Clemente v 205 W. 103 Owners Corp.
2017 NY Slip Op 32659(U)
November 27, 2017
Supreme Court, Bronx County
Docket Number: 301074/2013
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART LPM

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RAYMOND CLEMENTE,

Plaintiff,

- against -

205 WEST 103 OWNERS CORP., R&L REALTY ASSOCIATES, COLUMBUS PARTNERS I LLC, 103 W COOP, LLC and CIDH-VCMB LLC,

Defendants.

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DECISION AND ORDER

Index No. 301074/2013

PRESENT: Hon. Lucindo Suarez

Upon the June 2, 2017 notice of motion of defendant 205 West 103 Owners Corp. and the affirmation and exhibits submitted in support thereof (Motion Sequence #12); plaintiff's September 18, 2017 affirmation in opposition and the exhibits and four affidavits submitted therewith; the October 3, 2017 affirmation in opposition of defendant and third-party plaintiff 103 W Coop LLC and defendant CIDH-VCMB LLC; movant's October 5, 2017 affirmation in reply and the exhibit submitted therewith; movant's October 25, 2017 affirmation in reply; plaintiff's June 6, 2017 notice of motion and the affirmation, two affidavits and exhibits submitted in support thereof (Motion Sequence #13); the June 7, 2017 notice of cross-motion of defendant and third-party plaintiff 103 W Coop LLC and defendant CIDH-VCMB LLC and the affirmation and exhibits submitted in support thereof; the two July 25, 2017 affirmations in opposition of defendant 205 West 103 Owners Corp.; plaintiff's September 18, 2017 affirmation in reply and the two affidavits submitted therewith; the October 3, 2017 affirmation in opposition of defendant and third-party plaintiff 103 W Coop LLC and defendant CIDH-VCMB LLC; plaintiff's October 4, 2017 affirmation in reply; the October 26, 2017 affirmation in reply of defendant and third-party plaintiff 103 W Coop LLC and defendant CIDH-VCMB LLC; and due deliberation; the court finds:

Plaintiff moves for summary judgment on his Labor Law § 240(1) and § 241(6) causes of action. Defendant building owner 205 West 103 Owners Corp. ("205") moves for summary judgment dismissing the complaint and on its cross-claim against defendant 103 W Coop, LLC ("103"), the owner of the cooperative apartment in which plaintiff was working, for contractual indemnification and on its cross-claim against defendant CIDH-VMBC, LLC ("CIDH"), who hired the contractor on 103's behalf, for common-law indemnification. 103 and CIDH cross-move for summary judgment dismissing the complaint and all cross-claims.

Plaintiff had been removing plaster from a wall in the bathroom of an apartment that was being reconfigured by tapping the wall with a hammer to dislodge the plaster from the underlying lath system. The drywall ceiling was intact and not to be removed. Plaintiff was clearing debris from the floor when the ceiling suddenly fell, striking him. Plaintiff had been working in the bathroom for a total of two or two and a half hours; prior to starting to remove the plaster, he had performed other tasks which took approximately one hour.

205 first argued that it cannot be deemed an owner for Labor Law purposes because it had no notice of the work and derived no benefit from the work. An agreement executed in addition to 103's proprietary lease required 205's notice and approval of any plan to alter the apartment. 103's witness admitted that 103 took no steps to comply with the alteration notification requirement and it is undisputed that 205 never approved the work. 205's lack of knowledge of or consent to the work, however, does not warrant relief in its favor. *See Sanatass v. Consolidated Investing Co., Inc.*, 10 N.Y.3d 333, 887 N.E.2d 1125, 858 N.Y.S.2d 67 (2008). 205 provided no support for its argument that the *Sanatass* holding should be limited to a commercial building or tenant. *Sanatass* has been applied to a cooperative apartment by at least one appellate court. *See DeSabato v. 674 Carroll St. Corp.*, 55 A.D.3d 656, 868 N.Y.S.2d 209 (2d Dep't 2008). The proprietary lease between 205 and 103 provided a sufficient nexus between 205's ownership and the work being

performed, *see Sanatass*, *supra*, and 205's lack of knowledge of the work did not sever such nexus, *see Morton v. State of New York*, 15 N.Y.3d 50, 930 N.E.2d 271, 904 N.Y.S.2d 350 (2010).

In support of summary judgment on the Labor Law § 241(6) claim and in opposition to defendants' motions, plaintiff relied on 12 NYCRR § 23-1.7(a)(1), 12 NYCRR § 23-3.3(b)(3) and 12 NYCRR § 23-3.3(c). Plaintiff abandoned all other predicates, and the claim is dismissed to that extent. *See Burgos v. Premiere Props., Inc.,* 145 A.D.3d 506, 42 N.Y.S.3d 161 (1st Dep't 2016); *87 Chambers, LLC v. 77 Reade, LLC*, 122 A.D.3d 540, 998 N.Y.S.2d 15 (1st Dep't 2014).

12 NYCRR § 23-1.7(a)(1) requires overhead protection for places "normally exposed to falling material or objects." The fact of a falling object striking plaintiff does not, in and of itself, establish *prima facie* violation of the regulation. *See McCatty v. Creations Assocs.*, 689 N.Y.S.2d 78, 260 A.D.2d 315 (1st Dep't 1999). No work had been done on the ceiling, no work was going to be performed on the ceiling, the ceiling was wholly intact, and there was no evidence of work being performed overhead. Plaintiff failed to establish that the area was one "normally" exposed to falling material. *See Mercado v. TPT Brooklyn Assoc., LLC*, 38 A.D.3d 732, 832 N.Y.S.2d 93 (2d Dep't 2007); *Quinlan v. City of New York*, 293 A.D.2d 262, 739 N.Y.S.2d 706 (1st Dep't 2002); *Amato v. State*, 241 A.D.2d 400, 660 N.Y.S.2d 576 (1st Dep't 1997). The cause of action is thus dismissed insofar as predicated on 12 NYCRR § 23-1.7(a)(1).

12 NYCRR § 23-3.3(b)(3) requires that "parts of any building or other structure shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration." 12 NYCRR § 23-3.3(c) requires "continuing inspections . . . to detect any hazards to any person resulting from . . . loosened material" "[d]uring hand demolition operations." Both, however, pertain to demolition. Plaintiff's work did not involve the destruction of interior walls altering the building's structural integrity, *cf. Luebke v. MBI Group*, 122 A.D.3d 514, 997 N.Y.S.2d 379 (1st Dep't 2014), only the removal of surface plaster and replacement with

sheetrock, and accordingly did not involve "demolition" as contemplated by the regulations. *See Solis v. 32 Sixth Ave. Co. LLC*, 38 A.D.3d 389, 832 N.Y.S.2d 524 (1st Dep't 2007).

Removing plaster to replace it with sheetrock is not demolition, *see Zuniga v. Stam Realty*, 169 Misc.2d 1004, 647 N.Y.S.2d 426 (Sup Ct Queens County Aug. 22, 1996), *affirmed*, 666 N.Y.S.2d 515, 245 A.D.2d 561 (2d Dep't 1997), nor is removal of only a portion of a wall, *see Baranello v. Rudin Mgmt. Co.*, 13 A.D.3d 245, 785 N.Y.S.2d 918 (1st Dep't 2004), *lv denied*, 5 N.Y.3d 706, 835 N.E.2d 659, 801 N.Y.S.2d 799 (2005). 12 NYCRR § 23-3.3 is thus inapplicable.

Regardless of whether work constituting "demolition" as defined in 12 NYCRR § 23-1.4(b)(16) had taken place elsewhere, plaintiff's reliance on the superintendent's testimony that all interior walls were "down" is contrary to plaintiff's photographic evidence and contrary to plaintiff's explicit testimony that at least all four walls of the bathroom remained standing. His work was antithetical to "demolition" and was instead intended to preserve the structural integrity of the walls. The intent of plaintiff's work was to remove only damaged surface plaster, leaving undamaged surface plaster intact, and to restore a façade over the existing studs. If the area of removed plaster was small, it would be patched and filled. For larger areas, the plaster would be replaced with sheetrock. The underlying studs remained untouched. Plaintiff's expert did not attribute the accident to overall demolition activity; he attributed it solely to the work plaintiff and his partner were performing. Thus, plaintiff's motion is denied and the court searches the record, *see Siegel Consultants, Ltd. v. Nokia, Inc.*, 85 A.D.3d 654, 926 N.Y.S.2d 82 (1st Dep't 2011), *lv denied* 18 N.Y.3d 809, 944 N.Y.S.2d 480, 967 N.E.2d 705 (2012), to grant defendants' motion and cross-motion dismissing plaintiff's Labor Law § 241(6) cause of action.

