

Christie v Live Nation Concerts, Inc.

2018 NY Slip Op 32790(U)

October 25, 2018

Supreme Court, Suffolk County

Docket Number: 14-790

Judge: David T. Reilly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COPY

INDEX No. 14-790

CAL. No. 17-01382OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

P R E S E N T :

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 12-05-17 (002)

MOTION DATE 12-15-17 (003)

MOTION DATE 12-08-17 (004)

MOTION DATE 01-26-18 (005)

ADJ. DATE 02-23-18

Mot. Seq. # 002 - MotD

003 - MD

004 - MotD

005 - MD

-----X
MICHAEL CHRISTIE,

Plaintiff,

- against -

LIVE NATION CONCERTS, INC., and BMS
CAT, INC.,

Defendants.
-----X

EDMOND C. CHAKMAKIAN, P.C.
Attorney for Plaintiff
200 Motor Parkway, Suite A3
Hauppauge, New York 11788

BRODY & BRANCH, LLP
Attorney for Defendant/Third-Party Plaintiff
205 Lexington Avenue, 4th Floor
New York, New York 10016

LIVE NATION CONCERTS, INC.,

Third-Party Plaintiff,

- against -

KESSOR ENTERPRISES, LTD, d/b/a
SUPERIOR LABOR SOLUTIONS,

Third-Party Defendants.
-----X

McLAUGHLIN & STERN, LLP
Attorney for Third-Party Defendant
Kessor Enterprises
1010 Northern Blvd, Suite 400
Great Neck, New York 11021

AHMUTY DEMERS & MCMANUS, ESQS.
Attorney for Defendant BMS CAT, Inc.
20 West Main Street, Suite 205
Riverhead, New York 11901

Christie v Live Nation Concerts
Index No. 14-790
Page 2

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion/Order to Show Cause by defendant BMS CAT, Inc. (Seq. 002), dated November 2, 2017, and supporting papers; (2) Notice of Motion/Order to Show Cause by third-party defendant Kessor Enterprises, Ltd. (Seq. 003), dated November 16, 2017, and supporting papers (including Memorandum of Law); (3) Notice of Motion/Order to Show Cause by defendant/third-party plaintiff Live Nation Concerts, Inc. (Seq. 004), dated November 17, 2017, and supporting papers; (4) Notice of Cross Motion by the plaintiff (Seq. 005), dated December 19, 2017, and supporting papers (including Memorandum of Law); (5) Affirmation in Opposition by third-party defendant Kessor Enterprises, Ltd. (Seq. 002), dated January 18, 2018, and supporting papers; (6) Affirmation in Opposition by defendant/ third-party plaintiff Live Nation Concerts, Inc. (Seq. 003), dated January 19, 2018, and supporting papers; (7) Affirmation in Opposition by third-party defendant Kessor Enterprises, Ltd. (Seq. 004), dated January 18, 2018, and supporting papers; (8) Affirmation in Opposition by defendant Live Nation Concerts, Inc. (Seq. 005), dated January 19, 2018; (9) Reply Affirmation by BMS CAT, Inc. (Seq. 002), dated February 21, 2018; (10) Reply Affirmation by third-party defendant Kessor Enterprises, Ltd. (Seq. 003), dated February 20, 2018, and supporting papers (including Memorandum of Law); (11) Reply Affirmations by Live Nation (Seq. 004), dated February 21, 2018; and (12) Reply Affirmation by plaintiff (Seq. 005), dated January 24, 2018 (including Memorandum of Law); it is

ORDERED that the motion (002) by defendant BMS CAT, Inc., the motion (003) by third-party defendant Kessor Enterprises, Ltd., the motion (004) by defendant/third-party plaintiff Live Nation Concerts, Inc., and the cross-motion (005) by plaintiff, are consolidated for the purposes of this determination; and it is

ORDERED that the motion (002) by defendant BMS CAT, Inc., for summary judgment dismissing the complaint of plaintiff Michael Christie against it, and for summary judgment in its favor with respect to its cross-claims against third-party defendant Kessor Enterprises, Ltd., for indemnification, is granted as set forth herein and is otherwise denied; and it is

ORDERED that the motion (003) by third-party defendant Kessor Enterprises, Ltd., for summary judgment dismissing the third-party complaint, and granting judgment in its favor with respect to the cross-claims against it is denied; and it is

ORDERED that the motion (004) by defendant/third-party plaintiff Live Nation Concerts, Inc. for summary judgment dismissing the complaint of plaintiff Michael Christie against it, and for summary judgment in its favor with respect to its third-party complaint against third-party defendant Kessor Enterprises, Ltd., is granted as set forth herein and is otherwise denied; and it is further

ORDERED that the cross-motion (005) by plaintiff for summary judgment on the issue of liability is denied.

Plaintiff commenced this action to recover damages for injuries that he allegedly sustained as a result of an accident that occurred on December 4, 2012, while he was working at the Jones Beach Theater in Wantagh, New York after Superstorm Sandy. Defendant/third-party plaintiff Live Nation Concerts, Inc. ("Live Nation"), employed defendant BMS CAT, Inc. ("BMS"), to provide disaster relief and recovery services after the storm. BMS, in turn, subcontracted with third-party defendant Kessor Enterprises, Ltd., d/b/a Superior Labor Solutions ("Superior"), to supply labor to perform clean-up services, and Superior employed plaintiff as a laborer to work on the project. Plaintiff alleges, among other things, that Live Nation and BMS created a dangerous condition at the job site and were negligent in failing to provide him with safe methods to perform his work, which resulted in an accident that

caused him to suffer permanent injuries. He further alleges that Live Nation and BMS violated Labor Law §§ 200, 240(1) and/or 241(6), as well as the New York State Industrial Code. Subsequent to plaintiff's complaint, Live Nation instituted a third-party action against Superior, seeking contractual indemnification, common law indemnification, and contribution. Superior and Live Nation entered into a stipulation discontinuing Live Nation's causes of action sounding in common law indemnification and contribution; however, the cause of action for contractual indemnification remains.

In motion sequence 002, BMS moves for summary judgment dismissing the complaint and all cross-claims against it, and for summary judgment with regard to its cross-claims against Superior. In motion sequence 003, Superior moves for summary judgment dismissing Live Nation's third-party complaint, and all the cross-claims of BMS. In motion sequence 004, Live Nation joins the motion of BMS for summary judgment dismissing plaintiff's complaint, and moves for summary judgment in its favor with regard to the third-party action against Superior and for summary judgment for its cross claims against BMS. Plaintiff cross-moves for summary judgment on the issue of liability with respect to his cause of action pursuant to Labor Law § 240(1).

At his deposition, plaintiff testified that on the date of the incident, he was employed as a laborer for Superior while the company was performing clean-up at the Jones Beach Theater. His immediate supervisor was a foreman who was also employed by Superior. Plaintiff recalled that the inside and the outside of the theater required extensive clean-up because of Superstorm Sandy. He was assigned to work with a group of four other laborers to perform debris clean up in specific areas on the work site. After performing some work outside, the group was instructed to remove a piece of metal from inside of the theater. Because the metal was heavy, the group carried it and placed it on the ground two times. When they attempted to carry it the third time, it fell, causing plaintiff to trip, fall and twist his knee. Plaintiff "did not know if somebody slipped" while carrying the metal, and did not know how it fell.

The metal was a "thick," heavy, triangular-shaped 10-foot-long piece of steel, which required the five men to participate in removing it from the theater. The men lifted the object to "waist height" or approximately three feet off the ground. The room that they were in was "pretty clear" of debris, and temporary lights were installed. Plaintiff wore a hard hat, gloves, and a hazardous materials suit while performing the work, and he testified that there was a machine that could have been used to pull the metal out of the theater. He testified that the foreman witnessed the incident, and that he received workers' compensation as a result of his injury. Plaintiff did not know which company hired Superior to complete the work, and he did not know who owned the property. He received his assignment and instruction on how to perform his work from the foreman, and did not know who gave the foreman instructions.

Thomas Whitenton testified that he was a project manager for BMS at the time of the incident. BMS was hired as a general contractor to clean up the Jones Beach Theater after Superstorm Sandy. The scope of work included the labor required to remove debris from the theater. Plaintiff and other laborers worked in designated areas, and a BMS supervisor was placed in the area where they worked to oversee, control, and direct their work. There were approximately eight or nine supervisors on the work site, and Whitenton was on the site daily. BMS conducted safety meetings on a daily basis, which included discussion on lifting objects safety. The BMS supervisor who oversaw plaintiff's work area told

Whitenton that plaintiff was injured when a piece of metal that plaintiff was moving fell on his leg. An accident report was completed by BMS on the day after the incident. Whitenton testified that the room in which the plaintiff was working could not accommodate a Bobcat machine, and Whitenton was unsure whether a scissor lift could have been driven into the room to remove the metal.

Matthew Rubino testified that he was an independent consultant who provided staffing services for Superior. He found companies that needed laborers, and Superior would contract to send its union workers to a job site. He was not involved in the negotiation of the contract between BMS and Superior. Rubino was notified that plaintiff was injured, but he did not make any reports about the incident and did not have any discussion with BMS concerning plaintiff.

Kevin O'Grady testified that he was a laborer/foreman for Superior and union shop steward at the time of plaintiff's accident. Plaintiff and O'Grady were a part of the same five-man cleanup group, and O'Grady was helping to move the metal when plaintiff was injured. O'Grady observed plaintiff fall forward and make a noise, but he was not aware why plaintiff fell. The metal weighed approximately two to three hundred pounds. O'Grady did not receive direction from Live Nation on how to complete his work, and, as the leader of the group, he made the decision regarding how the metal would be removed from the room. Because there was no machine that could fit inside of the room, the five men manually removed the object.

The contract between BMS and Superior indicated that Superior agreed to provide "union labor" services for the cleanup job. Superior agreed to purchase and maintain insurance to protect BMS and Superior from "claims of any nature concerning [Superior's] actions and inaction pursuant to [Superior's] performance of the work, including but not limited to, claims under workers' compensation acts, unemployment compensation acts, claims for damage because of bodily injury, including death, and from claims for damages to property." Superior also agreed to indemnify BMS and Live Nation from "all claims, actions, liabilities, losses, costs, and damages, and expenses, (including attorneys' fees and costs) sustained or incurred by reason of any act, omission, negligence, or fault by [Superior] or its agents and employees, or otherwise arising out of or in any manner related to the Services, the Work, or the performance by [Superior] under the contract." Superior included an insurance policy from the New York State Insurance Fund, indicating that it procured workers' compensation and employers' liability policy.

It is well established that 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 issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion, which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *Rebecchi v Whitmore*, 172 AD2d 600, 568 NYS2d 423 [2d Dept 1991]; *O'Neill v Town of Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto, supra; O'Neill v Town of Fishkill, supra*).

Labor Law § 200 is a codification of the common-law duty imposed upon an owner, contractor, or their agent, to provide construction site workers with a safe place to work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 609 NYS2d 168 [1993]; *Haider v Davis*, 35 AD3d 363, 827 NYS2d 179 [2d Dept 2006]). “Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (*Messina v City of New York*, 147 AD3d 748, 46 NYS3d 174 [2d Dept 2017], quoting *Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323 [2d Dept 2008]). Where the condition of the premises is at issue, property owners may be held liable for a violation of Labor Law § 200 if the owner either created the dangerous condition or had actual or constructive notice of the dangerous condition that caused the accident (*Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323). When the methods or materials of the work are at issue, the owner or general contractor may be held liable where it “had the authority to supervise or control the performance of the work” (*id.*). General supervisory authority at a work site is not enough; rather, a defendant must have had the responsibility for the manner in which the plaintiff’s work is performed (*see id.*).

In their individual motions, BMS and Live Nation both claim that no dangerous condition existed at the work site, and that it was the manner in which plaintiff performed the work that caused his injury. BMS and Live Nation further argue that they cannot be held liable inasmuch as they did not control the manner in which the laborers worked on the job site. BMS and Live Nation have established that plaintiff’s work area was clear while he was performing his work as plaintiff did not complain of the condition of the work site (*Tolpa v One Astoria Sq., LLC*, 125 AD3d 755, 756, 4 NYS3d 230 [2d Dept 2015]). Accordingly, the Court finds that no dangerous condition existed at the work site.

Notwithstanding, when the methods or materials of the work are at issue, an owner or general contractor may be liable where it bore the responsibility for the manner in which the work was performed. The record demonstrates that an issue of fact exists whether BMS controlled the manner in which plaintiff’s work was performed (*see Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323 [2008]). Although O’Grady testified that he was working with plaintiff to remove the metal object, and that as the leader of the group he dictated the manner in which the men removed the object, Whitenton, the project manager who was employed by BMS, testified that a BMS supervisor oversaw, controlled, and directed the laborers’ work. Based upon this testimony, a reasonable mind could infer that BMS had the authority to control the performance of plaintiff’s work. There is also a question of fact whether BMS was negligent in failing to provide plaintiff with an alternative method to remove the more than 200-pound piece of metal. Plaintiff testified that a scissor lift could have been used to pull the material out of the room. With regard to Live Nation, however, the record establishes that it did not maintain a supervisory presence at the work site, and thus, cannot be held liable pursuant to Labor Law § 200 (*see Sullivan v New York Athletic Club*, 162 AD3d 955, 958 [2d Dept 2018]).

BMS and Live Nation also move for summary judgment dismissing plaintiff’s claims concerning Labor Law § 240 (1) and 241 (6), and plaintiff cross-moves for summary judgment on the defendants’ liability with respect to his Labor Law § 240 (1) claim. Labor Law §§ 240 (1) and 241 (6) impose a nondelegable duty upon owners and general contractors to provide protective equipment, devices and other adequate and reasonable protection to persons employed in the construction or alteration of a

building (see *Ross v Curtis-Palmer Hydro Elec. Co.*, 81 NY2d 494, 601 NYS2d 49 [1993]; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 577 NYS2d 219 [1991]; *Cannon v Putnam*, 76 NY2d 644, 563 NYS2d 16 [1990]). Labor Law § 240 (1) is often referred to as the “scaffold law,” and it provides that contractors and owners shall furnish or erect, “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 [construction workers employed on the premises]” (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500, 601 NYS2d 49 [1993]). The legislation “was aimed only at elevation-related hazards,” and addresses a work site that is elevated or positioned below the level where materials or load are hoisted or secured (*Ross v Curtis-Palmer Hydro Elec. Co.*, 81 NY2d 494, 601 NYS2d 49). Thus, “[t]he extraordinary protections of Labor Law § 240 (1) extend only to a narrow class of special hazards, and do ‘not encompass any and all perils that may be connected in some tangential way with the effects of gravity’” (*Sullivan v New York Athletic Club*, 162 AD3d 955, 957, 80 NYS3d 93 [2d Dept 2018] [internal quotation marks omitted]; see *Carlton v City of New York*, 161 AD3d 930, 932, 77 NYS3d 445 [2d Dept 2018]).

BMS and Live Nation have established entitlement to judgment as a matter of law by demonstrating “that the plaintiff’s injury was not caused by an elevation-related hazard encompassed by Labor Law § 240 (1)” (*Sullivan v New York Athletic Club*, 162 AD3d 955, 957, 80 NYS3d 93). The record demonstrates that plaintiff was standing on the ground and lifted the metal object up to waist height along with four other co-workers. The men were tasked with removing the heavy steel object from a room, and, while carrying the object, it fell, causing plaintiff to trip and injure his knee. Plaintiff testified that one of his co-workers may have slipped, and O’Grady testified that he did not know why plaintiff fell. BMS and Live Nation established that plaintiff was not working at an elevated worksite, and the object which allegedly caused his injury did not fall from a higher elevation (see *Carroll v Timko Contracting Corp.*, 264 AD2d 706, 694 NYS2d 744 [2d Dept 1999]). “The mere fact that the plaintiff was injured while lifting a heavy object does not give rise to liability” under the statute (*Sullivan v New York Athletic Club*, 162 AD3d 955, 80 NYS3d 93).

In opposition, plaintiff contends that the weight of the metal object, and the fact that he was required to manually lift the object, places his injury within the ambit of Labor Law § 240 (1). Plaintiff’s contention is unpersuasive. The facts herein demonstrate that plaintiff was not injured while working at an elevated worksite nor was the piece of metal at a higher level; he was lifting a heavy object, which caused him to twist his knee (*Carroll v Timko Contr. Corp.*, 264 AD2d 706, 706; see *Cardenas v BBM Const. Corp.*, 133 AD3d 626, 627-28 [2d Dept 2015]).

Similarly, Labor Law § 241(6) “requires owners and contractors to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor” (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501–502, 601 NYS2d 49). Thus, to support a claim under this section, the particular provision of the regulation relied upon by a plaintiff must “mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles” (*Misicki v Caradonna*, 12 NY3d 511, 882 NYS2d 375 [2009]). Additionally, a plaintiff must show that the violation of the regulation was a proximate cause of his accident (see *Seaman v Bellmore Fire Dist.*, 59 AD3d 515, 873 NYS2d 181 [2d Dept 2009]; see also *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d

Christie v Live Nation Concerts

Index No. 14-790

Page 7

343, 670 NYS2d 816; *Hricus v Aurora Contrs., Inc.*, 63 AD3d 1004, 883 NYS2d 61 [2d Dept 2009]; *Seaman v Bellmore Fire Dist.*, 59 AD3d 515, 873 NYS2d 181 [2d Dept 2009]; *Fitzgerald v New York City School Constr. Auth.*, 18 AD3d 807, 808, 796 NYS2d 694 [2d Dept 2005]). The rule or regulation alleged to have been breached must be a specific, positive command and must be applicable to the facts of the case (see *Forschner v Jucca Co.*, 63 AD3d 996, 883 NYS2d 63 [2d Dept 2009]; *Cun-En Lin v Holy Family Monuments*, 18 AD3d 800, 796 NYS2d 684 [2d Dept 2005]).

In his pleadings, plaintiff alleged that defendants violated 12 NYCRR 23-1.7 (a), 23-1.30, 23-6.1, and 23-1.7 (e). BMS and Live Nation have demonstrated that the Industrial Code (12 NYCRR) sections cited by plaintiff as predicates for his Labor Law § 241(6) claim are inapplicable (see *Grygo v 1116 Kings Highway Realty, LLC*, 96 AD3d 1002, 1003, 947 NYS2d 586, 588 [2d Dept 2012]; *Barrios v Boston Properties LLC*, 55 AD3d 339, 340, 866 NYS2d 99, 100 [1st Dept 2008]). There is no indication in the record that plaintiff was exposed to overhead falling materials or objects; he testified that temporary lights were provided at the work site; no hoisting machinery or equipment was used to move the object; and he testified that his work area was free of debris.

BMS and Live Nation have met their burden with respect to plaintiff's Labor Law §§ 240 (1) and 241(6) claims, and plaintiff failed to raise an issue of fact in opposition. In light of the Court's determination that all of plaintiff's claims against Live Nation are dismissed, and as BMS has not alleged any cross-claims against Live Nation, the motion of Live Nation for summary judgment with regard to its third-party complaint against Superior is denied as moot. The remaining claims involve the cross-claims of BMS against Superior.

Preliminarily, the Court dismisses the cross-claims of BMS for common law indemnification and contribution inasmuch as plaintiff received workers compensation as a result of his injury (see *Rodrigues v N & S Bldg. Contrs., Inc.*, 5 NY3d 427, 432 [2005] [Workers' Compensation Law §11 requires the indemnification claim arise from an indemnification provision in a written contract]; *Spiegler v Gerken Bldg. Corp.*, 35 AD3d 715, 716, 35 AD3d 715 [2d Dept 2006]). Additionally, BMS made no showing that Superior failed to procure insurance coverage to BMS for an accident such as plaintiff's. Therefore, that claim is also dismissed. On the remaining contractual indemnification cross claim, BMS contends that its agreement with Superior required that Superior indemnify BMS for any claim that arose from or was related to Superior's work at the Jones Beach Theater, and inasmuch as plaintiff's accident arose from and was related to Superior's work, and BMS was not negligent, summary judgment is warranted in its favor. Superior contends that it is not obligated to indemnify BMS under their agreement because it was not negligent.

"A party's right to contractual indemnification depends upon the specific language of the relevant contract . . . The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances" (*Campisi v Gambar Food Corp.*, 130 AD3d 854, 855, 13 NYS3d 567 [2d Dept 2015], citing *Desena v North Shore Hebrew Academy*, 119 AD3d 631, 636, 989 NYS2d 505 [2d Dept 2014]; *Roldan v New York Univ.*, 81 AD3d 625, 628, 916 NYS2d 162 [2d Dept 2011]). Here, the relevant indemnification provision requires Superior to indemnify BMS in either of two situations: (1) where a claim arose out of, or in any manner related to the performance of Superior's work or (2) where a claim arose out of the acts, omissions or

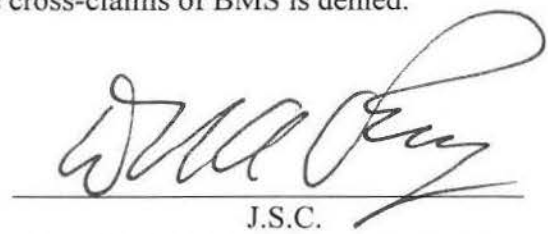
Christie v Live Nation Concerts
Index No. 14-790
Page 8

negligence of Superior (*Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 178, 556 NYS2d 991 [1990]). Superior argues that Texas Law, which governs the agreement, does not allow indemnification if the general contractor is negligent.

As the Court previously indicated, there is an issue of fact with respect to plaintiff's Labor Law §200 claim against BMS. A BMS supervisor testified that BMS had the authority to control and direct plaintiff's work, and plaintiff testified that a machine was available to move the two to three hundred-pound metal; however, he was instructed to remove it manually. The record also establishes that there is a question of fact as to Superior's negligence. O'Grady, who was employed by Superior, testified that he instructed plaintiff on how to remove the metal object. Superior, on one hand, argues that its only duty was to provide worker's compensation to plaintiff for his work-related injury, and, on the other hand, argues that it did not provide any work for BMS. Superior's position is unpersuasive. Because there is a dispute of fact with regard to the negligence of either BMS or Superior, summary judgment on BMS's cross-claim would be premature at this time (*see Coque v Wildflower Estates Developers, Inc.*, 31 AD3d 484, 489, 818 NYS2d 546 [2d Dept 2006]; *see also Bryde v CVS Pharm.*, 61 AD3d 907, 878 NYS2d 152 [2d Dept 2009]; *Wensley v Argonox Constr. Corp.*, 228 AD2d 823, 644 NYS2d 355 [3d Dept 1996]; *Cichon v Brista Estates Assocs.*, 193 AD2d 926, 597 NYS2d 819 [3d Dept 1993]).

Accordingly, the motion by Live Nation for summary judgment dismissing the complaint against it is granted, and the branches of the motion of BMS for summary judgment dismissing plaintiff's Labor Law §§ 240 (1) and 241 (6) claims are granted. In light of the foregoing, and inasmuch as plaintiff failed to raise an issue of fact with respect to his Labor Law § 240 (1) claim against BMS and Live Nation, his cross-motion for summary judgment on that claim is denied. Additionally, the branch of the motion of BMS for summary judgment with respect to its cross-claim for contractual indemnification against Superior is denied, and the motion of Superior dismissing the cross-claims of BMS is denied.

Dated: October 25, 2018



J.S.C.

HON. DAVID T. REILLY

 FINAL DISPOSITION X NON-FINAL DISPOSITION