SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

----------X

CARMEN AROCHO, as Administrator of the Estate of RICHARD AROCHO, deceased

Plaintiff,

- v -

BOP NE LLC, J.T. MAGEN & COMPANY INC.

Defendants.

----------X

INDEX NO. 153514/2020

MOTION DATE 06/30/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

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

BACKGROUND

Richard Arocho ("Arocho") commenced this Labor Law action seeking damages for personal injuries arising out of a January 29, 2020, workplace accident. After his death, Carmen Arocho was substituted as plaintiff in her capacity as Administrator of his Estate.

On July 21, 2025, Plaintiff moved for an order granting summary judgment on liability as to her Labor Law § 241(6) claim. For the reasons set forth below, the motion is granted.

FACTS

The following facts are taken from the record and are undisputed.

On February 4, 2019, defendant J.T. Magen & Company, Inc. ("J.T. Magen") and Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") entered into an agreement for J.T. Magen to serve as general contractor for a construction project at 1 Manhattan West ("the Building") (Exhibit G at 1). The construction project involved a total buildout of floors 28

through 46 of the Building (*id.*). Skadden was a tenant in the Building, which was owned by defendant BOP NE LLC ("BOP") (*id.* at 2).

On the 39th floor of the Building, J.T. Magen performed work to construct a kitchen, barista bar, and conference room (Exhibit C ("McGrath Deposition") at 12–13). During construction, several of J.T. Magen's workers would apply an adhesive plastic film to the ground to protect the new carpeting (*id.* at 17). Large panels of Masonite, a type of heavy wooden hardboard, were then secured to the ground on top of the adhesive, providing a pathway for workers to walk across. The workers would arrange the Masonite panels on the ground, abutting them closely against one another, and then secure them to the ground and to each other on all sides with duct tape (McGrath Deposition at 19).

Daniel McGrath ("McGrath"), J.T. Magen's superintendent assigned to the 38th and 39th floors of the Building, was tasked with inspecting the 39th floor to identify any tripping hazards (*id.* at 9, 12, 21). As superintendent, McGrath had the authority to correct unsafe conditions that were identified to him (*id.* at 21). Mr. McGrath would inspect the Masonite pathways every morning to ensure that the panels had "no edges sticking up," a routine he described himself as practicing "religiously" (*id.* at 20, 30).

Arocho was employed as a glazier by Certified Installations, a subcontractor of the construction project (Exhibit B ("Arocho Deposition") at 40–41). Arocho's duties involved the installation of heavy glass partitions that are commonly used in office spaces (*id.*). To install the partitions, Arocho and another worker would physically lift the glass sheets from carts and manually fit them into the walls (*id.* at 82–83, 85–86).

On January 29, 2020, Arocho and his partner were installing glass panels on the 39th floor of the Building (*id.* at 40, 86). The two had installed around ten panels that day without

issue (*id.*; *id.* at 96). Around 1:20 p.m., the two lifted a glass panel off a cart and began walking toward an opening where the panel would be fitted (*id.* at 93–94). Unbeknownst to Arocho, a board of Masonite in his pathway was not properly secured to the ground with duct tape, and the corner of the panel partially protruded upward (*id.* at 104–05; *see also* Exhibit D ("Plaintiff's Photograph")). When Arocho and his partner carried the panel toward the space where it would be installed, Arocho's left foot hit the unsecured portion of the Masonite, causing him to trip and fall (Arocho Deposition at 106–07). Arocho alleges he sustained serious injuries as a result (*see* Exhibit A ("Bill of Particulars") at ¶ 11).

DISCUSSION

Standard of Review

Summary judgment is a drastic remedy reserved for cases when it is apparent that "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on a motion for summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form to demonstrate the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). Once the movant meets this burden, summary judgment will be denied only when the nonmovant offers evidence in admissible form that shows the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to overcome a motion for summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). Courts

view the evidence in a light most favorable to the nonmovant, according the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

Plaintiff is entitled to summary judgment on the Labor Law § 241(6) claim.