Labor Law § 240(1) liability extends to objects that require securing for the purpose of the worker's undertaking. *See Outar v. City of New York*, 5 N.Y.3d 731, 832 N.E.2d 1186, 799 N.Y.S.2d 770 (2005). "The statute generally does not apply to objects that are part of a building's

permanent structure," *Marin v. AP-Amsterdam 1661 Park LLC*, 60 A.D.3d 824, 825, 875 N.Y.S.2d 242, 244 (2d Dep't 2009), such as ceilings, *see Flossos v. Waterside Redevelopment Co., L.P.*, 108 A.D.3d 647, 970 N.Y.S.2d 51 (2d Dep't 2013). "[T]he 'braces' referred to in section 240(1) [mean] those used to support elevated work sites not braces designed to shore up or lend support to a completed structure." *Misseritti v. Mark IV Constr. Co.*, 86 N.Y.2d 487, 491, 657 N.E.2d 1318, 1321, 634 N.Y.S.2d 35, 38 (1995), *rearg denied*, 87 N.Y.2d 969, 664 N.E.2d 1260, 642 N.Y.S.2d 197 (1996).

"A plaintiff in a case involving collapse of a permanent structure must establish that the collapse was 'foreseeable,' not in a strict negligence sense, but in the sense of foreseeability of exposure to an elevation-related risk." *Garcia v. Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 113 A.D.3d 494, 495, 980 N.Y.S.2d 6, 7 (1st Dep't 2014). "[A] worker who is caused to fall or is injured by the application of an external force is entitled to the protection of the statute only if the application of that force was foreseeable." *Buckley v. Columbia Grammar & Preparatory*, 44 A.D.3d 263, 267, 841 N.Y.S.2d 249, 254 (1st Dep't 2007), *lv denied*, 10 N.Y.3d 710, 889 N.E.2d 82, 859 N.Y.S.2d 395 (2008). "An object needs to be secured if the nature of the work performed at the time of the accident posed a significant risk that the object would fall . . . Where a falling object is not a foreseeable risk inherent in the work, no protective device pursuant to Labor Law § 240(1) is required." *McLean v. 405 Webster Ave. Assocs.*, 98 A.D.3d 1090, 1095-96, 951 N.Y.S.2d 185, 191 (2d Dep't 2012). "The statute does not apply in situations in which a hoisting or securing device of the type enumerated in the statute would not be necessary or expected." *Moncayo v. Curtis Partition Corp.*, 106 A.D.3d 963, 965, 965 N.Y.S.2d 593, 595 (2d Dep't 2013).

Plaintiff submits the affidavit of an engineer who opined that had defendants inspected the premises they would have discovered the need for proper shoring or bracing to prevent the ceiling collapse and that defendants should have inspected any and all portions of the existing structure

that may be affected by the demolition work to ensure such portions were in a stable and sound condition and not prone to collapse during the demolition operations. This is based upon the expert's assertion that water damage to the ceiling was "readily apparent." The expert provides no support for his conclusion that plaintiff's work, which consisted of removing surface plaster by merely "tapping" it with the side of a hammer, without removal of the underlying lath system, posed a "significant risk" of dislodging an entire bathroom ceiling which was wholly intact and undamaged prior to the accident. The expert assumes plaintiff was engaged in "demolition."

Although plaintiff now submits an affidavit claiming that there were water stains on the ceiling, plaintiff testified more than once at his depositions that there was no damage to the ceiling. *See Jones v. 414 Equities LLC*, 57 A.D.3d 65, 866 N.Y.S.2d 165 (1st Dep't 2008). The affidavit therefore appears to have been tailored to avoid the consequence of the prior testimony and is insufficient to raise an issue of fact. *See Vazquez v. Takara Condominium*, 145 A.D.3d 627, 44 N.Y.S.3d 386 (1st Dep't 2016). Plaintiff's expert's affidavit was apparently dependent upon this affidavit, while simultaneously claiming to have read only plaintiff's deposition testimony, which was devoid of any mention of water staining or any other defect of the ceiling or bathroom.

