

Mcgonigal v NYY Steak Manhattan, LLC

2020 NY Slip Op 32000(U)

May 14, 2020

Supreme Court, New York County

Docket Number: 158327/2013

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

-----X
INDEX NO. 158327/2013
KEVIN MCGONIGAL,
Plaintiff,
- v -
MOTION DATE 07/22/2019
NYY STEAK MANHATTAN, LLC, PLAZA CONSTRUCTION
CORP., BARING INDUSTRIES, INC.,
MOTION SEQ. NO. 003 005 006 007
Defendants.

DECISION + ORDER ON MOTION

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 003) 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 249, 250, 251, 252, 253, 254, 255, 256, 258, 259, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 277, 278, 279, 280, 281

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 381, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 436, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 450, 453, 455, 456, 464, 465, 466, 470, 471, 472, 473, 474, 475, 476, 477, 488, 489, 490, 491

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 377, 378, 379, 380, 382, 386, 387, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 451, 457, 458, 461, 478, 492, 493, 494

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 383, 384, 385, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 437, 449, 452, 454, 459, 460, 462, 463, 467, 468, 469, 479, 480, 481, 482, 483, 484, 485, 486, 495, 496, 497

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

Motion Sequence (MS) numbers 003, 005, 006 and 007 are consolidated for disposition.

In this action for personal injuries asserting Labor Law violations, third third-party defendant B & G Electrical Contractors (B&G) moves in MS 003, for an order pursuant to CPLR 3212: (1) dismissing the complaint of defendants / third third-party plaintiffs, NYY Steak Manhattan LLC (NYY Steak) and Plaza Construction LLC f/k/a Plaza Construction Corp. (Plaza) for contractual indemnification, common law indemnification, contribution, and breach of contract as against them; and (2) dismissing any and all cross-claims as against them in their entirety. Third third-party defendant Ess & Vee Acoustical Contractors, Inc. (EVAC) cross-moves, pursuant to CPLR 3212, for an order dismissing the third third-party complaint and all cross-claims as against it.

In MS 005, 006, and 007, defendant / third-party defendant / third third-party defendant Baring Industries, Inc. (Baring) moves for summary judgment for an order: (1) dismissing all cross claims as against it; (2) granting its contractual indemnity claims against second third-party defendants Day & Nite Refrigeration Corp. (DNRC) and Kimco Refrigeration Corp. (KRC); and (3) dismissing all claims of NYY Steak and Plaza as against it. Plaintiff Kevin McGonigal cross-moves, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law §§ 240 (1) and 241 (6) against defendants NYY Steak, Plaza, and Baring. Also in MS 006, DNRC and KRC move for summary judgment for an order dismissing the second third-party complaint and all cross claims as against them, or in the alternative, granting leave to amend their verified amended answer to include cross claims as against B&G and EVAC.

In MS 007, NYY Steak and Plaza move, pursuant to CPLR 3212, for an order: (1) dismissing plaintiff's Labor Law § 200 and common law negligence claims as against them; (2) granting their third-party claims as against B&G, EVAC, and Baring for contractual indemnification, common law indemnification, and contribution; (3) dismissing all claims and cross claims as against them by B&G, EVAC, Baring, DNRC, and KRC; and (4) granting their third third-party claims as against Baring for breach of contract to procure insurance.

BACKGROUND

Plaintiff was allegedly injured on September 6, 2013 (the accident) while transporting a refrigeration unit for a renovation project transforming a bank into a restaurant (the project). Defendant NYY Steak, the lessee of the property retained defendant Plaza as the construction manager for the project. Plaza retained B&G as the electrical subcontractor, and Baring to purchase and oversee the installation of the refrigeration of the food service

equipment. Baring hired plaintiff's employer, DNRC, as the refrigeration installation company.

Plaintiff testified at his deposition that he began working for DNRC in August 2013 about two or three weeks before the accident occurred (*see* plaintiff tr at 34). Plaintiff received his instructions from Julian Gomez, plaintiff's foreman, as well as Jimmy Vespe, a DNRC construction manager (*id.* at 59). On the date of the accident, plaintiff and Gomez unloaded a refrigeration unit onto a dolly provided by DNRC (*id.* at 40-41, 45). Vespe told plaintiff and Gomez to place the unit in the basement (*id.* at 73). Plaintiff and Gomez pushed the dolly from the street through the front entrance of the building (*id.* at 66-67). Gomez pushed the cart while plaintiff pulled the cart walking backwards (*id.* at 72, 81, 93, 99, 127, 129-130). After entering the building, plaintiff and Gomez took the freight elevator to the basement, and then exited the elevator proceeding approximately eight feet down the corridor (*id.* at 78-79). They turned left into another hallway approximately four feet long (*id.* at 89, 92-93). While walking backwards, he stepped on a piece of wood about two to three inches thick and three to four feet long that caused him to fall into a pit that was about 18 inches deep (*id.* at 97-99, 102; plaintiff aff, ¶ 18).

Deposition Testimony of James Vespe of DNRC

James Vespe testified at his deposition that he was the construction manager for DNRC at the time of the accident (Vespe tr at 9). As the construction manager, he was responsible for addressing the installation in commercial construction sites (*id.* at 12). DNRC had two workers at the project daily, plaintiff and Gomez (*id.* at 21). Plaintiff and Gomez were responsible for installing copper piping, evaporators, and condensers at the project (*id.* at 23). Plaza laborers were responsible for removing debris from the project area (*id.* at 68-71). If Vespe had any complaints regarding project conditions, he would make those complaints to Plaza, specifically George Usher, the superintendent of Plaza for the project (*id.* at 70).

On the date of the accident, Vespe was at the project (*id.* at 27). DNRC was accepting a delivery for evaporators for a walk-in refrigerator unit (*id.*). Plaintiff and Gomez carried the equipment to the basement facing each other, with plaintiff walking backwards before stepped into the pit which was about 12 inches (*id.* at 29, 32, 34, 48, 78, 80).

Deposition Testimony of Julian Gomez of DNRC

Julian Gomez testified at his deposition that he was the foreman for DNRC at the time of the accident (Gomez tr at 11). On the date of the accident, a box truck containing a delivery of three evaporator coils and three condenser units arrived at the project (*id.* at 30-32). The box truck arrived

curb side and the items were lowered to the street level and put onto a dolly one by one (*id.*). Thereafter, the coils and condensers would be unpackaged and delivered to the basement where the walk-in refrigerators were located (*id.* at 33-34).

Gomez testified that he and plaintiff arrived at the project at 7 a.m. on the date of the accident and the delivery was expected at 10 a.m. (*id.* at 40, 99). When they arrived, Gomez discussed with plaintiff what was expected for the day and the delivery job, and together, did a walkthrough of the route to deliver the equipment in the basement to determine how to bring the equipment down and where it would be installed (*id.* at 40-41, 100). After the walkthrough, he and plaintiff made two or three trips through the delivery route, including the area where the subject pit was located, bringing tools from Gomez's truck to the basement (*id.* at 80-81, 99). The temporary lighting in the hallway where the hole was located was hanging from a ceiling on a rope with three individual lights (*id.* at 153). The lighting did not prevent them from performing their job and seeing where they were pushing the dolly (*id.* at 153-156). Gomez did not make any complaints to anyone about the lighting (*id.* at 133). At the time of the accident, he was pushing the dolly while plaintiff was pulling it while walking backwards. Plaintiff was supposed to guide the dolly to the right to make the turn down a third hallway, but instead walked into the pit (*id.* at 56).

Deposition Testimony of George Usher of Plaza

George Usher testified at his deposition that on the date of the accident, he was a superintendent for Plaza at the project (Usher tr at 9, 16-17). He was responsible for walking through the project area and visually inspecting it for construction and safety issues, and the preparation of daily reports of the work performed at the project (*id.* at 39-40).

Usher testified that the subject pit was located on the 2LL floor and was a recess for the installation of an elevator piston (*id.* at 86). The pit was approximately 18 inches deep (*id.* at 88, 92-93). B&G installed temporary lighting in the project area including the area with the subject pit (*id.* at 100). The lights were incandescent stringer bulbs with protective plastic cages hanging on wires from the ceiling (*id.* at 144). Plaza never complained of any issues with the lighting and never received any complaints about the lighting from anyone (*id.* at 146).

Deposition Testimony of Chris Wolske of Baring

Chris Wolske testified at his deposition that he was a project manager for Baring on the date of the accident (Wolske tr at 9). Plaza hired Baring to supply food service equipment for the project, and Baring hired DNRC as a subcontractor for installation of kitchen equipment for the project (*see id.* at

12, 17, 23). DNRC attended progress meetings with Plaza and Baring when they walked through the project to review the scope of their work (*see id.* at 34-35). DNRC was required to provide labor, tools and materials to perform its refrigeration and installation work for the project (*see id.* at 45).

Wolske testified that he visited the project once or twice per week and as they were finishing up the work, he visited with more frequency (*see id.* at 30-31). He was the only person from Baring who visited the project (*see id.* at 32-33). He was not at the project on the day of plaintiff's accident (*see id.* at 30). Neither Baring nor DNRC was responsible for protection work or lighting at the project (*see id.* at 59).

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], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also 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 issue of 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]).

Labor Law § 240 (1) Claim

NY Steaks and Plaza move for summary judgment dismissing the Labor Law § 240 (1) claim as against them. Plaintiff cross moves for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim as against all 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.”

It is well established that Labor Law § 240 (1) applies to “extraordinary elevation risks,” and not the “usual and ordinary dangers of a construction site” (*Rodriguez v Margaret Tietz Ctr. for Nursing Care*, 84 NY2d 841, 843 [1994]). To establish liability under Labor Law § 240 (1), the plaintiff must establish the following two elements: (1) a violation of the statute, i.e., that the owner or general contractor failed to provide adequate safety devices; and (2) that the statutory violation was a proximate cause of the injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 289 [2003]). Where a plaintiff is the sole proximate cause of an injury, liability does not attach under the statute (*id.* at 290). In *Rocovich v Consolidated Edison Co.* (78 NY2d 509 [1991]), the Court of Appeals explained that:

“[t]he contemplated hazards are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured”

(*id.* at 514).

“The special hazards . . . however, do not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity. Rather, the special hazards referred to are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993] [internal citations and quotations omitted]; *see also Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [“the single decisive question is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential”]).

Labor Law § 240 (1) does not apply to the circumstances of this case. According to plaintiff, he stepped on a piece of wood while walking backwards that caused him to lose his balance into a pit that was about 18 inches deep (*see* plaintiff tr at 97-99, 102; plaintiff affidavit, ¶ 18). Usher testified that the depth of the subject pit was approximately 18 inches (*see* Usher tr at 92). Vespe testified that the depth of the pit was approximately 12 inches (*see* Vespe tr at 48). Given the aforementioned deposition testimony, the subject pit was at most 18 inches deep. Plaintiff was performing his assigned task of

delivering a refrigeration unit by pushing a cart at the basement level when the accident occurred. Thus, plaintiff “was exposed to the usual and ordinary dangers of a construction site, and not the extraordinary elevation risks envisioned by Labor Law § 240 (1)” (*Rodriguez*, 84 NY2d at 843; *see also Lombardo v Park Tower Management Ltd.*, 76 AD3D 497, 498 [1st Dept 2010] [finding that 18 inch elevation differential of the plaintiff’s fall from a broken step “was not of sufficient height to trigger the protection of § 240 (1), nor was plaintiff exposed to the type of extraordinary risk for which the statute was designed”]; *Romeo v Property Owner (USA) LLC*, 61 AD3d 491, 491 [1st Dept 2010] [finding that the plaintiff’s right foot falling 18 inches below into a hole “while walking on the permanent floor did not involve an elevation-related hazard of the type contemplated by [§ 240 (1)], and did not necessitate the provision of the type of safety devices set forth in the statute”]; *see all Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 99 [2015] [finding that the injuries plaintiff sustained when he slipped on a patch of ice and fell to the floor while using stilts to install insulation in a ceiling were not the direct consequence of an elevation-related risk within the scope of Labor Law § 240 (1)]; *Cohen v Memorial Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 [2008] [finding that Labor Law § 240 (1) did not apply where injuries sustained by a worker while installing pipe racks in ceiling when he attempted to climb off a ladder and could not clear the first step due to protruding pipes from a nearby unfinished wall because injuries were a result of the usual and ordinary dangers at a construction site not elevation-related hazard]).

Therefore, the branch of plaintiff’s cross motion for partial summary judgment as to liability on the Labor Law § 240 (1) claim is denied, and the branch of the motion by NYY Steak and Plaza seeking dismissal of plaintiff’s Labor Law § 240 (1) claim is granted. The court has considered the remaining arguments and finds them unavailing.

Labor Law § 241 (6) Claim

NYY Steak and Plaza move for summary judgment on plaintiff’s Labor Law § 241 (6) claim. Plaintiff cross moves for partial summary judgment in his favor as to liability on the Labor Law § 241 (6) claim as against all defendants. Labor Law § 241 (6) provides, in pertinent part, as follows:

“All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

(6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. . . .”

Labor Law § 241 (6) imposes a nondelegable duty “on owners and contractors to ‘provide reasonable and adequate protection and safety’ for workers” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant’s motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.* at 505).

Plaintiff’s complaint alleges violations of Industrial Code provisions 12 NYCRR 23-1.7 (b) (1) (i) (ii) (iii) (a) (b) (c). 12 NYCRR 23-1.7(b) (1) applies to hazardous openings and requires that hazardous openings “into which a person may step or fall . . . be guarded by a substantial cover . . . or by a safety railing constructed and installed in compliance with this Part (rule).” The First Department has held that an 18-inch deep opening is not the type of opening to which 12 NYCRR 23-1.7 (b) (1) applies (*see Romeo*, 61 AD3d at 492 [dismissing plaintiff’s Labor Law § 240 (1) claim based on an alleged violation of 12 NYCRR 23-1.7 (b) (1) because “the 18-inches depth to the sub-floor did not present significant depth” warranting such protection]). Therefore, 12 NYCRR 23-1.7 (b) (1) and all of its subdivisions are not applicable in this case.

Plaintiff alleges in his complaint a violation of 12 NYCRR 23-1.15. This section applies to safety railings and is inapplicable as a matter of law because plaintiff was not provided with a safety railing (*see Dzieran v 1800 Boston Road, LLC*, 25 AD3d 336 [1st Dept 2006] [dismissing the plaintiff’s Labor Law § 241(6) claim based on an alleged violation of 12 NYCRR 23-1.15 because the plaintiff was not provided with a safety railing]; *Ferluckaj v Goldman Sachs & Co.*, 53 AD3d 422 [2d Dept 2008] [finding that the plaintiff’s Labor Law § 241(6) claim based on an alleged violation of 12 NYCRR 23-1.15 should have been dismissed because the section applies only where a worker was provided with safety railings]).

Plaintiff also alleges violations of Industrial code provisions 12 NYCRR 23-1.7(e) (1) and (2). Section 23-1.7 (e) (Tripping and other hazards) provides as follows:

“(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”

In *Dalanna v City of New York* (308 AD2d 400 [1st Dept 2003]), a plumber tripped over a protruding bolt while carrying a pipe across an outdoor 50-foot-long concrete slab. In that case, the First Department held that neither section 23-1.7 (e) (1) nor 23-1.7 (e) (2) applied:

“[t]he slab, although regularly traversed to bring pipes to the tanks, remained a common, open area between the job site and the street, and thus was not [a] ‘passageway’ covered by 12 NYCRR 23-1.7 (e) (1), and at best was a ‘working area’ covered by 12 NYCRR 23-1.7 (e) (2). However, the bolt, which was embedded in the ground, was not ‘dirt,’ ‘debris,’ ‘scattered tools and materials’ or a ‘sharp projection[],’ as required by the latter provision”

(*id.* at 401 [citations omitted]). Here plaintiff’s accident occurred when he fell into an 18-inch-deep pit while walking backwards pulling a dolly. His accident did not occur as a result of “accumulations of dirt and debris,” “scattered tools and materials,” or “sharp projections” (*see Dalanna*, 308 AD2d at 401). Therefore, this section is not applicable.

Plaintiff alleges in his complaint a violation of industrial code provision 12 NYCRR 23-1.30 which pertains to illumination. Gomez and Usher both testified during their depositions that there was no issue with the lighting in the area by the subject pit (*see Gomez tr* at 153, 154,156; *Usher tr* at 146). Plaintiff testified he was walking backwards right before the accident while pulling the dolly (Plaintiff *tr* at 97-99, 102). Plaintiff’s conclusory deposition testimony that the lighting in the basement area was “dark” (plaintiff *tr* at 92) is not sufficient to support a violation of this regulation (*see Carty v Port Authority of New York and New Jersey*, 32 AD 3d 732 [1st Dept 2005] [holding that the plaintiff’s testimony that the lighting in the basement was “dark” was “insufficient to create an inference that the amount of lighting fell below the specific statutory standards”][internal

citations and quotations omitted]; *Kochman v City of New York*, 110 AD3d 477 [1st Dept 2013] [dismissing the plaintiff's Labor Law § 241(6) claim based on a violation of Rule 23-1.30 because his allegations were too vague to support any inference that the lighting fell below the specific statutory requirements]). Therefore, this section is not applicable to this case.

Plaintiff alleges a violation of 12 NYCRR 23-5.1 (j) in his complaint. This section sets forth standards for the construction of safety railings on scaffold platform. This section is not applicable as a matter of law because plaintiff was not on a scaffold platform at the time of the accident.

Since plaintiff has failed to identify a specific and applicable industrial code regulation that was violated, plaintiff's Labor Law § 241 (6) claim is dismissed (*see Owens v Commercial Sites*, 284 AD2d 315, 315 [2d Dept 2001]). Therefore, the branch of plaintiff's cross motion for partial summary judgment as to liability for Labor Law § 241 (6) is denied, and the branch of the motion by NYY Steak and Plaza seeking dismissal of plaintiff's Labor Law § 241 (6) claim is granted. The court has considered the remaining arguments and finds them unavailing.

Labor Law § 200 and Common Law Negligence Claims

NYY Steak and Plaza move for summary judgment dismissing plaintiffs' Labor Law § 200 and common law negligence claims as against them. Labor Law § 200 (1) provides:

“All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.”

It is well established that Labor Law § 200 is a codification of the common-law duty imposed upon landowners and general contractors to provide workers with a reasonably safe place to work (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]), and, therefore, the same standards apply to both Labor Law § 200 and common-law negligence theories of recovery. “Liability pursuant to Labor Law § 200 may fall into two broad categories: workers ‘injured as a result of dangerous or defective premises condition at a work site, and those involving the manner in which the work is performed’” (*McLean v 405 Webster Ave. Assoc.*, 98 AD3d 1090,

1093 [2d Dept 2012], quoting *Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]).

When an injury arises out of a dangerous or defective premises condition, “a property owner is liable under Labor Law § 200 when the owner created the dangerous condition causing an injury or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice” (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011] [internal quotation marks and citation omitted]). To prevail on a claim under Labor Law § 200 and common-law negligence, where the injury arises out of the means or methods of the construction work, the plaintiff must establish that the defendant supervised or controlled the activity giving rise to the injury (*see Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]; *Cahill v Triborough Bridge & Tunnel Auth.*, 31 AD3d 347, 350 [1st Dept 2006]). General supervision over the work, including coordination of the trades and inspection of quality of the work, is insufficient to impose liability (*see Hughes*, 40 AD3d at 306).

This branch of the motion by defendants NYY Steak and Plaza is granted. There is nothing in the record to establish that defendants supervised or controlled the work, other than general supervision, giving rise to plaintiff’s injury or that defendants created the alleged dangerous condition or had notice of it prior to the accident. The court has considered all remaining arguments and finds them unavailing.

Remaining Claims

In light of the dismissal of the main action insofar as asserted against defendants the remaining claims are dismissed as academic (*see Cardozo v Mayflower Ctr., Inc.*, 16 AD3d 536 [2d Dept 2005]; *Hoover v International Bus. Machs. Corp.*, 35 AD3d 371, 372 [2d Dept 2006]). The court need not reach any remaining contentions.

CONCLUSION

Accordingly, it is hereby ORDERED that third third-party defendant B & G Electrical Contractors’ motion for summary judgment and Ess & Vee Acoustical Contractors, Inc.’s cross motion for summary judgment (motion sequence 003) dismissing the complaint of defendants / third third-party plaintiffs, NYY Steak Manhattan LLC and Plaza Construction LLC for contractual indemnification, common law indemnification, contribution, and breach of contract as against them, and dismissing any and all cross claims as against them in their entirety is granted and said complaint and all cross claims against said defendants are dismissed with costs and disbursements

to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; it is further

ORDERED that the branches of defendant / third-party defendant / third third-party defendant Baring Industries, Inc.'s motion for summary judgment (motion sequence 005) dismissing all cross claims as against them and dismissing all claims of NYY Steak Manhattan LLC and Plaza Construction LLC as against it are granted and said complaint and all cross claims against said defendant are dismissed with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly and the other branches of the motion are denied; it is further

ORDERED that plaintiff's cross motion for partial summary judgment (motion sequences 005, 006, 007) on the issue of liability under Labor Law §§ 240 (1) and 241 (6) is denied; consequently, the branch of defendants NYY Steak Manhattan LLC and Plaza Construction LLC' motion for summary judgment based on Labor Law § 241 (6) is granted; it is further

ORDERED that the motion for summary judgment by second third-party defendants Day & Nite Refrigeration Corp. and Kimco Refrigeration Corp. (motion sequence 006) dismissing the second third-party complaint and any and all cross claims as against them is granted and said complaint and all cross claims against said defendants are dismissed with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly and the other branches of the motion are denied; and it is further

ORDERED that the branches of the motion for summary judgment by NYY Steak Manhattan LLC and Plaza Construction LLC dismissing plaintiff's Labor Law § 200 and common law negligence claims as against them and dismissing all claims and cross claims as against them are granted and the motion is otherwise denied (motion sequence 007).

5/14/2020

DATE

MARGARET A. CHAN, J.S.C.

MARGARET A. CHAN, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	

CHECK IF APPROPRIATE: