SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

Chet Wilson

INDEX NO. 156149/2019

MOT. DATE

- v -

MOT. SEQ. NO. 3-6

AC 320 HOTEL PARTNERS LLC et

The following papers were read on this motion to/for sj (seq 3)	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS Doc. No(s). 116-131
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS Doc. No(s). 210-227
Replying Affidavits	ECFS Doc. No(s). 271-272
OA Transcript	ECFS Doc. No(s). 284
The following papers were read on this motion to/for sj (seq 4)	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS Doc. No(s). 132-151
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS Doc. No(s). 233-250
Replying Affidavits	ECFS Doc. No(s). 278-279
OA Transcript	ECFS Doc. No(s). 285
The following papers were read on this motion to/for sj (seq 5)	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS Doc. No(s). 152-163
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS Doc. No(s). 251-268
Replying Affidavits	ECFS Doc. No(s). 273-274
OA Transcript	ECFS Doc. No(s). 286
The following papers were read on this motion to/for sj (seq 6)	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS Doc. No(s). 164-184
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS Doc. No(s). 207-209, 228-232, 269-270
Replying Affidavits	ECFS Doc. No(s). 275, 276, 277
OA Transcript	ECFS Doc. No(s). 287

There are four motions for summary judgment pending in this action for personal injuries arising from a construction site accident. In motion sequence 3, third-party defendant Enterprise Architectural Sales, Inc. ("Enterprise") moves for summary judgment dismissing the third-party complaint by

Dated: 4/11/24

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. Check as appropriate: Motion is ☐GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER

3. Check if appropriate: ☐SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐FIDUCIARY APPOINTMENT ☐ REFERENCE

defendants/third-party plaintiffs AC 320 Hotel Partners LLC ("AC 320"), LRR Holdings LLC ("LRR") and Flintlock Construction Services ("Flintlock").

In motion sequence 4, plaintiff moves for: [1] summary judgment on the issue of liability on his Labor Law § 240[1] against LRR and Flintlock; [2] leave to serve an amended bill of particulars alleging the violation of 12 NYCRR 23-1.7(b)(1)(i), *nunc pro tunc*; [3] summary judgment on the issue of liability on his Labor Law § 241(6) to the extent predicated upon a violation of 12 NYCRR 23-1.7(b)(1)(i) against LRR and Flintlock; and [4] summary judgment dismissing all affirmative defenses predicated upon Plaintiff's alleged comparative fault and/or culpable conduct.

In motion sequence 5, third-party defendant Rockledge Scaffold Corp ("Rockledge") moves for summary judgment dismissing all claims made by defendants/third-party plaintiffs and crossclaims made by third-party defendant Enterprise.

Finally, in motion sequence 6, defendants AC 320, LRR and Flintlock move for summary judgment dismissing plaintiff's Section 241[6] and 200/common law negligence claims as well as on their claims for common law and total and/or partial contractual indemnification, reimbursement of attorneys fees and breach of contract against Rockledge and Enterprise as well as dismissing Enterprise's third-party claims against them.

The motions are timely brought and all four motions are hereby consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

Applicable standard of review

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Relevant facts

The relevant facts are as follows. Plaintiff's accident occurred on July 10, 2017, at a construction project located at 320 West 36th Street in Manhattan (the "premises"). On that date, plaintiff was walking across a sidewalk bridge scaffold that was approximately 32 feet long and 16 feet wide when he stepped on a pink Styrofoam board covering a gap between the scaffold and the building which broke and gave way, causing him to fall approximately 13-15 feet.

On the accident date, LRR owned the premises, Flintlock was the general contractor for the project, and plaintiff was employed by Enterprise as a material handler. The project consisted of the construction of a new high-rise hotel. Flintlock hired Rockledge to install the sidewalk bridge scaffold which plaintiff fell from along the perimeter of the premises. Flintlock hired Enterprise to install portions of the building façade.

At his deposition, plaintiff explained that he did not see the gap between the scaffold and the building due to the Styrofoam board covering it. Also, the date of the accident was plaintiff's first time on the scaffold. Plaintiff claimed that the gap between the building and the scaffold was two feet, while defendants contend that the space was no more than fourteen inches. The parties dispute to what extent

the gap was covered by the Styrofoam board which was approximately 4 feet by 4 feet. The parties further dispute the purpose of the gap and it is unclear who placed the Styrofoam board over it.

After the accident, the New York City Department of Buildings issued a summons to Flintlock and a partial stop work order. The summons was upheld following an OATH hearing in a written decision stating "there was nothing to prevent a worker, or construction debris, from falling through the 14-inch gap ..." between the edge of the sidewalk bridge and the building." Defendants note that OATH did not make a finding as to whether a gap was permissible.

Finally, Enterprise provided a safety harness to plaintiff, but plaintiff testified that "we had nothing to be tied off to."

Parties' arguments as to plaintiff's claims

The court will first consider the parties' arguments as to plaintiff's claims. At the outset, plaintiff failed to oppose that part of defendants' motion for summary judgment that AC 320 is not a proper labor law defendant. Defendants have established that AC 320 is not an owner, general contractor, and did not perform any work on the jobsite, enter into contracts, or hire any contractors. Accordingly, plaintiff's claims against AC 320 are severed and dismissed.

Plaintiff argues that he is entitled to summary judgment on his Labor Law § 240[1] claim against LRR and Flintlock because it is undisputed that he fell more than ten feet to the ground below while working on a sidewalk bridge because the sidewalk bridge had an improper gap between it and the building façade, the improper gap was itself improperly covered with Styrofoam that collapsed when plaintiff stepped on it, and plaintiff was not provided with any other fall protection. Plaintiff further argues that he should be permitted to amend his bill of particulars to allege the violation of Industrial Code § 23-1.7[b][1][i], and upon amendment, plaintiff should be granted summary judgment on that claim as well.

Defendants oppose plaintiff's motion, arguing that plaintiff's accident did not involve an elevation-related risk or the failure of any safety device and instead that plaintiff proximately caused his own accident by failing to be aware of his surroundings and "take into account the placement of ... material which was integral to the nature of Plaintiff's work..." Defendants note that plaintiff was provided a harness and maintain that at a minimum, issues of fact preclude summary judgment. On the balance of plaintiff's motion, defendants contend that he should not be permitted to assert a new theory of liability or that defendants' affirmative defenses as to plaintiff's comparative fault and culpable conduct should be dismissed.

In support of their motion, defendants seek summary judgment dismissing plaintiff's Labor Law §§ 200 and 241[6] claims. Specifically, defendants argue that plaintiff's Labor Law § 200 and common law negligence claims must be dismissed because defendants did not direct, supervise, or control the means and methods of plaintiff's work nor did they create or have any actual or constructive notice of any dangerous condition. Defendants note that plaintiff concedes dismissal of claimed violations of Industrial Codes §§ 23-1.7(a), 23-1.11; 23-1.15; 23-1.16; 23-1.18; 23-5.1; 23-5.2; and 23-5.3 to 23-5.22. In addition to Industrial Code § 23-1.7[b][1][i], defendants maintain that Sections 23-1.5[c][3] and 23-5.1[j] are inapplicable and/or were not violated.

Section 240[1]

Labor Law § 240[1], which is known as the Scaffold Law, imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v. Eastern Railway Supply, Inc.*, 82 NY2d 555 [1993]). The statute provides in pertinent part as follows:

> All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a premises 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 protects workers from "extraordinary elevation risks" and not "the usual and ordinary dangers of a construction site" (*Rodriguez v. Margaret Tietz Center for Nursing Care, Inc.*, 84 NY2d 841 [1994]). "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)" (*Narducci v. Manhasset Bay Associates*, 96 NY2d 259 [2001]).

Section 240[1] was designed to prevent accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person (*Runner v. New York Stock Exchange, Inc.*, 13 NY3d 5999 [2009] quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The protective devices enumerated in Labor Law § 240 [1] must be used to prevent injuries from either "a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 [1991]).

