SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 43

----------x

DILLON JOHN, Index No.: 155296/2016

Plaintiff,

-against-

JEMCOM CANAL DEL, LLC., JEMCOM CANAL REVERSE, LLC., JEMCOM CANAL 159 REVERSE, LLC., ELIZABETH CANAL, LLC., ELIZABETH BRONX, LLC., ORANGE CRESCENT APARTMENTS, LLC., HH 159 CANAL, LLC., TOP LINK CONTRACTING, LLC and FIVE POINTS CANAL REALTY, LLC,

Defendants.

----------x

Robert R. Reed, J.:

Motion sequence numbers 002 and 003 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by a carpenter on March 29, 2016, when a heavy steel beam fell off a dolly and onto his leg, while he was working at a construction site located at 159 Canal Street, New York, New York (the Premises).

In motion sequence number 002, plaintiff Dillon John moves, pursuant to CPLR 3212, for partial summary judgment as to liability on the Labor Law § 240 (1) claim against defendants Jemcom Canal Del, LLC., Jemcom Canal Reverse, LLC., Jemcom Canal 159 Reverse, LLC., Elizabeth Canal, LLC., Elizabeth Bronx, LLC., HH 159 Canal, LLC. and Five Points Realty, LLC (Five Points) (collectively, the Jemcom defendants).

In motion sequence number 003, the Jemcom defendants move, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241

(6) claims and defendant Top Link Contracting, LLC's (Top Link) cross claims for contribution and common-law indemnification against them, as well as for summary judgment in their favor on their cross claim for common-law indemnification against Top Link.

BACKGROUND

On the day of the accident, the Jemcom defendants owned the Premises where the accident occurred. Five Points, the property manager of the Premises, retained non-party Folor, Inc. (Folor) to serve as the general contractor on a project at the Premises, which entailed demolishing the existing building and replacing it with a two-story commercial space with storefronts. Folor subcontracted the structural steel fabrication and erection work to Top Link. Plaintiff, who was employed by Folor as a carpenter/laborer, was assisting some Top Link workers in moving an unsecured steel I-beam on a dolly, when the I-beam fell off a dolly and onto his right leg, pinning him to the ground.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, he was employed as a carpenter/laborer by Folor. Plaintiff received his assignments from his supervisor, Andy Conklin, as well as from Folor's head supervisor, Michael Arle. Plaintiff's duties on the Project included applying blocking between joists, clean-up of the job site, rough carpentry, demolition and debris removal.

On the morning of the accident, Folor's structural steel subcontractor, Top Link, had some steel delivered to the Premises. Conklin instructed plaintiff to assist some of the Top Link workers in bringing a steel delivery into the building. At the time that plaintiff joined the Top Link workers, they were in the process of moving a single steel I-beam on a dolly. Plaintiff explained that the four-wheeled dolly was square in shape and had an open center. Plaintiff

further described the dolly has being "like a foot tall" (plaintiff's tr at 15-16). Plaintiff estimated that the "fairly long" I-beam that was being transported via the dolly measured approximately 25 to 30 feet long (*id.* at 16). Plaintiff was not sure how much the I-beam weighed, but it took "approximately five or six of [the men]" to move it (*id.* at 17).

Plaintiff explained that his "job was to direct the steel with a piece of wood. Like stopping it from going into the ditch" (*id.*). At the time of the accident, he was pressing the wood "[u]p against the dolly" (*id.* at 18). He was injured when "the steel slipped off the dolly and pinned [his] foot with the wood" (*id.*). Plaintiff asserted that it took "10, 12 guys" to move the steel beam off his foot.

Plaintiff testified that prior to the day of his accident, he had observed other methods of transporting I-beams, such as "[o]n an A-frame [dolly]," which was owned by Top Link (*id.* at 78-79). He also maintained that there were A-frame dollies available at the Premises on the day of the accident.

Deposition Testimony of Brian Flanagan (Top Link's Project Manager)

Brian Flanagan testified that he was Top Link's project manager on the day of the accident. He testified that Folor hired Top Link to install steel beams on the Project. He maintained that no one from Folor instructed or directed any of the Top Link employees, and that Enrique Vasquez of Top Link supervised Top Link's work. Vasquez also determined what work was to be performed each day, and how that work was to be performed. Specifically, it was Vasquez's decision to move the I-beam on the subject dolly. Flanagan noted that the Top Link workers typically used an A-frame dolly to transport I-beams, and that he had observed some of these A-frame dollies at the Premises.

Deposition Testimony of Michael Arle (Folor's Project Manager)

Arle testified that he was Folor's project manager on the day of the accident. When he spoke with Vasquez after the accident, Vasquez told him that he wasn't sure how the accident occurred, but that "the work got away from him" (Arle tr at 50). Vasquez explained that the accident occurred because the ground had a slight elevation and "the dolly was not balanced properly and whatever was on it had shifted" (*id.*). Arle did not know if the subject load had been tied down or not, but asserted that if the load had been "mounted on the dolly correctly and secured to the dolly," the accident would not have happened (*id.* at 43). Instead, "the dolly tipped and dumped the steel" (*id.*).

Arle believed that a necessary strap may have been missing from the dolly at the time of the accident. If that strap had been in use, the dolly would have been appropriate for transporting the I-beam. Arle testified that Top Link was responsible for determining the means and methods associated with transporting steel on the Project.

Affidavit of Clyde Burnett (Folor Employee)

In his affidavit, Clyde Burnett stated that he was employed by Folor on the day of the accident. That day, he "went with two other Folor employees, one of whom was [plaintiff], to assist employees of Top Link Contracting bring steel beams from the street into the building" (Burnett aff). Vasquez of Top Link "directed the Top Link employees and [them] to load a steel beam onto a dolly and move the beam into the building" (*id.*).

Burnett further stated that Vasquez requested "that a person stand on each side of the dolly with a large piece of wood to guide the dolly and [the unsecured] beam and make sure that the beam did not fall off the dolly" (*id.*). As the men were moving the steel beam into the

building, he "saw the beam fall off the dolly and onto [plaintiff's] leg" (*id.*). Burnett described the I-beam as "very heavy," noting that "[i]t took approximately 10–15 men to lift the beam off of [plaintiff's] leg" (*id.*).

Burnett explained that A-frame dollies were usually used for this task because they were designed to "prevent beams from falling off the sides of the dollies" (*id.*). However, the men could not use an A-frame dolly to move the beam at issue because the beam was a "large foundation corner beam, and it was too large to fit on a normal A-frame dolly" (*id.*).

Affidavit of Martin Bruno (Construction Site Safety Expert)

In his affidavit, Martin Bruno, a construction site safety expert, asserted that the accident occurred because "Top Link chose to move the beam in an unsafe and dangerous manner . . . [and because] Top Link did not properly place, balance and secure the steel beam to the dolly to prevent it from moving and ultimately falling off" (Bruno aff). Bruno further stated that the I-beam's "substantial weight" and "the slight shift in elevation" also contributed to the accident (*id.*).

Bruno also maintained that "[i]t was clearly foreseeable that the unsecured 25-30 foot beam would shift, move and fall when the dolly was set in motion. Nevertheless, Top Link failed to use any means of restraining the beam, such as straps or lashes, to prevent the foreseeable risk of the beam shifting . . . during its transport" (*id.*). Bruno also noted that an A-frame dolly would have been a better choice for safely moving the I-beam involved in the accident.

The Affidavits of Kevorn Lewis and Nielle Bourne (Plaintiff's Folor Co-Workers)

In their affidavits, Kevorn Lewis and Nielle Bourne stated that they were employed by

Folor as carpenters/laborers on the Project. Lewis and Bourne both stated that they "had nearly the same job responsibilities as [plaintiff]" at the Project (Lewis and Bourne affs). They also both maintained that they "regularly assisted Top Link Contracting employees move steel deliveries from the street into the building" (*id.*)

DISCUSSION

"'The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

The Common-Law Negligence and Labor Law §§ 200 and 241 (6) Claims

The Jemcom defendants move for dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against it. As plaintiff does not oppose those parts of the Jemcom defendants' motion which seeks to dismiss these claims, these unopposed claims are deemed abandoned (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012]; *Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did not oppose that

branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]).

Thus, the Jemcom defendants are entitled to dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against them.

The Labor Law § 240 (1) Claim

Plaintiff moves for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against the Jemcom defendants. Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant part:

> "All contractors and owners and their agents . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

"'Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

> "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein"

(*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]; *Hill v Stahl*, 49 AD3d 438, 442 [1st Dept 2008]; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 2007]).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]; *Felker v Corning Inc.*, 90 NY2d 219, 224-225 [1997]; *Torres v Monroe Coll.*, 12 AD3d 261, 262 [1st Dept 2004]).

Initially, plaintiffs may recover damages for a violation of Labor Law § 240 (1) under a falling objects theory, because the object that fell on the plaintiff's leg, i.e. the heavy I-beam, "was 'a load that required securing for the purposes of the undertaking at the time it fell [citation omitted]'" (*Cammon v City of New York*, 21 AD3d 196, 200 [1st Dept 2005]; *Gabrus v New York City Hous. Auth.*, 105 AD3d 699, 699 [2d Dept 2013] [the plaintiff was entitled to summary judgment in his favor on his Labor Law § 240 (1) claim where he demonstrated that the load of material that fell on him while being hoisted to the top of the building was inadequately secured]; *Dedndreaj v ABC Carpet & Home*, 93 AD3d 487, 488 [1st Dept 2012] ["[p]laintiff established his prima facie entitlement to summary judgment by showing that defendants' failure to provide an adequate safety device proximately caused a pipe that was in the process of being hoisted to fall and strike him"]).

In addition, as there were no protective devices in place, such as nets or ropes, to secure the I-beam while it was being moved via the dolly, Labor Law § 240 (1) is applicable, because plaintiff's injuries were "'the direct consequence of [defendants'] failure to provide adequate protection against [that] risk'" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1,10

[2011] [citation omitted]).

"'[T]he availability of a particular safety device will not shield an owner or general contractor from absolute liability if the device alone is not sufficient to provide safety without the use of additional precautionary devices or measures'" (*Nimirovski v Vornado Realty Trust Co.*, 29 AD3d at 762, quoting *Conway v New York State Teachers' Retirement Sys.*, 141 AD2d 957, 958-959 [3d Dept 1988]).

Initially, in opposition to plaintiff's motion, the Jemcom defendants argue that Labor Law § 240 (1) does not apply to plaintiff's accident because he was not acting within the scope of his employment at the time that the accident occurred. However, as plaintiff argues, case law makes clear that a worker need not be performing his assigned duties at the time of the accident in order to be accorded the protections of the statute (*see Destefano v City of New York*, 39 AD3d 581, 582 [2d Dept 2007]; *Roberts v Caldwell*, 23 AD3d 210, 210 [1st Dept 2005]). In any event, plaintiff and his co-workers asserted that it was one of their duties as carpenters/laborers to assist Top Link workers in moving steel during deliveries.

In addition, contrary to the contention of the Jemcom defendants, it is also not necessary for plaintiff to show that the dolly was defective in order to recover under Labor Law § 240 (1), as "[i]t is sufficient for purposes of liability under section 240 (1) that adequate safety devices to . . . protect plaintiff from falling were absent" (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 291 [1st Dept 2002]; *McCarthy v Turner Constr., Inc.*, 52 AD3d 333, 333-334 [1st Dept 2008] [where plaintiff sustained injuries "when the unsecured ladder he was standing on to drill holes in a ceiling tipped over," the plaintiff was not required to demonstrate, as part of his prima facie showing, that the ladder he was working on at the time of the accident was defective]).

Further, it would be improper to deny plaintiff summary judgment merely because plaintiff has not provided the testimony of other witnesses who observed the accident (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d at 290 [Court granted plaintiff, who was alone at time of accident and fell from an A-frame ladder which had no protective devices while installing a light fixture, summary judgment on his section 240 (1) claim "[r]egardless of the precise reason for his fall"]; *Campbell v 111 Chelsea Commerce, L.P.*, 80 AD3d 721, 722 [2nd Dept 2011] ["The fact that the plaintiff may have been the sole witness to the accident does not preclude the award of summary judgment in her favor"]).

It should also be noted that case law dictates that it was not necessary for plaintiff to demonstrate that the subject I-beam was in the process of being hoisted or secured in order for the accident to be covered under Labor Law § 240 (1). It is enough that said object simply needed securing "'for the purposes of the undertaking'" (*Moncayo v Curtis Partition Corp.*, 106 AD3d 963, 964 [2d Dept 2013], quoting *Outar v City of New York*, 5 NY3d 731, 732 [2005] [Labor Law § 240 (1) applicable where plaintiff was struck by an unsecured dolly, which was being stored on top of a bench wall, and thus, was not in the process of being hoisted or secured at the time that it fell on the plaintiff]).

The Jemcom defendants further argue that Labor Law § 240 (1) does not apply to the facts of this case because, in order for Labor Law § 240 (1) to apply, the hazard must have arisen out of an appreciable differential in height between the object that fell and the work (*see Melo v Consolidated Edison Co. of N.Y.*, 92 NY2d 909, 911 [1998]; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]). Here, plaintiff testified that he was injured when the I-beam fell off the dolly, which was only one-foot-tall.

However, in *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.* (*supra*), the Court of Appeals "decline[d] to adopt the 'same level' rule, which ignores the nuances of an appropriate section 240 (1) analysis" (*Wilinski*, 18 NY3d at 9). In *Wilinski*, the plaintiff was struck by metal pipes, which stood 10-feet tall and measured 4 inches in diameter. In that case, the pipes that toppled over onto the plaintiff were located at the same level as the plaintiff. Quoting *Runner v New York Stock Exch., Inc.* (13 NY3d 599 [2009]), the Court in *Wilinski* determined that the "'the elevation differential . . . [could not] be viewed as de minimis, particularly given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent" (*id.* at 10, quoting *Runner* at 605).

Applying *Wilinski* to the instant case, not only is plaintiff not precluded from recovery simply because the heavy I-beam fell only a short distance, but, given the significant amount of force that it generated during its fall, plaintiff's accident "'ar[ose] from a physically significant elevation differential'" (*id.* at 10, quoting *Runner* at 603; *see also Marrero v 2075 Holding Co. LLC*, 106 AD3d 408, 409 [1st Dept 2013] [in a case where the plaintiff was injured when two 500-pound steel beams fell "a short distance" off an A-frame cart and landed on his leg, Labor Law applied "[g]iven the beams' total weight of 1,000 pounds and the force they were able to generate during their descent"]). Here, the steel I-beam that fell on plaintiff was repeatedly described as substantial in weight, requiring multiple men to lift it off of plaintiff's leg.

Also contrary to the assertion of the Jemcom defendants, it is of no consequence whether the I-beam completely fell off the dolly or partially fell off the dolly. Importantly, plaintiff is entitled to the protections of Labor Law § 240 (1) under either scenario, because in both scenarios, defendants failed to provide proper safety devices to secure the I-beam against shifting

and falling (*see Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept 2004] [where plaintiff was injured as a result of unsteady ladder, plaintiff did not need to show that ladder was defective for the purposes of liability under Labor Law § 240 (1), only that adequate safety devices to prevent the ladder from slipping or to protect the plaintiff from falling were absent]; *Diaz v City of New York*, 110 AD3d 577, 577 [1st Dept 2013]; *Romanczuk v Metropolitan Ins. and Annuity Co.*, 72 AD3d 592, 592 [1st Dept 2010]; *John v Baharestani*, 281 AD2d at 117).

Finally, while the Jemcom defendants argue that plaintiff's motion should have been supported by expert testimony establishing that a safety device was needed to keep plaintiff safe, expert testimony is required only when the subject matter is "beyond the ken of the typical juror," or when the issues involved are of "such scientific or technical complexity as to require the explanation of an expert in order for the jury to comprehend them" (*Hendricks v Baksh*, 46 AD3d 259, 260 [1st Dept 2007]). Here, these defendants have not sufficiently established that the subject matter and issues involved herein are of the kind that would make such expert testimony necessary.

Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards such as falling from a height, and must be liberally construed to accomplish the purpose for which it was framed [internal citation omitted]" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006]). "As has been often stated, the purpose of Labor Law § 240 (1) is to protect workers by placing responsibility for safety practices at construction sites on owners and general contractors, 'those best suited to bear that responsibility' instead of on the workers, who are not in a position to protect themselves" (*John v Baharestani*, 281 AD2d at 117, quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 500).

Thus, plaintiff is entitled to partial summary judgment in its favor as to liability on the Labor Law § 240 (1) claim against the Jemcom defendants.

This court has considered the Jemcom defendants' remaining arguments on this issue and finds them unavailing.

Top Link's Cross Claims for Contribution and Common-Law Indemnification Against the Jemcom Defendants

The Jemcom defendants move for dismissal of Top Link's cross claims for contribution and common-law indemnification against them. "Contribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person [internal quotation marks and citations omitted]" (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003]).

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], quoting *Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]; *Priestly v Montefiore Med. Ctr./Einstein Med. Ctr.*, 10 AD3d 493, 495 [1st Dept 2004]). "It is well settled that an owner who is only vicariously liable under the Labor Law may obtain full indemnification from the party wholly at fault" (*Chapel v Mitchell*, 84 NY2d 345, 347 [1994]).

Here, the accident was caused by the means and methods involved in moving the I-beam. To that effect, at the time of the accident, the I-beam was being moved by a dolly that was not fit with sides or rails to properly and safely support the I-beam. Moreover, there was no fall protection in place to prevent the I-beam from falling off of the dolly, such as straps, nets or

ropes.

That said, there is no evidence in the record indicating that the Jemcom defendants were responsible for dictating how the I-beam was to be moved, or what equipment was to be utilized in doing so. In fact, a review of the record reveals that Top Link was the entity that directed how said work was to be performed, as well as what equipment and safety devices were to be utilized. To that effect, Flanagan testified that Vasquez, the Top Link supervisor on the Project, determined how the work was to be performed. Moreover, it was Vasquez's decision to move the unsecured I-beam on the subject dolly. Arle also maintained that it was Top Link's responsibility to determine the means and methods of its work, including the transport of steel deliveries into the building.

As further evidence that Top Link was responsible for plaintiff's accident, in his affidavit, Burnett stated that Vasquez directed the Top Link workers to load the I-beam onto the dolly for its transport. Bruno, a construction safety expert, blamed the accident on Top Link's failure to use a safety device to restrain the I-beam while it was being moved. Bruno also asserted that an A-frame dolly would have been a more appropriate piece of equipment to transport the I-beam.

Thus, as Top Link was responsible for the work that caused the accident, and as no negligence on the part of the Jemcom defendants contributed or caused the accident, the Jemcom defendants are entitled to dismissal of Top Link's cross claims against them for contribution and common-law indemnification.

The Jemcom Defendants' Cross Claim for Common-law Indemnification Against Top Link

The Jemcom defendants also move for summary judgment in their favor on their cross claim for common-law indemnification against Top Link. As noted previously, no negligence on

the part of the Jemcom defendants caused or contributed to the accident. In addition, Top Link was the entity responsible for directing the means and methods of the work that caused the accident to occur.

Thus, the Jemcom defendants are entitled to summary judgment in their favor on their cross claim for common-law indemnification against Top Link.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

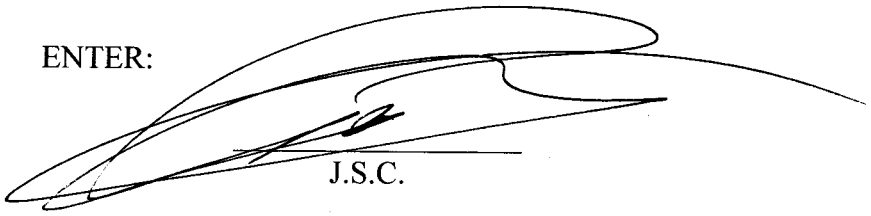
ORDERED that plaintiff Dillon John's motion (motion sequence number 002), pursuant to CPLR 3212, for partial summary judgment as to liability on the Labor Law § 240 (1) claim against defendants Jemcom Canal Del, LLC., Jemcom Canal Reverse, LLC., Jemcom Canal 159 Reverse, LLC., Elizabeth Canal, LLC., Elizabeth Bronx, LLC., HH 159 Canal, LLC. and Five Points Realty, LLC (collectively, the Jemcom defendants) is granted; and it is further

ORDERED that the parts of the Jemcom defendants' motion (motion sequence number 003), pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims and defendant Top Link Contracting, LLC's (Top Link) cross claims for common-law indemnification and contribution against them is granted, and these claims and cross claims are dismissed as against the Jemcom defendants; and it is further

ORDERED that the part of the Jemcom defendants' motion (motion sequence number 003), pursuant to CLPR 3212, for summary judgment in their favor on their cross claim for common-law indemnification against Top Link is granted.

Dated: March 11, 2019

ENTER:



J.S.C.