The expert relies on photographs claimed to depict "significant" water damage, so as to put defendants on notice to shore or brace the ceiling. The purportedly water-damaged underlying lath system, however, would not have become visible until after the removal of the surface material, which was the very work plaintiff was performing immediately before the accident. There is nothing in the record to suggest that the walls exhibited any sign of damage prior to removal of the surface plaster and no evidence that any work was performed in the bathroom prior to plaintiff's work. Furthermore, plaintiff testified that additional removal work was performed in the apartment after his accident, as reflected in the photograph, which therefore does not depict the premises as it existed on the day of the accident. Thus, there is no evidence that water-damaged studs were

observable or discoverable at any time prior to the accident.

The only other evidence of a defective condition alluded to by the expert is what he describes as a water stain on a portion of one of the bathroom walls near the ceiling. Assuming that the quality of the photograph did not prevent plaintiff's expert from making such an assessment, there is no evidence that this staining was visible or apparent at any time prior to the date of the accident. The discoloration appears only on a small part of one wall, without any admissible evidence of staining on or damage to the ceiling or any other surface. Plaintiff's new assertion that the submitted photographs accurately depicted the supporting structures after the accident directly contradicts his prior testimony that the photographs did not accurately depict the wall, because the wall had been covered entirely with plaster on the day of the accident and extensive plaster removal must therefore have taken place between the accident and the photograph. Plaintiff's co-worker merely parroted the language of plaintiff's affidavit.

The court may disregard those portions of a subsequent affidavit or proof which contradict earlier proof as tailored to avoid the prior testimony. *See Edmund v. Albert Einstein Hosp.*, 118 A.D.3d 578, 988 N.Y.S.2d 605 (1st Dep't 2014), *lv denied* 27 N.Y.3d 910, 39 N.Y.S.3d 378, 62 N.E.3d 118 (2016); *Morrissey v. N.Y.C. Transit Auth.*, 100 A.D.3d 464, 953 N.Y.S.2d 503 (1st Dep't 2012); *Nguyen v. Abdel-Hamed*, 61 A.D.3d 429, 877 N.Y.S.2d 26 (1st Dep't 2009). Expert opinions premised upon such contradictory proof are also incompetent evidence. *See Telfeyan v. City of N.Y.*, 40 A.D.3d 372, 836 N.Y.S.2d 71 (1st Dep't 2007). The affidavit of an alleged eyewitness, consisting solely of "conclusory allegations tailored to overcome plaintiff's testimony, is insufficient to warrant the denial of defendant's motion." *Perez v. Bronx Park S. Assocs.*, 285 A.D.2d 402, 404, 728 N.Y.S.2d 33, 35 (1st Dep't 2001), *lv denied* 97 N.Y.2d 610, 740 N.Y.S.2d 694, 767 N.E.2d 151 (2002).

There is no evidence in the record of any water, leak, wetness or dampness to support the

expert's conjecture that the stain resulted from water damage, that the water damage emanated from a leak in the apartment above or that inspection would have revealed any need to brace or shore the ceiling. The expert did not describe what type of inspection should have been undertaken or what type of inspection would have revealed the need to shore or brace the ceiling, and plaintiff testified that the plaster on the walls was not intended to support the weight of the ceiling. Absent actual or constructive notice of a latent defect, defendants had no duty to examine areas concealed within walls and ceilings or inspect the plumbing system. *See Utica Mut. Ins. Co. v. Brooklyn Navy Yard Dev. Corp.*, 131 A.D.3d 470, 15 N.Y.S.3d 136 (2d Dep't 2015); *Giaccio v. 179 Tenants Corp.*, 45 A.D.3d 454, 845 N.Y.S.2d 328 (1st Dep't 2007). Plaintiff himself testified that he had no reason at any time, either by sight or sound, to anticipate that the ceiling could collapse.

Plaintiff therefore failed to establish that the ceiling, which was not being worked on, *see Narducci v. Manhasset Bay Assocs.*, 96 N.Y.2d 259, 750 N.E.2d 1085, 727 N.Y.S.2d 37 (2001), could have or should have been secured, *see Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, 959 N.E.2d 488, 935 N.Y.S.2d 551 (2011), or required securing for the purposes of plaintiff's undertaking. *See Romero v. 2200 N. Steel, LLC*, 148 A.D.3d 1066, 50 N.Y.S.3d 158 (2d Dep't 2017). Defendants established that neither the nature of plaintiff's work nor the condition of the premises required securing the ceiling. *Cf. Espinosa v. Azure Holdings II, LP*, 58 A.D.3d 287, 869 N.Y.S.2d 395 (1st Dep't 2008).

With respect to the Labor Law § 200 and common-law negligence claims, plaintiff testified that all of his direction came solely from his supervisor. Neither 103 nor CIDH directed the work, instructed the workers or inspected the site. 103 did not provide any materials, and neither 103 nor CIDH supplied equipment. CIDH's independent contractor provided some materials, visited periodically to check progress and had authority to stop work if he perceived an unsafe condition.

Liability may arise because of the means or methods of the work or because of a defective

condition on the premises. Because neither 205 nor 103 exercised supervision or control over the work, they cannot be held liable under Labor Law § 200 or common-law negligence for any injury arising out of the means or methods of the work. *See Willis v. Plaza Constr. Corp.*, 151 A.D.3d 568, 54 N.Y.S.3d 281 (1st Dep't 2017). CIDH's independent contractor had, at most, only general supervisory authority, which is insufficient to impose liability. *See James v. Alpha Painting & Constr. Co., Inc.*, 152 A.D.3d 447, 59 N.Y.S.3d 21 (1st Dep't 2017); *Maddox v. Tishman Constr. Corp.*, 138 A.D.3d 646, 30 N.Y.S.3d 93 (1st Dep't 2016).

With respect to a defective condition, plaintiff's expert averred that the ceiling was weakened by a leak from the apartment above. Liability for injury resulting from a defective condition requires that the owner or general contractor created or had actual or constructive notice of the condition. *See Cappabianca v Skanska USA Bldg. Inc.*, 99 A.D.3d 139, 950 N.Y.S.2d 35 (1st Dep't 2012). "To constitute constructive notice . . . the defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit the defendant or its agents to discover and remedy it." *Branham v. Loews Orpheum Cinemas, Inc.*, 31 A.D.3d 319, 322, 819 N.Y.S.2d 250, 254-55 (1st Dep't 2006), *affirmed*, 8 N.Y.3d 931, 866 N.E.2d 448, 834 N.Y.S.2d 503 (2007). "If the claim is that the ceiling collapsed because of a leak, a plaintiff must show that the defendant had prior notice, actual or constructive, of the leak and that the leak was never repaired." *Figueroa v. Goetz*, 5 A.D.3d 164, 165, 774 N.Y.S.2d 9, 10 (1st Dep't 2004).

The record is devoid of any such evidence, there being no evidentiary basis to support the expert's assumption and the only evidence of water staining on the ceiling being the expert's adoption of plaintiff's contradictory affidavit, which is ineffective to raise an issue of fact. *See Feaster-Lewis v. Rotenberg*, 2012 NY Slip Op 1566, 93 A.D.3d 421, 939 N.Y.S.2d 421 (1st Dep't), *lv denied*, 19 N.Y.3d 803, 946 N.Y.S.2d 105, 969 N.E.2d 222 (2012); *Vasquez v. Urbahn Assoc. Inc.*, 79 A.D.3d 493, 918 N.Y.S.2d 1 (1st Dep't 2010). Any admissible evidence relating to

water staining is limited to that existing on the day of the accident, as per plaintiff's testimony regarding the photographs. *See Figueroa, supra*. There is no evidence of the appearance of any part of the bathroom at any time prior to the date of the accident.

