SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

DANIEL RODRIGUEZ

INDEX NO. 159524/18

MOT. DATE

- v -

MOT. SEQ. NO. 002

PLAZA CONSTRUCTION, LLC et al.

The following papers were read on this motion to/for and cross motion for summary judgment

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s)._____

Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s)._____

Replying Affidavits NYSCEF DOC No(s)._____

This is an action for personal injuries at a construction site. Plaintiff Daniel Rodriguez moves for summary judgment on his Labor Law 240(1) and 241(6) claims against Defendants Plaza Construction, LLC and Henry V. Murray Senior, LLC (the "Plaza Defendants") only. Defendants Plaza Construction, LLC and Henry V. Murray Senior, LLC oppose the motion and cross-move for summary judgment dismissing the complaint. Defendant B & G Electrical ("B&G) cross-moves for summary judgment only.

Issue has been joined and the motions were timely brought after note of issue was filed. Therefore, summary judgment relief is available. The court's decision follows.

On September 5, 2018, the date of the accident, plaintiff, a foreman, employed by non-party VAL Floors (a/k/a 3L Flooring), was working at a construction project site at 11 Murray Street in Manhattan. Plaintiff's accident occurred when he was descending Staircase A from the 33rd to the 32nd construction floor.

At his deposition, plaintiff testified that he slipped and fell walking down Staircase A. Plaintiff was on the 33rd floor when he attempted to descend the staircase. He stepped with his left foot on the third step and slipped on "the greasy sandwich with his left foot, causing it to slip forward and to the left, striking the wall". Plaintiff then attempted to regain his balance, when his right foot became tangled in an orange/black striped extension cord that was laying "serpentine" across the stairway and caused him to fall all the way down the stairs. Plaintiff described the black and orange extension cord as being in a "serpentine position."

Plaza's witness, Raymond Romani, the senior job superintendent, testified at his deposition that his role is to be in charge of all field operations for a specific job site and that he was assigned in this role to the 11 Murray Street project. He further testified that it was Plaza Construction's job to oversee the

Dated: 6/4/21

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. Check as appropriate: Motion is ☐GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER

3. Check if appropriate: ☐SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐FIDUCIARY APPOINTMENT ☐ REFERENCE

work of the subcontractors as part of the construction on the building and that the work is being built according to the plans as per code. He testified that Total Safety LLC provided site safety for the job at 111 Murray Street. Plaza hired VAL Floors as the subcontractor to install wood flooring. He further testified that the policies/procedures for inspection of interior staircase are that they are to be cleaned and have handrails, inspected daily throughout the day for cleanliness and that nothing is allowed to be stored in the staircase.

B&G Electric witness, David Hochman, general foreman for the 11 Murray Street project, testified at his deposition that Plaza Construction contracted B&G to perform electrical work at the site and installed all electrical in the building including wiring, pulling cable, initial roughing etc. that began approximately in April 2016 with the majority of the work completed in or about April 2019. Hochman was responsible to make sure his "employees were in a safe working like manner, and to make sure [his] obligations as far as temporary power and temporary light were being met". Hochman further testified that in August and September 2018, B&G was finishing roughing the apartments at the top of the building in the high fifties and doing work on the lower floors such as putting in high hats, installing receptacles, the data wiring in the interior panel, installing all appliances. He claimed that by September 5, 2018 all the permanent fixtures were installed and working in the staircases. Hochman further testified that in August and September 2018, B&G had completed its work in Staircase A and B and that the only people performing work would be the painters and the concrete guys preparing the concrete step. B&G used red extension cords and usually did not use multi-colored cords such as the orange and black cord. When showed photo of the sandwich and extension cord, Hochman testified that it was definitely not a B&G extension cord because B&G did not have any cords of that color on the job.

Non-party witness Salvatore Zaccheo, an apprentice with VAL Floor Inc., submitted an affidavit in support of plaintiff's motion. Zaccheo averred that he was assigned to work with plaintiff and witnessed the accident of September 5, 2018. In his affidavit, Zaccheo stated:

> As I was walking behind Daniel Rodriguez as he began to descend the staircase, I was talking to him about our work and I watched him take approximately three steps down the left side of the staircase. On approximately his third step, I saw him step down with his left foot and trip/slip, stumble and fall head over heels down the staircase all the way to the bottom which was a long way down (somewhere between 15-20 steps down). I saw that his left foot kicked out as he stepped down and hit the wall to his left, and then saw him trip and stumble with his right foot as he was trying to catch his balance, and then go tumbling down the stairs. I was about three to five feet behind Daniel Rodriguez when this happened.

In an affidavit, plaintiff's expert witness, Walter Konon, a licensed professional engineer, averred that plaintiff's accident "was proximately caused by the defendants' failure to ensure that the stairwell in question was free of debris, scattered tools and obstructions (the half-eaten sandwich and extension cord over which Daniel Rodrigues slipped/tripped). These failures constituted a violation of New York Labor Law Sec. 241(6) and Rules 23-1.7(d), 23-1.7€(1), 23-1.7€(2), and 23-1.7(f) of the New York Industrial Code".

Plaintiff argues that he is entitled to summary judgment on the issue of liability on his Labor Law §§ 240[1] and 241[6] claims against Plaza and Senior, the owner. The Plaza Defendants oppose the motion and cross-move for summary judgement arguing that plaintiff's accident was not caused by a gravity-related hazard under Labor Law 240(1), that plaintiff's accident was not proximately caused by a violation under New York's Industrial Code, that defendants did not control or direct the work of plaintiff or his employer, or provide any tools or equipment involved in the accident and that defendants did not have actual or constructive notice of any of the alleged dangerous conditions.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of NewYork*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Labor Law § 240[1]

Labor Law § 240(1), which is known as the Scaffold Law, imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v. Eastern Railway Supply, Inc.*, 82 NY2d 555 [1993]). The statute provides in pertinent part as follows:

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

Labor Law § 240 protects workers from "extraordinary elevation risks" and not "the usual and ordinary dangers of a construction site" (*Rodriguez v. Margaret Tietz Center for Nursing Care, Inc.*, 84 NY2d 841 [1994]). "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)" (*Narducci v. Manhasset Bay Associates*, 96 NY2d 259 [2001]).

Section 240(1) was designed to prevent 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 (*Runner v. New York Stock Exchange, Inc.*, 13 NY3d 5999 [2009] quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The protective devices enumerated in Labor Law § 240 [1] must be used to prevent injuries from either "a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 [1991].

Plaintiff argues that he was required to use Staircase A to access his worksite as the other means of access were, under the circumstances, impractical because they would have required walking all the way around to the other side of the building to access another staircase or walking an "unacceptably" long time to use an elevator hoist, Plaintiff further asserts that the existence of an alternative means to access a worksite does not preclude recovery under Section 240(1).

Defendants Plaza oppose the motion and cross-move for summary judgment arguing that plaintiff's accident resulted from the type of ordinary peril a worker is commonly exposed to at a construction site and not from an elevation-related hazard that Labor Law 240(1) was intended to protect against.

In reply, plaintiff argues that his submissions, at the very least, raise questions of fact as to Section 240(1)'s application, that defendants have not met their burden and established entitlement to dismissal

of this claim and that there was no evidence that plaintiff had accessible and safe means of accessing his worksite when the accident happened.

Plaintiff has not demonstrated a *prima facie* case of liability under Labor Law Sec. 240(1). Here, there is no dispute that that Staircase A was a permanent staircase, which plaintiff fell down, was a normal appurtenance to the building and was not designed as a safety device to protect him from an elevation-related risk. *Norton v. Park Plaza Owners Corp.*, 263 AD2d 531, 694 NYS2d 411 Plaintiff testified that he used Staircase A, but that there were other ways to access the 32nd floor that were not as direct as Staircase A. Plaintiff slipped on a "greasy" sandwich which is what caused him to slip and lose his balance and not from an elevated hazard that Labor Law 240(1) was intended to protect against. Further, the facts in *Conlon v. Carnegie Hall Society, Inc*, cited by plaintiff, are distinguishable from the case herein. While Labor Law 240(1) may apply to falls within a permanent staircase only if the staircase was the sole means for the worker to access the work area, that was not the case here. *Ramirez v. Shoals*, 78 AD3d 515. Plaintiff unilaterally elected to descend Staircase A when he there were alternative means for him to access the 32nd floor.

Based on the foregoing, the Plaza defendants' cross-motion for summary judgment dismissing plaintiff's Labor Law 240(1) is granted and plaintiff's Labor Law 240(1) cause of action is severed and dismissed.

Labor Law § 241[6]

Labor Law § 241[6] imposes a non-delegable duty on all contractors and owners, in connection with construction or demolition of buildings or excavation work, to ensure that:

> [a]ll 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 the persons employed therein or lawfully frequenting such places.

The scope of the duty imposed by Labor Law § 241[6] is defined by the safety rules set forth in the Industrial Code (*Garcia v. 225 E. 57th Owners, Inc.*, 96 AD3d 88 [1st Dept 2012] citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). Plaintiff must allege violations of specific, rather than general, provisions of the Industrial Code (*Rizzuto v. L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998]). Plaintiff asserts that he is entitled to summary judgement pursuant to Labor Law Sec. 241(6) because the defendants violated 12 NYCRR § 23-1.7(d), 23-1.7€(1), 23-1.7€(2) and 23-1.7(f), which proximately caused the accident.

Industrial Code Rule 23-1.7(d) provides in part that "Employers shall not.... permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substances which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

Plaintiff argues that the "the staircase down which Daniel Rodriguez fell was a passageway, a walkway and an elevated working surface under the circumstances" and that the half-eaten sandwich is considered a type of "other foreign substance" because it was not the intended product of plaintiff's construction work and caused slippery footing. Plaza Defendants disagree and argue that this Industrial Code section does not apply as a matter of law because the subject staircase was a permanent part of the structure and not the sole means available for plaintiff to access his intended work destination.

The court agrees with the Plaza Defendants that Sec. 23-1.7(d) does not apply as a matter of law. It is undisputed that Staircase A was a permanent structure within the building. Further, plaintiff testified that he had multiple ways to access the 32nd floor including walking to the other side of the building to access Staircase B or the freight elevator which would have been a "waste of time", but unilaterally

elected to use Staircase A because it was the most direct route to access his work area. Clearly, Staircase A was not plaintiff's sole means to access his work area and therefore, this section of 241(6) does not apply. *Wowk v. Broadway 280 Park Fee, LLC,* 94 AD3d 669, 944 NYS2d 23 [AD1st 2012]. Accordingly, plaintiff's Section 241(6) claim premised upon a violation of Section 23-1.7(d) is severed and dismissed.

Since Staircase A is not a "passageway" within the context of Rule 23-1.7, Rule 23-1.7[e][1] does not apply as well. Therefore, this claim is also severed and dismissed.

12 NYCRR 23-1.7[e][2] provides as follows:

(2) Working areas. The parts of floors, platforms and similar areas where persons work, or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

With regard to 23-1.7[e][2], plaintiff's expert Walter Konon opines that "the staircase was a "working area", the extension cord a "scattered material", and the half-eaten sandwich "debris", both of which caused the Accident...."

The Plaza Defendants contend that their site safety manager, Jared Rivera, conducted walk throughs of the entire site at the end of the workday to check for unsafe conditions which were documented in daily logs and that at no time during the period of August 1, 2018 through September 4, 2018 did Rivera observe any debris or obstructions on Staircases A and B at the end of the workday on September 4, 2018.

Based on the evidence submitted to the court, specifically plaintiff's testimony, the affidavit of witness Salvatore Zaccheo and the photographs, it is undisputed that plaintiff slipped and tripped on the sandwich and the electrical cord which caused him to fall down the flight of stairs. It is of no moment that the site safety manager conducted walk throughs and failed to note any debris within Staircase A. On this record, plaintiff has established that Section 23-1.7(e)(2) was violated by the Plaza Defendants because plaintiff "slipped" on a half-eaten sandwich and then "tripped" over an electrical cord while descending Staircase A to the 32nd floor, an area where persons pass. Therefore, plaintiff is granted summary judgment on liability on his Section 241(6) claim premised upon 12 NYCRR 23-1.7(e)(2).

Industrial Code Section 23-1.7 (f) provides, in pertinent part, as follows:

> (f) Vertical passage. Stairways, ramps or runways shall be provided as the means of access to working levels above or below ground except where the nature or the progress of the work prevents their installation in which case ladders or other safe means of access shall be provided.

Plaintiff alleged that Stairway A was not safe because the presence of the half-eaten sandwich and the extension cord violated this section of the Industrial Code and caused plaintiff to fall down the stairs.

The Plaza Defendants argue that there were multiple staircases at the site and available to plaintiff and that they have not violated Sec. 23-1.7(f).

It is irrelevant that there were other staircases, even if those staircases were in a safe condition, because there is not dispute on this record that Staircase A was not in a safe condition. No reasonable factfinder could conclude that a sandwich and an electrical cord on Staircase A was a safe condition. Therefore, plaintiff's motion is also granted as to liability on Section 241(6) premised upon 12 NYCRR 23-1.7(f).

Plaintiff further argues that the Plaza Defendants have offered no evidence that handrails were present in Staircase A under Rule 23-2.7(e) and have not met their burden requiring denial of their cross-

motion. The court disagrees. Here, plaintiff testified that there were handrails in the stairwell and the photos provided to the court show that there is at least one handrail in Staircase A.

As to the remainder of plaintiff's claims in his Reply, he contends that he did not abandon the causes of action brought pursuant to Sec. 241(6) vis a vis Rules 23-1.5, 23-1.7(b)(1), 23-1.8(c)(2), 23-1.30, 23-1.32, 23-2.1(a), 23-2.1(b), 23.2.7(b), 23-2.7(d) and 23-2.7(e), but that he does not oppose the Cross-Motions as to these Rules. The Rules cited above do not apply to the instant case and therefore are severed and dismissed.

Accordingly, plaintiff's motion is granted only to the extent that plaintiff is granted summary judgment on liability as to Section 241(6) premised upon violations of 12 NYCRR 23-1.7(e)(2) and (f) and the Plaza defendants' cross-motion for summary judgment as to 12 NYCRR 23-1.7(e)(2) and (f) is denied, but granted as to the balance of the Industrial Code Rules.

Labor Law Sec. 200

Labor Law § 200 codifies the common law duty of owners and general contractors to provide workers with a reasonably safe place to work (*Comes v. New York State Elec. And Gas Corp.*, 82 NY2d 876 [1993]). There are two categories of Labor Law § 200 and common law negligence claims: injuries arising from dangerous or defective premises conditions and injuries arising from the manner or means in which the work was performed (*Cappabianca v. Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). In order to demonstrate a *prima facie* case under the former category, a plaintiff must prove that the owner or general contractor created the condition or had actual or constructive notice of it (*Mendoza v. Highpoint Asoc., IX, LLC*, 83 AD3d 1 [1st Dept 2011]). Where the injury was caused by the manner of the work, the owner or general contractor will be liable if it exercised supervisory control over the work performed (*Foley v. Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476 [1st Dept 2011]).

However, where the dangerous or defective condition arises from the subcontractor's methods, and the owner exercised no supervisory control over the injury-producing work, no liability will be imposed on the owner or general contractor under either the common law or Labor Law § 200 (*Comes v. New York State Elec. & Gas Corp.*, *supra*).

Here, defendants have met their burden by showing that they did not supervise or control the manner in which plaintiff performed his work and that the dangerous condition arose from the subcontractor's methods. The record before the court shows that plaintiff received instructions on how to perform his work from Val Floors and that the Plaza Defendants did not direct, supervise or control the work of Val Floors or plaintiff. Plaintiff's argument that the Plaza Defendants failed to demonstrate that they did not direct and control the injury-producing work is rejected. In fact, Hochman testified that [he] "was in charge of the means and methods" employed by B&G workers. Accordingly, defendant's motion to dismiss the Labor Law § 200 claim is granted.

Relatedly, the Plaza Defendants are entitled to dismissal of the common law negligence claim, since defendants have established the absence of notice of the subject dangerous condition.

Cross-Motion by Defendant B&G

The court now turns to Defendant B&G's cross-moves to dismiss plaintiff's complaint and to dismiss Plaza's cross-claims for contractual indemnification, contribution and for breach of contract for failure to procure additional insurance coverage because: "1) plaintiff did not make any complaints as to lighting; 2) B&G's employees were not present at the scene the time of plaintiff's accident, did not leave lunch waste on the stairs, or use the type of multi-colored extension cord plaintiff allegedly tripped over; and 3) Plaza's claim for contractual indemnification, contribution, and failure to procure additional insurance coverage against B&G lacks any factual basis to assert claims for all three of the aforementioned causes of action against B & G".

Plaintiff uses the words "defendants" and "cross-motions" in his opposition (ecf 99) interchangeably and fails to differentiate between the actions of the Plaza and B&G defendants, respectively. In his combined opposition to the two cross-motions by Defendants Plaza and B&G, plaintiff contends that there are questions of fact as to the applicability of 240(1); and, in any event, defendants have not met their burden to establish entitlement to dismissal.

The court disagrees. Defendant B&G has established as a matter of law that it is entitled to summary judgment dismissing plaintiff's complaint against it. It is undisputed that B&G was not an owner nor the general contractor at the site and therefore Labor Law 240(1) does not apply. B&G produced David Hochman, who testified that B&G was an electrical trade subcontractor hired by defendant Plaza. He further testified that in August and September 2018 B&G had completed its work in Staircase A and B and that the only people performing work would be the painters and the concrete guys preparing the concrete step and that B&G used red extension cords and usually did not use multi-colored cords such as the orange and black cord. When showed a photo of the orange and black extension cord, Hochman testified that it was definitely not a B&G cord. Hochman further testified that B&G never received any complaints of dim lighting during the project. At his deposition, plaintiff testified that the lighting conditions between the 33rd and 32nd floor where the accident occurred were "fine". Further, plaintiff has failed to show that B&G, the electrical subcontractor, had the authority to supervise or control the work that led to plaintiff's accident under 241(6). Finally, based on Hochman's testimony, there is no evidence that B&G caused or created the alleged "dangerous condition" that caused plaintiff's accident. In sum, plaintiff has failed to raise a triable issue of fact that B&G worked in the stairwell at the time of plaintiff's accident, that the food or the orange and black extension cord left on the stairs was left by B&G that caused his accident.

Accordingly, defendant B&G's cross-motion for summary judgment to dismiss plaintiff's complaint is granted in its entirety.

Next, the court turns to that portion of B&G's cross-motion to dismiss claims for contractual indemnification, contribution and breach of contract.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (Drzewinski v Atlantic Scaffold & Ladder Co., 70 NY2d 774, 777 [1987], quoting Margolin v New York Life Ins. Co., 32 NY2d 149, 153 [1973]; see also Tonking v Port Auth. of N.Y. & N.J., 3 NY3d 486, 490 [2004]). However, "General Obligations Law § 5-322.1 prohibits and renders unenforceable any promise to hold harmless and indemnify a promisee which is a construction contractor or a landowner against its own negligence" (Kilfeather v Astoria 31st St. Assoc., 156 AD2d 428 [2d Dept 1989]).

The relevant portions of the contract between the Plaza Defendants and B &G provide as follows:

> ARTICLE 9: Indemnification
>
> 9.1 To the extent permitted by law, Subcontractor shall indemnify, defend, save and hold Owner, Construction Manager, their respective partners, officers, employees and anyone else acting for or on behalf of any of them (herein collectively called "Indemnitees") harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with:
>
> 9.1.1 The performance of Work by the Subcontractor, or any of its sub- subcontractors, any act or omission of any of the Foregoing;

> 9.1.2 Any accident or occurrence which happens, or is alleged to have happened, in or about the place where such Work is being performed or in the vicinity thereof (a) while Subcontractor is performing the Work, either directly or indirectly through a sub-subcontractor or material supplier, or (b) while any of Subcontractor's property, equipment or personnel are in or about such place or the vicinity thereof by reason of or as a result of the performance of the Work; [emphasis added]

Here, the record shows that B&G's workers were not performing any work in the stairwells at the time of plaintiff's accident as testified by Mr. Hochman as B&G completed its work by September 2018 and further did not use orange and black electric cords for any wok at the site. Based on the language of the indemnification provision in the parties contract, the Plaza defendants cannot maintain a claim for contractual indemnification.

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (Perri v Gilbert Johnson Enters., Ltd., 14 AD3d 681, 684-685 [2d Dept 2005], quoting Correia v Professional Data Mgt., 259 AD2d 60, 65 [1st Dept 1999]).

For the same reasons set forth above, the Plaza defendants cannot maintain a claim for common law indemnification and contribution because the uncontroverted evidence showed that B&G was no longer working on the stairwells and was not responsible to supervise or control the work that caused plaintiff's injury.

Finally, the Plaza defendants cross-claim for breach of contract to procure additional insurance coverage in favor of the Plaza defendants is dismissed. Here, B&G provided a copy of the certificate of insurance naming the Plaza defendants as additional insureds, which was unopposed by Plaza.

Accordingly, defendant B&G cross-motion for summary judgement is granted in its entirety, plaintiff's complaint is severed and dismissed and the Plaza Defendants cross-claims are dismissed.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion for summary judgment on Labor Law Sec. 240(1) and 241(6) is granted only to the extent that plaintiff is granted summary judgment on liability as to Section 241(6) premised upon violations of 12 NYCRR 23-1.7(e)(2) and (f); and it is further

ORDERED that plaintiff's motion is otherwise denied; and it is further

ORDERED that defendant Plaza's cross-motion for summary judgement is granted to the extent that plaintiff's Labor Law Section 240(1) claim is severed and dismissed and his Labor Law Section 241(6) claim premised upon violations of all but 12 NYCRR 23-1.7(e)(2) and (f) is severed and dismissed; and it is further

ORDERED that defendant Plaza's cross-motion is otherwise denied; and it is further

ORDERED that defendant B & G Electrical cross-motion for summary judgement and to dismiss the cross-claims is granted in its entirety and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 6/4/21
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.