SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN **PART** IAS MOTION 33EFM

Justice

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LEE RUDNITSKY, DIANE RUDNITSKY,

Plaintiff,

- v -

MACYS REAL ESTATE, LLC, MACYS OF NEW YORK, STRUCTURE TONE, INC., SHORE ELECTRICAL CONTRACTING, INC. (3RD PARTY DEFT.),

Defendants.

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INDEX NO. 157417/2012

MOTION DATE N/A, N/A, N/A, N/A, N/A

MOTION SEQ. NO. 003 004 005 006 007

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 317

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 279, 280, 281, 282, 283, 290, 303, 305, 307, 318, 323

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 267, 275, 276, 277, 278, 284, 288, 294, 295, 298, 299, 302, 304, 308, 319

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 271, 272, 273, 274, 285, 286, 289, 291, 292, 293, 301, 309, 311, 312, 313, 314, 315, 320

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 268, 269, 270, 287, 296, 297, 300, 310, 321, 322, 324

were read on this motion to/for JUDGMENT - SUMMARY.

This is an action to recover damages for personal injuries pursuant to Labor Law §§ 200, 240[1], and 241[6]. In motion sequence (MS) 003, defendants/third party plaintiffs, Macy's Corporate Services, Inc. s/h/a Macy's Real Estate, LLC, Macy's Inc. s/h/a Macy's of New York (Macy's), moves to vacate the Note of Issue,

strike the complaint of plaintiffs, Lee Rudnitsky (plaintiff) and Diane Rudnitsky[1], or in the alternative, require that plaintiffs furnish certain discovery and to extend Macy's time to move for summary judgment. Plaintiffs oppose Macy's motion.

In MS 004, Macy's moves pursuant to CPLR 3212 for summary dismissal of plaintiff's complaint and summary judgment on its claims for contractual indemnification against: co-defendant, Structure Tone, Inc. (Structure); third-party defendant SHORR Electrical Contracting, Inc. (SHORR); and second fourth-party defendant, Commodore Construction Corp. (Commodore). SHORR and Commodore oppose Macy's motion.

In MS 005, Structure moves pursuant to CPLR 3212 for summary dismissal of the complaint and for summary judgment on its claims for contractual indemnity against SHORR and Commodore. Plaintiff opposes Structure's motion as to Labor Law § 241(6) only and cross-moves pursuant to CPLR 3212 for partial summary judgment of its claim under Labor Law § 241(6). Structure, SHORR, and Commodore oppose plaintiff's cross-motion.

In MS 006, Commodore moves pursuant to CPLR 3212 for summary dismissal of the second third-party (denominated as Fourth Party) complaint by SHORR, and the third third-party (denominated as Second Fourth Party) by Macy's against it. SHORR and Structure oppose Commodore's motion.

Lastly, in MS 007, SHORR moves pursuant to CPLR 3212 for summary judgment on its third-party claims against Commodore and for summary dismissal of Structure and Macy's third-party claims against it. Structure and Commodore oppose SHORR's motion.

MS 003, 004, 005, 006, and 007 are consolidated for joint disposition.

Factual Background

As alleged in the complaint, on July 24, 2012, while working on a renovation project at Macy's Herald Square, located in the city, county and state of New York (premises), plaintiff tripped on a protruding two-by-four that was wrapped an orange safety netting and sustained injuries. Macy's, the owner of the premises, hired Structure as the general contractor to perform construction-related work for the subject renovation project. Structure hired subcontractors SHORR to perform electrical work at the premises; Commodore to install and remove the perimeter protection at the work site, including the accident site -- the mezzanine level of the premises; and non-party Total Safety to perform site safety inspections. Plaintiff was SHORR's foreman.

The complaint alleges claims under Labor Law §§ 200/common law negligence, 240[1], and 241[6] premised on violations of Industrial Code (12 NYCRR) §§ 23-1.5, 23-1.7, 23-1.8, 23-1.15, 23-1.30, 23-2.1, and 23-2.7.

