

Hatfield v Bridgedale L.L.C.

2004 NY Slip Op 30252(U)

February 16, 2004

Supreme Court, Queens County

Docket Number: 0022502/2000

Judge: Janice A. Taylor

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR
Justice

IA Part 15

LEONARD HATFIELD and LISA HATFIELD, x

Plaintiffs,

-against-

BRIDGEDALE L.L.C., PRI ENTERPRISES, INC., VECTOR MEDIA L.L.C., ROYAL SIGN ERECTING CO., INC., TOWER BUILDING RESTORATION, INC., RALPH P. ALBANESE, ARCHITECT,

Defendants.

Index
Number 22502 2000

Motion
Date December 16, 2003

Motion
Cal. Number 5

BRIDGEDALE L.L.C., and VECTOR MEDIA, L.L.C.,

Third-Party Plaintiffs,

-against-

ROYAL SIGN ERECTING CO., INC., d/b/a ROYAL SIGN & RIGGING CO., INC., TOWER BUILDING RESTORATION, INC., and RALPH P. ALBANESE, ARCHITECT,

Third-Party Defendants.

Third-Party Index
Number 350191 2001

PRI ENTERPRISES, L.L.C.,

Second Third-Party Plaintiff,

-against-

INTERBORO SIGNS & MAINTENANCE, CO., INC.,

Second Third-Party Defendant.

Second Third-Party Index
Number _____

x

The following papers numbered 1 to 42 were read on this: (1) motion by the defendant/third-party defendant Ralph P. Albanese, Architect, pursuant to CPLR 3212, for summary judgment dismissing the complaint, third-party complaint and all cross claims interposed against him; (2) cross motion by the plaintiffs, pursuant to CPLR 3212, for summary judgment on the issue of the liability of the defendants based upon Labor Law §§ 240[1] and 241[6]; (3) cross motion by the defendants/third-party plaintiffs Bridgedale, L.L.C. and Vector Media, L.L.C., pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims interposed against them or, in the alternative, for conditional summary judgment on the issue of the liability of the defendants/third-party defendants for contractual and/or common-law indemnification; (4) cross motion by the defendant/second third-party plaintiff PRI Enterprises, L.L.C., pursuant to CPLR 3212, for summary judgment dismissing the complaint or, in the alternative, for conditional summary judgment on the issue of the liability of the defendant/third-party defendant Tower Building Restoration, Inc. for contribution and common-law indemnification, and for an order directing the insurer for that defendant/third-party defendant to provide a defense and indemnification in this action; and, (5) cross motion by the second third-party defendant Interboro Signs & Maintenance Co., Inc., pursuant to CPLR 3212, for summary judgment dismissing the second third-party complaint based upon Workers' Compensation Law § 11.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross Motion - Affidavits - Exhibits ...	5-8
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Upon the foregoing papers it is ordered that the motion and cross motions are determined as follows:

I. The Relevant Facts

The plaintiff Leonard Hatfield and his wife, derivatively ("Hatfield"), commenced this action seeking damages for injuries Hatfield sustained on March 6, 2000, while installing a billboard canvass known as a "stretch face." At the time of his injuries, Hatfield was employed by the second third-party defendant Interboro Signs & Maintenance, Inc. ("Interboro"). Hatfield seeks

damages based upon common-law negligence and violations of Labor Law §§ 200, 240[1] and 241[6]. He alleges that the defendants failed to provide him with proper safety devices, including a lower catwalk or scaffold.

The defendant/third-party plaintiff Bridgedale, L.L.C. ("Bridgedale") owned the building where the accident occurred. Bridgedale leased outdoor advertising space on the top of the building to the defendant/third-party plaintiff Vector Media, L.L.C. ("Vector"). Vector hired the defendant/third-party defendant Ralph P. Albanese, Architect ("Albanese"), to perform architectural services in connection with the construction of a new billboard. Vector also hired the defendant/second third-party plaintiff PRI Enterprises, L.L.C. ("PRI") as construction manager, to oversee the fabrication and erection of the new billboard structure.

PRI originally contracted with the defendant/third-party defendant Royal Sign Erecting Co., Inc. ("Royal") to fabricate and erect the billboard structure; however, during the construction, PRI terminated Royal and hired the defendant/third-party defendant Tower Building Restoration, Inc. ("Tower"), to complete the work. PRI also contracted with Interboro, Hatfield's employer, for the installation of the billboard stretch face.¹

A. Bridgedale/Vector Lease

Pursuant to a lease dated October 15, 1998, Bridgedale leased to Vector for a period of 20 years, billboard space atop the building. Pursuant to the lease, Vector was obligated to obtain all licenses or permits necessary for the conduct of its business. Vector also agreed to hold Bridgedale harmless for damages to persons or property as a result of any acts and/or omissions of Vector or Vector's agents arising during the construction, maintenance, repair or removal of any signage.

At the time of the lease, a billboard and permits therefor were already in place. Ultimately, Bridgedale and Vector decided that the existing billboard had to be replaced. Vector believed that the pre-existing billboard and existing permits allowed the

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Following the interposition of the complaint and amended complaint, the defendants cross-claimed against one another seeking contribution and/or indemnification. Bridgedale and Vector then commenced a third-party action seeking similar relief. PRI's second third-party complaint is not part of the record; however, it apparently seeks contribution and/or indemnification against Interboro.

construction of a new billboard; however, its representative also stated that he believed that PRI would handle the filing of plans, inspections and the obtaining of permits for the new billboard.

B. Vector/Albanese Contract

Vector hired Albanese to design a 20 x 60-foot indirect illuminated steel billboard for the roof. Pursuant to the written contract, Albanese was to survey the site, prepare plans and applications to be submitted to the New York City Department of Buildings ("DOB"), conduct controlled inspections and obtain a DOB Letter of Completion. All requisite permits were to be the responsibility of "the Contractor, Owner or Client." The steel contractor was to submit to Albanese, the engineer and the owner, two (2) sets of erection and shop drawings signed and sealed by a New York State Professional Engineer.

According to Albanese, the controlled inspections were to occur only if his plans were filed with the DOB and a permit issued, and the controlled inspections did not include inspections of the contractor's work or construction site safety. Albanese searched DOB records and found that no application for a permit was ever filed. Although Albanese also contends that his original drawings/plans called for the construction of a lower catwalk on the billboard, the drawings/plans themselves fail to clearly so indicate.

C. Vector/PRI Contract

Vector verbally hired PRI as construction manager to manage and coordinate all aspects of construction and maintenance of the billboard. Vector provided PRI with the plans prepared by Albanese and asked PRI to obtain prices. PRI never contacted Albanese and believed that Vector had obtained all permits necessary to start construction. PRI never called Albanese for a final inspection.

D. PRI/Royal/Tower Contracts and Billboard Construction

On or about August 6, 1999 PRI, on behalf of Vector, entered into a written contract whereby Royal was to fabricate, install and erect the new billboard. The contract documents included Albanese's drawings as well as a scope of work document obligating Royal to, inter alia, install all catwalks.

Pursuant to the PRI/Royal contract, Royal agreed to maintain liability and other insurance specifically naming Bridgedale, Vector and PRI as additional insureds. The parties do not dispute that Royal procured such insurance. Pursuant to paragraph 9 of the contract, Royal agreed to indemnify and hold harmless "Owner &

Contracting Agent" from all liabilities, claims, costs and expenses, including reasonable attorneys' fees, paid or incurred as a result of any breach by Royal of any covenant or condition of the contract, or Royal's negligence in performing the work.

Sometime in mid-October 1999, PRI terminated Royal and entered into a contract with Tower which, generally, contained the same relevant terms as the PRI/Royal contract. Tower was also obligated to obtain insurance naming Vector and PRI as additional insureds; however, the section naming the owner, Bridgedale, as an additional insured was left blank. In any event, the record fails to demonstrate that Tower obtained the requisite insurance. Although Tower's scope of work document varied from Royal's, paragraph 15 obligated Tower to fabricate and deliver all structural steel and related items for "(2) cat walks; (1) bottom front, (1) top back."

According to the PRI representative, upon the termination of Royal, the lower catwalk was not installed although its installation was required by the drawings. Tower failed to install the lower catwalk as of November 6, 1999, when it completed construction and was finally paid by PRI.²

E. The Accident

On March 6, 2000, after removing a stretch face from the billboard, Hatfield was injured while installing a new stretch face. At that time, Hatfield had worked for Interboro for eight or nine years, and had changed stretch faces for the prior one-to-two years.

To change stretch faces, the workers loosened ratches on the perimeter of the billboard, removed the old stretch face, attached a new stretch face and then tightened the ratchets. Hatfield and the other Interboro workers came equipped with harnesses, ropes, utility knives and the stretch face to be installed. There was no supervisor in charge of the Interboro workers.

When he arrived at the site, Hatfield saw that the billboard structure lacked permanently-affixed steel ladders or safety rails. There was a portable, fiberglass extension ladder at the site which two Interboro men used to get to the top of the billboard where a catwalk was located; however, no catwalk existed at the bottom of the billboard.

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The record indicates that the lower catwalk was installed only after Hatfield's accident.

To install the new stretch face, two men stood at the top of the billboard where a catwalk was located and pulled up the stretch face, while Hatfield and another worker stood at the bottom of the billboard on a horizontal I-beam and secured the bottom of the stretch face.

During installation of the new stretch face, Hatfield and his co-workers wore harnesses with lanyards that attached to the structure. As Hatfield moved from the left side of the horizontal I-beam to its right side fastening the bottom of the stretch face, he confronted vertical beams or other obstacles which required him to unhook and re-hook the lanyard to the structure.

At the first vertical beam, while in the process of unhooking his lanyard and then re-hooking it to the structure, a co-worker standing on the ground spontaneously threw a ratchet device up to Hatfield. As Hatfield tried to catch it, he lost his balance and fell approximately 15 to 20 feet from the horizontal I-beam to the roof, landing on and fracturing both feet, and sustaining other injuries.

Following the accident, Hatfield received workers' compensation benefits. Nothing prevented him from re-hooking the lanyard to the I-beam before he reached for the ratchet. He was not provided with scaffolding materials or ladders. On other occasions he performed the same tasks without ladders, scaffolds or a catwalk; however, the use of these devices depended on how close the bottom of the billboard was to the ground.

II. Motion and Cross Motions

A. Albanese's Motion

Albanese moves for summary judgment dismissing the complaint, the third-party complaint and all cross claims interposed against him, asserting that: (1) he had no on-site responsibility for the construction; (2) the contractor, client or owner were obligated to obtain all permits; (3) as no permits were obtained, his controlled inspection responsibilities were never triggered; (4) he was never notified that construction had commenced, and had no contact with Vector or the premises after he completed and delivered his plans; and, (5) if the lower catwalk was not constructed, there was a significant deviation from his plans and specifications.

Hatfield opposes Albanese's motion based upon the affidavit of an expert mechanical/safety engineer who asserts, inter alia, that the accident was due to Albanese's failure to properly specify work platforms and warn that the billboard should not be used until

construction of the billboard structure was complete. Tower, Bridgedale and Vector oppose Albanese's motion asserting that Albanese's plans do not clearly depict catwalks. Albanese replies that the plans clearly called for catwalks, and Hatfield never interposed any design defect or failure to warn claim against him.

B. Hatfield's Cross Motion

Hatfield cross-moves for summary judgment on the issue of the liability of Bridgedale, PRI, Vector, Royal, Tower and Albanese based upon violations of Labor Law §§ 240[1] and 241[6]. He asserts that he was not provided with proper safety devices, he was not the sole proximate cause of the accident, and he was not otherwise negligent.

C. Cross Motions of Bridgedale, Vector and PRI

Bridgedale and Vector, as well as PRI, oppose Hatfield's cross motion and separately cross-move for summary judgment dismissing the complaint and all cross claims interposed against them, asserting that: (1) Labor Law §§ 240[1] and 241[6] are inapplicable as Hatfield's work did not constitute an alteration to a structure, he was performing routine maintenance, there was no defect in the structure, and additional safety devices were not required; (2) they are not liable for common-law negligence or a violation of Labor Law § 200 as they did not supervise or control Hatfield's work and lacked actual or constructive notice of any dangerous condition; and, (3) in any event, the co-worker's act of throwing of a ratchet to Hatfield constituted a supervening cause of the accident.³

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In the alternative, Bridgedale and Vector seek conditional summary judgment on the issue of the liability of Albanese, PRI, Royal and Tower for contractual or common-law indemnification. PRI alternatively seeks summary judgment on the issue of the liability of Tower for contribution and contractual indemnification, as well as an order directing Tower's insurance company to provide it with a defense and indemnification.

Tower opposes the alternative relief sought by Bridgedale, Vector and PRI, asserting that: (1) Bridgedale was not named as a party to be indemnified in its contract with PRI; (2) it is not obligated to contractually indemnify PRI or Vector as those defendants failed to demonstrate that the accident was caused by its negligence; and, (3) it was not negligent as, unlike Royal's scope of work document, its scope of work document did not call for the installation of the catwalk at issue.

Hatfield opposes the cross motions of Bridgedale, Vector and PRI asserting that: (1) removing and installing the sheet face is a significant physical change to the structure as, upon such removal, the structure no longer constitutes a billboard; (2) the defendants violated Labor Law § 240[1] in failing to provide a lower catwalk or a scaffold; (3) the defendants' violation of 12 NYCRR §§ 1.15, 1.16 and 1.22 warrants the imposition of liability under Labor Law § 241[6]; (4) there are issues of fact as to who supplied the extension ladder, warranting the denial of summary judgment on the Labor Law § 200 and common-law negligence claims; and, (5) the co-worker's act of throwing a ratchet was not the proximate or superseding cause of the accident.

D. Interboro's Cross Motion

Interboro cross-moves for summary judgment dismissing the second third-party complaint asserting that Hatfield did not suffer a grave injury within the meaning of Workers' Compensation Law § 11, and there was no contractual indemnification agreement between it and PRI. PRI opposes the cross motion contending that there are issues of fact as to whether Hatfield sustained a grave injury.⁴

III. Decision

A. Architect Liability Under Labor Law §§ 240[1] and 241[6]

Labor Law §§ 240 and 241 expressly exempt from the liability imposed thereunder architects who do not direct or control the work and perform no activities other than planning and design (see, Boyd v Lepera & Ward, P.C., 275 AD2d 562, quoting Labor Law § 240[1]; see also, Thompson v St. Charles Condos., 303 AD2d 152, appeal dismissed 100 NY2d 556; Labor Law § 241[9]).

Even assuming, arguendo, that Labor Law §§ 240[1] and 241[6] are applicable to this action, the evidence demonstrates that Albanese only prepared plans for the fabrication, construction and erection of the billboard, and there is no evidence that he directed or controlled the injury-producing work.

As a result, Albanese is entitled to summary judgment dismissing the Labor Law §§ 240[1] and 241[6] causes of action interposed in the complaint, as well as all third-party claims and cross claims interposed against him that are based upon his

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A separate cross motion by Tower seeking summary judgment has not been considered, based upon Tower's failure to pay the requisite filing fee.

violation of those statutes. The branches of all cross motions seeking summary judgment on the issue of Albanese's liability based upon his violation of those statutes are denied.

B. General Liability Under Labor Law §§ 240[1] and 241[6]

In order to prevail on a Labor Law § 240[1] claim, a plaintiff must demonstrate that the statute was violated and that the violation was a proximate cause of the injuries (see, e.g., Blake v Neighborhood Hous. Servs. of N.Y. City, Inc., ___ NY2d ___, 2003 NY LEXIS 4213 [12/23/03]). Labor Law § 240[1] imposes liability where a plaintiff was engaged in, inter alia, the altering of a building or structure and was not provided with the enumerated safety devices (see, Joblon v Solow, 91 NY2d 457, 462-463).

There is no doubt that the billboard at issue was a structure within the meaning of the statute (see, Joblon v Solow, supra). The controversy turns, instead, on whether Hatfield was engaged in the altering of that structure. The term "altering" requires the making of a significant physical change to the configuration or composition of the building or structure (see, Joblon v Solow, supra, at 465).

Hatfield's work of changing the sheet face on the billboard did not involve any significant physical change to the configuration or composition of the billboard itself (see, LaFontaine v Albany Mgmt., Inc., 257 AD2d 319, 321, lv denied 94 NY2d 751; Munoz v DJZ Realty, LLC, ___ Misc 2d ___, 2003 NY Misc LEXIS 1617 [Sup Ct, Westchester County, 12/10/03]). Cases involving the repair and/or replacement of signs affixed to buildings are inapplicable (see, Vernieri v Empire Realty Co., 219 AD2d 593; cf., Izrailev v Ficarra Furniture of Long Island, Inc., 70 NY2d 813; Neville v Deters, 175 AD2d 597).

Thus, the defendants clearly established that the work performed by Hatfield involved a routine activity which does not fall within the scope of Labor Law § 240[1] (see, Esposito v New York City Indus. Dev. Agency, ___ NY2d ___, 2003 NY LEXIS 3945 [11/20/03]; Smith v Shell Oil Co., 85 NY2d 1000; LaFontaine v Albany Mgmt, Inc., supra; cf., Joblon v Solow, supra, at 265; Gonzalez v City of N.Y., 269 AD2 493; Lynch v City of N.Y., 209 AD2d 590).

Similarly, Labor Law § 241[6] imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (see, Rizzuto v L.A. Wenger

Contr. Co., Inc., 91 NY2d 343, 348). Even though "construction work" is defined expansively to include construction, erection, alteration, repair, maintenance, painting or moving of buildings or other structures (see, 12 NYCRR § 23-1.4[b][13]), the replacement of the billboard's sheet face does not fall within the meaning of any portion of that definition (see, Esposito v New York City Indus. Dev. Agency, supra; Vernieri v Empire Realty Co., supra; Munoz v DJZ Realty, LLC, supra).⁵

Accordingly, Albanese, Bridgedale, Vector and PRI are entitled to summary judgment dismissing the complaint, third-party complaint and all cross claims interposed against them which are based upon a violation of Labor Law §§ 240[1] and 241[6]. Hatfield's cross motion for summary judgment on those causes of action is denied.

C. Common-Law Negligence and Labor Law § 200 Claims

Labor Law § 200 codifies the common-law duty imposed upon an owner and general contractor to provide construction workers with a safe place to work (see, Comes v New York State Elec. & Gas Corp., 82 NY2d 876, 877). In order for liability to attach under Labor Law § 200 or upon a theory of common-law negligence, the owner, lessee or contractor must have exercised supervision and control over the injured party's work, or had actual or constructive notice of the dangerous condition on the premises which caused the injuries, regardless of whether they supervised the injured party's work (see, Comes v New York State Elec. & Gas Corp., supra; Abayev v Jaypson Jewelry Mfg. Corp., __ AD2d __, 769 NYS2d 563; Nobre v Nynex Corp., __ AD2d __, 769 NYS2d 556).

There is no evidence that Albanese, Bridgedale, Vector or PRI had any authority to supervise or control Hatfield's sheet face installation. Only Hatfield and the other Interboro workers were present at the time of the accident, and they came equipped with and were using all safety devices. There is no evidence that the ladder present at the site was in any way involved in the accident, or that any of the safety devices were defective or failed. Thus, Albanese, Bridgedale, Vector and PRI also demonstrated that they also lacked actual or constructive notice of any dangerous condition which precipitated Hatfield's injuries (see, Nobre v

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In addition, Hatfield failed to demonstrate the applicability of Industrial Code provisions 12 NYCRR §§ 23-1.5, 23-1.16 or 23-1.22, or how the defendants violated those provisions (see, e.g., Luckern v Lyonsdale Energy Ltd. P'ship, 281 AD2d 884; Skudlarek v Bethlehem Steel Corp., 251 AD2d 973).

Nynex Corp., supra; O'Donoghue v New York City Sch. Constr. Auth., 1 AD3d 333; Bommarito v Park Ave. Plaza Co., 307 AD2d 944, lv denied, __ NY2d __, 2003 NY LEXIS 4114 [12/22/03]). In opposition to this evidence, Hatfield failed to raise any triable issue of fact.

As a result, Albanese, Bridgedale, Vector and PRI are entitled to summary judgment dismissing the complaint, third-party complaint and all cross claims interposed against them based upon common-law negligence and a violation of Labor Law § 200.

D. Liability of Interboro

Pursuant to Workers' Compensation Law § 11, an employer may be held liable for common-law contribution or indemnification only where the co-defendant or third-party plaintiff proves through competent evidence that the injured party sustained a "grave injury" (see, Schuler v Kings Plaza Shopping Ctr., 294 AD2d 556). The term "grave injury" has been statutorily defined to include only those injuries which are determined to be permanent (see, Schuler v Kings Plaza Shopping Ctr., supra; see also, Workers' Compensation Law § 11).

Workers' Compensation Law § 11 does not affect the power of a third party to recover under express contractual obligations between the employer and the third party (see, Majewski v Broadalbin-Perth Cent. Sch. Dist., 91 NY2d 577, 582; Stabile v Viener, 291 AD2d 395, lv denied 98 NY2d 727).

Here, there is no contractual indemnification provision between PRI and Interboro. Moreover, Interboro established that Hatfield did not sustain a grave injury within the meaning of Workers' Compensation Law § 11 (see, Meis v ELO Org., LLC, 97 NY2d 714; Hilbert v Sahlen Packing Co., 267 AD2d 939; Fichter v Smith, 259 AD2d 1023, appeal dismissed 93 NY2d 994). In opposition to that evidence, PRI failed to raise any issue of fact.

As a result, Interboro's cross motion for summary judgment dismissing PRI's second third-party complaint is granted.⁶

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In view of the foregoing determinations, the branch of the cross motion by Bridgedale and Vector seeking alternative relief on the issue of the liability of Albanese, PRI, Royal and Tower for contractual and common-law indemnification, as well as the branch of the cross motion by PRI seeking alternative, similar relief against Tower, and an order directing Tower's insurer to provide a defense and indemnification, are denied as moot.

Conclusion

Accordingly, based upon the papers submitted to this court and the determinations set forth above, it is

ORDERED that the motion by the defendant/third-party defendant Ralph P. Albanese, Architect, for summary judgment dismissing the complaint, third-party complaint and all cross claims interposed against him is granted, and the complaint, third-party complaint and all cross claims interposed against that defendant are dismissed; and it is further

ORDERED that the cross motion by the plaintiffs for summary judgment on the issue of the liability of the defendants based upon Labor Law §§ 240[1] and 241[6] is denied; and it is further

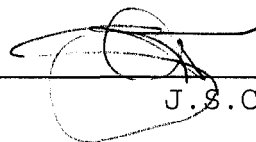
ORDERED that the cross motion by the defendants/third-party plaintiffs Bridgedale, L.L.C. and Vector Media, L.L.C., for summary judgment dismissing the complaint and all cross claims interposed against them or, in the alternative, for conditional summary judgment on the issue of the liability of the defendants/third-party defendants for contractual and/or common-law indemnification is granted to the extent that the defendants/third-party plaintiffs Bridgedale, L.L.C. and Vector Media, L.L.C. are granted summary judgment dismissing the complaint and all cross claims interposed against them, the complaint and all cross claims interposed against those defendants/third-party plaintiffs are dismissed and, otherwise, the cross motion is denied as moot; and it is further

ORDERED that the cross motion by the defendant/second third-party plaintiff PRI Enterprises, L.L.C., for summary judgment dismissing the complaint or, in the alternative, for conditional summary judgment on the issue of the liability of the defendant/third-party defendant Tower Building Restoration, Inc. for contribution and common-law indemnification, and for an order directing the insurer for that defendant/third-party defendant to provide a defense and indemnification in this action is granted to the extent that the defendant/second third-party plaintiff PRI Enterprises, L.L.C. is granted summary judgment dismissing the complaint, the complaint interposed against that defendant/second third-party plaintiff is dismissed and, otherwise, the cross motion is denied as moot; and it is further

ORDERED that the cross motion by the second third-party defendant Interboro Signs & Maintenance Co., Inc. for summary judgment dismissing the second third-party complaint based upon

Workers' Compensation Law § 11 is granted, and the second third-party complaint is dismissed.

Dated: 02/16/04



J.S.C.