SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SHLOMO S. HAGLER** **PART** **17**

Justice

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MIKHAIL KHANUNOV, NATALIA KHANUNOV,

Plaintiff,

- v -

CITIGROUP TECHNOLOGY, INC., TISHMAN CONSTRUCTION CORPORATION,

Defendant.

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INDEX NO. 159135/2019

MOTION DATE 12/29/2022, 01/30/2023

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 128

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 129

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

This is an action for personal injuries allegedly sustained by plaintiff Mikhail Khanunov ("plaintiff") on May 15, 2018 while working as a sheet metal mechanic employed by non-party defendant AABCO Sheet Metal at a building located at 388-390 Greenwich Street, New York, NY on the 6th floor (the "Premises").

Plaintiff moves for partial summary judgment pursuant to Labor Law §§ 240 (1) and 241 (6) on liability (Motion Seq. No. 003).[1] Defendants Citigroup Technology Inc., Tishman Construction Corporation ("Tishman"), Turner Construction Company ("Turner") and ASM Mechanical Company, Inc. (collectively, "defendants") move for summary judgment dismissing plaintiffs' complaint in its entirety.

[1] Plaintiff Natalia Khanunov has asserted a cause of action for loss of consortium. For purposes of this motion, the term "plaintiff" refers to plaintiff Mikhail Khanunov.

By Interim Order, dated April 25, 2023 (NYSCEF Doc. No. 129), this Court denied plaintiff's motion for summary judgment on plaintiff's claims under Labor Law § 241 (6) predicated on Industrial Code §§ 23-1.7 (e) (1) & (2) and 23-2.1 (a) (1) and granted defendants' motion for summary judgment dismissing plaintiff's claims under Labor Law § 241 (6) predicated on Industrial Code §§ 23-1.7 (e) (1) & (2). Moreover, on the record this Court denied defendants' motion for summary judgment dismissing plaintiff's claims under Labor § 241 (6) predicated on Industrial Code § 23-2.1 (a) (1) (tr oral argument at 33-34). Defendants also move for summary judgment dismissing plaintiff's claims under Labor Law § 241 (6) predicated on Industrial Code § 23-1.3. Given plaintiff has failed to submit any opposition thereto, plaintiff's claim under Labor Law § 241 (6) predicated on Industrial Code § 23-1.3 is deemed abandoned.[2]

BACKGROUND

Plaintiff's Deposition Testimony

On the day of the subject accident, plaintiff was working at the Premises which consisted of two connected buildings in Manhattan. The buildings were undergoing "repositioning", that is, a refurbishing for the global headquarters of Citigroup (NYSCEF Doc. No. 75, 109 at 9 [Deposition of Kevin Louie, Sr. VP of Citi Realty Services/Senior VP of Citigroup ("Louie")]). There were multiple trades working on the sixth floor along with plaintiff and his partner (NYSCEF Doc. No. 73, 106 at 19-21 [Plaintiff Deposition]). Plaintiff was a sheet metal mechanic employed by AABCO Sheet Metal ("AABCO") (*id.* at 9-10). From the start of the day of the accident up until the time the accident occurred, plaintiff was installing ductwork (*id.* at 22). Plaintiff testified that in the morning "we got the drawings, we got the safety meetings, we have to get [*sic*] the job site, open the gang box, take the tools, safety equipment and looking for

[2] By Partial Stipulation of Discontinuance With Prejudice, dated March 24, 2023, the parties discontinued the action as against defendant ASM Mechanical Company Inc. (NYSCEF Doc. No. 126).

material, get the drawings and prepare [*sic*] start to assemble pieces on the floor and get lifting materials and start doing installation of the ductwork of the ceiling or where they have to go" (*id.* at 16-17). Essentially, plaintiff alleges that on the day of the accident, he was engaged in assembling pieces of HVAC ducts that he was preparing to install in the ceiling, when a door leaning horizontally against the wall fell on him causing injuries.

Plaintiff testified as follows:

Q. What were you doing at the time of the incident?
A. I was prepare [*sic*] to assemble pieces and looking for material (*id.* at 32).