Plaintiff has established that a violation of Industrial Code § 23-1.7(e)(1) proximately caused Arocho's injuries.

Labor Law § 241(6) provides:

> All areas in which construction . . . 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. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work . . . shall comply therewith. (Labor Law § 241(6)).

Section 241(6) imposes a nondelegable duty on owners, general contractors, and their agents "to provide reasonable and adequate protection and safety for workers" and "to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501–02 [1993]). By enacting section 241(6), the Legislature intended "to place the 'ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor," not on the workers themselves (*Rizzuto v LA Wenger Contr. Co.*, 91 NY2d 343, 348 [1998] [emphasis removed], quoting 1969 NY Legis Ann at 407–08).

To prevail on a claim under section 241(6), the plaintiff must first prove that there was a violation of a regulation in the Industrial Code that places a "specific, positive command" on the owner or general contractor to ensure safe working conditions (*id.* at 349, quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 504 [1993]). The Commission's safety rules are set out in Title 12, part 23 of the New York Codes, Rules and Regulations (12 NYCRR § 23-1.1 [hereinafter "Industrial Code"]; *Garcia v 225 E. 57th Street Owners, Inc.*, 96 AD3d 88, 90 [1st

Dept 2012]). Then, the plaintiff must prove that the violation of the Industrial Code proximately caused of their injury (*Ares v State*, 80 NY2d 959, 959 [1992]). In this case it is uncontested that Industrial Code § 23-1.7(e)(1) is sufficiently specific to support the claim.

The unsecured Masonite panel qualifies as a tripping hazard whose presence would violate Industrial Code § 23-1.7(e)(1).

Plaintiff argues that the condition of the Masonite violated Industrial Code § 23-1.7(e)(1) and that this violation proximately caused his injury. BOP and J.T. Magen counter that the meaning of section 23-1.7(e)(1) does not encompass the Masonite panel on which Arocho tripped. The Court disagrees.

Section 23-1.7(e)(1), entitled "Tripping and other hazards," provides, "All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping" (Industrial Code § 23-1.7(e)(1)). Because BOP and J.T. Magen offer an alternative interpretation of section 23-1.7(e)(1), the Court must conduct regulatory interpretation. The principles of statutory construction "apply equally to administrative rules and regulations" (*Springer v Board of Educ. of City of New York*, 27 NY3d 102, 107 [2016]). For statutory and regulatory interpretation, "legislative intent is the great and controlling principle, and the proper judicial function is to discern and apply the will of the [enactors]" (*ATM One, LLC v Landaverde*, 2 NY3d 472, 477 [2004] [alteration in original], quoting *Mowczan v Bacon*, 92 NY2d 281, 285 [1998]). The "clearest indicator of legislative intent" is the language of the statute or regulation, of which courts give effect "to the plain meaning" (*Kuzmich v 50 Murray Street Acquisition LLC*, 34 NY3d 84, 91 [2019]).

Starting with the language of the regulation, section 23-1.7(e)(1) proscribes accumulations of "dirt and debris," which the Masonite panel, being a solid object, is not. The regulation continues, however, with a separate prepositional phrase: "dirt and debris *and from*

any other obstructions or conditions which could cause tripping" (Industrial Code § 23-1.7(e)(1) [emphasis added]). That separate prepositional phrase, starting with the conjunctive "and," evidences the intent of the Commissioner to separate "other obstructions or conditions which could cause tripping" from the preceding prepositional phrase that covers only dirt and debris. BOP and J.T. Magen ask this Court to adopt an interpretation of section 23-1.7(e)(1) that would cabin the meaning of "other obstructions or conditions" to those conditions similar to "dirt and debris" (Affirmation in Opposition at 4–5). But given the prepositional construction of section 23-1.7(e)(1), the Court is unpersuaded.

The First Department has also held that Masonite panels are tripping hazards contemplated by section 23-1.7(e)(1). In *Thomas v Goldman Sachs Headquarters, LLC*, the First Department held that summary dismissal of a section 241(6) claim was improper when the plaintiff alleged that he was injured after tripping on misaligned Masonite panels (109 AD3d 421, 421 [1st Dept 2013]). Similarly, in *Bowden v Summit Glory Property LLC*, the First Department affirmed summary judgment on a plaintiff's section 241(6) claim based on a violation of Industrial Code § 23-1.7(e)(1) when the plaintiff tripped on a Masonite panel (238 AD3d 629, 630 [1st Dept 2025]). Like *Bowden*, Plaintiff's claim involves tripping on an unsecured Masonite panel (*see id.*).

Accordingly, the Court holds that the unsecured portion of the Masonite panel on which Arocho fell constitutes a violation of Industrial Code § 23-1.7(e)(1).

The "integral-to-the-work" defense is not applicable to Plaintiff's claim.

BOP and J.T. Magen counter that Plaintiff's section 241(6) claim is nevertheless defeated by the "integral-to-the-work" defense (Affirmation in Opposition at 4–5). The Court disagrees.

The integral-to-the-work defense bars a section 241(6) claim when the elimination of a hazardous condition "would be 'impractical and contrary to the very work at hand' and inconsistent with accomplishing a task that was 'an integral part of the job'" (*Sinai v Luna Park Housing Corp.*, 209 AD3d 600, 601 [1st Dept 2022], quoting *Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139–40 [2011]). The defense applies "only when the dangerous condition is inherent to the task at hand, and not . . . when a defendant or third party's negligence created a danger that was avoidable without obstructing the work or imperiling the worker" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 320 [2024]; *see also Bowden*, 238 AD3d at 630). There is no basis in the record to find that the improperly secured Masonite was integral to Plaintiff's work.

Whether superintendent McGrath actually inspected the Masonite panel on the day of the incident is immaterial.

Finally, BOP and J.T. Magen argue that superintendent McGrath's lack of memory regarding whether he specifically inspected the Masonite panel on which Arocho tripped creates a triable issue of fact as to the amount of time that the panel existed in that dangerous condition (Affirmation in Opposition at 6–7). The defendants argue—without citing any authority—that the amount of time that such a condition existed is "key to determining whether the Industrial Code was violated" (*id.* at 7). But nothing in section 23-1.7(e)(1) requires any period of time that a hazardous condition must exist for a violation to occur. And as stated above, the question is merely whether (1) a violation of a specific command in the Industrial Code (2) proximately caused the plaintiff's injuries (*Rizzuto v LA Wenger Contr. Co.*, 91 NY2d 343, 348–49 [1998], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 504 [1993]; *Ares v State*, 80 NY2d 959, 959 [1992]).

Additionally, assuming *arguendo* notice were part of such a claim, the fact that McGrath could not substantiate when the floor was last inspected weighs against defendants not in their favor.

Because plaintiff has made a *prima facie* case that a violation of Industrial Code § 23-1.7(e)(1) proximately caused Mr. Arocho's injuries and the defendants have not raised any triable issue of fact, the Court grants her motion for summary judgment.

Having found a basis for liability under Labor Law § 241(6) based on a violation of Industrial Code § 23-1.7(e)(1), the Court need not address the arguments for liability based on a violation of section 23-1.7(e)(2). The parties raise no issue as to whether the area was a passageway or a workspace, and in either event the result is the same.

CONCLUSION

Accordingly, it is hereby:

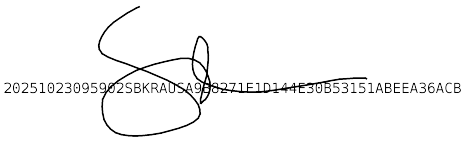
ORDERED that Plaintiff's motion for summary judgment as to liability is granted and the action shall be set down for a trial on damages before this Court; and it is further

ORDERED that, within twenty (20) days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties appear for a virtual pre-trial conference on November 12, 2025, at 10 am, where the Court will set a final trial date.

This constitutes the decision and order of this Court.



10/23/2025
DATE

SABRINA KRAUS, 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**