**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK: PART 35**

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CELIO MOURA and GABRIELLA PRATA MOURA, Index No.: 150011/13

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, SKANSKA KOCH, INC. and B&H ENGINEERING, P.C.,

Defendants.

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B&H ENGINEERING, P.C.,

Third-Party Plaintiff,

-against-

ROVI CONSTRUCTION CORP.,

Third-Party Defendant.

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SKANSKA KOCH, INC.,

Second Third-Party Plaintiff,

-against-

ROVI CONSTRUCTION CORP.,

Second Third-Party Defendant.

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**Edmead, J.:**

Motion sequence numbers 003, 004 and 005 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by a bridge painter on August 26, 2012, when he fell into a drainage trench, while working in the subway

tunnel on the Manhattan side of the Manhattan Bridge, in New York, New York (the Site).

In motion sequence number 003, defendant City of New York (the City) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it.

In motion sequence number 004, defendant/third-party plaintiff B&H Engineering, P.C. (B&H) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it.

In motion sequence number 005, third-party/second third-party defendant Rovi Construction Corp. (Rovi) moves, pursuant to CPLR 3212, for summary judgment dismissing the third-party complaint against it.

**BACKGROUND**

On the day of the accident, the City owned the Site where the accident occurred. Pursuant to a lease agreement, dated June 1, 1953, the City authorized nonparty New York City Transit Authority (NYCTA) "to take jurisdiction, control, possession and supervision" of all "transit facilities, materials, supplies and property" owned, acquired or constructed by the City (the Lease) (the City's notice of motion, exhibit C, the Lease, ¶ 2.1).

Pursuant to a consultant agreement, dated January 1, 2012, defendant New York City Department of Transportation (the DOT) hired B&H to perform the 2012-2013 biennial and interim bridge inspection of the Manhattan Bridge, Region 11 (the Bridge) (the Inspection Agreement). It should be noted that B&H's inspection was not part of any construction project underway at the Site on the day of the accident.

Pursuant to a subcontract, dated May 25, 2012, B&H hired Rovi to perform rigging services in connection with its inspection of the Bridge (the ROVI Subcontract). As part of these

services, Rovi erected rolling platform scaffolds necessary for the performance of B&H's inspection. The ROVI Subcontract identified two phases for B&H's inspection work of the Bridge. Important to the instant case, the second phase of the inspection work involved "the complete shutdown of the NYCTA railroad tracks (BMT subway line) on the North and South Transit structures to perform the underdeck inspection of the North and South Upper Roadway . . . using rolling platforms" (the City's notice of motion, exhibit E, Rovi Subcontract, Part B). Plaintiff was employed by Rovi.

***Plaintiff's Deposition Testimony***

At his deposition, plaintiff testified that, on the day of the accident, he was employed by Rovi as a bridge painter. Plaintiff's job as a bridge painter included erecting scaffolding, constructing platforms and running cables at the Site. At the time of the accident, plaintiff was "[s]etting up scaffolding for the inspector to do the inspection" (plaintiff's tr at 36). The subject scaffold, that plaintiff was constructing at the time of the accident, measured approximately 14 feet in length and two feet in width. The rolling scaffold was comprised of four iron riggings, or tubes, that were "connected on the corners so [they could] make a square" (*id.* at 90). Plaintiff explained that "a platform [was] placed above [the square]," and six pipes were used to construct the scaffold's steps (*id.*).

Plaintiff further testified that the inspection work underway on the day of the accident entailed "several inspectors" inspecting "the iron of the bridge" (*id.* at 52-53). However, he could not state the identity of any of the inspectors or who employed them. Plaintiff maintained that his Rovi foreman and the inspectors instructed him as to what work he was to perform at the Site on any given day.

Plaintiff testified that, after the rolling scaffold was "put together," he and his coworkers intended to "push [it] on[to] the train tracks" (*id.* at 49). At this time, the tracks were shut down, and plaintiff was situated about 50 to 60 feet from the entrance of the subway tunnel,"fixing the scaffolding" (*id.* at 58). Plaintiff was attempting to adjust the scaffold, because it was not level. While plaintiff was wearing a safety belt at this time, he was not attached to anything.

Plaintiff explained that, just prior to the accident, he was walking from the front of the scaffold to the back of the scaffold, in order to move a piece of plywood. At this time, he was walking parallel with, and to the outside of, the railroad tracks. The accident occurred just after he had stepped over a rail and into a space located between the tracks. Specifically, plaintiff testified that his "left leg fell inside a hole . . . in the middle of the track" (*id.* at 57). As a result, plaintiff ended up "[h]ead down," with the rest of his body "[o]n the track" (*id.* at 65). Plaintiff described the hole that he stepped into as between "1 by 1-1/2 and 2-feet down, deep" (*id.* at 58).

Plaintiff described the lighting conditions at the Site as "[v]ery little" (*id.* at 74). To that effect, there was only a light "[o]n top of the pipe scaffolding where the inspectors would be, would stay" (*id.* at 75). While plaintiff had a light on his hard hat, it was not working at the time of the accident, because it had no battery.

When asked if he was aware of the existence of the "trench," plaintiff replied, "I imagine so" (*id.* at 208). That said, plaintiff testified that he "couldn't know" of the presence of the trench in the accident area, because "[i]t was dark" (*id.* at 213). Plaintiff explained that, while there were coverings over the Bridge's outside trenches, the trenches inside the tunnel lacked such coverings. Plaintiff acknowledged that the trench that he fell into was part of the permanent structure of the tracks.

***Deposition Testimony of Brian Gill (DOT Engineer)***

Brian Gill testified that, on the day of the accident, he was employed by the DOT as the engineer in charge of overseeing projects involving the "reconstruction of the Manhattan Bridge" (Gill tr at 7). Gill explained that the City leased the Bridge, which had two subway tunnels associated with it, to the DOT and the NYCTA.

Gill explained that, at the time of the accident, a reconstruction project was underway at the Bridge, pursuant to a contract between defendant/third-party plaintiff Skanska Koch, Inc. and the DOT. In addition, a "[b]iennial condition inspection" was going on in August of 2012, which was "separate" and "not related to the Skanska contract" (*id.* at 15). The biennial inspection, which was conducted by B&H, was completed every two years, pursuant to a federal law relating to public bridges. Specifically, B&H was hired by the DOT to "[g]ain access to all the structural elements on the bridge and read them and provide a report" (*id.* at 56-57). With the exception of attending certain coordination meetings in regard to gaining access to the Bridge to perform its inspection, B&H had no connection to Skanska's reconstruction project.

***Deposition Testimony of Richard Ng (B&H's Senior Vice-President)***

Richard Ng testified that he was B&H's senior vice-president on the day of the accident. In addition, in August of 2012, he acted as a quality control engineer for B&H's inspection work at the Site. Ng testified that the DOT hired B&H to conduct the regular biennial inspection of the Bridge. B&H had conducted this inspection on other occasions. Ng maintained that B&H's inspection work did not involve the erection, demolition or repair of any permanent structure or any cleaning or painting.

B&H hired Rovi to provide rigging services and to erect rolling platform scaffolds that

were necessary for the performance of the inspection. The rolling scaffolds were set up on top of the subway rails. Both B&H and Rovi provided helmet lights and flashlights to their workers.

Ng testified that, at the time of the accident, plaintiff was assembling a rolling scaffold. While he did not witness the accident, Ng was close by when the accident occurred. Afterwards, when Ng approached plaintiff, he observed him lying on the tracks, approximately two feet from a trench, which he described as the space between the two sides of the tracks. Ng explained that the subject trench was a permanent structure built to provide for drainage at the Site. Ng further maintained that the area where plaintiff appeared to have fallen was not wet or slippery. He also noted that it was sunny on the day of the accident, and that natural light coming into the tunnel made the trench easy to see. Ng asserted that "everybody knew the trench was there" (Ng tr at 154).

***Deposition Testimony of Walter Villacis (Rovi's Vice-President)***

Walter Villacis testified that he was Rovi's vice-president on the day of the accident. He explained that the subcontract between B&H and Rovi required Rovi to install rolling scaffolds at the Site, which fit on top of the subway rails. He explained that plaintiff was injured when he fell into a trench that was a permanent part of the subway track's design. The trench, which measured approximately 17 inches deep and 12 inches wide, was part of the Bridge's drainage system. Villacis maintained that the trench was small enough for one to step over. Villacis also maintained that the Site was open and exposed to daylight. Accordingly, the trench was "[o]bvious," as you could see it from the roadway.

**DISCUSSION**

"'The 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 eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

***The Labor Law § 240 (1) Claim***

In their separate cross motions, the City and B&H (together, defendants) move for dismissal of the Labor Law § 240 (1) claim against them. Importantly, plaintiff does not oppose that part of defendants' motions seeking dismissal of said claim.

Thus, defendants are entitled to dismissal of the Labor Law § 240 (1) claim against them.

***The Labor Law § 241 (6) Claim***

In their separate cross motions, defendants move for dismissal of the Labor Law § 241 (6) claim against them. Labor Law § 241 (6) provides, in pertinent part, as follows:

> "All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored,

> [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

Labor Law § 241 (6) imposes a nondelegable duty on "owners and contractors to 'provide reasonable and adequate protection and safety' for workers" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.* at 503-505).