Here, the court finds that plaintiff has met his burden on his Section 240[1] claim. Specifically, plaintiff has established that he was exposed to a significant height differential and was not provided proper protection to protect against the risk of the gravity-related accident that occurred. In turn, defendants have failed to raise a triable issue of fact sufficient to defeat the motion. Whether the gap between the building was 14 inches or greater or whether it was code compliant is of no moment, since plaintiff plainly testified that he did not have any place to tie off his harness and defendants have failed to point to any admissible evidence which would dispute this claim. Nor is the court persuaded by defendants' argument that plaintiff was the sole proximate cause of his accident or failed to reasonably observe with his own senses that there was a gap hidden under the Styrofoam placed on the scaffold. Finally, the court rejects defendants' argument that the Styrofoam was integral to plaintiff's work. Assuming *arguendo* that there was a proper purpose for the gap itself, the placement of Styrofoam board over the gap creating a trap-like condition which cannot be said to be integral to the installation of materials onto the building.

Accordingly, plaintiff's motion for summary judgment on liability against LRR and Flintlock is granted on his Section 240[1] claim.

Amendment

Leave to amend a bill of particulars is ordinarily freely given in the absence of prejudice or surprise, unless the amendment is sought on the eve of trial" (*Alvarado v. Beth Israel Med. Ctr.*, 78 AD3d 873, 874 [1st Dept. 2010]). Industrial Code § 23-1.7[b][1][i] provides as follows:

(b) Falling hazards.
(1) Hazardous openings.

> (i) Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part (rule).

Defendants do not substantively argue that the were prejudiced or surprised or that plaintiff's proposed amendment to his bill of particulars should be denied on timeliness grounds. In any event, such arguments would be unavailing on this record. Accordingly, leave to amend is granted.

Section 241[6]

Labor Law § 241[6] imposes a non-delegable duty on all contractors and owners, in connection with construction or demolition of buildings or excavation work, to ensure that:

> [a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.

The scope of the duty imposed by Labor Law § 241[6] is defined by the safety rules set forth in the Industrial Code (*Garcia v. 225 E. 57th Owners, Inc.*, 96 AD3d 88 [1st Dept 2012] citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). Plaintiff must allege violations of specific, rather than general, provisions of the Industrial Code (*Rizzuto v. L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998]). Plaintiff asserts that Industrial Code § 23-1.7[b][1][i] was violated as a matter of law. Meanwhile, plaintiff opposes defendant's motion as to the violation of Industrial Code §§ 23-1.5[c][3] and 23-5.1[j].

The court agrees with defendants that issues of fact preclude summary judgment on whether Section 23-1.7[b][1][i] was violated since there is testimony in the record that the gap existed so that materials could be installed thereby potentially rendering the gap integral to the work in progress being performed (see Industrial Code § 23-1.7[b][1][ii]). Accordingly, upon amendment, plaintiff's motion for summary judgment on his Section 241[6] claim is denied.

As for the balance of plaintiff's Section 241[6], defendants correctly point out that plaintiff's failure to oppose defendants' motion as to Industrial Code §§ 23-1.7(a), 23-1.11; 23-1.15; 23-1.16; 23-1.18; 23-5.1; 23-5.2; and 23-5.3 to 23-5.22 permits the court to deem these claims abandoned and therefore they are severed and dismissed. The court further agrees with defendants that Industrial Code § 23-1.5[c][3] is inapplicable since the subject scaffold was not inoperable or damaged requiring repair or removal from the job site. As for Industrial Code § 23-5.1(j), which requires safety railings on scaffolds, issues of fact as to whether the opening was necessary and integral to install materials precludes summary judgment to defendants on this claim.

Accordingly, defendants' motion as to plaintiff's Section 241[6] claim is granted to the extent that all but plaintiff's Section 241[6] claim premised upon violations of Industrial Code § 23-1.7[b][1][i] and 23-5.1[j] is severed and dismissed.

Section 200 and common law negligence

Labor Law § 200 codifies the common law duty of owners and general contractors to provide workers with a reasonably safe place to work (*Comes v. New York State Elec. And Gas Corp.*, 82 NY2d 876 [1993]). There are two categories of Labor Law § 200 and common law negligence claims: injuries arising from dangerous or defective premises conditions and injuries arising from the manner or means in which the work was performed (*Cappabianca v. Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). In order to demonstrate a *prima facie* case under the former category, a plaintiff must prove that the owner or general contractor created the condition or had actual or constructive notice of it (*Mendoza v. Highpoint Asoc., IX, LLC*, 83 AD3d 1 [1st Dept 2011]). Where the injury was caused by the manner

of the work, the owner or general contractor will be liable if it exercised supervisory control over the work performed (*Foley v. Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476 [1st Dept 2011]).

As plaintiff correctly points out, to the extent that his Section 200 claim is premised upon a premises condition, defendants have not met their burden on this motion by setting forth when the accident area was last inspected prior to plaintiff's accident (*see i.e. Ohadi v. Magnetic Constr. Grop. Corp.*, 182 AD3d 474 [1st Dept 2020]). There is also a question of fact as to whether Flintlock was the party responsible for the Styrofoam placement, which separately provides a basis for liability under Section 200 and ordinary negligence principles. Accordingly, defendants' motion as to plaintiff's Section 200 claim is denied.

Third-party claims and crossclaims

The court now turns to the third-party claims. Enterprise argues that it is entitled to dismissal of the defendants' third-party claims against it because plaintiff has not sustained a grave injury, Enterprise was not negligent and Enterprise obtained the coverage required under its operative contract. Defendants claim that Enterprise has not established it was not negligent in its direction, control or supervision of plaintiff and that whether or not plaintiff sustained a grave injury is a question of fact to be determined by a jury.

The court agrees with Enterprise that it has established that plaintiff did not sustain a grave injury as a matter of law (*see i.e. Granite State Insurance Company v. Moklam Enterprises, Inc.*, 193 AD3d 616 [1st Dept 2021]) and thus defendants common-law claims are barred by Workers Compensation Law § 11 (*Hasenzahl v. 44th Street Development LLC*, 203 AD3d 602 [1st Dept 2022]). Further, Enterprise has established without opposition that it obtained the requisite insurance and therefore defendants' breach of contract claim against Enterprise must also be severed and dismissed.

Enterprises' contract with defendants contained the following indemnity provision:

> To the fullest extent permitted by law, Enterprise Architectural Sales, Inc. (hereinafter "Subcontractor"), shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Letter of Intent and/or Subcontract, provided that any such claim, damage, loss or expense is attributable to economic loss, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.,* 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.,* 32 NY2d 149, 153 [1973]; *see also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). However, "General Obligations Law § 5-322.1 prohibits and renders unenforceable any promise to hold harmless and indemnify a promisee which is a construction contractor or a landowner against its own negligence" (*Kilfeather v Astoria 31st St. Assoc.*, 156 AD2d 428 [2d Dept 1989]).

Here, issues of fact preclude summary judgment to either defendants or Enterprise on defendants' claim for contractual indemnification because it remains to be determined whether plaintiff's accident arose out of Enterprises' negligent acts or omissions. Indeed, it is unclear who was responsible for

placing the Styrofoam on the scaffold, obstructing plaintiff's vision, and Enterprise otherwise directed, controlled and supervised plaintiff. Accordingly, the balance of Enterprises' motion and defendants' motion as to its claim for contractual indemnification against Enterprise is denied.

Finally, the court considers Rockledge's motion, which is granted as to Enterprises' crossclaims without opposition. Rockledge argues that defendants' claims against it should be dismissed because Rockledge was not negligent, plaintiff's accident was caused by defendants' actions, the operative indemnification provision was not triggered, and Rockledge procured the necessary coverage. Defendants maintain that Rockledge has not absolved itself of liability, that plaintiff's accident arose out of or resulting from Rockledge's work and defendants were otherwise not negligent.

Defendants breach of contract claims against Rockledge are severed and dismissed as unopposed. The court turns to defendants' common law claims. "To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], *quoting Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]). Meanwhile "[c]ontribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person" (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003], *lv dismissed* 100 NY2d 614 [2003] [internal quotation marks and citations omitted]).

On this record, defendants have failed to establish that Rockledge negligently installed the scaffold. Indeed, as defense counsel conceded at oral argument, defendants' claims against Rockledge hinge on whether "there's any issue with the way that the scaffold was installed…" and "to the extent that the Court finds that a question of fact exists as to the scaffold itself and the installation of the scaffold" since plaintiff testified that the gap between the scaffold was 20 to 24 inches. There is no evidence that the scaffold was installed in a manner which violated any applicable code or provision or that a reasonable factfinder would otherwise find that Rockledge was negligent in the happening of plaintiff's accident, i.e. that Rockledge placed the Styrofoam board over the gap or was responsible for installing anchors for plaintiff to tie his harness to. Accordingly, defendants' common law claims against Rockledge are severed and dismissed.

The operative indemnity agreement between Rockledge and defendants provides as follows:

> § 4.6.1 To the fullest extent permitted by law the Subcontractor shall indemnify, defend (with counsel reasonably acceptable to the indemnitees), and hold harmless the Owner, Architect, Architect's consultants, Contractor, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work, provided that such claim, damage, loss or expense is attributable to (a) the acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable including strict liability under Labor Law § 240(1), or (b) the failure of the Subcontractor to comply with the provisions of this Agreement, in each case regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, except that nothing in this Section obligates the Subcontractor to indemnify or hold harmless any indemnitee from or against liability for damage arising out of bodily injury to person or damage to property to the extent contributed to, caused by, or resulting from the negligence of that indemnitee or its agents or employees. …
>
> § 13.5.1 To the fullest extent permitted by law, the subcontractor hereby assumes the entire responsibility and liability for any and all injury to or death of any per-

> sons, including the owner's, contractor's and subcontractor's employees resulting from or arising out of any negligent act or omission on the part of the subcontractor in connection with this Agreement...and the subcontractor shall save and hold harmless the owner and the contractor from and against all loss ...they may suffer or pay as a result of claims or suits due, to, because of or arising out of any and all injuries... and the subcontractor, if requested, shall assume and defend, at its own defense, any suit, action... arising therefrom...

The court further agrees with Rockledge that plaintiff's accident did not arise out of or result from Rockledge's performance of contracted-for work. Again, there is no evidence on this record that Rockledge placed the Styrofoam on the scaffold or that it was responsible for installing anchors that plaintiff should have tied his harness to. The only work that Rockledge performed, installation of the scaffold, lacks a sufficient nexus to plaintiff's accident to trigger Rockledge's indemnification obligation under parties' agreement. Accordingly, Rockledge's motion is granted in its entirety.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that motion sequence 3 is granted to the extent that defendants/third-party plaintiffs' claims against Enterprise for common law indemnification and contribution and breach of contract for failure to procure insurance are dismissed; and it is further

ORDERED that Enterprises' motion sequence 3 is otherwise denied; and it is further

ORDERED that plaintiff's motion sequence 4 is granted to the extent that plaintiff is granted summary judgment on liability on his Labor Law § 240[1] claim against LRR and Flintlock and plaintiff is granted leave to amend his bill of particulars to assert a violation of Industrial Code § 23-1.7[b][1][i] with respect to his Labor Law § 241[6] claim; and it is further

ORDERED that motion sequence 4 is otherwise denied; and it is further

ORDERED that Rockledge's motion sequence 5 is granted in its entirety and defendants/third-pary plaintiff's third-party claims against Rockledge as well as Enterprises' crossclaims against Rockledge are severed and dismissed; and it is further

ORDERED that defendants motion sequence 6 is granted to the following extent:

> [1] plaintiff's claims against defendant AC 320 are severed and dismissed; and
>
> [2] all but plaintiff's Section 241[6] claim premised upon violations of Industrial Code § 23-1.7[b][1][i] and 23-5.1[j] are severed and dismissed;

And it is further

ORDERED that the balance of motion sequence 6 is otherwise denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 4/11/24
New York, New York

So Ordered:

HON. LYNN R. KOTLER

Hon. Lynn R. Kotler, J.S.C.