Index No.: 509035/2019

At IAS Part 13 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 320 Jay Street, Brooklyn, New York, on the 29th day of December 2023.

PRESENT:

HON. RUPERT BARRY, A.J.S.C

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JORGE PARRALES CHAVEZ,

Plaintiff,

- Against -

127 ECKFORD BAY LLC, DPC NEW YORK, INC. and ANDR SERVICES GROUP INC.,

Defendants.

Cal. No.: 42 (Motion Seq. No.: 4)
Cal. No.: 43 (Motion Seq. No.: 5)
Index No.: 509035/2019

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DECISION & ORDER

127 ECKFORD BAY LLC and DPC NEW YORK, INC.,

Third-Party Plaintiffs,

- Against -

CPJR IMPROVEMENTS CORP.,

Third-Party Defendant.

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127 ECKFORD BAY LLC and DPC NEW YORK, INC.,

Second Third-Party Plaintiffs,

- Against -

ANDR SERVICES GROUP INC.,

Second Third-Party Defendant.

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Recitation, as required by CPLR § 2219(a), to be considered in review of papers reviewed in connection with Plaintiff JORGE PARRALES-CHAVEZ's motion for summary judgement and Defendants 127 ECKFORD BAY LLC's and DPC NEW YORK, INC.'s cross-motion for summary judgment: NYSCEF Doc. Nos.: 131-156; 160-186; 187-192.

Upon the foregoing cited papers, this Court's Decision and Order on Plaintiff's motion for summary judgment (Motion Seq. No.:4) and Defendants' cross-motion for summary judgment (Motion Seq. No.: 5) this Court finds as follows:

This Court finds that Plaintiff failed to meet his *prima facie* burden of demonstrating that his injury was caused by an elevation related hazard encompassed by Labor Law 240(1) because the permanent staircase that Plaintiff fell down was a normal appurtenance to the building, was not designed as a safety device to protect plaintiff from an elevated risk, and the injury did not result from the an elevation hazard contemplated to be protected by the statute. The protections of Labor Law § 240 (1) do not apply to every worker who falls and is injured at a construction site (*O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27 [2017]). Where a fall occurs from a permanent stairway, no liability pursuant to Labor Law § 240 (1) can attach (*Sullivan v. New York Athletic Club of City of N.Y.*, 162 AD3d 950 [2d Dept 2018], quoting *Gallagher v. Andron Constr. Corp.*, 21 AD3d 988, [2d Dept 2005]). Unlike other appellate departments, the Second Department has not carved out an exception to the stairway rule. While Plaintiff asserts that the Second Department has consistently held that "a staircase, whether temporary or permanent, is considered a 'safety device' where it serves as the sole means of access into and out of the work area," Plaintiff fails to cite to any cases that hold this proposition.

Here, Plaintiff was exposed to the ordinary dangers of a construction site, and not the extraordinary elevation risks envisioned by Labor Law § 240 (1). Moreover, insofar as Plaintiff was using the stairwell as a passageway, it did not come within the purview of Labor Law § 240(1) (*Castro v Wythe Gardens, LLC.*, 217 AD3d 822 [2d Dept 2023]). Therefore, this branch of Plaintiff's summary judgment motion is **denied**. The similar branch of Defendants' summary judgment motion is **granted**.

This Court further holds that Plaintiff failed to meet his *prima facie* burden of demonstrating as a matter of law that Defendants violated Labor Law § 241(6) and that any alleged violation was a proximate cause of Plaintiff's accident since it has not been established as a matter of law that Defendants violated New York Industrial Code § 23-1.7(d), § 23-2.1(b), or § 23-3.3(e).

Turning to Plaintiff's Labor Law § 241 (6) cause of action. To the extent that cause of action is predicated upon an alleged violation of 12 NYCRR 23-1.7 (d), which requires employers to remove or cover foreign substances which may cause slippery footing, courts have held that where the substance naturally results from the work being performed, it is not generally considered a foreign substance under Section 23-1.7 (d) (*Giglio v. Turner Constr. Co.,* 190 AD3d 829 [2d Dept 2021]). Here, Defendants established, *prima facie*, that section 23-1.7 (d) is inapplicable, as the record demonstrates that the injured Plaintiff slipped and fell on debris that had fallen from the trash can he was carrying down the stairs, and that both the water being sprayed by his supervisor and the debris were direct and natural results of the work being performed. Therefore, this branch of Plaintiff's motion is **denied**. The branch of Defendants' motion seeking dismissal of this cause of action is granted**.**

With respect to Plaintiff's Labor Law § 241 (6) cause of action, to the extent it is predicated upon an alleged violation of 12 NYCRR 23-2.1(b), which pertains to disposal of debris, the code lacks the specificity required to qualify as a predicate for liability under Labor Law § 241 (6) (*Fowler v. CCS Queens Corp.*, 279 AD2d 505 [2d Dept 2001]). To support a claim under Labor Law § 241(6) the particular Industrial Code provision relied upon by a Plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles (*Misicki v Caradonna*, 12 NY3d 511 [2009]; *Mugavero v Windows By Hart, Inc.*, 69 AD3d 694 [2d Dept 2010]). Here, because that provision is too general, and not a

sufficiently specific directive necessary to support a cause of action under Labor Law § 241 (6), that branch of Plaintiff's motion is **denied**. Conversely, that same branch of Defendants' motion is **granted** (*Dyszkiewicz v City of New York*, 218 AD3d 546 [2d Dept 2023]; *La Veglia v. St. Francis Hosp.*, 78 AD3d 1123 [2d Dept 2010]).

With respect to Plaintiff's Labor Law § 241 (6) cause of action, to the extent it is predicated upon an alleged violation of 12 NYCRR 23-3.3(e), which requires debris, bricks and any other materials to be removed "by means of buckets or hoists," this Court finds that the Industrial Code alleged did not furnish a basis for liability under Labor Law § 241(6). The code is inapplicable here, as Plaintiff was in fact furnished with trash containers which this Court finds comparable to "buckets" as listed under the section. Therefore, this branch of **Plaintiff's motion is denied**, and, conversely, this **same branch of Defendants' motion is granted**.

For the aforementioned reasons, it is:

ORDERED, that Plaintiff JORGE PARRALES CHAVEZ's motion for partial summary judgment against Defendants 127 ECKFORD BAY LLC and DPC NEW YORK, INC is DENIED. It is further,

ORDERED, that Defendants 127 ECKFORD BAY LLC's and DPC NEW YORK, INC's cross-motion for summary judgment is GRANTED, and Plaintiff JORGE PARRALES CHAVEZ's complaint against Defendants 127 ECKFORD BAY LLC and DPC NEW YORK, INC is **dismissed**.

This constitutes the decision and order of this Court.

*All applications not specifically addressed herein are Denied.

HON. RUPERT V. BARRY, A.J.S.C.