| **Quiroz v New-York Presbyt./Columbia Univ. Med. Ctr.** |
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| 2020 NY Slip Op 33793(U) |
| November 16, 2020 |
| Supreme Court, New York County |
| Docket Number: 153266/2016 |
| Judge: Barbara Jaffe |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. BARBARA JAFFE **PART** IAS MOTION 12

*Justice*

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GUSTAVO QUIROZ, JASMINE QUIROZ,
Plaintiffs,

- v -

NEW-YORK PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER, STRUCTURE TONE, INC.,

Defendants.

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NEW-YORK PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER, STRUCTURE TONE, INC.,

Third-party Plaintiffs,

-against-

PJ MECHANICAL CORPORATION, PENAVA MECHANICAL CORP.,

Third-party Defendants.

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**INDEX NO.** 153266/2016

**MOTION DATE** _____

**MOTION SEQ. NO.** 004 005

**DECISION + ORDER ON MOTION**

Third-Party
Index No. 595875/2016

The following e-filed documents, listed by NYSCEF document number (Motion 004) 81-94, 108, 110, 113, 116, 117, 120, 122-126

were read on this motion for summary judgment.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 95-106, 109, 111, 112, 118, 119, 121

were read on this motion for summary judgment.

By notice of motion, defendants New-York Presbyterian/Columbia University Medical Center (Columbia) and Structure Tone, Inc. (STI) move pursuant to CPLR 3212 for an order summarily dismissing plaintiffs' causes of action for negligence and violations Labor Law § 200 and 241(6), and awarding them contractual indemnity, legal fees, and costs against third-party

defendants. Plaintiffs and third-party defendants oppose (mot. seq. four).

By notice of motion, third-party defendant PJ Mechanical Corporation moves pursuant to CPLR 3212 for an order summarily dismissing the third-party complaint and awarding it summary judgment on its cross claims against third-party defendant Penava Mechanical Corp. for contribution and indemnification. Plaintiffs, defendants, and Penava oppose (mot. seq. five).

## I. BACKGROUND

By contract dated February 5, 2014, STI hired PJ Mechanical to complete HVAC work at the Columbia University Medical Center located at 650 West 168th Street in Manhattan. The contract provides, as pertinent here, that:

> To the fullest extent permitted by Law, [PJ Mechanical] will indemnify and hold harmless Structure Tone, Inc. ("STI") and [Columbia], their officers, directors, agents and employees from and against any and all claims, suits, liens, judgments, damages, losses and expenses including reasonable legal fees and costs, arising in whole or in part and in any manner from the acts, omissions, breach or default of [PJ Mechanical], its officers, directors, agents, employees and Subcontractors, in connection with the performance of any Work by [PJ Mechanical] pursuant to this Purchase Order and/or a related Proceed Order. [PJ Mechanical] will defend and bear all costs of defending any action or proceedings brought against STI and/or [Columbia], their officers, directors, agents and employees, arising in whole or in part out of any such acts, omission, breach or default.

(NYSCEF 91).

By contract dated November 20, 2014, PJ Mechanical hired Penava as a subcontractor for the project. The contract provides, as pertinent here, that:

> To the fullest extent permitted by law, [Penava] shall indemnify and hold harmless [PJ Mechanical], [STI], and [Columbia], and their directors, officers, employees, agents and representative from and against all claims, damages, loses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the Work, including, but not limited to any such claims, damages, losses and expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, provided such claim, damage, loss or expense is caused in whole or in part by any act or omission of [Penava], any sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part

> by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity.

(NYSCEF 92).

By summons and complaint dated April 18, 2016, plaintiffs allege that on August 19, 2014, plaintiff Gustavo Quiroz, while employed by Penava, was injured while working at the aforementioned construction site. They allege that defendants were negligent and violated Labor Law §§ 200, 240, and 241(6). (NYSCEF 83).

By third-party summons and complaint dated November 15, 2016, defendants allege that third-party defendants are contractually obligated to defend and indemnify them, that they are liable for contribution and attorney fees, and that they breached their contracts by failing to procure insurance. By answer dated January 13, 2017, PJ Mechanical advances cross claims against Penava for indemnification and contribution. (NYSCEF 85).

At his deposition, Gustavo testified that on the day of his accident, August 19, 2014, he was employed by Penava as a journeyman steamfitter at the construction site. His duties that day were to install, lay out, and hang pipe. He had a partner working with him the entire time, and he received directions only from his Penava foreperson. Upon arriving on the roof of the building, he saw that an eight-foot A-frame ladder, supplied by Penava, had been set up and locked into position by his partner. All four rubber feet of the ladder were resting on level masonite, which had been installed to cover rocks on the roof's surface. Gustavo climbed five or six feet up the ladder, to approximately the sixth rung. He reached for his tape measure and felt the ladder tilt and wobble. Gustave then fell from the ladder, landing on his knees. His partner was not holding the ladder at the time and had not been asked to.

After he fell, Gustavo observed that one of the right feet of the ladder had broken through the masonite and that the ladder was tilted. He was helped to his feet up by his partner and was

escorted into the elevator and to the hospital by the building engineer. (NYSCEF 87).

At his deposition, STI's superintendent testified that he was responsible for monitoring the progress of the work at the site, but not for ensuring that the work was being performed in accordance with any contract, blueprints, or specifications, nor did he assist in coordinating the work. However, if he observed an unsafe condition at the site, he was authorized to stop it by telling the foreperson, who was responsible for correcting it. STI's laborers installed the masonite on the roof, and if the masonite were to break, STI would be responsible for fixing it. The superintendent denied knowledge of Gustavo's accident. (NYSCEF 88).

At his deposition, PJ Mechanical's project director testified that he was responsible for overseeing PJ Mechanical's work on the site, which included retrofitting the roof with new HVAC equipment: installing new piping, equipment, and ductwork. The project director recalled no issues with or having received complaints about the masonite. While he communicated with Gustavo's foreperson about where work was to be performed and the dates for its completion, he did not direct the means and methods of Penava's workers. (NYSCEF 89).

At his deposition, Penava's vice president testified that Penava was hired by PJ Mechanical to supply steamfitters and install pipes for the project. He never visited the construction site nor did he know where Penava's employees worked at the site. While he does not know Gustavo and lacks personal knowledge of the accident, the vice president claims that the accident arose from Penava's work. (NYSCEF 90).

## II. DISCUSSION

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-

26 [2019]). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; "conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). In deciding the motion, the evidence must be viewed in the "light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference." (*O'Brien v Port Authority of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

A. Labor Law § 200 and negligence

Labor Law § 200 is "a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work." (*Prevost v One City Block LLC*, 155 AD3d 531, 533 [1st Dept 2017], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]).

As plaintiffs withdraw the Labor Law § 200 and negligence claims they advanced against Columbia (NYSCEF 116), those claims are discussed only as asserted against STI.

1. Contentions

Defendants contend that the evidence shows that before the accident, there were no issues with or complaints about the masonite, and thus, absent notice of the hazardous condition, STI cannot be held liable for negligence or for a violation of Labor Law § 200 (NYSCEF 82).

According to plaintiffs, a lack of notice is immaterial given the factual issue as to whether STI, which admittedly installed and maintained the masonite, created the dangerous condition. Moreover, they argue, as the accident arose from a defective condition on the premises, proof of supervision and control is unnecessary (NYSCEF 116-117).

In reply, defendants reiterate their earlier arguments. (NYSCEF 122).

2. Analysis

As it is undisputed that defendants did not supervise or control Gustavo's work, the pertinent inquiry is whether they created and/or had notice of an unsafe condition. Pursuant to Labor Law § 200, an owner may be held liable for a dangerous condition on premises if it either created it or had actual or constructive notice of the condition and failed to remedy it. (*Savlas v City of New York*, 167 AD3d 546, 548 [1st Dept 2018]).

