Scarogni v Metropolitan Transp. Auth.
2018 NY Slip Op 31401(U)
June 26, 2018
Supreme Court, New York County
Docket Number: 157104/2014
Judge: Kathryn E. Freed

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2
Justice

---X

ANTONIO SCAROGNI,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, and MTA CAPITAL CONSTRUCTION COMPANY,

Defendants.

---X

INDEX NO. 157104/2014

MOTION DATE 05/22/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **denied**.

Plaintiff Antonio Scargoni, who commenced this personal injury action against defendants Metropolitan Transportation Authority ("MTA"), New York City Transit Authority ("NYCTA"), and MTA Capital Construction Company ("MTACC") (collectively "defendants"), moves for partial summary judgment against defendants MTA and NYCTA on his claims pursuant to Labor Law sections 240(1) and 241(6). After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the motion is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

On November 8, 2013, plaintiff Antonio Scarogni reported to work at the construction site of a subway station that was being built underneath the intersection of

72nd Street and Second Avenue, New York, New York. Plaintiff was an operating engineer employed by SSK Constructors Joint Venture ("SSK"), a construction firm which contracted[1] with the Metropolitan Transportation Authority ("MTA") and the New York City Transit Authority ("NYCTA") to perform work in the tunnel at the subway station. Doc. 20.[2] It is undisputed that, due to the dangerous nature of the work, plaintiff wore a hard hat and safety glasses as he entered the tunnel. When he arrived, plaintiff saw two men in a construction lift approximately twenty feet away from the deck where he was to work. According to plaintiff, the men were tying reinforcing bars for the concrete structure with tie wires. At his deck, plaintiff proceeded to a cart to check the materials needed to torch the reinforcing bars. Before plaintiff ignited the torch, he exchanged his safety glasses for a pair of burning glasses, which were tinted so as to protect his eyes from the extreme brightness of the torch flame. He confirmed that all the devices were functioning properly. As plaintiff began to turn away from the cart, however, he suddenly felt a sharp pain in his right eye and realized that an object had somehow fallen down into the space between the glasses and his eye. He removed the glasses, grabbed the part of the object which was sticking out of his eye, pulled it out, and identified it as a piece of tie wire that was approximately six inches in length. Plaintiff immediately ran to the nearest worker and informed him of what had happened. He was then rushed to a hospital for treatment of his eye injuries.

SSK thereafter conducted an investigation at the accident site and submitted an accident report and a "root cause analysis" report to MTACC, which owns the premises

[1] The NYCTA entered into the contract on behalf of the MTA.
[2] Unless otherwise noted, all references are to the documents filed with NYSCEF in this matter.

at 72nd Street and Second Avenue. These steps were required under the terms of the construction contract which SSK had with the MTA, NYCTA, and MTACC. The reports reflected that the area in which plaintiff was injured was not barricaded or protected by other means. Additionally, the root cause analysis report indicated that falling tie wire could be a projectile capable of generating enough force to puncture soft tissue.

On July 21, 2014, plaintiff commenced the captioned action against MTA, NYCTA, and MTACC alleging common-law negligence, as well as violations of New York Labor Law §§ 200, 240(1) and 241(6). Doc. 1.

At his deposition, plaintiff testified that he did not see the tie wire fall and that he could not definitively tell where the tie wire had come from. Michael Caterina, the director of environmental health and safety for SSK, testified at his deposition that he had never seen a piece of tie wire project out twenty feet.

On September 1, 2017, plaintiff moved, pursuant to CPLR 3212, for partial summary judgment on liability against defendants MTA and NYCTA on his claims pursuant to Labor Law §§ 240(1) and 241(6).

POSITIONS OF THE PARTIES:

In support of his motion, plaintiff argues that the MTA and NYCTA fall within the purview of the New York Labor Law because both entities had the ability to control the construction work done at the subway site. Second, plaintiff argues that § 240(1) was violated by defendants because there was no safety device preventing the tie wire from falling and because the deck area below where plaintiff was injured was not barricaded off. He further asserts that his conduct should not be considered in connection with the alleged

§ 240(1) violation. Additionally, plaintiff asserts that the MTA and NYCTA are liable for his injuries under § 241(6) because they violated New York Industrial Code §§ 23-1.7(a)(1) and 23-1.8(a).

In opposition to the motion, the MTA and NYCTA argue that plaintiff failed to establish that they are proper "Labor Law defendants" because they are neither the owners of the site nor general contractors at site, and, therefore, that they cannot be held liable under Labor Law §§ 240(1) and 241(6). They further assert that this is not a § 240(1) case because the evidence which plaintiff submits in support of the motion is inadmissible and contradictory, plaintiff's affidavit is speculative, and the tie wire at issue did not require securing for safety purposes.

The MTA and NYCTA also maintain that plaintiff's claim pursuant to Labor Law § 241(6) cannot be maintained because they did not fail to comply with the Industrial Code sections which plaintiff claims they violated.

LEGAL CONCLUSIONS:

The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985].) In so doing, the moving party must produce sufficient evidence to eliminate any issues of material fact. (*Id.*) Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. (*Id.*) If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See*

Mazurek v. Metro. Museum of Art, 27 A.D.3d 227, 228 [1st Dept. 2006].) If, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, then summary judgment will be denied. (*See Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012]; *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 [1978].)

a. **Plaintiff Satisfied His Burden of Establishing Both the MTA and NYCTA as Proper Labor Law Defendants.**

Plaintiff asserts that the MTA and NYCTA fall within the ambit of New York Labor Law §§ 240(1) and 241(6) because both entities had the ability to control the construction work done at the site. In opposition, defendants maintain that they fall outside the scope of those sections because they were neither the owners of, nor general contractors at, the subway station in question.

Under New York Labor Law §§ 240(1) and 241(6), liability for construction site accidents is limited to owners and general contractors or their statutory agents. (*See Kosiv v. ATC Group Servs., Inc.*, 53 Misc 3d 1201[A], 2016 NY Slip Op 51307[U], *2 [Sup Ct, NY County 2016].) Courts have held that the term "owner" encompasses "a person who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for his benefit." (*Scaparo v. Vil. of Ilion*, 13 N.Y.3d 864, 866 [2009]; *Markey v. C.F.M.M. Owners Corp.*, 51 A.D.3d 724, 737 [2d Dept. 2008]; *Rossi v. 140 West JV Mgr. LLC*, 58 Misc 3d 1215[A], 2018 NY Slip Op 50124[U], *5 [Sup Ct, NY County 2018].) In other words, the term "owner" has not been limited to the titleholder. (*Rossi*, 58 Misc 3d at *5; *see also Kane v. Coundorous*, 239 A.D.2d 309, 311 [1st Dept. 2002].) Moreover, the Court of Appeals

has made it clear that § 240(1) liability "does not require notice of a defect nor the exercise of supervisory control by the owner." (*Lombardi v. Stout*, 80 N.Y.2d 290, 295 [1992].)

Owners are not relieved of liability even though the property might be leased to another. (*See Gordon v. E. Ry. Supply, Inc.*, 82 N.Y.2d 555, 560 [1993].) However, in cases where the property owner did not contract for the work performed on the property, courts require "some nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest", (*Scaparo*, 13 N.Y.3d at 866), in order to hold the property owner liable for an accident. "General contractors" are those who have sufficient control over the means and methods of construction. (*See Silicato v. Skanska USA Civ. N.E., Inc.*, 58 Misc 3d 1229[A], 2018 NY Slip Op 50305[U], *5 [Sup Ct, NY County 2018].) One who has the authority to supervise and control the work will be deemed an "agent" of the owner or general contractor. (*See Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 311, 318 [1981].)

