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

Index Number : 100760/2008

BOYLE, DANIEL

VS.

NEW YORK CITY HOUSING

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

stice

PART 7

INDEX NO.

MOTION DATE 5/5/09

MOTION SEQ. NO. 01

MOTION CAL. NO. 11

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

+all papers submitted and read in Seq 02

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits A-M	1-2
Notice of Cross Motion Answering Affidavits — Exhibits A-M	3-4
Notice of Cross Motion - Exhibits A-M Replying Affidavits	5-6
Opp. Affirms	7-~~8~~9
Cross-Motions (2) ☒ Yes ☐ No Reply Affirms	10-12

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the memorandum Decision and Order filed herewith.

FILED

AUG 13 2009

COUNTY CLERK'S OFFICE

NEW YORK

HON. MICHAEL D. STALLMAN

Dated: 8/12/09

J.S.C.

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

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 7

----------x

DANIEL BOYLE,

Index No.: 100760/08

Plaintiff,

-against-

THE NEW YORK CITY HOUSING AUTHORITY, URS CORPORATION NEW YORK and LIRO ENGINEERING & CONSTRUCTION MANAGEMENT, PC,

Defendants.

----------x

LIRO ENGINEERING & CONSTRUCTION MANAGEMENT, PC,

Index No.: 590201/08

Third-Party Plaintiff,

-against-

NAVILLUS TILE INC., d/b/a NAVILLUS CONTRACTING,

Third-Party Defendant.

----------x

Hon. Michael D. Stallman:

Motion sequence numbers 001 and 002 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries sustained by a laborer when he fell off a sidewalk bridge while working at a building located at 354 Beach 56th Street in Far Rockaway on December 4, 2006.

In motion sequence number 001, plaintiff Daniel Boyle moves, pursuant to CPLR 3212, for summary judgment in his favor on his Labor Law § 240 (1) claim against defendants New York City Housing Authority (NYCHA), URS Corporation New York (URS) and Liro

Engineering & Construction Management, PC (Liro), and directing the Calendar Clerk of this court to set the matter down for an assessment of damages.

Defendant Liro cross-moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint, as well as dismissing all cross claims and counterclaims asserted against it. In addition, Liro cross-moves, pursuant to CPLR 3212, for summary judgment in its favor on its third-party action for contractual indemnification and breach of contract against third-party defendant Navillus Tile, Inc. d/b/a Navillus Contracting (Navillus).

Defendant URS cross-moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint, as well as dismissing all cross claims for contribution and indemnification against it. In addition, URS cross-moves, pursuant to CPLR 3212, for summary judgment in its favor on its cross claims for common-law and contractual indemnification against third-party defendant Navillus.

In motion sequence number 002, defendant NYCHA moves, pursuant to CPLR 3212, for summary judgment in its favor on its cross claim for contractual indemnification against defendant Liro.

BACKGROUND

Defendant NYCHA was the owner of the Ocean Bay Apartment Complex (the complex) where plaintiff's accident occurred. NYCHA entered into an agreement with defendant Liro, dated February 2, 2004, entitled "Requirements Contract for Construction Management/Build Services for Various Capital Construction Projects" (NYCHA/Liro contract) (URS Cross Motion, Exhibit Q, NYCHA/Liro Contract), wherein Liro was to serve as construction manager on a project to renovate the complex (the project). Pursuant to the NYCHA/Liro contract, Liro's

duties as construction manager were to include hiring and coordinating various entities, such as subcontractors, general contractors, electricians, and plumbers.

The project consisted of two parts. The Oceanside part of the project involved renovating seven buildings, and the Bayside part of the project involved the renovation of 24 buildings. The renovations were to include exterior masonry to refurbish the facades of the Oceanside and Bayside buildings, lobby improvements, renovations to the daycare and senior centers, transformer and electrical site distribution upgrades and other necessary site improvements.

Liro entered into a contract with defendant URS, dated November 11, 2004, for "Construction Management Services for the Ocean Bay Apartment Complex" (the URS/Liro contract) (URS Cross Motion, Exhibit R, Liro/URS Contract), wherein URS was to also provide construction management services for the project. In December of 2006, Liro was providing construction management services, pursuant to the NYCHA/Liro contract, with respect to the Daycare and Senior Center renovations, transformers and electrical site distribution upgrade, and URS was providing construction management services, pursuant to the URS/Liro contract, with respect to the exterior and lobby improvements at the Oceanside and Bayside buildings.

URS then contracted with third-party defendant Navillus, wherein Navillus was to serve as general contractor for the exterior renovations to be performed on the seven Oceanside buildings. These renovations included replacing the parapet walls and two feet of roofing on the buildings. On the date of his accident, plaintiff was employed as a laborer by Navillus.

Plaintiff testified that his duties on the project included assisting the masons, moving brick, building scaffolds and cleaning up the job site. Plaintiff stated that, on the day of his accident, he and a co-worker were sent by their supervisor, Martin Dooley (Dooley), to repair a

sidewalk bridge which had been erected by a Navillus subcontractor in furtherance of the exterior renovations being performed on the Oceanside part of the project. Specifically, plaintiff and his co-worker were instructed to repair a wooden panel located on one of the ends of the sidewalk bridge. The wooden panel had been damaged by a forklift and left hanging from the sidewalk bridge.

Plaintiff explained that the top of the sidewalk bridge was surrounded by blue wooden panels, which were affixed to the floor planking of the bridge by a series of angle braces. The only perimeter protection around the sidewalk bridge was in the form of chicken wire, which was attached to a series of upper wooden planks extending above the wooden panels.

Plaintiff testified that, after he and his co-worker arrived on the platform of the sidewalk bridge, they removed the damaged panel and the corresponding upper wooden plank, moving them onto the platform. Then, the two men began to remove the chicken wire from the upper wooden plank, so that they could reattach it properly. In order to pull back the chicken wire to re-wrap it, the men had to also remove the chicken wire from an another upper wooden plank, which was attached to a different, non-damaged blue wooden panel (the non-damaged panel). Plaintiff explained that, as he went to remove the chicken wire from this plank, he placed his left hand on the non-damaged panel, leaning slightly onto it. At this point, the non-damaged panel gave way, and plaintiff fell nine or 10 feet from the sidewalk bridge to the concrete sidewalk below, sustaining injury.

A job site incident report, dated December 4, 2006, stated that "the parapet failed and [plaintiff] toppled over, falling nine feet to the concrete sidewalk" (Plaintiff's Notice of Motion, Exhibit M, Job Site Incident Report).

DISCUSSION

"'The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 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]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable issue of fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

Initially, it should be noted that, in a Stipulation dated July 14, 2009, defendants NYCHA, Liro and URS agreed to discontinue, with prejudice, all cross claims, third-party claims and counterclaims between them, with counsel for third-party defendant Navillus now representing all defendants in this matter. As a result, only plaintiff's motion seeking summary judgment on the issue of liability under Labor Law § 240 (1) against defendants NYCHA, Liro and URS, as well as Liro and URS's cross motions seeking dismissal of plaintiff's complaint, which alleged violations of Labor Law § 240 (1), 241 (6) and common-law negligence and Labor Law § 200, as against them, need yet to be resolved by this court.

PLAINTIFF'S LABOR LAW § 240 (1) CLAIM AGAINST DEFENDANTS NYCHA, Liro and URS (Motion sequence number 001 and Liro and URS's Cross Motions)

Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 1983]), 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) was designed to prevent those types of accidents in which the scaffold ... 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'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). The Scaffold Law does not apply merely because work is performed at elevated heights, but also applies where the work itself involves risks related to differences in elevation (*Binetti v MK W. St. Co.*, 239 AD2d 214, 214-215 [1st Dept 1997]; *see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 500-501]).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated and that this violation was a proximate cause of the plaintiff's injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]; *Felker v Corning Inc.*, 90 NY2d 219, 224-225 [1997]; *Torres v Monroe College*, 12 AD3d 261, 262 [1st Dept 2004]). "The statute is designed to protect workers from gravity-related hazards such as falling from a height, and must be liberally construed to accomplish the purpose for which it was framed [internal citations omitted]" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006]).

Initially, it should be noted that NYCHA, as owner of the premises where plaintiff's accident occurred, falls within the purview of Labor Law § 240 (1). However, it must be determined as to whether Liro and URS, as construction managers for the project, also fall within the purview of the statute.

"Although a construction manager of a work site is generally not responsible for injuries under Labor Law § 240 (1), one may be vicariously liable as an agent of the property owner for injuries sustained under the statute in an instance where the manager had the ability to control the activity which brought about the injury" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]; *Millard v Hueber-Breuer Constr. Co.*, 4 AD3d 817, 818 [4th Dept 2004]; *Falsitta v Metropolitan Life Insurance Company, Inc.*, 279 AD2d 879, 880-881 [3d Dept 2001]).

When the work giving rise to the duty to conform to the requirements of Labor Law § 240 (1) is 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'" (*Walls v Turner Constr. Co.*, 4 NY3d at 864, quoting *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]). "General supervisory authority is insufficient to constitute supervisory control; it must be demonstrated that the contractor controlled *the manner in which the plaintiff performed his or her work*, i.e., how the injury-producing work was performed" (*Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]).

A review of the record in this case reveals that defendants Liro and URS did not have sufficient authority to supervise and control the injury-producing work at issue in this case, so as to be held vicariously liable for plaintiff's injuries as statutory agents of the owner under Labor Law § 240 (1) (*see Lazarou v Turner Constr. Co.*, 18 AD3d 398, 399 [1st Dept 2005] [Labor Law

§ 240 (1) claim dismissed as against defendant where record established that defendant did not have sufficient supervision or control over the injury-producing work]).

At the time of the accident, plaintiff was repairing a sidewalk bridge erected by a Navillus subcontractor in furtherance of the exterior improvements for the Oceanside part of the project. This sidewalk bridge was maintained and inspected by Navillus. Plaintiff testified that he was directed and supervised solely by Navillus employees, specifically foremen Dooley and Alan Mansfield, and that he was not involved with workers from any other company.

In addition, Dooley testified that Navillus served as a general contractor on the project, and that Liro and URS had a partnership as co-construction managers. Dooley also stated that Navillus had a duty to provide safety equipment to its workers, and that Navillus provided a 40-foot storage container on the job site containing said safety equipment. As to Liro, although it was one of the construction managers for the project, a review of the testimonial evidence in this case reveals that Liro was not the construction manager for the part of the project that plaintiff was working on at the time of his accident.

Moreover, pursuant to the terms of the contract between Navillus and URS, dated April 25, 2005 (the URS/Navillus contract), Navillus was responsible for supervising, inspecting and directing the work described under that contract, and Navillus was "solely responsible for the means, methods, techniques, sequences of procedures of construction" (URS Cross Motion, Exhibit S, URS/Navillus Contract, Art. 3.2.1.). In fact, URS was specifically denied the authority to "supervise or direct the furnishing or performance of the Work" (*id.*, Art. 1.8.4). The URS/Navillus contract further provides that Navillus was to be responsible for developing its own safety program, as well as for "initiating, maintaining and supervising all safety precautions

and programs in connection with the Work" (*id.*, Art. 2.1.3.).

Thus, as Liro and URS did not have supervisory control or authority over the injury-producing activity in this case, these defendants cannot be deemed "agent[s]" for the purposes of Labor Law § 240 (1). Thus, defendants Liro and URS are entitled to summary judgment dismissing plaintiff's Labor Law § 240 (1) claim against them. Accordingly, plaintiff is not entitled to summary judgment in his favor on his Labor Law § 240 claim against Liro and URS.

As to defendant NYCHA, plaintiff has met his burden in that the collapse of the sidewalk bridge's panel constituted a prima facie violation of Labor Law § 240 (1) (*Aragon v 233 W. 21st St., Inc.*, 201 AD2d 353, 354 [1st Dept 1994] [collapse of a scaffold is prima facie evidence of a violation of Labor Law § 240 (1) which shifts the burden to defendants to raise a factual issue on liability]; *Becerra v City of New York*, 261 AD2d 188, 190 [1st Dept 1999] [Court held that the collapse of unsecured plywood platform which supported a construction worker four stories above ground level constituted a prima facie violation of scaffolding statute]). "[A] presumption in favor of plaintiff arises when a scaffold or ladder collapses or malfunctions 'for no apparent reason'" (*Quattrocchi v F.J. Sciame Constr. Corp.*, 44 AD3d 377, 381 [1st Dept 2007], quoting *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d at 289).

"Whether the device provided proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his materials" (*Nelson v Ciba-Geigy*, 268 AD2d 570, 572 [2d Dept 2000]). "[W]here the uncontroverted evidence establishes that the safety device collapsed, slipped or otherwise failed to support him or her, the plaintiff demonstrates a prima facie entitlement to partial summary judgment under Labor Law § 240 (1), and the burden shifts to the defendant" (*Ball v Cascade Tissue Group-NY.*,

Inc., 36 AD3d 1187, 1188 [3d Dept 2007]; *see also Kosavick v Tishman Constr. Corp. of NY.*, 50 AD3d 287, 288 [1st Dept 2008] ["(O)nce a plaintiff makes a prima facie showing that the ladder he was using collapsed, there is a presumption that the ladder was an inadequate safety device," shifting the burden to the defendant to establish that there was violation of the statute and plaintiff was the sole proximate cause of his accident]).

Defendants argue that Labor Law § 240 (1) does not apply to the facts of this case because the sidewalk bridge was not intended to be used as a proper safety device, because it was the safety device plaintiff and his co-worker were sent up to fix. In opposition to this argument, plaintiff asserts that the panel that failed was not the panel that plaintiff and his co-worker were sent up to fix.

In any event, it was up to defendant NYCHA to provide additional precautionary devices or measures in the event that the sidewalk bridge could not provide safety while plaintiff was repairing it (*Nimirovski v Vornado Realty Trust Co.*, 29 AD3d 762, 762 [2d Dept 2006] [additional safety devices were necessary to satisfy Labor Law § 240 (1), as it was foreseeable that pieces of metal being dropped to the floor by plaintiff could strike the scaffold and cause it to shake, rendering the scaffold inadequate for plaintiff's protection]; *Pritchard v Murray Walter, Inc.*, 157 AD2d 1012, 1013 [3d Dept 1990] [scaffold from which decedent fell was inadequate to protect him against hazards encountered while he was dismantling the same scaffold. Thus, it was necessary for defendant to provide decedent with additional protection in order to satisfy its duty within the meaning of Labor Law § 240 (1)]).

In its opposition to plaintiff's motion for summary judgment, defendant NYCHA asserts the defense that plaintiff was a recalcitrant worker and the sole proximate cause of his injuries,

because safety harnesses were available for use at the job site, and yet, plaintiff chose not to use one. Where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability under Labor Law § 240 (1) (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006] [plaintiff's own negligent actions in choosing a ladder he knew was too short for the work to be accomplished, and then standing on the ladder's top cap in order to reach the work, were, as a matter of law, the sole proximate cause of his injuries]; *Montgomery v Federal Express Corp.*, 4 NY3d 805, 806 [2005]; *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004][where an employer has made available adequate safety devices and an employee has been instructed to use them, the employee may not recover under Labor Law § 240 (1) for injuries caused solely by his violation of those instructions]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d at 290). Such actions may include the failure to use or the misuse of an otherwise available safety device (*see Robinson v East Med. Ctr., LP*, 6 NY3d at 554; *Masullo v 1199 Hous. Corp.*, 63 AD3d 430 [1st Dept 2009]).

Whether plaintiff was a recalcitrant worker and the sole proximate cause of his accident depends on whether plaintiff was provided with safety devices, whether he was instructed to use those safety devices, and whether he intentionally chose not to use those devices in direct violation of those instructions (*see Gallagher v New York Post*, 55 AD3d 488, 490 [1st Dept 2008] [plaintiff ignored a standing order to ironworkers to be in a harness and to tie off when working around any floor opening]; *Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d at 288 [generic statements of availability of safety devices were insufficient to create an issue of fact as to whether the plaintiff was the sole proximate cause of his injury]; *Leniar v Metropolitan Tr. Auth.*, 37 AD3d 425, 426 [2d Dept 2007] [Court found no Labor Law § 240 (1) liability where

plaintiff was provided with safety devices, attended several safety meetings, and then intentionally chose not to use said devices in direct violation of his instructions]). However, "[t]he mere presence of [safety devices] somewhere at the worksite" is insufficient to defeat liability (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 524 [1985]).

Here, defendant NYCHA puts forth that plaintiff testified that, during the times when they were available, plaintiff had used harnesses at the job site fairly often when working on sidewalk bridges. In addition, Dooley testified that workers that needed harnesses had access to them, and that they were available in a centrally located place. Dooley also noted that workers did not need special permission to obtain harnesses.

Plaintiff testified that, not only were the harnesses not always available, he would have to go to his foreman to obtain one. In addition, plaintiff maintained that his foreman did not instruct him to use a harness or give him a harness before going up on the sidewalk bridge at issue on the day of his accident, because there was nowhere to clip it to there.

Here, the evidence is insufficient to raise issues of fact as to whether plaintiff was provided with adequate safety devices, was instructed to use them and declined to do so, thus rendering his actions the sole proximate cause of his injuries (*compare Gallagher v New York Post*, 55 AD3d at 490 [where plaintiff's testimony, which was corroborated by the affidavits of his co-worker and foreman, asserted that he was not provided with any safety devices, and the defense provided testimony that ironworkers were required to use certain safety devices when working near open areas, that safety devices were available on the job site the day the plaintiff was injured, and that a standing order was in place that all workers operating around any opening in the floor were to be in a tied-off harness, Court found that the evidence was sufficient to raise

issues of fact as to whether plaintiff was recalcitrant]; *Masullo v 1199 Hous. Corp.*, 63 AD3d 430, *supra* [no Labor Law § 240 (1) liability where there was an issue of fact as to how easily plaintiff could have obtained a replacement ladder or other safety device]).

Thus, plaintiff is entitled to summary judgment in his favor on the issue of Labor Law § 240 (1) liability as against defendant NYCHA.

PLAINTIFF'S LABOR LAW § 241 (6) CLAIM AGAINST DEFENDANTS LIRO AND URS (Liro and URS's Cross Motions)

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 ... as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. ..."

Labor Law § 241 (6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection and safety to workers (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 501-502). 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 of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.*).

As discussed previously, as Liro and URS did not have supervisory control or authority

over the injury-producing activity in this case, these defendants cannot be deemed "agents" for the purposes of Labor Law § 241 (6). Thus, defendants Liro and URS are entitled to summary judgment dismissing plaintiff's Labor Law § 241 (1) claim as against them (*see Smith v McClier Corp.*, 22 AD3d 369, 371 [1st Dept 2005] [Labor Law § 241 (6) claim dismissed as against defendant subcontractor because defendant was not owner or general contractor, and did not have authority to supervise and control injury-producing work]).

PLAINTIFF'S COMMON-LAW NEGLIGENCE AND LABOR LAW § 200 CLAIMS AGAINST DEFENDANTS LIRO AND URS (Liro and URS's Cross Motions)

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 at 317). 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.

Here, plaintiff was injured while repairing a wooden panel on a sidewalk bridge, which was erected in furtherance of exterior renovations being performed at the complex. As such, it can be said that plaintiff's accident was caused as a result of defects or dangers in the methods or materials of the work. In such a case, recovery under Labor Law § 200 requires that "it is shown that the party to be charged had the authority to supervise or control the performance of the work" (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]; *Rizzuto v L.A. Wenger Contr. Co.*, 91

NY2d 343, 352 [1998]). "'[T]he duty to provide a safe place to work [under Labor Law § 200] is not breached when the injury arises out of a defect in the subcontractor's own plant, tools and methods, or through negligent acts of the subcontractor occurring as a detail of the work'" (*Ortega v Puccia*, 57 AD3d at 62, quoting *Persichilli v Triborough Bridge & Tunnel Auth.*, 16 NY2d 136, 145 [1965]).

Mere "'[g]eneral supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability for common-law negligence and under Labor Law § 200 [citations omitted]'" (*Natale v City of New York*, 33 AD3d 772, 773 [2d Dept 2006]).

Here, evidence in the record indicates that the subject sidewalk bridge was erected by a Navillus subcontractor and maintained by Navillus. In addition, plaintiff testified that only Navillus employees supervised and directed the manner in which he performed his repair work on the sidewalk bridge. In addition, pursuant to contract, Navillus had sole responsibility for determining the means and methods for its own work, as well as developing and implementing a safety plan. In fact, Dooley testified that he did not inform URS of the need to repair the sidewalk bridge or that the repair was being conducted.

As a result, Liro and URS are entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claims as against them.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiff Daniel Boyle's motion (motion sequence number 001), pursuant to CPLR 3212, for summary judgment in his favor on his Labor Law § 240 (1) claim

against defendants New York City Housing Authority (NYCHA), URS Corporation New York (URS) and Liro Engineering & Construction Management, PC (Liro), and directing the Calendar Clerk of this court to set the matter down for assessment of damages, is granted as to defendant NYCHA only, and the motion is otherwise denied; and it is further

ORDERED that defendant Liro's cross motion, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint as against it is granted, and the complaint is severed and dismissed as to this defendant, and the Clerk is directed to enter judgment in favor of this defendant, with costs and disbursements as taxed by the Clerk, and the motion is otherwise denied as moot; and it is further

ORDERED that defendant URS's cross motion, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint as against it is granted, and the complaint is dismissed as to this defendant, and the Clerk is directed to enter judgment in favor of this defendant, with costs and disbursements as taxed by the Clerk, and the motion is otherwise denied as moot; and it is further

ORDERED that defendant NYCHA's motion (motion sequence number 002), pursuant to CPLR 3212, for summary judgment in its favor on its contractual indemnification claim against defendant Liro is denied as moot; and it is further

ORDERED that the remainder of the action shall continue.

DATED: 6/12/09
New York, NY

ENTER:

J.S.C.

FILED
AUG 13 2009
COUNTY CLERK'S OFFICE
NEW YORK