Santoro v Schiavone Constr. Co., LLC
2026 NY Slip Op 30321(U)
January 23, 2026
Supreme Court, New York County
Docket Number: Index No. 158340/2016
Judge: Francis A. Kahn III
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANCIS A. KAHN, III** **PART** **32**

Justice

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INDEX NO. 158340/2016

MOTION DATE

MOTION SEQ. NO. 003

NICHOLAS SANTORO,

Plaintiff,

- v -

SCHIAVONE CONSTRUCTION CO., LLC, JOHN P. PICONE, INC.,86TH STREET CONSTRUCTORS JOINT VENTURE, KONE INC., METROPOLITAN TRANSPORTATION AUTHORITY, MTA CAPITAL CONSTRUCTION COMPANY, MTA METRO-NORTH RAILROAD, THE CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003). 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169

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

Upon the foregoing documents, the motion is determined as follows:

This action arises out of an incident that occurred on February 29, 2016, at approximately 8:30 a.m. at the lower mezzanine level of a construction site concerning the 2nd Avenue Subway line project at the 86th Street Subway Station in Manhattan. Plaintiff, an electrician, employed by Five-Star Electric, a non-party, alleges that he was injured when he was caused to fall while descending an escalator at the site because the escalator was missing a step. The Defendants maintain that the subject escalator was undergoing construction at the time, it was not intended to be used by workers at the site and Plaintiff failed to use the staircase that afforded safe egress. Plaintiff commenced this action on October 4, 2016, alleging that the Defendants violated Labor Law §§240, 241(6) and 200. Per the bill of particulars, Plaintiff alleges violations of the Industrial Code sections: 23-1.5; 23-1.7[b][1] and [2]; 23-1.7[d]; 23-1[e][1] and [2]; 23-2.1[a][l] and [2]; 23-2.1[b], 23-2.4[c].[1]

Defendants Schiavone Construction Co., LLC, ("Schiavone") and John P. Picone, Inc ("Picone"), created Joint Venture, Defendant 86th Street Constructors Joint Venture ("86th STREET"), to act as the General Contractor for the subject project. Defendant Kone Inc. ("Kone") was subcontracted to install the subject escalator at the 86th Street Station. The specific roles of Defendants Metropolitan Transportation Authority ("MTA"), MTA Capital Construction Company ("MTA

[1] The pleadings and bill of particulars were collectively annexed as Plaintiff's Exhibit "J" and uploaded to NYSCEF as Doc. 155. To avoid confusion, and to make sure documents are easily located, parties should refrain from collectively annexing multiple documents as one exhibit.

Capital"), MTA Metro-North Railroad ("Metro North"), The City of New York and New York City Transit Authority ("Transit") are not made entirely clear in the motion papers.

Now, Defendants move for summary judgment dismissing Plaintiff's complaint in its entirety. Plaintiff opposes the motion and cross-moves for partial summary judgment on the issue of liability on the claims under Labor Law §§ 240[1], 241[6] and 200.

Plaintiff's Deposition

On the day of this incident, Plaintiff met with his foreman, Robert Amabile, ("Foreman Amabile") at the Five-Star electric shanty at approximately 7:00 a.m. (Doc. 136, pg. 140-141). The shanty was located at the 86th Street Station on the lower mezzanine level (*Id. at* 141-142). The shanty was approximately 100 feet from the bottom of the subject escalator bank (*Id. at* 142). To access the shanty, Plaintiff would descend a construction staircase at 83rd Street, then proceed along an underground corridor to 86th Street. (*Id. at* 144). There was also a scaffolding staircase that was located at 86th Street that went from the lower mezzanine to the street level. (*Id. at* 146-147; 254; 382-383).

Foreman Amabile advised Plaintiff that his work assignment would be located at the upper mezzanine. (*Id. at* 158-159). Foreman Amabile then walked Plaintiff and his co-workers, Bobby Bennet, Billy Ford, Nick and Adamo up the middle escalator (escalator #2) to the upper mezzanine level. (*Id.* at 158-159; 163). Escalator #3 was barricaded off and could not be accessed, but, Plaintiff does not recall seeing any barricades for the other two escalators. (*Id. at* 176-177). There was no caution tape or barricades at the top of the escalator bank on the upper mezzanine level. (*Id. at* 184; 191). Once they reached the mezzanine level, Foreman Amabile took Plaintiff and a couple of his coworkers to their work location, located approximately 100 feet from the top of the escalators on the upper mezzanine level (*Id. at* 180-183). They were going to be installing electric panels and running conduit. (*Id. at* 185).

Plaintiff's accident occurred as he was descending escalator #1. (*Id. at* 177-178). As he was descending, he stepped with his right foot into an area of the escalator with a missing step. (*Id. at* 190; 195). Plaintiff's body fell into the open area and he caught himself with his arm on the escalator's railing, injuring his arm. (*Id. at* 193-194). Neither Foreman Amabile nor Plaintiff's co-workers were with him at the time of the accident and Plaintiff does not believe that anyone witnessed his accident. (*Id. at* 169-171). Plaintiff testified that the only way to get back down to the Five-Star shanty would have been to descend the escalator because he could not exit out of the upper mezzanine level via the street. (*Id. at* 247-250).

Plaintiff observed KONE employees at the bottom of the escalator bank at approximately 7:00 a.m., but did not observe anyone working on the escalators. (*Id. at* 153-154). No KONE employee told him not to descend the escalator (*Id. at* 190-191).

During toolbox meetings with Five-Star, "controlled access zones" were discussed. (*Id. at* 156). Controlled access zones are locations where workers cannot walk through because there is ongoing work and it is too dangerous. (*Id. at* 156-157). At the time of his accident, the escalators were still under construction and were not in final working order. (*Id. at* 161). Plaintiff was never told at his toolbox meetings not to walk on the escalators (*Id. at* 156). No one from SCHIAVONE ever told Plaintiff not to walk on the escalators (*Id. at* 160).

Deposition of Escalator Subcontractor KONE

Ryan Kaufman, Kone's Project Manager, testified that Kone was contracted by the Schiavone - Picone joint venture, 86th Street Constructors, the General Contractor for the project. (Doc. 137 pg. 26, 30). KONE is a manufacturer and installer of escalators and was hired to install escalators at the 86th Street station (*Id. at* 9, 12). The subject escalators were located on the north side of 86th Street, east of 2nd Avenue. (*Id. at* 16-17). Seven escalators existed at this location; two pairs of escalators from street level to the upper mezzanine, and three escalators that ran between the upper mezzanine and lower mezzanine. (*Id. at* 16-17; 22-23; 50-51). The subject three escalators where Plaintiff's accident occurred were under construction, were not functioning and were only approximately 70 percent complete on the date of this incident. (*Id. at* 16, 21). KONE's gang boxes were located at the top of the escalators. (*Id. at* 103).

Kone's Field Supervisor, Gerald Matawa, was present daily. (*Id. at* 49). KONE also had a site foreman, and several workers present each day. (*Id. at* 47-48). Mr. Kaufman was not present every day, and he did not know which foreman, or which workers were present on the date of this incident. (*Id.*). At the time of the accident, all KONE employees would have been working on the seven escalators at the 86th Street location. (*Id. at* 50). At 8:30 a.m. on the day of the accident, work was occurring on the three subject escalators. (*Id. at* 53).

It is Kone's policy that anyone who does not work for Kone should not be on the escalators while they are still under construction (*Id. at* 54). Kone employees advise other trades not to use the escalators while they are under construction, and barricades and/or caution and danger tape are also utilized. (*Id.*). A barricade or caution tape should have been used at the bottom of the subject escalators on the date of the accident as long as it did not interfere with the work Kone was performing. (*Id. at* 72). Meetings with representatives from all of the trades on the project were held at least once a week, and the restriction on using escalators would have been discussed. (*Id. at* 61-62; 66). Kone also had weekly and daily safety meetings with its employees. (*Id. at* 64). No trades should have been using the subject escalators to access the mezzanines at the time of this incident. (*Id. at* 101-103). If Mr. Kaufman observed such use, he would have stopped it. (*Id.*)

During the installation process, multiple steps are purposefully left out of the escalators so that the escalators can be tested or until the escalators can be powered. (*Id. at* 91). If an escalator had a missing step, a controlled access zone would be created at the top and bottom of the escalators. (*Id. at* 92-93).

Deposition of SCHIAVONE

Joseph Rogosich was Schiavone's Safety Manager for the 2nd Avenue subway project. (Doc. 138 pg. 9). SCHIAVONE And PICONE had a joint venture to act as the General Contractor for their section of the project, which ran from 83rd Street to 92nd Street. (*Id. at* 10; 12). As Safety Manager, Mr. Rogosich was responsible to make sure that all personnel on site adhered to all local, state and federal safety rules. (*Id. at* 9-10). A "competent person", typically a foreman, for each trade would be designated to oversee their respective crew and to advise of any unsafe conditions. (*Id. at* 15-16; 18-19). Part of Mr. Rogosich's responsibilities would be to prepare a report if an accident occurred, per MTA guidelines. (*Id.* at 24-25). A draft report would be prepared, and then after speaking with any witnesses or identifying any additional information, the report would be finalized and sent to the MTA. (*Id.* at 28; 33).

Coordination meetings were held every day on site with representatives from each trade and subcontractor. (*Id.* 20). The work for each trade was discussed, including where the work was being performed and what issues my arise. (*Id.*). The foreman or "competent person" would be included. After the coordination meeting ended, the Safety Manager would then speak about things to be aware of that day. (*Id.* 20-21). Mr. Rogosich recalls Alan Diaz as the Five Star foreman who attended most coordination meetings. (*Id.*).

Mr. Rogosich was on site the date of this incident and was notified about the accident shortly after it occurred. (*Id.* at 23-24). Mr. Rogosich arrived on the scene within 10 minutes of the accident. (*Id.* at 38). Mr. Rogosich spoke with the Plaintiff, who advised that as he was walking down the escalator, he missed a step and fell into the open hole of the missing step. (*Id.* at 32). Mr. Rogosich attempted to speak with Plaintiff's co-workers, but they refused to provide any statements. (*Id.* at 33-34; 36). He also spoke with KONE employees, who also would not provide a statement because they did not witness the accident. (*Id.* at 35). No one ever identified themselves to Mr. Rogosich as a witness to this incident. (*Id.* at 37-38). Mr. Rogosich prepared the injury report for this incident (NYSCEF Doc. 140). (*Id.* at 30-31).

It is part of the normal process of the installation of any escalator to have missing steps so that testing can be done. (*Id.* at 36). Every escalator at the subject site was off limits to all personnel other than KONE. (*Id.* at 41; 86-87). Neither KONE nor Mr. Rogosich would have permitted anyone else to access the escalators. (*Id.* at 41-42). When a worker first started at the stie, Mr. Rogosich or other safety personnel would notify them that no one is allowed on the escalators. (*Id.* 87). Although it is required for all workers to undergo a safety orientation when they start, it is the competent person's responsibility to present their workers when they first start on site. (*Id.* at 96-97). Mr. Rogosich had to write-up Foreman Amabile and suspend him for a day because he failed to present Five Star workers for the safety orientation. (*Id.*).

Fencing was used to barricade off both the bottom and top of the subject escalators. (*Id.* at 52; 55). The fencing, approximately 6 to 8 feet tall, created a controlled access zone. (*Id.* at 51-52). After the fencing, there is a line of red danger or yellow caution tape. (*Id.* at 54-55). Kone's equipment and materials would be located behind the fencing so that they could access what they needed and so no one else could access it. (*Id.* at 61-62). When he arrived at the scene, the escalators were barricaded off with free-standing chain-link fence. (*Id.* at 51-52). Kone is typically very protective of their escalators and if anyone had attempted to access them, Schiavone would have been notified immediately as any damage caused to the escalators before they are complete and turned over to the MTA would be the responsibility of the contractor. (*Id.* at 49-51).

There were staircases at the site that provided access from the lowest-track level to the street level. (*Id.* at 43; 84-85). If heavy material needed to be transported, the material could be raised/lowered via hatchways and the use of a crane. (*Id.* at 99).

Deposition of MTA CAPITAL

Nitin Patel was MTA Capital 's Senior Engineering Manager for the 2nd Avenue Subway project. (Doc. 139 at 9). Mr. Patel acted as MTA Capital's coordinator for the project, in order to monitor the budget, progress and manage change orders. (*Id.* at 10). For this project, MTA Capital retained 86th Street Constructors, who then hired subcontractors. (*Id.* at 17; 75). Neither Metro North nor The City Of New York participated in the project. (*Id.* at 74-75). Transit was the owner of the project. There were staircases at the site providing access from the lower mezzanine to the upper mezzanine. (*Id.* at 44-46;

48-49). Mr. Patel did not recall which staircases were open at the time of this accident, but he was not aware of the staircase ever being inoperable at the project. (*Id.* at 44-46; 48-49; 79). When escalators are being worked on, the staircases must be used. (*Id.* at 70).

MTA CC Injury Report

The accident description in the MTA CC Injury Report prepared by Mr. Rogosich states: "Worker claims he was walking down the escalator steps at Entrance #2 and did not see the missing step.... Worker was walking in an area that was off limits to everyone onsite except for the KONE, the escalator installers". (Doc. 140).

Defendants Affidavits

The Defendants also submit an April 7, 2021, Affidavit of Philip Brownson, an apprentice escalator mechanic with KONE, who avers that there were barricades and either red or yellow tape at the top and bottom of the subject escalators along with "danger" signs on the date of the accident. He also avers that only KONE workers who were installing the escalator could use them. (Doc. 145).

An April 7, 2021, Affidavit from Gregory Peterson, an apprentice escalator mechanic with KONE, is also submitted. Therein, Mr. Peterson also avers that there were barricades, tape and a "danger" sign at the top and bottom of the subject escalators on the date of the accident. Additionally, Mr. Peterson avers that when non-KONE workers attempted to use the escalators, he would tell them to stop, but that some workers would not listen to his warnings. Mr. Peterson observed the Plaintiff walking down the escalator on the date of this accident, told him to get off the escalator, but the Plaintiff kept walking. (NYSCEF Doc. 146). A May 19, 2025, Affirmation is submitted by Mr. Rogosich is ostensibly consistent with his deposition testimony. (NYSCEF Doc. 147).

A May 22, 2025, Affirmation is submitted by Mr. Patel, which states that 86th STREET CONSTRUCTORS built a temporary steel stair tower at the 86th Street station which lead from the lower mezzanine to the street level in May 2015, which was the standard method of egress to be used by works at the site to travel between the lower mezzanine and the street level. (NYSCEF Doc. 148). Annexed to the affirmation is the OCIP report from the date of this accident which Mr. Patel avers shows that the staircase was in use. (*Id.*).

Plaintiff's Affidavits

Plaintiff submits his own July 30. 2025 Affidavit, which is generally consistent with this deposition testimony. (Doc. 156). Plaintiff also submits affidavits from his coworkers Nicola DiGioia, Adamo Mannarino, Robert Bennet and William Ford prepared in April 2016, who apparently did not witness the accident itself. (Doc. 158, 159, 160, 161). Therein the co-workers aver that, the subject escalators were not barricaded on the date of the accident and that it was only blocked off after the accident. (*Id.*). Mr. DiGioia avers that "someone" had removed the escalator step, and that Kone workers were only working on one of the escalators. (NYSCEF Doc. 158). Mr. Mannarino avers that the non-working escalators were stairways that could be used by workers. (Doc. 159). Mr. Bennet claims that everyone used the escalators. (Doc. 160). Mr. Ford averred that only one escalator was blocked off and the others could be used as stairs. (Doc. 161).

DISCUSSION

"[T]he 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 demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993] *citing Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *see also Zapata v Buitriago*, 107 AD3d 977 [2d Dept 2013]). Failure to make such a showing requires the denial of the motion, regardless of the sufficiency of the papers in opposition (*Alvarez v Prospect Hospital*, supra at 324; *see also Smalls v AJI Industries. Inc.*, 10 NY3d 733, 735 [2008]). Only if a *prima facie* showing is made, does the burden then shift to the party opposing the motion to produce proof, in evidentiary form, sufficient to establish the existence of material issues of fact (*see eg Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Plaintiff's Labor Law §240 Claims

Labor Law § 240[1] imposes "'upon owners, contractors, and their agents a nondelegable duty that renders them liable regardless of whether they supervise or control the work' for failure to provide workers proper protection from elevation-related hazards" (*see Yaguachi v. Park City 3 and 4 Apartments, Inc.*, 185 AD3d 635 [2d Dept 2020]; *quoting Aslam v. Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 135 AD3d 790, 791 [2d Dept 2016]; *quoting Barreto v. Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]). "The purpose of the statute is to protect workers … 'from the pronounced risks arising from construction work site elevation differentials'" (*Villa v. East 85th Realty, LLC*, 189 AD3d 1661 [2d Dept 2020]; *quoting Runner v. New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see also Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]; *Simmons v. City of New York*, 165 AD3d 725, 726-727 [2d Dept 2018]). The protections of the statute are triggered where a worker's "task creates an elevation-related risk of the kind that the safety devices listed in section 240(1) protect against" (*Soto v. J.Crew Inc.*, 95 AD3d 721, 722 [1st Dept 2012]; *quoting Broggy v. Rockefeller Group, Inc.*, 8 NY3d 675, 681 [2007]).

However, "… where a plaintiff's own actions are the sole proximate cause of the accident or injury, no liability attaches under the statute. Where a plaintiff has an adequate safety device readily available that would have prevented the accident, and for no good reason chooses not to use it, Labor Law § 240(1) does not apply (*Barreto v. Metro. Transp. Auth.*, 110 A.D.3d 630, 632, [1st Dept 2013], *aff'd as modified*, 25 N.Y.3d 426 [2015], *citing Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 39–40 [2004]).

Here, it is uncontroverted that the subject escalators were not fully operation and were still in the process of being installed by KONE at the time of this incident. It is uncontroverted that missing steps were required in the installation process for the escalators to undergo testing. It is also uncontroverted that controlled access zones existed at the site and that the Plaintiff was generally aware of such restricted areas.

Nevertheless, it has not been established by either movant whether the barricades, restricting access to the escalators were in place at the time of the accident, and whether there was a safe, alternative way to travel between the lower and upper mezzanine on the day of the accident. Defendants maintain that there were barricades in place at the time of this incident based upon deposition testimony of the General Contractor's Safety Manager and KONE's Project Manager, and the injury report. Yet, Plaintiff testified that no such barricades were in place and Plaintiff relies upon affidavits from his co-workers which aver that only one escalator had barricades on the date of the accident. Additionally, neither movant has established whether alternative, safe means of egress were readily available. Defendants maintain that there were alternative methods by which to transport personnel, and materials,

from the lower mezzanine level to the upper level, which all non-KONE personnel were directed to use. However, although acknowledging that he was aware of various staircases at the site, Plaintiff testified that there was no alternative access from the upper mezzanine level, where he was before descending the escalator, to the street level or the lower mezzanine at the time of his accident.

Although Defendants maintain that all trades were apprised that the escalators could not be used by anyone other than Kone, Mr. Rogosich testified that Foreman Amabile was previously written up for failing to present Five Star workers for orientation meetings regarding site safety. Plaintiff also testified that his foreman directed him to use the escalators, walked with Plaintiff and his co-workers up the escalators on the day accident approximately 1.5 hours before it occurred. Although Plaintiff's co-workers, who Plaintiff testified did not witness his accident, aver that the escalator was regularly used by workers at the site, notably, no one has claimed to have used the escalators themselves on the date of this incident.

As there is substantially conflicting testimony and sworn statements regarding whether barricades were in place restricting access to the subject escalator and whether safe alternate means of egress were available to Plaintiff, it cannot be determined as a matter of law whether Plaintiff was the sole proximate cause of his accident or whether there was a violation of Labor Law §240. Therefore, Defendants' motion to dismiss the Labor Law §240 claims is denied, as is Plaintiff's motion for summary judgment in his favor.

Plaintiff's Labor Law §241(6) Claims

"Labor Law § 241 (6) imposes on owners, general contractors, and their agents a nondelegable duty to provide 'reasonable and adequate protection' to workers engaged in construction, demolition, and excavation activities by complying with Industrial Code regulations that specify concrete safety directives, regardless whether they exercised supervision or control over the work" (*Lapinsky v Extell Dev. Co.*, 202 AD3d 478, 479 [1st Dept 2022] [internal citations omitted]; *see also Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]). The regulation cannot "simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]; *Morris v Pavarini Constr.*, 9 NY3d 47, 50 [2007], quoting *Allen v Cloutier Constr. Corp.*, 44 NY2d 290, 297 [1978] [stating that owners and contractors must comply with rules promulgated by the Commissioner of Labor, "but only where the regulation in question contains a "'specific, positive command[ ]'"). To prevail on a Labor Law § 241 (6) claim, the "plaintiff must establish a violation of an implementing regulation which sets forth a specific standard of conduct" and that the violation was a proximate cause of the plaintiff's injuries (*Bucci v City of New York*, 223 AD3d 453, 454-455 [1st Dept 2024]). Comparative or contributory negligence is a valid defense (*see Misicki*, 12 NY3d at 515; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 n 4 [1993]).

Defendants move to dismiss Plaintiff's Labor Law §241(6) claim asserting that Industrial Code sections: 23-1.7(b)(1) [hazardous openings] and (2) [bridge overpasses]; 23-1.7(d) [slipping hazards]; 23-1.7(e)(1) and (2) [tripping and other hazards]; 23-2.1(a)(l) and (2); 23-2.1(b); [storage of material or equipment]; and 23-2.4(c) [flooring—other construction] are inapplicable or were not violated because the Plaintiff was the sole proximate cause of his accident. (Doc. 134).

Plaintiff opposes and in his cross-motion asserts that the Defendants violated §§23-1.7(b)(1) and 23-1.7(f) [stairways, ramps or runways], which is not alleged in the Complaint or bill of particulars. (Doc. 153). As Plaintiff only addresses §§23-1.7(b)(1) and 23-1.7(f) in his opposing and cross-moving

papers, Plaintiff has abandoned his reliance on the other Industrial Code provisions (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012]). Therefore, this Court will only consider whether §§23-1.7(b)(1) or 23-1.7(f) are applicable to the subject incident and whether a violation can be established.

Industrial Code §23-1.7(b)(1) concerns hazardous openings into which a worker could step and requires such openings to guarded against. Industrial Code §23-1.7(f) directs that access must be afforded to all working levels, above or below ground. As set forth above, material questions of fact remain as to whether Plaintiff, as the sole proximate cause of his accident, in that he disregarded barricades, signage and ongoing safety instructions to stay off of the still under construction escalators and whether Plaintiff had a safe alternate means of egress and refused to use it. Therefore, a question of fact remains as to whether §23-1.7(b)(1) and §23-1.7(f) are applicable and whether they were violated.

Additionally, neither Defendants nor Plaintiff have moved regarding the alleged violation of NYCRR §23-1.5. "Industrial Code §23–1.5(a) 'is insufficiently specific to support' a Labor Law § 241(6) claim." (*Marte v. Tishman Constr. Corp.*, 223 A.D.3d 527, 529 [1st Dept 2024]; *quoting Cordeiro v. TS Midtown Holdings, LLC*, 87 A.D.3d 904, 906 [1st Dept. 2011]). Industrial Code §23–1.5(b) merely "… serves to amplify other provisions of the Industrial Code that require a designated individual to perform or supervise work, and thus does not provide an implementing regulation upon which to predicate a Labor Law § 241(6) cause of action." (*Guallpa v. Canarsie Plaza, LLC*, 144 A.D.3d 1088, 1091 [2d Dept 2016]). However, Industrial Code §23–1.5(c) has been found to provide a basis for lability under Labor Law §241(6). (*see Becerra v. Promenade Apartments Inc.*, 126 A.D.3d 557, 558–59 [1st Dept 2015]). Therefore, Plaintiff cannot support a claim of a Labor Law §241(6) violation pursuant to §23–1.5(a) or (b), but §23-1.5(c) remains.

Accordingly, Plaintiff's claims of violations of NYCRR §§23–1.5(a) and (b), 23-1.7(b)(2), 23-1.7(d), 23-1.7(e)(1)(2), 23-2.1(a)(l)(2), 23-2.1(b) and 23-2.4(c) are dismissed. Defendants' motion to dismiss the Labor Law §241(6) is otherwise denied, as is Plaintiff's motion for summary judgment in his favor.

Plaintiff's Labor Law §200 Claims

Labor Law § 200 "codifies an owner's or general contractor's common-law duties of care, there are 'two broad categories' of personal injury claims: '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.'" (*Rosa v 47 E. 34th St. (NY), L.P.*, 208 AD3d 1075, 1081 [1st Dept 2022], *quoting Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). Neither common law negligence nor Labor Law §200 makes an owner or contractor vicariously liable for the negligence of a downstream subcontractor (*See DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 625 [1st Dept 2015], *citing Burkoski v Structure Tone, Inc.*, 40 AD3d 378, 381 [1st Dept 2007]).

"Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it. Where the injury was caused by the manner and means [means and methods] of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work." (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d at 144 [internal citations omitted]; *see also Toussaint v Port Auth. of N.Y. & NY*, 38 NY3d 89, 94 [NY 2022][to recover under Labor Law

§200 "a plaintiff must show that an owner or general contractor exercised some supervisory control over the operation"]).

As made clear in Plaintiff's papers, the theory of liability under Labor Law §200 is a dangerous condition at the work site (Doc. 135). Thus, to prevail upon a Labor Law §200 claim, Plaintiff "... must demonstrate that the defendant had actual or constructive notice of the allegedly unsafe condition that caused the accident" (*Mitchell v New York Univ.*, 12 A.D.3d 200, 201, [1st Dept 2004]). A defendant moving for summary judgment in an action involving a dangerous premises condition must demonstrate that it did not create or have actual or constructive notice of the condition that caused the plaintiff's injury (*see Bradley v NYU Langone Hosps.*, 223 AD3d 509, 510 [1st Dept 2024]).

Here, it is uncontroverted that the Defendants were aware that there were missing escalator steps for Kone to properly install and test the subject escalator. What remains unresolved is whether the missing step constituted a dangerous condition upon which liability may attached pursuant to Labor Law§200. Defendants maintain that escalator work was being performed at the time of the accident, that Plaintiff was not authorized to be in such work area, that this restriction was well known by all personnel at the site, and that the area was properly barricaded and restricted from use by any non-KONE worker. Plaintiff claims the escalator was a means of egress to all work levels with no safe alternative option.

Accordingly, as material questions of fact exist, neither Defendants nor Plaintiff have established entitlement to judgment as a matter of law on Plaintiff's Labor Law §200 cause of action or the Defendants' purported common-law negligence.

Accordingly, it is

ORDERED that Defendants' motion for summary judgment is granted only to the extent that Plaintiff's Labor Law §241[6] claim predicated on Industrial Code [12 NYCRR] §§23-1.5(c), 23-1.7(b)(1) and 23-1.7(f) are dismissed, otherwise the motion is denied; and it is further

ORDERED that Plaintiff's cross-motion seeking summary judgment on his Labor Law §§240, 241(6) and 200 claims is denied in its entirety.

1/23/2026
DATE

FRANCIS A. KAHN, III, J.S.C.
HON. FRANCIS A. KAHN III
J.S.C.

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