To Be Argued By:
Danny C. Lallis
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Appellate Division, First Department Case No. 2021-00357

Court of Appeals

STATE OF NEW YORK

FELIPE RUISECH and MARTHA RUISECH,

Plaintiffs-Appellants,

against

STRUCTURE TONE GLOBAL SERVICES, INC.,
TISHMAN SPEYER PROPERTIES, L.P. and 200 PARK LP,

Defendants-Respondents,

(Caption Continued on the Reverse)

BRIEF FOR SECOND THIRD-PARTY DEFENDANT/ THIRD THIRD-PARTY DEFENDANT-RESPONDENT A-VAL ARCHITECTURAL METAL III, LLC

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METROPOLITAN LIFE INSURANCE COMPANY,

Defendant,

and

CBRE INC.,

Defendant-Respondent.

TISHMAN SPEYER PROPERTIES, L.P. and 200 PARK LP,

Third-Party Plaintiffs-Respondents,

against

CBRE INC.,

Third-Party Defendant-Respondent.

STRUCTURE TONE GLOBAL SERVICES, INC.,

Second Third-Party Plaintiff-Respondent,

against

A-VAL ARCHITECTURAL METAL III, LLC,

Second Third-Party Defendant-Respondent.

TISHMAN SPEYER PROPERTIES, L.P. and 200 PARK LP,

Third Third-Party Plaintiffs-Respondents,

against

A-VAL ARCHITECTURAL METAL III, LLC,

Third Third-Party Defendant-Respondent.

RULE 500.1(F) CORPORATE DISCLOSURE STATEMENT

Second and Third Third-Party Defendant-Respondent A-Val Architectural Metal III, LLC is not a publicly held corporation. It has no subsidiaries or affiliates that are publicly traded.

TABLE OF CONTENTS

RULE 500.1(F) CORPORATE DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

COUNTER-QUESTIONS PRESENTED 5

COUNTER-STATEMENT OF FACTS 6

A. Background 6

B. The First Department's Decision 7

C. Plaintiff's Application for Leave to Appeal 8

ARGUMENT 9

POINT I: Plaintiff's Applicatoin for Leave Was Untimely 9

POINT II: Plaintiff's Labor Law § 241(6) Claim Fails Due to the Integral-to-the-Work Defense 12

POINT III: The Industrial Code Sections Relied Upon by Plaintiff are Inapplicable 16

POINT IV: Plaintiff's Labor Law § 200 and Common Law Negligence Claims Were Correctly Dismissed 18

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 21

TABLE OF AUTHORITIES

CASES

Avgush v. Jerry Fontan, Inc.,
167 A.D.3d 484 (1st Dep't 2018) 10

Bacalokonstantis v. Nichols,
141 A.D.2d 482 (2d Dep't 1988) 11

Bazdaric v. Almah Partners LLC,
2024 WL 674245 (N.Y. 2024) 12, 16

Cabrera v. Sea Cliff Water Co.,
6 A.D.3d 315 (1st Dep't 2004) 13

Cooper v. Sonwil Distrib. Ctr., Inc.,
15 A.D.3d 878 (4th Dep't 2005) 12

City Bank Farmers Tr. Co. v. Cohen,
300 N.Y. 361 (1950) 10

Doran v. JP Walsh Realty Group, LLC,
189 A.D.3d 1363, 1364 (2d Dep't 2020) 18

Dyskiewicz v. City of New York,
218 A.D.3d 546 (2d Dep't 2023) 18

Fonck v. City of New York,
198 A.D.3d 874 (2d Dep't 2021) 18

Ghany v. BC Tile Contractors, Inc.,
95 A.D.3d 768 (1st Dep't 2012) 12, 13

Haverstraw Park, Inc. v. Runcible Props. Corp.,
33 N.Y.2d 637 (1973) 9

Johnson v. 923 Fifth Ave. Condo.,
102 A.D.3d 592 (1st Dep't 2013) 14

Kane v. City of Brooklyn,
114 N.Y. 586 (1889) 11

Krzyzanowski v. City of New York,
179 A.D.3d 479 (1st Dep't 2020) 13

Messina v. City of New York,
300 A.D.3d 121 (1st Dep't 2002) 17

Moye v. Alphonse Hotel Corp.,
205 A.D.3d 907 (2d Dep't 2022).....12

Pereira v. New School,
148 A.D.3d 410 (1st Dep't 2017) 15

Rodriguez v. Dormitory Auth. of State,
104 A.D.3d 529 (1st Dep't 2013) 19

Rodriguez v. New York City Housing Auth.,
209 A.D.2d 260 (1st Dep't 1994) 17

Rose v. A. Servidone, Inc.,
268 A.D.2d 516 (2d Dep't 2000).....16

Salinas v. Barney Skanska Const. Co.,
2 A.D.3d 619 (2d Dep't 2003).....16

Singh v. Young Manor, Inc.,
23 A.D.3d 249 (1st Dep't 2004) 15

Tighe v. Hennegan Const. Co., Inc.,
48 A.D.3d 201 (1st Dep't 2008) 15

W. Rogowski Farm, LLC v. County of Orange,
79 A.D. 102 (2d Dep't 2019).....9

Zieris v. City of New York,
93 A.D.3d 479 (1st Dep't 2012) 13

STATUTES

N.Y. G.C.L. § 20 .....1, 11

N.Y. Labor Law § 200 ..... 2, 4, 5, 18

N.Y. Labor Law § 241 ..... 3, 4, 5, 12, 15, 18

RULES

22 N.Y.C.R.R. §§ 202.5 10

C.P.L.R. § 2103 10

C.P.L.R. § 2211 10

C.P.L.R. § 5513 ..... 1, 9, 10

OTHER AUTHORITIES

Industrial Code § 23-1.7 ..... 3, 5, 16, 17, 18

PRELIMINARY STATEMENT

Third-Party Defendant-Respondent A-Val Architectural Metal III, Inc. ("A-Val") respectfully contends that the Order of the Appellate Division, First Department, should be entirely affirmed and that Plaintiff-Appellant's ("Plaintiff")[1] appeal is without a basis in fact or law.

First, Plaintiff's application for leave to this Court was untimely, which means that there is a lack of jurisdiction to consider this appeal in the first instance. Per New York's General Construction Law ("NY GCL) § 20, the calculating of time begins one day after the deadline begins to run, which is "exclusive of the calendar day from which the reckoning is made. Thus, it is only the date that the deadline begins to run which is excluded from the calculation. Therefore, the deadline day is included in the calculation and there is no authority permitting an extra day to file after the expiration of the deadline. CPLR § 5513(b) requires a motion for permission to appeal to be made within thirty days after service of a copy of the order and written notice of entry. Here, Plaintiff received a copy of the order and written notice of entry on November 22, 2022, but the motion for leave to appeal was not served until December 23, 2022. Accordingly, in this case, Plaintiff's leave

[1] Although this lawsuit is brought on behalf of Plaintiff, Felipe Ruisech and his wife, Martha Ruisech, Mrs. Ruisech's claims are entirely derivative of Mr. Ruisech's claims. As such, and for the sake of clarity, the word "Plaintiff" as used throughout shall refer to Mr. Ruisech, unless otherwise stated.

application was untimely filed one day after the deadline expired, and, as such, this appeal should be dismissed as untimely.

Second, even ignoring the untimeliness of the application, the First Department's decision should be affirmed on the merits. In this personal injury lawsuit, Plaintiff claimed to be injured when his feet slightly slipped forward on pebbles created during an ongoing construction project. To put things in context, the work was being performed on the nineteenth floor of a building owned by Defendant 200 Park LP ("200 Park") and leased by CBRE, Inc. ("CBRE"). CBRE hired Structure Tone Global Services, Inc. ("Structure Tone") as the general contractor, and A-Val was retained to performed the glass work.

Plaintiff was a glazier employed by A-Val at the time of the alleged incident. Plaintiff was in the process of moving a glass pane that was intended to divide a hallway and an interior office. As he was moving the glass along with other workers, his foot slipped on tiny pebbles that were allegedly on the floor, which caused him to strain his back. It is undisputed that the pebbles were caused by the glass installation work that he and his coworkers were performing. These pebbles were created in order to form the channels in the concrete floor for the glass to be installed. The pebbles were created by A-Val as part of the installation of installing the glass partitions. Since the pebbles were created as part of the ongoing glass installation work, Plaintiff's claim under Labor Law § 241(6) is without a basis in law.

On appeal, Plaintiff attempts to argue that there is an issue of fact regarding discarded garbage or other materials on the floor where Plaintiff's foot slipped. However, Plaintiff testified that he slipped on pebbles, and not on any other debris, and he testified that what he slipped on was integral to the work he was performing. In this regard, he testified that it was standard practice to take "debris" or sheetrock from the project and place it on the ground to protect the glass from being damaged by the unfinished floor.

Ultimately, as the First Department rightly held, the industrial code sections relied on by Plaintiff are not applicable in this case. Specifically, construction debris is not a slipping hazard within the meaning of Industrial Code § 23-1.7(d) and Plaintiff never tripped, which makes Industrial Code §§ 23-1.7(e)(1) and (e)(2) inapplicable. To the extent Plaintiff seeks to rely on his expert's affidavit regarding the Industrial Codes, such an argument is misplaced as the applicability of the codes is solely a question of law for the Court.

Third, the First Department correctly dismissed all common law claims and claims under Labor Law § 200 because Plaintiff's foot slipped on pebbles that were inherent to the work of A-Val. Moreover, there was no prior notice to the defendants regarding any condition at issue.

As will be fully demonstrated in greater detail below, it is respectfully submitted that Plaintiff's appeal should be denied and the First Department's decision should be, in all things, affirmed.

COUNTER-QUESTIONS PRESENTED

1. Was plaintiff's leave application untimely?

The First Department never reached this question. This Court should answer "yes."

2. Was the Labor Law § 241(6) claim properly dismissed where the construction debris involved in the accident was created as part of the ongoing work?

The First Department answered, "yes." This Court should affirm.

3. Was the Labor Law § 241(6) claim properly dismissed where the sections of the Industrial Code relied upon by Plaintiff are inapplicable?

The First Department answered, "yes." This Court should affirm.

4. Were the Labor Law § 200 and common-law negligence claims properly dismissed against the defendants?

The First Department answered, "yes." This Court should affirm.

COUNTER-STATEMENT OF THE FACTS

A. Background

The alleged incident that gave rise to this matter occurred on June 2, 2011. At that time, Plaintiff was employed as a glazier by A-Val and while he was carrying a plate of glass, he injured himself when his foot slipped slightly forward on tiny or "minute" pebbles during the ongoing construction work on the nineteenth floor of the building located 200 Park Avenue in Manhattan ("the project"). (R. 458, 466.)

At that time, Defendant 200 Park owned the building, and CBRE leased the nineteenth floor. (R. 1276, 1277-1278, 1280, 1289.) CBRE hired Defendant Structure Tone as the general contractor, which then hired A-Val perform glass installation work (R. 458-459, 461-462, 467, 472-473, 1103-1122, 1238.) Structure Tone's project superintendent, Bryan Orsini, testified that Structure Tone had been retained to demolish the nineteenth floor and to rebuild it in accordance with CBRE's specifications. (R. 1044-1045,1068.)

Plaintiff testified that his responsibilities as a glazier included all work involving glass and "all types of glass installations." (R. 441, 466.) At the time of the incident, he – along with three other coworkers – was moving glass within an open office space, which was to be utilized as a hallway divider. (R. 466, 485, 616.) He and three other coworkers picked up one of eight pieces of glass, and were lifting it into position, which was about ten feet away. (R. 479, 484-486, 487.) The glass

was lifted using suction cups and carried to the area where it was to be installed. (R. 486, 489-491.) The glass was then stood up, and Plaintiff and four-coworkers were going to install the glass into a channel that had been created in the unfinished floor. (R. 489-492.) As the glass was being lifted into place, according to Plaintiff, two of the other workers were having difficulty, and Plaintiff testified as he lifted the glass into place, his foot slipped a few inches forward toward the channel:

> When I lifted up the glass and when I went to install the glass . . . there was something on the ground, it must have been pebbles, it must have been something that when I put my foot down, my foot slipped.

(R. 497, 499, 635-637, 640-47). At this point, his "upper body jolted backwards" and he used his strength to prevent the glass from striking him, which resulted in injuries to his back. (R. 497, 499, 635-637, 640-47). Plaintiff testified that he slipped on small debris on the unfinished concrete floor. (R. 500, 502, 556-557.) He testified that he had not previously complained about the small pebbles. (R. 826.) Plaintiff testified that the pebbles were the result of the track or channel work (or "chip" work) performed by A-Val, which occurred shortly before the accident, and which was done in order to permit the glass to be installed. (R. 490-492, 501, 503-504).

B. The First Department's Decision

On appeal, the First Department held that Plaintiff's accident occurred as part of his work as he tried to install the glass and he "stepped forward to place the glass

into the track, he stepped on minute pebbles near the track." (R. 2639.) As such, the Court dismissed the Labor Law § 241(6) claim. Specifically, the tiny pebbles did not create a "slippery condition" on the floor nor was there a "foreign substance that may cause slippery footing" within the meaning of Industrial Code § 23-1.7(d). Further, the open area where Plaintiff fell was not a passageway within the meaning of Industrial Code § 23-1.7(e)(2). (R. 2639.) Additionally, the claim failed because "the pebbles were debris that were an integral part of the construction work. The integral to the work defense applies to things and conditions that are an integral part of the construction, not just the specific task a plaintiff may be performing at the time of the accident." (R. 2639.)

The claims under Labor Law § 200 were also dismissed because the Defendants did not create the tiny pebbles nor did they have notice of the tiny pebbles. (R. 2639-2640.) Further, the pebbles were not an existing defect or dangerous condition on the property but were "created by Plaintiffs employers' work and the manner in which it was performed." (R. 2640.)

C. Plaintiff's Application for Leave to Appeal.

On November 22, 2022, Plaintiff was served via NYSCEF with notice of entry of the Order denying his motion to reargue and for leave to appeal. Plaintiff filed the Motion for Leave to Appeal to this Court on December 23, 2022.

ARGUMENT

POINT I

PLAINTIFF'S APPLICATION FOR LEAVE WAS UNTIMELY[2]

Plaintiff's application for leave to this Court was untimely, which means that there is a lack of jurisdiction to consider this appeal. The First Department's Order was dated August 16, 2022, and it was entered by the Clerk on that same date. (R. 2636-2644.) Per New York's General Construction Law ("NY GCL) § 20, the calculating of time begins one day after the deadline begins to run, which is "exclusive of the calendar day from which the reckoning is made."

Here, written Notice of Entry of the Appellate Division Order denying their motion for leave was served via NYSCEF on November 22, 2022. However, Plaintiff's motion for leave to appeal was not made until December 23, 2022. Where permission to appeal has been denied by Order of the Court whose determination is sought to be reviewed, a motion for permission to appeal must be made *within* thirty days after service of a copy of the Order and written Notice of Entry. See CPLR § 5513(b). This thirty-day time period for filing a motion to appeal is a nonwaivable jurisdictional limitation. Haverstraw Park, Inc. v. Runcible Props. Corp., 33 N.Y.2d 637, 637 (1973); see also W. Rogowski Farm, LLC v. County of Orange, 79 A.D.

[2] Please note that A-Val incorporates by reference and adopts on appeal the arguments raised by Structure Tone, CBRE, and 200 Park.

102, 108 (2d Dep't 2019) ("The time period for filing a Notice of Appeal is jurisdictional in nature and non-waivable.").

Here, Plaintiff initiated this action through NYSCEF, and he consented to receive all filings through NYSCEF in the First Department and Trial Court. See CPLR § 2103(b)(20, (b)(7); 22 N.Y.C.R.R. §§ 202.5-bb(a), (c)(1). And, a party may serve Notice of Entry of an Order electronically by filing it "with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer." 22 N.Y.C.R.R. § 202.5(b)(h)(3).

Plaintiff admits that he was served with notice of entry of the Order denying his motion to reargue and for leave to appeal on November 22, 2022. Thus, it is undisputed that the thirty-day time period was commenced on November 22, 2022. Therefore, Plaintiff was required to move for permission to appeal by December 22, 2022. See CPLR § 5513(b). The failure to do so means the motion was untimely. Cf. Avgush v. Jerry Fontan, Inc., 167 A.D.3d 484, 485 (1st Dep't 2018) (explaining that the defendants properly electronically served the order with notice of entry via NYSCEF and dismissed the appeal because "the time period for filing a Notice of Appeal is nonwaivable and jurisdictional [and] it does not matter that plaintiff served and filed his Notice of Appeal just one day late").

A motion is made when it is served: "A motion on notice is made when a notice of the motion or an order to show cause is served." CPLR § 2211; City Bank

Farmers Tr. Co. v. Cohen, 300 N.Y. 361, 367 (1950) ("It is statutory law that [a] motion is made when a notice thereof or an order to show cause is duly served.").

Contrary to Plaintiff's position, the computation of time in calculating a deadline does not Begin on day two or the day after the deadline expires. (App. Br. at p. 17.) Rather, the calculating begins one day after the deadline begins to run; the computation is "exclusive of the calendar day from which the reckoning is made." N.Y. GCL § 20. Thus, while the day the counting begins is excluded from the calculation, the deadline day is included in the calculation. There is no authority or logical basis to assert that a litigant is entitled to one extra day after the deadline expires. Bacalokonstantis v. Nichols, 141 A.D.2d 482, 484 (2d Dep't 1988) ("The proper method when computing time periods is to exclude the day of the event and to include the last day up to midnight of that day."); Kane v. City of Brooklyn, 114 N.Y. 586, 594 (1889) ("The general rule for the computation of time in this state is to exclude the first day and to include the last").

It is undisputed that Plaintiff was served with written Notice of Entry of the Appellate Division Order denying their motion for leave to appeal via NYSCEF on November 22, 2022. Indeed, Plaintiff acknowledges this service in the Preliminary Appeal Statement. It is also undisputed that Plaintiff's motion for leave to appeal was made on December 23, 2022, which is *thirty-one* days after service. Therefore, the motion for leave to appeal is untimely and the Court lacks jurisdiction over this

appeal. As such, it is respectfully submitted that this appeal should be dismissed as untimely.

POINT II

PLAINTIFF'S LABOR LAW § 241(6) CLAIM FAILS DUE TO THE INTEGRAL-TO-THE-WORK DEFENSE

The integral-to-the-work defense "applies only when the dangerous condition is inherent to the task at hand and not . . . when a defendant or third party's negligence created a danger that was avoidable without obstructing the work or imperiling the worker. Bazdaric v. Almah Partners LLC, 2024 WL 674245, at *5 (N.Y. 2024). When small stones or demolition debris are an inherent result of the work that is being performed, this defense is applicable. See, e.g., Moye v. Alphonse Hotel Corp., 205 A.D.3d 907, 908 (2d Dep't 2022) (dismissing 241(6) claim because "the debris upon which the plaintiff allegedly tripped was an integral part of the ongoing demolition work being performed"); Ghany v. BC Tile Contractors, Inc., 95 A.D.3d 768, 768-69 (1st Dep't 2012) (explaining that the small stone on which the plaintiff allegedly fell was an unavoidable and inherent result of the work that involved the delivery of stones to the project site).

All Departments agree that when an accident is caused by an accumulation of debris that was an inherent result of the ongoing construction work, there is no basis for liability under Labor Law § 241(6). Moye, 205 A.D.3d at 908; Ghany, 95 A.D.3d at 768-69; Cooper v. Sonwil Distrib. Ctr., Inc., 15 A.D.3d 878 (4th Dep't 2005). For

example, in Cabrera v. Sea Cliff Water Co., 6 A.D.3d 315 (1st Dep't 2004), the worker was injured due to the accumulation of sheet rock dust and sawdust, which his coworkers had crated by cutting sheet rock and plywood in preparation for their work. Id. at 316-17.

Here, Plaintiff testified that the pebbles were caused by the track and channel work performed by other A-Val workers in preparation for the installation of the glass partition. Plaintiff's incident hen occurred while he was installing the glass into the channels. Thus, this presents a clear scenario where the integral-to-the-work defense applies because the pebbles upon were "'an unavoidable and inherent result' of the work being performed at the site" and integral to the project. See Ghany, 95 A.D.3d at 768-69.

On appeal, Plaintiff appears to argue that since Plaintiff himself did not personal create the pebbles, then the defense does not apply. (App. Br. at 30.) This is incorrect. The integral-to-the-work defense "applies to things and conditions that are an integral part of the construction, not just to the specific task a plaintiff may be performing at the time of the accident." Krzyzanowski v. City of New York, 179 A.D.3d 479, 481 (1st Dep't 2020) (internal quotations omitted). The fact that Plaintiff was not one of the workers who dug the channel to install the glass partition is not relevant as it was undisputed that the pebbles were an inherent byproduct of the ongoing work of installing the glass into place. See Zieris v. City of New York,

93 A.D.3d 479, 479 (1st Dep't 2012) (holding that the "argument that the rivet [that caused the accident] did not originate from the work that [the plaintiff] himself was performing is unavailing" because "rivets left by coworkers, who were performing the same rivet removal work, could still be deemed an integral part of the work").

Similarly, the authorities on which Plaintiff relies on appeal are equally misplaced. For example, Plaintiff misconstrues Johnson v. 923 Fifth Avenue Condominium, 102 A.D.3d 592 (1st Dep't 2013), when arguing that only "purposefully laid" or permanent objects in a construction site will be sufficient to implicate the integral-to-the-work defense. (App. Br. at p. 26.) In Johnson, the object over which the plaintiff tripped had been "purposefully laid. Therefore, the Court held that it was clearly an "integral part of the work." 102 A.D.3d at 593. However, the Court did not hold that *only* "purposefully laid" or "permanent" objects would ever satisfy the integral to the work defense. Indeed, case law is replete with examples demonstrating that this is not the case.

Finally, Plaintiff is incorrect to contend that the "minute" pebbles at issue in this case were some random construction debris or discarded construction materials that had accumulated in the location. Rather, Plaintiff testified that he slipped on minute pebbles in the location where the channel had been constructed by his coworkers, which was necessary for the installation of the glass. (R. 490-492, 501, 503-504.) He further testified that it was standard practice for A-Val to take such

debris or sheetrock from the project and place it on the ground so the glass would not directly touch the floor. (R. 600, 826-27.) Moreover, Plaintiff testified that the project and glass installation work that he was involved in was still ongoing and Plaintiff was, in fact, attempting to install the glass at the time of the alleged incident. (R. 485, 616.) Thus, Plaintiff's reliance on cases involving accumulation of debris or objects unrelated to the work at issue or not created by plaintiff's coworkers as part of the ongoing job is misplaced. See, e.g., Pereira v. New School, 148 A.D.3d 410, 412 (1st Dep't 2017) (explaining that the "discarded concrete" on which the plaintiff fell did not involve plaintiff's work as he did not work with concrete); Tighe v. Hennegan Const. Co., Inc., 48 A.D.3d 201, 202 (1st Dep't 2008) (explaining that the plaintiff fell over construction debris created by another contractor doing demolition work and not involving the plaintiff's work as an electrical contractor); Singh v. Young Manor, Inc., 23 A.D.3d 249, 249 (1st Dep't 2004) (noting that the plaintiff slipped on a random nail contained in a pile of debris near where he intended to work).

Here, the debris at issue was created as part of the ongoing glass installation work, which was necessary to install the glass partition at issue. Based on the well-settled law, and the undisputed facts established in this case, the dismissal of Plaintiff's Labor Law § 241(6) claim based on the integral-to-the-work doctrine should be affirmed.

POINT III

THE INDUSTRIAL CODE SECTIONS RELIED UPON BY PLAINTIFF ARE INAPPLICABLE

Plaintiff relies on Sections 23-1.7(d), (e), and (e)(2) of the Industrial Code to support his Labor Law 241(6) claim, but, as the First Department correctly held, these sections of the Industrial Code are inapplicable.

First, Industrial Code § 23-1.7(d) is inapplicable because that section only applies to specifically defined and similarly related conditions: "ice, snow, water, grease, and any other foreign substance which may cause slippery footing." Here, it is undisputed that none of these conditions are present. Plaintiff's reliance on the Bazdaric case is unavailing because the plaintiff slipped on a "plastic covering" that was "not a component of the escalator" where plaintiff was painting nor was it necessary to the escalator's functionality. 2024 WL 67245 at *4. Moreover, the facts in the record established that the plastic covering being utilized was not the correct type for the work at issue and that a non-slippery covering existed. Id. Thus, Bazdaric is factually dissimilar from the matter at hand.

Here, Plaintiff testified to having been injured due to minute pebbles or debris created by the very construction project on which he was working. (R. 490-492, 501-504.) These conditions are not the type of slippery hazard or foreign substance contemplated by Section 23-1.7(d). See, e.g., Salinas v. Barney Skanska Const. Co., 2 A.D.3d 619, 622 (2d Dep't 2003) (slipping on demolition debris); Rose v. A.

Servidone, Inc., 268 A.D.2d 516, 518 (2d Dep't 2000) (unlevel ground "strewn with dirt, pebbles, blacktop, and concrete"). Plaintiff's reliance on his expert's own conclusory statement that pebbles are a "foreign substance" does not alter this conclusion nor does it change the well-established case law.

Second, since Plaintiff testified that he slipped on minute pebbles and did not trip, Industrial Code §§ 23-1.7(e)(1) and (e)(2) do not apply because they only pertain to "tripping" hazards: 12 N.Y.C.R.R. 23-17(e)(1) and (e)(2), which protect workers from tripping hazards, are inapplicable to the facts of this case, since the accident was the result of a slipping hazard, not a tripping hazards, as the plaintiff testified at his deposition that he 'slipped.'" Dyskiewicz v. City of New York, 218 A.D.3d 546, 548 (2d Dep't 2023).

Plaintiff's argument that his expert creates an issue of fact on this issue is misplaced. "The interpretation of an Industrial Code regulation and determination as to whether a particular condition is within the scope of the regulation present questions of law for the court." Messina v. City of New York, 300 A.D.3d 121, 123 (1st Dep't 2002); see also Rodriguez v. New York City Housing Auth., 209 A.D.2d 260, 260-61 (1st Dep't 1994). Neither Plaintiff's counsel's statements nor the subjective statements from his expert are relevant to this analysis. Here, it is undisputed that Plaintiff "slipped" on "minute" debris that were created as a necessary part of his and his co-workers' ongoing glass installation work.

Finally, the area in which Plaintiff was working at the time of the alleged incident was not a passageway within the meaning of Industrial Code § 23-1.7(e)(2). At the time of the incident, he – along with three other coworkers – was moving glass within an open office space, which was to be utilized as a hallway divider. (R. 466, 485, 616.) He and three other coworkers picked up one of eight pieces of glass, and were lifting it into position, which was about ten feet away. (R. 479, 484-486, 487.) Therefore, there is no legal basis to apply Section 23-1.7(e)(2) under the facts of this matter.

Therefore, in addition to the foregoing arguments, the dismissal of the Labor Law § 241(6) claim can also be affirmed because the industrial codes relied upon by Plaintiff are inapplicable to the facts of this case.

POINT IV

PLAINTIFF'S LABOR LAW § 200 AND COMMON LAW NEGLIGENCE CLAIMS WERE CORRECTLY DISMISSED

The First Department correctly dismissed the Labor Law § 200 and common-law negligence claims against the defendants as plaintiff fell over pebbles created by his coworkers during ongoing work and the defendants did not have notice of or create the pebbles on the unfinished floor.

First, a claim under Labor Law § 200 does not extend to conditions that are inherent in the work the employee is to perform. Fonck v. City of New York, 198 A.D.3d 874, 875 (2d Dep't 2021); see also Doran v. JP Walsh Realty Group, LLC,

189 A.D.3d 1363, 1364 (2d Dep't 2020) (explaining that "the debris int eh area where the accident occurred was an unavoidable and inherent result of the ongoing tree removal work"). Here, the testimony establishes that Plaintiff's accident occurred due to the presence of pebbles where he was installing a glass partition, which were created by the installation of a trench for purposes of installing the glass.

Second, as Plaintiff testified, the pebbles were created by his coworkers and Plaintiff did not complain about their existence. (R. 502, 826.) In fact, Plaintiff testified that the pebbles at issue were "minute" and that he did not even see them until after his foot slid forward. (Id.) There is no evidence in the record to establish that any defendants created or had notice of the condition at issue. Rodriguez v. Dormitory Auth. of State, 104 A.D.3d 529, 530 (1st Dep't 2013) (holding that the plaintiff's testimony failed to raise an issue of fact where he had seen similar hazards on the floor on the day of the accident and the day before).

Based on the foregoing, the decision of the First Department should be affirmed.

CONCLUSION

Based on the foregoing, the undersigned respectfully submits that this appeal should be dismissed as untimely; the decision of the Appellate Court, First Department, should be affirmed; and that the Court should award such other and further relief deemed appropriate and just.

Dated: May 10, 2024
White Plain, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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White Plain, New York

Respectfully submitted,

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