Initially, defendants argue that Labor Law § 241 (6) does not apply to the facts of this case, because B&H's regular biennual inspection work did not entail "construction, excavation or demolition work," as required by the statute. However, as plaintiff argues, liability under Labor Law § 241 (6) is not limited to construction of "building sites" (*Mosher v State of New York*, 80 NY2d 286, 287 [1992]; *Joblon v Solow*, 91 NY2d 457, 466 [1998]). To that effect, courts "look to the regulations contained in the Industrial Code (12 NYCRR 23-1.4 [b] [13]) to define what constitutes construction work within the meaning of the statute" (*Joblon*, 91 NY2d at 466; *Jock v Fien*, 80 NY2d 965, 968 [1992]).

Industrial Code 12 NYC 23-1.4 (b) (13) defines "Construction work," in pertinent part, as including "[a]ll work of the types performed in the construction, erection, alteration, . . . painting or moving of buildings or other structures, whether or not such work is performed in proximate relation to a specific building or other structure."

Notably, case law has defined a structure as "'any production or piece of work artificially

built up or composed of parts joined together in some definite manner'" *(Joblon,* 91 NY2d at 464, quoting *Lewis-Moors v Conel of N.Y.*, 78 NY2d 942, 943 [1991]; *see McCoy v Kirsch*, 99 AD3d 13, 14-15 [2d Dept 2012] [wedding chupah, which "was a 10-foot-high device made of pipe, wood, and a fabric canopy at its top," was a structure for the purposes of Labor Law § 240 (1)]; *Sinzieri v Expositions, Inc.*, 270 AD2d 332, 333 [2d Dept 2000] [the exhibit, "which was composed of interlocking parts," fell within the definition of "'structure' under Labor Law § 240 (1)"]).

In addition,

> "[w]hether an item is or is not a 'structure' is fact-specific and must be determined on a case-by-case basis. In determining each case, courts may consider a number of relevant factors. These factors should include, but are not necessarily limited to, the item's size, purpose, design, composition, and degree of complexity; the ease or difficulty of its assembly and disassembly; the tools required to create it and dismantle it; the manner and degree of its interconnecting parts; and the amount of time the item is to exist. However, no one factor should be deemed controlling"

(*McCoy v Kirsch*, 99 AD3d at 16-17).

Here, considering the rolling scaffold's size, composition, design, interconnecting parts, complexity, difficulty of assembly and disassembly and purpose, it is determined that the rolling scaffold that plaintiff was erecting at the time of the accident would be a structure for the purposes of Labor Law § 240 (1) liability. Accordingly, Labor Law § 241 (6) may apply to the facts of this case.

Although plaintiffs list multiple violations of the Industrial Code in the bill of particulars, with the exception of Industrial Code sections 23-1.30 and 23-1.7 (b) (1) (i), either they do not apply to this case, or they are deemed abandoned, because plaintiff does not address them in his

opposition (*see Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]). As such, defendants are entitled to summary judgment dismissing those parts of plaintiff's Labor Law § 241 (6) claim predicated on those provisions.

*Industrial Code 12 NYCRR 23-1.30*

Industrial Code 12 NYCRR 23-1.30 states, as follows:

> **Illumination**. Illumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less that 10 foot candles in any area where persons are required to work nor less than five foot candles in any passageway, stairway, landing or similar area where persons are required to pass.

Initially, it should be noted that Industrial Code section 23-1.30 is sufficiently specific to support a Labor Law § 241 (6) cause of action (*Murphy v Columbia Univ.*, 4 AD3d 200, 202 [1st Dept 2004]; *Giglio v St. Joseph Intercommunity Hosp.*, 309 AD2d 1266, 1267 [4th Dept 2003]; *Herman v St. John's Episcopal Hosp.*, 242 AD2d 316, 317 [2d Dept 1997]).

Here, defendants failed to put forth sufficient evidence to establish that the lighting in the exact area where plaintiff was working was sufficient to meet the standard set forth in Industrial Code section 23-1.30. As such, defendants have "failed to meet [their] burden of coming forward with proof in evidentiary form establishing that the cause of action has no merit" (*Duell v Eastman Kodak Co.*, 224 AD2d 997, 997 [4th Dept 1996]).

In addition, in opposition, plaintiff raises a triable issue of fact as to whether the standard set forth in section 23-1.30 was met. Plaintiff testified that the lighting in the accident area was

poor, and that there was only a light "[o]n top of the pipe scaffolding where the inspectors would be, would stay" (plaintiff's tr at 75). In addition, plaintiff testified that he "couldn't know" of the existence of the trench in the accident area, because "[i]t was dark" (*id.* at 213) (*see Capuano v Tishman Constr. Corp.*, 98 AD3d 848, 851 [1st Dept 2012] [section 23-1.30 applicable where the plaintiff testified that the work area "had no windows to provide natural light and the artificial light was not working"]; *Hernandez v Columbus Ctr., LLC*, 50 AD3d 597, 598 [1st Dept 2008] ["(p)laintiff's testimony . . . that lighting conditions were poor, consisting only of a street light 150 to 200 feet away, created a triable issue of fact as to adequate lighting"]; *Verel v Ferguson Elec. Constr. Co., Inc.*, 41 AD3d 1154, 1157-58 [4th Dept 2007] [the plaintiff's deposition testimony, wherein he testified that the area where he fell had no artificial lighting and was too dark to read a newspaper, created a triable issue of fact as to whether the lighting conditions fell below the regulatory standard of 10 foot candles of illumination as required by section 23-1.30]).

Thus, defendants are not entitled to summary judgment dismissing that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.30.

*Industrial Code 12 NYCRR 23-1.7 (b) (1) (i)*

Industrial Code section 23-1.7 (b) (1) (i), requiring that hazardous openings into which a person may step or fall be guarded by a substantial cover fastened in place or by a safety railing, is sufficiently concrete in its specifications to support plaintiff's Labor Law § 241 (6) claim (*see Scarso v M.G. Gen. Constr. Corp.*, 16 AD3d 660, 661 [2d Dept 2005]; *Olsen v James Miller Mar. Serv., Inc.*, 16 AD3d 169, 171 [1st Dept 2005]).

Specifically, Industrial Code 12 NYCRR 23-1.7 (b) (1) (i) states:

"(b) Falling hazards

> (1) Hazardous openings.
>
> (i) Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part (rule)."

"[A]lthough the term 'hazardous opening' is not defined in 12 NYCRR 23-1.7 (b), based upon a review of the regulation as a whole -- particularly the safety measures delineated therein -- it is apparent that the regulation is 'inapplicable where the hole is too small for a worker to fall through'" (*Rice v Board of Educ. of City of N.Y.*, 302 AD2d 578, 579 [2d Dept 2003], quoting *Alvia v Teman Elec. Contr.*, 287 AD2d 421, 422-423 [2d Dept 2001] ["hazardous openings" regulation did not apply where the 12-inch by 16-inch hole that worker fell into was too small for him to fall through]; *Urban v No. 5 Times Sq. Dev., LLC*, 62 AD3d 553, 556 [1st Dept 2009] [a 10- to 12-inch gap was not a hazardous opening]).

Here, although the trench was not guarded by either a substantial covering or a safety railing, nevertheless, section 1.7 (b) (1) (i) does not apply to the facts of this case, because it was too shallow for plaintiff to fall through.

Thus, defendants are entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.7 (b) (1) (i).

***The Common-Law Negligence and Labor Law § 200 Claims***

In their separate motions, defendants move for dismissal of the common-law negligence and Labor Law § 200 claims against them. However, plaintiff only opposes B&H's motion to dismiss these claims against it. Thus, the City is entitled to dismissal of the common-law negligence and Labor Law § 200 claims against it.

As to B&H, Labor Law § 200 (1) states, in pertinent part, as follows:

> "All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: when the accident is the result of the means and methods used by the contractor to do its work, and when the accident is the result of a dangerous condition (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]).

"Where an existing defect or dangerous condition caused the injury, liability [under Labor Law § 200] attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 (1st Dept 2012); *Murphy*, 4 AD3d at 202 [to support a finding of a Labor Law § 200 violation, it was not necessary to prove general contractor's supervision and control over plaintiff's work, "because the injury arose from the condition of the work place created by or known to the contractor, rather than the method of [the] work"]).

It is well settled that, in order to find an owner or its agent liable under Labor Law § 200 for defects or dangers arising from a subcontractor's methods or materials, it must be shown that the owner or agent exercised some supervisory control over the injury-producing work (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993] [no Labor Law § 200 liability where the plaintiff's injury was caused by lifting a beam, and there was no evidence that the

defendant exercised supervisory control or had any input into how the beam was to be moved]).

Moreover, "general supervisory control is insufficient to impute liability pursuant to Labor Law § 200, which liability requires actual supervisory control or input into how the work is performed" (*Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 311 [1st Dept 2007]; *see also Bednarczyk v Vornado Realty Trust*, 63 AD3d 427, 428 [1st Dept 2009] [Court dismissed common-law negligence and Labor Law § 200 claims where the deposition testimony established that, while the defendant's "employees inspected the work and had the authority to stop it in the event they observed dangerous conditions or procedures," they "did not otherwise exercise supervisory control over the work"]; *Burkoski v Structure Tone, Inc.*, 40 AD3d 378, 381 [1st Dept 2007] [no Labor Law § 200 liability where the defendant construction manager did not tell subcontractor or its employees how to perform subcontractor's work]; *Smith v 499 Fashion Tower, LLC*, 38 AD3d 523, 524-525 [2d Dept 2007]).

As discussed previously, plaintiff was injured when, while walking from the front of the scaffold to the back in order to move a piece of plywood, his foot fell into the trench, an intentionally constructed permanent structure of the subway system used for drainage. In and of itself, the trench contained no defects. However, as plaintiff asserts, the trench was, nevertheless, a hazard, due to the lack of lighting in its vicinity, which would have permitted plaintiff to see it and navigate around it. In addition, for safety reasons, the trough should have been covered or blocked off when plaintiff was working adjacent to it. Accordingly, plaintiff's accident must be analyzed according to both an unsafe condition and a means and methods analysis.

*Additional Facts Relevant To This Issue:*

The Inspection Agreement required B&H to assign a quality control engineer to the

Project, whose duties included making sure that the work was performed in a safe manner. In addition, the Inspection Agreement provided that B&H "monitor/provide the project with the adequate safeguards, including but not limited to, the proper shoring, trenching, safe rigging, safety nets, fencing, barricades, scaffolding, and ladders that are necessary for the protection of its employees, as well as the public and Department employees" (the Inspection Agreement at 52). The Inspection Agreement also required B&H to provide all employees with personal safety equipment, as well as hard hats and safety equipment designed to provide high visibility under all lighting and weather conditions" (*id.* at 53).

Here, B&H failed to sufficiently demonstrate that it lacked actual or constructive notice of the dangerous nature of the trench. In addition, the fact that the Inspection Agreement required B&H to provide certain safety safeguards at the Site, for the protection of its workers, creates a question of fact as to whether it exercised supervision and control over the lighting conditions at the Site, as well as over the fall protection necessary to prevent workers from falling into the trench.

Thus, B&H is not entitled to dismissal of the common-law negligence and Labor Law § 200 claims against it.

***B&H's Third-Party Claim Against Rovi***

Rovi moves to dismiss B&H's third-party claim against it, on the ground that, as the Labor Law does not apply to B&H's biennial inspection of the Manhattan Bridge, B&H bears no nondelegable duty to plaintiff. Accordingly, as the complaint against B&H should be dismissed, B&H's third-party complaint against Rovi should also be dismissed.

However, Rovi's argument fails, as the Labor Law does, in fact, apply to the facts of this

case. Thus, as Rovi has made no other argument in support of dismissal of the third-party complaint against it, Rovi is not entitled to dismissal of said complaint.

Finally, in their separate motions, the City and B&H also request that all cross claims asserted against them be dismissed. However, as they offer no arguments or evidence in support of this request, said requests are denied.

**CONCLUSION AND ORDER**

For the foregoing reasons, it is hereby

**ORDERED** that the parts of defendant City of New York's motion (motion sequence number 003), pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law § 200, 240 (1) and 241 (6) claims against it is granted, with the exception of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.30, and these claims are dismissed as against this defendant, and the motion is otherwise denied; and it is further

**ORDERED** that the parts of defendant/third-party plaintiff B&H Engineering, P.C.'s motion (motion sequence number 004), pursuant to CPLR 3212, for summary judgment dismissing the Labor Law §§ 240 (1) and 241 (6) claims against it is granted, with the exception of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code 12 NYCRR 23-1.30, and these claims are dismissed as against this defendant, and the motion is otherwise denied; and it is further

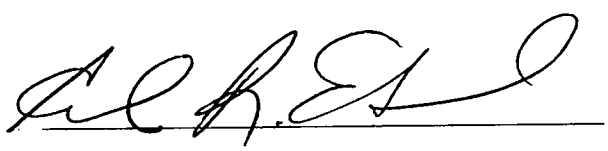
**ORDERED** that the parts of third-party/second third-party defendant Rovi Construction Corp.'s motion (motion sequence number 005), pursuant to CPLR 3212, for summary judgment dismissing the third-party complaint against it is denied; and it is further

**ORDERED** that the remainder of the action shall continue; and it is further

**ORDERED** that counsel for defendant City of New York shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on all counsel.

DATED: May 16, 2017

ENTER:



Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.