205 demonstrated that it did not create, *see Vera v. Low Income Mktg. Corp.*, 145 A.D.3d 509, 43 N.Y.S.3d 307 (1st Dep't 2016), or have notice, either actual or constructive, of any allegedly defective condition contributing to the accident. *See Paterra v. Arc Dev. LLC*, 136 A.D.3d 474, 24 N.Y.S.3d 631 (1st Dep't 2016). All repairs were the responsibility of the proprietary lessee, *see Kulovany v. Cerco Prods., Inc.*, 26 A.D.3d 224, 809 N.Y.S.2d 48 (1st Dep't 2006), and the superintendent's testimony reveals that the cooperative did not assume the tenant's duty to maintain and repair the apartment, *cf. Radnay v. 1036 Park Corp.*, 17 A.D.3d 106, 793 N.Y.S.2d 344 (1st Dep't 2005). There was no indication 205 had ever been made aware of any problem with the ceiling or the plumbing, which 103, upon approval, was apparently free to alter. *See Aslanian-Persico v. Park Reservoir Hous. Corp.*, 2016 NY Slip Op 31112(U) (Sup Ct Bronx County May 11, 2016). Furthermore, 103's principal did not visit the site, *see Gory v. Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 113 A.D.3d 550, 979 N.Y.S.2d 314 (1st Dep't 2014), and it is apparent that 103 did not create the condition or have actual or constructive notice of it, *see DeMaria v. RBNB 20 Owner, LLC*, 129 A.D.3d 623, 12 N.Y.S.3d 79 (1st Dep't 2015). CIDH's independent contractor was present every few weeks, including the morning of the day of the plaintiff's accident, and never noticed a problem with the bathroom ceiling.

Plaintiff argues that because 103's sole member was also a member of the 205's board, as was the general contractor's managing member, 205 had knowledge of the work. However, those two individuals acquired this knowledge not in their capacities as members of 205's board but in in their capacities as principals of their own independent corporations, *see Christopher S. v. Douglaston Club*, 275 A.D.2d 768, 713 N.Y.S.2d 542 (2d Dep't 2000), whose interests, in this

context, were adverse to 205's. Plaintiff provides no support for the proposition that their knowledge, gained in this context, should be imputed to 205. Their acts and knowledge, by engaging in a course of conduct expressly prohibited by the agreement between 205 and 103 and in furtherance of the interests of their own corporations, cannot be imputed to 205. *See e.g. 124 Holdings, Inc. v. Spring St. Apt. Corp.*, 73 A.D.3d 499, 899 N.Y.S.2d 838 (1st Dep't 2010). Furthermore, knowledge of the work is not a substitute for knowledge of the particular condition alleged to have caused plaintiff's accident. *See Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 492 N.E.2d 774, 501 N.Y.S.2d 646 (1986).

The affidavit of plaintiff's partner, who averred that he worked in the apartment for two or three days before the accident and noticed brownish colored stains on the ceiling and upper walls, is rejected, as also tailored to avoid the consequences of plaintiff's deposition testimony that he noticed no problems with the ceiling during the same period of time. *See Vilomar v. 490 E. 181st St. Hous. Dev. Fund Corp. Corp.*, 50 A.D.3d 469, 858 N.Y.S.2d 10 (1st Dep't 2008). There is accordingly no admissible evidence to support plaintiff's argument that visible water stains existed for a sufficient period of time for defendant to discover and remedy any leak. Plaintiff's reliance on *Andersen v. Park Ctr. Assocs.*, 250 A.D.2d 473, 673 N.Y.S.2d 396 (1st Dep't 1998) is thus misplaced. In *Anderson*, all of the admissible testimony was consistent and there was evidence of an active leak and a wet floor at the time of the accident, factors which are absent here.

Accordingly, it is

ORDERED, that the motion of defendant 205 West 103 Owners Corp. for summary judgment dismissing plaintiff's complaint (Motion Sequence #12) is granted; and it is further

ORDERED, that the cross-motion of defendants 103 W Coop, LLC and CIDH-VMBC, LLC for summary judgment dismissing plaintiff's complaint (Motion Sequence #13) is granted; and it is further

ORDERED, that plaintiff's motion for summary judgment on his Labor Law §240(1) and § 241(6) claims (Motion Sequence #13) is denied; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendants 205 West 103 Owners Corp., 103 W Coop, LLC and CIDH-VMBC, LLC dismissing plaintiff's complaint; and it is further

ORDERED, that, given the prior dismissal of the action as against the remaining defendants, the Clerk of the Court is directed to mark this proceeding disposed in its entirety.

This constitutes the decision and order of the court.

Dated: November 27, 2017

Lucindo Suarez, J.S.C.