SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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RADOSLAW KUCHARSKI,

Plaintiff,

- v -

GARDEN CITY 505, LLC,CBRE, INC.,COSMO VENEZIALE, ARCHITECT, PLLC,

Defendant.

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INDEX NO. 153249/2021

MOTION DATE 02/03/2025, 02/03/2025

MOTION SEQ. NO. 009 010

DECISION + ORDER ON MOTION

GARDEN CITY 505, LLC, CBRE, INC.

Plaintiff,

-against-

PHOENIX SUTTON STR. INC.

Defendant.

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Third-Party
Index No. 596042/2023

The following e-filed documents, listed by NYSCEF document number (Motion 009) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 248, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 274, 276, 277, 278, 279, 280

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

The following e-filed documents, listed by NYSCEF document number (Motion 010) 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 249, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 275, 281, 282

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

FACTUAL BACKGROUND

This action arises from personal injuries plaintiff Radoslaw Kucharski alleges he sustained on December 30, 2020, while performing electrical testing on exterior switchgear located at 1000 Stewart Avenue in Garden City, New York. On that date, defendant Garden City 505, LLC owned the premises, and defendant CBRE, Inc. served as its property manager.

Defendant Cosmo Veneziale Architect, PLLC ("CVA") had been retained by Garden City as the owner's representative for a project involving the installation of a shed-like protective structure and waterproofing over existing switchgear equipment.

The switchgear enclosure consisted of several metal cabinet compartments mounted outdoors. Plaintiff testified that when he arrived onsite, the cabinets appeared aged, in disrepair, unsecured, and unlocked, with doors hanging open and no posted signage indicating that the equipment was energized or contained high-voltage components. Plaintiff further testified that he was not a licensed electrician, had never before worked at the premises, did not know what voltage the switchgear carried, and believed from its appearance that it had been abandoned or shut down. Plaintiff had not been provided with any safety glasses, hard hat, insulated gloves, or other protective equipment, nor did he observe any other workers utilizing such equipment.

Plaintiff's employer, ELPO Electric, had been subcontracted by Phoenix Sutton, CVA's subcontractor by verbal agreement (NYSCEF Doc No. 214 at 18-20), to perform testing as part of the work preceding the installation of the overhead structure. Plaintiff testified that upon his arrival, CVA's principal, Cosmo Veneziale, instructed him to test the switchgear for stray voltage so that the shed installation could proceed. Plaintiff stated that CVA pointed out the areas he was to check, opened cabinet doors during the inspection, and remained physically close behind him, observing him and talking to him as he conducted the testing.

Plaintiff testified that as he was not a licensed electrician he believed that the "high voltage" signs were meaningless in determining the type of tester appropriate for the application. (NYSCEF Doc No. 214 at 78-80). It is undisputed that plaintiff used a Fieldpiece HS36 multimeter, which he brought to the site. Defendants contend that this device was inappropriate for testing 15,000-volt equipment and that plaintiff alone caused the accident by using an

improper meter and making physical contact with energized components. Plaintiff, however, testified that he had never been told the voltage level of the equipment, had not been advised that the switchgear remained energized, and only learned of the hazard after the accident. He further testified that CVA instructed him to proceed with testing even after mentioning that the last cabinet might contain live power.

The parties do not dispute that an explosion occurred while plaintiff was testing the final compartment, throwing him backwards and causing significant eye injuries. Plaintiff contends that the explosion resulted from defendants' failure to provide a safe work environment, including the failure to identify the voltage level, warn of the hazard, de-energize the equipment or implement lockout procedures, and provide appropriate protective gear or tools. Defendants maintain that plaintiff's own conduct was the solitary cause of the accident.

Defendants move separately for summary judgment in Motion Sequences 009 (CVA) and 010 (Garden City and CBRE), seeking dismissal of all claims and counterclaims against them.

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]).

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, 23-1.8(a) and (c)(1) and 23-1.13(b)(1)-(4)[1] 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.

[1] At Oral Argument held on October 7, 2025, Plaintiff withdrew their claim pursuant to Industrial Code 23-1.33 on the record.

