LABOR LAW 200 AND NEGLIGENCE CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED; THE ACCIDENT WAS RELATED TO MATERIAL ON THE FLOOR WHICH CAUSED THE WHEELS OF A CART PLAINTIFF WAS PUSHING TO GET STUCK; DEFENDANT DID NOT DEMONSTRATE WHEN THE FLOOR WAS LAST INSPECTED OR CLEANED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the Labor Law 200 and common law negligence causes of action should not have been dismissed. Plaintiff was pushing a cart when the wheels got stuck. When a coworker kept pulling the cart plaintiff hand was pinned and the tip of his index finger was severed. Plaintiff alleged there were steel rods (which were integral to the work) and garbage on the floor:

> A defendant will be found to have "failed to establish that they lacked constructive notice of the dangerous condition that caused plaintiff's injury, [if] they submitted no evidence of the cleaning schedule for the work site or when the site had last been inspected before the accident" … .
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> Here, plaintiff alleges that there was "garbage" as well as rods on the floor that impeded the cart's movement. Bravo's [the builder's] contract explicitly required it to look for dangerous and hazardous conditions on a daily basis, and to keep the workplace safe. However, since Bravo submitted no evidence as to its inspection and cleaning schedule of the worksite, this claim must be reinstated.
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> It is not relevant whether the rods on which the cart got stuck were an open and obvious condition that plaintiff could have seen, since that issue raises a question of plaintiff's comparative negligence and does not bear on defendant's own liability … . Spencer v Term Fulton Realty Corp., 2020 NY Slip Op 02855, First Dept 5-14-20