannot be solely to blame for it" (*Blake v Neighborhood Hous. Servs. of N.Y. City, Inc*., 1 NY3d 280, 290 [2003]).

Kay contends that plaintiff's cause of action for a violation of Labor Law § 240(1) must be dismissed since it provided him with adequate safety devices and because the subject accident was caused by plaintiff's removal of his safety lanyard from his harness while he was still on the scaffold. Kay contends that plaintiff was provided with an adequate scaffold, a harness, and a safety line, all of which were sufficient to protect him from falling. Nevertheless, plaintiff voluntarily removed the harness, despite knowing that he was required to keep it attached at all times. Kay argues that, according to Lavon's affidavit, plaintiff's accident was solely caused by his disconnecting the safety lanyard from his harness while he was still on the scaffold.

Kay further contends that, contrary to plaintiff's assertions that the scaffold was unsecure, plaintiff's testimony reflects that the scaffold was affixed to the building and needed to be untied at the end of the day to be properly stored. Kay maintains that plaintiff's injuries were the direct result of his improper use of the provided safety equipment.

In opposition and in support of their own motion, plaintiffs contend that summary judgment must be granted pursuant to Labor Law § 240(1). They argue that plaintiff was caused to fall from a height as a result of the failure of an inadequately-secured scaffold. Plaintiff maintains that he was actively engaged in the covered activity of façade repair and that the suspended motorized scaffold atop of which he was working suddenly shook, causing him to fall off the side of its platform 14 - 15 feet to the sidewalk below. Plaintiff contends that his removal of the harness was the result of the safety rope becoming entangled, requiring that the harness be removed so that the situation could be rectified.

Given the foregoing, a question of fact exists as to whether there was a statutory violation, and moreover, defendants failed to establish as a matter of law that the scaffolding was an adequate safety device which provided proper protection (*see O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 34 [2017] [questions of fact exist as to whether staircase at construction site provided adequate protection to plaintiff]; *Hartigan v Gilbane Bldg. Co.*, 228 AD3d 487, 488 [1st Dept 2024] ["questions of fact remain, assuming plaintiff's accident involved a gravity-related risk within the reach of Labor Law 240(1), as to whether the plaintiff was provided with devices which shall be so constructed, placed and operated as to give proper protection" (citations omitted)]; *Delahaye v Saint Anns School*, 40 AD3d 679, 682 [2d Dept 2007] [holding that "(g)enerally, the issue of whether a particular safety device provided proper protection is a question of fact for the jury"]; *Garbacki v K. 80 at Northern Westchester, Inc.*, 248 AD2d 434, 434 [2d Dept 1998] ["the issue of whether the device provided proper protection within the meaning of Labor Law 240(1)is a question of fact for the jury"]).

Plaintiff testified that the scaffold was unstable, unsteady, and was moving because of the wind. Due to its instability, plaintiffs contend that the scaffold should have had a piece of wood placed underneath to stabilize it. Since plaintiff's testimony demonstrates an issue of fact regarding whether the scaffold was secure, a question of fact exists as to whether it was an adequate safety device and whether defendant could have utilized any further safety measures to prevent its movement.

Additionally, it remains unclear whether the safety lines that were allegedly tangled with other ropes could have been prevented from tangling. Plaintiff testified that there was generally a worker located on the sidewalk shed. However, there was no worker at that location on the subject day and the rope which plaintiff grabbed was loose and remained untied. Therefore, a

question of fact exists as to whether the safety line provided adequate protection to plaintiff since it was loose enough to become entangled with other ropes and machinery.

Finally, it remains disputed whether plaintiff should have removed his harness and whether the removal was the proximate cause of his accident. Kay contends that Paguay advised plaintiff and his fellow employees that a safety harness had to be worn at all times and that all workers had to be properly tied off while on a scaffold. Lavon maintains that plaintiff was told many times not to remove or disconnect his safety harness and lanyard while on a scaffold, and that plaintiff ignored those warnings, resulting in his accident.

Plaintiff maintains that he removed his safety harness because he was placed in an emergency situation and had to remove the device. However, it remains unclear whether the scaffold could have first been lowered to the sidewalk shed, thereby eliminating the need for plaintiff to reach for the rope without his harness while elevated (*Humbach v Goldstein*, 255 AD2d 420, 421 [2d Dept 1998] [“there is a question of fact as to whether the plaintiff's conduct was a foreseeable consequence of an emergency situation created by the defendants' alleged negligence”]).

In summary, because triable issues of fact exist as to whether adequate safety equipment was provided to plaintiff and whether plaintiff was the sole proximate cause of his accident, summary judgment must be denied pursuant to Labor Law § 240(1) (*See Giordano v Tishman Constr. Corp*., 152 AD3d 470, 471 [1st Dept 2017] [“there are issues of fact as to whether Labor Law § 240(1) was violated, the issue of whether (plaintiff) was the sole proximate cause of the accident (because he unhooked his lanyard) cannot be determined as a matter of law”]).

Labor Law § 200

As plaintiff does not oppose dismissal of the common-law negligence and Labor Law § 200 claims as against defendants, defendants are entitled to dismissal of the claims (*see Linares v Massachusetts Mut. Life Ins. Co.*, 225 AD3d 520, 521 [1st Dept 2024] [holding the "Supreme Court should have dismissed plaintiff's common law negligence and Labor Law § 200 claims as abandoned against (defendants) because plaintiff expressly opted not to oppose their dismissal on summary judgment"]; *Leveron v Prana Growth Fund I, L.P.*, 181 AD3d 449, 450 [1st Dept 2020] ["Plaintiff abandoned his common-law negligence and Labor Law § 200 claims as against the . . . defendants by failing to oppose that portion of their motion seeking the dismissal of those claims"]).

Labor Law § 240(2)

As plaintiffs abandoned this claim by failing to oppose that portion of Kay's motion, it is dismissed (*See Sancino v Metropolitan Transp. Auth.*, 184 AD3d 534, 535 [1st Dept 2020] [holding that the court declined to consider plaintiff's arguments regarding a section of the Labor Law because he abandoned the claim by failing to oppose that portion of the defendants' motion"]).

Labor Law § 240(3)

As plaintiff has not submitted evidence to establish that this section of the Labor Law was violated, other than providing a generalized statement, it is dismissed (*see Kyle v City of New York*, 268 AD2d 192, 199 [1st Dept 2000] ["we find that plaintiff failed to proffer any evidence, other than bald, conclusory statements, to establish that the scaffold could not support four times its weight, a precondition to recovery under" Labor Law 240 (3)]; *see also Badzio v East 68th St. Tenants Corp.*, 2020 NY Slip Op 32885 [U] **27 [Sup Ct, NY County 2020]

["There is no indication in the record that the scaffolding was not constructed to bear the appropriate weight amount"]).

Labor Law § 241(6)

> Labor Law § 241(6) provides, in pertinent part:
>
> [a]ll contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places . . . .

Labor Law § 241(6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection for workers and to comply with specific safety rules which have been set forth by the Commissioner of the Department of Labor (*see St. Louis v Town of N. Elba*, 16 NY3d 411, 413 [2011]). In order to demonstrate liability pursuant to Labor Law § 241(6), a plaintiff must show that the defendant violated a specific, applicable regulation of the Industrial Code, rather than a provision containing only generalized requirements (*Nostrom v A.W. Chesterton Co*., 15 NY3d 502, 507 [2010]).

Plaintiffs allege that Kay violated numerous sections of the Industrial Code. However, as plaintiffs address only sections 23-1.5 and 23-1.16 in their motion, the other sections are deemed abandoned (*Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003]).

Industrial Code Section 23-1.5(c)(3)

Section 23-1.5(c)(3) provides that "[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." This section of the Industrial Code has been found to be

specific enough to support a Labor Law § 241(6) claim (*See Becerra v Promenade Apts. Inc.*, 126 AD3d 557, 558 [1st Dept 2015]).

Kay maintains that there is no evidence of damage to the scaffold plaintiff was using which required Kay to immediately remove or restore it, observing that plaintiff testified that his scaffold was in good working order prior to using it on the day of the accident.

In opposition, plaintiffs contend that the safety line became entangled with other lines and with the scaffold's motor, and that the substantial swaying and shaking movement of the scaffold led to plaintiff's fall. Plaintiffs contend that defendants have failed to eliminate all triable issues of fact regarding whether the safety line and scaffold were sound and operable, or whether they should have been immediately repaired, restored or removed from the job site as required by section 1.5(c)(3).

Questions of fact exist as to whether the scaffold was fully operable, as plaintiff testified that it was unsteady and should have had wood stabilizing it. Furthermore, it is also unclear whether the safety lines and ropes were operable since they were allegedly so loose that they tangled. Give that the purpose of the scaffold was to provide a safe working surface, and since a question exists as to why it was unstable and why the rope became tangled, the portion of Kay's motion seeking to dismiss plaintiff's claim of a violation of this section is denied (*See Leopoldino v 206 Kent Inv. LLC,* 2024 NY Slip Op 51457 (U) ** [Sup Ct, Kings County 2024] ["summary judgement is denied as to § 23-1.5(c)(3), as there are outstanding material issues of fact"]).

Industrial Code Section 23-1.16(b)

Industrial Code § 23-1.16(b) provides:

> Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the

> performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.

Section 23-1.16(b) is sufficiently specific enough to sustain a cause of action under Labor Law § 241(6) (*see Jerez v Tishman Constr. Corp. of N.Y.*, 118 AD3d 617, 618 [1st Dept 2014]).

Kay contends that, although plaintiff had a harness and a proper location to tie off, he voluntarily removed the safety rope from his harness to retrieve a rope needed to secure the scaffold. Kay argues that plaintiff's harness was attached to an anchor lifeline which was connected to the roof of the building and that, had he not disconnected his lifeline, plaintiff would have stayed secure the entire time he was using the scaffold. Furthermore, Lavon concluded that, since plaintiff voluntarily disconnected his lifeline against explicit instructions, there can be no violation of the Industrial Code.

Plaintiffs contend that, while plaintiff was provided with a harness and safety line, such equipment was not adequately secured and erected in such a way as to avoid the line becoming entangled. Thus, plaintiffs maintain Kay cannot assert that the safety line was properly attached to a secure anchorage point.

Here, plaintiff's testimony presents a question of fact regarding whether the safety lines were securely anchored since the lines were allegedly loose, and became tangled and caught in machinery. Therefore, the portion of Kay's motion seeking to dismiss the alleged violation of section 23-1.16(b) of the Industrial Code is denied (*see Dossantos v Church of St. Paul the Apostle, N.Y. City*, 2019 NY Slip Op 31489 [U] **9 [Sup Ct, NY County 2019] [questions of fact exist as to whether section 23-1.16(b) was violated]).

Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI) provisions

Plaintiffs fail to address the OSHA or ANSI provisions in opposition to Kay's motion. In any event, it has been held that "OSHA regulations cannot provide the basis for a Labor Law 241(6) cause of action" (*see Landry v General Motors Corp., Cent. Foundry Div.*, 210 AD2d 898, 898 [4th Dept 1994]). Further, purported violations of ANSI standards will not support a Labor Law § 241(6) claim (*see Montero v Myrtle Ave. Bldrs., LLC*, 42 Misc 3d 1219 [A] [Sup Court, Kings County 2014]).

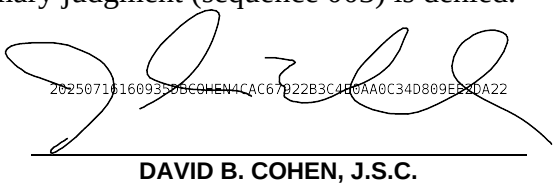
Therefore, plaintiffs' claims regarding Labor Law § 241 (6) predicated on alleged violations of OSHA and the ANSI are dismissed.

CONCLUSION

Accordingly, it is hereby;

ORDERED that defendant/third-party plaintiff K Restoration and Roofing Corp. s/h/a Kay Waterproofing Corp.'s motion for summary judgment (sequence 002) is granted only as to severing and dismissing the claims of violations of Labor Law §§ 200, 240(2), 240(3), and 241(6) predicated on violations of sections 23-1.7, 23-1.15, 23-1.17, 23-1.21(b)(1), 23-1.21(b)(3)(i), 23-1.21(b)(4)(ii), 23-1.21(b)(4)(iv), 23-5 and 23-9.6 of the Industrial Code and OSHA and ANSI provisions, and the motion is otherwise denied; and it is further

ORDERED that that plaintiffs' motion for summary judgment (sequence 003) is denied.



7/11/2025
DATE

DAVID B. COHEN, J.S.C.

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