

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

6999	NICK ALMER, Plaintiff-Respondent, -against- SUMMIT GLORY PROPERTY LLC, et al., Defendants-Respondents-Appellants, LINEAR TECHNOLOGIES, INC., Defendant-Appellant-Respondent. SUMMIT GLORY PROPERTY LLC, et al., Third-Party Plaintiffs-Respondents-Appellants, -against- LINEAR TECHNOLOGIES, INC., Third-Party Defendant-Appellant-Respondent, FOREST ELECTRIC CORP., Third-Party Defendant. SUMMIT GLORY PROPERTY LLC, et al., Second Third-Party Plaintiffs, -against- TRI RAM LLC doing business as MOMENTUM DATA, Second Third-Party Defendant. LINEAR TECHNOLOGIES, INC., Third Third-Party Plaintiff-Appellant-Respondent,	Index Nos. 154195/19 595753/19 595378/20 595584/20 Case No. 2025-01586
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-against-

TRIRAM LLC, doing business as MOMENTUM
DATA,
Third Third-Party Defendant-
Respondent-Appellant.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Patrick J. Lawless of counsel), for appellant-respondent.

Haworth Barber & Gerstman, LLC, New York (Paul Golden of counsel), for Tri Ram LLC, respondent-appellant.

London Fischer LLP, New York (James Walsh of counsel), for Summit Glory Property LLC, Fosun Management (US) Inc. and Benchmark Builders, Inc., respondents-appellants.

Krieger Wilansky & Hupart, Bronx (Brett R. Hupart of counsel), for respondent.

Order, Supreme Court, New York County (Lyle E. Frank, J.), entered February 3, 2025, which, to the extent appealed from as limited by the briefs, denied defendant Linear Technologies, Inc.'s motion for summary judgment dismissing plaintiff's Labor Law § 241(6), Labor Law § 200, and common-law negligence claims as against it, denied judgment in its favor on its claim for contractual indemnity as against third-party defendant Tri Ram LLC doing business as Momentum (Momentum), and dismissal of the claims by defendants Summit Glory Property LLC, Fosun Management (US) Inc., and Benchmark Builders, Inc. for contractual indemnity, common-law indemnity, common-law contribution, and breach of contract claims as against it (mot seq 7); denied Momentum's motion for summary judgment dismissing plaintiff's Labor Law § 241(6), Labor Law § 200, and common-law negligence claims, and all cross-claims and/or third-party claims as against it, (mot seq 8); and denied Summit, Fosun, and

Benchmark's motion for summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence claims as against them, and judgment in their favor on their contractual indemnity claims as against Momentum and Linear (mot seq 6); unanimously modified, on the law, to grant Linear's motion to the extent of granting Linear conditional contractual indemnity as against Momentum; to grant so much of Momentum's motion as sought dismissal of Summit, Fosun, and Benchmark's contractual indemnity claims as against Momentum; to grant Summit and Fosun's claim for conditional contractual indemnity as against Linear; and to grant so much of Linear's motion as sought dismissal of Benchmark's contractual indemnity claims as against Linear; and otherwise affirmed, without costs.

Plaintiff, an apprentice electrician employed by nonparty Forest Electric, tripped and fell over a drag line, a rope used to pull cable trough conduit, while the drag line was attached to a partially installed data cable that had been coiled up and hung from a passageway ceiling. The construction project involved the build-out of tenant space at 28 Liberty Street in downtown Manhattan; the building was owned by Summit, a subsidiary of Fosun, and the space was leased to nonparty Wolters Kluwer. Summit engaged Benchmark to serve as the project's general contractor. Wolters Kluwer, in turn, contracted with Linear to run all the project's low energy data and communications cable, and Linear subcontracted that work to Momentum.

Supreme Court correctly denied summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence claims. The record contains evidence that Momentum, which installed the drag line, left it attached to the data cable so that the drag line dragged along the floor of the passageway and created a tripping hazard. Linear was contractually obligated to perform, and thus supervise, that installation, and

it failed to make a prima facie showing that it was not on notice of the condition. Thus, questions of fact remain as to whether Linear and Momentum are liable for plaintiff's injury (*see Ross v Curtis-Palmer*, 81 NY2d 494, 505 [1993]; *Davis v Trustees of Columbia Univ. in the City of N.Y.*, 199 AD3d 481, 482 [1st Dept 2021]). Summit, Fosun, and Benchmark also failed to make a prima facie showing of entitlement to summary judgment dismissing those claims (*see Agli v 21 E. 90 Apartments Corp.*, 195 AD3d 458, 459 [1st Dept 2021]; *Pereira v New Sch.*, 148 AD3d 410, 412-413 [1st Dept 2017]). As a result, Supreme Court correctly denied the defendants' and third-party defendants' summary judgment motions either seeking common-law indemnity or dismissing common-law indemnity and common-law contribution claims against them (*see Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]).

The court also correctly denied Linear's and Momentum's motions to dismiss plaintiff's Labor Law § 241(6) claim based upon alleged violations of Industrial Code §§ 23-1.7(e)(1) and 23-2.1 (a)(1). Whether Linear and Momentum were in privity with Benchmark or Forest Electric or whether they had supervisory authority over plaintiff is irrelevant, as it was Momentum's work, and not plaintiff's, that allegedly gave rise to the violations (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]; *DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 625 [1st Dept 2015]). Linear had supervisory authority over Momentum's work, making it subject to Labor Law § 241(6) claims arising out of Momentum's work (*see Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 193 [1st Dept 2011]; *Weber v Baccarat, Inc.*, 70 AD3d 487, 488 [1st Dept 2010]). The record also contains evidence that Industrial Code §§ 23-1.7(e) and 23-2.1 were violated. Whether Industrial Code § 23-1.7(e) was violated because the coil of cable and drag line was integral to the work and thus not a tripping hazard, and whether the

drag line was debris that should have been removed and discarded to avoid being a tripping hazard, are at a minimum questions for a jury (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 321 [2024]; *see also Rudnitsky v Macy's Real Est., LLC*, 189 AD3d 490, 491 [1st Dept 2020]).

Linear is entitled to indemnity against Momentum based on the contract between them. Linear is defined as “Contractor” in the agreement and is thus named as a party to whom Momentum owed contractual indemnity (*see Hartrum v Montefiore Hosp. Hous. Section II Inc.*, 237 AD3d 429, 432 [1st Dept 2025]). Moreover, the accident “arose out of,” was “in connection with,” or was “a result of or consequence of” the work (*see Urbina v 26 Ct. St. Assoc., LLC*, 46 AD3d 268, 274 [1st Dept 2007]). Further, the triggering of an “arising out of” clause is not contingent upon proof that the indemnitor was negligent (*see Licata v AB Green Gansevoort, LLC*, 158 AD3d 487, 490-491 [1st Dept 2018]). Summit, Fosun, and Benchmark, however, are not named indemnitees (*see Tavaréz v LIC Dev. Owner, L.P.*, 205 AD3d 565, 567 [1st Dept 2022]). Defendants argue that Summit is an indemnitee because it is an “Owner” and Benchmark and Fosun are its agents. However, the term “Owner” in the Linear/Momentum contract refers to Wolters Kluwer, the tenant with whom Linear contracted, and the “prime contract” is the contract between Linear and Wolters Kluwer. Even if Summit were named, there is no evidence that either Fosun or Benchmark Builders were its agents (*see Tonking v Port Auth. of New York & New Jersey*, 3 NY3d 486, 490 [2004]; *Tavaréz*, 205 AD3d at 567).

Defendants Summit and Fosun are entitled to indemnity from Linear based upon the Linear/Wolters Kluwer Contract. That contract has a two-page rider entitled “Insurance and Indemnity Rider” that provides that the indemnitees are the parties

listed “below” as additional insureds. The portion of the rider outlining insurance requirements lists Summit and Fosun as parties that Linear is obligated to name as additional insureds, thus making them indemnitees under the contract’s terms (*see Hartrum*, 237 AD3d at 432). Linear’s argument that those entities are not intended indemnitees because they are listed above, rather than below, the indemnity clause is unpersuasive, as the intent of the parties is clear from the contract. Benchmark, however, is not named as an additional insured, nor is it an agent of Summit for purposes of contractual indemnity (*see Tonking*, 3 NY3d at 490). Thus, its contractual indemnity claim against Linear must be dismissed.

Linear failed to make a showing that it procured the required insurance so as to warrant dismissal of defendants’ breach of contract claim against it (*see Dorset v 285 Madison Owner LLC*, 214 AD3d 402, 404 [1st Dept 2023]; *Shala v Park Regis Apt. Corp.*, 192 AD3d 607, 608 [1st Dept 2021]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being more prominent.

Susanna Molina Rojas
Clerk of the Court