(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) 23-1.8

(a) Eye protection. Approved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons while employed in welding, burning or cutting operations or in chipping, cutting or grinding any material from which particles may fly, or while engaged in any other operation which may endanger the eyes.
(c) Protective apparel.
(1) Head protection. Every person required to work or pass within any area where there is a danger of being struck by falling objects or materials or where the hazard of head bumping exists shall be provided with and shall be required to wear an approved safety hat. Such safety hats shall be provided with liners during work in areas or at such times where the temperature is below 55 degrees Fahrenheit.

iii) 23-1.13;

(b) General.
(1) Precautions. All power lines and power facilities around or near construction, demolition and excavation sites shall be considered as energized until assurance has been given that they are otherwise by qualified representatives of the owners of such power lines or power facilities.
(2) Determination of voltages. Before work is begun at any construction, demolition or excavation site, the employer shall determine the voltage levels of all energized power lines and power facilities around or near such site. Where two or more voltages are available at a job site, all electrical equipment and circuits shall be appropriately identified. Such identification shall include voltage level and phase.
(3) Investigation and warning. Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool or machine into physical or electrical contact therewith. The employer shall post and maintain proper warning signs where such a circuit exists. He shall advise his employees of the locations of such lines, the hazards involved and the protective measures to be taken.
(4) Protection of employees. No employer shall suffer or permit an employee to work in such proximity to any part of an electric power

> circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means. In work areas where the exact locations of underground electric power lines are unknown, persons using jack hammers, bars or other hand tools which may contact such power lines shall be provided with insulated protective gloves, body aprons and footwear.

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 §200 and Common-Law Negligence

Defendants argue that they neither supervised nor controlled plaintiff's work and that the accident resulted solely from plaintiff's misuse of his own multimeter. However, the record contains numerous factual disputes that preclude dismissal under either branch of Labor Law §200. With respect to supervision and control, plaintiff testified that Cosmo Veneziale ("CVA") personally instructed him at the site to test the switchgear for stray voltage, identified the areas he was to examine, opened portions of the cabinet in the course of the inspection, and remained immediately behind him as he conducted the testing. Issues of fact, therefore, remain as to whether CVA exercised actual supervisory authority over the injury-producing activity rather than merely performing general oversight or coordination.

The record further reflects correspondence among Garden City, CBRE, and CVA discussing whether the switchgear would be de-energized before work commenced. From this, a jury could infer that these entities participated in operational decisions related to the electrical condition of the switchgear and thereby exerted influence over how the work would be performed. Although defendants' experts opine that plaintiff alone caused the accident by using a low-voltage multimeter to test high-voltage switchgear, plaintiff testified that he was never told the voltage level, never advised that the switchgear remained energized, and was instructed by CVA to proceed even when CVA stated that he "thought" the final compartment might contain power. These conflicting versions of events create factual questions regarding the extent to which defendants directed or influenced the very method of testing that resulted in the explosion. For this reason, summary judgment is inappropriate under the means-and-methods theory.

There are also triable issues under the dangerous condition branch of §200. Plaintiff described the switchgear enclosure as appearing abandoned, unsecured, and unlocked, with no warning signs indicating that the equipment was energized at 15,000 volts. He further stated that no barriers, lockout mechanisms, or other protective measures were present and that neither he nor any other workers were provided with personal protective equipment.

Meanwhile, internal emails among defendants reveal that they were aware of ongoing concerns about whether the switchgear would remain energized or be shut down for the Project. A factfinder could reasonably conclude that defendants knew of the high-voltage hazard, appreciated that workers would be required to access the cabinet as part of the Project, and nevertheless failed to implement safety measures or communicate warnings. Whether defendants created, permitted, or failed to remedy a dangerous condition, and whether such condition contributed to plaintiff's injuries, cannot be determined as a matter of law. Because the evidence presents competing factual narratives regarding both supervision and the existence of an unsafe condition, summary judgment under Labor Law §200 and common-law negligence must be denied.

Labor Law §241(6)

Plaintiff's Labor Law §241(6) claim is predicated on alleged violations of Industrial Code §§ 23-1.5, 23-1.8(a) and (c)(1), and 23-1.13(b)(1)–(4). Defendants contend that these provisions are either inapplicable or that plaintiff's own conduct was the sole proximate cause of the accident. The record, however, demonstrates substantial factual disputes relating to the applicability and potential violation of each cited section.

