

Retta v 160 Water St. Assoc., L.P.

2011 NY Slip Op 30890(U)

April 11, 2011

Supreme Court, New York County

Docket Number: 406411/07

Judge: Barbara Jaffe

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

PRESENT: Jaffe BARBARA JAFFE J.S.C. Justice

PART 5

Index Number : 406411/2007
RETТА, ROBERT
VS.
160 WATER STREET ASSOCIATES
SEQUENCE NUMBER : 004
DISMISS
CAL # 81

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

on this motion to/for dismiss

Exhibits ... PAPERS NUMBERED
1, 2
3, 4, 5, 6

Answering Affidavits — Exhibits _____
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

APR 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/11/11
APR 11 2011

[Signature]
BARBARA JAFFE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 5

-----X
ROBERT RETTA and ENIS RETTA,

Index No.: 406411/07

Plaintiffs,

Motion Date: 2/15/11

-against-

Motion Seq. Nos.: 004,

Motion Cal. Nos.: 81

DECISION AND ORDER

160 WATER STREET ASSOCIATES, L.P., ONESOURCE
N.Y., INC., NEW YORK CITY HEALTH AND HOSPITAL
CORPORATION and OESTREICHER PROPERTIES, INC.,

Defendants.

-----X
BARBARA JAFFE, J.S.C.:

For plaintiffs:
Vincent Gonzalez, Esq.
Brecher, Fishman *et al.*
233 Broadway, Ste. 820
New York, NY 10279
212-267-8235

For defendants OneSource:
Joshua R. Hecker, Esq.
Gallo Vitucci & Klar
90 Broad St., 3rd Fl.
New York, NY 10004
212-683-7100

For defendant New York City:
Andrew Lucas, ACC
Michael A. Cardozo
Corporation Counsel
100 Church St.,
New York, NY 10007
212-788-0560

For defendant 160 Water/Oestreicher:
Peter E. Vairo, Esq.
Law Office of Charles J. Siegel
40 Wall St., 7th Fl.
New York, NY 10005
212-440-2350

By notice of motion dated April 30, 2010, defendant New York City Health and Hospital Corporation (HHC) moves pursuant to CPLR 3211(a)(7) and/or CPLR 3212 for an order summarily dismissing the complaint and all cross-claims against it. Defendants 160 Water Street Associates, L.P. (160 Water Street) and Oestreicher Properties, Inc. (collectively, 160 Water) oppose HHC's motion and, by notice of cross motion dated July 22, 2010, cross-move for an order dismissing the complaint and all cross-claims against them. HHC joins in 160 Water's motion to the extent of dismissing plaintiff's labor law claims. Plaintiffs oppose HHC's motion.

By notice of motion dated September 20, 2010, defendant OneSource N.Y., Inc. (OneSource) moves pursuant to CPLR 3212 for an order dismissing the complaint and all cross-claims against it. Plaintiffs and 160 Water oppose the motion and, by notice of cross motion dated September 30, 2010, 160 Water cross-moves pursuant to CPLR 3212 for an order granting summary judgment against OneSource.

The motions are consolidated herein for decision.

I. BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff alleges that, at approximately 7 a.m. on August 4, 2006, he sustained personal injuries when he was electrocuted and thrown off a ladder and across the elevator lobby as he was attempting to change a ballast in a light fixture at the building located at 160 Water Street in Manhattan (the premises), owned by 160 Water Street, and managed by Oestreicher. HHC leased offices on the floor where plaintiff's accident occurred, and OneSource was the janitorial service provider for the premises. (Affirmation of Andrew Lucas, ACC, dated Apr. 30, 2010 [Lucas Aff.], Exh. G, at 48). A ballast is "a device used to provide the starting voltage or to stabilize the current in a circuit (as of a fluorescent lamp)." (*See* www.merriam-webster.com/dictionary/ballast).

Article four of the lease between 160 Water Street and HHC provides that 160 Water Street is responsible for the electrical system and the following, in pertinent part, that:

Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portions of the demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilation systems (to the extent such systems presently exist) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the demised premises for which Owner may be responsible hereunder.

(Lucas Aff., Exh. J). It further provides that all fixtures which are installed in the premises at any time, either by the tenant or by the owner on the tenant's behalf, "shall, upon installation, become the property of Owner" and that 160 Water Street is not responsible for injury to persons on the property unless the injuries were the result of its negligence or that of its agents, servants or employees. (*Id.*). The lease also contains an indemnification provision as follows:

Landlord shall indemnify and save Tenant and its agents harmless from and against (I) any and all (x) claims against Tenant or its agents arising from any negligent or otherwise wrongful act or omission of Landlord or any of Landlord's employees, agents, visitors, invitees or contractors or subcontractors of any tier, or (y) breach of any covenant or condition in this lease on the part of Landlord to be performed and (ii) all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon.

(*Id.*).

The record also reflects that OneSource's predecessor, National Cleaning, and 160 Water Street, entered into a contract in 1969 for janitorial services, although its validity is disputed by the parties. Under the lighting maintenance service section of this contract, repairing ballasts is a service to be provided to 160 Water Street. The contract was to expire one year from the date it was signed in 1969, and it provides, as pertinent here, that:

CONTRACTOR agrees to indemnify and hold harmless the OWNER from and against any loss, damage or expense arising out of or from any injury to person or persons, or damage to property, including the OWNER'S property, arising out of or from any wrongful act or omission on the part of the CONTRACTOR, its agents, servants, employees and the like.

(Lucas Aff., Exh. J).

By letter dated April 7, 2004 to HHC, 160 Water Street set forth OneSource's proposal to provide additional cleaning services to HHC beyond the cleaning services included in the base rent as described in the lease. Specifically, it was agreed that the costs for the additional cleaning

services would be billed to HHC as additional rent, as to which HHC acknowledged and agreed. (*Id.*, Exh. L).

OneSource contracted with Knight Electrical Services Corporation (Knight) to perform lighting maintenance services for the building. In a letter, Knight agreed that it would provide OneSource with a lighting maintenance subcontract at the premises. (Affirmation of Joshua R. Hecker, Esq., dated Sept. 20, 2010 [Hecker Aff.], Exh. H). Enclosed with the letter is Knight's most recent Certificate of Insurance and a copy of its W-9. (*Id.*). At the time of plaintiff's accident, OneSource had no employees at the building except for a porter who was operating a freight elevator. (*Id.*).

At a deposition held on February 24, 2009, plaintiff testified that at the time of the accident, he was working as an electrician's assistant and had been employed by non-party Knight for over 20 years. Plaintiff repaired lights or ballasts on the premises, using tools provided by Knight, which consisted of a "screwdriver, spin tights, wire nuts, [his] strippers, and cutters, and the ballasts that need to be changed." (*Id.* at 33). He was assigned to visit the premises three times a week and Knight sent him to 160 Water Street to repair ballasts and lights. Plaintiff had a small supply closet in the basement of the premises. (Lucas Aff., Exh. G).

On the morning of the accident, plaintiff was directed to repair three light fixtures at the premises, specifically in the ceiling of the eighth floor elevator bank, and he knew that the power circuit breakers would have to be shut off. Normally, there were light switches, but for this repair, the circuit breakers had to be shut off by the building engineers as plaintiff had no access to the electrical closet. Before the accident, although plaintiff had repaired other ballasts that required circuit breakers to be turned off in other buildings, he had never turned off the circuit

* 6]
breakers at the premises. (*Id.*).

When plaintiff arrived at the premises on the morning of his accident, he met with Angelo Deservio, 160 Water Street's building engineer. After Deservio went to the electrical closet and shut off the power breakers, plaintiff told him that the lights had gone out. Deservio then locked up the electrical closet and left the area. Plaintiff had already replaced the bulbs for these light fixtures. He then had to replace the ballast for each fixture. There were four wires coming out of each ballast. (*Id.*).

Plaintiff climbed his ladder, opened the ceiling, across which pipes and wires ran, and tested the wires between the ballast and the power service to see if the power was off. In his view, it is a matter of common knowledge that the wires must be confirmed as not energized so that he can go forward with the repair. He checked the first light fixture to ensure that there was no power and then he stripped the wires and replaced the ballast. He then continued with the same procedure for the second ballast. As he spliced the white wire, his arm touched one of the pipes in the ceiling and then a hot wire, and he became electrocuted, thrown from the ladder, and hurled across the elevator lobby. (*Id.*).

Plaintiff did not know the source of the electrical current, and he did not use his flashlight to determine if there were any wires in the area. Rather, he assumed that there were no live wires. Although he saw no pipe, there was a small burn on his elbow and he does not recall if his finger was touching the metal part of the splicer at the time of the accident. Plaintiff wore no gloves that day and never wore gloves when changing ballasts. (*Id.*).

160 Water Street filled out an accident report for the incident, which included a written statement by Deservio. (Lucas Aff., Exh. J). An HHC employee also completed a crime and

incident report for plaintiff's accident, reflecting that a senior management consultant employed by 160 Water Street reported the incident to HHC and that he also called 911. (*Id.*, Exh. O). In a field work order from that day, an unnamed person states that after the accident, he checked the premises' electrical closet and found that the main circuit breaker in the high voltage panel had been tripped, which circuit breaker had been feeding the transformers that powered the eighth floor. (*Id.*, Exh. H).

Plaintiff sustained injuries to his left shoulder, left elbow and lower back, requiring surgeries and physical therapy, and claims that he can no longer work as an electrician's helper. (Lucas Aff., Exh. G).

On or about January 17, 2008, plaintiffs filed a supplemental summons and complaint, alleging causes of action for common-law negligence against all defendants, including Labor Law and Industrial Code violations, violations of Labor Law § 200, Labor Law § 241(6), and Labor Law § 240, and a derivative claim. (Lucas Aff., Exh. B). In his bill of particulars, dated August 2, 2007, plaintiff states that he was permanently and seriously injured when he was "shocked by a live electrical current which had negligently remained electrified while he was atop a ladder." (*Id.*, Exh. F). Plaintiff claims, among other things, that defendants and their agents did not provide him with a safe premises to work, that they exposed him to a dangerous condition, and that, by giving him assurances that the electrical energy was off, defendants negligently directed the means and methods by which plaintiff worked. (*Id.*).

II. SUMMARY JUDGMENT MOTIONS BY HHC, 160 WATER, AND ONESOURCE

A. Contentions

HHC denies any duty to plaintiff as it had no control over the electrical maintenance

system which may have caused plaintiff's injury, nor did it have control over Deservio or any other employee of 160 Water Street, OneSource, or Knight. Moreover, HHC claims that as a mere tenant occupying the floor where plaintiff's accident occurred, it provided plaintiff with no equipment nor did any of its employees assist plaintiff with his job. HHC also denies that it had access to the electrical closet, and maintains that plaintiff was not engaged in activity protected under the Labor Law, in that plaintiff was not engaged in activity covered by Labor Law § 241(6), in that plaintiff cannot prove that HHC provided him with an unsafe working environment under Labor Law § 200, and in that plaintiff's Labor Law § 240 claim fails as he alleges no defect with respect to the ladder on which he had been working. (Lucas Aff.).

160 Water argues that plaintiff's Labor Law claims should be dismissed as plaintiff was engaged in routine maintenance work at the time of the accident, and that his negligence claims should be dismissed absent notice of any defect and proof that it created a dangerous condition. They provide an affidavit from a licensed electrician, Rudolph Winkler, who opines that plaintiff's accident resulted from his own negligence:

In addition, it is my opinion, based upon my experience, and based upon review of the above materials, that the plaintiff's conduct in failing to "lock out" the electrical power feeding the light fixture he was working on and the failure to use gloves and take proper precautions for his own safety was the sole proximate cause of the plaintiff's accident.

(Affirmation of Peter E. Vairo, Esq., dated July 22, 2010 [Vairo Aff.], Exh. B).

OneSource also denies any involvement in plaintiff's accident or that it was negligent in any way, and contends that it is an improper party in this action. It alleges that it subcontracted all of its lighting maintenance obligations to Knight, that Knight provided plaintiff with all of his equipment, and that OneSource was thus not an owner or contractor and cannot be held liable

under the Labor Law. (Hecker Aff.).

In opposition to HHC's motion, 160 Water argues that HHC failed to prove whether plaintiff's accident occurred while he was working for Knight pursuant to OneSource's contract with HHC or with 160 Water, and that if working pursuant to OneSource's contract with HHC, HHC may be held liable. They also contend that the accident arose from HHC's use and occupancy of the building as the electrical closet was within HHC's demised premises.

(Affirmation of Peter E. Vairo, Esq., dated June 21, 2010).

Plaintiffs concede that their Labor Law §§ 240 and 241(6) claims must be dismissed, but argue that there exist triable issues as to the Labor Law § 200 and common law negligence claims against HHC, as plaintiff was injured in a location which may have been within HHC's demised premises and thus its responsibility and an HHC employee may have supervised or controlled the de-energizing of the light fixtures or created the dangerous condition. They thus oppose dismissal of their Labor Law § 200 and common-law negligence claims against HHC and join in 160 Water's arguments in opposition to HHC's motion. (Affirmation of Vincent L. Gonzalez, Esq., dated July 1, 2010).

In reply, HHC denies any contract with OneSource to provide lighting maintenance; rather, it accepted 160 Water's proposal to have OneSource perform such work, with the costs to be included in its rent to 160 Water. HHC thus characterizes the agreement as between it and 160 Water only and adopts 160 Water's arguments as to plaintiffs' Labor Law claims.

(Affirmation of Andrew Lucas, ACC, dated Aug. 30, 2010).

B. Analysis

"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.” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If this burden is not met, summary judgment must be denied, regardless of the sufficiency of plaintiff’s opposition papers. (*Winegrad*, 64 NY2d 851, 853).

When the moving party has demonstrated entitlement to summary judgment, the burden of proof shifts to the opposing party which must demonstrate by admissible evidence the existence of a factual issue requiring trial. (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman*, 49 NY2d 557, 562). The opposing party must “lay bare” its evidence (*Silbertstein, Awad & Miklos v Carson*, 304 AD2d 817, 818 [1st Dept 2003]); “unsubstantiated allegations or assertions are insufficient.” (*Zuckerman*, 49 NY2d 557, 562).

1. Labor Law § 200 claims

a. Applicable law

Labor Law § 200 provides as follows:

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.

The statute thereby codifies “the common-law duty imposed upon an owner or general contractor to maintain a safe construction site.” (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]; see also *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 272 [1st Dept 2007] [“Labor Law § 200, the codification of the common-law negligence standard, imposes a

duty upon an owner or general contractor to provide construction site workers with a safe place to work”]).

Claims brought pursuant to Labor Law § 200 generally arise when a worker is injured as a result of a defective or dangerous condition at a work site or as a result of the “manner in which the work [is] performed.” (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). Owners and general contractors may be held liable under Labor Law § 200 for a dangerous condition if they either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident. (*Makarius v Port Auth. of New York and New Jersey*, 76 AD3d 805 [1st Dept 2010]). To sustain a claim for alleged defects or dangers in the methods or materials of the work, the plaintiff must show that the owner or general contractor “had the authority to supervise or control the performance of the work.” (*Ortega*, 57 AD3d at 61; *see also Romeo v Prop. Owner (USA), LLC*, 61 AD3d 491 [1st Dept 2009] [owner and general contractor not liable absent evidence that they had notice of dangerous condition or directly controlled or supervised work in question]). A party has the authority to supervise or control a plaintiff’s work when it bears responsibility for the manner in which the work is performed. (*Ortega*, 57 AD3d at 61).

b. Labor Law § 200 and common-law negligence claims against HHC

As HHC is neither the owner nor the general contractor, it had no duty to provide plaintiff with a safe place to work. Moreover, as plaintiffs’ claim arose from the means and methods of his work, rather than a defective condition at the premises (*see Pilato v 866 U.N. Plaza Assocs., LLC*, 77 AD3d 644, 646 [2d Dept 2010] [plaintiff, who received electric shock when replacing ballast, had injury arise from means used to perform work rather than from dangerous condition;

“the fact that electricity was flowing into the light fixture was not a defective condition”]; *Rolewicz v State*, 73 AD3d 1269 [3d Dept 2010] [energized electrical cables did not constitute dangerous condition]), plaintiffs must establish that HHC had the authority to supervise or control the performance of his work (*Pilato*, 77 AD3d at 646).

Here, HHC established, *prima facie*, that it had no control over the work site or the means or methods by which plaintiff performed his work as it had no employees supervising plaintiff or the work site, did not provide plaintiff with any equipment, no HHC employees were present when plaintiff was injured, and it had no access to the electrical closet or any responsibility to maintain it (*see La Veglia v St. Francis Hosp.*, 78 AD3d 1123 [2d Dept 2010] [tenant had no authority to control means or methods by which plaintiff performed work]; *Bush v Gregory/Madison Ave., LLC*, 308 AD2d 360 [1st Dept 2003] [Labor Law § 200 claim against lessee should have been dismissed as it had no supervisory control over plaintiff’s work]; *see also Affri v Basch*, 13 NY3d 592 [2009] [homeowner had no supervisory control over plaintiff’s work as they did not provide plaintiff with equipment or materials, nor were they present when work was performed]).

In opposition, plaintiffs fail to offer any evidence showing that HHC controlled or supervised his work site or work, and their contention that an HHC employee may have controlled or supervised the electrical closet is conclusory and speculative. Moreover, HHC’s agreement with 160 Water reflects that while HHC agreed to use OneSource’s services, there was no direct agreement or contract between it and OneSource and thus, HHC did not hire OneSource to provide lighting maintenance services. (*See Guclu v 900 Eight Ave. Condominium, LLC*, 81 AD3d 592 [2d Dept 2011] [lessee did not hire plaintiff’s employer to undertake work

plaintiff was performing at time of accident]; *Pest v Beeper Connection Paging, Inc.*, 302 AD2d 249 [1st Dept 2003] [lessee did not hire plaintiff's employer and did not otherwise have control over work site]; *Guzman v L.M.P. Realty Corp.*, 262 AD2d 99 [1st Dept 1999] [lessee not liable as it neither contracted for nor supervised plaintiff's work]).

Thus, no triable issues exist as to plaintiffs' Labor Law § 200 or common-law negligence claims against HHC.

c. Labor Law § 200 and common-law negligence claims against 160 Water

As it is undisputed that 160 Water owns the premises, that it had hired OneSource to provide lighting maintenance services for the premises, and that the person who assisted plaintiff on the day of the accident was employed by it, triable issues exist as to whether 160 Water had the authority to supervise or control the performance of plaintiff's work.

To the extent that plaintiffs' injuries were caused by a defective condition at the premises, 160 Water has failed to establish, *prima facie*, that it neither created nor had actual or constructive notice of the condition absent an affidavit from anyone with personal knowledge of the pertinent facts. Moreover, while 160 Water contends that plaintiff's actions were the sole proximate cause of his accident, as plaintiff testified that Deservio told him that the electrical power had been turned off, 160 Water has not established that plaintiff's conduct was the sole proximate cause of his accident as a matter of law. (*See Neissel v Rensselaer Polytechnic Inst.*, 54 AD3d 446 [3d Dept 2008], *lv denied* 11 NY3d 716 [2009] [actions of plaintiff electrician, who received electrical shock from energized cable when he entered electrical cabinet without verifying that cable was de-energized and without protective gear, was not sole proximate cause of accident as plaintiff believed cable had been de-energized; while plaintiff's decision may have

been ill-advised or careless, it was not so extraordinary as to constitute sole proximate cause]; *Baumann v Metro. Life Ins. Co.*, 17 AD3d 260 [1st Dept 2005] [electrician's actions in attempting to fix bad splice, which electrocuted him, was not sole proximate cause of accident as it cannot be said as matter of law that his failure to turn off electricity was extraordinary or unforeseeable]).

d. Labor Law § 200 and common-law negligence claims against OneSource

While OneSource agreed to provide lighting maintenance services to the premises, it is undisputed that it subcontracted with Knight for Knight to provide the services, that plaintiff was employed by Knight, and that OneSource did not provide plaintiff with any equipment or training or otherwise supervise him. Thus, no triable issues exist as to plaintiffs' Labor Law § 200 or common-law negligence claims against OneSource.

e. Labor Law §§ 240 and 241(6) claims

Plaintiffs concede that these claims lack merit.

IV. CLAIMS FOR INDEMNIFICATION

A. 160 Water's claim for common law indemnification against OneSource

160 Water maintains that, even if denied summary judgment, it is entitled to indemnification from OneSource based on the 1969 contract, and that Knight as "agent, servant, employee and the like" of OneSource and is covered by the provision, even if plaintiff was the sole proximate cause of his accident. (*Vairo Aff.*).

OneSource denies that any valid contract exists between it and 160 Water as the last contract was signed in 1969 and expired in 1970, and contends that even if valid, the indemnification provision is inapplicable. (*Hecker Aff.*).

As I have dismissed plaintiffs' complaint against HHC and OneSource on the ground that plaintiff failed to establish that they were negligent or violated the Labor Law, 160 Water is not entitled to common law indemnification from them.

B. 160 Water's claim for contractual indemnification against OneSource

"When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed." (*Hooper Assocs., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]).

Even if the 1969 contract is valid, as OneSource subcontracted its lighting maintenance services to Knight and as Knight was an independent contractor and not OneSource's employee or servant, the only issue remaining is whether Knight was OneSource's agent.

"[A] principal-agent relationship may be established by evidence of the consent of one person to allow another to act on his or her behalf and subject to his or her control, and consent by the other so to act [internal quotation marks and citation omitted]." (*Art Fin. Partners, LLC v Christie's Inc.*, 58 AD3d 469, 471 [1st Dept 2009]). Absent any evidence that OneSource consented to allow Knight to act on its behalf and controlled or supervised Knight's or plaintiff's activities, 160 Water has not established that Knight was OneSource's agent.

C. HHC's cross claim for indemnification and/or contribution against OneSource

As plaintiffs' complaint against OneSource has been dismissed (*supra*, II.B.1.d.), HHC's cross claim against OneSource is dismissed.

D. HHC's cross claim for contractual indemnification against 160 Water

HHC argues that it is entitled to contractual indemnification from 160 Water as 160 Water is responsible for any negligent maintenance of the electrical system at the premises or any

failure to make plaintiff's work area safe and as HHC did not hire Knight or plaintiff and thus had no employment or agency relationship with them. (Lucas Aff.).

As triable issues exist as to whether 160 Water may be held liable for plaintiff's accident, and as I have already found that OneSource and not HHC hired Knight (*supra*, at 4), 160 Water may be liable to HHC for its costs related to this litigation. HHC is thus conditionally granted summary judgment with respect to its cross claim for indemnification against 160 Water and 160 Water is denied summary judgment with respect to this claim.

E. OneSource's cross claim for indemnification against 160 Water

OneSource sets forth no grounds upon which it may be found that it is entitled to common law or contractual indemnification from 160 Water.

V. CONCLUSION

For all of the above reason, it is hereby

ORDERED, that defendant New York City Health and Hospital Corporation's motion for summary judgment is granted to the extent of dismissing the complaint and all cross claims against it and awarding it a conditional order of contractual indemnification against defendants 160 Water Street Associates, L.P. and Oestreicher Properties, Inc to the extent of its attorney fees and costs to date in the event of the entry of a judgment awarding damages in favor of plaintiffs and against defendants 160 Water Street Associates, L.P. and Oestreicher Properties, Inc; it is further

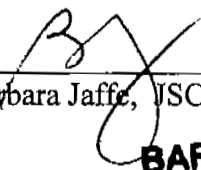
ORDERED, that defendants 160 Water Street Associates, L.P. and Oestreicher Properties, Inc.'s cross motion for summary judgment dismissing plaintiffs' complaint against it is granted only to the extent of dismissing plaintiffs' Labor Law §§ 240 and 241(6) claims; it is

further

ORDERED, that OneSource N.Y., Inc.'s motion for summary judgment dismissing plaintiffs' complaint and any cross claims against it is granted and the complaint is hereby severed and dismissed in its entirety as against OneSource N.Y., Inc., with costs and disbursements to OneSource N.Y., Inc. as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of OneSource N.Y., Inc.; and it is further

ORDERED, that 160 Water Street Associates, L.P. and Oestreicher Properties Inc.'s cross motion for summary judgment on its claim for indemnification against OneSource N.Y., Inc. is denied.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: April 11, 2011
New York, New York

APR 11 2011

FILED
APR 12 2011
NEW YORK
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