While it is undisputed that STI lacked notice of the hazardous condition, defendants fail to demonstrate, *prima facie*, that it did not create it. (*See Picchione v Sweet Const. Corp.*, 60 AD3d 510, 512 [1st Dept 2009] [given evidence that defendant created condition, whether it exercised supervision or control over the work or had notice of it irrelevant]). Rather, STI admittedly installed the masonite and was responsible for its maintenance, thereby raising an issue as to whether it had created the hazardous condition that caused Gustavo's accident. (*Compare Lipari v AT Spring, LLC*, 92 AD3d 502, 503 [1st Dept 2012] [issue of fact as to whether defendant created dangerous condition, where plaintiff fell off ladder after piece of masonite against which he was leaning did not hold], *with Stier v One Bryant Park LLC*, 2012 WL 4844127, *1 [Sup Ct, NY County 2012], *affd* 113 AD3d 551 [1st Dept 2014] [defendant not liable for plaintiff's slip and fall on unsecured piece of masonite, given evidence that defendant neither installed nor was responsible for maintaining it]).

B. Labor Law § 241(6)

Pursuant to Labor Law § 241(6), owners and contractors bear a non-delegable duty to provide workers with reasonable and adequate protection and safety. To establish a violation of this section, a plaintiff must show that the defendant violated a regulation setting forth a specific standard of conduct. Given this duty, a plaintiff need not establish that the owner or contractor or

their agent had notice of the alleged violation or caused or created it by exercising supervision and control over the injury-producing work. (*See Rizzuto v L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998] [general contractor may be held liable despite absence of control over worksite or notice of violation]; *Rubino v 330 Madison Co., LLC*, 150 AD3d 603 [1st Dept 2017] [owner and/or general contractor's lack of notice irrelevant to liability]; *Gonzalez v Perkan Concrete Corp.*, 110 AD3d 955 [2d Dept 2013] [plaintiff need not show that defendants exercised supervision and control over work or worksite]). In addition to demonstrating the violation of such a regulation, the plaintiff must show that the alleged injuries were proximately caused by that violation. (*Ulrich v Motor Parkway Properties, LLC*, 84 AD3d 1221, 1223 [2d Dept 2011]; *Egan v Monadnock Const., Inc.*, 43 AD3d 692, 694 [1st Dept 2007], *lv denied* 10 NY3d 706 [2008]).

As plaintiffs do not address 12 NYCRR §§ 23-1.8, 23-1.10, 23-1.15, 23-1.16, 23-4, and 23-5, they are deemed abandoned. (*See Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] [deeming abandoned industrial code provisions that plaintiff did not address in opposition to summary judgment motion]).

1. 12 NYCRR §§ 23-1.5(c)(1) and (2)
*Condition of equipment and safeguards*
(c)(1) *"[n]o employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition"*
(c)(2) *"[a]ll load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon."*

Defendants contend that these sections are not applicable to this case. (NYSCEF 82).

In opposition, plaintiffs argue that the masonite qualifies as equipment that did not safely support the load it was intended to carry at the time of the accident, that the evidence reflects that it was defective, and that these sections are sufficiently specific and concrete for the purposes of Labor Law § 241(6). (NYSCEF 117).

In reply, defendants reiterate their earlier argument. (NYSCEF 122).

It has been held that these sections are too general to support a claim under Labor Law § 241(6). (*Ortega v Trinity Hudson Holding LLC*, 176 AD3d 625, 626 [1st Dept 2019], citing *Jackson v Hunter Roberts Constr. Grp., LLC*, 161 AD3d 666, 667 [1st Dept 2018]).

2. 12 NYCRR § 23-1.7(e)(1), (2)
*Tripping and other hazards*
(e)(1) *"[a]ll passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping"* and *"[s]harp projections which could cut or puncture any person shall be removed or covered."*
(e)(2) *"[t]he 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."*

Defendants contend that this section is not applicable to this case. (NYSCEF 82). In opposition, plaintiffs argue that while Gustavo did not slip or trip, the masonite, which was part of the working area, failed, causing him to fall. Thus, the section was violated. (NYSCEF 117). In reply, defendants observe that as the accident did not occur in a passageway, was not caused by a trip on accumulations of dirt, debris, or other conditions, and there were no sharp projections, the section is not applicable. (NYSCEF 122).

As it is undisputed that Gustavo's accident did not occur in a passageway, (e)(1) is inapplicable. (*See Purcell v Metlife Inc.*, 108 AD3d 431, 432 [1st Dept 2013] [12 NYCRR § 2301.7(e)(1) not applicable where accident did not occur in passageway]).

As it is undisputed that Gustavo's accident was not caused by tripping or other hazards, such as dirt, debris, scattered tools, or sharp projections, (e)(2) is inapplicable. (*See Purcell*, 108 AD3d at 432 [section not applicable where plaintiff did not slip or trip on debris or other hazards]).

3. 12 NYCRR § 23-1.21(b)(4)(ii)
*General requirements for ladders*
*"[a]ll ladder footings shall be firm"* and *"[s]lippery surfaces and insecure objects such as*

*bricks and boxes shall not be used as ladder footings."*

Defendants contend that this section is not applicable to this case absent evidence that the ladder was defective. (NYSCEF 82).

In opposition, plaintiffs assert that as the masonite on which the ladder was placed broke and collapsed, the ladder's footing was not firm. They contend that the statute is sufficiently specific and concrete to serve as a predicate for a claim under Labor Law § 241(6), and ask that the court search the record and grant them summary judgment under this industrial code provision. (NYSCEF 117).

In reply, defendants observe that the ladder stood on a level surface and that Gustavo did not testify that it was slippery or that the ladder was on a box or bricks. Moreover, they assert, Gustavo had checked the ladder before climbing it and observed nothing wrong with it or its placement. (NYSCEF 122).

Defendants demonstrate, *prima facie*, that this section is inapplicable, as there is no evidence that the masonite was slippery or that the ladder was defective or lacked proper footings. (*Compare Campos v 68 E. 86th St. Owners Corp.*, 117 AD3d 593, 594 [1st Dept 2014] [dismissing claim absent evidence that ladder unable to sustain plaintiff's weight, or not in good condition, or that floor slippery], *and Croussett v Chen*, 102 AD3d 448, 448 [1st Dept 2013] [dismissal warranted where plaintiff testified that ladder had four rubber footings and was not defective, and there was no evidence of a slippery floor or that masonite covering ceramic floor was foreign substance that caused slippery footing], *with Melchor v Singh*, 90 AD3d 866, 870 [2d Dept 2011] [awarding summary judgment to plaintiff given his testimony that feet on ladder in bad condition and that he used small blocks at bottom of ladder to keep it from moving]).

That the masonite on which the ladder was placed broke and caused the ladder to fall

does not raise an issue of fact, as this section only covers slippery surfaces and the use of insecure objects as ladder footings.

C. Third-party complaint

1. Contentions

a. Defendants (NYSCEF 82)

Defendants contend they are entitled to an order summarily awarding them contractual indemnity including attorney fees and costs from PJ Mechanical, as Gustavo's work arose from PJ Mechanical's work. They also rely on the testimony of PJ Mechanical's project director that Penava was hired to install piping, the work performed by Gustavo. They seek the same from Penava, observing that Penava's contract with PJ Mechanical covers both defendants.

b. PJ Mechanical (NYSCEF 96)

In support of its motion for summary judgment dismissing the third-party complaint in its entirety, PJ Mechanical denies that defendants are entitled to contractual indemnification, as neither it nor its subcontractors was obligated to maintain and replace the masonite. Rather, STI admits responsibility for it. Likewise, defendants are not entitled to common law indemnification or contribution, PJ Mechanical argues, absent evidence that it was negligent, and it observes that as liability here is premised on a dangerous or defective condition, it cannot be held liable because it did not own, occupy, control, or have special use of the premises where the accident occurred, nor did it perform work at the site. It also maintains that there is no evidence that it directed or controlled Penava's work, and it denies having had notice that the masonite was defective.

Defendants' claim for breach of contract for failure to procure insurance should be dismissed, argues PJ Mechanical, offering the liability policy it obtained covering the relevant

time period and including a blanket endorsement for contractually designated additional insureds (NYSCEF 106). It maintains that whether the insurer refuses to indemnify a contractor under the coverage purchased by the subcontractor does not alter the fact that the contractual obligation was satisfied.

c. Penava (NYSCEF 110)

Penava also denies that defendants are entitled to contractual indemnification, as STI admits to having been responsible for the masonite, as neither PJ Mechanical nor Penava was obligated to maintain or replace it, and absent evidence that Penava was negligent. Rather, Penava argues that STI's failure to maintain the masonite directly caused Gustavo's accident, and that defendants do not demonstrate that they are free from negligence. Additionally, Penava alleges that it creates a factual issue in demanding deposition testimony from an additional Penava employee.

d. Defendants (NYSCEF 112, 113)

In partial opposition to PJ Mechanical's motion and in reply to Penava, defendants reiterate their argument that they are entitled to contractual indemnification because Gustavo was injured in the course of his work for Penava, noting that his coworker had placed the ladder on the masonite. They maintain that the contract does not purport to indemnify them for their own negligence, and that there is no need to establish PJ Mechanical's negligence to be entitled to contractual indemnification. Defendants argue that an issue of fact exists as to whether PJ Mechanical failed to ensure that Penava performed its work safely, and thus, dismissal of their claims for common law indemnification and contribution is unwarranted. Defendants also contend that Penava fails to offer evidence reflecting that the masonite was not properly installed or was defective, and that its argument is based solely on an attorney's affirmation that is not

based on personal knowledge. To the extent defendants were negligent, they claim entitlement to partial indemnity.

e. PJ Mechanical (NYSCEF 120, 121)

In opposition to defendants' motion for summary judgment on the third-party complaint and in reply to defendants' opposition to its motion for summary judgment on the third-party complaint, PJ Mechanical contends that as STI's negligence was the sole proximate cause of Gustavo's accident, defendants cannot seek contractual indemnification and reiterates its earlier contentions.

2. Analysis

As an issue of fact exists as to whether STI was negligent in maintaining the masonite, and whether that negligence was the sole proximate cause of Gustavo's fall (*see supra* at II.A.2), defendants fail to establish their entitlement to contractual indemnification. (*See Davies v Simon Prop. Grp., Inc.*, 174 AD3d 850, 855 [2d Dept 2019] [party seeking contractual indemnification must prove itself free from negligence]).

Third-party defendants also fail to demonstrate entitlement to summary judgment on defendants' contractual indemnification claim, as plaintiffs' Labor Law § 240(1) claim, which does not require a showing of negligence for liability to attach, remains outstanding. (*See Adagio v New York State Urban Dev. Corp.*, 168 AD3d 602, 603 [1st Dept 2019] [indemnitor need not be found negligent where contract obliges indemnification for all claims "arising out of" or "resulting from" work]; *Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 496 [1st Dept 2018] [indemnitor need not be found negligent where contract mandates that damages or injury be "caused by" indemnitor]). Nor do third-party defendants offer an argument as to whether Gustavo was provided adequate safety devices and whether such a failure proximately caused his

accident. For defendants to be entitled to contractual indemnification, there must only be "some causal relationship" between third-party defendants' conduct and Gustavo's injury. (*See Wilk v Columbia University*, 2015 WL 13484589, *9 [Sup Ct, NY County 2015], *affd* 150 AD3d 502 [1st Dept 2017], quoting *Maroney v New York Cent. Mut. Fire Ins. Co.*, 5 NY3d 467, 472 [2005]). Having failed to address liability for Gustavo's injuries to the extent that they resulted from defendants' alleged violation of Labor Law § 240(1), third-party defendants are not entitled to summary judgment on defendants' contractual indemnity claim.

Liability for common law indemnification and contribution may not be imposed against parties that are not negligent and do not exercise actual supervision and control over the injury-producing work. (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377-78 [2011]; *Ausby v 365 W. End LLC*, 135 AD3d 481, 482 [1st Dept 2016]). Thus, even if a party has the contractual authority to direct and supervise work, if the party never exercises that authority and subcontracts its contractual duties to an entity that actually directs and supervises the work, then the party with contractual authority may not be held liable for common-law indemnification and contribution. (*McCarthy*, 17 NY3d at 378).

Here, the evidence reflects that PJ Mechanical did not supervise, direct, or control Gustavo's work and in light of the evidence that Penava supervised and controlled it, PJ Mechanical may not be held liable for common-law indemnity and contribution. Moreover, there is no evidence that PJ Mechanical created or had notice of the allegedly defective masonite. (*See Jehle v Adams Hotel Assocs.*, 264 AD2d 354, 355 [1st Dept 1999] [common law indemnity and contribution not available absent notice of dangerous condition]).

PJ Mechanical demonstrates that it complied with its contractual obligation to procure insurance by submitting the liability policy it had purchased which contains a blanket

endorsement for contractually designated additional insureds. That the insurer might refuse to indemnify defendants does not alter the fact that PJ Mechanical complied with its contractual obligations. (*Perez v Morse Diesel Int'l, Inc.*, 10 AD3d 497, 498 [1st Dept 2004]).

D. Cross claims

While PJ Mechanical purports, in its notice of motion, to move for summary judgment on all of its cross claims, it only advances arguments concerning contractual indemnification. Consequently, only that claim is addressed.

1. Contentions

a. PJ Mechanical (NYSCEF 96)

PJ Mechanical claims entitlement to contractual indemnification from Penava, as Gustavo was employed by Penava and his injury arose while performing work pursuant to the contract between them. It observes that Gustavo's partner had placed the ladder in position and that solely Penava instructed him as to his work, and thus, Penava is responsible for Gustavo's accident. It maintains that the contract between it and Penava does not require Penava to indemnify it for its own negligence and thus, it does not violate the General Obligations Law. It denies that there is evidence reflecting that it was negligent.

b. Penava (NYSCEF 111)

Penava contends that as STI was responsible for the masonite, it, Penava, cannot be held liable for the accident. Gustavo's testimony that he received instructions from only Penava is immaterial, it claims, as his accident did not result from the ladder he was using, but from the defective masonite. It denies that PJ Mechanical demonstrates that it was not negligent, arguing that PJ Mechanical was inherently obligated under its contract with STI to coordinate with STI to prepare the location where Gustavo worked, but failed to do so.

c. PJ Mechanical (NYSCEF 121)

In reply to defendants, PJ Mechanical reiterates its earlier contentions.

2. Analysis

Regardless of whether Gustavo's accident was caused by the ladder he was using or the allegedly defective masonite, it is undisputed that Gustavo was injured while performing work for Penava, and pursuant to the contract between third-party defendants, Penava is required to contractually indemnify PJ Mechanical for all claims arising from the performance of the work. Penava fails to offer evidence of PJ Mechanical's, and Penava's contention that the contract between them provides an "inherent responsibility" to coordinate work at the premises is baseless. Thus, to the extent PJ Mechanical is held liable to defendants, it is entitled to indemnification from Penava.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants' motion for partial summary judgment is granted to the following extent: (1) plaintiffs' claims of negligence and a violation of Labor Law § 200 are severed and dismissed only as to Columbia; and (2) plaintiffs' Labor Law § 241(6) claim is severed and dismissed, and is otherwise denied (mot. seq. four); it is further

ORDERED, that PJ Mechanical's motion for summary judgment is granted to the following extent: (1) defendants' claims for common-law indemnification, contribution, and breach of contract for failure to procure insurance as asserted against PJ Mechanical are severed and dismissed; and (2) to the extent PJ Mechanical is liable to defendants, it is entitled to contractual indemnification from Penava, and is otherwise denied (mot. seq. five); and it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.


11/16/2020
DATE

BARBARA JAFFE, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | | GRANTED | | DENIED | | GRANTED IN PART | X OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
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