

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31929
H/ct

_____AD3d_____

Submitted - May 24, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-04023

DECISION & ORDER

Thomas Dalvano, plaintiff-respondent, v Racanelli Construction Company, Inc., defendant third-party plaintiff-appellant, et al., defendants; Torino Industrial, Inc., third-party defendant-respondent.

(Index No. 6949/08)

Mulholland, Minion & Roe, Williston Park, N.Y. (Kriton A. Pantelidis of counsel), for defendant third-party plaintiff-appellant and defendants Long Island Lutheran Middle and High School, Lutheran High School Association, and Lutheran High School Association of Nassau and Suffolk Counties.

Cuomo LLC, New York, N.Y. (Sherri A. Jayson of counsel), for third-party defendant-respondent.

In an action to recover damages for personal injuries, the defendant third-party plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Feinman, J.), dated March 17, 2010, as denied its cross motion for summary judgment on its third-party cause of action for contractual indemnification, and denied the defendants' motion for summary judgment dismissing the causes of action to recover damages for violation of Labor Law § 200 and common-law negligence.

ORDERED that the order is affirmed insofar as appealed from, with costs payable by the appellant.

While working on a construction project at Long Island Lutheran Middle and High

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School in Nassau County, the plaintiff, an ironworker, allegedly was injured when he fell while descending a ladder which was missing a rung. The defendant third-party plaintiff, Racanelli Construction Company, Inc. (hereinafter Racanelli), was the general contractor on the project. Neither the plaintiff nor employees of Racanelli knew who owned the subject ladder.

The Supreme Court properly denied the defendants' motion for summary judgment dismissing the causes of action to recover damages for violations of Labor Law § 200 and common-law negligence, since a triable issue of fact exists as to whether the defendants had control over the work site and either created or had actual or constructive notice of the dangerous or defective condition (see *Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47; *Schultz v Hi-Tech Constr. & Mgt. Servs., Inc.*, 69 AD3d 701, 702; *Bridges v Wyandanch Community Dev. Corp.*, 66 AD3d 938, 940; *Chowdhury v Rodriguez*, 57 AD3d 121, 123; *Van Salisbury v Elliot-Lewis*, 55 AD3d 725, 726; *Keating v Nanuet Bd. of Educ.*, 40 AD3d 706, 708). Further, the Supreme Court properly denied Racanelli's cross motion for summary judgment on its third-party cause of action for contractual indemnification (see *McAllister v Construction Consultants L.I., Inc.*, 83 AD3d 1013; *George v Marshalls of MA, Inc.*, 61 AD3d 925, 929; *Callan v Structure Tone, Inc.*, 52 AD3d 334, 335-336).

DILLON, J.P., BALKIN, BELEN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court