[1] Co-plaintiff Diane Rudnitski is the injured plaintiff's wife. Her claim is for loss of consortium.

Structure and Macy's filed the third-party actions against SHORR for common law and contractual indemnification, contribution, attorney's fees, and failure to procure insurance. Structure and Macy's second fourth-party complaint allege identical claims against Commodore.

SHORR alleges counterclaims for contribution and indemnification against Structure and Macy's. SHORR also alleges fourth-party claims against Commodore for contribution and indemnification.

Testimony

Plaintiff

Plaintiff testified that on the date of his accident he was tasked with overseeing the lighting and power on the first floor and mezzanine level of the premises (NYSCEF # 204 – Pltf's April 2014 tr ["Apr tr"] at 24:14-20; NYSCEF # 205 – Pltf's December 2014 tr ["Dec tr"] at 48:4-15). To get to the mezzanine level, plaintiff used a stairway that was previously barricaded on the first floor and mezzanine levels with orange netting and two-by-fours (Apr tr at 89:9-11; Dec tr at 98:4-21 and 89:9-17). Plaintiff indicated that the barricade consisted of four vertical "corner posts" that stood four feet high, and two horizontal two-by-fours that are parallel to the floor and that are connected to the posts "like a horse corral fence" (Apr tr at 90:5-92:5). On the day of plaintiff's accident, the two-by-four and mesh netting at the entrance to the stairway connecting the mezzanine and first floor levels was removed (*id.* at 99:8-15).

After inspecting the electrical work at the mezzanine level, plaintiff walked toward the stairway to go down to the first floor (Apr tr at 39:15-21). As plaintiff walked toward the stairway, plaintiff tripped on an orange mesh-wrapped two-by-four laying on the floor and protruding at an upward angle from the barricade (*id.* at 44:10-21; Dec tr at 105-106:22). Plaintiff assumed that the two-by-four was part of the barricade since they were next to each other (Dec tr at 114:20-115:5). Plaintiff did not know how long the condition existed prior to his fall (*id.* at 107:2-4).

Plaintiff reported his accident to a representative at Total Safety, who completed an accident report (*id.* at 112:2-3). The accident report filled out by Total Safety indicates that plaintiff tripped over a board blocking access to the stairway (NYSCEF # 220).

Structure

Justin Spagnuolo (Spagnuolo), a Superintendent employed by Structure, testified that the steel barriers at the entrances to the stairway at the first floor and mezzanine levels were installed by an iron-working company, non-party USW, and that Commodore installed the orange mesh netting on the barrier (NYSCEF # 258 – Spagnuolo tr at 71:20-76:8). Spagnuolo described the barriers as two-by-two steel angles that were welded to the steel and came up about three feet with a steel rope

across and an orange mesh hooked around it (*id.* at 71:24-72:17). Spagnuolo testified that the barriers would be placed at the top platform of all of the stairways at the mezzanine level and that when workers at the premises wanted access to the mezzanine level, they would request that Commodore remove the barriers in order to make them operational (*id.* at 75:4-6; 76:20-77:10; 111:2-11). Commodore would notify Structure after the barriers were removed (*id.* at 113:9-12).

Kevin Mulvey (Mulvey), Structure's Project Manager for the subject renovation project, testified that Commodore provided the protective barriers along the perimeter of the mezzanine level and at the stairway openings (NYSCEF # 239 – Mulvey's Oct 2016 tr at 143:3-11). The perimeter protection included orange netting and toe boards (NESCEF # 211 – Mulvey's Dec 2016 tr at 31:25-32:13). Mulvey indicated that the perimeter protection installed by Commodore was inspected by Structure and Total Safety (NYSCEF # 239 – Mulvey's Oct 2016 tr at 143:16-24).

SHORR

Kenneth Nardoza (Nardoza), SHORR's general foreman, testified that Structure Tone and Commodore were responsible for all safety and protection at the premises (NYSCEF # 212 – Nardoza tr at 33:7-8). Nardoza gave the foremen, including plaintiff, assignments and instructions while working at the premises (*id.* at 20:19-21-6). Nardoza stated that plaintiff informed him of plaintiff's trip and fall on a two-by-four located at the base of the stairway (*id.* at 89:25-90:4).

Commodore

Paul Real (Real), a carpenter for Commodore, testified that Commodore was involved in providing protection for the stairways at the premises, but that it did not provide protection for the stairway leading from the mezzanine level to the first floor (NYSCEF # 241- Real tr at 11:12-13:3). Real stated that Commodore provided perimeter protection around the whole perimeter of the mezzanine level, including orange mesh and toe boards, to prevent debris from falling to the first floor, but Commodore did not use two-by-fours along the mezzanine level (*id.* at 12:4-2513:6; 40:3-15). Real further stated that part of the premier protection for the mezzanine level included the stairways (*id.* at 13:17-25). Real indicated that if there was a problem with the perimeter protection, someone from Structure or Total Safety would inform Commodore, and Commodore would remedy the condition (*id.* at 52:6-13). Commodore did not receive any such complaint (*id.* at 52:17-53:2).

DISCUSSION

At the outset, Structure contends that plaintiff's cross-motion and SHORR's motion should be denied because they were made after the time permitted pursuant to the Preliminary Conference Order. The Preliminary Conference Order indicates

that dispositive motions shall be made within sixty days of the note of issue (NYSCEF # 42). The note of issue was filed on August 16, 2017. Plaintiff cross-moved for partial summary judgment on November 20, 2017, thirty-four days past the filing deadline. SHORR filed its motion on October 27, 2017, eleven days past the filing deadline. However, both plaintiff's cross-motion and SHORR's motion may be considered by the court since Structure's timely motion for summary judgment and the motion and cross-motion seek relief on nearly identical claims (*see Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc.*, 104 AD3d 446, 448-449 [1st Dept 2013]).

Summary Judgment

"Summary judgment must be granted if the proponent makes 'a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a *prima facie* showing, the court must deny the motion, " 'regardless of the sufficiency of the opposing papers' " (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

Labor Law § 200/Common Law Negligence

Macy's and Structure's respectively move for summary dismissal of plaintiff's claims under Labor Law § 200/common law negligence. The branches of Macy's and Structure's respective motions on Labor Law § 200/common law negligence claims are unopposed and are hereby granted. There is no indication that any parties, other than plaintiff's general foreman, controlled plaintiff's work at the premises, or that Structure or Macy's created the alleged defective condition that caused plaintiff's accident or had notice of the condition (*see Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]; *Hughes v Tishman Constr Corp.*, 40 AD3d 305, 306 [1st Dept 2007]).

Labor Law § 240(1)

Macy's and Structure's motions for summary dismissal of plaintiff's claims under Labor Law § 240(1) are also unopposed and are hereby granted. Simply, plaintiff's accident is not a height-related hazard.

Labor Law § 241(6)

Macy's and Structure also move to dismiss plaintiff's Labor Law § 241(6) claims. The branches of Macy's motion on the Labor Law § 241 (6) claim is granted as plaintiff does not oppose it and therefore the claim is deemed abandoned (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012]). However, plaintiff opposes Structure's motion to dismiss his Labor Law § 241 (6) claim that is predicated upon violations of Industrial Code (IC) §§ 23-1.[e][1] and [2] and 23-2.1[a][1]. Plaintiff does not address the remaining allegations of violations of the IC

§§ 23-1.5, 23-1.8, 23-1.15, 23-1.30, and 23-2.7, hence these remaining allegations are also deemed abandoned and dismissed as against Structure (*id.*).

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" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). This section imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to workers engaged in the inherently dangerous work of construction, excavation or demolition (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]). In order to recover, the claimant must allege and prove that the owner or contractor violated a rule or regulation of the Commissioner of the Department of Labor which sets forth a specific standard of conduct, as opposed to a general reiteration of the common law (*see Ross*, 81 NY2d at 502-504; *Coyago v Mapa Props., Inc.*, 73 AD3d 664 [1st Dept 2010] ["A Labor Law § 241(6) claim requires that there be a violation of some specific safety standard"]).

Structure argues that (i) the area where plaintiff fell was an open area and not a passageway within the meaning of IC § 23-1.7[e][1]; (ii) IC §§ 23-1.7[e][1] and [2] are inapplicable since the alleged cause of plaintiff's accident was an integral part of the work site; (iii) IC § 23-2.1 is inapplicable because plaintiff's accident did not involve building materials that were not stored in a safe and orderly manner; and (iv) the subject two-by-four was an ordinary construction peril.

As to Structure's open area argument, IC §§ 23-1.7[e][1] and [2] states as follows:

> (e) Tripping and other hazards.
> (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.
> (2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

Plaintiff contends that the subject stairway is a passageway and that IC § 23-1.7[e][1] applies to tripping hazards regardless of whether the alleged hazards are integral to the work. Structure asserts that plaintiff fell in an open area near the staircase.

Assuming that the stairway was a passageway for the purposes of IC § 23-1.7[e][1], as plaintiff argues, the facts do not support plaintiff's contention. As

plaintiff testified, plaintiff was walking toward—but did not reach— the subject stairway when he tripped on the two-by-four. There is no evidence that there was any obstruction on the stairway. Plaintiff was still on the mezzanine and not on the stairs at the time of his accident. The mezzanine is an open area and having the stairway in an open area does not make it a passageway under § 23-1.7[e][1] (*see Quigley v Port Auth. of N.Y.*, 168 AD3d 65, 67 [1st Dept 2018] [defining "passageway" as an "interior or internal way of passage inside a building"]).

Plaintiff's reliance *Thomas v Goldman Sachs Headquarters, LLC* (109 AD3d 421 [1st Dept 2013]) is unavailing. The plaintiff in *Thomas* was injured when he tripped on overlapping Masonite and slid into a gap in the floor directly in front of a doorway, which is factually distinguishable from the accident herein. The doorway is a confined area; the mezzanine is an open area.

Plaintiff's Labor Law § 241(6) claim predicated on IC § 23 2.1(a) (1) is dismissed upon the above rationale finding plaintiff's accident occurring in an open area. Industrial Code § 23 2.1(a) (1) states:

> (a) Storage of material or equipment.
> (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.

As discussed above, plaintiff testified that his accident occurred while he was walking toward the stairway, and not in a passageway, walkway, stairway or other thoroughfare, and thus, § 23-2.1(a)(1) is inapplicable (*see Burkoski v Structure Tone, Inc.*, 40 AD3d 378, 382 [1st Dept 2007]).

On the other hand, plaintiff makes a *prima facie* showing of Structure's liability under Labor Law § 241[6] premised on IC § 23-1.7[e][2] regarding working areas. Plaintiff demonstrates, and Structure does not contest, that he tripped on a two-by-four wrapped in mesh that was protruding upwards at an angle and that his accident occurred within a "working area."

Structure argues that the mesh-wrapped two-by-four was an integral part of the work being performed at the premises at the time of plaintiff's accident and also relies on *Thomas v Goldman Sachs Headquarters, LLC* (109 AD3d 421]) to support its argument. Plaintiff responds that the perimeter protection purpose for the two-by-four ceased.

The plaintiff in *Thomas* tripped on Masonite that was intentionally placed to perform a specific purpose—to protect the floor of the worksite (*id* at 422). However, Structure fails to articulate a purpose for the placement of the subject two-by-four at the time of plaintiff's accident. The two-by-fours were set up as a barricade to protect the mezzanine perimeter. When used as a barricade, the two-by-fours were

attached to metal posts standing three- or four-feet high, and the orange mesh is stretched out and attached to the two-by-fours forming a visible orange barrier. Here, plaintiff tripped over a two-by-four with the orange mesh wrapped or "rolled around the two-by-four" (NYSCEF # 205 - Rudnitsky tr at 106:14). The two-by-four with the orange mesh wrapped around it laying by the open staircase was not serving its purpose as a barricade. Hence, while the subject two-by-four may have been an integral part of the work performed at the premises when it was installed as part of the perimeter protection, including at the entrance to the stairway, it ceased to be integral once it stopped serving the purpose for which it was installed.

Structure next argues that an issue of fact exists as to the cause of plaintiff's accident. Structure points to it Structure's Project Manager, Kevin Mulvey's testimony that he was not aware of any trade moving the barricade at the top of the steps. However, whether Mulvey was aware of anyone moving the barrier is irrelevant to whether plaintiff tripped on the subject two-by-four. Moreover, Mulvey's testimony that the barrier was removed days after the accident does not contradict plaintiff's testimony that he tripped on a two-by-four wrapped in mesh. Structure's argument that plaintiff's injury was caused by an ordinary construction danger is inapplicable in a Labor Law §241(6) claim.

In sum, plaintiff's Labor Law § 241(6) claim predicated on IC §23-1.7 [e][2] survives Structure's motion. Macy's motion to dismiss plaintiff's Labor Law § 241(6) claim is granted as plaintiff abandoned the claim as to Macy's. In light of the dismissal of all plaintiff's claims against Macy's, MS 003 – Macy's motion on discovery issues – is moot.

Contractual Indemnification

Macy's also moves in MS 004 for contractual indemnification from Structure, SHORR and Commodore. Structure moves in MS 005 for summary judgment of its claims for indemnification against SHORR and Commodore based on the subcontracts and Blanket Indemnification Agreements. Commodore moves in MS 006 for summary dismissal of the third and fourth-party claims against it for indemnification on the grounds that the indemnification provisions were not triggered by its performance of the work called for under its subcontract with Structure. SHORR moves in MS 007 for summary dismissal of Macy's and Structure's third-party claims on the grounds that the indemnification provisions are not triggered since plaintiff was not injured by an electrical component. SHORR also moves for summary judgment of its fourth-party claim for indemnification against Commodore.

In light of the dismissal of the complaint against Macy's, its third and fourth-party claims for indemnification are dismissed as academic (*Cardozo v Mayflower Ctr, Inc.*, 16 AD3d 536, 538 [2d Dept 2005]). Macy's argues that it is entitled to contractual indemnification from Structure, but Macy's never brought a claim

against Structure for contractual indemnification. Thus, that branch of Macy's motion is denied.

Structure entered into a subcontract with each of its subcontractors, SHORR and Commodore (Subcontracts). Paragraph 11.2 of the Subcontracts include identical indemnification provisions stating that the "[s]ubcontractor will indemnify and hold harmless [Structure] and [Macy's]" for any claims arising "in connection with the performance of any Work by Subcontractor pursuant to" work performed for Structure (NYSCEF ## 217, 218).

In addition to the subcontracts, Structure entered into a Blanket Insurance/Indemnity Agreement (Blanket Agreement) with both SHORR and Commodore. The Blanket Agreement states that both subcontractors are to indemnify and hold harmless Structure and Macy's from and against any and all claims, including legal fees, arising from the acts of the subcontractors in connection with the performance of their work for Structure (*id.*, Blanket Insurance/Indemnity Agreements, ¶ 6).

At the outset, Structure's third-party claims against Commodore for indemnification are dismissed since plaintiff's accident did not arise out of or in connection with Commodore's work at the premises. Commodore's placement of the perimeter protection was inspected and approved by Structure and Total Safety, and the condition that allegedly caused plaintiff's accident—the two-by-four wrapped in mesh protruding from the barrier—did not arise from Commodore's work under the subcontract. Further, there is no evidence that Structure requested that Commodore remove the barrier blocking the stairway or that Commodore removed any protective barriers at the premises prior to plaintiff's accident.

As to SHORR, the indemnification provisions contained in both the Subcontract and Blanket Agreement are triggered, notwithstanding that plaintiff's injuries were not caused by SHORR's work. Plaintiff was performing work at the premises for his employer SHORR, as encompassed under the subcontract between Structure and SHORR (*see Fuger v Amsterdam House for Continuing Care Ret. Cmty., Inc.*, 117 AD3d 649, 650 [1st Dept 2014] [holding that the indemnification provision requiring plaintiff's employer to indemnify the general contractor triggered where plaintiff was injured while performing work for his employer]; *Torres v Morse Diesel Int'l, Inc.*, 14 AD3d 401, 403 [1st Dept 2005]). SHORR's claim against Commodore for contractual indemnification is dismissed, since there was no contract between those parties.

Common Law Indemnification and Contribution

The branches of Structure, Macy's, Commodore, and SHORR's respective motions seeking dismissal of all counter-claims and cross-claims for contribution

and common-law indemnification as against them are granted since there is no evidence of their negligence (*see generally Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2nd Dept 2003] [contribution requires a showing of active negligence]; *McCarthy v Turner Constr, Inc.*, 17 NY3d 369, 374 [2011] [common-law indemnification requires a showing of negligence]).

Attorney's Fees

Both Commodore and SHORR move to dismiss Structure and Macy's claims for attorneys' fees. Neither Structure nor Macy's opposes. Thus, Structure and Macy's claims for attorney's fees against Commodore and SHORR are dismissed.

Failure to Procure Insurance

SHORR argues that Structure's third-party claim for failure to procure insurance should be dismissed since the Certificate of Insurance demonstrates that it named both Macy's and Structure as Additional Insured (NYSCEF # 266).

The branch of SHORR's motion to dismiss the third-party claim is denied. A "certificate of insurance is evidence of an insurer's intent to provide coverage, but it is not a contract to insure . . . , nor is it conclusive proof, standing alone, that such a contract exists" (*Buccini v 1568 Broadway Assoc*, 250 AD2d 466, 469 [1st Dept 1998]). The Certificate of Insurance submitted by SHORR is insufficient to demonstrate that it procured the necessary insurance coverage and added both Macy's and Structure as Additional Insured.

Commodore also moves for summary dismissal of Structure and Macy's claim for failure to procure insurance. Structure and Macy's fail to oppose that branch of Commodore's motion, and thus, their claims against Commodore for failure to procure insurance is dismissed.

Conclusion

Accordingly, it is hereby

ORDERED that the branch of Macy's motion (MS 004) pursuant to CPLR 3212 for summary dismissal of plaintiffs' complaint is granted; it is further

ORDERED that the branch of Macy's motion (MS 004) pursuant to CPLR 3212 for summary judgment on its claims for contractual indemnification is denied; it is further

ORDERED that Macy's motion (MS 003) to vacate the Note of Issue, strike plaintiff's complaint and for discovery is moot; it is further

ORDERED that the branch of Structure's motion (MS 005) pursuant to CPLR 3212 for summary dismissal of the complaint is granted to the extent that plaintiffs' claims under Labor Law §§ 200/common law negligence, 240(1), and 241(6), under Industrial Code sections 23-1.5, 23-1.7(e)(1), 23-1.8, 23-1.15, 23-1.30, 23-2.1, and 23-2.7 are dismissed; it is further

ORDERED that the branch of Structure's motion (MS 005) for summary judgment on its claims for contractual indemnification is granted only as against SHORR; it is further

ORDERED that plaintiffs' cross-motion (MS 005) for partial summary judgment on its Labor Law 241(6) claim against Structure is granted only as to its claim under Industrial Code § 23-1.7(e)(2); it is further

ORDERED that Commodore's motion (MS 006) for summary dismissal of all claims against it is granted; it is further

ORDERED that the branch of SHORR's motion (MS 007) for summary judgment on its claims against Structure, Macy's and Commodore is denied; it is further

ORDERED that the branch of SHORR's motion (MS 007) for summary dismissal of the third-party claims against it is granted as to Structure and Macy's claims for contribution, common law indemnification, and attorney's fees only; it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that counsel for Macy's shall serve a copy of this order, with notice of entry, on all parties, within 10 days of entry.

This constitutes the Decision and Order of the court.

6/7/2019
DATE

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE