At an IAS Term, Part **35** of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of January, 2021.

P R E S E N T:

HON. KAREN ROTHENBERG,
Justice.

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LUCIANO CAMPOS,
Plaintiff,

- against - Index No. 521271/17

UNIQUE DEVELOPERS HOLDINGS CORP., UNIQUE DEVELOPERS CORP., 193-197 FREEMAN LLC, AND CORNER FREEMAN LLC,

Defendants.

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The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	22-31,32-42, 54-57
Opposing Affidavits (Affirmations)	59,61
Reply Affidavits (Affirmations)	59,61, 63
Affidavit (Affirmation)	
Other Papers	

Upon the foregoing papers, plaintiff Luciano Campos (plaintiff) moves (motion sequence one) for an order, pursuant to CPLR 3212, for partial summary judgment on his Labor Law §240(1) cause of action against defendants Unique Developers Holdings Corp.

(Unique Developers Holdings) and 193-197 Freeman LLC (193-197 Freeman). Defendants Unique Developers Holdings, Unique Developers Corp. (Unique Developers) and 193-197 Freeman (collectively, defendants) move, (mot. seq. three) for an order, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's common-law negligence claim and Labor Law §§200 and 241(6) causes of action. Defendants also cross-move (mot. seq. four) for an order, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's Labor Law § 240(1) cause of action.

The instant action arises out of a fall from a ladder on December 22, 2016 when plaintiff, a carpenter, was performing work relating to the construction of a four-story residential building located at 193-197 Freeman Street in Brooklyn. At the time of the accident, plaintiff was employed by non-party Magellan Concrete, the concrete subcontractor (Magellan). The building was owned by 193-197 Freeman. Defendant Unique Developers Holdings acted as the general contractor and hired all the subcontractors for the job

Plaintiff testified at deposition that he began working for Magellan in August, 2016 "mounting . . . decks and taking them apart." Plaintiff explained that he would make the deck from wood, install iron work, and then pour concrete. Eventually supports would be placed under the wood deck to allow the concrete to harden.

Sometime in October, 2019, plaintiff began work at the subject premises at which time the foundation and the first level had already been constructed. In the five weeks plaintiff worked there, four additional floors had been added.

Plaintiff's foreman, Marcelo, supervised the carpenters. He determined what plaintiff and his coworkers were going to do each day. Plaintiff used a hammer, measuring tape, pencils, nails, and a "square," to perform his work, which he provided himself. At the job site, plaintiff had used a scaffold on wheels on the upper floors. He had also used a "fixed" scaffold which would be accessed by using an eight-foot A-frame ladder. Plaintiff had used this type of fixed scaffold in order "to put the deck together." Magellan provided the scaffolds and ladders. Most of the ladders were eight-foot A-frame ladders and there was also one scaffold that plaintiff and his coworkers alternated using with steelworkers. The ladder plaintiff used on one day would not necessarily be the ladder he used the next day because other workers were using the same ladder, and there was no way to differentiate between the ladders.

On December 22, 2016, plaintiff arrived at the work site at 7:00 a.m. For the entire morning, plaintiff worked on the fourth floor putting up a deck. Marcelo had assigned two coworkers to help him, including Ramon Ayala. That morning, plaintiff alternated between using a platform scaffold with wheels and an A-frame ladder. After lunch, plaintiff returned to the fourth floor and completed his work. When he was finished Marcelo told him to go to the first or ground floor, with whatever helpers he needed to remove plywood forms from the ceiling. The plywood forms had supports or "screw jacks" beneath them, which had to be unscrewed before removing the forms. Plaintiff testified that two people were required to remove the supports - one to unscrew them and the other to give support so that the wood

did not come "tumbling . . . down." Only one person needed to be working on either a ladder or platform. Plaintiff and three helpers, including Mr. Ayala, went to the ground floor and plaintiff used an eight-foot A-frame ladder to perform the work.

Plaintiff leaned the top of the ladder against a square column, as there was no room to open the ladder, and checked that it was firm and stable. He also checked to see if the black feet were on the bottom of the ladder. No one instructed him to use the ladder this way, but Marcelo had seen him and his coworkers use the ladder in this manner "in such a situation," and plaintiff had seen other workers using the ladder in the same way. Plaintiff had also used the ladder in this manner previously.

Plaintiff climbed the ladder and while at a height where he was able to put his hand on the top of the ladder, he reached for the plywood with both hands. As soon as he touched the plywood, he felt the ladder slide or move to the left. The next memory plaintiff had was hours later when he was at his cousin's house before he was taken to the hospital. Ramon Ayalya told plaintiff that he had seen the ladder shift.

Before he climbed the ladder, plaintiff had not asked any of the helpers to hold it steady as they were all busy. Plaintiff testified that he had performed this task before and did not require help. Plaintiff testified that before his accident, the ladder had been "on the other side of this column and I fell over"; that the square column was located on an elevated concrete structure, which was about four feet high; that the column was very close to the corner of that "concrete area"; that the ladder was on the opposite side of the column; that

if he "were facing the column," his right foot would have been "able to step over that" [i.e. the concrete area]; that he was able to see the gate onto which he fell in the photograph; and that he was told that he had fallen from the ladder from the elevated concrete area.

Discussion

Timeliness of Motions and Cross Motion

"Pursuant to CPLR 3212 (a), courts have 'considerable discretion to fix a deadline for filing summary judgment motions,' so long as the deadline is not 'earlier than 30 days after filing the note of issue or (unless set by the court) later than 120 days after the filing of the note of issue, except with leave of court on good cause show'" (*Gonzalez v Pearl*, 179 AD3d 645, 645-646 [2d Dept 2020], quoting *Brill v City of New York*, 2 NY3d 648, 651 [2004], citing CPLR 3212[a]). Further, "[in] Kings County, 'a party is required to make its motion for summary judgment no more than 60 days after the note of issue is filed, unless it obtains leave of the court on good cause shown'" (*id.*, quoting *Popalardo v Marino*, 83 AD3d 1029, 1030 [2d Dept 2011]).

Plaintiff and defendants filed their respective motions on July 27, 2020, and September 3 and 4, 2020, more than 60 days after the note of issue was filed. Plaintiff's counsel argues that plaintiff's motion is timely under *Brill* because any delay in filing plaintiff's motion was attributable to the Covid-19 crisis. In this regard, counsel states that his offices were completely closed until July 6th; that at the time this motion was made, his offices were only partially reopened; and that he was unable to secure the affidavit of

eyewitness Ramon Ayala, plaintiff's coworker, until July 20th, 2020, due to "the inherent safety and social distancing concerns." In support of their own motion and cross motion, defendants argue that their motions are timely under *Brill* based on the State's executive orders.

Under the circumstances of the Covid-19 pandemic and the Executive tolling orders that followed the motions will be deemed timely and will be considered on the merits.

Labor Law § 240 (1)

"Under Labor Law § 240 (1), owners and general contractors, and their agents, have a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (*Roblero v Bais Ruchel High Sch., Inc.*, 175 AD3d 1446, 1447 [2d Dept 2019]). Thus, "Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder 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" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

"To succeed on a cause of action under Labor Law § 240 (1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff's injuries" (*id.*). "A worker's comparative negligence is not a defense to a claim under Labor Law § 240 (1) and does not effect a reduction in liability" (*id.*, citing *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 286 [2003]; *see also Garzon v Viola*, 124 AD3d 715,

716-717 [2d Dept 2015]). In this regard, "where . . . a violation of Labor Law § 240 (1) is a proximate cause of an accident, the worker's conduct cannot be deemed solely to blame for it" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 696 [2d Dept 2006], citing *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290 [2003]).