Q. When you were looking for material, what did you do as far as looking for material?
A. Looking for material, our material should be in one pile and we start to, you know, in certain places and we have to find exactly the right pieces when they have to go according to drawings.
Q. So had you put together any pieces of the HVAC before the accident occurred?
A. I start collecting pieces.
Q. And where were the pieces located?
A. On the same floor (*id.* at 34).

Q. So when you were collecting pieces, what were you doing as far as collecting pieces? Were you picking up pieces and bringing them to the location where you were going to assemble them?
A. Yes, I find the right pieces with the number and I move them to the place where they have to go.
Q. So when you were bringing them to the place where you have to go, were you installing pieces of the HVAC in the location where you were going to then install it above your head above the ceiling.
A. Yeah, we leave it right on the floor.
Q. Had you assembled any of the pieces before your accident occurred?
A. Not yet, no.
Q. Were you still bringing pieces to the location where you were going to assemble them?
A. Yes.
Q. And what happened as you were going to get a piece of HVAC?
A. I found the right piece, I move the pieces, move it over and the door fell.
Q. When you say you found the piece, could you describe the piece that you found?
A. It's a square piece approximately 58 or 60 inches long or tall. It's [*sic*] all depends if they're on the floor, it's long, it it's standing vertically and they [*sic*] installed.
Q. Approximately how much did that piece weigh?
A. I [*sic*] not remember.
Q. Were you able to carry it and pick it up with your own power?
A. Yes. (*id.* at 35-37).

Q. So you were holding the piece of HVAC equipment at the time of the incident?
A. Yes.
Q. And the door that you mentioned that fell, where was the door located in relation to the location where the HVAC piece was located?
A. Right behind the ductwork leading [*sic*] on the floor, on the wall.
Q. Was there one or more than one door?
A. More.
Q. How many doors were there?
A. Two.
Q. And when you say the door was behind the ductwork, are you referring to the ductwork that you needed to assemble?
A. Yes.
Q. And how many pieces of ductwork were there by the door.
A. It was a lot.
Q. When you say a lot of pieces, how many pieces were there approximately?
A. I cannot tell you (*id.* at 38-39).

Q. Did you see the two doors by the ductwork before you picked up the piece of ductwork that you were taking to the location to assemble at the time of your accident?
A. Yes.
Q. Could you tell me the size of the doors that you saw?
A. Exactly, no, I can only guess.
Q. Could you estimate rather than guess?
A. Um, 36 – eight by three foot.
Q. Eight foot by three foot roughly?
A. Roughly, yes (*id.* at 40-41).

Q. And when you say they were leaning against the wall, were they leaning in a horizontal fashion or were they leaning in a vertical fashion the way a door would typically be positioned?
A. Horizontal.
Q. So they were about three feet up above the ground, the height?
A. Yes.
Q. And the two doors that were there, were they directly abutting each other leaning against the wall?
A. Probably, yes.
Q. In other words, there was one door and then another door was right next to it and they were both leaning together against the wall.
A. Yes (*id.* at 41-42).

Q. Did one or both doors fall?
A. One (*id.* at 48).

Q. So the door that fell, that was not the first door that was leaning against the wall, it was the door that was leaning against the door that was leaning against the wall?
A. Yes.

Q. Mr. Khanunov, the piece of HVAC that you were picking up at the time of the accident, had picked up, do you know if it was touching up against the door that fell?
A. I am not sure.
Q. Do you know how far the piece of HVAC may have been away from the door when you picked it up?
A. It was close.
Q. It was close, but you don't know if it was touching the door?
A. I'm not, I don't know.
Q. Do you know if there were other pieces of HVAC at that location that were touching up against the door.
A. I don't think so.
Q. When the door fell, were you looking in the direction of the door or some other direction.
A. Other direction.
Q. So your body was turned away from the door at the time the door fell?
A. Yes (*id.* at 49-50).[3]

Plaintiff testified that the door made contact with his knee and that his foot became stuck between the floor and the door (*id.* at 50-52).

Depositions of Defendants

Louie of Citigroup was in charge of the administrative aspects of the subject project. Louie testified that there were two construction managers on the project. Tishman performed the "core and shell positioning work" and Turner performed the "interior construction work" (NYSCEF Doc. No. 75 [Louie Deposition] at 11). In an Affidavit, sworn to on January 18, 2023 (NYSCEF Doc. No. 109), Louie attested that Citigroup did not have any direct control over the actual work being conducted since the two construction managers were hired to oversee and supervise the work (*id.*, ¶ 3). Citigroup played no part in controlling the manner and method of the work being performed (*id.*). "On occasion, Citigroup, including myself, would perform 'walk-throughs' at the site while construction was taking place. However, there was no specific schedule of frequencies for these walk-throughs performed by Citigroup. The walk-throughs would only be done to be kept abreast of developments on the site and for determination as far as

[3] Colloquy between counsel omitted.

the extent of work being completed per scheduling" (*id.*). Louie did not have any first-hand knowledge of plaintiff's accident, and only acquired knowledge through review of the incident report of the accident (*id.* at ¶ 4). Louie and Citigroup had no notice of the subject doors leaning on their side in the hallway of the 6th floor (*id.*).

Frank Servidio ("Servidio"), a superintendent employed by Tishman, testified that the sixth floor was a "Tuner floor" (NYSCEF Doc. Nos. 78, 112 [Servidio Deposition] at 54). However, Servidio testified that he would walk through the subject site "periodically" meaning he would walk through on "certain occasions" to monitor work progress "mostly" (id. at 16-17).

Greg Gutkes ("Gutkes"), a superintendent of Turner, testified that Turner oversaw work including work on the floor, interior walls, office spaces and conference rooms (NYSCEF Doc. Nos. 77, 110 [Gutkes Deposition] at 12). In an affidavit, sworn to on January 23, 2023 (NYSCEF Doc. No. 111), Gutkes attested that as one of the superintendents for Turner, Gutkes was assigned to oversee the work being performed on floors where Turner was the construction manager (*id.* at ¶ 2). Gutkes states that Turner did not perform any of the work but hired various subcontractors to do so (*id.*). Gutkes' duties were to oversee the fit-out work performed by the various trades and ensure that the work was being timely completed and pursuant to job plans and specifications (*id.* at ¶ 4). Gutkes explained generally that doors were being installed as part of the project by various subcontractors and that the doors were delivered to the jobsite through the loading dock. The subcontractor who ordered the door, would take the door to the floor where it was to be utilized using the freight elevators and then the door would be off-loaded from the freight elevator to a corridor or hallway nearby (*id.* at ¶¶ 2, 3). The subject door would subsequently be brought to the location on that floor where they were to be utilized (*id.* at ¶¶ 3, 8).

Gutkes stated that he would have performed walk-throughs on the 6th floor on the date of the accident and would monitor the progress. If he observed a dangerous condition, he would inform the foreman or superintendent of the trade who was responsible for that particular condition (*id.* at ¶ 8). However, Gutkes had no specific authority to control the manner and method in which a trade was doing its work (*id.*). Gutkes does not recall seeing the subject two doors leaning on their sides on the day of the accident or prior thereto (*id.* at ¶¶ 6, 7). Gutkes examined photographs of the door and stated, "there is no way I can tell from a review of the photographs of the door which specific trades may have been utilizing this type of door" (*id.* at ¶ 6). Gutkes attested that duct work being placed near doors leaning against the wall, "would have been created through the manner and method in which the two trades utilizing the doors and duct work temporarily placed these materials on the freight elevator for use on the 6th floor" (*id.* at ¶ 9). Gutkes further attested that he would not have considered duct work placed close to doors leaning on the wall to be a dangerous condition (*id.* at ¶¶ 6, 9).

DISCUSSION

Summary Judgment

A party moving for summary judgment under CPLR 3212 "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" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact

(*Alvarez*, 68 NY2d at 324). The moving party's "[f]ailure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*id.*).

Plaintiff's and defendants' motions under Labor Law § 240 (1) (Motion Seq. Nos. 003 and 004)

Labor Law § 240 (1), also known as the Scaffold Law, provides, as relevant:

> "All contractors and owners and their agents . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

"'Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards . . . and must be liberally construed to accomplish the purpose for which it was framed" (*Valensisi v Greens at Half Hollow, LLC,* 33 AD3d 693, 695 [2d Dept 2006] [internal citations omitted]).

Not every worker who falls or is struck by a falling object at a construction site is afforded the protections of Labor Law § 240 (1), and "a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace" (*Makarius v Port Auth. of N.Y. & N.J.*, 76 AD3d 805, 807 [1st Dept 2010]). Instead, liability "is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Therefore, to prevail on a section 240 (1) claim, a plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

In the instant matter, both plaintiff and defendants are not entitled to summary judgment on plaintiff's Labor Law § 240 (1) claim. In falling object cases, it is well established that summary judgment in favor of a plaintiff under Labor Law § 240 (1) is not precluded simply because a plaintiff and the base of the object which fell stood on the same level as plaintiff (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 5-6 [2011]). An "elevation differential … cannot be viewed as de minimis, particularly given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 605 [2009]).

Here, plaintiff's deposition testimony reveals that plaintiff merely estimated that the subject door on the ground leaning against the wall measured eight feet by three feet (NYSCEF Doc. No. 73, 106 at 41).[4] Significantly, there is no evidence in the record with respect to the weight of the door other than plaintiff's expert's conclusory estimation of such weight. In an affidavit, sworn to on December 15, 2022, plaintiff's expert, Leo Debobes ("Debobes Affidavit") opines that based on plaintiff's deposition testimony that the door measured an estimated eight feet by three feet, "a typical 36-inch by 96-inch 18-gauge hollow metal door will weigh approximately 118 pounds" (NYSCEF Doc. No. 83 at 14). The Debobes Affidavit concedes however that "none of the deposed individuals knew the exact dimensions of the door or whether it was hollow or solid. No invoices or documents were available for [his] review describing

[4] Plaintiff testified that there was one door directly next to another door and both were leaning against the wall. The door that fell was the door that was leaning against the door that was leaning against the wall (NYSCEF Doc. No. 73, 106 at 41-42, 49). In estimating the measurements, plaintiff did not differentiate between the two doors.

these doors in great detail" (*id.*, ¶ 13). As such, the Debobes Affidavit, at least to the extent it opines on the weight of the subject door, is entirely speculative.

The cases cited by plaintiff holding that the plaintiffs' injuries therein resulted from the force of gravity given the weight of the subject objects, are inapposite. In *Grigoryan v 108 Chambers St. Owner,* LLC, 204 AD3d 534 [1st Dept 2022], a "3-4 foot tall, 300-500+ pound fire pump" fell on plaintiff's leg. In *Ali v Sloan-Kettering Inst. for Cancer Research*, 176 AD3d 561 [1st Dept 2019], an air conditioning system coil weighing at least 300 pounds was being transported secured to two dollies and fell on plaintiff's leg (*see also Schoendorf v 589 Fifth TIC I LLC*, 206 AD3d 416 [1st Dept 2022] [plaintiff was injured as he attempted to move a 400-pound elevator platform from the front of a flatbed truck]; *Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 409 [1st Dept 2013] [an A-frame cart containing sheet rock and two 500-pound steel beams tipped over toward plaintiff]; *McAllister v 200 Park, L.P.*, 92 AD3d 927 [2d Dept 2012] [the total weight of the subject stacked scaffolds was approximately 450-500 pounds].[5]

Given the lack of evidence as to the weight of the subject doors, plaintiff has failed to meet his *prima facie* burden establishing that plaintiff's accident resulted from a falling object capable of generating an extreme amount of force pursuant to Labor Law § 240 (1). Defendants have likewise failed to meet their *prima facie* burden dismissing such Labor Law § 240 (1) claim.

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[5] Other "falling object" cases granting summary judgment to plaintiff are likewise inapposite (*see e.g. Douglas v Tishman Constr. Corp.*, 205 AD3d 570 [1st Dept 2022 [a wooden door frame measuring 15 to 20 feet high and 8 feet wide struck plaintiff causing him to fall off a ledge]; *Viruet v Purvis Holdings LLC*, 198 AD3d 587 [1st Dept 2021] [steel and plywood form came off a wall and fell on plaintiff]).

Defendants' Motion dismissing plaintiff's Common-Law Negligence and Labor Law § 200 Claims (Motion Seq. No. 004)

Labor Law § 200 "is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). 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: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a defect or dangerous condition (*see Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d 542 [1st Dept 2022]; *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012].

"'Where the injury was caused by the manner and means 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'" (*Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d at 543 quoting *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d at 144]). Specifically, "liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]).

However, where an injury stems from a dangerous condition existing on the premises, an owner or contractor may be liable in common-law negligence and under Labor Law § 200 when the owner or contractor "'created the dangerous condition or had actual or constructive notice of

it" (*Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d at 543 quoting *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d at 144]; *see Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

Significantly "[t]his case could also be one of those 'rare cases [where] both theories of liability may be implicated'" (*Rosa v 47 E. 34th St. (NY), L.P.*, 208 AD3d 1075, 1081 [1st Dept 2022] quoting *Grasso v New York State Thruway Auth.*, 159 AD3d 674, 678 [2d Dept 2018]). In the instant matter, defendants have made a *prima facie* showing of entitlement to judgment as a matter of law dismissing plaintiff's claims made pursuant to Labor Law § 200 and common law negligence under a means and methods theory and plaintiff has failed to raise an issue of fact (*see generally Polonia v 14 Sutton Tenants Corp.*, 210 AD3d 417, 418 [1st Dept 2022]).[6] With respect to the means and methods theory of Labor Law § 200 and common law negligence, defendants have made their *prima facie* showing that defendants controlled the means and methods of plaintiff's work and plaintiff has failed to raise an issue of fact. Plaintiff testified that he received instructions about the subject doors only from his supervisor, Al Jackson of AABCO Sheet Metal (NYSCEF Doc. Nos. 73, 106 [Plaintiff Deposition] at 28). Gutkes of Turner attested in his Affidavit that he performed walk-throughs on the 6th floor on the date of the accident and would monitor the progress. If he observed a dangerous condition, he would inform the foreman or superintendent of the trade who was responsible for that particular condition (NYSCEF Doc. No. 111 [Gutkes Affidavit] at ¶ 8).[7] However, Turner had no authority to control the manner and method in which work was being performed by the various subcontractors (*id.* at ¶ 4). "General supervisory authority is insufficient to constitute supervisory control; it must be

[6] Defendants maintain that only the means and methods theory is applicable to this matter while in opposition to defendants' motion, plaintiff argues that only the dangerous condition standard is applicable.
[7] As Servidio of Tishman testified that the 6th floor was a "Turner floor", there is no evidence that Tishman controlled the means and methods of plaintiff's work.

demonstrated that the contractor controlled the *manner in which the plaintiff performed his or her work*, i.e., how the injury-producing work was performed" (*Hughes v Tishman Constr. Corp.* 40 AD3d 305, 306 [1st Dept 2007]; *see Mendriski v New York City Hous. Auth.*, 189 AD3d 410, 411 [1st Dept 2020]). Gutkes' authority to correct any unsafe conditions by stopping the work (NYSCEF Doc. No. 120 at 32-33 [Gutkes Deposition]), fails to establish a claim under Labor Law § 200. "The authority of [defendant's] representatives to ensure the overall safety of the work site and to stop any unsafe work does not rise to the level of supervision and control required to hold owners and general contractors liable under Labor Law § 200" (*DaSilva v Toll First Ave., LLC*, 199 AD3d 511, 513 [1st Dept 2021] *citing Mendriski*).

