Rondon v 25 Park Row Condominium
2025 NY Slip Op 33788(U)
September 30, 2025
Supreme Court, New York County
Docket Number: Index No. 159862/2021
Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M

Justice

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PABLO RONDON,

Plaintiff,

- v -

25 PARK ROW CONDOMINIUM, PARK ROW 23 OWNERS LLC,23 PARK ROW ASSOCIATES, LLC,L&M DEVELOPMENT PARTNERS INC.,RNC INDUSTRIES, LLC,URBAN ATELIER GROUP, LLC,ROCK GROUP NY CORP., DORIA, INC.

Defendant.

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INDEX NO. 159862/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 177

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 175, 178, 179

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

FACTUAL BACKGROUND

This personal injury action arises from an accident at a construction project at 25 Park Row in Manhattan. On July 19, 2018, Plaintiff, a plumber employed by subcontractor Parkview Plumbing, was allegedly assigned by his foreman to perform work on the 21st floor of the building. Plaintiff testified that upon arriving at the floor, he was instructed to prepare for plumbing installation in the bathroom area of one of the apartments.

Plaintiff alleges that while carrying a plank, Plaintiff stepped on a metal clamp lying on the floor and fell. The clamp was identified as a "C-clamp," typically used by RNC Industries LLC ("RNC"), the concrete subcontractor, to hold forms in place during concrete work. Plaintiff testified that he had not previously worked on the 21st floor, was alone at the time of the

accident, and did not see anyone else performing work in the area. Plaintiff alleges that he did not notice the clamp before stepping on it, and did not know how long it had been there. Photographs taken shortly after the accident depict a clamp, although Defendants argue that these photographs do not establish where they were taken and lack temporal context.

Plaintiff's Bill of Particulars alleges violations of Labor Law §§ 240(1), 241(6), and 200, with the §241(6) claim predicated on multiple Industrial Code provisions. Discovery produced daily reports and deposition testimony from Seth Anderson, a site representative, confirming that RNC was working on higher floors (27th and 28th) at the time of the accident. Anderson also testified that if he had seen clamps lying loose on the floor, he would have directed them to be removed.

Plaintiff, in Motion Sequence 006 seeks summary judgment pursuant to Labor Law §241(6). Defendants in Motion Sequence 007 seek dismissal of all claims under Labor Law §§240(1), 241(6), 200, and common-law negligence.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be

drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Labor Law §240(1) states "All contractors and owners and their agents…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 statute imposes absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). "[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

"To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries. The burden then shifts to the defendant to raise a triable issue of fact" (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). "The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

"Labor Law § 240(1) applies to both 'falling worker' and 'falling object' cases." (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68 [2001]). With respect to falling

objects, Labor Law § 240(1) applies where the falling of an object is related to 'a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured.'" (Id. *quoting Rocovich v Consol. Edison Co.,* 78 NY2d 509, 514 [1991]).

For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 [1992]). Here, plaintiff's claim under Labor Law §241(6) is based on violation of Industrial Codes 23-1.5, 23-1.7(d), (e)(1), (e)(2), 23-1.32, 23-1.33(b)(2)(iii), (b)(3)(iii), (d)(i), and 23-2.1(a), (b) as follows:

i) 23-1.5

> (a) Health and safety protection required. All places where employees are suffered or permitted to perform work of any kind in construction, demolition or excavation operations shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection for the lives, health and safety of such persons as well as of persons lawfully frequenting the area of such activity. To this end, all employers, owners, contractors and their agents and other persons obligated by law to provide safe working conditions, personal protective equipment and safe places to work for persons employed in construction, demolition or excavation operations and to protect persons lawfully frequenting the areas of such activity shall provide or cause to be provided the working conditions, safety devices, types of construction, methods of demolition and of excavation and the materials, means, methods and procedures required by this Part (rule). No employer shall suffer or permit an employee to work under working conditions which are not in compliance with the provisions of this Part (rule), or to perform any act prohibited by any provision of this Part (rule).
> (b) General requirement of competency. For the performance of work required by this Part (rule) to be done by or under the supervision of a designated person, an employer shall designate as such person only such an employee as a reasonable and prudent man experienced in construction, demolition or excavation work would consider competent to perform such work.
> (c) Condition of equipment and safeguards.

(1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition.
(2) All load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon.
(3) All 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.

ii) 23-1.7(d), (e)(1) & (2);

(d) Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.
(e) Tripping and other hazards.
(1) Passageways. All passageways shall be kept free from … obstructions or conditions which could cause tripping…
(2) Working areas. The parts of 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 and from sharp projections insofar as may be consistent with the work being performed.

iii) 23-1.32;

Where noncompliance with a provision of this Part (rule) causes or tends to cause imminent danger to a person employed in construction, demolition or excavation work and written notice thereof is given by the commissioner to the appropriate employer, owner, contractor or his agent, such person shall either (a) at once effect compliance sufficiently to end the danger, or (b) unless the commissioner does such posting or tagging on his behalf, forthwith post the dangerous area or tag the dangerous device or material with suitable posters or signs warning of the danger and forbidding unauthorized entry into the area or unauthorized use of the device or material, and shall maintain such posters or signs until the danger has been ended. While such noncompliance exists no employer shall suffer or permit any person employed by him to enter or be within an area or to use a device or material as to which he has received such a notice of imminent danger, or which is so posted or tagged, except to effect compliance with this Part (rule). No unauthorized person shall remove such poster or sign.

iv) 23-1.33(b)(2)(iii), (b)(3)(iii); & (d)(i)

(b) Pedestrian protection.
(2) Temporary Walkways
(iii) Where any such existing thoroughfare is endangered from both sides, protection or guarding shall be provided for both sides.

(3) Elevated temporary Walkways

(iii) The surface of every elevated temporary walkway shall be smooth, firm, free from tripping hazards and so constructed as to permit adequate drainage. If planking is used on the surface of any such walkway, it shall be of uniform thickness, shall be laid parallel to the length of the walkway and shall be fastened together to prevent displacement.

(d) Maintenance.

(1) Existing and temporary walkways shall be maintained free from obstructions, tripping hazards, snow, sleet, ice and accumulations of water, dirt or dust and of any other material or objects.

v) 23-2.1(a) & (b)

(a) Storage of material or equipment.

(1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.

(2) Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge.

(b) Disposal of debris. Debris shall be handled and disposed of by methods that will not endanger any person employed in the area of such disposal or any person lawfully frequenting such area.

Finally, Labor Law §200 codifies the common law duty of an owner to provide construction workers with a safe place to work (*See Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876 [1993]). Labor Law §200 and common law claims fall under two categories: "those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). Under the first group, the owner had to have either created the condition or have actual or constructive notice of it (*Id* at 144). In the second category, the owner or general contractor is liable if "it actually exercised supervisory control over the injury-producing work" (*Id*).

Labor Law § 200 claims against a premises owner or contractor can arise from either the manner in which the work is performed or a dangerous or defective condition at the work site. (*Martinez v City of New York,* 73 AD3d 993 [2d Dept 2010]). For the former, the owner or contractor is liable only if it exercised supervision or control of the work that led to the injury. (*Rizzuto v L.A. Wenger Contr. Co., Inc.,* 91 NY2d 343 [1998]). Where the injury arises from a dangerous or defective condition, an owner or contractor is liable if they created the condition, or failed to remedy it when they had actual or constructive notice. (*Williams v McAlpine Contr. Co.*, 235 AD3d 521, 522 [1st Dept 2025]).

DISCUSSION

Labor Law §240(1)

Labor Law §240(1), provides extraordinary protections for workers engaged in certain enumerated construction activities against gravity-related risks such as falling from a height or being struck by a falling object that was inadequately secured. Absolute liability is imposed where the failure to provide such protection is the proximate cause of the accident (*Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 559 [1993]; *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

Plaintiff alleges that he was carrying a wooden plank into a bathroom on the jobsite when he tripped over a clamp on the floor and fell forward. He does not claim to have fallen from an elevated height, nor does he allege that an object fell onto him from above. The hazard he encountered was a tripping obstruction on the same level.

New York courts have repeatedly emphasized that §240(1) does not apply to ordinary workplace hazards, even if they are tangentially connected to the effects of gravity. The Court of Appeals rejected liability where glass fell but not as a result of hoisting or securing devices

explaining that "[a] plaintiff must show that the object fell, while being hoisted or secured, *because of* the absence or inadequacy of a safety device of the kind enumerated in the statute." (*Narducci.*, 96 NY2d 259 at 268) (emphasis in original).

In *Melber v 6333 Main St., Inc.*, 91 NY2d 759, 763 [1998], a worker tripped over conduit on the ground while on stilts. The Court held that while the fall was gravity-related in the broadest sense, the hazard did not result from elevation differentials contemplated by §240(1), in part because no enumerated device could have protected the plaintiff in *Melber* from the fall, and that the cause of the injuries alleged was not a heigh differential contemplated by the statute. (Id.).

Here, the accident was not caused by the absence or failure of a safety device intended to guard against elevation-related risks. Plaintiff did not fall from a ladder, scaffold, platform, or other elevated device, nor was he struck by an object that was being hoisted or inadequately secured. Instead, his injury stemmed from a ground-level tripping hazard created by a clamp lying on the floor while he was carrying a plank. Courts have consistently held that such tripping or same-level hazards fall outside the ambit of §240(1) because they do not implicate the "special elevation-related hazards" the statute was designed to address (*Melber*, 91 NY2d 759 at 763; No protective device enumerated in the statute, such as scaffolds, hoists, or ropes, would have prevented Plaintiff's fall, and the risk he encountered was one of ordinary site maintenance and housekeeping. Thus, this accident does not fall within the extraordinary protections afforded by Labor Law §240(1).Moreover, Plaintiff submits no opposition to the branch of Defendants' motion predicated on Labor Law §240(1).

Accordingly, Defendants' motion for summary judgment (Motion Sequence 007) dismissing the Labor Law §240(1) claim is granted.

Labor Law §241(6)

Labor Law §241(6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection to workers, contingent upon establishing a violation of a specific, applicable Industrial Code provision that proximately caused the accident (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501 [1993]).

Plaintiff pleads violations of Industrial Code §§ 23-1.5, 23-1.7(d), 23-1.7(e)(1)-(2), 23-1.32, 23-1.33(b)(2)(iii), 23-1.33(b)(3)(iii), 23-1.33(d)(i), and 23-2.1(a)-(b). In opposition, Plaintiff only advances arguments under §§ 23-1.5, 23-1.7(d), and 23-1.7(e)(1)-(2). All other provisions are deemed abandoned and dismissed.

12 NYCRR § 23-1.5 (general safety and equipment condition)

Subsection (a) of Industrial Code 23-1.5 is too general to support a claim for liability pursuant to Labor Law §241(6). (*Castaldo v F.J. Sciame Constr. Co. Inc.*, 222 AD3d 579, 580 [1st Dept 2023]). However, subsection (c), which require equipment to be in good repair and safety devices to be operable, are sufficiently specific (*Becerra v Promenade Apartments Inc.*, 126 AD3d 557, 559 [1st Dept 2015]).

Here, Plaintiff testified that he tripped over a clamp while carrying a wooden plank into a bathroom. The record does not definitively establish whether the clamp was a piece of equipment actively in use, discarded material left on the floor, or a defective component improperly maintained at the site. If the clamp constituted equipment or a safety device that was not in good repair or not properly stored, that may fall within the scope of §23-1.5(c)'s mandate. Conversely, if the clamp was simply a loose piece of material unrelated to any equipment defect, liability under this provision may not be established.

Because these factual questions remain unresolved, including the origin and condition of the clamp, the Court cannot determine as a matter of law whether §23-1.5(c) was violated or whether such a violation proximately caused Plaintiff's accident. Accordingly, summary judgment is inappropriate for liability related to the claim under Industrial Code §23-1.5(c).

12 NYCRR § 23-1.7(d) (slipping hazards)

Section 23-1.7(d) prohibits the use of walkways, floors, or platforms that are slippery from ice, snow, water, grease, or other substances. The Court of Appeals recently addressed this provision in *Bazdaric v Almah Partners LLC,* 41 NY3d 310, 312 [2024]. There, the plaintiff slipped on heavy-duty plastic covering placed on an escalator where he was painting. The Court held that the plastic sheeting, though not one of the enumerated substances, created a slippery condition of the same kind and was not integral to the work being performed. On that basis, the Court granted the plaintiff summary judgment under Labor Law §241(6). The definition of a material that is "integral" is not confined narrowly to the specific task being performed but may extend to the broader work area. (*Krzyzanowski v City of New York*, 179 AD3d 479, 480 [1st Dept 2020]).

The facts here are materially different. Plaintiff does not allege that he slipped on a slippery surface. Instead, he testified that he tripped over a clamp lying on the floor while carrying a plank into a bathroom. A clamp on the ground does not fall within the category of slippery substances contemplated by §23-1.7(d). Nor has Plaintiff alleged that the clamp created a slippery surface akin to snow, ice, water, grease, or other similar substances. Rather, the clamp presents an obstruction or tripping hazard, which are addressed under different subsections of the Industrial Code, namely §23-1.7(e) and §23-2.1, not under subsection (d).

Moreover, to the extent Defendants contend that the clamp was an ordinary piece of work equipment left in its proper place as part of ongoing work, *Bazdaric* makes clear that materials or tools integral to the work, when appropriately placed, do not constitute a dangerous condition under the Industrial Code. Because Plaintiff's testimony attributes his fall to tripping, not slipping, and no evidence suggests a slippery footing condition of the type contemplated by subdivision (d), this subsection is inapplicable as a matter of law, and as such summary judgment is inappropriate for liability related to the claim under Industrial Code §23-1.7(d).

12 NYCRR § 23-1.7(e)(1) (passageways and working areas)

This subsection requires passageways to be kept free from obstructions. "[T]he Industrial Code does not provide a formal definition of 'passageway,' the practical function of the area where plaintiff fell is a question to be addressed by the trier of fact…'courts have interpreted the term to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area'" (*Prevost v One City Block LLC,* 155 AD3d 531, 535 [1st Dept 2017] *quoting Steiger v LPCiminelli, Inc.*, 104 AD3d 1246, 1250 [4th Dept 2013]).

Here, Plaintiff testified that he was carrying a plank into a bathroom when he tripped over a clamp lying on the floor. The threshold factual issue is whether the entrance into and through the bathroom doorway where Plaintiff allegedly fell functioned as a "passageway."

There is no material issue as to whether the location of the alleged accident was a "working area" for the purposes of the Industrial Code. The bathroom itself was being used as an active worksite, meaning it functioned as a "working area" under the regulation.

However, issues of fact as to whether the clamp was "instrumental" to the work apply equally to Industrial Code §23-1.7(e) as they do to Industrial Code §23-1.7(d). (*Krzyzanowski*, 179 AD3d 479 at 480). As discussed *supra*, whether the clamp here was integral to the ongoing

installation work, or instead represented a hazardous obstruction in a passageway, is a factual question.

Accordingly, issues of fact remain as to whether Plaintiff fell in a "passageway" within the meaning of §23-1.7(e)(1), and if so, whether the clamp was an obstruction or merely equipment integral to the work. Summary judgment is inappropriate for liability related to the claim under Industrial Code §23-1.7(e) as well.

Remaining Industrial Codes §§ 23-1.32, 23-1.33, 23-2.1 and Comparative Fault

These provisions were not argued in opposition and are therefore deemed abandoned. Nonetheless, the Court finds such are inapplicable to Plaintiff's claims.

Section 23-1.32 requires compliance or warning signage when the Commissioner of Labor issues a written notice of imminent danger. The regulation is triggered only when there is proof that the Commissioner has identified a dangerous condition and issued such notice. Here, there is no evidence in the record that any such notice was issued regarding the clamp or any other condition at the worksite. In the absence of that threshold showing, §23-1.32 cannot support Plaintiff's §241(6) claim. Accordingly, this subsection does not apply, and Defendants are entitled to dismissal as a matter of law.

Next, the Court analyzes the Industrial Code §23-1.33 related to pedestrian protection and walkways. Subdivision (b)(2)(iii) requires that temporary walkways endangered from both sides be guarded, while subdivision (b)(3)(iii) requires elevated walkways to be smooth, firm, and free from tripping hazards. Subdivision (d)(1) further requires that existing and temporary walkways be maintained free from obstructions and accumulations of debris.

Plaintiff allegedly tripped in a bathroom interior not on a temporary walkway, passage, or pedestrian thoroughfare constructed for site access. A bathroom floor within an active

construction site does not qualify as such a walkway. Accordingly, these subsections of §23-1.33 do not apply to the facts at bar, and they are dismissed.

Industrial Code §23-2.1 governs the storage of materials and disposal of debris. Subsection (a)(1) requires building materials to be stored in a stable and orderly manner and not to obstruct passageways, while subsection (a)(2) prohibits storing materials so close to the edge of a platform as to endanger persons below. Subsection (b) requires debris disposal methods that will not endanger workers.

Industrial Code §23-2.1 "is inapplicable in the absence of any showing that the material which caused plaintiff to fall was being 'stored' or that the accident involved 'material piles,' as oppose[d] to a single [object]." (*Constabile v Damon G. Douglas Co.*, 21 Misc 3d 144(A) [App Term 2008], *affd sub nom. Costabile v Damon G. Douglas Co.*, 66 AD3d 436 [1st Dept 2009]). The record contains no evidence that the clamp was part of a pile of materials or stored equipment, nor that it was debris in the process of disposal. Instead, it was a single object that allegedly created a tripping hazard. Under *Costabile*, the absence of stored materials or debris piles removes the condition from the ambit of §23-2.1. Accordingly, Plaintiff's claim premised on Industrial Code §23-2.1 cannot be sustained and is dismissed.

As the court has found that Plaintiff is not entitled to summary judgment pursuant to Labor Law §241(6), it similarly declines to strike the affirmative defense of comparative fault, as issues remain as to any fault related to the alleged injuries.

Labor Law §200 and Common-Law Negligence

Defendants argue that Plaintiff's §200 and negligence claims fail because the record demonstrates that they did not supervise or control Plaintiff's work, did not provide tools or materials, and had no notice of the clamp on the 21st floor. They emphasize Plaintiff's

deposition testimony that he received instructions exclusively from his ParkView foreman, John Murphy, and had no interactions with the moving defendants regarding supervision, materials, or safety. They also highlight that the clamp was allegedly located beneath a wooden plank and thus not visible until Plaintiff lifted the plank, contending that no one, including Defendants, could have discovered the hazard beforehand.

While this argument is relevant to resolving Defendants role in directing Plaintiff's means and methods, Plaintiff's theory is that his injuries resulted from a dangerous or defective condition on the premises as to a clamp left on the floor. In such cases, liability arises if Defendants either created the condition or had actual or constructive notice of it. (*Cappabianca*, 99 AD3d 139; *Williams*, 235 AD3d 521).

On this record, Defendants have not made aprima facie showing that they lacked notice. Their motion relies on pointing to Plaintiff's inability to prove that Defendants had notice, but deficiencies in opposition alone are insufficient to support a finding of summary judgment. f (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985])

The affidavits from project representatives broadly deny supervisory involvement and fault, but they do not set forth evidence of inspection or maintenance practices that would establish Defendants exercised reasonable care to detect or prevent hazards on the 21st floor. Nor do they establish how long the clamp had been in the area, which is central to determining constructive notice. Moreover, the Affirmation of the project manager on site, Sarah Marquez, states that "it is very unlikely that any materials would be left behind." Plaintiff's testimony related to the existence of a clamp contradicts such testimony, and moreover, that it was unlikely to be there is insufficiently conclusive to establish that the clamp was not there.

Plaintiff's testimony that the clamp was partially obscured beneath a plank does not, as a matter of law, eliminate the possibility that Defendants' agents, through reasonable inspections, could have discovered the hazard. Courts have consistently held that "[t]o constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." (*Gordon v Am. Museum of Nat. History*, 67 NY2d 836, 837 [1986]). As Defendants have failed to proffer evidence conclusively showing that a clamp was not present, and that if it was present any evidence as to the length of time such was present questions of fact remain rendering summary judgment pursuant to Labor Law § 200 and common law negligence inapplicable, and such must be denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED, that Plaintiff's motion for partial summary judgment on liability under Labor Law §241(6) and dismissing Defendants' affirmative defenses of comparative fault (Motion Sequence 006) is denied.

ORDERED, that Defendants' motion for summary judgment (Motion Sequence 007) is granted in part to the extent that Plaintiff's claims under Labor Law §240(1) are dismissed; and it is further

ORDERED, that Defendants' motion for summary judgment (Motion Sequence 007) is granted in part, to the extent that Plaintiff's Labor Law §241(6) claims predicated upon Industrial Code §§ 23-1.7(d), 23-1.32, 23-1.33(b)(2)(iii), 23-1.33(b)(3)(iii), 23-1.33(d)(i), and 23-2.1(a) and (b), are dismissed; and it is further

ORDERED that the remainder of Defendant's motion for summary judgment (Motion Sequence 007) seeking dismissal of Plaintiff's Labor Law §241(6) claims predicated upon Industrial Code §§ 23-1.5(c), 23-1.7(e)(1), and 23-1.7(e)(2) and Plaintiff's Labor Law §200 and common law negligence claims are denied.

The foregoing constitutes the decision and order of the court.

9/30/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

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