12 NYCRR § 23-1.5 (Health and Safety Protection; Condition of Equipment)

Industrial Code §23-1.5 sets forth general provisions regarding health and safety protections, competency, and the condition of equipment and safeguards.

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]).

Although plaintiff brought his own multimeter to the project, the record leaves open whether defendants, having directed him to test high-voltage switchgear, were obligated to ensure that he used appropriate equipment or to provide protective devices necessary for such testing; particularly since they did not tell him the level of voltage. Conflicting expert evidence also exists concerning whether proper safety equipment or PPE should have been supplied. These issues cannot be resolved as a matter of law.

12 NYCRR § 23-1.8(a), (c)(1) (Eye and Head Protection)

Industrial Code §23-1.8(a) requires that "approved eye protection equipment suitable for the hazard involved shall be provided for and shall be used" by persons engaged in operations "which may endanger the eyes." Section 23-1.8(c)(1) similarly requires that every person "required to work or pass within any area where there is a danger of being struck by falling objects or materials or where the hazard of head bumping exists" be provided with and required to wear an approved safety hat.

Plaintiff testified that no safety glasses, hard hats, or other protective equipment were available at the site, despite the clear potential for arc flash when working near energized components. Defendants deny liability for PPE, but whether these provisions applied to the

specific work at issue and whether defendants bore responsibility for providing or enforcing such protection remain questions for trial.

12 NYCRR § 23-1.13(b)(1)–(4) (Protection from Electric Power Circuits and Power Lines)

Industrial Code §23-1.13(b) sets forth general requirements related to electrical power circuits and power lines at or near construction sites.

Plaintiff argues that defendants violated these provisions by failing to de-energize the switchgear, identify its 15,000-volt rating, and warn Plaintiff of the hazard posed by the energized buses.

Issues of fact remain as to whether defendants determined the voltage of the switchgear before allowing plaintiff to test it, whether they communicated the voltage level or the energized status to him, whether they provided any warnings or lockout procedures, and whether the decision to leave the equipment energized was consistent with regulatory requirements. Defendants' expert asserts that stray-voltage testing necessarily requires energized equipment, while plaintiff's account suggests he was unaware the equipment remained live. These competing positions highlight the existence of factual questions that must be resolved by a jury.

Finally, defendants' argument that plaintiff was the sole proximate cause of the accident cannot be resolved on summary judgment. Although defendants attribute the explosion entirely to plaintiff's use of an improper multimeter, plaintiff maintains that he relied on the directions of on-site supervisors, reasonably believed the switchgear was de-energized based on its physical appearance, and lacked necessary warnings, training, or protective gear. A jury could credit plaintiff's account and find that defendants' alleged Code violations contributed to the accident. Because causation turns on disputed facts, it cannot be determined as a matter of law.

Accordingly, the Court finds that defendants have not met their prima facie burden for dismissal under Labor Law §241(6), and their motions must be denied.

Plaintiff's Cross-Motions

Plaintiff's cross-motions for summary judgment on liability under Labor Law §§ 200 and 241(6) were filed on March 28, 2025, more than 50 days after the 60-day dispositive-motion deadline set forth in this Court's December 3, 2024 order. Although the cross-motions are untimely under CPLR 3212(a) and the applicable case law, and plaintiff offers no good cause for the delay, the Court, in the exercise of its discretion, has nevertheless considered plaintiff's requests for affirmative relief on the merits. Accordingly, even if timely, plaintiff's cross-motions would be denied on the merits as the same issues of fact remain which precluded a finding of summary judgment as to defendants.

The Court has considered the remaining arguments of the parties and finds such unavailing. Accordingly; it is hereby

ORDERED that defendant Cosmo Veneziale Architect, PLLC's motion for summary judgment (Motion Sequence 009) is denied; and it is further

ORDERED that defendants Garden City 505, LLC and CBRE, Inc.'s motion for summary judgment (Motion Sequence 010) is denied,; and it is further

ORDERED that plaintiff's cross-motions for summary judgment in Motion Sequences 009 and 010 are denied.

12/12/2025
DATE

LESLIE A. STROTH, J.S.C.

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