Hurley v Best Buy Stores, L.P.
2008 NY Slip Op 30003(U)
January 3, 2008
Supreme Court, New York County
Docket Number: 0106538/2005
Judge: Carol R. Edmead
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SCANNED ON 1/4/2008

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD, Justice — PART 35

Index Number : 106538/2005
HURLEY, MICHAEL
vs
BEST BUY CO,
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. ______
MOTION DATE 12/13/07
MOTION SEQ. NO. 002
MOTION CAL. NO. ______

The following papers, numbered 1 to ___ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

FILED
JAN 04 2008
NEW YORK
COUNTY CLERK'S OFFICE

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by plaintiff for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability based upon the violation of Labor Law Section 240(1) as against defendants Best Buy Stores, L.P., Moklam Enterprises, Inc. and Schimenti Construction Company, LLC, and setting this matter down for an immediate assessment of damages is denied; and it is further

ORDERED that the motion by said defendants for summary judgment granting contractual indemnity over and above third-party defendant/second-third party defendant Sage Electrical Contracting, Inc. is granted; and it is further

ORDERED that said defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/3/08

HON. CAROL EDMEAD, J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-- x

MICHAEL HURLEY,

Plaintiff,

-against-

BEST BUY STORES, L.P., MOKLAM ENTERPRISES, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC,

Defendants.

-- x

Index No. 106538/05

DECISION/ORDER

SCHIMENTI CONSTRUCTION COMPANY, LLC,

Third-Party Plaintiff,

-against-

SAGE ELECTRICAL CONTRACTING, INC.,

Third-Party Defendant.

-- x

Index No. 590952/05

BEST BUY STORES, L.P., and MOKLAM ENTERPRISES, INC.,

Second Third-Party Plaintiffs,

-against-

SAGE ELECTRICAL CONTRACTING, INC.,

Second Third-Party Defendant.

-- x

Index No. 591014/05

FILED
JAN 04 2008
NEW YORK
COUNTY CLERK'S OFFICE

EDMEAD, J.S.C.

MEMORANDUM DECISION[1]

Plaintiff Michael Hurley ("plaintiff") moves for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability based upon the violation of Labor

[1] Motion sequence numbers 002 and 003 are consolidated for joint decision and disposition.

[* 3]

Law Section 240(1) as against Defendants Best Buy Stores, L.P. ("Best Buy"), Moklam Enterprises, Inc. ("Moklam") and Schimenti Construction Company, LLC ("Schimenti"),[2] (collectively the "defendants") and setting this matter down for an immediate assessment of damages.

Defendants move for summary judgment granting contractual indemnity over and above third-party defendant/second-third party defendant Sage Electrical Contracting, Inc. ("Sage").

Moklam was the owner of the premises located at 622 Broadway, New York, New York (the "subject premises") and leased the store space to Best Buy as tenant. Best Buy in turn hired Schimenti as general contractor, to renovate the store space. Sage was retained by Schimenti to perform electrical work including fluorescent light fixtures from the ceiling level of the store, as part of the renovation of a Best Buy store space (the "project"). Plaintiff was employed by Sage as an electrician at the project.

Plaintiff's Deposition

On January 24, 2005, the date of plaintiff's accident, he was employed by Sage (p. 8), and he had been working for Sage for approximately 3 to 4 months. Plaintiff had been working at the project site for approximately 4 to 5 weeks before the accident occurred. The Best Buy location was being renovated (p. 9). The store location was being rewired and plaintiff was performing electrical work (p. 11). Plaintiff was "pulling wire" in the conduit, which is a circular raceway for wires. The distance from the ceiling to the location where plaintiff was standing was approximately 20 feet. The conduit was affixed to the ceiling. Plaintiff was struck with a

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[2] By Stipulation dated 12/4/06 plaintiff amended the Complaint to reflect a change in name of the defendants to "Best Buy Stores, L.P." and "Moklam Enterprises, Inc."

fluorescent light fixture. It was an eight-foot surface mount fluorescent. The light that injured plaintiff was affixed on a fixture chain, which is a metal series of links and wherever the light would be called for, you support the chain and the light would be suspended on the chain (pp. 14-15). At the time of the accident, plaintiff was on ground level (p. 26). Plaintiff had a bunch of wires in his hand, and he was struck by the fluorescent fixture. After he was struck, plaintiff could see the fixture lying there on the ground (pp. 31-32). Before the accident, plaintiff had not observed any light above him because it was his first time in the area (p. 31). At no time on the morning of his accident had anyone used the scissor lift to perform any work above the area where the accident occurred (p. 29). No one had performed any work in the area above where the accident occurred on the morning before plaintiff's accident (p. 29).

The morning before his accident, plaintiff or his partner went up the ladder to either pull the snake or the wires through the conduit. That project was completed prior to plaintiff's accident. At the time of his accident, plaintiff was at the end where the scissor lift was, but he was not on the scissor lift (p. 24). Just prior to his accident, plaintiff and his partner had the wires out of the conduit, and his partner was next to plaintiff. The next thing he knew, he was injured (p. 28).

The fixture that hit plaintiff appeared to him to be a newly installed fixture, and he assumes it was installed by Sage (p. 36).

Andrzej Wysoczanski Deposition

Andrzej Wysoczanski ("Wysoczanski") has been an electrician with Sage for twenty years; he is a general foreman for Sage. The general nature of Sage's business is electrical subcontractor in the construction field (p. 7). He confirmed that the Best Buy project was a

renovation, and that Sage did all of the electrical work at the project which included power, lighting, including running all the wires for the electrical work, installation of lighting fixtures, and telephone (pp. 10). Sage employees received all of their direction with respect to what they were to do from either Wysoczanski or Sal Badalamenti, a subforeman who reported to Wysoczanski (p. 14). The installation of the fluorescent fixtures was done by Sage only (p. 16). He was not a witness to plaintiff's accident. Someone told him of plaintiff's accident, that a fixture fell on plaintiff. He observed the eight-foot fluorescent fixture hanging down from one chain. The other chain had detached from the ceiling causing the light fixture to fall (pp. 33-36).

Jim Sakolowski Deposition

Jim Sakolowski ("Sakolowski") has been employed by Schimenti, a general contractor, for nine years; his position is job superintendent. On the date of plaintiff's accident, he was assigned to the project site (pp. 7-8). He was responsible for taking care of the requests for information, managing the information between the architect and the project manager for Best Buy and Schimenti, managing the blueprint, answering the telephone and the mail (p. 16). Schimenti was the general contractor on the project (p. 21). Schimenti hired the subcontractors at the project, including Sage (pp. 22-23). Schimenti coordinated the subcontractors at the project (p. 25). He interacted with Wysoczanski from Sage (pp. 31). He had authority to interact with the trades and give them directives (p. 34). He learned of plaintiff's accident from Wysoczanski who asked him to fax an accident report (p. 47). He learned from the accident report that a light worker was injured when a light fixture fell and hit him (p. 48).

Marcin Mackiewicz Deposition

For four years prior to the date of his deposition, Marcin Mackiewicz ("Mackiewicz") was employed by Sage as an electrician (p. 6). He was not on the project site on the date of plaintiff's accident (p. 7). His supervisor on the project was Wysoczanski (p. 9). He recalls that there were fluorescent light fixtures hung from the ceilings on the ground level floor of the project. The fixtures were attached by screw hooks to the beams of the ceiling and then "a sling through with a chain and sling through the fixture with a chain so the fixture could not break apart." The fixtures were suspended from the ceiling, screwed with a U-bolt that went straight to the beam (pp. 13-14). He did the installations of the light fixtures on the first floor (p. 15). He worked alone (p. 16). He learned of plaintiff's accident when he returned from vacation (p. 18).

Mackiewicz hung all the fixtures in the area where plaintiff's accident occurred (p. 19). He remembers mounting the particular light fixture that is the subject of plaintiff's accident (p. 20). He installed the light fixture approximately one month before plaintiff's accident (p. 36).

Plaintiff's Motion

In support of his motion for summary judgment, plaintiff argues that his accident occurred as a result of the defendants' violation of Labor Law Section 240(1) as plaintiff was struck by a falling object. The object in question, an eight-foot light fixture, was inadequately secured and ultimately fell. It is uncontroverted that the defendants were the respective owners and general contractor under the Labor Law and, as such, are absolutely liable for any violation of Section 240(1).

Schimenti's Opposition

Plaintiff's motion for summary judgment should be denied because questions of fact exist concerning the happening of the accident as plaintiff may have been the sole proximate cause of his accident.

Plaintiff's deposition testimony is in stark contrast to the sworn affidavit of non-party witness Anthony Delnegro ("Delnegro"), a carpenter employed by non-party contractor Avon Five Brother of Freehold, who was noticed as a witness to plaintiff's accident. Delnegro states that on the date of plaintiff's accident, he was working on the street level near the loading dock at the rear of the Best Buy store. The only people working in this area were the plaintiff and Delnegro's partner Joe Sierra and Delnegro. At about 11:00 a.m., Delnegro saw plaintiff ascend a scissor lift to conduct work near the ceiling of the first floor. Delnegro observed plaintiff move the subject light fixture and tie it off in order to conduct his work. A short while later, Delnegro saw plaintiff descend the scissor lift. After plaintiff came down off the lift, Delnegro heard a sound. He then looked over towards plaintiff and saw that the light fixture that plaintiff had tied off was suspended from only one chain. The chain that was attached to the other end of the fixture was no longer attached above. This light fixture was swinging just above the level of the top of the scissor lift. At the time of the accident, Delnegro was standing approximately 25 to 30 feet away from plaintiff. Although he did not see the accident take place, he did see a scratch on plaintiff's head. There was no one else on the scissor lift and no one else working on the light fixture that was swinging.

Also, based on Mackiewicz' deposition testimony, an issue of fact exists concerning the condition of the light fixture, and who was responsible for the condition of the light fixture that

caused plaintiff's accident.

In short, an issue of fact exists as to whether plaintiff was the sole proximate cause of his accident which would preclude summary judgment pursuant to Labor Law §240 (1).

Plaintiff's Reply

Plaintiff did not install the light fixture. Moreover, the pipe upon which the light fixture was affixed was cut by someone other than plaintiff. Sage employees did not cut pipe.

Further, Delnegro should be subject to deposition. There is no proof in admissible for that plaintiff caused the light fixture to fall. Further, Mr. Delnegro did no witness plaintiff's accident; therefore, his affidavit cannot establish that plaintiff was the sole proximate cause of his accident.

Defendants' Motion

In support of contractual indemnification, defendants argue that the subcontract between Schimenti and Sage provided that Sage was to indemnify the defendants from "all claims, suits, losses, or expenses . . . arising out of or in consequence of the performance of this Purchase Order." The Purchase Order stated that Sage was to provide "union labor, material and equipment to complete the electrical scope of work as detailed in the attached [Sic] Electrical Scope of Work Clarification dated 8/11/04." Plaintiff was working on behalf of Sage at the time of the accident, and an electrician employed by Sage installed all the light fixtures in the area where the accident occurred. Thus, since plaintiff's accident arose out of Sage's work, and the indemnification clause does not require a finding of negligence on the part of Sage, defendants are entitled to contractual indemnification.

Sage's Opposition

Sage argues that prior to the accident, a Sage employee had hung the light fixtures from the ceiling, and in this instance, from a chain that was looped around a sprinkler pipe. However, the plaintiff's accident was the result of someone cutting off a portion of the pipe, which once removed, allowed the chain to slide down and drop the light fixture. Sage did not cut the sprinkler pipe. Plaintiff's accident did not arise out of the work plaintiff was doing on behalf of Sage or out of the electrical work Sage was contracted to perform.

Further, the indemnification clause provides that indemnity does not extend to "claims, costs, losses, or expenses . . . [that] arise out of or are the consequences of the negligence of one or more indemnities or its agents or employees." Sage was under contract to do electrical work only. The accident did not arise out of or in consequence of the performance of Sage's work, but was the result of a pipe that was cut after the light fixture was hung. The cut pipe can only be attributed to either Schimenti which oversaw the jobs on the project and safety, or the pipe cutting subcontractor that cut the pipe for Schimenti.

Defendants' Reply

Defendants maintain that plaintiff was conducting work in furtherance of Sage, as he was "pulling wire" at the time of the accident. Under the scenario presented by Delnegro's affidavit, plaintiff improperly tied off the light fixture so as to conduct his work at the ceiling level. If a plaintiff is injured during the course of performing his own work, that injury arises out of his employers' work. That Sage's contract does not include cutting pipes is irrelevant. Further, Sage fails to recognize that it was hired to hang light fixtures, including the light fixture that fell and contracted plaintiff.

Additionally, the indemnification provision provides for Sage to indemnify Schimenti for all injuries arising out of Sage's work, except if Schimenti or its "Agent" is negligent. "Agent" does not mean any other subcontractor working at the time of the accident. Thus, since the negligence of any other subcontractor in the happening of the accident is meaningless, and there is no evidence that Schimenti was negligent, the indemnification clause applies.

Analysis

Labor Law § 240(1)

Labor Law § 240 (1) provides, in relevant part:

"All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 240 (1) imposes absolute liability upon an owner or contractor for failing to provide or erect safety devices necessary to give proper protection to a worker who sustains injuries proximately caused by that failure (*Ernish v City of New York*, 2 AD3d 256, 768 NYS2d 325 [1st Dept 2003], *citing Bland v Manocherian*, 66 NY2d 452, 497 NYS2d 880 [1985]). In *Rocovich v Consolidated Edison Co.* (78 NY2d 509, 514, 577 NYS2d 219 [1991]), the Court of Appeals defined the scope of Labor Law § 240 (1) as encompassing special hazards inherent in elevation-related tasks (*Gill v Samuel Kosoff & Sons*, 229 AD2d 824 [3rd Dept 1996]). The Court again addressed the scope of Labor Law § 240 (1) in *Ross v Curtis-Palmer Hydro-Elec. Co.* (81 NY2d 494 [1993]), wherein it stated that the section "was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to

shield the injured worker *from harm directly flowing from the application of the force of gravity to an object or person*" (*supra*, at 501 [emphasis in original]). Thus, pursuant to Labor Law § 240 (1), owners and contractors have the duty to provide safety equipment to protect workers from hazards related to elevating themselves or their materials at the work site (*Drew v Correct Manufacturing Corp.*, 149 AD2d 893 [3rd Dept 1989]).

In enacting this statute, the legislative intent was to protect workers "by placing 'ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor' (1969 N.Y. Legis. Ann., at 407), instead of on workers, who 'are scarcely in a position to protect themselves from accident' [citation omitted]" (*Zimmer v Chemung County Performing Arts*, 65 N.Y.2d 513, 520, 493 N.Y.S.2d 102, [1985]). As the *Zimmer* court noted, "this statute is one for the protection of workmen from injury and undoubtedly is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed" (*id.* at 520-521, *quoting Quigley v Thatcher*, 207 N.Y. 66, 68, 100 N.E. 596 [1912]). The statute imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v Eastern Ry. Supply*, 82 N.Y.2d 555, 559, 606 N.Y.S.2d 127, 626 N.E.2d 912 [1993]; *Ross*, 81 N.Y.2d 494, 500, *supra*; *Rocovich*, 78 N.Y.2d 509, 513, *supra*).

Also, it is well settled that the § 240(1) provision applies to both "falling worker" and "falling object" cases. In the latter category, Labor Law § 240(1) applies where the falling of an object is related to a significant risk inherent in the "difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v Consolidated Edison Co.*, 78 N.Y.2d 509, 514, 577 N.Y.S.2d 219, 583 N.E.2d 932

[1991]).

Further, the issue of whether a falling object must be in the actual process of being "hoisted and/or secured," in order for the statute to apply, has also been resolved by the Court of Appeals. In *Outar v City of New York,* 5 N.Y.3d 731, 799 N.Y.S.2d 770, 832 N.E.2d 1186 [2005], the Court made clear that the falling object liability is not limited to cases in which the falling object is being actively hoisted or secured at the time it falls (*see also Smith v Jesus People,* 113 A.D.2d 980, 493 N.Y.S.2d 658 [1985] [§ 240(1) construed to cover the situation where a defective scaffold falls on a worker and injures him; plank fell from a scaffold and injured a carpenter who was in the process of moving it]).

However, section 240(1) imposes absolute liability upon owners and contractors only upon proof of a violation and that such violation was the proximate cause of the injuries sustained (*Zimmer v Chemung County Performing Arts,* 65 N.Y.2d 513, 493 N.Y.S.2d 102, 482 N.E.2d 898 [1985]; *see also Blake v Neighborhood Housing Servs. of N.Y. City,* 1 N.Y.3d 280, 289, 771 N.Y.S.2d 484, 803 N.E.2d 757 [2003] [liability is contingent on statutory violations and proximate cause and once these elements are established, contributory negligence cannot defeat the plaintiff's claim]).

In effect, an accident alone does not establish a Labor Law § 240(1) violation or causation (*id.*). Thus, for plaintiff herein to recover under section 240(1), the threshold issue to be resolved is whether there was a violation of the statute. If a violation exists, the court must determine whether that violation was the proximate cause of plaintiff's injuries. In other words, in the instant case, plaintiff must overcome the allegation that he alone adjusted the fluorescent light fixture causing it to fall.

While this court finds that plaintiff's moving papers make out a *prima facie* case for summary judgment as to liability under section 240(1), the Delnegro testimony, contrary to plaintiff's assertions, is inconsistent with plaintiff's testimony. If Delnegro is deposed and/or called at trial, his testimony would be admissible at trial, and would raise a triable issue of fact as to whether plaintiff's accident in fact resulted from plaintiff's own act. Specifically, defendants would not be subject to statutory liability if, as Delnegro indicates, that shortly before plaintiff's accident, Delnegro saw plaintiff ascend a scissor lift to conduct work near the ceiling of the first floor, and that Delnegro observed plaintiff move the subject light fixture and tie it off in order to conduct his work (*see Blake v Neighborhood Hous. Servs. of N.Y. City,* 1 N.Y.3d 280, 290, 771 N.Y.S.2d 484, 803 N.E.2d 757 [2003] [affirming verdict for defendant where, although plaintiff was injured while using a ladder, there was "no violation (of Labor Law § 240[1]) and the worker's actions ... (were) the 'sole proximate cause' of the accident"]; *Weiss v City of New York,* 306 A.D.2d 64, 760 N.Y.S.2d 491 [2003] [affirming denial of plaintiff's motion for judgment notwithstanding the verdict where the jury could "rationally find" that plaintiff failed to prove that his fall from a ladder was proximately by a Labor Law § 240(1) violation]; *Chan v Bed Bath & Beyond,* 284 A.D.2d 290, 726 N.Y.S.2d 127 [2001] [affirming denial of plaintiff's motion for partial summary judgment as to liability under Labor Law § 240[1] where plaintiff allegedly told his supervisor that he "slipped off of the ladder"]).

Accordingly, this Court finds that defendants have met their burden of establishing triable issues of fact as to whether plaintiff's actions were the sole proximate cause of his injuries (*see Blake v Neighborhood Hous. Servs. of N.Y. City,* 1 N.Y.3d 280, 289, n. 8, 771 N.Y.S.2d 484, 803 N.E.2d 757 [2003]). There is an issue of fact as to whether plaintiff is solely to blame for the

accident based on the assertions made in Delnegro's affidavit that shortly before plaintiff's accident, Delnegro saw plaintiff ascend a scissor lift to conduct work near the ceiling of the first floor, and that Delnegro observed plaintiff move the subject light fixture and tie it off in order to conduct his work.

With respect to defendants' request for contractual indemnity over and above Sage, it has been held that 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'" (*Torres v Morse Diesel Intl., Inc.*, 14 AD3d 401 [1st Dept 2005]).

Here, the Purchase Order requires that Sage

> defend, indemnify, and hold Us, the Owner, and the agents and employees of the foregoing harmless, of and from any and all claims, suits, losses or expenses whether direct or consequential . . . arising out of or in consequence of the performance of this Purchase Order . . . . This indemnity shall not extend to claims, cost, losses, or expenses for bodily injury or property damage to the extent that such claims, costs, losses, or expenses arise out of or are the consequences of the negligence of one or more indemnities or its agents or employees.

The indemnity provision to which Sage agreed is broad, as it obligates Sage to indemnify defendants and Schimenti against "all claims . . . arising out of or in consequence of the performance of this Purchase Order" (*see Urbina v 26 Court Street Assocs., LLC*, 847 NYS2d 67 [1st Dept 2007] *citing People v Young*, 220 AD2d 872, 874, 632 NYS2d 668 [1995] [construing the term "arising out of" in Executive Law § 63(3); "the term 'arising out of', in its most common sense, has been defined as originating from, incident to or having connection with"] [citation omitted], *lv. denied* 87 N.Y.2d 909, 641 N.Y.S.2d 239, 663 N.E.2d 1269 [1995]; *United States Fire Ins. Co. v. New York Mar. & Gen. Ins. Co.*, 268 A.D.2d 19, 21-22, 706 N.Y.S.2d 377

[2000] ["when used in automobile exclusion clauses, the words 'arising out of the ... use' are deemed to be broad, general, comprehensive terms ordinarily understood to mean originating from, incident to, or having connection with the use of the vehicle"] [internal quotation marks and citations omitted]). The only language limiting the scope of Sage's obligation is the exclusion of claims which arise out of or are the consequences of defendants' negligence. However, there is no evidence of negligence on the part of any of the defendants so as to deny indemnification in favor of defendants (*Torres, supra* [general duty to supervise work and ensure compliance with safety regulations does not amount to supervision and control of the work site such that the supervisory entity would be liable for the negligence of the contractor who performs the day-to-day operations]).

Further, whether Sage or another entity cut the pipe which purportedly caused the light fixture to fall upon the plaintiff is inconsequential. Nothing in the broad indemnification provision herein conditions the defendants' right to indemnification on a finding of fault by Sage or a third person. Sage's duty to indemnify the defendants is triggered since plaintiff's injury was sustained during his performance of work under, and pursuant to, the Purchase Order.[3]

Plaintiff's argument that his accident did not arise out of the work plaintiff was doing on behalf of Sage at the time of the accident requires too narrow a construction of the term "arises out of." The cause of the plaintiff's accident need not be directly related to the specific task being performed by the plaintiff. Since plaintiff was injured during his performance of work on behalf of his employer, Sage, which work fell within the scope of the Purchase Order, the

[3] The Court notes that the light fixture which fell upon the plaintiff was installed by another employee of Sage, under and pursuant to the Purchase Order.

contractual indemnification clause was triggered by plaintiff's accident (*see Torres, supra*; *see also April v Sovereign Constr. Co.*, 55 NY2d 627 [1981]).

Based on the foregoing, it is hereby

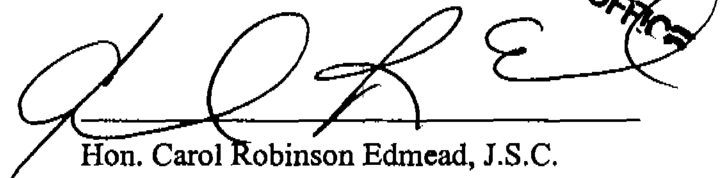
ORDERED that the motion by plaintiff for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability based upon the violation of Labor Law Section 240(1) as against defendants Best Buy Stores, L.P., Moklam Enterprises, Inc. and Schimenti Construction Company, LLC, and setting this matter down for an immediate assessment of damages is denied; and it is further

ORDERED that the motion by said defendants for summary judgment granting contractual indemnity over and above third-party defendant/second-third party defendant Sage Electrical Contracting, Inc. is granted; and it is further

ORDERED that said defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry.

FILED
JAN 04 2008
COUNTY CLERK'S OFFICE
NEW YORK

This constitutes the decision and order of the Court.



Dated: January 3, 2008

Hon. Carol Robinson Edmead, J.S.C.