Plaintiff's argument that the agreements between Citigroup and both Tishman and Turner providing that said defendants are to comply with applicable codes and regulations, and providing that the proper safety practices be followed, confers upon the defendants the authority to direct the means and methods of plaintiff's work, is unavailing (*see* NYSCEF Doc. No. 104 [Contract between Owner and Turner] at ¶ 19.21); NYSCEF Doc. No. 105 [Contract between the Owner and Tishman, as Construction Manager] at ¶ 18.22) (*Suconota v Knickerbocker Props., LLC*, 116 AD3d 508, 508-509 [1st Dept 2014] ["The construction management agreement between [the construction manager] and the owner demonstrated that [the construction manager] had, at most general supervisory authority over plaintiff's work, which is insufficient to form a basis for the imposition of liability"]; *see DaSilva v Haks Engrs., Architects & Land Surveryors, P.C.*, 125 AD3d 480, 481 [1st Dept 2015]).

To the extent that plaintiff's claims under Labor Law § 200 are predicated on the existence of a dangerous condition, defendants have established prima facie that they did not

create the allegedly dangerous condition involving the placement of the subject doors on the 6th floor and plaintiff has failed to raise an issue of fact on that issue.[8]

However, defendants have failed to establish *prima facie* that they had notice of the allegedly dangerous condition. There has been no evidence submitted as to who left the subject door leaning against the wall on its side on the sixth floor or any evidence as to the last time the site was inspected (*Padilla v Touro Coll. Univ. Sys.*, 204 AD3d 415, 416 [1st Dept 2022]). Alternatively, even if defendants met their *prima facie* burden, plaintiff has at the very least raised issues of fact as to defendants' liability under the dangerous condition theory (*see Herrero v 2146 Nostrand Ave. Assoc., LLC*, 193 AD3d 421, 423 [1st Dept 2021] [issue of fact as to defendant's liability "as it had authority to control site safety, including the safety of equipment on site, and a factual issue exists as to whether it had actual or constructive notice of the dangerous condition and could have remedied the condition"]).

CONCLUSION

On the basis of the foregoing, it is

ORDERED that plaintiff's motion (Motion Seq. No. 003) to the extent it seeks summary judgment on liability pursuant to Labor Law § 240 (1) is denied; and it is further

ORDERED that plaintiff's motion (Motion Seq. No. 003) to the extent it seeks summary judgment on liability on claims under Labor Law § 241 (6) predicated on Industrial Code §§ 23-1.7 (e) (1) & (2) and 23-2.1 (a) (1) is denied; and it is further.

ORDERED that the motion by defendants Citigroup Technology Inc., Tishman Construction Corporation ("Tishman"), Turner Construction Company ("Turner") and ASM

[8] In opposition to defendants' motion for summary judgment, plaintiff does not argue that defendants created the condition but rather contends that there is an issue of fact as to whether defendants had notice of the subject condition (NYSCEF Doc. No. 119 [Plaintiff's MOL in Opposition to Defendants' Motion for Summary Judgement] at 16-18).

Mechanical Company, Inc. (Motion Seq. No. 004) for summary judgment dismissing plaintiff's complaint under Labor Law § 241 (6) predicated on Industrial Code §§ 23-1.7 (e) (1) & (2) and § 23-1.3 is granted, and is denied to the extent defendants seek to dismiss plaintiff's claims under Labor Law § 241 (6) predicated on Industrial Code § 23-2.1 (a) (1); and it is further

ORDERED that the motion by defendants Citigroup Technology Inc., Tishman Construction Corporation ("Tishman"), Turner Construction Company ("Turner") and ASM Mechanical Company, Inc. (Motion Seq. No. 004) is granted to the extent of dismissing plaintiff's claims under Labor Law § 200 and common law negligence arising from the means and methods of plaintiff's work and predicated on the allegation that defendants created an alleged dangerous condition, and is otherwise denied.

The Clerk shall enter judgment accordingly.

January 8, 2024
DATE

SHLOMO S. HAGLER, 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