In support of plaintiff's motion, plaintiff's counsel relies upon plaintiff's deposition testimony and the sworn affidavit of eye-witness Ramon Ayala.[1] Specifically, plaintiff's counsel argues that plaintiff is entitled to judgment as a matter of law on his Labor Law § 240(1) cause of action because at the time of the accident, plaintiff was engaged in an enumerated activity protected under Labor Law § 240(1); the ladder plaintiff was provided was not a proper safety device to protect him from falling; plaintiff was not provided with

[1] Mr. Ramon Ayala avers that on December 22, 2016, he was an eyewitness to an accident involving Luciano Campos (plaintiff). In this regard, Mr. Ayala states that plaintiff was working in an area that was near the edge of the building that was under construction; that his work required him to be about ten feet above the ground; that plaintiff used an eight foot A- Frame ladder to gain access to the work area; that plaintiff was working in a very narrow and tight space; that there was only a two-foot gap between the concrete column that plaintiff was working on and the building edge; that the narrow space made it impossible to fully open the A-Frame ladder; that there was no way or place he could tie off his lanyard while on the ladder in that area; and that there was no straight rung ladder available for plaintiff to use.

Mr. Ayala further avers that plaintiff positioned the A-Frame ladder in its closed position against the concrete column; that plaintiff climbed the ladder using both hands and it appeared steady; and that plaintiff climbed the ladder to about its sixth step and both feet were on the same step. According to Mr. Ayala, as plaintiff was attempting to remove a plywood form at the top of the concrete column while using both of his hands over his head, the top of the ladder shifted position. Mr. Ayala then saw the ladder topple over sideways to the left and land on the concrete floor. Mr. Ayala states that after the ladder moved or shifted, he saw plaintiff fall with the ladder and observed his head strike a metal gate before landing on the concrete floor approximately 12 feet below.

Finally, Mr. Ayala avers that while plaintiff was on the ground he was face up on his back with his eyes closed, and that he eventually opened his eyes but appeared dazed and stunned, after which Mr. Ayala and others alerted their foreman, Marcelo, who came to the accident site.

any other safety devices to prevent his fall; and the failure to provide plaintiff with any proper safety devices as required under Labor Law § 240(1) was the proximate cause of his accident. Plaintiff's counsel also contends that defendants cannot demonstrate that plaintiff's conduct was the sole proximate cause of his accident because: 1) plaintiff was only given an unsecured ladder with which to work, and 2) defendants cannot identify any safety device that plaintiff was expected to use and chose for no good reason not to use.

In opposition to plaintiff's motion and in support of their cross motion to dismiss, defendants argue that plaintiff was the sole proximate cause of his accident because he was provided with a proper safety device yet chose to use it improperly. Defendants contend that the ladder was not defective; that plaintiff made the decision to use the ladder in a closed position, leaning against the column; and that plaintiff testified that although he was working with two other workers, he did not ask them to hold the ladder for him. In the alternative, defendants assert that based upon plaintiff's deposition testimony, there is a material question of fact as to whether plaintiff was provided with other available safety devices, i.e. a scaffold, but chose to use the ladder improperly.

Plaintiff has made a prima facie showing that he is entitled to partial summary judgment on his Labor Law § 240(1) cause of action. "'Whether a device provides proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his or her materials'" (*Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 729 [2d Dept 2020], quoting *Melchor v Singh,* 90 AD3d 866, 868 [2d

Dept 2011]). In particular, "with regard to accidents involving ladders, 'liability will be imposed when the evidence shows that the subject ladder was . . . inadequately secured and that . . . the failure to secure the ladder was a substantial factor in causing the plaintiff's injuries'" (*id.*, quoting *Canas v Harbour at Blue Point Home Owners Assn., Inc.*, 99 AD3d 962, 963 [2d Dept 2012] [internal quotation marks omitted]). Furthermore, "where a ladder slides, shifts, tips over, or otherwise collapses for no apparent reason, the plaintiff has established a violation" (*id.*, citing *Salinas v 64 Jefferson Apts., LLC*, 170 AD3d 1216, 1222 [2d Dept 2019]; *Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 759-760 [2d Dept 2018]; *Ricciardi v Bernard Janowitz Constr. Corp.*, 49 AD3d 624, 625 [2d Dept 2008]).

Here, as plaintiff argues, his uncontroverted testimony and the affidavit of eye-witness Ramon Ayala establish that while engaged in elevation/construction work the ladder slid to the left, causing him to fall and sustain injuries. Plaintiff's testimony also demonstrates that he was not provided with any other safety devices, and that the space in which he worked was too narrow to use the ladder in an open position. Under the circumstances, plaintiff has made a prima facie showing that defendants violated of Labor Law § 240(1) and that this violation was the proximate cause of his accident (*Cioffi,* 188 AD3d 788, 791 [plaintiffs made prima facie showing that defendants violated Labor Law § 240 (1) where plaintiff testified that the ladder he was using "'kicked out' from under him, causing him to fall to the floor"]; *Von Hegel,* 180 AD3d at 728 [plaintiff made prima facie showing on Labor Law § 240 (1) claim where he demonstrated that he sustained injuries when the feet of a ladder on

which he was working slipped, causing him to fall, and where defendants failed to demonstrate that appropriate safety devices were "readily available" to him within the meaning of the statute]; *Przyborowski v A&M Cook, LLC*, 120 AD3d 651, 652-654 [2d Dept 2014] [plaintiff made prima facie showing with respect to his Labor Law § 240 (1) cause of action "by demonstrating that he was injured when the unsecured, closed A-frame ladder (which provided access for plaintiff and other workers to move between an upper and lower level of work site) fell backwards as he descended it," despite nearby staircase providing access between the two levels]; *Leconte v 80 E. End Owners Corp.*, 80 AD3d 669, 671 [2d Dept 2011] [whether plaintiff used closed eight-foot A-frame ladder, ("[a]fter finding that he was unable to fit it onto the landing in an opened position") part of which fell through gaps on stairway landing, or merely fell from the stairway's railing, "he established his prima facie entitlement to judgment as a matter of law by showing that he was not provided with a proper safety device with which he could perform his job, and that the defendants' failure to provide such protection was a proximate cause of his injuries"]; *Rudnik v Brogor Realty Corp.*, 45 AD3d 828, 829 [2d Dept 2007] [where plaintiff placed A-frame ladder on platform of a five- or six-foot high scaffold and rested it against the wall in a closed position and ladder shifted, causing him to fall to ground, he made prima facie showing demonstrating that defendants failed to provide him with adequate safety devices, and that their violation of Labor Law § 240 (1) was a proximate cause of his injuries]).

In opposition, defendants have "failed to raise a triable issue of fact as to whether . . . plaintiff's decision to use the subject [ladder] was the sole proximate cause of the accident 'given that there was no evidence that anyone instructed . . . plaintiff that he was "expected to" use [a] scaffold"'" but for no good reason did not chose to do so" (*Vasquez-Roldan v Two Little Red Hens, Ltd.*, 129 AD3d 828, 830 [2d Dept 2015], quoting *Gallagher,* 14 NY3d at 89.

In any event, "when a 'plaintiff [is] provided only with an unsecured ladder and no safety devices, [he] cannot be held solely at fault for his injuries,' even where the plaintiff has negligently placed the ladder" (*Von Hegel,* 180 AD3d at 730, quoting, *Canas,* 99 AD3d at 964). Thus, the court rejects defendants' additional argument that plaintiff's own negligence must be the sole proximate cause of the accident because there is no evidence that the subject ladder was defective (*Von Hegel,* 180 AD3d at 730; *see also Rudnik,* 45 AD3d at 829 [where plaintiff made a prima facie showing that defendants failed to provide him with adequate safety devices, and that their violation of Labor Law § 240 (1) was a proximate cause of his injuries, "[w]hile . . . plaintiff may have been negligent in placing a closed -frame ladder against the wall from atop the scaffold, (his) conduct cannot be considered the sole proximate cause of his injuries"].

In sum, plaintiff has established that the ladder did not prevent him from falling, that the statute has been violated, that this violation was the proximate cause of his accident, and

that plaintiff's negligence, if any, cannot be considered the sole proximate cause of his injuries (*see Riffo-Velozo v Village of Scarsdale*, 68 AD3d 839, 840 [2d Dept 2009].

Defendants' have also failed to raise a triable issue of fact as to whether plaintiff was provided with other safety devices "in the form of a scaffold" but chose to misuse the A-frame ladder. In this regard, defendants rely on plaintiff's testimony that plaintiff had used scaffolds in the past at this work site to put up decks; that he had used mobile scaffolds at this job site on the uppers floors of the building; that ladders were provided at the site; that he had used a "fixed" scaffold at the work site. Defendants argue that this testimony demonstrates or raises a triable issue of fact that plaintiff's employer "provided a number of different scaffolds and ladders for use" in plaintiff's work, that plaintiff could have used a scaffold erected at sidewalk level to reach the plywood, and that these other safety devices were available on site for plaintiff's use.

However, this testimony fails to demonstrate that other safety devices were available to plaintiff on the ground floor where there accident occurred. Further, Mr. Ayala averred in his affidavit that there was no straight rung ladder available for plaintiff to use while attempting to remove the plywood form. In any event, even assuming this testimony demonstrates that a scaffold was available for plaintiff's use, defendants have failed to raise a material issue of fact as to whether plaintiff knew he was expected to use a scaffold and chose for no good reason not to do so. In fact, plaintiff testified that there was no space to open the A-frame ladder so he leaned it against a column in a closed position, suggesting that

he would have been unable to use a scaffold in the area. In addition, Mr. Ayala avers in his affidavit that plaintiff was working in a very narrow and tight space; that there was only a two-foot gap between the concrete column that plaintiff was working on and the building edge; and that the narrow space made it impossible to fully open the A-frame ladder. Moreover, the record does not establish that plaintiff was instructed to use one method instead of another method in order to perform his work (i.e. ladder or scaffold) (*Przyborowski*, 120 AD3d at 652 [in fall from closed A-frame ladder, where record did not establish, among other things, that the plaintiff was instructed to use one method of access (ladder versus staircase) to walk from one level to another, plaintiff was entitled to summary judgment on his Labor Law § 240 (1) cause of action]).

Further, defendants contend that at the time of the accident, plaintiff "was located on what would become the first floor, which was elevated from the ground/sidewalk level of the front of the building" (affirmation in support of cross motion at ¶18). Defendants then assert that "the use of a scaffold on the ground floor, rather than an unopened ladder, would have provided a safe and stable work platform for plaintiff to use" (*id.* at ¶ 29). However, this argument is entirely speculative. Finally, contrary to defendants' contention, "[p]laintiff's failure to ask his coworkers to hold the ladder while he worked also did not constitute the sole proximate cause of the accident, since a coworker is not a safety device contemplated by the statute" (*Noor,* 130 AD3d at 541[internal citations and quotation marks omitted]). In any event, "failure to ask a coworker for support amounts to comparative negligence" (*id.*).

In view of the foregoing, plaintiff's motion for partial summary judgment is granted and defendant's cross motion for summary judgment dismissing plaintiff's Labor Law § 240 (1) cause of action is denied.

Labor Law § 200

"'Labor Law § 200 (1) is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work'" (*Gomez v 670 Merrick Rd. Realty Corp.*, __ AD3d __, 2020 NY Slip Op 07549, *3 [2d Dept 2020], quoting *Ortega v Puccia*, 57 AD3d 54, 60 [2d Dept 2008]). In this regard, "'[c]ases involving Labor Law § 200 fall into two broad categories...those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed'" (*id.*, quoting *Ortega,* 57 AD3d at 61). "'[W]hen the manner and method of work is at issue in a Labor Law § 200 analysis' the issue is 'whether the defendant had the authority to supervise or control the work'" (*Poalacin v Mall Props., Inc.*, 155 AD3d 900, 908 [2d Dept 2017], quoting *Ortega*, 57 AD3d at 62 n 2). "'A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed'" (*id.*, quoting *Ortega*, 57 AD3d at 62). However, "'mere general supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200'" (*Gomez v 670 Merrick Rd. Realty Corp* __ AD3d __, 2020 NY Slip Op 07549, *3, quoting *Ortega*, 57 AD3d at 62).

Here, the accident related to the means and manner of the work, i.e. the placement of the ladder, rather than a premises condition. Defendants have made a prima facie showing that they did not exercise supervision or control over the performance of the work giving rise to the plaintiff's injury. Plaintiff testified that at the time of the accident he was given all his work instructions by his foreman, Marelo, who worked for Magellan; that Magellan provided the scaffolds and the ladders at the work site, and provided plaintiff with a hard hat and gloves; and that plaintiff provided and used his own hand tools.

Further, the record indicates that the subject building was owned by defendant 193-197 Freeman, LLC, which was established solely to purchase the subject property; that defendant Unique Developers Holdings, acted only as the general contractor for the subject construction project; developed plans, oversaw the architect and hired the subcontractors. For the most part Unique Developers Holdings was responsible for obtaining permits from the New York City Department of Buildings for the subject project. Unique Developers Holdings did not provide any type of safety equipment at the subject site.

In sum, defendants demonstrated that they gave no instructions to plaintiff and his coworkers as to how to do their work; that they did not provide any tools or equipment to plaintiff; and that they did not enforce or supervise safety matters at the site. Inasmuch as defendants have established that they merely exercised general supervisory authority over plaintiff's work, they have made a prima facie showing that they may not be held liable for under Labor Law § 200 and common-law negligence (*Gomez v 670 Merrick Rd. Realty Corp*

__ AD3d __, 2020 NY Slip Op 07549, *3; *Kearney v Dynegy, Inc.*, 151 AD3d 1037, 1039-1040 [2d Dept 2017]; *Goodwin v Dix Hills Jewish Ctr.*, 144 AD3d 744, 748 [2d Dept 2016]; *Poulin,* 166 AD3d at 667, *Ortega*, 57 AD3d at 62). Plaintiff has failed to oppose this branch of defendants' motion. Therefore, the branch of defendants' motion for an order dismissing plaintiff's Labor Law § 200 cause of action and plaintiff's common-law negligence claim against them is granted.

Labor Law 241 (6)

"Labor Law § 241(6) provides:

> "All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements: . . . (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places" (*Zukowski v Powell Cove Estates Home Owners Assn, Inc.*, 187 AD3d 1099 [2d Dept 2020], quoting Labor Law § 241 [6]).

Labor Law § 241(6) "'requires owners and contractors to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor'" (*Medina-Arana,* 186 AD3d at 1669, quoting *Ross*, 81 NY2d at 501-502 [internal quotation marks omitted]). "In order to state a claim under section 241(6), a plaintiff must allege that the property owners [and general contractor] violated a regulation that sets forth a specific standard of conduct and not simply a recitation of common-law safety principles" (*id.,* quoting *St. Louis v Town of N. Elba*, 16 NY3d 411, 414 [2011]).

Defendants argue that plaintiff's Labor Law § 241(6) cause of action must be dismissed because the Industrial Code provisions which plaintiff alleges were violated are either inapplicable to the facts of this matter or fail to demonstrate that the statute was violated. Plaintiff alleges in his bill of particulars that defendants violated the following Industrial Codes: § 23-1.7 (b) (ii-iii); § 23-1.16 (b-e); § 23-1.30; and § 23-2.2 (a) and (c).

Defendants are entitled to dismissal of plaintiff's Labor Law § 241 (6) cause of action with respect to all of the above-noted regulations because plaintiff has abandoned reliance on them by failing to oppose this branch of defendants' motion (*Smalls v New 56th & Park (NY) Owner, LLC*, 2019 NY Slip Op 30899 [U], *10 [Sup Ct, Kings County 2019] [defendants entitled to dismissal of Labor Law § 241 (6) cause of action because sections alleged to have been violated were not specific, not applicable to the facts, and/or because plaintiff had abandoned reliance on them by failing to address them in his opposition papers], citing *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]; *Palomeque v Capital Improvement Servs., LLC*, 145 AD3d 912, 914 [2d Dept 2016])

Conclusion

In summary, plaintiff's motion for partial summary judgment on his Labor Law § 240 (1) cause of action (mot. seq. one) is granted, and defendants' cross motion for summary judgment (mot. seq. 4) dismissing this cause of action is denied. Defendants' motion for summary judgment (mot. seq. 3) dismissing plaintiff's Labor Law §§ 200

and 241 (6) causes of action, and plaintiff's claim for common-law negligence, insofar as asserted against them, is granted.

This constitutes the decision and order of this court.

E N T E R

J. S. C.