

Jara v New York Racing Assn.
2010 NY Slip Op 30832(U)
February 25, 2010
Supreme Court, Queens County
Docket Number: 18190/2005
Judge: Augustus C. Agate
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE
Justice

IA Part 24

ANGEL JARA x

Index
Number 18190 2005

- against -

Motion
Dates November 24, 2009

THE NEW YORK RACING ASSOCIATION,
et al.
x

Motion
Cal. Numbers 11, 12 & 13

Motion Seq. Nos. 7, 8 & 9

The following papers numbered 1 to 53 read on this motion by third-party defendant Seasons Contracting Corp. (Seasons) for summary judgment dismissing the third-party causes of action by defendant/third-party plaintiff The New York Racing Association, Inc. (NYRA) and the cross claims by defendant/third-party defendant Tishman Construction Corporation of New York (Tishman) for contractual and common-law indemnification and contribution and breach of contract to procure insurance insofar as asserted against it; and on this motion by Tishman for summary judgment dismissing plaintiff's claims under Labor Law §§ 240(1), 241(6), and 200 and common-law negligence asserted against it, for summary judgment dismissing the third-party claims by NYRA for contractual and common-law indemnification and contribution asserted against it, and for summary judgment on its cross claims for contractual indemnification and breach of contract to procure insurance against Seasons; on this motion by NYRA and defendant Aqueduct Race Track (Aqueduct) for summary judgment dismissing plaintiff's causes of action under Labor Law §§ 240(1), 241(6), and 200 and common-law negligence and for summary judgment on NYRA's third-party causes of action for contractual and common-law indemnification against Seasons and Tishman; and on this cross motion by plaintiff for partial summary judgment against Tishman and NYRA on the issue of liability under Labor Law § 240(1); and on this separate cross motion by plaintiff for leave to supplement the bill of particulars to allege the violation of specific Industrial Code provisions.

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Upon the foregoing papers it is ordered that the motions and cross motions are determined as follows:

Plaintiff was employed as a laborer by Seasons, which had a subcontract with Tishman to perform demolition work at the Aqueduct Race Track, which was owned by NYRA. NYRA had a contract with Tishman to provide construction management services for the project. On July 30, 2003, as plaintiff was leaving a partially demolished room after unplugging an electric saw from an outlet, he was allegedly injured when he tripped over an eight-foot pile of debris, causing him to fall over an eight-foot wall and land on the floor below. Plaintiff subsequently commenced this action against defendants under Labor Law §§ 240(1), 241(6), and 200 and common-law negligence. On December 30, 2005, NYRA commenced a third-party action against Seasons and Tishman alleging claims for contractual and common-law indemnification and contribution.

Irrespective of NYRA and Aqueduct's objection, plaintiff's cross motion for partial summary judgment against Tishman and NYRA on the Labor Law § 240(1) cause of action will be considered herein. A cross motion for summary judgment made after the expiration of the statutory period or court-ordered deadline may be considered by the court, even in the absence of good cause, where a timely motion for summary judgment was made on grounds nearly identical to that of the cross motion (*see Grande v Peteroy*, 39 AD3d 590 [2007]). Here, plaintiff's cross motion was served eight days after the court-ordered deadline of August 18, 2009. Plaintiff's cross motion seeks partial summary judgment on his Labor Law § 240(1) claim, which is the same cause of action addressed in both Tishman and NYRA's timely motions for summary judgment. Therefore, the court, in its discretion, will entertain plaintiff's otherwise untimely cross motion.

Tishman, NYRA, and Aqueduct established their prima facie entitlement to judgment as a matter of law on plaintiff's Labor Law § 200 and common-law negligence causes of action insofar as asserted against them. In opposition, plaintiff failed to raise a triable issue of fact. Where the alleged defect or dangerous condition arises from a subcontractor's methods, no liability attaches to the owner or contractor under the common law or Labor Law § 200 where the owner or contractor exercised no supervisory control over the performance

of the work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876 [1993]). Here, plaintiff's injury did not arise from a dangerous or defective condition inherent in the property but, rather, from a pile of demolition debris created or caused by the manner in which plaintiff's employer, the demolition subcontractor, performed its work (*see e.g. Dalanna v City of New York*, 308 AD2d 400 [2003]). Plaintiff's own deposition testimony makes clear that Tishman, NYRA, and Aqueduct did not exercise any supervision or control over the method or manner of the injured plaintiff's work (*see Lombardi v Stout*, 80 NY2d 290 [1992]; *Enriquez v B & D Dev., Inc.*, 63 AD3d 780 [2009]; *Loiacono v Lehrer McGovern Bovis, Inc.*, 270 AD2d 464 [2000]; *Lofaso v J.P. Murphy Assoc.*, 37 AD3d 769 [2007]). At his deposition, plaintiff testified that Seasons, plaintiff's employer, provided him with the tools used by him to perform the demolition work. Plaintiff further stated that the foreman, Angel Sinche, was an employee of Seasons and was the only person who gave him instructions at the work site.

The court next turns to the branches of the separate motions by Tishman and NYRA and Aqueduct for summary judgment dismissing plaintiff's Labor Law § 241(6) cause of action and plaintiff's cross motion for leave to supplement the bill of particulars to identify Industrial Code violations. To recover under Labor Law § 241(6), a plaintiff must demonstrate a violation of an Industrial Code provision that is applicable given the circumstances of the accident and sets forth specific safety standards (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502-505 [1993]). In support of their respective motions, Tishman and NYRA and Aqueduct primarily assert that plaintiff's Labor Law § 241(6) claims should be dismissed because plaintiff failed to allege specific Industrial Code violations in his bill of particulars. Following defendants' motions for summary judgment, plaintiff cross-moved for leave to supplement his bill of particulars to add the specific Industrial Code sections allegedly violated by defendants. Additionally, in opposition to defendants' summary judgment motions, plaintiff asserted for the first time that defendants had violated 12 NYCRR 23-1.7(e)(1) and (e)(2), 23-1.16(b), 23-1.17(c), 23-1.22(b)(4) and (c)(2), 23-3.3(b)(4), and 23-5.2, and the supplemental bill of particulars citing these Industrial Code provisions was annexed thereto. Although a plaintiff asserting a Labor Law § 241(6) cause of action must allege a violation of a specific and concrete provision of the Industrial Code, a failure to identify the Industrial Code provision in the complaint or bill of particulars is not fatal to such a claim (*see Kelleir v Supreme Indus. Park, LLC*, 293 AD2d 513 [2002]). Rather, if the proposed regulations are applicable to the facts of a case, the plaintiff may be permitted to amend the bill of particulars to so identify a relevant Industrial Code provision as long as the amendment does not present new factual allegations or new theories of liability and does not prejudice the defendant (*see Galarraga v City of New York*, 54 AD3d 308, 310-311 [2008]; *Latino v Nolan & Taylor-Howe Funeral Home, Inc.*, 300 AD2d 631, 633-634 [2002]). Here, plaintiff's belated identification of specific Industrial Code sections has caused no prejudice to defendants because allegations

of Industrial Code violations merely amplify a Labor Law § 241(6) cause of action and do not raise a new theory of liability (see *Hageman v Home Depot U.S.A., Inc.*, 45 AD3d 730 [2007]; *Dowd v City of New York*, 40 AD3d 908 [2007]). Moreover, defendants have long been aware of plaintiff's Labor Law § 241(6) claim stemming from the accumulation of debris at the work site since, in his complaint, plaintiff asserted violations of Labor Law § 241(6) and, in his original bill of particulars, plaintiff alleged negligence in failing to, among other things, remove rocks, pebbles, dirt, rubble, tiles, and other foreign substances from the premises.

Nonetheless, this court finds that the Industrial Code provisions cited by plaintiff are inapplicable to the facts of the instant case. Industrial Code provisions 12 NYCRR 23-1.16(b) and 23-1.17(c), which establish standards for safety belts and life nets, respectively, are inapplicable here because plaintiff was not provided with any such devices (see *Forschner v Jucca Co.*, 63 AD3d 996 [2009]; *Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616 [2008]). Likewise, Industrial Code provisions 12 NYCRR 23-1.22(b)(4) and (c)(2) do not apply to the facts of this case because there is no evidence indicating that the debris upon which plaintiff fell was intended or designed to be used as a structural runway, ramp, or platform to support workers or materials in the performance of plaintiff's work (see e.g. *Torkel v NYU Hosps. Ctr.*, 63 AD3d 587 [2009]; *Vislocky v City of New York*, 62 AD3d 785 [2009]; *Olson v Pyramid Crossgates Co.*, 291 AD2d 706 [2002]; *Curley v Gateway Communications*, 250 AD2d 888, 891 [1998]). Industrial Code provision 12 NYCRR 23-3.3(b)(4), which provides that no person permitted to work while "standing on top of a wall or other similar elevated structure of small area," is similarly inapplicable because, at the time of his accident, plaintiff was standing on a pile of debris, not on a wall or other similar structure. In addition, 12 NYCRR 23-5.2, which pertains to scaffolds, does not apply to the facts of this case because plaintiff's accident did not involve the use of a scaffold and the pile of debris upon which plaintiff fell was not intended or designed to be used as a scaffold (see e.g. *Maldonado v Townsend Ave. Enters., Ltd. Partnership*, 294 AD2d 207 [2002]). Furthermore, 12 NYCRR 23-1.7(e)(1) and (e)(2) are inapplicable because the debris pile upon which plaintiff was injured did not constitute a passageway, walkway, or other elevated working surface contemplated by said regulations; rather, these Industrial Code provisions apply to defined walkways, passageways, or paths and specified work areas such as floors, roofs, or platforms (see generally *Canning v Barneys N.Y.*, 289 AD2d 32 [2001]; see e.g. *McGrath v Lake Tree Village Assocs.*, 216 AD2d 877 [1995]). In any event, plaintiff testified at his deposition that he tripped over demolition debris, which was an integral part of the demolition work being performed by his employer (see *Cooper v Sonwil Distrib. Ctr., Inc.*, 15 AD3d 878 [2005]; *Salinas v Barney Skanska Constr. Co.*, 2 AD3d 619 [2003]). Based on the foregoing, plaintiff may not supplement his bill of particulars to assert violations of the aforementioned Industrial Code provisions. As such,

plaintiff's Labor Law § 241(6) cause of action asserted against Tishman, NYRA, and Aqueduct is hereby dismissed.

Next, the court will address the branches of Tishman and NYRA and Aqueduct's motions for summary judgment and plaintiff's cross motion for summary judgment against Tishman and NYRA on the Labor Law § 240(1) cause of action. To prevail on a Labor Law § 240(1) cause of action, a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the accident (*see Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280 [2003]). Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with appropriate safety devices to protect against "such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*see Ross*, 81 NY2d at 501).

In support of its motion, Tishman initially argues that it is not a "contractor," "owner," or "agent" within the meaning of Labor Law §§ 240(1) and 241(6) because it served as a construction manager on the subject construction project. An entity is deemed an "owner," "contractor," or "agent" of an owner or contractor under the Labor Law if it had the power to enforce safety standards and choose responsible subcontractors (*see Williams v Dover Home Improvement, Inc.*, 276 AD2d 626 [2000]). Therefore, to impose liability, the defendant must have the authority to control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition (*see Chimborazo v WCL Assoc., Inc.*, 37 AD3d 394 [2007]; *Natoli v City of New York*, 32 AD3d 507 [2006]; *Damiani v Federated Dept. Stores, Inc.*, 23 AD3d 329, 332 [2005]). The relevant inquiry on the issue of control is not who furnished equipment and safety devices but who had control over the work being done and the authority to insist that proper safety practices be followed (*see Everitt v Nozkowski*, 285 AD2d 442, 443 [2001]). Furthermore, a party's status as a contractor is dependent upon whether it had the right to exercise control over the work, not whether it actually exercised that right (*see Williams*, 276 AD2d at 626). While a construction manager is generally not considered a "contractor" or "owner" within the meaning of Labor Law §§ 240(1) and 241(6), the label of construction manager versus general contractor is not necessarily determinative (*see Walls v Turner Constr. Co.*, 4 NY3d 861 [2005]). A construction manager may be vicariously liable as an agent of the property owner if it had the ability to control the activity which brought about the injury (*id.* at 863-864). In this case, Tishman's contract with NYRA bestowed upon it the requisite supervisory control and authority (*see Tomyuk v Junefield Assoc.*, 57 AD3d 518 [2008]; *Lodato v Greyhawk N. Am., LLC*, 39 AD3d 491 [2007]). Pursuant to the terms of the contract, Tishman's broad responsibility was both that of coordinator and overall supervisor for all the work being performed by the trade contractors on the job site. Tishman was also responsible for hiring all the trade contractors on the project and, with respect to safety concerns, Tishman assumed

the property owner's authority and responsibility to "cause compliance with site safety precautions."

In any event, Tishman, NYRA, and Aqueduct established, prima facie, their entitlement to judgment as a matter of law that plaintiff's accident did not involve an elevation-related risk covered by Labor Law § 240(1). Application of Labor Law § 240(1) is limited to injuries occasioned by elevation-related hazards "where protective devices are called for ... because of a difference between the elevation level of the required work and a lower level" (see *Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]). It is undisputed that plaintiff was injured after tripping on a pile of demolition debris, causing him to fall over an eight-foot wall. The task of climbing a pile of debris does not create an elevation-related risk simply because there is a difference in elevation between the ground and the accumulated debris. At the time of the subject accident, the debris pile was not being used by plaintiff as an elevated work platform, but as a means to traverse the construction site in order to access an electrical outlet. Under these circumstances, plaintiff's trip and fall while climbing a debris pile was not the result of the kind of extraordinary elevation-related hazards contemplated by Labor Law § 240(1) and, thus, did not necessitate the provision of safety devices enumerated in the statute (see e.g. *Romeo v Property Owner (USA) LLC*, 61 AD3d 491 [2009]; *Georgopoulos v Gertz Plaza, Inc.*, 13 AD3d 478 [2004]; *Meslin v New York Post*, 30 AD3d 309 [2006]; *Charles v City of New York*, 227 AD2d 429 [1996]). Therefore, the branches of the motions for summary judgment by Tishman and NYRA and Aqueduct dismissing the Labor Law § 240(1) claim asserted against them are granted, and plaintiff's cross motion for partial summary judgment on the Labor Law § 240(1) cause of action against Tishman and NYRA is denied.

The court will now address the branch of NYRA's motion for summary judgment on its third-party causes of action for common-law indemnification and contribution against Seasons and Tishman, the branches of Tishman and Seasons' separate motions for summary judgment dismissing said third-party claims, and the branch of Seasons' summary judgment motion dismissing Tishman's cross claims for common-law indemnification and contribution asserted against it. Seasons, plaintiff's employer, established its prima facie entitlement to judgment as a matter of law by demonstrating that plaintiff did not sustain a "grave injury" as defined in Workers' Compensation Law § 11 (see *Dechnik v Fortunato Sons, Inc.*, 58 AD3d 793 [2009]; *Martelle v City of New York*, 31 AD3d 400 [2006]; *Soto v Alert No. 1 Alarm Sys.*, 272 AD2d 466 [2000]). In opposition, NYRA and Tishman failed to raise a triable issue of fact. Therefore, the branch of Seasons' motion for summary judgment seeking dismissal of the third-party causes of action and cross claims for common-law indemnification and contribution against it is granted, and the branch of NYRA and Aqueduct's motion for summary judgment on its third-party claims for common-law indemnification and contribution against Seasons is denied.

Tishman demonstrated its entitlement to judgment as a matter of law dismissing the third-party causes of action for common-law indemnification and contribution insofar as asserted against it. As previously discussed, there is no evidence in the record demonstrating that Tishman was negligent in any way or that Tishman directed, controlled, or supervised the method or manner of the demolition work performed by the injured plaintiff (*see Mid-Valley Oil Co., Inc. v Hughes Network Sys., Inc.*, 54 AD3d 394, 395-396 [2008]). In opposition, NYRA failed to raise a triable issue of fact and, thus, its third-party claims for common-law indemnification and contribution asserted against Tishman are also dismissed.

The court next turns to the branch of NYRA motion for summary judgment on its third-party claim for contractual indemnification against Tishman and the branch of Tishman's summary judgment motion dismissing said third-party cause of action. It is well-established that the right to contractual indemnification depends upon the specific language of the contract (*see Kader v City of N.Y., Hous. Preserv. & Dev.*, 16 AD3d 461, 463 [2005]). Here, section 9.01 of the contract between NYRA and Tishman, in pertinent part, requires Tishman to indemnify NYRA for,

“all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work or Construction Manager's services hereunder. . . . only to the extent caused by the negligent acts or omissions of the Construction Manager, anyone directly or indirectly employed by it (but not including trade Contractors or Vendors with whom Construction Manager has entered an agreement as Agent of Owner), or anyone for whose acts it may be liable. . . .”

It is undisputed that plaintiff was an employee of Seasons, a subcontractor with whom Tishman, as an agent of NYRA, entered into an agreement to perform demolition work on the subject construction project. It is also undisputed that plaintiff's injury occurred when he was engaged in demolition work at the site pursuant to the subcontract between Tishman and Seasons. Additionally, there is no evidence in the record demonstrating, as required by the indemnification clause at issue, that plaintiff's accident was caused by a negligent act or omission by Tishman. Since Tishman's contractual indemnity obligation was not triggered under the circumstances of plaintiff's accident, the third-party claim for contractual indemnification asserted against Tishman is dismissed.

As to NYRA's third-party claim for contractual indemnification against Seasons and Tishman's cross claims for contractual indemnification and breach of contract to procure insurance asserted against Seasons, Seasons primarily asserts that there was no enforceable

written agreement between Seasons and Tishman, or any party, in effect at the time of plaintiff's accident. Specifically, Seasons argues that, at the time of the accident, the contract between Seasons and Tishman was the subject of ongoing negotiations and was not signed by the parties until December 2003, approximately five months after plaintiff's accident occurred. An unsigned contract may be enforceable if there is objective evidence, including the course of conduct between the parties and their writings, establishing that the parties intended to be bound (*see Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363 [2005]; *Brown Bros. Elec. Contrs. v Beam Constr. Corp.*, 41 NY2d 397 [1977]). That is, the parties' course of conduct must be reviewed to determine whether there was a meeting of the minds sufficient to give rise to an enforceable contract (*see Flores*, 4 NY3d at 370). Here, Robert Singley, Seasons' estimator and project manager, testified at his deposition that, in preparing Seasons' bid, he reviewed Tishman's standard form contract dated July 2, 2003, which contained an indemnification clause. On July 23, 2003, Tishman forwarded a letter of intent awarding Seasons the job and Mr. Singley stated that, on that same day, Seasons began work at the construction site. Seasons' payroll sheets for the period July 28, 2003 through August 8, 2003 further demonstrate that Seasons began demolition work on the project several months before the contract was executed. Additionally, Mr. Singley's deposition testimony indicates that it was common for Seasons to begin work on construction projects with Tishman while contract negotiations continued in the following weeks. Moreover, correspondence between Seasons and Tishman, which was dated October 30, 2003 and November 3, 2003, reveals that the indemnification provision in the contract dated July 2, 2003 was not in issue and that the scope of the work and general liability insurance were the only contract terms left open to negotiation following plaintiff's accident and prior to the execution of the contract. Therefore, the evidence, viewed in totality, indicates that there was a binding indemnification agreement in effect on the date of the accident (*see e.g. Tighe v Hennegan Constr. Co., Inc.*, 48 AD3d 201 [2008]).

Inasmuch as this court has found that there was an enforceable written indemnification agreement between the parties in effect at the time of plaintiff's accident, paragraph 7(c) of the contract between Tishman and Seasons, in pertinent part, requires Seasons to indemnify Tishman and NYRA,

“from and against any and all liability, damage, loss, claims, demands, actions and expenses, including but not limited to attorney's fees which arise or are claimed to arise out of or are connected with any accident or occurrence which happens . . . where such work is being performed, whether at the site or other place, (1) while the Contractor is performing the Work . . . or (2) while any of the Contractor's or said subcontractor's property, work in progress, equipment or personnel are in or

about such place or the vicinity thereof by reason of or as a result of the performance of the Work . . . whether based upon or claimed to be based upon, statutory . . . , contractual, tort or other liability of any indemnitee, and whether or not caused or claimed to have been caused by active or inactive negligence or other breach of duty by any indemnitee, any indemnitee's employees, agents, subcontractors, or invitees, or any other person as long as the indemnitor or its subcontractor or its materialman or vendor was negligent in whole or in part.”

In this case, plaintiff was employed by Seasons, and his accident occurred during the performance of the services required under the contract between Tishman and Seasons. In addition, contrary to Seasons' assertion, there is evidence that Seasons was negligent, in whole in or in part, because it exercised supervision or control over the method or manner of plaintiff's work. As previously discussed, plaintiff's injury did not arise from a dangerous or defective condition inherent in the property but, rather, from a pile of demolition debris created or caused by the manner in which plaintiff's employer, the demolition subcontractor, performed its work. At his deposition, plaintiff admitted that his foreman, Angel Sinche, was an employee of Seasons and was the only person who gave him instructions at the work site. Consequently, NYRA and Tishman are entitled to summary judgment on the third-party cause of action and cross claim, respectively, for contractual indemnification against Seasons.

With respect to Tishman's cross claim for breach of contract to procure insurance against Seasons, the evidence in the record demonstrates that, at the time of plaintiff's accident, there was no enforceable written agreement between Tishman and Seasons. As discussed above, the general liability insurance provision in the contract between Tishman and Seasons was the subject of ongoing negotiations after plaintiff's accident occurred on July 30, 2003 and before execution of the contract in December 2003. In particular, the liability insurance clause in the contract dated July 2, 2003 required Seasons to procure comprehensive general liability insurance in the amount of \$10,000,000 and name Tishman and NYRA as additional insureds. However, in support of its motion, Seasons submitted an insurance rider dated May 28, 2003, which crossed out the term “ten million” and substituted that amount with “five million.” Additionally, the above-mentioned correspondence between Seasons and Tishman dated October 30, 2003 stated that Seasons would only procure a general liability insurance policy with a limit of \$5,000,000, and not \$10,000,000 as stipulated in the contract dated July 2, 2003. It was not until December 15, 2003 that Tishman agreed to the revised insurance rider and, on December 17, 2003, Seasons forwarded to Tishman the signed revisions. As such, the parties had not reached a “meeting of the minds” concerning the procurement of general liability insurance at the time of

plaintiff's injury. Therefore, the branch of Tishman's summary judgment motion on its cross claim for breach of contract to procure insurance against Seasons is denied, and the branch of Seasons' motion for summary judgment dismissing said cross claim is granted.

Inasmuch as the third-party complaint (Seasons' exhibit A) does not allege a cause of action against Seasons for breach of contract to procure insurance, the branch of Seasons' motion for summary judgment seeking dismissal of NYRA third-party claim for breach of contract to procure insurance asserted against it is denied as moot.

Accordingly, those branches of the motion for summary judgment by Seasons dismissing the third-party causes of action and Tishman's cross claims for common-law indemnification and contribution insofar as asserted against it are granted. The branches of NYRA's motion for summary judgment on its third-party causes of action for common-law indemnification against Tishman and Seasons are denied. The branch of Seasons' motion for summary judgment dismissing Tishman's cross claim for breach of contract to procure insurance against it is granted, and the branch of Tishman's summary judgment motion on its cross claim for breach of contract to procure insurance against Seasons is denied. In all other respects, Seasons' summary judgment motion is denied. The branch of Tishman's motion for summary judgment on its cross claim for contractual indemnification against Seasons is granted. Those branches of Tishman's motion for summary judgment dismissing the third-party claims for contractual and common-law indemnification and contribution asserted against it are also granted. The branches of NYRA's summary judgment on its third-party claims for contractual indemnification asserted against Tishman and Seasons is granted only with respect to Seasons. Those branches of Tishman and NYRA and Aqueduct's respective motions for summary judgment dismissing plaintiff's Labor Law §§ 240(1), 241(6), and 200 and common-law negligence causes of action insofar as asserted against them are granted. Plaintiff's cross motion for summary judgment against Tishman and NYRA on the Labor Law § 240(1) claim is denied. In addition, plaintiff's cross motion for leave to supplement the bill of particulars to allege the violation of specific Industrial Code provisions is denied in its entirety.

Dated: February 25, 2010

AUGUSTUS C. AGATE, J.S.C.