

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

Manzanet-Daniels, J.P., Moulton, Shulman, Rosado, O'Neill Levy, JJ.

6982	JUNIOR CARTY ACOSTA, Plaintiff-Appellant-Respondent, -against-	Index Nos. 23090/19 43586/19 Case No. 2025-03411
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22-12 JACKSON OWNER LLC, et al.,
Defendants-Respondents-Appellants.

22-12 JACKSON OWNER LLC, et al.,
Third-Party Plaintiffs-Respondents-
Appellants,

-against-

VECTOR BUILDING CORP.,
Third-Party Defendant-Respondent-
Appellant,

QUALITY FACILITY SOLUTIONS CORP.,
Third-Party Defendant-Respondent.

[And Other Actions]

Law Offices of William Cafaro, New York (Bill Cafaro of counsel), for appellant-respondent.

Fuchs Rosenzweig, PLLC, New York (Angelika Arias-Linares of counsel), for Feldman Lumber-US LBM, LLC, respondent-appellant.

McMahon, Martine & Gallagher, LLP, Brooklyn (Daniel C. Reiser of counsel), for 22-12 Jackson Owner LLC, and Britt Realty LLC, respondents-appellants.

Gartner + Bloom P.C., New York (Nariman Subrati of counsel), for Vector Building Corp., respondent-appellant.

Galvano & Xanthakis, PC, Staten Island (Matthew D. Kelly of counsel), for respondent.

Order, Supreme Court, Bronx County (Myrna Socorro, J.), entered April 14, 2025, which, to the extent appealed from as limited by the briefs, denied so much of plaintiff's motion as sought summary judgment as to liability on his Labor Law § 240(1) claim as against defendant Feldman Lumber-US LBM, LLC and granted so much of plaintiff's motion as sought summary judgment as to liability on his Labor Law § 240(1) claim as against defendants 22-12 Jackson Owner LLC, Britt Realty, LLC, and Vector Building Corp.; granted so much of 22-12 Jackson and Britt Realty's summary judgment motion as sought dismissal of plaintiff's Labor Law § 200 and common-law negligence claims as against 22-12 Jackson, denied so much of the motion as sought dismissal of those claims as against Britt Realty, and denied so much of the motion as sought summary judgment on their cross-claims for contractual indemnification as against Vector and third-party defendant Quality Facility Solutions Corp. (QFS) and on their cross-claims for common-law indemnity as against Feldman Lumber; and denied so much of Vector's summary judgment motion as sought dismissal of plaintiff's Labor Law § 240(1) claim as against it, dismissal of 22-12 Jackson and Britt Realty's cross-claims for contractual indemnification as against it, and dismissal of 22-12 Jackson's, Britt Realty's, Feldman Lumber's, and QFS's cross-claims for contribution and common-law indemnification as against it, unanimously modified, on the law, to grant so much of plaintiff's motion as sought summary judgment on liability on his cause of action for common-law negligence as against Feldman Lumber, to conditionally grant so much of 22-12 Jackson and Britt Realty's motion as sought summary judgment on their cross-claims for contractual indemnification as against Vector and QFS, and to grant summary judgment to 22-12 Jackson on its cross-claim for common-law indemnification as against Feldman Lumber, and otherwise affirmed, without costs.

Plaintiff, a laborer employed by QFS, alleges that he was injured when sheetrock slid off of a Spyder forklift operated by an employee of Feldman Lumber and fell onto him as he was disposing of construction debris.

Supreme Court should have granted summary judgment in plaintiff's favor as to liability on his common-law negligence claim against Feldman Lumber. Plaintiff offered expert opinions from an experienced forklift operator, who opined that the accident could have happened only if Feldman Lumber's employee failed to properly operate the machinery by fully extending its forks. In opposition, Feldman Lumber failed to raise an issue of fact. Feldman Lumber's expert failed to address plaintiff's expert's opinion concerning the operator's failure to operate the machinery properly. Further, no third-party acts intervened between the employee's improper operation of the machinery, which dropped the sheetrock on plaintiff, sufficient to sever the causal connection (*see Derdarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]).

Supreme Court correctly granted plaintiff's motion for summary judgment on liability on his Labor Law § 240(1) cause of action against 22-12 Jackson, Britt Realty, and Vector. Initially, the record in this case establishes that all three parties qualified as proper Labor Law defendants (*see Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 192-193 [1st Dept 2011]). As to Vector in particular, the record establishes that it agreed to exercise a sufficient level of supervisory control so as to qualify (*id.* at 193). As to liability, plaintiff's evidence amply supports the conclusion that he was injured by a falling object, and that the object fell on him because of the absence of appropriate safety devices (*see Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001]). In opposition, defendants offered no eyewitness testimony or other such evidence to directly rebut plaintiff's evidence as to how this accident occurred.

Supreme Court also properly denied 22-12 Jackson and Britt Realty's motion for summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence causes of action as against Britt Realty, the general contractor. Labor Law § 200 applies "to owners, general contractors, and their statutory agents" (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 316-317 [1981]). Britt Realty's representative testified that Vector had responsibility for site safety, and that Vector, not Britt Realty, was responsible for deliveries to the site. However, the Feldman Lumber machinery operator testified that it was Britt Realty who instructed him where to park his truck before he began using the Spyder forklift to unload the sheetrock. In addition, other witness testimony, including record evidence from the Department of Buildings inspector, raised issues of fact as to Britt Realty's obligations to set procedures to ensure worker safety in the delivery areas of the construction site. In light of this testimony, the court correctly declined to dismiss plaintiff's Labor Law § 200 and common-law negligence claims as against Britt Realty, as triable issues of fact exist concerning its supervision and control of the injury-producing work.

However, the court should have granted summary judgment to 22-12 Jackson and Britt Realty on their contractual indemnification cross-claims as against Vector and QFS (*see Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987]). The record presents evidence indicating that Britt Realty, 22-12 Jackson, and Vector are each liable to plaintiff for their violation of Labor Law § 240(1). The relevant indemnification provisions for Britt Realty and 22-12 Jackson's relationship with Vector and QFS each covered damages "arising out of or resulting from the Work covered by this Subcontract to the extent such Work was performed by or contracted through the Subcontractor or by anyone for whose acts the Subcontractor may be held liable,

excluding only liability created by the sole and exclusive negligence of the Indemnified Parties.” With respect to Vector, the indemnification provision was implicated due to either Vector’s conduct set forth in the record, namely the carpentry work it contracted to perform which the sheetrock was for, or by the conduct of defendant GSP Interior Construction Inc., with whom Vector contracted to perform work.

With respect to QFS, the indemnification provision is implicated to the extent that plaintiff’s injuries arose out of work covered by the subcontract between Britt/22-12 Jackson and QFS. Further, there has been no showing that sole and exclusive negligence rested with the indemnified parties, 22-12 Jackson and Britt Realty. Because the record does not necessarily establish the indemnified parties’ negligence or lack thereof, however, summary judgment is granted only on a conditional basis (*see Maggio v 24 W. 57 APF, LLC*, 134 AD3d 621, 627-28 [1st Dept 2015]).

In light of the determination granting plaintiff’s motion for summary judgment on liability on his cause of action for common-law negligence against Feldman Lumber, the court should have granted 22-12 Jackson’s motion for summary judgment to the extent it sought common-law indemnification as against Feldman Lumber (*see Correia v Professional Data Mgt.*, 259 AD2d 60, 64-65 [1st Dept 1999]). There is no nonconclusory evidence in the record indicating that 22-12 Jackson’s liability under Labor Law § 240(1) is the result of anything other than vicarious liability for its nondelegable duties owed under the statute.

Finally, the court correctly denied Vector’s motion for summary judgment seeking dismissal of the common-law indemnification and contribution claims brought against it by 22-12 Jackson, Britt Realty, Feldman Lumber, and QFS. Vector failed to prove that it was not negligent beyond statutory liability, and must also prove that the

potential indemnitor was negligent in causing the accident (*Correia*, 259 AD2d at 65). Notwithstanding its assertion that it was not on site, the record contains some evidence that a Vector employee conferred with the general contractor about the delivery at issue, and documentary evidence in the record established that the sheetrock that fell on plaintiff was sold to Vector.

We have considered the remaining contentions and find them unavailing.

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 M. Rojas". The signature is fluid and cursive, with the first name "Susanna" and the last name "Rojas" being more prominent.

Susanna Molina Rojas
Clerk of the Court