In light of these prior decisions, this Court finds that plaintiff met his burden of establishing that the MTA and NYCTA are proper Labor Law defendants. The courts of this state have interpreted the concept of ownership broadly. For the purposes of §§ 240(1) and 241(6), the MTA and NYCTA were owners of the construction site at the time plaintiff was injured because they contracted to have SSK, plaintiff's employer, construct the subway station which, of course, was to be performed for their benefit. Indeed, in the contract for SSK to build the station, the term "owner" is specifically defined to include both the MTA and NYCTA. Defendants cannot now seek to reject that definition in an attempt to avoid liability. Rather, in order to defeat plaintiff's motion, defendants were required to prove that they were not owners or general contractors of the subway station, or statutory

agents of the owner. Defendants' argument in this regard is only that plaintiff did not prove ownership or the degree or control exercised by either the MTA or NYCTA. However, as previously noted, the degree of control they actually exercised over the work is irrelevant to this analysis.

b. **Plaintiff is Not Entitled to Summary Judgment on His § 240(1) Claim.**

The next point of dispute between the parties is whether plaintiff is entitled to summary judgment on his § 240(1) claim. According to plaintiff, § 240(1) was violated when defendants failed to erect any safety devices that would have prevented the tie wire from falling and when they failed to barricade the deck area where plaintiff was injured. In opposition, defendants argue that plaintiff's supporting evidence is both inadmissible and contradictory, that his affidavit is speculative, and that the tie wire at issue did not require securing for safety purposes.

Labor Law § 240(1) requires property owners to provide "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 construction workers. The Court of Appeals has held that "this statute is one for the protection of workmen from injury and undoubtedly is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed." (*Koenig v. Patrick Const. Corp.*, 298 N.Y. 313, 319 [1948].) This provision has consistently been interpreted to place strict duties on owners, general contractors, or their statutory agents.

In lawsuits based on a falling object, plaintiffs must demonstrate a violation of § 240(1) and show that such violation was a proximate cause of injury. (*See Kupiec v. Morgan*

Contr. Corp., 137 A.D.3d 872, 873 [2d Dept. 2016].) In so doing, the plaintiff "must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, *because of* the absence or inadequacy of a safety device of the kind enumerated in the statute." (*Narducci v. Manhasset Bay Assocs.*, 96 N.Y.2d 259, 268 [2001]; *see also Doucoure v. Atl. Dev. Group, LLC*, 18 A.D.3d 337, 338–39 [1st Dept. 2005].) Thus, despite courts' liberal interpretations of § 240(1), they have consistently ruled that not all falling objects will give rise to liability under the statute. Instead, the plaintiff must show that, at the time the object fell, it was being hoisted or secured, (*see Marin v. AP-Amsterdam 1661 Park LLC*, 60 A.D.3d 824, 825 [2d Dept. 2009]), or that it required securing for the purposes of the undertaking (*see Gonzalez v. TJM Const. Corp.*, 87 A.D.3d 610, 611 [2d Dept. 2011]). Objects which are deliberately thrown fall outside of that scope, and, consequently, do not give rise to § 240(1) liability. (*See Galvan v. Triborough Bridge & Tunnel Auth.*, 29 A.D.3d 517, 517–18 [2d Dept. 2006].) Courts have also held that an object "propelled by the kinetic energy of the sudden release of tensile stress," (*Medina v. City of New York*, 87 A.D.3d 907, 909 [1st Dept. 2011]), such as the tie wire here, does not fall within the scope of § 240(1). And, in cases where the plaintiff is injured due to an object that was itself to be removed, courts have held that no § 240(1) cause of action accrues. (*See Torres v. Al-Stone, LLC*, 2017 WL 6731870, *4 [Sup Ct, Bronx County, Nov. 1, 2017, No. 3032172011] (reasoning that imposing § 240(1) liability when the plaintiff was struck by an object that fell as a result of a demolition project would be illogical since the fall of the object was the goal of the work).)

Defendants' first argument addressing plaintiff's summary judgment motion on his § 240(1) claim is that the accident reports and root cause analysis which plaintiff

submitted are inadmissible evidence. Plaintiff claims that they are admissible under the business records exception to hearsay. In summary judgment motions, "the movant's burden to proffer evidence in admissible form is absolute." (*Dipalma v. Metro. Transp. Auth.*, 20 Misc 3d 1128[A], 2008 NY Slip Op 51654[U], *6 [Sup Ct, Bronx County, 2008].) It bears noting here that the purpose of summary judgment is to avoid a trial that would be unnecessary. This purpose would be subverted if, in deciding whether issues exist for trial, courts were to consider evidence that could not subsequently be admitted at trial.

The business records exception is set forth in CPLR 4518(a), which provides that a judge may admit a writing or record if the judge finds that it "was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." (CPLR 4518 [a].) Adding to these three requirements, the Court of Appeals has expressly stated that the source of the information recorded must be a person with personal knowledge thereof, and that it be part of such person's regular business practice to report and record the information. (*See Johnson v. Lutz*, 253 N.Y. 124, 128 [1930] ("[The exception] was not intended to permit the receipt in evidence of entries based upon voluntary hearsay statements made by third parties not engaged in the business or under any duty in relation thereto."); *see also Grant v. Fadhel*, 51 Misc 3d 1009, 2016 NY Slip Op 26088, *1012 [Sup Ct, Kings County 2016] (stating that unsigned deposition transcripts cannot be taken into proffered evidence to support a summary judgment motion).)

This Court finds that the accident reports are not sufficiently reliable and, therefore, they do not pass evidentiary muster. Although the reports are seemingly prepared by

plaintiff's employer, it is not clear who the source of the information contained therein was and whether that source had any personal knowledge of the events in question.

On the other hand, however, the root cause analysis performed by SSK may be admitted pursuant to the business records exception. As plaintiff asserts, SSK's contract with defendants required it to conduct a root cause analysis for all accidents at the worksite. The analysis reflects that the incident was investigated on November 8, 2013, the date on which plaintiff was injured. Therefore, the analysis meets the regularity and timeliness requirements in CPLR 4518(a).

The analysis further states that the incident was investigated by Ron Walton, a Tunnel Operations Superintendent, and by Vincent Querijero, a Project Safety Manager. While there apparently were no eyewitnesses to the accident, these individuals may be said to have had personal knowledge of the conditions surrounding plaintiff's injury.

Even considering the root cause analysis report and other admissible evidence submitted by plaintiff, however, this Court finds that plaintiff failed to make a prima facie showing of entitlement to judgment as a matter of law because he did not establish that the tie wire which struck his eye constituted a falling object within the meaning of Labor Law § 240(1). As previously noted, not every injury that is caused by a falling object at a construction site is covered by § 240(1)'s extraordinary protections. (*See D'Antonio v. Manhattan Contr. Corp.*, 93 A.D.3d 443, 444 [1st Dept. 2012] (denying summary judgment because a triable issue of fact existed regarding whether a conduit pipe was a falling object under § 240(1)); *see also Harinarain v. Walker*, 73 A.D.3d 701, 702 [2d Dept. 2010] (denying summary judgment on the ground that the plaintiff failed to make a prima facie

showing that the plywood that caused his injuries was a material that required securing under § 240(1)).)

In *Moncayo v. Curtis Partition Corp.* (106 A.D.3d 963 [2d Dept. 2013]), the plaintiff was struck by a piece of sheetrock and sued the defendants under § 240(1). The defendants in *Moncayo* testified that the sheetrock had been placed in piles and then bagged. (*Id.* at 965.) The sheetrock had hit the plaintiff when it slipped out of a worker's hand and bounced off a window sill. (*Id.* at 964.) Noting that the sheetrock was not being hoisted or secured and that it did not require hoisting or securing at the time, the *Moncayo* court held that § 240(1)'s special protections were not implicated. (*Id.* at 965.)

The situation presented in this case is analogous to *Moncayo*. When Plaintiff entered the construction site, he saw two men on a lift tying reinforcing bars with tie wire. The tie wire was not being hoisted or secured, nor did it require hoisting or securing at the time—rather, the tie wire was being used to secure other materials. Plaintiff's argument on this point is that, because the tie wire fell, it must have required securing and therefore constitutes a falling object that triggers § 240(1). However, this argument is not persuasive. Although there were measures which could have been taken to avoid the accident, it was a type of hazard that construction workers typically encounter on the job, and not one that is implicated by § 240(1). (*See Rosado v. Briarwoods Farm, Inc.*, 19 A.D.3d 396, 398–99 [2d Dept. 2005].)

Cases involving falling objects in which plaintiffs were granted summary judgment on their § 240(1) claims are inapposite herein. In those cases, the falling objects were contemplated hazards where there was an elevation difference between "where the worker is positioned and the higher level of the materials *being hoisted or secured*." (*Rocovich v.*

Consol. Edison Co., 78 N.Y.2d 509, 514 [1991] (emphasis added).) But, as noted above, the tie wire here does not trigger § 240(1) because it was neither being hoisted nor secured. Nor is there any proof that the tie wire required hoisting or securing.

In addition, plaintiff's deposition testimony reveals that he did not see the tie wire falling and that he did not know which direction it came from. Plaintiff references *Mercado v. Caithness Long Is. LLC* (104 A.D.3d 576 [1st Dept. 2013]), to argue that he is not required to show exactly how the tie wire hit him. In *Mercado*, the plaintiff was hit by a pipe that fell about 100 feet through a gap in a walkway. (*Id.* at 577.) The *Mercado* court stated that the plaintiff was not "required to show exactly how the pipe fell, since, under any of the proffered theories, the lack of protective devices was the proximate cause of his injuries." (*Id.*) That case, however, is distinguishable from the present facts: pipes, especially pipes at great heights, ordinarily require securing and therefore fall squarely within § 240(1)'s purview. This Court thus concludes that *Mercado* is not controlling precedent herein.

Further, plaintiff claims that, at the time of his injury, the men in the construction lift were about twenty feet away. However, Caterina, the SSK director of environmental health and safety, suggested that it was uncommon for tie wire to travel that distance when falling, as he stated during deposition that he has never seen tie wire project out twenty feet. Indeed, as noted in the root cause analysis report, the investigation conducted by SSK reflected that tie wires fall straight down when dropped from a height of about ten feet. Even if the piece of tie wire somehow projected out from the construction workers who were about twenty feet away from plaintiff, that would still be insufficient for § 240(1) liability. (*See Medina*, 87 A.D.3d at 909 (declining to impose § 240(1) liability when a rail was propelled as a result of kinetic energy, but suggesting that liability would have been

found if the rail had fallen due to the effects of gravity).) In any case, plaintiff's suggestions for how this accident could have been prevented—netting and barricades around the work area (Doc. 14)—do not change the outcome, as the Court fails to see how those measures would have prevented the tie wire from injuring plaintiff if it were actually projected twenty feet from where the workers stood. Plaintiff proffers no evidence suggesting that the tie wire could have been secured so as to have prevented the accident. (*See Vega v. Metro. Transp. Auth.*, 43 Misc 3d 1218[A], 2014 NY Slip Op 50703[U], *3 [Sup Ct, NY County 2014] (denying a plaintiff summary judgment on his § 240(1) claim because he could not establish what measures could have been taken to prevent his accident).) In light of the information contained in the root cause analysis report, Caterina's deposition testimony, and plaintiff's own admissions that he did not see the tie wire fall, and did not know where it came from, plaintiff failed to establish his prima facie entitlement to summary judgment as a result of a violation of Labor Law § 240(1).

c. **Plaintiff is Not Entitled to Summary Judgment on His § 241(6) Claim.**

Plaintiff's final contention is that he is entitled to summary judgment on his § 241(6) claim. He contends that the MTA and NYCTA must be held liable under § 241(6) because they violated New York Industrial Code §§ 23-1.7(a)(1) and 23-1.8(a). Defendants assert that plaintiff cannot maintain a § 241(6) action against them because they did not violate the Industrial Code provisions relied on by plaintiff.

Labor Law § 241(6) imposes a nondelegable duty on property owners and general contractors or their statutory agents to "provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction,

excavation or demolition work is being performed." (*Rossi*, 2018 NY Slip Op 50124[U], *4.) To support a cause of action under § 241(6), a plaintiff must demonstrate that his or her injuries "were proximately caused by a violation of a New York Industrial Code provision that is applicable under the circumstances of the accident and that sets forth a concrete standard of conduct rather than a mere reiteration of common law principles." (*Labatto v. Genting New York LLC*, 2014 WL 5844321, *8 [Sup Ct, NY County, Nov. 7, 2014, No. 150135/13]; *see also Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501–02 [1993].)

Here, plaintiff relies on Industrial Code §§ 23-1.7(a)(1) and 23-1.8(a) to invoke his Labor Law § 241(6) claim. Industrial Code § 23-1.7(a)(1) requires employers to use appropriate safety devices to protect workers from overhead hazards. (*See Amerson v. Melito Constr. Corp.*, 45 A.D.3d 708, 709 [2d Dept. 2007].) Importantly, the provision only applies when the plaintiff was injured in an area that is normally exposed to falling objects. (*See Portillo v. Roby Anne Dev., LLC*, 32 A.D.3d 421, 422 [2d Dept. 2006].) However, plaintiff has failed to offer any evidence suggesting that the construction site was, indeed, normally exposed to falling objects. Plaintiff's only argument for invoking Industrial Code § 23-1.7(a)(1) is that the tie wire was a hazard which was not prevented from falling into the work area. That argument alone, however, is insufficient to hold defendants liable under the statute. In fact, plaintiff testified that he had no concern about getting struck by tie wire at the time he entered the construction area. Moreover, he has not alleged that overhead work was the primary focus of the worksite. (*See Amato v. State*, 241 A.D.2d 400, 402 [1st Dept. 1997] concluding that a plaintiff's Labor Law § 241(6) claim should be dismissed when the plaintiff could prove neither that overhead work was the primary focus of the

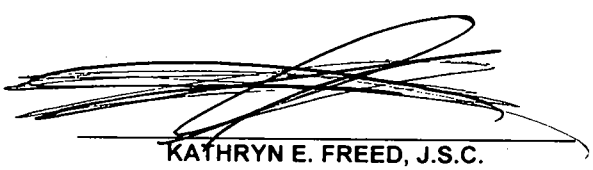
worksite nor that the site of injury was normally exposed to falling objects).) Plaintiff's Industrial Code § 23-1.7(a)(1) must therefore be dismissed.

Industrial Code § 23-1.8(a), requires the furnishing of eye protection equipment to employees who are engaged in any operation which may endanger the eyes. Plaintiff cites *Crawford v. Williams* (198A.D.2d 48 [1st Dept. 2004]), to argue that defendants should be held liable. However, in *Crawford*, the court found the defendant liable for failure to furnish the plaintiff with any safety glasses. (*Id.* at 48.) The situation in the present case is, of course, different. Plaintiff was engaged in torch burning, which is indubitably an activity that may endanger the eyes. Nevertheless, defendants cannot be found liable under Industrial Code § 23-1.8(a) because plaintiff was furnished with safety glasses and fireproof glasses, both of which he wore on the morning of his injury. For the foregoing reasons, plaintiff has failed to establish a violation of either Industrial Code §§ 23-1.7(a)(1) or 23-1.8(a). Consequently, this Court denies plaintiff's motion for summary judgment on his New York Labor Law § 241(6) claim.

In light of the foregoing, it is hereby:

ORDERED that plaintiff's motion for partial summary judgment is denied; and it is further

ORDERED that this constitutes the decision and order of the court.



6/26/2018
DATE

KATHRYN E. FREED, J.S.C.

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