SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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LEON DALE,

Plaintiff,

- v -

CAULDWELL-WINGATE COMPANY, LLC, 79TH OWNER, LLC,

Defendant.

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INDEX NO. 452692/2022

MOTION DATE 06/11/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

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

Upon the foregoing documents, and after a final submission date of September 29, 2025, Defendants Cauldwell-Wingate Company, LLC ("Cauldwell") and 79th Owner, LLC's ("79th Owner") (collectively "Defendants") motion for summary judgment dismissing Plaintiff Leon Dale's ("Plaintiff") Labor Law §§ 240(1) and 200, and common law negligence claims is granted in part and denied in part. Plaintiff's cross motion for summary judgment on his Labor Law § 241(6) claim is denied.

On October 8, 2021, non-party Standard Plumbing employed Plaintiff as an insulator at 109 E. 79th Street, New York, New York (the "Premises") when his coworker bumped into him and Plaintiff fell (NYSCEF Doc. 52 at 31-33; 46). When Plaintiff got up, he slipped on a ten-foot-long pipe, causing him to fall again (*id.* at 47; 51). The Premises is owned by 79th Owner and Cauldwell served as construction manager (NYSCEF Doc. 54 at 14-15). Cauldwell employees would walk the Premises to ensure there were no tripping hazards (NYSCEF Doc. 54 at 38). Cauldwell retained and directed certain laborers to keep the Premises clean during construction,

and Cauldwell's superintendents gave direction to those laborers through a task list (NYSCEF Doc. 54 at 36-37; 44). Defendants move for summary judgment dismissing Plaintiff's Labor Law §§ 240(1) and 200 and negligence claims, while Plaintiff cross moves for summary judgment on his Labor Law § 241(6) claim.

Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is granted. Plaintiff fails to proffer any particularized arguments in opposition to this branch of Defendants' motion. In any event, there is nothing in the record that suggests Plaintiff's fall was caused by any elevation related hazard or some gravity related risk. He was allegedly bumped into by a coworker, and when attempting to stand up, purportedly tripped on a pipe on the floor. These facts do not give rise to a Labor Law § 240(1) claim and instead encompass the type of ordinary and usual peril to which a worker is exposed at a construction site (*see Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 267-68 [1st Dept 2007] citing *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 200 claim under a means and methods analysis is granted. There is no evidence that Defendants controlled the means and methods of Plaintiff's work and therefore Plaintiff's Labor Law § 200 claim under a means and methods theory of recovery is dismissed (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]).

However, viewing the facts in the light most favorable to the non-movant, and keeping in mind the movants' heavy burden on a motion for summary judgment, Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 200 claim based on a dangerous condition theory is denied. Although Defendants rely on Plaintiff's testimony that he did not see the pipe prior to his fall, to establish entitlement to summary judgment Defendants are required to do more

than just point to gaps in Plaintiff's evidence *(see, e.g. Powell v City of New York*, 218 AD3d 1, 4 [1st Dept 2023]; *Ladignon v Lower Manhattan Dev. Corp.*, 128 AD3d 534 [1st Dept 2015]). There is no evidence of the last time the area near Plaintiff's fall was inspected prior to Plaintiff's accident and thus Defendants have failed to meet their burden for summary judgment dismissing Plaintiff's negligence and Labor Law § 200 claim premised on a dangerous condition theory (*Henriquez v Appula Mgt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]).

In fact, there is evidence submitted on Defendants' motion in chief that Cauldwell employees would regularly walk through the Premises looking for trip hazards, but Defendants' sole witness produced, Mr. Divine, could not recall observing the area of Plaintiff's fall on the date of his accident (NYSCEF Doc. 54 at 56-57). He also testified he knew trades would store material in the area where Plaintiff fell, and that due to the foot traffic in the area it required "extra attention" (NYSCEF Doc. 54 at 65; 72; 86-87). This testimony, coupled with the absence of any maintenance or inspection records, raises an issue of fact as to Cauldwell's constructive notice of a tripping hazard from construction materials at the location of Plaintiff's accident (*see also Ellis v JPMorgan Chase Bank*, 190 AD3d 413, 414 [1st Dept 2021]). Because there are issues of fact as to Cauldwell's notice of the pipe on the floor, summary judgment in favor of 79th Street Owner is denied, for it may be held vicariously liable for the acts of its agent (*see Pesante v Vertical Industrial Development Corp.*, 29 NY3d 983, 983-84 [2017]; *Tobola v 123 Washington, LLC*, 15 AD3d 456, 457 [1st Dept 2021]).

Plaintiff's cross motion is denied as untimely (*see Filannino v Triborough Bridge and Tunnel Auth.*, 34 AD3d 280, 281-82 [1st Dept 2006]). Plaintiff's cross motion is distinct from Defendants' motion in that he seeks summary judgment on his Labor Law § 241(6) claim, but Defendants only seek dismissal of Plaintiff's Labor Law §§ 240(1), 200, and common law

negligence claims. Thus, Plaintiff's cross motion on his Labor Law § 241(6) claim cannot be considered (*see also Jarama v 902 Liberty Ave. Hous. Dev. Fund Corp.*, 161 AD3d 691, 691-92 [1st Dept 2018]).

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment is granted to the extent that Plaintiff's Labor Law § 240(1) claim and Labor Law § 200 claim premised on a means and method theory of liability are dismissed, and the remainder of Defendants' motion is denied; and it is further

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 241(6) claim is denied as untimely; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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.

12/9/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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