SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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JOHN GILLIGAN and COLLEEN GILLIGAN,

Plaintiffs,

-against- Index No.: 154536/2015

CJS BUILDERS, CJS INDUSTRIES, INC., CJS INDUSTRIES, LTD., and 11 WEST 42 REALTY INVESTORS, L.L.C.,

Defendants.

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11 WEST 42 REALTY INVESTORS, L.L.C.,

Third-Party Plaintiff,

-against- Third-Party Index No.: (Discontinued)

MICHAEL KORS (USA), INC.,

Third-Party Defendant.

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CJS INDUSTRIES, INC., t/a CJS BUILDERS,

Second Third-Party Plaintiff,

-against- Second Third-Party Index No.: 154536/2015

COMPLETE CONSTRUCTION CONTRACTING CORP.,

Second Third-Party Defendant.

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11 WEST 42 REALTY INVESTORS, LLC.,

Third Third-Party Plaintiff,

-against- Third Third-Party Index No.:

COMPLETE CONSTRUCTION CONTRACTING CORP.

Third Third-Party Defendant.

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COHEN, J.:

Motion sequence numbers 003 and 005 have been consolidated for disposition.

In motion sequence 003, plaintiffs John Gilligan and Colleen Gilligan move, pursuant to CPLR 3212, for an order granting partial summary judgment against CJS Industries, Inc. (CJS) and 11 West 42 Realty Investors, L.L.C. (11 West) for their claim of a violation of Labor Law § 240 (1).

In motion sequence 005, 11 West moves, pursuant to CPLR 3212, for an order granting conditional summary judgment against CJS and Complete Construction Contracting Corp. (Complete) for contractual indemnity and for breach of contract for failing to procure insurance.

CJS cross-moves, pursuant to CPLR 3212, for an order granting summary judgment and dismissing plaintiffs' causes of action for common law negligence and for a violation of Labor Law § 200. CJS also seeks summary judgment as to its claim of contractual indemnification as against Complete, or in the alternative, for a conditional order of contractual indemnity against Complete.

FACTUAL ALLEGATIONS

Plaintiff testified that he was injured on April 17, 2015, while working at 11 East 42nd Street. Plaintiff was working for Complete as a carpenter on the 16th floor of the premises. The general contractor for the project was CJS. Plaintiff was supervised at the site by "Aquinas," a foreman for Complete, who instructed plaintiff that he was to frame ceilings and install sheet rock. Plaintiff maintains that he was paired with a worker named "Richie."

Plaintiff testified that at the time of his accident, he was utilizing a scaffold. The scaffold

was six feet high by six feet long, and two and a half feet deep. Plaintiff was unaware of who owned the scaffold. Plaintiff maintains that he was on top of the wooden platform on the scaffold and about three to four feet above the ground.

Plaintiff maintains that while he was working on the scaffold "[i]t went out from under me and I fell down." Plaintiff's EBT, at 44. Plaintiff clarified that the scaffold moved forward, as he moved backward. Plaintiff testified that the back of his head hit the wall behind him, and that he proceeded to fall off of the scaffold to the ground and onto his right elbow. Plaintiff maintains that the wheels of the scaffold had a locking mechanism which plaintiff believes were locked at the time of the accident. He testified that he checked the wheels before ascending the scaffolding.

Plaintiff testified that while working for Complete, he was never given any instructions regarding wearing fall protection while on the subject height of the scaffold and was not wearing any type of fall protection at the time of his accident. Plaintiff also testified that based upon his own common sense, a safety harness should be worn at heights of about four to five feet. However, plaintiff maintains that he was working three to four feet above the ground at the time of his fall.

Plaintiff testified that a worker named "Rusty" witnessed his accident and helped him stand up before alerting the shop steward and foreman. Plaintiff testified that before the accident, he had moved the scaffold three or four times, descended the ladder, unlocked the scaffold, moved the scaffold, and locked the scaffold again. Plaintiff testified that he was located on the scaffold for 15 to 30 minutes before his accident, and that it had not moved in any way during that time.

Plaintiff testified:

"Q. And when you got– in the time that you had moved the scaffold last before you had the accident, did you lock each of those wheels?
A. Yes.
Q. Did you look [sic] it, or did Richie lock it or Rusty or someone else lock it for you or with you?
A. I locked it."

Id. at 142.

Plaintiff testified that he was not wearing a harness. He wore a hard hat from Complete, and was unaware of any safety or toolbox meetings. Plaintiff had no communication with any workers from CJS during the project. He maintains that he did not perform an inspection of the scaffold after the accident to see why it moved, and that prior to his accident, he was unaware of any problems with the subject scaffold.

Plaintiff submits an affidavit dated February 28, 2017, which states that on the date of his accident, the scaffold on which he was working had no guardrails or perimeter protection and that he was never told to utilize either. He was unaware of any guardrails, perimeter protection, harnesses, safety belts or lanyards located on site.

Christopher Spano (Spano) testified that he is the president and owner of CJS, the general contractor and construction management firm for the project at 11 West 42nd Street. Spano testified that CJS managed, oversaw, and facilitated the construction process and the bidding of subcontractors. He maintains that CJS hired Complete.

Spano testified that there was an authorized representative of CJS who had the authority to give directions to the person in charge of Complete. CJS conducted daily toolbox safety talks, and weekly subcontractor meetings to ensure that the subcontractors were following OSHA and

safety requirements. CJS superintendents would also sit in on the meetings with the subcontractor's foreman. Spano maintains that he was at the subject site two to three times a week and that there was a management team at the site on a daily basis. Spano did not witness the accident, and did not know if the scaffold moved or if the wheels were in place.

Spano testified that CJS had the authority to stop work if it determined that a subcontractor was engaging in unsafe practices. He was unaware of any CJS policies regarding the safe use of construction scaffolds on the site or policies regarding checking scaffolds for guardrails or checking if Complete had guardrails. Spano maintains that it was CJS's policy that if a scaffold was six feet high, guardrails, barricades or a harness was needed. He contends that because there was no policy regarding what was needed if a scaffold was below six feet high, the subcontractor could decide whether or not guardrails were neccessary for that height.

Karen Montero (Montero) testified that from December 2014 to December 2015, she was a property manager for 11 West. She maintains that the owner of the building or the property manager had no role in overseeing the specifics of the construction project other than receiving a schedule, reserving freight, receiving certificates of insurance, and taking care of requests for overtime air conditioning. Montero maintains that 11 West did not mandate any safety procedures and believes that implementing safety procedures was the general contractor's responsibility. Montero had no idea how the accident occurred and did not conduct an investigation.

Aquinas McElhatton (McElhatton) testified that he works for Complete as a carpenter foreman and that CJS hired Complete for work. On the date of plaintiff's accident, he instructed plaintiff to frame the corridor and the hallway ceilings. McElhatton was alerted about plaintiff's

accident while he was working on another floor of the building. When he arrived at the site of the accident, plaintiff was with the shop steward. He observed the scaffold on which plaintiff was working and it did not appear damaged. He could not recall if the wheels were locked or unlocked, but noticed that it did not have guardrails. McElhatton believes that by looking at the scaffold and the height of the ceiling, plaintiff was working at about two feet high. He did not know what caused plaintiff to fall.

McElhatton testified that a scaffold had to be four feet high to require guardrails and that there were guardrails located at the site. He maintains that he had not instructed plaintiff to utilize guardrails and that there were no harnesses or lanyards located at the site. McElhatton testified that he had not received any directions or safety protocols from anyone who worked for the owner of the building. McElhatton was uncertain if any of the safety meetings involved the use of scaffolds or if Complete's safety manual included any discussion regarding scaffold safety. He maintains that Complete would have job site talks.

Dwayne Williams (Williams) submits an affidavit dated October 26, 2015, which states that on the date of plaintiff's accident, he was a carpenter at 11 West 42nd Street. Williams observed plaintiff on a three to four foot scaffold installing framing in the ceiling. Williams states that while plaintiff was walking on the scaffold, the base of the scaffold moved and plaintiff proceeded to fall off to the floor below. Williams maintains that there were no guardrails or handrails located on the scaffold, that they were not issued safety devices, and that they were not aware of any harnesses or safety belts on site.

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 . . . ." *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).

Plaintiffs argue that partial summary judgment must be granted in their favor as to the claim of a violation of Labor Law § 240 (1) as against CJS and 11 West.

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

> "[a]ll 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."

"To establish a claim under this provision, a plaintiff must show that the statute was violated and that the violation proximately caused his injury." *Keenan v Simon Prop. Group, Inc.*, 106 AD3d 586, 588 (1st Dept 2013) (internal quotation marks and citation omitted). Plaintiff "must have suffered an injury as the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential." *Soto v J. Crew, Inc.*, 21 NY3d 562, 566 (2013) (internal quotation marks and citation omitted).

Plaintiffs argue that there is no dispute that plaintiff John Gilligan was engaged in the erection, repair and altering of a building; that 11 West was the owner of the premises on the day of the accident; and that CJS was the general contractor or agent of the owner, as provided in the Labor Law.

Plaintiffs argue that plaintiff was working on a scaffold at a height of three to four feet, that the scaffold became unstable causing plaintiff to fall, that the scaffold lacked guardrails, and that no other safety devices were provided to prevent him from falling. Plaintiffs argue that while Williams testified that the platform of the scaffold was three to four feet high which differed from Aquinas' testimony that the platform was about two feet high, plaintiff faced a substantial elevation differential as to fall under Labor Law § 240 (1).

CJS argues that there are material issues of fact as to whether Labor Law § 240 (1) was violated. CJS contends that a question of fact exists as to whether plaintiff was the sole proximate cause of his accident and failed to lock the wheels of the scaffold. CJS maintains that although plaintiff alleges that he locked the wheels each time he moved the scaffold, neither plaintiff, nor anyone who inspected the scaffold following the accident, could state whether the wheels were locked. CJS also contends that there is no evidence that a guardrail would have prevented the accident.

11 West contends that plaintiff was provided with a properly functioning scaffold which did not have any defects. It maintains that the sole proximate cause of the accident was plaintiff's failure to lock the wheels. 11 West contends that if plaintiff locked the wheels of the scaffold before climbing upon it, the scaffold would not have moved.

Complete contends that there are triable issues of fact as to whether plaintiff was the sole proximate cause of the accident and whether plaintiff locked the wheels of the scaffold. Complete argues that plaintiff made a statement to medical provider "Multi-Specialty Pain Management" which indicates that he bent down to pick up an item and slipped which contradicts plaintiff's statement that he was standing on the scaffold reaching up when the

scaffold moved. Complete also contends that even if the guardrails were not utilized, guardrails were located at the site and plaintiff failed to demonstrate that the guardrails would have prevented the accident.

In order to demonstrate that a plaintiff was the sole proximate cause of an injury, the defendant must establish "that plaintiff had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured.'" *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 (2004).

Here, plaintiffs have established that partial summary judgment must be granted on the Labor Law § 240 (1) claim. Plaintiff testified that the scaffold moved and caused him to fall, that the scaffold on which he was working had no guardrails or perimeter protection, and that he was never told to use guardrails or other perimeter protection while utilizing the scaffold. Plaintiff states that as far as he knew, there were no guardrails or perimeter protection, harnesses, safety belts or lanyards located on site. McElhatton testified that he had not instructed plaintiff to utilize guardrails and that there were no harnesses or lanyards located at the site.

As the lack of safety railings on the scaffold was a proximate cause of plaintiff's fall, plaintiff can not be the "sole proximate cause" of his injury as a matter of law. *See Lezcano v Metro. Life Ins. Co.,* 11 AD3d 303, 303 (1st Dept 2004) ("[d]efendants' liability was established as a matter of law by clear evidence that the injured worker had been provided a scaffold without guardrails or other protective devices that might have prevented his fall"); *Morrison v City of New York*, 306 AD2d 86, 86 (1st Dept 2003) (holding "[d]efendants' liability was established as a matter of law by the fact that the scaffold they provided plaintiff, which admittedly had no guard

rails, safety nets or lifelines, did not prevent plaintiff from falling").

Furthermore, although plaintiff testified that the wheels of the scaffold were locked, even if plaintiff failed to lock the wheels, plaintiff's actions would not be the sole proximate cause of his injuries. *See Crespo v Triad, Inc.*, 294 AD2d 145, 147 (1st Dept 2002) (holding "[p]roximate cause is established as a matter of law by the undisputed fact that plaintiff fell off a scaffold without guardrails that would have prevented his fall . . . [t]he claims concerning plaintiff's failure to use the locking wheel devices and his movement of the scaffold while standing on it are not determinative, since contributory negligence is not a defense").

As plaintiffs have demonstrated that the scaffold did not provide proper protection and that plaintiff was not provided with any other devices from preventing his fall, plaintiffs motion for summary judgment as to their claim of a violation of Labor Law § 240 (1) as against CJS and 11 West must be granted.

In motion sequence 005, 11 West contends that it should be granted an order of conditional summary judgment as against CJS and Complete for contractual defense and indemnification. 11 West maintains that an agreement entered into between Michael Kors and CJS obligates CJS to provide it with a defense and indemnity as an additional insured. 11 West contends that the agreements between CJS and Complete also obligate Complete to provide defense and indemnity and to obtain insurance coverage for 11 West. 11 West argues that the agreements are valid and enforceable and that Spano, the president and owner of CJS, testified that an agreement required CJS to provide defense and indemnity for the building owner and that he was supposed to obtain insurance coverage naming the owner as an additional insured.

In opposition, Complete argues that 11 West's motion for summary judgment must be

denied because issues of fact exist as there is no contract between 11 West and Complete, nor are they the third-party beneficiary to any contract. Complete contends that there is no indication in any of the agreements which were submitted that Complete agreed to indemnify 11 West. Furthermore, Complete contends that the agreements submitted by 11 West are not authenticated.

CJS also opposes 11 West's motion and argues that summary judgment must be denied because absent clear and definitive language indicating an intent to enter into an agreement to indemnify, such duty cannot be imposed. CJS argues that there is no contract between CJS and 11 West and that the alleged claim for breach of contract must also fail.

"A party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances." *Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 (1987) (quotations omitted)

11 West fails to reference any specific language in the agreements which demonstrate that 11 West was defined to be the "owner" for purposes of indemnification and was to be indemnified by either CJS or Complete. The agreement between the owner and the construction manager entitled "Standard Form of Agreement Between Owner and Construction Manager" dated April 1, 2014, states the owner as "Michael Kors Inc." and not 11 West.

Furthermore, despite 11 West's argument, Spano's testimony is inconclusive as to whether or not 11 West was an additional insured pursuant to any agreement. Spano testified that 11 West's name was listed on insurance company policies and insurance certificates. However, Spano also testified that he was unsure if 11 West was an additional insured and that he saw no reference to the building owner. He further testified that his understanding was that

the requirement for insurance was to provide insurance for Michael Kors and that it was not his understanding that CSJ was responsible for providing defense and indemnity for 11 West.

Therefore, because 11 West fails to meet its burden to demonstrate that no issues of fact exist and that summary judgment should be granted as against CJS and Complete for contractual indemnification and for breach of contract, 11 West's motion must be denied.

CJS cross-moves for summary judgment dismissing plaintiff's causes of action against it for common law negligence and a violation of Labor Law § 200.

Labor Law § 200 "is a codification of 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) (citations omitted). 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."

"Liability pursuant to Labor Law § 200 may be based either upon the manner in which the work is performed or actual or constructive notice of a dangerous condition inherent in the premises." *Markey v C.F.M.M. Owners Corp.*, 51 AD3d 734, 736 (2d Dept 2008). In order for an owner or general contractor to be liable for common-law negligence or a violation of Labor Law § 200 for claims involving the manner in which the work is performed, it must be shown that the defendant had the authority to supervise or control the performance of the work. For claims which arise out of an alleged dangerous premises condition, it must be shown that

defendant either created the dangerous condition causing an injury, or failed to remedy the dangerous or defective condition, while having actual or constructive notice of it. *See Abelleira v City of New York*, 120 AD3d 1163, 1164-1165 (2d Dept 2014). Here, plaintiffs allegations made pursuant to Labor Law § 200 relate to the manner in which plaintiff's work was performed, specifically the use of the scaffold.

CJS argues that it had nothing to do with plaintiff's accident other than having hired plaintiff's employer to perform work. CJS further argues that it did not supervise nor control the means and methods of plaintiff's work or the work of his employer.

In opposition, Complete contends that a question of fact exists as to whether CJS was negligent and violated Labor Law § 200. It argues that CJS had the power to control the methods of Complete and all subcontractors on the site, that CJS had the authority to give directions to Complete, to stop work, and to dictate CJS's safety practices. Complete further argues that the safety practices created by CJS did not require that guardrails or a harness be provided to plaintiff and that CJS had the authority to control whether guardrails were utilized. It also maintains that according to CJS's safety manual, fall hazards of six feet or more required an employee to utilize acceptable means of fall protection such as guard rails, barricades, or a body harness.

When a worker is injured as the result of the manner in which the work is performed, including dangerous or defective equipment provided by the plaintiff's employer, "liability under section 200 only attaches where the owner or contractor had the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition." *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 (1st Dept 2012) (internal citation and quotation omitted). General supervision and coordination of a worksite is insufficient to trigger liability

under Labor Law § 200. *See Francis v Plaza Constr. Corp.*, 121 AD3d 427, 428 (1st Dept 2014) ("[t]hat Plaza had a representative who would walk the site on a daily basis and had the authority to stop work for safety reasons is insufficient to raise a triable issue of fact with respect to whether Plaza exercised the requisite degree of supervision and control to sustain a Labor Law § 200 or common-law negligence claim); *Singh v Black Diamonds LLC*, 24 AD3d 138, 140 (1st Dept 2005) ("liability can only be imposed if defendant exercised control or supervision over the work and had actual or constructive notice of the purportedly unsafe condition").

According to the deposition testimony of the various witnesses, plaintiff was supervised at the site by the foreman for Complete. Plaintiff had no communication with any workers from CJS at any time during the project, and CJS only had general supervision over the worksite. Plaintiffs fail to demonstrate that CJS exercised supervisory control over plaintiff's specific work.

Therefore, because CJS has met its burden and demonstrated that it did not supervise or control the performance of the work which caused plaintiff's injury, the part of CJS's cross motion seeking summary judgment and dismissing plaintiff's claim that it violated Labor Law § 200 must be granted.

CJS also moves for summary judgment on its claim for contractual indemnity against Complete, or in the alternative, for a conditional order of contractual indemnity. "A party is entitled to full contractual indemnification [for damages incurred in a personal injury suit] 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." *Masciotta v Morse Diesel Int'l, Inc.*, 303 AD2d 309, 310 (1st Dept 2003) [internal quotation marks and citation omitted]).

Furthermore, "[i]n contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability. Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant." *De La Rosa v Philip Morris Mgmt. Corp.*, 303 AD2d 190, 193 (1st Dept 2003) (internal quotation marks and citation omitted).

CJS contends that the indemnification provision of the Master Subcontractor Agreement between CJS, as contractor, and Complete Construction, as subcontractor, and a rider entitled "Indemnification for NY," provide that to the fullest extent permitted by law, Complete will indemnify and hold harmless CJS from and against any claims and expenses, including but not limited to attorney's fees, arising out of Complete's performance of the work.

CJS argues that plaintiff was an employee of Complete, that he was injured during the course of his work due to an alleged violation of the Labor Law on the subject premises, and that plaintiff's work was directed and controlled by his foreman at Complete. CJS argues, that if the court finds that there is any issue of fact as to CJS's active negligence, then CJS is entitled to a conditional order of contractual indemnity against Complete. CJS contends that Complete fails to cite to any case law whereby a general contractor may be found to have been actively negligent because it had a site safety program or manual in place and/or had the authority to stop an unsafe work practice observed at the site.

Complete argues that a question of fact exists as to whether it owes CJS contractual indemnification because it is unclear if CJS was negligent and failed to employ a proper safety protocol at the site including the use of guardrails or a safety harnesses.

The "Master Subcontractor Agreement" entered into between CJS and Complete

provides:

> "9.1 INDEMNIFICATION AND LIABILITY. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner, Contractor and Contractor's other laborers . . . from and against any claims, damages, losses, liabilities, fines, payments and expenses, including but not limited to attorney's fees, arising out of and in connection with injuries . . . resulting from performance of the Work caused or alleged to be caused in whole or in any part by a violation of any law, ordinance, or regulation or by any negligent or willful act or omission, or any claim or strict liability, arising out of Work by Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable."

The Agreement's rider entitled "Indemnification for NY" dated February 13, 2014, states:

> "[t]o the fullest extent permitted by law Complete Construction Contracting Corp. ("Subcontractor"), agrees to indemnify, defend and hold harmless CJS Industries, Inc. DBA CJS Builders ("Contractor"), all applicable additional Indemnitees, if any, their officers, directors, agents, employees and partners (hereinafter collectively "Indemnitees") from and against any and all claims, suits, damages, liabilities, reasonable and necessary professional fees, including attorney fees, costs, court costs, expenses and disbursements related to death, personal injuries, property damage (including loss of use thereof) or the alleged violation of any laws, statutes, rules or ordinances brought or assumed against any of the Indemnitees by any person entity or firm, arising out of or in connection with or as a result of or as a consequence of the performance of the work to be undertaken by the Subcontractor (the "Work") as well as any additional work, extra work, or add-on work, whether or not caused in whole or part by the Subcontractor or any person or entity employed, either directly or indirectly, by the Subcontractor including any sub-contractor and subtier contractor thereof and their employees. The parties expressly agree that this indemnification agreement contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise, and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim in which case, indemnification will be limited to any and all liability imposed over and above that percentage attributable to actual fault on the part of the Indemnitees whether by statute, operation of law or otherwise. Where partial indemnity is provided under this agreement, attorneys' fees, costs, expenses and disbursements shall be indemnified on a pro rate basis. Recovery of attorneys' fees, costs, court costs, expenses and disbursements incurred in the defense of any underlying claim, in the enforcement of this indemnity agreement, in the prosecution of any claim for indemnification hereunder and pursuit of any claim for insurance coverage that

the Subcontractor is required to procure."

CJS's contract with Complete states that Complete would indemnify CJS for all claims "arising out of or in connection with or as a result of or as a consequence of the performance of the work to be undertaken by the Subcontractor ... ." As there is no dispute that plaintiff's injuries arose out of the contracted work for Complete which was also directed by Complete, CJS is entitled to indemnification by Complete. *See Guzman v 170 W. End Ave. Assoc.*, 115 AD3d 462, 463 (1st Dept 2014) ("[s]ince there is no dispute that plaintiff's injuries arose out of the contract "Work," defendants are unconditionally entitled to indemnification . . .").

CONCLUSION and ORDER

Accordingly, it is

ORDERED that plaintiffs John Gilligan and Colleen Gilligan's motion for partial summary judgment as to their claim of a violation of Labor Law § 240 (1) as against CJS Industries, Inc. and 11 West 42 Realty Investors, L.L.C. is granted; and it is further

ORDERED that 11 West 42 Realty Investors, L.L.C.'s motion for summary judgment against CJS Industries Inc. and Complete Construction Contracting Corp. is denied; and it is further

ORDERED that the part of CJS's cross motion seeking summary judgment dismissing plaintiff's causes of action for common law negligence and Labor Law § 200 as against CJS is granted; and it is further

ORDERED that the part of CJS's cross motion seeking summary judgment as to its claim

of contractual indemnification as against Complete Construction Contracting Corp. is granted.

Dated: 3-28-2018

ENTER:

J.S.C.

HON. DAVID B. COHEN
J.S.C.