Pilco v New York City Hous. Auth.
2024 NY Slip Op 31056(U)
March 25, 2024
Supreme Court, Kings County
Docket Number: Index No. 514553/2019
Judge: Ingrid Joseph

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25th day of March, 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

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EMELY PILCO,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY AND THE CITY OF NEW YORK,

Defendants.

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NEW YORK CITY HOUSING AUTHORITY,

Third-Party Plaintiff,

-against-

J&N CONSTRUCTION GROUP CORP.,

Third-Party Defendant.

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ORDER
Index No. 514553/2019
Motion Seq. 6-8

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	179-184; 138-159; 160-178
Opposing Affidavits/Answer (Affirmations)	201-203, 208-211; 212-219, 220-226; 204-207, 227-233
Affidavits/ Affirmations in Reply	240-243; 235; 236-239

Upon the foregoing papers in this action to recover damages for personal injuries, Emely Pilco (plaintiff) moves (Motion Seq. 6), for summary judgment, pursuant to CPLR 3212, on the issue of liability as against the defendant/third-party plaintiff, New York City Housing Authority (NYCHA) pursuant to Labor Law § 240(1). Third-party defendant, J&N Construction Group Corp. (JN), moves (Motion Seq. 7), for an order, pursuant to CPLR 3212, dismissing plaintiff's complaint against NYCHA and dismissing NYCHA's third-party claim for breach of contract for failure to procure insurance. NYCHA moves in (Motion Seq. 8), for an order, pursuant to CPLR 3212, granting it summary judgment and dismissing plaintiff's complaint, dismissing JN's counterclaim, and summary judgment on its contractual indemnification cause of action against JN.

Plaintiff commenced the instant action by filing a summons and complaint on July 2, 2019. According to the complaint, plaintiff was employed by JN as a construction worker and was at the building located at 2839 West 33rd Street in New York City (work site/building) on July 13, 2018 (NYSCEF Doc No. 1 at ¶¶ 59-60).[1] NYCHA owned the building at the work site and retained JN to perform renovations after Super Storm Sandy (NYSCEF Doc No. 180 at ¶ 5).[2] Plaintiff alleges that she was violently struck on her back and head by a tool (referred to herein as a scraper) which had fallen on plaintiff while she was bent over in the process of scooping up debris into a garbage bag on the rooftop of the building (NYSCEF Doc No. 1 at ¶¶ 62-64).[3] Plaintiff claims that she sustained serious injuries to her brain, neck, back, shoulder, knees, and ankle.[4] Plaintiff contends that NYCHA violated Labor Law §§ 200, 240 (1), 241 (6), the Occupational and Safety Health Administration (OSHA), and Rule 23 of the New York Code of Rules and Regulations (*id.* at ¶ 67). Specifically, plaintiff alleges that NYCHA violated Industrial Code §§ 23-1.5, 23-1.7, 23-1.8, 23-2.1, and 23-3.3 (*id.* at ¶ 106; NYSCEF Doc No. 107 at ¶ 30). On August 30, 2019, NYCHA filed an answer asserting fifteen affirmative defenses (NYSCEF Doc No. 3).

Thereafter, on December 29, 2020, NYCHA filed a third-party complaint against JN (NYSCEF Doc No. 26). NYCHA claims that at all relevant times, JN was working as a subcontractor at the premises pursuant to an agreement entered into by the parties (*id.* at ¶ 8). NYCHA alleges that the agreement contained an indemnification clause and an additional insured provision in its favor (*id.* at ¶ 9). NYCHA asserts four third-party claims against JN: (1) contribution; (2) common law indemnification; (3) contractual indemnification; and (4) breach of contract (*id.* at 4-6). On February 4, 2021, JN filed an answer asserting fifteen affirmative defenses and one counterclaim (NYSCEF Doc No. 29 at ¶ 39).

In support of her motion, Plaintiff asserts that NYCHA was the statutory owner as it owned the building on the date of the accident and plaintiff was a covered worker under the

[1] Pilco EBT tr dated June 15, 2021, at page 69, line 2 to page 70, line 24.
[2] Plaintiff testified that JN was hired to remove asbestos and NYCHA states that the roof was being replaced and the exterior of the building was being renovated (Pilco EBT tr dated June 15, 2021, at page 71, lines 3 to 22; NYSCEF Doc No. 180 at ¶ 21)
[3] According to plaintiff, a scraper is a large metal object weighing roughly 30 to 40 pounds used to lift flashing. JN disputes plaintiff's claim and asserts that the scraper weighs roughly four to five pounds as testified to by Rommel Vasquez (Vasquez), JN's employee (Pilco EBT tr dated June 15, 2021, at page 76, lines 8-16; Vasquez EBT tr dated October 20, 2021, at page 57, lines 3-6).
[4] Pilco EBT tr dated June 15, 2021, at page 154, line 3 to 14; page 12, line 3 to 23; and page 29 line 13 to 22.

Labor Law. Plaintiff argues that NYCHA is liable under Labor Law § 240(1) because an unsecured six-foot scraper leaning against a parapet wall on a rooftop fell on plaintiff while she was kneeling on the roof scooping up debris (NYSCEF Doc No. 180 at ¶ 31). Plaintiff asserts that NYCHA should have secured the subject scraper by laying it horizontally on the ground (*id.*).

In partial opposition, JN argues that plaintiff's motion must be denied because this is not a height related accident and there was no safety device which should have been used to prevent plaintiff's accident (NYSCEF Doc No. 201 at ¶ 3). JN contends that the accident occurred when the scraper merely tipped over from the fence and struck plaintiff (*id.*). NYCHA also opposes plaintiff's motion, arguing that her Labor Law § 240 (1) claim is meritless and should be dismissed because: (1) the scraping tool used by plaintiff and/or her co-workers during their work was not being hoisted or secured at the time it fell; (2) the tool did not require securing for purposes of the undertaking; and (3) the tool did not create an extraordinary elevation risk (NYSCEF Doc No. 208 at 2).

In reply, plaintiff asserts that the six-foot-tall metal pipe-like scraper, toppled over and struck her while she was kneeling on her hands and knees, thereby sustaining her burden that she suffered harm that flowed directly from the application of the force of gravity (NYSCEF Doc No. 240 at ¶ 3).

In support of its motion, JN argues that Labor Law § 240 (1) is inapplicable to the instant case since the scraper was on the same level as plaintiff, and simply tipped over. The scraper was not being hoisted or secured and no safety device would have prevented the accident or required securing for purposes of the undertaking (NYSCEF Doc No 139 at ¶¶ 5, 43). Next, JN contends that plaintiff's Labor Law § 241 (6) claim must be dismissed since the Industrial Code Sections plaintiff asserts were not violated (*id.* at ¶ 6). JN further asserts that plaintiff cannot establish her Labor Law § 200 or common law negligence claims against NYCHA because plaintiff's supervisors from JN were the only ones who directed or controlled her work and the existence of a scraper resting against a fence is not a defective premises condition (*id.* at ¶ 7). Lastly, JN asserts that NYCHA's breach of contract claim for failure to procure insurance must be dismissed since JN procured the requisite insurance and is defending NYCHA in the instant matter (*id.* at ¶ 8).

NYCHA submits partial opposition to the portion of JN's motion seeking dismissal of NYCHA's claim that JN failed to procure insurance. NYCHA argues that JN failed to demonstrate a prima facie case that it provided the excess insurance coverage in the minimum amount of $5 million per occurrence/$10 million general aggregate as required by their contract.

In opposition to JN's motion, plaintiff argues that she was engaged in a covered activity since she was altering the building or structure and her injuries were caused as the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation (NYSCEF Doc No. 220 at ¶ 7). Specifically, plaintiff notes that several decisions have applied Labor Law § 240 (1) to cases involving objects falling from the same elevation level where workers were standing (*id.* at ¶ 21). Plaintiff contends that NYCHA could have simply tied a piece of rope around the scraper and the fencing to give proper protection to the workers from the object falling on top of them (*id.* at ¶ 33). Plaintiff submits an affidavit from Nicholas Bellizzi (Bellizzi), a professional engineer, who opined that the scraper leaning vertically against the parapet wall was inherently unstable and unsafe and should have been secured and braced using a safety device (NYSCEF Doc No. 222 at ¶ 20). Additionally, plaintiff asserts that defendant violated Labor Law § 241 (6) based upon 12 NYCRR § 23-2.1 because leaving a six-foot-long heavy metal scraper leaning against a wall near ongoing construction where a worker is cutting/removing asbestos from the roof flooring with a gasoline operated saw, which caused a vibration in the floor, is inherently unstable and an unsafe storage of equipment. Lastly, plaintiff contends that JN failed to establish that the subject scraper did not fall on plaintiff due to a weakened floor or wall in violation of 12 NYCRR § 23-3.3 (c) requiring continued inspections.

In reply, JN asserts that plaintiff failed to raise any questions of fact in opposition to its contention that NYCHA cannot be held liable pursuant to Labor Law §§ 240 (1), 241 (6), 200, and common law negligence. JN reiterates that plaintiff's Labor Law § 240 (1) claim must be dismissed as the scraper was on the same level as plaintiff and, according to plaintiff's own testimony, weighed no more than 30 to 40 pounds (NYSCEF Doc No. 235 at ¶ 4). Furthermore, JN states that plaintiff's Labor Law § 241 (6) claim is without merit as the scraper was in an open area of the roof and not a passageway, stairway, or throughfare and did not exceed the carrying capacity of the floor (*id.*). JN asserts that plaintiff's general negligence and Labor Law § 200 claims must be denied as plaintiff failed to oppose those portions of JN's motion. Lastly,

JN argues that the affidavit of Bellizzi does not raise any issues of fact since it is identical to plaintiff's affirmation in opposition and its conclusion is illogical to assume that a worker using a tool would obtain a piece of rope and tie the tool to a fence when it was set down for a few minutes (*id.* at ¶¶ 39-48). JN notes that Bellizzi does not cite to any relevant authority to support his position.

In support of its motion, NYCHA asserts that plaintiff's Labor Law § 200 claim must be dismissed because it did not supervise or control plaintiff's work (NYSCEF Doc No. 163 at 1). NYCHA also argues as JN did, that plaintiff's Labor Law § 240 (1) cause of action should be dismissed because the scraper tool is not material that required hoisting or securing as contemplated by § 240 (1).

With respect to plaintiff's claim that NYCHA violated 12 NYCRR §§ 2.1 (a) (1) and (a) (2), NYCHA alleges that they do not apply. NYCHA asserts that section 23-2.1 (a) (1) is inapplicable because the scraper was in use at the time and was not stored building materials or material piles (NYSCEF Doc No. 163 at 10). Next, NYCHA contends that § 23-2.1 (a) (2) is inapplicable because the scraper: (1) was not being stored, at the time of the accident, rather it was being utilized; (2) did not cause a floor, platform or scaffold to collapse; and (3) did not fall over an edge of a floor, platform or scaffold and strike anyone beneath such edge on a lower level (*id.*). JN also argues that the Industrial Code provision is inapplicable since the scraper was not beneath the edge of a floor, platform, or scaffold at the time of the accident (NSYCEF Doc No. 139 at ¶ 54). Furthermore, NYCHA argues that 22 NYCRR § 23.3-3 (c) does not apply since plaintiff was struck by a tool that tipped over and was not struck by a deteriorated floor, wall, or loosened material (*id.* at 10). In addition, NYCHA notes that violations of OSHA standards do not provide a predicate for Labor Law § 241 (6) liability (*id.* at 11).

Pertaining to JN's counterclaim for contribution, NYCHA asserts that it must be dismissed since there is no evidence that NYCHA was negligent (*id.* at 12). NYCHA argues that plaintiff is precluded from bringing her left knee claims since they were denied by the Workers' Compensation Board. Lastly, NYCHA contends that it is entitled to contractual indemnification from JN on the ground that Article III (5) of the contract between NYCHA and JN (the Contract) contains an indemnity clause in favor of NYCHA.

In partial opposition to NYCHA's motion, on their indemnification claim, JN contends that NYCHA is being defended under JN's primary and excess insurance policies after JN's

carriers accepted NYCHA's tender and thus NYCHA's claim is barred by the anti-subrogation rule. With respect to JN's counterclaim for contribution, JN asserts that if the court decides that NYCHA is not negligent then all claims against NYCHA should be dismissed, including JN's counterclaim for contribution (NYSCEF Doc No. 204 at ¶ 9).

In opposition, plaintiff asserts the same arguments she did to JN's mot. seq. no. seven discussed *supra*. In reply, NYCHA argues that plaintiff testified that a co-worker placed the scraper against the wall no more than 10 to 20 minutes before her accident, and thus plaintiff cannot contend that no one was using the scraper on the date of the accident (NYSCEF Doc No. 238 at 5).

It is well established that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Ayotte v. Gervasio,* 81 NY2d 1062, 1063 [1993], citing *Alvarez v. Prospect Hospital,* 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. (*Zuckerman v. City of New York,* 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212, [2nd Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, [2nd Dept. 1984]; *Galeta v. New York News, Inc.*, 95 AD2d 325, [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie's Automatic Transmission Co.,* 168 AD2d 610 [2d Dept. 1990]; *Rebecchi v. Whitemore,* 172 AD2d 600 [2d Dept. 1991]).

Labor Law § 240 (1) mandates that all building owners and contractors:

> "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 240 (1) imposes on owners, general contractors, and their agents a nondelegable duty to provide safety devices to protect against height-differential hazards on construction sites, and they will be absolutely liable for any violation that results in injury, regardless of whether they supervised or controlled the work (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-288 [2003]). "The extraordinary protections of Labor Law § 240 (1) extend only to a narrow class of special hazards, and do not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity" (*Laliashvili v Kadmia Tenth Avenue SPE, LLC*, __AD3d__, 2023 NY Slip Op 06131, *2 [2d Dept 2023] [internal citations omitted]). "The single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*id*; *see also Runner v New York Stock Exchange, Inc.*, 13 NY3d 599 [2009]). "With respect to falling objects, Labor Law § 240 (1) applies where the falling of an object is related to a significant risk inherent in ... the relative elevation ... at which materials or loads must be positioned or secured" (*id.*; *Narducci v Manhasset Bay Associates*, 96 NY2d 259 [2001]). "Therefore, a plaintiff must show more than simply that an object fell, thereby causing injury to a worker. A plaintiff must show that, at the time the object fell, it was being hoisted or secured, or that the falling object required securing for the purposes of the undertaking" (*id.*; *Simmons v City of New York*, 165 AD3d 725 [2d Dept 2018]).

Plaintiff's motion for summary judgment as to liability on her Labor Law § 240 (1) claim is denied and those branches of JN's and NYCHA's motions to dismiss said claim are granted as this accident was not a result of an elevation-related hazard or gravity-related risk encompassed by Labor Law § 240 (1) (*Laliashvili* at *2). In the *Runner* case, the Court of Appeals held that:

> "[T]he dispositive inquiry framed by our cases does not depend upon the precise characterization of the device employed or upon whether the injury resulted from a fall, either of the worker or of an object upon the worker. Rather, the single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 603 [2009]).

Furthermore, the Court held that the elevation differential involved in the case cannot be viewed as de minimis, particularly given that the large reel of wire weighed some 800 pounds, and the

amount of force it was capable of generating, even over the course of a relatively short descent (*Runner*, 13 NY3d at 605).

Here, plaintiff failed to establish, prima facie, that her injury was caused by an elevation-related hazard encompassed by Labor Law § 240 (1), rather than from the usual and ordinary dangers of the construction site (*see Sullivan v New York Athletic Club*, 162 AD3d 955, 957 [2d Dept 2018]; *see also Cardenas v BBM Const. Corp.*, 133 AD3d 626 [2d Dept 2015]). Plaintiff testified that, while kneeling and picking up pieces of roofing material, she was struck in the neck and head by a six-foot tall scraper weighing, at the most, thirty to forty pounds.[5] Plaintiff further testified that she observed the scraper leaning against the mesh netting that was on the roof roughly ten to twenty minutes before the accident.[6] In addition, plaintiff testified that she is about five feet tall,[7]and that she was three to four feet away from the scraper when the accident occurred.[8] Although even a short elevation differential can be deemed significant on account of the weight of a falling object, the plaintiff failed to establish that the subject scraper generated a significant amount of force as it fell sufficient to create an extraordinary danger that was contemplated by Labor Law § 240 (1) rather than an ordinary construction hazard (*see Connor v AMA Consulting Engineers PC*, 213 AD3d 483, 484 [2d Dept 2023] [holding that a piece of sheetrock that tipped over no more than three feet onto plaintiff was an ordinary construction hazard not an extraordinary danger contemplated by Labor Law § 240 (1)]; *Ortega v Fourtrax Contr Corp*, 214 AD3d 666 [2d Dept 2023] [holding that a dolly with sheetrock tipping over and falling onto plaintiff was not a gravity-related risk within the scope of the statute]). Thus, plaintiff's motion for summary judgment on her Labor Law § 240 (1) claim is denied.

NYCHA's and JN's motions for summary judgment to dismiss plaintiff's Labor Law § 240 (1) claim are granted as NYCHA and JN established that plaintiff's accident was an ordinary construction hazard and not a extraordinary danger contemplated by Labor Law § 240 (1), and that plaintiff's injuries were not the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential contemplated by the statute (*Connor,* 213 AD3d at 484; *Runner*, 13 NY3d at 603; *Fabrizi v 1095 Ave. of*

[5] Pilco EBT tr dated June 15, 2021, at page 109, lines 5-3; at page 120, line 24 to page 122, line 5; at page 77, line 2 to page 78, line 6; NYSCEF Doc No. 56 at 10-13.
[6] Pilco EBT tr dated June 15, 2021, at page 72, line 9 to page 74, line 5.
[7] Pilco EBT tr dated June 15, 2021, at page 45, lines 5-7.
[8] Pilco EBT tr dated June 15, 2021, at page 120, lines 12-15.

Americas, LLC., 22 NY3d 658 [2014] [holding that plaintiff's Labor Law § 240 (1) claim was properly dismissed as the 8 to 10 foot long conduit that fell and struck plaintiff while plaintiff was kneeling did not fall on plaintiff due to the absence or inadequacy of an enumerated safety device]).

"Labor Law § 241 (6) imposes a nondelegable duty of reasonable care upon an owner or general contractor to provide reasonable and adequate protection to workers on the premises" (*Venezia v State*, 57 AD3d 522, 522 [2d Dept 2008]). "[T]o establish liability under Labor Law § 241 (6), a [plaintiff] is required to establish a breach of a rule or regulation of the Industrial Code which gives a specific, positive command" (*id.*). Here, the plaintiff's Labor Law § 241 (6) cause of action is predicated on violations of 12 NYCRR §§ 23-1.5, 23-1.7, 23-1.8, 23-2.1, 23-3.3 and 29 CFR 1910.132 (c) (NYSCEF Doc No. 107 at ¶¶ 19, 30). Plaintiff has abandoned some of the provisions of the Industrial Code, thus obviating their further discussion (*see Elam v Ryder Sys., Inc.*, 176 AD3d 675, 676 [2d Dept 2019]; *Pita v Roosevelt Union Free School Dist.*, 156 AD3d 833, 835 [2d Dept 2017]). Specifically, plaintiff failed to oppose the portion of NYCHA and JN's motions to dismiss plaintiff's Labor Law § 241 (6) claim premised on violations of 12 NYCRR §§ 23-1.5, 23-1.7 and 23-1.8. Thus, the court will not address these alleged violations as they are deemed abandoned.

The two remaining Industrial Code provisions on which plaintiff relies are 12 NYCRR § 23-2.1 ("Maintenance and Housekeeping") and § 23-3.3 (c) ("Inspection"). 12 NYCRR § 23-2.1 provides, in relevant part, as follows:

> "(a) Storage of material or equipment.
> (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.
> (2) Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge."

Here, the court finds that JN and NYCHA have demonstrated that 12 NYCRR § 23-2.1 (a) (1) does not apply to the facts of this case. NYCHA and JN established that this section is inapplicable because the scraper was in use at the time of the accident, albeit not by plaintiff,

and the accident did not involve "building materials" or a "material pile" but rather a single object, and the area where the accident occurred was not a passageway, walkway, stairway, or other thoroughfare (*Castillo v Starret City, Inc.*, 4 AD3d 320 [2d Dept 2004] [holding that plaintiff's Labor Law § 241 (6) claim was without merit when plaintiff slipped on a small piece of insulation and lost his balance as the material that caused plaintiff to fall was not being "stored" but was in use]; *Cody v State,* 82 AD3d 925 [2d Dept 2011] [holding that 12 NYCRR § 23-2.1 (a) (1) did not apply to a plaintiff stepping on and twisting his leg on a two-by-four piece of lumber since the material that caused plaintiff's injury was not being stored but was in use, and the area was not a passageway, walkway, stairway, or other thoroughfare]). Plaintiff testified that she noticed that a coworker placed the scraper near her about 10 to 20 minutes before the accident occurred and the scraper was not necessary to perform the job.[9] However, Vazquez testified that on the date of the accident, he saw plaintiff using a scraper, a tool used by JN employees to remove flashing, that JN employees would be working in small groups to remove the flashing, and there would be more than just one scraper present.[10] Based on the foregoing testimony, it is evident that the scraper was not being stored but was in use, by plaintiff and/or one of her coworkers. In opposition, plaintiff failed to raise a triable issue of fact as to whether the scraper was not in use by her coworkers; nor did she raise an issue of fact that the accident occurred in a passageway, walkway, stairway, or other thoroughfare.

Regarding plaintiff's contention that defendant violated 12 NYCRR § 23-2.1 (a) (2), the court finds that this provision is inapplicable to the instant set of facts as there is nothing in the evidence that the scraper's weight exceeded the safe carrying capacity of the floor or that the scraper was placed close to any edge (*Chuqui v Amna, LLC*, 203 AD3d 1018 [2d Dept 2022]; *see also Desena v North Shore Hebrew Academy*, 119 AD3d 631 [2d Dept 2014]).

The remaining Industrial Code provision upon which the plaintiff relies, 12 NYCRR § 23-3.3 (c), titled "Demolition by hand," provides as follows:

> "Inspection. During hand demolition operations, continuing inspections shall be made by designated persons as the work progresses to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material. Persons shall not be suffered or permitted to work where such

[9] Pilco EBT tr dated June 15, 2021, at page 112, line 18 to 25; page 113, line 1 to 21.
[10] Vasquez EBT tr dated October 20, 2021, at page 55, line 3 to page 57 line 13.

> hazards exist until protection has been provided by shoring, bracing or other effective means."

The court finds that this provision is inapplicable since the alleged facts do not involve weakened or deteriorated floors or walls or loosened material (*Reyes v Sligo Construction Corp.*, 214 AD3d 1014 [2d Dept 2023]). Lastly, OSHA standards do not provide a basis for liability under Labor Law § 241(6) (*Marl v Liro Engineers, Inc.*, 159 AD3d 688, 689 [2d Dept 2018]). Thus, plaintiff's Labor Law § 241 (6) claim is dismissed.

"Labor Law § 200 is a codification of the common-law duty imposed on property owners, contractors, and their agents to provide construction site workers with a safe place to work" (*Sanchez v BBL Constr. Servs., LLC*, 202 AD3d 847, 849 [2d Dept 2022]). "Cases involving Labor Law § 200 fall into two broad categories, namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]). "A defendant must have the authority to exercise supervision and control over the work in order to be held liable under the statute" (*Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 733 [2d Dept 2023] [internal citations omitted]). "Evidence of mere general supervisory authority to oversee the progress of the work, to inspect the work product, or to make aesthetic decisions is insufficient to impose liability under Labor Law § 200" (*id.*; *Southerton v City of New York*, 203 AD3d 977 [2d Dept 2022]).

Here, NYCHA and JN established, prima facie, that NYCHA did not exercise any supervision or control over the method or manner in which plaintiff's work was performed and did not have actual or constructive notice of the alleged dangerous or defective condition. In opposition, plaintiff failed to raise any triable issue of fact since plaintiff's papers did not respond to NYCHA and JN's arguments. Thus, plaintiff's Labor Law § 200 and common law negligence claims are dismissed.

In light of the determination rendered herein that NYCHA is not negligent for the subject accident, JN's counterclaim seeking contribution is dismissed in its entirety.

In light of the dismissal of plaintiff's complaint, NYCHA's third-party claim for breach of contract for failure to procure insurance is moot. NYCHA is granted contractual indemnification pursuant to Article III (5) of the contract and is limited to the reimbursement for any litigation-related counsel fees, costs and expenses.

All arguments raised on the motions and evidence submitted by the parties in connection thereto have been considered by this court, Matters not discussed are either moot or without merit. Accordingly, it is hereby,

ORDERED that plaintiff's motion for summary judgment (Motion Seq. 6) on plaintiff's Labor Law § 240 (1) claim is denied in its entirety; and it is further,

ORDERED that the branches of JN's motion for summary judgment (Motion Seq. 7) dismissing plaintiff's Labor Law §§ 240 (1), 241 (6), 200, and common law negligence claims against NYCHA are granted; and it is further,

ORDERED that the branch of JN's motion for summary judgment (Motion Seq. 7) dismissing NYCHA's third-party claim for breach of contract for failure to procure insurance is rendered moot; and it is further,

ORDERED that the branches of NYCHA's motion for summary judgment (Motion Seq. 8) dismissing plaintiff's Labor Law §§ 240 (1), 241 (6), 200, and common law negligence claims against NYCHA are granted; and it is further,

ORDERED that the branch of NYCHA's motion for summary judgment (Motion Seq. 8) dismissing JN's counterclaim for contribution is granted; and it is further,

ORDERED that the branch of NYCHA's motion for summary judgment (Motion Seq. 8) on its contractual indemnification claim is granted to the extent that NYCHA is entitled to reimbursement for any litigation-related counsel fees, costs, and expenses; and it is further,

ORDERED that plaintiff's complaint is hereby dismissed.

This constitutes the decision, order, and judgment of the court.

Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice