



QUESTION OF FACT WHETHER OWNER/GENERAL CONTRACTOR FAILED IN THEIR NONDELEGABLE DUTY TO SHUT OFF THE ELECTRICITY IN A BUILDING UNDERGOING DEMOLITION; PLAINTIFF RECEIVED AN ELECTRIC SHOCK WHEN HE STRIPPED INSULATION FROM AN ELECTRIC CABLE; PLAINTIFF'S LABOR LAW 241(6) CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED (FOURTH DEPT).

The Fourth Department determined the property owner/general contractor's motion for summary judgment on the Labor Law 241(6) cause of action should not have been granted. Plaintiff received an electric shock when cutting away the insulation of an electric cable as part of a demolition project. Plaintiff was to make the wiring in the office safe and was going to test the voltage of the wires lying on the floor when he received the shock:

... [T]he court erroneously granted defendants' motion with respect to the Labor Law § 241 (6) claim against them insofar as that claim is predicated upon alleged violations of 12 NYCRR 23-1.13 (b) (4) and 23-3.2 (a) (2) and (3), and we therefore modify the order accordingly. The first of those provisions of the Industrial Code states that "[n]o employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means" (12 NYCRR 23-1.13 [b] [4] ...). The latter provisions state, inter alia, that electric lines must be "shut off and capped or otherwise sealed" before any demolition project begins (12 NYCRR 23-3.2 [a] [2] ...) and, if it is necessary to maintain an electric line during demolition, "such lines shall be so protected with substantial coverings or shall be so relocated as to protect them from damage and to afford protection to any person" (12 NYCRR 23-3.2 [a] [3]). Defendants failed to meet their initial burden of establishing that they "did not violate the regulations, that the regulations are not applicable to the facts of this case, or that such violation was not a proximate cause of the accident" We conclude that there are issues of fact whether, inter alia, defendants' failure in their nondelegable duty to shut off the electricity was a proximate cause of the accident [Winters v Uniland Dev. Corp., 2019 NY Slip Op 05440, Fourth Dept 7-5-19](#)