

<b>Jianlan Xie v Skanska USA Civ., Inc.</b>
2026 NY Slip Op 30955(U)
March 5, 2026
Supreme Court, New York County
Docket Number: Index No. 152501/2016
Judge: Verna L. Saunders
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36**

*Justice*

-----X  
 JIANLAN XIE, INDEX NO. 152501/2016  
 Plaintiff, MOTION SEQ. NO. 003; 004

- v -

SKANSKA USA CIVIL, INC., SKANSKA USA CIVIL  
 NORTHEAST, INC., STV GROUP, INC., TISHMAN  
 CONSTRUCTION CORPORATION, KENCO WIRE & TRON  
 PRODUCTS, INC., and THOMAS SMITH,  
 Defendants.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165

were read on this motion to/for

SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227

were read on this motion to/for

SUMMARY JUDGMENT

In March 2016, plaintiff Jianlan Xie, a United States Postal Service (“USPS”) employee, commenced this Labor Law §§ 200 and 241(6) action to recover damages for personal injuries sustained in a construction-related accident at her place of work. Plaintiff asserts these Labor Law causes of action, as well as one for common-law negligence, against the construction project’s general contractors—Skanska USA Civil, Skanska USA Civil Northeast, Inc, STV Group Inc, Tishman Construction, Corp., (hereinafter, “Skanska defendants”)—as well as their subcontractor, Kenco Wire & Tron Products, Inc. (“Kenco Wire”), and its employee, Thomas Smith (“Smith”).

In Mot. Seq. 003, the Skanska defendants move for summary judgment pursuant to CPLR 3212 on each of plaintiff’s causes of action; alternatively, in the event the court denies this branch of the motion, the Skanska defendants move for summary judgment on their cross-claims against Kenco Wire for common-law and contractual indemnification. Both plaintiff and Kenco Wire have filed opposition to the motion.

In Mot. Seq. 004, Kenco Wire and Smith also move for summary judgment pursuant to CPLR 3212 on plaintiff’s claims and the Skanska defendants’ cross-claims. This motion is also opposed. For the following reasons, the Skanska defendants’ motion is denied in its entirety, and Kenco Wire and Smith’s is granted, in part.

As relevant to the motions, in her deposition testimony, plaintiff testified that the subject accident occurred on January 6, 2016, at her place of work on the 1st floor of the United States Post Office building located at 421 8th Avenue, New York, New York. (NYSCEF Doc. No. 125 at 18-20, *plaintiff's EBT transcript*). Anthony Rosano (“Rosano”), Skanska’s Environmental, Health, and Safety Manager, was on the premises on this day. He testified that Skanska was hired by USPS to install a wire mesh system to cover the gap between the walls of the premises’ “finance room,” which rose to approximately eight feet above the ground, and the ceiling at ten feet. (NYSCEF Doc. No. 126, *Rosano EBT transcript*). According to the subcontract between Skanska and Kenco Wire, under a section entitled “Detailed Scope of Work,” “all work [was] to be performed off shift 9:00 PM to 6:00 AM in order to minimize impact to ongoing USPS operations.” (NYSCEF Doc. No. 138, *subcontract*). Same notwithstanding, Rosano testified that a postal inspector or a supervisor for the postal service denied access to the premises after hours and thus, the work would have to be done during the day shift. (NYSCEF Doc. No. 126 at 28-30; *see also* NYSCEF Doc. No. 127 at 16-17, *Stewart EBT transcript*.) None of the Skanska defendants produced documents demonstrating said denial of access. (NYSCEF Doc. No. 137 at ¶ 7, *plaintiff affidavit in opp*).

On the day in question, Smith, a Kenco Wire employee, testified that Rosano showed him where he would perform his work (NYSCEF Doc. No. 128 at 22, *Smith's EBT transcript*) and a security guard or supervisor within the Post Office explained that he could not work from inside the finance room for security reasons (stamps, money, and money orders were stored inside) (*id* at 24-25). As such, he would be required to install the mesh wiring from the outside of the room, starting with the back, far left corner, where he would eventually work all the way around (*id* at 25-26, 39). Both Rosano and Smith testified that the finance room should have been secured and that all personnel needed to be out of the room while Smith was performing the work. Specifically, Rosano raised his objection that “we needed to ensure there would be no postal employees in the area that Kenco was performing their work.” (NYSCEF Doc. No. 126 at 32). As Smith explained, “I would just expect...Skanska would coordinate with the Post Office that this is an area that I’m going to be working and it was up to them to keep people away.” (NYSCEF Doc. No. 128 at 40). He expounded on this further, saying that, as the general contractor, Skanska “basically coordinated the work...that everyone would be away from the room unless they had to. And I would be notified if someone had to access it, and I would stop working until they were done...then I would continue” (*id*). According to Rosano, he received verbal assurances from Lynn Watson (“Watson”), a supervisor with USPS, that the finance room would be locked and not accessible that day but did not further ensure that no one entered that office. (NYSCEF Doc. No. 126 at 73). Watson, however, testified that she did not understand any conversation she had with Skanska employees to mean that the finance room was supposed to be locked and off limits to everyone. (NYSCEF Doc. No. 147 at 74, *Watson EBT transcript*). Moreover, she testified that several other supervisors and employees had keys to the room, including plaintiff (*id* at 37).

When Smith started installing the mesh wiring, the door to the finance room was locked and thereafter nobody asked him to stop his work to grant an employee access to the room.<sup>1</sup> (NYSCEF Doc. No. 128 at 76). Plaintiff, however, testified that she had a key to the finance

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<sup>1</sup> While he testified that the door was locked, upon questioning from plaintiff’s counsel, he did not explain how he came by this knowledge as he did not recall testing the lock to make sure. (NYSCEF Doc. No. 128 at 76.)

office, had walked in and out multiple times before the accident, and had not seen any contractors working in that area (NYSCEF Doc. No. 125 at 23-26). To this end, Watson and two other USPS employees testified that neither Skanska nor Kenco Wire put up visible barriers to the entry door, laid out construction cones, or put up caution tape or other signage to notify USPS employees that work was being performed (NYSCEF Doc. Nos. 147 at 39; 149 at 20-21, *McQueen EBT transcript*; 148 at 20, *Oliver EBT transcript*). While performing the installation with assistance from another Kenco Wire's employee—Sean Kennedy (“Kennedy”)<sup>2</sup>—Smith was standing on a ladder, drilling a hole in the wall to put in an “angle,” when a level measuring tool fell forward, through the gap between the ceiling and wall, and into the finance office (NYSCEF Doc. No. 128 at 44). The level measure struck plaintiff while she was sitting at a desk in this room (NYSCEF Doc. No. 125 at 30-32).

The Skanska defendants have asserted cross-claims against Kenco Wire for common-law and contractual indemnification. With respect to the cross-claim for contractual indemnification, they attach the subcontract, or purchase agreement, between it and Kenco Wire. Article XV of this agreement provides, in relevant part:

“To the fullest extent permitted by law, Vendor [Kenco Wire] agrees to defend, indemnify and save harmless Contractor and Owner...from and against any claim, cost, expense or liability (including costs and attorneys’ fees...) attributable to bodily injury, sickness, disease, or death, or damage to or destruction of any property...caused by, arising out of, resulting from, or occurring in connection with the materials, whether or not caused by the active or passive negligence or other fault of a party indemnified hereunder.” (NYSCEF Doc. No. 130 at 5.)

Under CPLR 3212, summary judgment is appropriate where “the proponent makes a ‘prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of material issues of fact’ and the opponent fails to rebut that showing.” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also CPLR 3212 [b]). Once the proponent has made a *prima facie* showing, the burden shifts to the opposing party to demonstrate, through admissible evidence, factual issues requiring a trial. Since summary judgment is an extreme remedy, the court must draw all reasonable inferences in favor of the non-moving party (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) “Where there is any doubt as to the existence of triable issues, summary judgment should not be granted.” (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563, 565 [1st Dept 2010]).

Labor Law § 200 (1) provides, in pertinent part, that “all places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting as such.” (Labor Law § 200 [1]; *Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 405-406 [1st Dept 2018]). Claims for personal injury under § 200 fall into two broad categories: (1) those arising from an alleged defect or dangerous condition existing on the premises, and (2) those arising from the manner in which the work was performed.

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<sup>2</sup> Sean Kennedy is not to be confused with Paul Kennedy, who, in his EBT, identifies himself as a part owner of Kenco Wire and the brother of Kenco Wire's President, Mary Urban.

(*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]). For the latter category (the principal basis upon which plaintiff's claim rests), where the injury was caused by the "manner and means" of the work, an owner or general contractor can only be held liable if it actually exercised supervisory control over the injury-producing work (*id*, citing *Foley v Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476, 477 [1st Dept 2011]; see also *Alberto v DiSano Demolition Co., Inc.*, 194 AD3d 607, 608 [1st Dept 2021]). Merely maintaining a general supervisory authority over the worksite, without exercising said authority, is insufficient to impose liability under Labor Law § 200 (*Estevez v SLG 100 Park LLC*, 215 AD3d 566, 568-569 [1st Dept 2023]).

The Skanska defendants argue that, as a general contractor, they did not supervise, direct, or control the work performed by Kenco Wire and Smith, did not provide or furnish any of the tools or equipment Smith used for said work, and thus, cannot be held liable to plaintiff for her injuries. (See generally NYSCEF Doc. No. 133 at 3-11, *Skanska memo. of law*). This position, however, is refuted by Rosano, Skanska's employee. Prior to the accident, he testified that he raised concerns internally with a Port Authority employee that, if the project were to be completed during work hours, "we need to ensure that there would be no postal employees in the area that Kenco was performing their work." (NYSCEF Doc. No. 126 at 31). It appears that he was onsite at the post office on the date of the accident for this purpose, as he testified that he spoke with Watson, whom Rosano referred to as a liaison for the work happening, concerning "assurances...that the financial room would not be occupied" (*id* at 35-36). Moreover, Rosano testified that the Skanska defendants had "site safety duties" as the general contractor that "included the site safety where Kenco was doing the work on the date of the accident" (*id* at 72-73). Nonetheless, even though it appears that Rosano's authority encompassed imposing further measures, at no point did he do anything beyond accept Watson's verbal reassurances: this includes not inquiring about other employees with keys, informing them to notify Smith when they would need access to the finance room, placing caution signs near the area, and/or putting cones around its entrance (*id* at 74-76). That it was Skanska's duty to ensure the safety of USPS employees aligns with Smith's testimony, specifically, the Skanska defendants were responsible for coordinating with USPS supervisors to ensure no one entered, or if they had to enter, to notify him beforehand. (NYSCEF Doc. No. 128 at 40).

More broadly, the parties' Construction Work Plan and purchase agreement initially required the work to be performed after hours. Yet, other than Rosano's second-hand account of conversations he was not privy to, the Skanska defendants have produced no evidence, whether documentary or in the form of testimony, that establishes their contention that it was USPS — rather than themselves — who determined that the work had to be performed during the workday. Thus, even the Skanska defendants' claim that Kenco Wire was solely "responsible for selecting and placing the equipment and personnel it used in connection with the wire mesh installation" (NYSCEF Doc. No. 133 at 5) has not been established. As such, the court finds that plaintiff has established, at the very least, issues of fact as to whether the Skanska defendants exercised control over the means and manner of the work that caused plaintiff's injuries (see *Vargas v 622 Third Ave. Co. LLC*, 233 AD3d 522, 523-524 [1st Dept 2024]; cf *Ruisech v Structure Tone Inc.*, 208 AD3d 412, 414-415 [1st Dept 2022], *aff'd as mod* 42 NY3d 1061 [2024], *rearg denied* 43 NY3d 939 [2025]).

Lastly, while the Skanska defendants' motion seeks summary judgment with respect to liability on both plaintiff's Labor Law §§ 200 and § 241(6) claims (NYSCEF Doc. No. 103, *notice of motion*), their moving papers do not advance an argument in support of said relief with respect to § 241(6), based, as it is, on Industrial Code § 23-1.7(a) (*see generally* NYSCEF Doc. Nos. 133 at 3-5, *defendants' memo. of law*; 104 at 12, *counsel affidavit*). As such, the Court cannot consider their argument, raised for the first time in their reply, that Industrial Code § 23-1.7(a) is not applicable. (*Gumbs v Flushing Town Ctr. III, L.P.*, 114 AD3d 573, 574 [1st Dept 2014].)<sup>3</sup>

To be entitled to common-law indemnification, the moving party must show that (1) it has been held vicariously liable without proof of any negligence or actual supervision on its part and, (2) the proposed indemnitor was either negligent or exercised actual supervision or control over the injury producing work (*see Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012].) For the reasons cited above, namely, that plaintiff has attached sufficient evidence showing that the Skanska defendants held actual supervision and were negligent in its use, the Skanska defendants are not entitled to summary judgment on its common-law indemnification claim at this juncture (*see Lucas v City of New York*, 236 AD3d 523, 525 [1st Dept 2025]).

As to their contractual indemnification cause of action, the Skanska defendants would have the court enforce the indemnification provision within the parties' purchase agreement despite the fact that they each signed it nearly six weeks after plaintiff's accident. This course of action, however, is foreclosed by *Kolakowski v 10839 Assoc.* (185 AD3d 427, 428 [1st Dept 2020]). An "indemnification clause in a contract executed *after* a plaintiff's accident may be applied retroactively where evidence establishes as a matter of law that the agreement pertaining to the contractor's work was made as of a pre-accident date, and the parties intended that it apply as of that date." (*Id* [emphasis original; internal citations omitted].) Here, there is no such evidence that the Skanska defendants and Kenco Wire agreed to the purchase order before the work was performed. Rather, as the Skanska defendants admit, Kenco Wire "submitted drawings and plans for the work it performed," plans that were accepted by Skanska prior to performance without an indemnification provision (NYSCEF Doc. Nos. 165 at 7-8; 151, *construction work plan*). This is further confirmed by Mary Urban, Kenco Wire's president, who explained that, "in furtherance of the parties' verbal agreement, Kenco Wire drafted and negotiated plans and the scope of work" for the project that became memorialized in the Construction Work Plan. (NYSCEF Doc. No. 172 at ¶ 3, *Urban affidavit*). Critically, she avers that "there was no other written document governing the Skanska and Kenco's work agreement at the Post Office as of that date." (*Id*; *see also id* at ¶ 16).

Defendants' reliance on *Timmons v Barrett Paving Materials, Inc.* (83 AD3d 1473, 1477 [4th Dept 2011], *lv dismissed in part, denied in part* 17 NY3d 843 [2011]) is, first, not binding on this court and, second, unpersuasive for this same reason. There, the Fourth Department found an indemnification provision enforceable where there was sufficient evidence to establish

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<sup>3</sup> Industrial Code § 23-1.7(a) is not, on its face, inapplicable to plaintiff's claim. That provision applies to "[e]very place where persons are required to work or pass that is normally exposed to falling material or objects" and requires that space "shall be provided with suitable overhead protection." The only argument the Skanska defendants make is that this "was not a work area below which there would be workers who could potentially be exposed to falling objects." Yet, this is exactly what plaintiff alleges happened.

that the parties agreed to the terms of the purchase order at the time it was made—pre-accident—even though the parties signed it after (*id.*). In other words, unlike the Skanska/Kenco Wire subcontract, the decision makes clear that the purchase order, indemnification clause included, was written and agreed to by the parties before the accident. Accordingly, because there is no evidence in the record that shows the parties intended for the indemnification provision to apply retroactively, Skanska’s motion for summary judgment on this claim must be denied, and Kenco Wire’s motion for summary judgment on this claim must be granted (see *Kolakowski*, 185 AD3d at 428; *Mikulski v Adam R. West, Inc.*, 78 AD3d 910, 912 [2d Dept 2010]).

In moving for summary judgment,<sup>4</sup> Kenco Wire argues that it cannot be held liable because it did not have ownership, occupancy, control, or special use of the finance room (NYSCEF Doc. No. 169 at 4, *Kenco Wire’s memo of law*). This argument is unavailing as plaintiff has clearly established that Kenco Wire, in performing the wire mesh installation on a wall that connects to the inside of the room, had the requisite “occupancy” and “control” of the finance room for purposes of the Labor Law. Next, Kenco Wire argues that plaintiff’s presence was entirely unforeseeable and against the specific guidelines provided to Smith. However, the presence of USPS employees in the finance room, even against Skanska’s guideline, was foreseeable, especially in light of the fact that Smith testified that he relied solely on Rosano and did not check himself to ensure the finance room was locked (see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 139 [2002] [finding duty of care owed by subcontractor where it “launches a force or instrument of harm”]; NYSCEF Doc. No. 125 at 30-32, *Smith EBT transcript*.) Kenco Wire does not cite any caselaw that supports a finding that plaintiff’s presence was unforeseeable.

As noted above, to be entitled to common-law indemnification, Kenco Wire must show that it has been held vicariously liable without proof of any negligence or actual supervision on its part (see *Naughton*, 94 AD3d at 10.) Plaintiff’s opposition, however, has raised issues of fact as to whether Smith was negligent in installing the mesh wiring. More specifically, plaintiff has demonstrated that Smith was aware of the risk that a tool could fall from a significant height as he worked above the finance room but did not take precautions and safety measures available to him. For example, in response to plaintiff’s counsel’s questioning, Smith testified that he (1) knew of the practice of tethering, whereby he would tie his tools or other falling hazards to his body to prevent them from falling (NYSCEF Doc. No. 128 at 33); (2) owned a tether and knew that one would be available (*id.*); and yet (3) elected to forgo this practice based on, in his opinion, the relatively low height from which he was working (*id.* at 33-34). Given that there are issues of fact as to the Skanska defendant’s negligence and Kenco Wire’s negligence, neither party is entitled to summary judgment on their respective cross-claims for common-law indemnification. For this same reason, Kenco is not entitled to summary judgment on Skanska’s cross-claim for contribution. Accordingly, for the foregoing reasons, it is hereby

**ORDERED** that the Skanska defendants’ motion for summary judgment pursuant to CPLR 3212 (Mot. Seq. 003) is denied its entirety; and it is further

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<sup>4</sup> Plaintiff originally commenced two separate actions, one against the Skanska defendants and the other against Kenco Wire. In the action against Kenco Wire (NYSCEF Index No. 161966/2018), which was then consolidated with the instant case, plaintiff withdrew her Labor Law §§ 200 and 241(6) claims (see NYSEC Doc. No. 47).

**ORDERED** that Kenco Wire's motion for summary judgment pursuant to CPLR 3212 (Mot. Seq. 004) is granted solely as to the Skanska's cross-claim for contractual indemnification but is otherwise denied; and it is further

**ORDERED** that counsel for plaintiff shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days of entry.

This constitutes the Decision and Order of the Court.

March 5, 2026

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE