At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the day 9th of December 2024.

PRESENT:

HON. ANNE J. SWERN, J.S.C.

DEORAJ BADLOO and LYSTRA BADLOO,

Plaintiff(s),

-against-

THE CITY OF NEW YORK, NYC FERRY FLEET, LLC, NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, HORNBLOWER GROUP, INC., HNY FERRY, INC.,

Defendant(s).

Index No.: 515084/2020

Calendar No.: 12

Motion Seq.: 5

Oral Argument Date: 12/05/2024

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion, Affirmation, Memorandum of Law, Statement of Material Facts and Exhibits (NYSCEF 100-117)	1, 2
Affirmation in Opposition, Memorandum of Law Statement of Material Facts and Exhibit (NYSCEF 119-121)	3
Reply Memorandum of Law (NYSCEF 123)	4

Upon the foregoing papers, and after oral argument, defendants' motion for summary judgment pursuant to CPLR § 3212 is decided as follows:

Before oral argument commenced, the Court conducted a remittal proceeding on the record and the parties consented to proceed.

Plaintiff filed this action to recover damages under the "Jones Act" for personal injuries sustained on 12/31/2019. The following facts are undisputed: Plaintiff was injured in the course of his employment as an electrician with HNY Ferry, LLC, a subsidiary of Hornblower Group, Inc.,[1] aboard the Rainbow Cruise Ferry that was moored at the Brooklyn Navy Yard, Pier C.

[1] *See* defendants' deposition transcript page and line numbers 10:10-12 and 13:3-8 (Ex. 7, NYSCEF #108).

During the six months of his employment, his duties were performed only while the ferry was moored or "docked" and was not a member of the vessel crew.[2] Plaintiff was never on the open seas while the ferry was "in navigation." (*See also* plaintiff's Statement of Material Facts ¶¶1-5 [NYSCEF #122).

The director of engineering at the time of the accident testified on behalf of defendants (NYSCEF #108).[3] He testified that the Rainbow Cruise Ferry was part of a fleet owned by the New York City Economic Development Corporation (NYCED) and the City of New York (NYC).[4] NYC Ferry Fleet, LLC constructed the fleet of vessels but did not operate them.[5] HNY Ferry, LLC (plaintiff's employer), a subsidiary of Hornblower Group, Inc., operated the Rainbow Cruise Ferry.[6] Plaintiff worked the night shift from 10:00 p.m. to 6:30 a.m.[7]

Based on the foregoing, defendants' motion to dismiss based on the exclusivity of the Longshore and Harbor Workers' Compensation Act is granted (*Doty v. Tappan Zee Constructors, LLC*, 831 Fed. Appx. 10 [2d Cir. 2020]). Plaintiff's reliance on *Baucom v. Sisco Stevedoring, LLC*, 2008 U.S. Dist. LEXIS 7724 (SD Alabama) and *Lara v. Harveys Iowa Management Co.*, 109 F. Supp. 2d 1031 (SD Iowa 2000) is misplaced. Although Baucom worked a six-hour shift while the vessel was docked, he "ate, slept, and showered on board" because his employer required him to live on the ship for 24 hours on the days he was scheduled to work (2008 U.S. Dist. LEXIS 7724 at p.7). In *Lara,* a question of fact existed because (1) pursuant to the corporate employee handbook, plaintiff would be considered a "Jones Act" employee if she spent 30% or more of her working time on the vessel, (2) the return-to-work form signed by the employer, reflected that her accident was a "sea-based injury" under the Jones Act and not a land injury requiring workers' compensation benefits, and (3) the employer conceded that although the vessel was docked, it was "a vessel in navigation" (109 F. Supp. 2d 1035-1036). Here, the plaintiff was not required to live on the vessel after his shift ended, and there were no concessions or policies by his employer, as in *Lara.* Plaintiff failed to raise a question of fact that he was a seaman under the Jones Act.

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[2] *See* plaintiff's deposition testimony 24:2-12 and 43:2-15 (NYSCEF #102).
[3] NYSCEF #108 at 11:24-25, 12:1-9
[4] Id. at 10:23-25, 11:1-10
[5] Id. at 10:3-9
[6] Id. at 10:10-12
[7] Id. at 13:9-19; *See also* plaintiff's deposition testimony 25:16-25 (NYSCEF #102).

Absent a cause of action under 33 U.S.C. § 905 (b) (Longshore and Harbor Workers' Compensation Act) in the complaint against the remaining defendants as the owners of the vessel, the complaint must be dismissed as to the remaining defendants. Plaintiff also has not come forward with evidence that the defendants caused, created, or otherwise had notice of the alleged condition that caused his fall. Therefore, even if the pleadings were liberally construed, plaintiff has failed to raise a question of fact as to defendants' notice of the condition and alleged failure to remedy it (*Smith v. Crounse Corp.*, 72 F.4th 799, 808-809 [7th Cir. 2023] and *Patil v. Amber Lagoon Shipping GmbH & Co.*, 2021 U.S. App. LEXIS 26221 [5th Cir. 2021]).

The Court has considered plaintiff's remaining arguments and finds them to be without merit. Therefore, based on the foregoing, it is hereby

ORDERED that defendants' motion for summary judgment dismissing the complaint is GRANTED, and it is further

ORDERED that this action is dismissed in its entirety, and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER:

Hon. Anne J. Swern, J.S.C.
Dated: 12/9/2024

For Clerks use only:
MG ✓
MD ____
Motion seq. # 5