At an IAS Term, Part 90 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11th day of July, 2018.

P R E S E N T:

HON. EDGAR G. WALKER,
Justice.

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DENNIS MARNEY,
Plaintiff,

- against -

Index No. 504701/13

CORNELL KENT II HOLDINGS, LLC, RA CONSULTANTS, LLC, CORNELL KENT HOLDINGS, LLC AND 28 NORTH 3RD STREET, LLC, 206 KENT AVENUE OWNER, LLC, AND CORNELL REALTY MANAGEMENT, LLC
Defendants.

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The following papers numbered 1 to 21 read on the motions herein:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-2,3-5,6-7,8-11
Opposing Affidavits (Affirmations)	
Reply Affidavits (Affirmations)	12,13,14,15,16,17
Affidavit (Affirmation)	
Other Papers Opposition and Reply Briefs	18,19,20,21

Upon the foregoing papers, defendant Cornell Realty Management, LLC (CRM) moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff Dennis Marney's (plaintiff) complaint and all cross claims asserted against it. Defendant RA Consultants, LLC (RAC) moves for summary judgment dismissing plaintiff's complaint and all cross

claims asserted against it. Defendants Cornell Kent II Holdings, LLC and Cornell Kent Holdings, LLC (collectively, Cornell) cross-move for summary judgment dismissing plaintiff's complaint and all cross claims asserted against it. Plaintiff cross-moves for summary judgment against all defendants under his Labor Law §§ 241 (6) and 200 claims.

Background Facts and Procedural History

The instant action arises out of personal injuries sustained by plaintiff on April 16, 2013 while using a mobile drilling rig to take core samples in a vacant lot located at 206 Kent Avenue in Brooklyn, New York (the property or the lot). The core samples were being drilled in order to determine the subsurface conditions at the property before excavation and construction work on a planned 10-story residential building. Prior to the accident, on February 22, 2013, Solomon Reichman signed a written proposal on behalf of CRM in which RAC agreed to retain plaintiff's employer, Warren George Inc. (WGI) to drill several borings at the property in order to determine the subsurface conditions. On this same day, Shifra Hager signed an identical proposal prepared by RAC on behalf of Cornell. At the time the proposals were signed, the property was owned by defendant 28 North 3rd Street, LLC (28 North). However, in March of 2013, prior to the accident, 28 North sold the property to Cornell. When asked at his deposition why two separate proposals were signed, Mr. Reichman testified that it was a "mistake" for CRM to sign the proposal since it merely managed the property and that, inasmuch as Cornell was to be the owner of the property, it was the proper entity to sign off on the proposal.

On or about April 4, 2013, plaintiff began performing the drilling work at the lot using the aforementioned drilling rig, which was owned by his employer, WGI. The rig itself, which was mounted on a flatbed truck, was a complicated piece of machinery that had numerous components and moving parts including connected drilling rods (i.e., a drill string) that were attached to a drill head, a diesel engine which spun the drill, hydraulic hoses, as well as a 140 pound hammer which was used to drive a "split spoon" attached to the drill line into the ground when taking soil samples. The bore hole drilled by the rig was four inches in diameter. When operating the drilling rig, plaintiff was usually assisted by one Angel Ortiz, a "helper" employed by WGI. Also present during drilling operations was an engineer employed by RAC, who told the drill operator where to drill the core samples and recorded the results of the drilling.

With respect to the drilling rig itself and drilling operations, RAC's owner, Walter Papp, testified that his engineers did not have any duty to inspect WGI's rigs, that his employees' sole function at the job site was to observe the drilling operations and record soil samples in order to create a boring log, and that RAC's engineers did not direct, control, or supervise the means and methods of plaintiff's drilling work. Similarly, plaintiff himself testified that he alone was responsible for the safe operation of the drilling rig, that RAC's engineer at the job site did not tell him how to operate the machine, and that the engineer was not permitted to operate the drill.

At the time of the accident, plaintiff and Mr. Ortiz had been drilling core samples at the lot for approximately 10 days. According to plaintiff's deposition testimony, during this time period, he experienced numerous problems with the drilling rig including issues with the transmission clutch, the water pump bearings, the "swivel," "blown hoses," as well as the lack of a hydraulic vise to hold the drilling rods. Plaintiff further testified that he complained to his WGI supervisor, Robert Ware, about these problems but no remedial actions were taken. Shortly before the accident, plaintiff was performing drilling work on the rig when a swivel hose "blew." As a result, plaintiff sent Mr. Ortiz to a hardware store to obtain a part needed to repair the hose. Thereafter, plaintiff began the process of "breaking down" or disconnecting two drill rods that were threaded together. In basic terms, in order to perform this work, plaintiff held the lower rod using a 24" pipe wrench and put the drill motor into reverse gear so as to spin the top rod in a counter clockwise direction. This allowed plaintiff to use the power of the drill motor to unscrew the two connected rods. As the two rods began to come apart, plaintiff released the motor's transmission clutch handle. According to plaintiff, this should have put the motor into neutral gear. However, the machine malfunctioned and the motor unexpectedly went into forward gear. As a result, plaintiff avers that:

> "[t]he power head quickly went from rotating counter clockwise to clockwise, which re-tightened the rods, and as it did so, the wrench on the rod 'cocked' or twisted downward while my hand was still stabilizing it on the rod. The downward twist of the wrench 'grabbed' my thumb, and the rotation ripped it off my hand. It only needed a quarter of a

> rotation before the two rod pieces were tight again, which in turn caused the wrench to come off the frame of the machine, cock down and catch my finger."

Although plaintiff had been issued work gloves, he was not wearing them at the time of the accident. In this regard, plaintiff testified that it was easier to manipulate the wrench when not wearing gloves. Following the accident, in or about January of 2014, Cornell sold the property to defendant 206 Kent Avenue Owner, LLC (Kent Owner). At the time of the sale, no construction work had been undertaken in connection with the planned residential building.

On or about August 14, 2013, plaintiff commenced the instant action to recover for his injuries against RAC and Cornell Kent II Holdings, LLC, alleging violations of Labor Law §§ 200, 240 (1), and 241 (6). Plaintiff subsequently filed an amended summons and complaint adding Cornell Kent Holdings, LLC and 28 North as party defendants. Thereafter, plaintiffs filed a second amended complaint adding defendants Kent Owner and CRM as defendants. Underlying plaintiff's claims is the allegation that his accident was caused by two defects/unsafe conditions involving the drilling rig. In particular, plaintiff maintains that the drilling rig should have had a hydraulic vise to hold the drill rod, which would have obviated the need for him to manually hold the lower rod with a pipe wrench when he was uncoupling the rods. In addition, plaintiff maintains that the gears/clutch on the drill motor were not working properly, which caused the motor to unexpectedly shift from reverse to forward gear when it should have gone into neutral.

In their answers to the complaint, Cornell as well as CRM asserted cross claims against RAC seeking common-law and contractual indemnification. On May 15, 2015, plaintiff voluntarily discontinued his action against Kent Owner. In an order filed on March 9, 2015, plaintiff obtained a default judgment against 28 North. On August 21, 2017, plaintiff filed a note of issue.[1] Discovery is now complete and the instant motions are before the court.

Plaintiff's Labor Law § 241 (6) Claim

CRM, RAC, and Cornell separately move for summary judgment dismissing plaintiff's Labor Law § 241 (6) cause of action. In so moving, these defendants all argue that plaintiff's accident is not covered under the statute inasmuch as he was not performing construction, excavation or demolition work at the time of the accident. In particular, the defendants argue that the mere act of drilling core samples in order to take soil samples does not constitute construction or excavation work. Further, the moving defendants maintain that the soil testing work is too attenuated from any planned future construction/excavation work on the property to fall under the protection of the statute. In this regard, the moving defendants note that no actual construction or excavation work was taking place at the time of the accident. The moving defendants further note that no such construction or excavation work ever took place while Cornell owned the property inasmuch as Cornell sold the

[1]Although plaintiff filed his cross motion for summary judgment more than 60 days after the note of issue was filed, it may be considered by the court inasmuch as it is nearly identical to CRM, RAC, and Cornell's timely motions (*Grande v Peteroy*, 39 AD3d 590, 591-592 [2007]).

undeveloped lot to Kent Owner in January of 2014. The moving defendants also argue that plaintiff's Labor Law § 241 (6) claim must be dismissed against them inasmuch as the New York State Industrial Code regulations which plaintiff sites in support of his Labor Law § 241 (6) cause of action are either inapplicable, or too general to support such a claim

In further support of its motion to dismiss plaintiff's Labor Law § 241 (6) claim against it, RAC argues that, as a professional engineering firm that did not supervise or control the manner in which plaintiff performed the drilling work, Labor Law § 241 (9) specifically exempts it from liability under Labor Law § 241 (6). In further support of its motion for summary judgment, CRM contends that it is not subject to liability under the statute inasmuch as it did not own the property and was not a contractor or an agent of the owner or contractor. In this regard, CRM points to the undisputed fact that Cornell owned the property. Further, CRM notes that, although it initially signed the RAC proposal for the drilling work, Mr. Reichman testified that this was a mistake, that Cornell was the proper party to enter into the agreement, and that Cornell did in fact sign an identical RAC proposal.

In opposition to the defendants' respective motions to dismiss his Labor Law § 241 (6) claim, and in support of his own cross motion for summary judgment under this statute, plaintiff initially contends that all of the moving defendants are subject to liability under Labor Law § 241 (6) inasmuch as Cornell owned the property, CRM hired RAC to conduct the geotechnical analysis needed in order to determine the type of foundation that would be needed for the planned residential building, and RAC hired plaintiff's employer to carry out

this work. Thus, plaintiff concludes that Cornell is subject to liability as an owner, CRM is subject to liability as an agent of the owner, and RAC is subject to liability as a general contractor.

In further opposition to defendants' respective summary judgment motions, and in support of his own cross motion for summary judgment under Labor Law § 241 (6), plaintiff maintains that the drilling work that he was performing at the time of the accident constituted excavation and construction work that is covered under the statute. In this regard, plaintiff notes that this geotechnical work was merely the first stage of an underlying development project that involved excavating the property and constructing a 10-story building. Specifically, plaintiff points out that the excavation and construction work on the building could not begin until the geotechnical investigation of the subsurface conditions was conducted and completed.

Alternatively, plaintiff argues that the work he was performing at the time of the accident constituted repair work that is covered under Labor Law § 241 (6). In this regard, plaintiff notes that the repair of construction equipment is covered under the statute. Plaintiff further notes that it is undisputed that he was repairing the drilling rig at the time of the accident.

As a final matter, plaintiff argues that defendants violated several Industrial Code regulations which are both specific and applicable given the circumstances of the accident. In particular, plaintiff avers that 12 NYCRR 23-9.2(a), which requires that repairs be made

when a defect or unsafe condition is discovered with power operated equipment, was violated. In this regard, plaintiff notes that he complained on several occasions prior to the accident regarding the lack of a hydraulic vise to hold the drill rods as well as problems with the gears/clutch on the drill motor, but no repairs were made to correct these defects/unsafe conditions. In addition, plaintiff maintains that 12 NYCRR 23-9.2 (d) was violated inasmuch as the drilling rig lacked guards to protect him against moving parts. Finally, plaintiff points to 12 NYCRR 23-1.5(c), which requires that "[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged." Here, plaintiff avers that the drilling rig was not operating properly in the days leading up to the accident, but was not repaired or removed from the job site.

Labor Law § 241(6) provides, in pertinent part, that:

> "All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to persons employed therein or lawfully frequenting such places."

The statute, which was enacted to provide workers engaged in construction, demolition, and excavation work with reasonable and adequate safety protections, places a nondelegable duty upon owners and general contractors, and their agents to comply with the specific safety rules set forth in the Industrial Code (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-

502 [1993]). Accordingly, in order to support a cause of action under Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable given the circumstances of the accident, and sets forth a concrete standard of conduct rather than a mere reiteration of common-law principals (*id.* at 502; *Ares v State*, 80 NY2d 959, 960 [1992]; *Mugavero v Windows By Heart, Inc.*, 69 AD3d 694 [2010]).

As an initial matter, the court finds that, in and of itself, drilling core samples does not constitute construction, excavation, or demolition work for purposes of Labor Law § 241 (6) (*Fielding v Environmental Resources Mgt. Group.*, 253 AD2d 713 [1998]). Indeed, plaintiff does not contend otherwise. Instead, plaintiff argues that his work is covered under the statue inasmuch as it was merely the initial stage of the planned excavation and construction work. In this regard, plaintiff notes that by law, no excavation work could take place on the project until a geotechnical investigation was completed regarding the subsurface conditions. Plaintiff further notes that the findings of the geotechnical investigation directly impacted upon the construction and design of the planned building. However, it is well-settled that preliminary testing and inspection work that takes place at a site prior to the commencement of actual construction, excavation, or demolition work is not protected under Labor Law §§ 240 (1) or 241 (6) when the entity carrying out the preliminary work is not involved in the subsequent construction, excavation, or demolition work (*Panek v County of Albany*, 99 NY2d 452, 457 [2003]; *Prats v Port Auth. of New York and New Jersey*, 100 NY2d 878, 881

[2003]; *Martinez v City of New York*, 93 NY2d 322, 326 [1999]; *Toro v Plaza Const. Corp.*, 82 AD3d 505, 505-506 [2011]; *Adams v Pfizer, Inc.*, 293 AD2d 291, 292 [2002]). This is true even when the preliminary work is necessary and integral to the construction, excavation, or demolition work that eventually takes place. Thus, in *Martinez*, the Court of Appeals found that a worker who was injured while inspecting a building for asbestos during the initial phase of a larger asbestos removal project was not protected under the Labor Law since the inspection work took place prior to any removal work covered under the statute and the subsequent asbestos removal work was carried out by an entity other than plaintiff's employer (*Martinez*, 93 NY2d at 326). In so ruling, the Court specifically rejected any "necessary and integral" analysis in determining coverage under Labor Law § 241 (6), finding that "[s]uch a test improperly enlarges the reach of the statute beyond its clear terms" (*id.*).

The facts in the instant case are indistinguishable from those in *Martinez*. In particular, plaintiff was carrying out drilling work not otherwise covered under Labor Law § 241 (6) as part of an initial investigatory phase of a planned excavation and construction project. Further, at the time plaintiff carried out this work, no actual excavation or construction work had begun on the property. Finally, plaintiff's employer, WGI, was in the business of boring holes for geotechnical investigations and was to have no role in any future excavation or construction work. Plaintiff's attempt to portray his work as the first phase of actual excavation work merely amounts to an argument that his work was necessary and

integral to the excavation work that would eventually take place. However, as noted above, the Court of Appeals specifically rejected the use of a "necessary and integral" test in determining whether or not work is covered under the Labor Law.

Also without merit is plaintiff's argument that his accident is covered under Labor Law § 241 (6) inasmuch as he was carrying out repair work at the time he was injured. In particular, it is well-settled that replacing worn component parts on a piece of machinery in a non-construction context constitutes routine maintenance, which is not covered under the statute (*Deoki v Abner Prop. Co.*, 48 AD3d 510, 510-511 [2008]). Here, at the time of the accident, plaintiff was in the process of replacing a worn-out/blown swivel hose.

As a final matter, the court notes that on March 16, 2018, plaintiff filed a supplemental affirmation and attached New York City Department of Building's (DOB) construction permits which list "Cornell Realty" and Shifra Hager as the owner of the property. According to plaintiff, this evidence demonstrates that Cornell ultimately proceeded with the development project notwithstanding Cornell's claim that it sold the property without moving forward with the development project. However, this affirmation and attached exhibits were filed after the matter was deemed fully submitted on the February 2, 2018 return date. Thus, the submission constitutes an improper surreply that cannot be considered by the court (*Jannetti v Whelan*, 131 AD3d 1209, 1210 [2015]). In any event, for the reasons stated above, the fact that actual excavation and construction work took place after plaintiff's drilling work does not bring plaintiff's work under the protection of Labor

Law § 241 (6) even if it is assumed that the contractors carrying out this work relied upon the soil samples provided by plaintiff's work. To the contrary, plaintiff's work was "too remote" from the actual excavation and construction work, which took place several years after the soil samples had been taken (*Prats*, 100 NY2d at 881).

Under the circumstances, Cornel, CRM, and RAC's motions for summary judgment dismissing plaintiff's Labor Law § 241 (6) cause of action are granted. Plaintiff's cross motion for summary judgment against all defendants under his Labor Law § 241 (6) claim is denied.[2]

Plaintiff's Labor Law § 200 Claim/Common-Law Negligence Claim

CRM, RAC, and Cornell separately move for summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence causes of action. In so moving, these defendants all note that, since plaintiff's claims are based upon allegations that the drilling rig was defective or otherwise malfunctioned, they may only be held liable under a Labor Law § 200/common-law negligence theory upon a showing that they had the authority to supervise and control the means and methods plaintiff used while carrying out his drilling work. However, according to the moving defendants, the evidence in this case conclusively demonstrates that they had no authority or control over the means and methods employed by plaintiff. In this regard, Cornell and CRM note that they were not even present at the

[2]Inasmuch as plaintiff was not carrying out construction, excavation, or demolition work at the time of the accident, his Labor Law § 240 (1) claim must be dismissed as well. In any event, plaintiff concedes that the statute is inapplicable since his accident was not gravity-related for purposes of Labor Law § 240 (1).

property at the time plaintiff performed his work, and therefore could not have exercised any control over his work. In addition, in support of its motion to dismiss plaintiff's Labor Law § 200/common-law negligence claims, RAC points to plaintiff's own deposition testimony, wherein he stated that he alone was responsible for the safe operation of the drilling rig, and that RAC did not exercise any control or supervision over the drilling work other than to indicate where the holes should be drilled. RAC also notes that its owner, Mr. Papp, testified that engineers employed by RAC did not have any duty to inspect WGI's drilling rigs, that his employees' sole function at the job site was to observe the drilling operations and create a boring log, and that the engineers did not direct, control, or supervise the means and methods of plaintiff's drilling work. Under the circumstances, the moving defendants maintain that plaintiff's Labor Law § 200 and common-law negligence claims must be dismissed against them.

In opposition to this branch of defendants' motions, and in support of his own cross motion for summary judgment under his Labor Law § 200/common-law negligence claims, plaintiff submits an expert affidavit and attached forensic/investigative report on the accident by a professional safety engineer, Shawn White. In his report, Mr. White maintains that plaintiff's accident was caused by violations of several OSHA regulations. Mr. White further claims that, as the respective owners, owner's agent, and the general contractor on the project, Cornell, CRM, and RAC were negligent in failing to ensure that there was compliance with these OSHA regulations. In this regard, Mr. White points to an OSHA

"Multi-Employer Citation Policy" directive whereby more than one employer may be held responsible for the violation of an OSHA regulation. In addition, plaintiff argues that RAC exercised control and supervision over his work inasmuch as a RAC engineer/consultant was present at the job site while drilling operations were taking place and these employees took extensive notes which indicated when the drilling machine broke down and needed repairs. Plaintiff also notes that Mr. Reichman testified that RAC directed, controlled, and supervised the work performed by WGI.

Labor Law § 200 is merely a codification of the common-law duty placed upon owners and contractors to provide employees with a safe place to work (*Kim v Herbert Constr. Co.*, 275 AD2d 709, 712 [2000]). Liability for causes of action sounding in common-law negligence and for violations of Labor Law § 200 is limited to those who exercise control or supervision over the plaintiff's work, or who have actual or constructive notice the unsafe condition that caused the underlying accident (*Bradley* v *Morgan Stanley & Co., Inc.*, 21 AD3d 866, 868 [2005]; *Aranda v Park East Constr.*, 4 AD3d 315 [2004]; *Akins v Baker*, 247 AD2d 562, 563 [1998]). Specifically, "[w]here a premises condition is at issue, property owners [and contractors] may be held liable for a violation of Labor Law § 200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident" (*Ortega v Puccia*, 57 AD3d 54, 61 [2008]). On the other hand, "when a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or

general contractor cannot be had under Labor Law § 200 unless it is shown that the party to be charged had authority to supervise or control the performance of the work" (*id.*).

In the instant case, the underlying accident was caused by alleged defects and inadequacies in the equipment that plaintiff was using. In particular, plaintiff maintains that the accident was caused by the lack of a hydraulic vise to hold the drill rod as well as a malfunctioning clutch on the motor of the drilling rig. Under the circumstances, plaintiff's Labor Law § 200/common-law negligence claims against Cornell, CRM, and RAC are dependent upon a showing that they had the authority to supervise and control the means and methods used by plaintiff while operating the drilling rig (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 51 [2011]).

Here, Cornell, CRM, and RAC have made a prima facie showing that they lacked the authority to control and supervise plaintiff's work. In this regard, it is undisputed that Cornell and CRM did not own or maintain the drilling rig and were not even present at the job site at any time when plaintiff was performing his drilling work. Further, plaintiff testified that he never received any instructions from these entities, did not know who owned the property, and had never heard of CRM. With respect to RAC, although it had an employee present at the job site during drilling operations, plaintiff himself testified that this engineer only told him where to drill the holes, and did not instruct him how to perform the actual drilling work. Moreover, when asked, "[i]s it fair to say that whatever direction, control or supervision you received about the means and methods of what you were doing at the time of the accident

came from [WGI]," plaintiff responded "yes." Plaintiff also testified that he was responsible for machine safety and that the RAC engineer did not tell him how to operate the drilling rig. In addition, plaintiff testified that, when he began to experience problems with the drilling rig, he complained to his WGI supervisor rather than the on-site RAC engineer. Finally, RAC's owner Mr. Papp testified that his employees sole function at the job site was to observe the drilling operations and soil samples in order to create a boring log, and that the engineers did not direct, control, or supervise the means and methods of plaintiff's drilling work.

In opposition to Cornell, CRM, and RAC's prima facie showing, plaintiff has failed to raise a triable issue of fact regarding whether they had the authority to control and supervise his work. In particular, although Mr. Reichman testified that RAC directed and controlled WGI's work, he later explained that his understanding of the words direction and control meant the "location of borings, supervision of borings." In addition, when asked if RAC had any supervision or control over the means and methods used by WGI during drilling operations, Mr. Reichman testified that, "I cannot speak for [RAC] because I wasn't there. I cannot tell you how borings get done as far as who is responsible, whether it's the driller or the engineer overseeing it." Further, the fact that RAC told plaintiff where to drill the holes and made notations indicating when the drilling rig broke down is insufficient to show that they controlled and supervised the actual drilling work.

Finally, plaintiff and his expert Mr. White's reliance upon OSHA regulations is misplaced. In this regard, the court notes that OSHA did not issue any violations against RAC, Cornell, or CRM (*compare March Assocs. Constr. Inc. v CMC Masonry Constr.*, 151 AD3d 1050, 1055 [2017]). In any event, the OSHA regulations cited by plaintiff only apply to employers or parties that otherwise have authority or control over the manner in which an employee carries out his or her work (*Ramos v Baker*, 91 AD3d 930, 933 [2012]). Indeed, under the Multi-Employer Responsibility directive cited by plaintiff's expert, only employers who had the authority to control underlying work, correct unsafe conditions, or who otherwise created an unsafe condition may be held responsible for OSHA violations. Here, it is undisputed that none of the defendants created the alleged defects on the drilling rig, which was owned by WGI. Further, it is clear from plaintiff's own deposition testimony that he alone was responsible for safety issues involving the drilling rig and that the only entity that had authority and control over the means and methods he employed while performing the drilling work was WGI.

Under the circumstances, plaintiff's Labor Law § 200 and common-law negligence claims against Cornell, CRM, and RAC must be dismissed.[3]

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[3]The court has already determined that plaintiff's Labor Law § 241 (6) claim must be dismissed since plaintiff was not performing construction, excavation, or demolition work at the time of the accident. Inasmuch as the court has also determined the RAC did not control or direct plaintiff's work, plaintiff's Labor Law § 241 (6) claim must also be dismissed against RAC since it is exempt from liability under the statute pursuant to Labor Law § 241 (9).

Cross Claims

The court has already determined that the accident was not caused by any negligence on the part of Cornell, CRM, or RAC. Further, none of these defendants entered into any contractual agreements in which they agreed to indemnify another party or obtain liability insurance covering another party. Consequently, there is no basis for any of the cross claims asserted against Cornell, CRM, or RAC and all such claims are dismissed.

Summary

In summary, Cornell, CRM, and RAC's respective motions for summary judgment dismissing plaintiff's complaint and all cross claims against them are granted. Plaintiff's cross motion for summary judgment against the defendants under his Labor Law §§ 241 (6) and 200 causes of action is denied.

This constitutes the decision, order, and judgment of the court.

ENTER

J. S. C.

Nancy T. Sunshine

NANCY T. SUNSHINE
Clerk

FILED
KINGS COUNTY CLERK
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