

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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DUSAN KRAL,

Plaintiff,

-against-

F.J. SCIAME CONSTRUCTION CO., INC.,
EAGLE ONE ROOFING CONSTRUCTORS, INC., and
TRUSTEES OF THE SPENCE SCHOOL, INC.,

Defendants.

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EAGLE ONE ROOFING CONTRACTORS, INC.,

Third-Party Plaintiff,

-against-

J&J CONTRACTORS COMPANY,

Third-Party Defendants,

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F.J. SCIAME CONSTRUCTION CO., INC., and
TRUSTEES OF THE SPENCE SCHOOL, s/h/a
TRUSTEES OF THE SPENCE SCHOOL, INC.,

Second Third-Party Plaintiffs,

-against-

JOHN KARCZ, individually and JOSEPH SKORUPA,
individually and JOHN KARCZ and JOSEPH SKORUPA
d/b/a J&J CONTRACTORS,

Second Third-Party Defendants

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Index No.: 21818/03

Motion

Dated: May 16, 2006

Cal. No.: 12

T.P. Index

No.: 350421/04

Second T.P. Index

No.: 350525/04

The following papers numbered 1 to 11 read on this motion by defendant/second third-party plaintiff F.J. SCIAME CONSTRUCTION CO., INC. to reargue the court's decision pursuant to CPLR § 2221.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	1-4
Plaintiff's Affirmation in Opposition.....	5-6
Eagle One's Affirmation in Opposition, Exhs....	7-9
Reply Affirmation.....	10-11

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendant/Second Third-Party Plaintiff F. J. Sciame Construction Co., Inc.'s (hereinafter referred to as "Sciame") motion to reargue the court decision dated March 9, 2006 is granted, to the extent that the court clarifies its prior order. Under CPLR § 2221(d), a motion for leave to reargue should be based upon matters of fact or law overlooked or misapprehended by the court in determining the prior motion. A motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor is it designed for litigants to present the same arguments already considered by the court. (See *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2nd Dept. 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2nd Dept. 2005].)

Sciame's motion for summary judgment as to plaintiff's causes of action under Labor Law § 241(6) based upon OSHA regulations and Industrial Code §§ 23-1.16, 23-1.17, 23-1.24, 23-1.30, 23-1.32, 23-1.33, 23-2.1, 23-2.2, 23-2.3, 23-2.4, 23-2.5, 23-2.6, 23-2.7, 23-3.2, 23-3.3, 23-3.4, 23-4, 23-5.9, 23-5.10, 23-5.22, 23-7.1, 23-8.2, 23-9.2, 23-1.24 and 23-5.1 is granted without opposition. Sciame demonstrated prima facie that these sections are not applicable to the facts in this case or cannot be the basis of a Labor Law § 241(6) violation. (See *Greenwood v. Shearson, Lehman & Hutton*, 238 AD2d 311 [2nd Dept. 1997].) As plaintiff presented no evidence in support of these sections, they are dismissed.

Sciame's motion to reargue the court's denial of its motion for summary judgment under Labor Law § 200 is denied. Sciame failed to present any evidence that the Court overlooked or misapprehended any facts or law in deciding the prior motion. Rather, Sciame reiterates the arguments it previously cited in its moving papers. (See *Pryor*, supra; *Simon*, supra.) Defendant's reliance on *McParland v. Travelers Ins. Co.*, 302 AD2d 328 (1st Dept. 2003) is misplaced, as the plaintiff in that action made no claim

that the owner exercised supervisory control over the worksite to be liable under Labor Law § 200. Further, the *McParland* decision does not discuss a scenario where the general contractor was unaware of the sub-subcontractor, as argued by defendant.

Sciame's motion for summary judgment as to plaintiff's causes of action under Labor Law § 241(6) based upon Industrial Code §§ 23-1.7 and 23-1.11 is denied. There are issues of fact as to whether the worksite was an area normally exposed to falling objects or materials that preclude summary judgment. (*Cf. Amato v. State*, 241 AD2d 400 [1st Dept. 1997].) There are also issues of fact as to whether the nails used by the workers caused the scaffold to collapse. (See *Springer v. Keith Clark Pub. Co.*, 171 AD2d 914 [3rd Dept. 1991].)

However, Sciame's motion for summary judgment as to plaintiff's causes of action under Labor Law § 241(6) based upon Industrial Code §§ 23-1.1, 23-1.2, 23-1.3, 23-1.4, and 23-1.5 is granted. The law is clear that these are general application codes that cannot form the basis of a Labor Law § 241(6) violation. (See *Gordineer v. County of Orange*, 205 AD2d 584 [2nd Dept. 1994]; *Creamer v. Amsterdam High School*, 241 AD2d 589 [3rd Dept. 1997].) Further, Sciame's motion for summary judgment as to Labor Law § 241(6) claims based upon Industrial Code § 23-1.15 is granted. Defendant demonstrated that this statute is not applicable, as it only regulates the use of safety railings and does not mandate their use under these facts. As plaintiff failed to present any evidence other than general speculation as to the code section's applicability, Sciame's motion is granted. (See *Katrakazos v. Frank Bahar, Inc.*, 297 AD2d 332 [2nd Dept. 2002].)

Sciame's motion for summary judgment against defendant Eagle One is denied. As there are issues of fact as to Sciame's supervision and control over the worksite, summary judgment is not warranted. (See *Anarumo v. Slattery Associates, Inc.*, 298 AD2d 339 [2nd Dept. 2002].)

Dated: June 9, 2006

Augustus C. Agate, J.S.C.