Calderone v Crown 144 LLC
2007 NY Slip Op 34529(U)
January 17, 2007
Supreme Court, New York County
Docket Number: 101031/05
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 36

LOUIS CALDERONE,

Plaintiff,

-against-

CROWN 144 LLC, CITIGROUP, INC. and BRONX BASE BUILDERS, LTD.,

Defendants.

Index No.: 101031/05

Motion Seq. No.: 003

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Ling-Cohan, J.:

This is an action to recover damages for personal injuries sustained by a journeyman electrician when he tripped and fell on debris at a construction site located at 2841 Adam Clayton Powell Boulevard in Manhattan. Defendants Crown 144 LLC (Crown 144) and Citigroup, Inc. (Citigroup) move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff Louis Calderone's common-law negligence and Labor Law claims, or in the alternative, for summary judgment granting them common-law and contractual indemnification as against co-defendant Bronx Base Builders, Ltd. (Bronx Base). Bronx Base cross-moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's action, or in the alternative, granting it indemnification as against Crown 144 and Citigroup, and denying Crown 144 and Citigroup's motion for indemnification as against Bronx Base.

BACKGROUND

On November 27, 2002, the date of plaintiff's alleged accident, defendant Crown 144 owned the building where plaintiff's accident occurred. Crown 144 had leased the building to co-defendant Citigroup, which intended to renovate the premises and build a Citibank branch at the location (Citibank project). (Affirmation of Joseph W. Sands, Esq. in Support of Motion

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[Sands Aff. in Support], Exh. B [Lease]). Citigroup retained co-defendant Bronx Base as a "vendor" of various construction-related services, including hiring and supervising various subcontractors and laborers on the project. The Citibank project was to continue well into December of 2002.

The November 6, 2002 purchase order agreement (purchase order) between the parties specifically refers to Bronx Base as a "vendor" and contains an indemnification clause in favor of Citigroup, and against Bronx Base (see Sands Aff in Support, Exhibit C, Purchase Agreement). Various documents attached to plaintiff's affirmation in opposition identify Bronx Base as the general contractor of the Citibank project. For example, Citibank project meeting minutes refer to Bronx Base as a "general contractor" (Affirmation of Herman S. Steinberg in Opposition [Steinberg Aff in Opp], Exh. B), Bronx Base-generated applications and certificates for payment refer to Bronx Base as a "contractor" (id. at Exh. E-J), and a Bronx Base-generated fax regarding architectural information refers to Bronx Base as a "general contractor" (id. at Exh. K).

In his deposition, plaintiff testified that he was a journeyman electrician employed by ADCO Electrical Corporation (ADCO), which had been hired to perform various data work at the site, including the running of computer and telephone lines. (Sands Aff. in Support, Exh. D [Plaintiff's Dep. at 6-9]. At the time of plaintiff's alleged accident, plaintiff had been working at the Citibank project site for approximately six to seven weeks, and ADCO still had at least another two weeks of work to complete on the Citibank project (id. at 6, 14).

Plaintiff also testified that, in addition to ADCO, there were other trades working on the site during the same period (Plaintiff's Dep. at 6, 14). Although he could not remember the name of the company, plaintiff stated that the project did have a general contractor (id. at 12). Plaintiff

also testified that ADCO's foreman, Jimmy Figueroa (Figueroa), directed, controlled and supervised plaintiff's work (id. at 10, 12).

Plaintiff explained that, on November 27, 2002, the day before Thanksgiving, just after he had put away his tools for the day and was heading for the front door to exit the premises, he tripped on debris consisting of garbage, broken floor tiles and concrete, as well as various debris from ceiling work that had taken place at the site the day before (Plaintiff's Dep. at 13-20, 23, 63).

Plaintiff stated that debris was located all over the site, and that he had complained to Figueroa about the debris "all the time" (Plaintiff's Dep. at 20). In response, Figueroa complained about the debris to the Bronx Base foreman, who was in charge of the laborers assigned to cleaning the job site (id. at 20, Sands Aff. in Support, Exh. F [Padilla Dep] at 39). In addition, plaintiff stated that when he arrived at work on the day of his alleged accident, he observed debris still present on the floor from the previous day, and that he had complained again about the debris to Figueroa (Plaintiff's Dep. at 25).

Steven Barraco (Barraco), a senior project manager and vice president of Citigroup for the New York metropolitan area, testified that he was in charge of supervising the design and construction of corporate office space for Citigroup, including the Citibank project at issue (Sands Aff. in Support, Exh. E [Barraco Dep.], at 8-10). Specifically, Barraco hired architects, prepared construction documents, sent out the construction documents to bid for construction and then supervised the construction through completion (id. at 10).

Barraco testified that Citigroup put out a bid for a general contractor for the Citibank project, and that the bid was awarded to Bronx Base. It was Barraco's understanding that, as

general contractor, Bronx Base would be in charge of hiring and supervising all of the various subcontractors, as well as supply the labor force on the project (id. at 44).

Barraco stated that he was not present at the construction site on a day-to-day basis, and that, although he had the authority to direct a subcontractor to stop work, or change the timetable of the work that they were doing, he would only do as such through a general contractor (id. at 53, 91-92).

Barraco, an employee of owner-lessee Citigroup, William Padilla (Padilla), the owner and on-site supervisor of Bronx Base, and an architect hired by Citigroup attended weekly project meetings during the 12-14 weeks of the Citibank project. Other than this meeting, Barraco stated that he only visited the project site one other time during the week, in order to make sure that everything was on schedule and built to specification (Barraco Dep. at 52-53, 103-04).

When asked if he had ever observed debris at the construction site during any of his visits, Barraco stated that "[t]here is always debris on a construction job," and noted that laborers were in charge of cleaning the debris and putting it in dumpsters (Barraco Dep. at 61-62). However, Barraco also noted that, based on his years of experience, he did not consider what he observed at the site to be a large amount of debris (id. at 62). During his visits, Barraco never voiced any concerns to Bronx Base about what he felt was an unsafe condition (id. at 69). In addition, Barraco did not recall anyone complaining about cleanliness at the job site during his weekly visits (id. at 85).

Padilla asserted that Bronx Base's role on the Citbank project was simply that of a "vendor," which means "a supplier of resource construction," rather than a general contractor (Padialla Dep. at 13-14). Padilla noted that, for the Citibank project, Bronx Base was a vendor of

drywall, acoustical ceilings, some light masonry work, general carpentry and plumbing (id. at 13-15). Padilla stated that Bronx Base was one of between eight to 10 vendors hired for the Citibank project, and that the project did not have a general contractor, only vendors (id. at 14-16). However, Padilla also stated that he and Barraco worked "hand-in-hand" coordinating the trades for the project at the weekly meetings (id. at 16). Padilla also noted that the project had a December 2002 completion date (id. at 79).

Padilla also testified that, although Bronx Base hired an outside plumber, a plumbing contractor and a masonry contractor for the project, it provided its own labor force for all of the other work that Bronx Base was responsible for (Padilla Dep. at 14-15). Most notably, Bronx Base was responsible for installing an acoustical drop ceiling, as well as making sure that the entire site was kept clean (id. at 17-18, 20-21). To this effect, pursuant to its agreement with Citigroup, Bronx Base provided laborers for daily clean-up of the site eight hours a day (id. at 21-22). These clean-up laborers were supervised by Padilla. Padilla stated that Figueroa never complained to him about debris at the site (id.). On the day of plaintiff's alleged accident, the laborers hired by Bronx Base were performing their duties at the project site under the supervision of Padilla (id. at 63-64, 68-69).

DISCUSSION

"Where a defendant is the proponent of a motion for summary judgment, it has the burden of establishing that there are no material issues of fact in dispute and thus that it is entitled to judgment as a matter of law" (Flores v City of New York, 29 AD3d 356, 358 [1st Dept 2006]; citing Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form

sufficient to raise a genuine, triable issue of fact" (Mazurek v Metropolitan Museum of Art, 27 AD3d 227, 228 [1st Dept 2006]; see also Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]; Grossman v Amalgamated Housing Corp., Inc., 298 AD2d 224, 226 [1st Dept 2002]).

1. COMMON-LAW NEGLIGENCE AND LABOR LAW § 200 CLAIMS

Labor Law § 200 is a "'codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work' [citation omitted]" (Cruz v Toscano, 269 AD2d 122, 122 [1st Dept 2000]; see also Russin v Louis N. Picciano & Son, 54 NY2d 311, 317 [1981]). Labor Law § 200 (1) states, in pertinent part, as follows:

> "1. 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 such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

Although the parties in this case discuss at great length the issue of supervision, or lack thereof, on the part of defendants, that standard applies in Labor Law § 200 cases which involve injuries resulting from the means and methods of the work. Here, however, plaintiff's injuries were the result of an allegedly defective condition at the work site, not the manner in which the work was being performed. In such a case, the proponent of a Labor Law § 200 claim must demonstrate that the defendant either created, or had actual or constructive notice, of the defective condition that caused the accident (Murphy v Columbia University, 4 AD3d 200, 201-

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022 [1st Dept 2004]; Shipkoski v Watch Case Factory Associates, 292 AD2d 589, 590 [2d Dept 2002]).

At the beginning of Barraco's deposition, plaintiff's attorney stated for the record that no one from Crown 144 was ever involved in any aspect of the renovation of the Citibank project in question, and that no one from that entity had any involvement with any of the contractors who performed work at the location (Barraco Dep. at 4-5). In addition, once it turned over the keys to the premises to Citigroup, Crown 144 was never physically present at the location (id. at 5-6). As a result, it is not disputed that Crown 144 did not create or have actual or constructive notice of the unsafe condition that caused plaintiff's alleged accident.

In addition, no evidence was presented to the effect that Citigroup created or had actual or constructive notice of the unsafe condition that allegedly caused plaintiff's accident. Barraco testified that he only visited the job site a couple of times a week in order to attend a meeting and to make sure that everything was on schedule (Barraco Dep. at 52-53, 103-04). Although Barraco stated that "[t]here is always debris on a construction job," he also noted that what he had observed at the project site at the time of his visits did not amount to a large amount of debris (id. At 61-62). Moreover, Barraco did not recall Figueroa or anyone else complaining about the cleanliness of the job site during any of his weekly visits.

Thus, as it has been established that Crown 144 and Citigroup did not create or have actual or constructive notice of the unsafe condition that caused plaintiff's alleged accident, and plaintiff has not demonstrated that a triable issue of fact exists as to this issue, Crown 144 and Citigroup are entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action.

Bronx Base, however, is not entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action, as there is a triable issue of fact as to whether it had actual or constructive notice of the unsafe condition at issue in this case, and even contributed to its creation.

Here, as Bronx Base was responsible for the installation of the acoustical ceiling (Padilla Dep. at 20), and plaintiff testified that he tripped on debris from the ceiling work that had taken place at the site the day before his alleged accident (Plaintiff's Dep. At 19, 23), there is a triable issue of fact as to whether Bronx Base had a hand in creating the unsafe condition. In addition, as Bronx Base was in charge of supervising the laborers assigned to clean up the job site for eight hours a day, Bronx Base may have had actual notice of the unsafe condition (Padilla Dep. at 21-22).

Further, there is also a triable issue of fact as to whether Bronx Base had constructive notice of the unsafe condition in this case. "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (Gordon v American Museum of Natural History, 67 NY2d 836, 837 [1986]).

Here, Bronx Base controlled the clean-up of debris at the job site on a day-to-day basis, including the day of plaintiff's alleged accident. Plaintiff asserted that the debris that he tripped on included debris that had been present the day before his alleged accident, as well as debris created from the ceiling work that had taken place by Bronx Base employees at the job site the day before plaintiff's accident. Thus, there is a triable issue of fact as to whether the unsafe condition was visible and apparent and existed for a sufficient length of time for Bronx Base to

discover and remedy it.

In addition, a plaintiff may establish constructive notice by demonstrating an ongoing and recurring dangerous condition in the area of the alleged accident (Solazzo v New York City Transit Authority, 21 AD3d 735, 736 [1st Dept 2005]; Maza v University Avenue Development Corporation, 13 AD3d 65, 65 [1st Dept 2004][general contractor correctly found liable under Labor Law § 200 where it had the authority to direct the trades and its own employees to clean up the site, and it was not disputed that construction debris had been present and continued to accumulate in the area over a period of several months]; O'Connor-Miele v Barhite & Holzinger, Inc., 234 AD2d 106, 106-107 [1st Dept 1996][plaintiff may establish constructive notice by evidence that an ongoing and recurring dangerous condition existed in the area of the accident that was routinely left unaddressed by the landlord]). Here, plaintiff testified that debris was located all over the site and that he often complained to his foreman about the debris, who in turn complained to Bronx Base.

Thus, as Bronx Base has not demonstrated that, as a matter of law, it did not create or have actual or constructive notice of the unsafe condition that caused plaintiff's accident, Bronx Base is not entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action.

2. LABOR LAW § 241 (6)

Labor Law § 241 (6) provides, in pertinent part, as follows:

> "All contractors and owners and their agents ... when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *

> (6) All 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 commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work ... shall comply therewith."

Labor Law § 241 (6) imposes a nondelegable duty on owners, contractors and their agents to provide reasonable and adequate protection and safety to persons employed in construction, excavation and demolition work (see Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 501-502 [1993]). If a violation of the statute is proven, the owner or general contractor is vicariously liable without regard to his or her fault (Rizzuto v L.A. Wenger Contracting Co., Inc., 91 NY2d 343, 349-50 [1998]). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation, rather than a provision containing only generalized requirements for worker safety (id. at 349; Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d at 502-03). However, even if the alleged breach is of a specific Industrial Code rule, that rule must be applicable to the facts of the case (Thompson v Ludovico, 246 AD2d 642, 643-44 [2d Dept 1998]).

Defendants Crown 144, Citigroup and Bronx Base assert that the Labor Law statutes only apply to accidents occurring during a construction job and cease to apply at times when construction work is not actually being performed. As such, they argue that plaintiff's Labor Law § 241 (6) claim should be dismissed, because, at the time of plaintiff's accident, plaintiff had finished work for the day and was leaving the job site, and therefore, no construction work was

taking place at that time.

In support of their position, defendants Crown 144 and Citigroup mistakenly point to the case of Esposito v D'Orsagna (240 AD2d 195, 195 [1st Dept 1997], lv denied 90 NY2d 809 [1997]). In dismissing the Labor Law § 241 (6) cause of action in Esposito, the Court considered that, at the time of plaintiff's accident, the roofing repair was complete, all the materials and tools had been placed in the van, and plaintiff had already finished cleaning his hands (id. at 195-96).

However, the facts of Esposito are distinguishable from the case at bar. In Esposito, at the time of the plaintiff's accident, the materials and tools had been put away because the construction job had been completed in its totality (id. at 196). By contrast, in the instant case, although plaintiff had completed his work for the day, the renovation work at the project site was not yet completed. Thus, the location of plaintiff's alleged accident was still considered an active construction site to which the plaintiff would return the next work day and for many days thereafter.

Labor Law § 241 (6) and other construction safety statutes, have been applied to similar situations wherein the plaintiff was injured at a construction site while taking a break, but intended to return to the site later to continue working. In Morales v Spring Scaffolding, Inc. (24 AD3d 42, 47-48 [1st Dept 2005]), the Appellate Division held that Labor Law § 240(1) (commonly known as the "scaffold law"), applied where there plaintiff was injured on a defective sidewalk bridge which collapsed while plaintiff was eating his lunch. The sidewalk bridge had been used by workers as a staging area and for storing equipment and mixing cement. The Court noted that, whether plaintiff was still on his lunch break or had finished lunch, eventually he would return to the bridge to do more work (see also Griffin v New York City Tr. Auth., 16 AD3d

202, 203 [1st Dept 2005][deceased worker who was performing punchlist work and testing recently installed fans at the time of the accident was engaged in construction work for the purposes of Labor Law §§ 240[1] and 241[6]]). Thus, as it is of no consequence that plaintiff had finished working for the day when he was allegedly injured before he had left the construction site, plaintiff's accident falls within the purview Labor Law § 241 (6).

In addition, it is also of no consequence that, when plaintiff tripped, he had left his immediate work area and was approaching the front entrance to the premises. Responsibility under Labor Law § 241 (6) "extends not only to the point where the ... work was actually being conducted, but to the entire site ... in order to insure the safety of laborers going to and from the points of actual work [internal quotation marks and citations omitted]" (Smith v McClier Corporation, 22 AD3d 369, 370-71 [1st Dept 2005]; Whalen v City of New York, 270 AD2d 340, 341-342 [2d Dept 2000].

Although the Court has determined that defendants Crown 144 and Citigroup were not negligent in this case, because the statute imposes a non-delegable duty upon them to maintain a safe workplace, they may nevertheless be found vicariously liable under Labor Law § 241 (6) for plaintiff's injuries. "Section 241 (6) imposes a nondelegable duty upon owners and general contractors, regardless of the level of control or supervision" (Piccolo v St. John's Home for the Aging, 11 AD3d 884, 886 [4th Dept 2004]; see also Ross v. Curtis-Palmer Hydro Elec. Co., 81 NY2d at 501-02).

Bronx Base, Bronx Base argues that it is not subject Labor Law § 241(6) as it is not a general contractor with supervisory responsibilities so as to be considered an agent of Crown 144 and Citigroup, and thus, not within the purview of the statute. However, although Labor Law §

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241 (6) makes nondelegable the duty of an owner or general contractor to conform to the requirement of those sections, "[w]hen the work giving rise to these duties has been delegated to a third party, that third party then obtains the concomitant authority to supervise and control that work and becomes a statutory 'agent' of the owner or general contractor" (Russin v Louis N. Picciano & Son, 54 NY2d at 318; Everitt v Nozkowski, 285 AD2d 442, 443 [2d Dept 2001][determinative factor on the issue of control is whether a contractor or subcontractor has control of work being done and the authority to insist that proper safety practices are followed].

Here, Barraco testified that Citigroup put out a bid for a general contractor, and Bronx Base was awarded that bid (Barraco Dep. at 34-35). It was Barraco's understanding that, as general contractor, Bronx Base would be in charge of hiring and supervising the various subcontractors (id. at 49). Also, Padilla, of Bronx Base, stated that he worked "hand-in-hand" with Barraco to coordinate the trades on the project (Padilla Dep. at 16). In addition, various correspondence and other documents in the record, some generated by Bronx Base, identify Bronx Base as a general contractor on the project. Padilla also stated that Bronx Base was responsible for keeping the entire construction site clean and for employing and supervising labor for daily clean-up of the site (Padilla Dep. at 21-22). Thus, the Court finds that Bronx Base comes within Labor Law § 241(6) either as a general contractor or as the statutory agent of Citigroup, for the purpose of keeping the construction site clean.

Initially, it should be noted that although plaintiff asserts a violation of Industrial Code 12 NYCRR 23-1.7 (d) in his bill of particulars, it was not addressed by the parties in this case. In any event, this provision, which deals with slippery conditions, does not apply to the facts of this case.

Industrial Code 12 NYCRR 23-1.7 (e) (1) provides:

"Tripping and other hazards - Passageways - All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. ..."

Industrial Code 12 NYCRR 23-1.7 (e) (2) provides:

"Working areas - The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed."

Both Industrial Code 12 NYCRR 23-1.7 (e) (1) and (2) contain specific directives that are sufficient to sustain a cause of action under Labor Law § 241 (6) (see Singh v Young Manor, Inc., 23 AD3d 249, 249 [1st Dept 2005]; Lopez v City of New York, 21 AD3d 259, 259-60[1st Dept 2005]; Holloway v Sacks and Sacks, Esqs., 275 AD2d 625, 626 [1st Dept 2000]).

Industrial Code 12 NYCRR 23-1.7 (e) (1) does not apply to the facts of this case, as plaintiff was not traversing a passageway at the time of his accident. However, as plaintiff's accident was caused as a result of an accumulation of debris in the Citibank project site working area, defendants Crown 144, as owner of the premises, Citigroup, as owner-lessee, and Bronx Base, as general contractor or as Citigroup's agent, could be liable pursuant to Labor Law § 241 (6) cause of action predicated on a violation of 12 NYCRR 23.1.7 (e) (2). Accordingly, the motions for summary judgment by Crown 144 and Citigroup and the cross-motion for summary judgment of Bronx Base are denied with respect to the cause of action pursuant to Labor Law § 241(6)

3. INDEMNIFICATION

"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 Enterprises, Ltd., 14 AD3d 681, 684-685 [2d Dept 2005], quoting Correia v Professional Data Management, Inc., 259 AD2d 60, 65 [1st Dept 1999]; see also Priestly v Montefiore Medical Center, 10 AD3d 493, 495 [1st Dept 2004]). In the absence of any negligence, a claim for common-law indemnity may be established upon a showing that the proposed indemnitor "had the authority to direct, supervise, and control the work giving rise to the injury" (Hernandez v Two East End Avenue Apartment Corporation, 303 AD2d 556, 557 [2d Dept 2003]).

Crown 144 and Citigroup are entitled to summary judgment on their claim for common-law indemnification from Bronx Base as the Court has found that they were not negligent in this case - while it is undisputed that Bronx Base had the authority to direct, supervise and control the cleaning of the work site, which gave rise to plaintiff's injury - and that, at most, are subject only to statutory liability pursuant to Labor Law § 241(6). In addition, as the Court has found that Crown 144 and Citigroup were not negligent, and Bronx Base failed to demonstrate that Crown 144 and Citigroup had the authority to direct, control and supervise the work that gave rise to the unsafe condition that allegedly caused plaintiff's accident, Bronx Base is not entitled to common-law indemnification from Crown 144 and Citigroup.

Lastly, Crown 144 and Citigroup are not entitled to summary judgment on their claim for contractual indemnification from Bronx Base, as the copy of the indemnification provision submitted with their motion papers, is completely illegible.

"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 Company, Inc., 70 NY2d 774, 777 [1987], quoting Margolin v New York Life Insurance Company, 32 NY2d 149, 153 [1973]; see Torres v Morse Diesel International, Inc., 14 AD3d 401, 402-03[1st Dept 2005]). Since defendants have not submitted a legible copy of the indemnification provision, this Court cannot determine the scope of the indemnity provided therein.

Bronx Base's cross motion for contractual indemnification from co-defendants Crown 144 and Citigroup, is, likewise, denied, as Bronx Base has failed to produce a legible copy of an indemnification agreement running in its favor.

CONCLUSION AND ORDER

Accordingly, it is hereby

ORDERED that the part of defendants Crown 144 LLC and Citigroup, Inc.'s motion for summary judgment, pursuant to CPLR 3212, dismissing the parts of plaintiff's complaint asserting common-law negligence and a violation of Labor Law § 200, and asserting a violation of Labor Law § 241 (6) which is predicated on violations of Industrial Code 12 NYCRR 23-1.7 (d) and (e) (1) as against them is granted; and these portions of the complaint are dismissed as to these defendants and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the part of defendants Crown 144 LLC and Citigroup, Inc.'s motion for summary judgment, pursuant to CPLR 3212, dismissing the part of plaintiff's complaint asserting a violation of Labor Law § 241 (6) which is predicated on violations of Industrial Code 12 NYCRR 23-1.7 (e) (2) as against them is denied; and it is further

ORDERED that the part of defendants Crown 144 LLC and Citigroup, Inc.'s motion for summary judgment, pursuant to CPLR 3212, granting them common-law indemnification as against co-defendant Bronx Base Builders, Ltd. is granted; and it is further

ORDERED that the part of defendants Crown 144 LLC and Citigroup's motion for summary judgment, pursuant to CPLR 3212, granting them contractual indemnification as against co-defendant Bronx Base Builders, Ltd. is denied; and it is further

ORDERED that the part of defendant Bronx Base Builders, Ltd.'s cross motion for summary judgment, pursuant to CPLR 3212, dismissing the parts of plaintiff's complaint asserting common-law negligence and a violation of Labor Law § 200, and asserting a violation of Labor Law § 241 (6) which is predicated on violations of Industrial Code 12 NYCRR 23-1.7 (e) (2) as against it is denied; and it is further

ORDERED that the part of defendant Bronx Base Builders, Ltd.'s motion for summary judgment, pursuant to CPLR 3212, dismissing the part of plaintiff's complaint asserting a violation of Labor Law § 241 (6) which is predicated on violations of Industrial Code 12 NYCRR 23-1.7 (d) and (e) (1) as against it is granted; and this portion of the complaint is dismissed as to this defendant and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the part of defendant Bronx Base Builders, Ltd.'s cross motion for summary judgment, pursuant to CPLR 3212, granting it common-law and contractual indemnification as against co-defendants Crown 144 LLC and Citigroup, Inc. is denied; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that, within 30 days of entry of this order, defendants Crown 144 and Citigroup shall serve a copy upon all parties with notice of entry.

DATED: January 17, 2007

Hon. Doris Ling-Cohan, J.S.C.

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