At IAS Part 99, at the Kings County Courthouse, 360 Adams St., Brooklyn, NY 11201, on the 23 day of May 2022

PRESENT: HON. RICHARD J. MONTELIONE, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MATTHEW MILLIGAN,

Plaintiff,

-against-

606 WEST 57 LLC, TFC WEST 57 GC LLC, EE 57TH STREET SOUTH HOLDINGS LLC, FADLING II LLC, and APPLEBY SOUTH HOLDINGS LLC,

Defendants.

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DECISION/ORDER

Index No.: 521031/2017
Motion Date: 4/6/2022
Motion Cal. No.: 11, 12
Mot. Seq. 5, 6

After oral arguments, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	Numbered
Motion Sequence #5	
Plaintiff's Notice of Motion for Summary Judgment on the issue of liability against all Defendants, dated 10/11/2021 (NYSCEF #105), Plaintiff's Statement of Material Facts (NYSCEF # 106), Attorney Affirmation of Attorney Jeffrey B. Bromfeld, affirmed on 10/11/2021 (NYSCEF #107), Exhibits (NYSCEF #108-114), ...	105-106, 108-114
Defendants' Joint Attorney Affirmation of Abigail Rossman in Opposition, affirmed on 2/14/2022 (NYSCEF #136), Exhibits (NYSCEF 137-140), Affidavit of Frank Vasta, sworn to on 10/8/2021 (NYSCEF #141), Defendants' Statement of Material Facts (NYSCEF #142), Defendants' Response to Plaintiff's Statement of Material Facts (NYSCEF #143).....	137-143
Plaintiff's Attorney Affirmation of Jeffrey B. Bromfeld in Reply, affirmed on 2/23/2022 (NYSCEF #144).....	144
Motion Sequence #6	
Defendants' Joint Notice of Motion for Summary Judgment dismissing all claims against Defendants, dated 10/12/2021 (NYSCEF #115), Defendants' Attorney Affirmation of Abigail Rossman, affirmed on 10/12/2021 (NYSCEF # 116), Memorandum of Law in Support (NYSCEF #117), Affidavit of Frank Vasta, sworn to on 10/8/2021 (NYSCEF #118), Defendants' Statement of Material Facts (NYSCEF #119) Exhibits (NYSCEF #120-128).....	115-128
Plaintiff's Attorney Affirmation of Jeffrey B. Bromfeld in Opposition, affirmed on 2/14/2022 (NYSCEF #134), Plaintiff's Response to Defendants' Statement of Material Facts (NYSCEF #135).....	134-135
Defendants' Attorney Affirmation of Abigail Rossman in Reply, affirmed on 2/25/2022 (NYSCEF #145), Exhibit (NYSCEF #146).....	145-146

I. *Background*

Plaintiff commenced this action by filing a summons and complaint on October 30, 2017 alleging a work site injury that occurred on January 23, 2017 as a result of negligence and violations of the Labor Law. Issue was joined on December 12, 2017. Plaintiff was a union journeyman carpenter working for Winco Corporation. The construction site was located at 606 West 57th Street, New York, New York. The accident occurred near the entrance of the construction site on 11th Avenue ("the premises"). On the date of the accident, plaintiff arrived to work around 6:15-6:30 a.m. Plaintiff entered the project site via the 11th Avenue entrance and descended the internal and permanent staircase located at that entrance to access Winco's shanties located in the basement. The shanties were used by workers and contractors to conduct meetings. Around 7:00-7:10 a.m., plaintiff's supervisor informed him that there would be no work that day due to high winds. To exit the premises, plaintiff ascended the same internal and permanent stairwell. When he arrived at the top of the stairwell, around approximately 7:15 a.m., he stepped on a cement cinderblock that was left on the staircase landing in front of an egress. When plaintiff stepped on the cinderblock, the cinderblock flipped, plaintiff's left ankle rolled, and plaintiff fell into the wall. The only first-hand account from an individual who was present at the scene of the accident is Plaintiff's deposition testimony.

Defendants EE 57th Street South Holdings LLC, Fadling II LLC, and Appleby-South Holdings LLC, are the owners and ground lessors of the premises. Defendant 606 West 57 LLC was and is the sole ground lessee of the premises. Defendant TFC West 57 GC LLC was the general contractor for the project. Chris Steinmann was TFC West 57 GC LLC's site superintendent.

Plaintiff moves and all defendants jointly move for summary judgment on liability. Plaintiff moves for summary judgment against all defendants on the issue of liability under Labor Law § 241(6) based on violations of the Industrial Code, specifically provisions 12 NYCRR 23- 1.7(e)(1) and 23-1.7(e)(2) (Motion Sequence #5). Defendants move for summary judgment to dismiss the common law negligence claim and the Labor Law §§ 200, 240(1), and 241(6) causes of action (Motion Sequence #6).

II. *Standard of Review*

A motion for summary judgment will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 967, 520 N.E.2d 512 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 404 N.E.2d 718 (1980). On such a motion, the evidence will be construed in a light most favorable to the party against whom summary judgment is sought. *Spinelli v. Procassini*, 258 A.D.2d 577, 686 N.Y.S.2d 446 (2d Dep't 1999).

III. *Plaintiff's Motion for Summary Judgment on his Labor Law § 241(6) claim*

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. *Oss v. Curtis-Palmer Hydro-Electric Co.*, 81 N.Y.2d 494, 501-02, 601 N.Y.S.3d 49 (1993). "It is well settled that Labor Law § 241(6) imposes a nondelegable

duty on owners and contractors regardless of their control or supervision of the work site." *Whalen v. City of New York*, 270 A.D.2d 340, 342, 704 N.Y.S.2d 305 (2d Dep't 2000) (citing *Allen v. Cloutier Const. Corp.*, 44 N.Y.2d 290, 291, 376 N.E.2d 1276 [1978]). To establish a cause of action under Labor Law § 241(6), a plaintiff must show that the defendant violated a specific provision of the Industrial Code. *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 497–98, 618 N.E.2d 82 (1993).

Plaintiff's Motion for Summary Judgment under Labor Law § 241(6) based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(1)

Plaintiff alleges a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(1), which states:

> Tripping and other hazards.
>
> Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

Plaintiff argues that he is entitled to summary judgment because the cinderblock that caused him to slip/trip was a tripping hazard within a passageway as contemplated by 12 NYCRR 23- 1.7(e)(1).

As stated above, plaintiff alleges that he stepped on the cinderblock, the cinderblock flipped causing Plaintiff's ankle to roll and Plaintiff to fall into the wall. Defendants contend that plaintiff did not "trip" or "slip" as contemplated by the Industrial Code but instead voluntarily stepped on the cinderblock. Defendants further argue that because plaintiff stepped on the cinderblock, the cinderblock was not a "tripping hazard" as contemplated by the Industrial Code. *See Costa v. State*, 123 A.D.3d 648, 997 N.Y.S.2d 690 (2d Dep't 2014). Defendants' reliance on *Costa v. State* is misplaced. In *Costa*, "the decedent was walking on a steel beam and, as he went to step down from the beam onto a 'stack of wood' that was about three-to-four feet high, the wood 'gave way,' he 'lost [his] footing,' and he fell." *Id.* Here, the cinderblock was significantly smaller than three-to-four feet high and plaintiff was not injured while descending onto the cinderblock from a higher altitude. Nor is there evidence that plaintiff saw and intentionally stepped on the cinderblock. To the contrary, plaintiff testified at his deposition that he did not notice the cinderblock prior to stepping on it and that he did not know that it was there. There is uncontroverted evidence that plaintiff's injuries were a result of him stepping on the cinderblock and the cinderblock rolling, causing plaintiff to fall. As plaintiff points out, "[w]hether the accident is characterized as a slip and fall or trip and fall is not dispositive as to the applicability of [12 NYCRR 23-1.7(e)(1)]," citing *Lois v. Flintlock Const. Servs., LLC*, 137 A.D.3d 446, 447–48, 27 N.Y.S.3d 120 (1st Dep't 2016).

Also in dispute is whether the landing of the stairwell where plaintiff tripped was a "passageway" as contemplated by 12 NYCRR 23- 1.7(e)(1). While the Industrial Code does not define the term, case law supports a finding that the location where plaintiff's accident occurred is a passageway. In *Lundy v. Austein*, 170 A.D.3d 703, 705, 95 N.Y.S.3d 289, 291 (2d Dep't 2019), the Court upheld the trial court's ruling denying defendants' motion for summary judgment to dismiss the cause of action based on a violation of 12 NYCRR 23- 1.7(e). The plaintiff in *Lundy* "stepped from the basement onto the bottom landing of the stairway, his foot became caught in what appeared to be an uncovered drain hole, causing him to trip and sustain injury." The Second Department continued, "Given this evidence, the [defendants]

failed to show that the plaintiff's alleged injury did not result from the presence of a tripping hazard in the passageway he traversed, in violation of 12 NYCRR 23–1.7(e)," citing *McCullough v. One Bryant* Park, 132 A.D.3d 491, 492, 18 N.Y.S.3d 373 (1st Dep't 2015). *Id.* In *McCullough*, the plaintiff was injured "while he was passing from an exterior roof on a construction site to an interior room" and tripped on a drain hole. *Id.* The First Department found in *McCullough* that "the doorway constitute[d] a passageway within the meaning of [12 NYCRR 23–1.7(e)]." *Id.* These cases support a finding that Plaintiff's accident occurred in a "passageway" as plaintiff fell at the top landing of an indoor/interior stairway while plaintiff was attempting to exit the construction site via the doorway/egress at the top of the landing.

Defendants argue that the cinderblock does not constitute a tripping hazard under 12 NYCRR 23- 1.7(e)(1) because the cinderblock is a singular object and cannot be pluralized to constitute "materials" or "accumulations of dirt and debris" under 12 NYCRR 23- 1.7(e)(1). However, a claim under 12 NYCRR 23- 1.7(e)(1) is not defeated simply because the tripping hazard was singular. In both *Lundy*, 170 A.D.3d at 705, 95 N.Y.S.3d at 291 and *McCullough*, 132 A.D.3d at 492, 18 N.Y.S.3d at 373, the plaintiffs tripped over singular drain holes. The Courts did not consider summary judgment or dismiss the actions on the basis that plaintiffs tripped over singular objects. *Id.*

Accordingly, plaintiff has established entitlement to summary judgment under Labor Law § 241(6) based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(1). Defendants have failed to raise a trial issue of fact. Therefore, this branch of plaintiff's motion for summary judgment is granted.

Plaintiff's Motion for Summary Judgment under Labor Law § 241(6) based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(2)

Industrial Code provision 12 NYCRR 23–1.7(e)(2) states,

> Tripping and other hazards.
>
> 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.

Defendants argue that plaintiff is not entitled to summary judgment based on his claim under this provision because the cinderblock was singular. Similar to the discussion above, the court rejects this argument. Cases from the Second Department demonstrate that summary judgment with respect to 12 NYCRR 23–1.7(e)(2) is not determined by whether the plaintiff tripped over a singular object, so long as the object was not an integral part of the work being performed. In *Riley v. J.A. Jones Contracting, Inc.*, 54 A.D. 3d 744, 865 N.Y.S.2d 255 (2d Dep't 2008), a question of fact "exist[ed] as to whether the brick the plaintiff tripped over was integral to the work being performed or was 'debris.'" The Court made no mention of the inapplicability of 12 NYCRR 23–1.7(e)(2) simply because it was a singular brick. Similarly, in *Gonzalez v. Magestic Fine Custom Home*, 115 A.D.3d 798, 799, 982 N.Y.S.2d 344 (2d Dep't 2014), the Second Department did not deny summary judgment because the plaintiff tripped over a single electrical cable or wire, and held that the defendant was not entitled to summary judgment because the plaintiff "raised a triable issue of fact as to whether the electrical cable or wire was merely lying loose on the floor . . . and thus, was not, under the circumstances, an integral part of the construction." Here, defendants do

not argue that the concrete block was an integral part of the construction plaintiff was performing, which would otherwise preclude a cause of action under Industrial Code §§ 23- 1.7(e). *See O'Sullivan v. IDI Const. Co.*, 7 N.Y.3d 805, 806, 855 N.E.2d 1159 (2006). Further, defendants do not cite any caselaw that supports a finding that 12 NYCRR 23–1.7(e)(2) does not apply where the plaintiff tripped over a singular object. Accordingly, the court finds defendants' arguments unavailing.

However, a question of fact does exist regarding whether plaintiff fell in a "working area." Plaintiff's reliance on *Whalen v. City of New York*, 270 A.D.2d 340, 342–43, 704 N.Y.S.2d 305 (2d Dep't 2000) to show that the landing in which the accident occurred is both a "passageway" and a "working area" is misplaced. The Court in *Whalen* was discussing 12 NYCRR 23-1.7(d), not 12 NYCRR 23-1.7(e). *Id.* Plaintiff also relies on several First Department cases to establish that an area where a plaintiff is required to pass to reach a working area is itself considered a working area under 12 NYCRR 23-1.7(e). *See Canning v. Barney's New York*, 289 A.D.2d 32, 34, 734 N.Y.S.2d 116, 119–20 (2001). Plaintiff contends that the basement constitutes a working area and that the only way to access the basement was via the landing/staircase located near the 11th Avenue entrance. Defendants argue that the basement does not constitute a working area but instead an area where workers and contractors conducted meetings. Further, Chris Steinmann, the site superintendent, testified at his deposition the project site contained three entrances located on: (1) 11th Avenue, (2) 57th Street, and (3) 56th Street, and that plaintiff had alternative routes to access the worksite. Accordingly, questions of fact exist.

Therefore, defendants have demonstrated questions of fact that preclude summary judgment in plaintiff's favor with respect to the claim arising under 12 NYCRR 23–1.7(e)(2). Accordingly, the branch of plaintiff's motion for summary judgment under Labor Law § 241(6) based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(2) is denied.

IV. *Defendants' Joint Motion for Summary Judgment*

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 200 and Common-Law Negligence Claims

"Labor Law § 200 codifies the common-law duty of an owner or employer to provide employees with a safe place to work." *Sanders v. St. Vincent Hosp.*, 95 A.D.3d 1195, 1195, 945 N.Y.S.2d 343, 344 (2 Dep't 2012). Liability under Labor Law § 200 applies to owners, contractors, and their agents. *Romang v. Welsbach Elec. Corp.*, 47 A.D.3d 789, 852 N.Y.S.2d 144 (2d Dep't 2008). Defendants argue that they are not liable under Labor Law § 200 or under a theory of common law negligence because they did not direct, supervise, or control the work being performed. However, whether defendants directed, supervised, or controlled the work being performed is only relevant where the accident arose from the manner in which the work was being performed. *Sanders v. St. Vincent Hosp.*, 95 A.D.3d 1195, 1195, 945 N.Y.S.2d 343, 344 (2d Dep't 2012). Instead, where, as here, "a premises condition is at issue, property owners may be held liable for a violation of Labor Law § 200 if the owner either created . . . or had actual or constructive notice of the dangerous condition that caused the accident." *Id.*

Similarly, general contractors will be found liable if they either created the dangerous condition or had actual or constructive notice of the dangerous condition. *See Dalvano v Racanelli Constr. Co., Inc.*, 86 A.D.3d 550, 551,926 N.Y.S.2d 658 (2d Dep't 2011). However, a general contractor's "right to generally

supervise the work, stop the contractor's work if a safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law § 200 or for common-law negligence." *Sanchez v. Metro Builders Corp.*, 136 A.D.3d 783, 787, 25 N.Y.S.3d 274 (3d Dep't 2016) (quoting *Austin v Consolidated Edison, Inc.*, 79 A.D.3d 682, 684, 913 N.Y.S.2d 684 [2d Dep't 2010]).

In support of their motion for summary judgment, defendants argue that neither the ground lessors, EE 57th Street South Holdings LLC, Falding II LLC, and Appleby South Holdings LLC, nor the ground lessee, 606 West 57 LLC, had any involvement with or presence at the project. Defendants contend that Winco was responsible for all work conducted by its employees pursuant to a subcontract with TFC West 57 GC. Plaintiff testified at his deposition that he only received instruction from Winco employees. Defendants admit that site superintendent, Chris Steinmann, was present at the site but argue that he never instructed Winco workers as to how their work should be performed. Chris Steinmann testified during his deposition that he conducted daily inspections of the site, including the basement accessible via the 11th Avenue stairway. However, the record is devoid of any inspection records from the day of the accident.

Chris Steinmann also testified that he had never seen a cinderblock placed in that manner at the project site. Defendants argue that the record is devoid of any evidence that defendants created the alleged dangerous condition or that defendants directed or supervised the work performed. Defendants further argue that there is no evidence to establish constructive or actual notice of the alleged dangerous condition, and that there is no basis to impute notice on TFC West 57 GC based on plaintiff and Chris Steinmann's testimony.

With respect to the ground lessors and lessee, defendants have failed to demonstrate the absence of actual or constructive notice of the alleged hazardous condition that caused plaintiff's accident. Defendants have failed to point to any probative evidence on this issue. *See Palacios v 29th St. Apts, LLC*, 110 A.D.3d 698, 699, 972 N.Y.S.2d 615 (2d Dep't 2013); *see also Ventimiglia v Thatch, Ripley & Co.*, LLC, 96 A.D.3d 1043, 1046, 947 N.Y.S.2d 566 (2d Dep't 2012). Additionally, while defendants deny notice that the cinderblock was on the landing of the staircase, they offer no evidence of either (1) the condition of the staircase or the landing on the day in question, or (2) when the stairway and landing were last inspected. *See Costa v Sterling Equip., Inc.*, 123 AD3d 649, 650, 997 N.Y.S.2d 704 (2d Dep't 2014); *Doto v Astoria Energy II, LLC*, 129 A.D.3d 660, 663-64, 11 N.Y.S.3d 201 (2d Dep't 2015). For these reasons, defendants failed to "make a prima facie showing of entitlement to judgment as a matter of law" as they did not "[tender] sufficient evidence to eliminate any material issues of fact from the case." *See generally Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 476 N.E.2d 642, 643 (1985). Therefore, the lessor and lessee defendants are not entitled to summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence claims.

With respect to TFC West 57 GC, the general contractor, defendants failed to eliminate all triable issues of fact regarding TFC's control over the premises, through its site superintendent at the project site, and whether said defendant knew or should have known of the dangerous condition presented by the cinderblock on the landing of the staircase. *See Nankervis v. Long Island Univ.*, 78 A.D.3d 799, 800, 911 N.Y.S.2d 393 (2d Dep't 2010) (citing *Mikhaylo v Chechelnitskiy*, 45 A.D.3d 821, 847 N.Y.S.2d 204 [2d Dep't 2007] and *Keating v. Nanuet Bd. of Educ.*, 40 A.D.3d at 709 [2d Dep't 2007]); *see also Rainer v. Gray-Line Dev. Co., LLC*, 117 A.D.3d 634, 635, 987 N.Y.S.2d 33 [1st Dep't 2014]). TFC's superintendent, Chris Steinmann, testified that he was present at the site every day, and that he performed

daily walk-through inspections. At the very least, this testimony raises a triable issue of fact as to TFC's constructive notice of the cinderblock on the landing.

Therefore, the branch of defendants' motion for summary judgment to dismiss plaintiff's Labor Law § 200 and common-law negligence claims is denied in its entirety.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 240(1) claim

Labor Law § 240(1), often called the "scaffold law", states,

> All contractors and owners and their agents, . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building 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(1) relates only to 'special hazards' presenting 'elevation-related risk[s]' and liability may be imposed where the 'plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential.'" *Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 97, 30 N.E.3d 154, 158 (2015). Here, plaintiff was injured in a permanent staircase, which is considered a "normal appurtenance to the building and [not] designed as a safety device to protect him from an elevation-related risk." *See Norton v. Park Plaza Owners Corp.*, 263 A.D.2d 531, 532, 694 N.Y.S.2d 411 (2d Dep't 1999); *see also Gallagher v. Andron Construction Corp.*, 21 A.D.3d 988, 990, 801 N.Y.S.2d 373, 375 (2d Dep't 2005). Additionally, the court takes note that plaintiff does not oppose this branch of defendants' motion for summary judgment.

Therefore, the branch of defendants' motion seeking summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is granted.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claims for violations of Industrial Code provisions 12 NYCRR 23- 1.7(e)(1) and 12 NYCRR 23- 1.7(e)(2)

As discussed above, plaintiff's motion seeking summary judgment under Labor Law § 241(6) based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(1) is granted. With respect to plaintiff's Labor Law § 241(6) claim based on a violation of 12 NYCRR 23- 1.7(e)(2), a question of fact exists that precludes summary judgment. Therefore, the branch of defendants' motion seeking relief under these two provisions is denied.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim for a violation of Industrial Code provision 12 NYCRR 23-1.7(f)

Industrial Code provision 12 NYCRR 23-1.7(f) states,

> 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.

This provision is inapplicable to the present facts because plaintiff fell in a permeant stairwell which was part of the building. *See Tesoro v. BFP 300 Madison II, LLC*, 98 A.D.3d 1031, 950 N.Y.S.2d 779, 781 (2d Dep't 2012) ("[S]ince the plaintiff's accident occurred on a permanent, concrete ramp which was a part of the building, section 23–1.7(f) is inapplicable.") Additionally, this branch of defendants' motion for summary judgment is unopposed.

Therefore, the branch of defendants' motion for summary judgment dismissing plaintiff's claim alleging a violation of 12 NYCRR 23-1.7(f) is granted.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim for a violation of Industrial Code provision 12 NYCRR 23-1.30

Industrial Code provision 12 NYCRR 23-1.30 states,

> Illumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10 foot candles in any area where persons are required to work nor less than five foot candles in any passageway, stairway, landing or similar area where persons are required to pass.

There is no testimony, allegation, or evidence in the record that illumination played a role in plaintiff's accident. Plaintiff testified at his deposition that the incident had nothing to do with lighting in the area, and plaintiff's reply papers do not oppose this branch of defendants' motion for summary judgment.

Accordingly, the branch of defendants' motion for summary judgment dismissing the cause action alleging a violation of 12 NYCRR 23-1.30 is granted.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim based on a violation of Industrial Code provision 12 NYCRR 23-1.31

Industrial Code provision 12 NYCRR 23-1.31 states,

> Application may be made to the board for the approval of any device, apparatus, material, equipment or method which may be used in compliance with the intent of this Part (rule) and approval by the board shall be deemed to authorize such use.

This provision is inapplicable to facts and plaintiff does not oppose this branch of defendants' motion in his reply papers. Therefore, the branch of defendants' motion for summary judgment dismissing the cause action alleging a violation of 12 NYCRR 23-1.31 is granted.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim for a violation of Industrial Code provision 12 NYCRR 23-1.32

Industrial Code provision 12 NYCRR 23-1.32 applies where the defendant received a written notice of an industrial code violation. *See Mancini v. Pedra Const.*, 293 A.D.2d 453, 454, 740 N.Y.S.2d 387 (2d Dep't 2002). Here the record is devoid of any testimony, allegation, or evidence that defendants received a written notice of the cinderblock on the stairwell landing or any other industrial code violation. Additionally, plaintiff does not oppose this branch of defendants' motion for summary judgment.

Therefore, the branch of defendants' motion for summary judgment dismissing the cause action alleging a violation of 12 NYCRR 23-1.32 is granted.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim for a violation of Industrial Code provision 12 NYCRR 23-2.1(a)(1)

12 NYCRR 23-2.1(a)(1) states,

> Storage of material or equipment.
>
> All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.

Defendants argue that the cinderblock is not "building materials" but instead a piece of equipment. However, defendants fail to cite a provision of the Industrial Code or case law stating that a cinderblock is not a building material. Defendants further argue that the accident did not occur in a passageway. As discussed above, the court finds that the incident did occur in a passageway as contemplated by the Industrial Code.

Therefore, defendants have failed to establish entitlement to summary judgment dismissing plaintiff's claim based on a violation of Industrial Code provision 12 NYCRR 23-2.1(a)(1). Accordingly, this branch of defendants' motion for summary judgment is denied.

Defendants' Joint Motion for Summary Judgment dismissing Plaintiff's Labor Law § 241(6) claim for a violation of Industrial Code provision 12 NYCRR 23-2.1(b)

12 NYCRR 23-2.1(b) states,

> Disposal of debris. Debris shall be handled and disposed of by methods that will not endanger any person employed in the area of such disposal or any person lawfully frequenting such area.

There is no testimony, allegation, or evidence in the record that plaintiff's accident is the result of defendants mishandling or disposing of debris. Additionally, the court notes that plaintiff does not oppose this branch of defendants' motion for summary judgment.

Therefore, defendants' motion for summary judgment dismissing the cause action alleging a violation of 12 NYCRR 23-2.1(b) is granted.

All other requests for relief are denied.

Based on the foregoing it is,

ORDERED, that plaintiff's motion for summary judgment is **GRANTED** with respect to the Labor Law § 241(6) claim based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(1) (Motion Sequence #5); and it is further

ORDERED, that plaintiff's motion for summary judgment is **DENIED** with respect to the Labor Law § 241(6) claim based on a violation of Industrial Code provision 12 NYCRR 23- 1.7(e)(2) (Motion Sequence #5); and it is further

ORDERED, that defendants' joint motion for summary judgment to dismiss plaintiff's claims arising under Labor Law § 240(1) and Industrial Code provisions 12 NYCRR 23-1.7(f), 12 NYCRR 23-1.30, 12 NYCRR 23-1.31, 12 NYCRR 23-1.32, and 12 NYCRR 23-2.1(b) are **GRANTED** (Motion Sequence #6); and it is further

ORDERED, that defendants' joint motion for summary judgment to dismiss plaintiff's claims arising under Labor Law § 200, common-law negligence, and Industrial Code provisions 12 NYCRR 23-1.7(e)(1), 12 NYCRR 23- 1.7(e)(2), and 12 NYCRR 23-2.1(a)(1) are **DENIED** (Motion Sequence #6).

This constitutes the decision and order of the Court.

ENTER

Hon. Richard J. Montelione, J.S.C.