Cordero v Hall Heating & Cooling Serv., Inc.
2020 NY Slip Op 34943(U)
March 16, 2020
Supreme Court, Westchester County
Docket Number: Index No. 67580/2018
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
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JAVIER CORDERO,

Plaintiff,

-against-

HALL HEATING & COOLING SERVICE, INC., REDCOM CM, INC., FREDERICK S. FISH INVESTMENT CO. NO. 32- SCARSDALE, LLC and STEPHEN ODER SCARSDALE, LLC.,

Defendants.
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DECISION & ORDER
Index No.: 67580/2018

Sequence Nos. 1&2

WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 89-153, were read in connection with plaintiff's motion (Seq 1) pursuant to CPLR 3212 and Labor Law §§§ 200, 240(1) and 241(6), awarding plaintiff summary judgment; and moving defendants Redcom CM Inc ("Redcom"), Frederick S. Fish Investment Co. No. 32-Scarsdale LLC and Stephen Oder Scarsdale LLC.'s motion for summary judgment to dismiss plaintiff's Labor Law §200 and common law negligence claims against these moving defendants; dismissing plaintiff's Labor Law §241(6) against these moving defendants; and for contractual indemnification over and against the codefendant Hall Heating & Cool Service, Inc. ("Hall"); and the parties' respective opposition papers, including Hall's opposition to plaintiff's motion for summary judgment and partial opposition to Moving Defendants' motion for summary judgment on the grounds of common and contractual indemnification.

Plaintiff worker allegedly fell from a ladder and sustained injuries. He now brings this action to recover damages from defendants, pursuant to common law negligence theories and Labor Law sections 200, 240(1) and 241(6).

NOW, in light of the foregoing, the motions are decided as follows:

On January 30, 2018, plaintiff, an employee of Trade Source, Inc. was working as a loader installing ductwork at 2-4 Weaver Street in Scarsdale on premises owned by defendants Frederick S. Fish Investment Co. No. 32-Scarsdale LLC and Stephen Oder Scarsdale LLC. The owners were building luxury residential apartments there. Plaintiff had been assisting employees of a sub-contractor, Hall Heating & Cooling Service, Inc ("Hall"), and Hall had been hired by Redcom, as general contractor.

On the day of the accident, plaintiff was being supervised by Otis Moore, a Hall employee. Moore and plaintiff were installing ductwork, and the height of the ceiling was between ten and twelve feet. After lunch, plaintiff was building duct boxes, when Otis Moore, who was already standing on a ladder, asked plaintiff to bring over another twelve foot ladder and position it approximately eight feet away from where Moore was standing on his ladder and help Moore push a long piece of ductwork into the ceiling. Plaintiff opened the ladder, locked the braces, and went approximately eight feet up the ladder. Moore then asked plaintiff to put both hands on the duct box and push it into the ceiling. As he was holding the ductwork up with two hands positioned three steps from the top of the ladder, plaintiff felt the ladder wobble and then it suddenly fell to the right throwing plaintiff to the left.

Trade Source's business was to provide labor to the construction industry. Trade Source and Hall had entered into an Agreement, that Hall promised to provide workers, such as plaintiff, with

a safe work place. Plaintiff's supervisor at Trade Source was Jonathan Bobinski. He testified that Trade Source supplied their employees with safety equipment to work at the subject site including hard hat, safety vest, safety glasses and gloves (NYSCEF Doc No. 14). Bobinski further testified that a skilled laborer should know how to use a ladder; and that he was unaware that plaintiff was hired to work on a ladder to install ducts in the ceiling, but if ladders were to be used, that would be the responsibility of Hall, as subcontractor, or the general contractor (NYSCEF Doc No. 99 at pg 15).

Additionally, Bobinski testified that on an accident report regarding plaintiff's injury, he checked that the cause of the accident at issue was employee carelessness due to the fact that plaintiff was a construction worker, and he should be checking the equipment he is stepping on for his own safety; and also believes the accident at issue was caused by poorly maintained equipment, meaning the ladder (NYSCEF Doc No. 25-26).

It is well settled that "a 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 demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York, 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (Barclays Bank of New York, N.A. v Sokol, 128 AD2d 492 [2d Dept 1987]). A party opposing a motion for summary judgment may do so on the basis of deposition testimony as well as other admissible forms of evidence, including an expert's affidavit, and eyewitness testimony (Marconi

v. Reilly, 254 AD2d 463 [2d Dept 1998]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (Kolivas v Kirchoff, 14 AD3d 493 [2d Dept 2005]); Baker v Briarcliff School Dist., 205 AD2d 652,661-662 [2d Dept 1994]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]).

The elements of negligence are: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) a showing that the breach of that duty constituted a proximate cause of the injury" (Ingrassia v Lividikos, 54 AD3d 721, 724 [2d Dept 2008]). Summary judgment is very rarely appropriate in a negligence case inasmuch as the issue of whether a defendant acted reasonably under the circumstances can rarely be resolved as a matter of law (Davis v Federated Dept. Stores, Inc., 227 AD2d 514 [2d Dept 1996]).

"Defendants are liable for all normal and foreseeable consequences of their acts, and the plaintiffs need not demonstrate that the precise manner in which the accident happened or the injuries occurred was foreseeable [citations omitted]. An intervening act constitutes a superseding cause sufficient to relieve a defendant of liability if it is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct" (Fahey v A.O. Smith Corp., 77 AD3d 612, 616 [2d Dept 2010]).

In support of plaintiff's motion for summary judgment, plaintiff, through his deposition, testifies that he was told by Hall employee to ascend a twelve foot ladder that was not anchored or spotted by anyone and reached up to push a piece of ductwork into a drop ceiling. He claims that the ladder was defective as it wobbled for no known or apparent reason and collapsed, throwing plaintiff down to the ground. Defendants possessed scaffolding which should have been erected for plaintiff and failed to do so.

In opposition to plaintiff's summary judgment motion, Hall raises that plaintiff was actually a special employee of Hall at the time of the accident, and as such, plaintiff's receipt of workers compensation benefits from non-party employer Trade Source should be plaintiff's exclusive remedy in tort. "The receipt of workers' compensation benefits is the exclusive remedy that a worker may obtain against an employer for losses suffered as a result of an injury sustained in the course of employment" 'A person may be deemed to have more than one employer for purposes of the Workers' Compensation Law, a general employer and a special employer' " (Munion v Trustees of Columbia Univ. in City of New York, 120 AD3d 779 [2d Dept 2014]). A special employee is 'one who is transferred for a limited time of whatever duration to the service of another,' and limited liability inures to the benefit of both the general and special employer" (Munion v Trustees of Columbia Univ. in City of New York, 120 A.D.3d 779).

Whether, plaintiff can be categorized as a special employee here is a question of fact since there are triable issues of fact as to who had the right to control the employee's work, who is responsible for the payment of wages and the furnishing of equipment, who has the right to discharge the employee, and whether the work being performed was in furtherance of the special employer's or the general employer's business (Munion v. Trustees of Columbia Univ. in City of

New York, 120 AD3d at 780. The record in support of their motion did not establish that Hall controlled and directed the manner and details of plaintiff's work, nor did the submissions show that plaintiff's actual employer, Trade Source had permanently assigned him exclusively to Hall on a full-time basis (Bostick v Penske Truck Leasing Co., L.P., 140 A.D.3d 999, 1001 [2d Dept 2016]).

Labor Law 240 (1)

Turning to Labor Law §240 (1), commonly known as the Scaffold Law, creates a duty that is nondelegable, and an owner or general contractor who breaches that duty may be held liable for damages regardless of whether they actually exercised any supervision or control over the work performed (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494 [1993]). This section requires owner and contractors to provide workers with appropriate safety devices to protect against gravity related accidents such as falling from heights or being struck by an improperly hoisted or secured object (Novak v Del Savio,, 64 AD3d 636 [2d Dept 2009]). To demonstrate entitlement to summary judgment on an alleged violation of Labor Law §240(1), a plaintiff must establish that there was a violation of the statute, and that it was the proximate cause of his or her injuries (Blake v Neighborhood Hous. Servs. of N. Y. City, 1 NY3d 280, 289 [2003])

The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity (Nieves v Five Boro A.C. & Refrig. Corp., 93 NY2d 914, 915-916 [1999], quoting Ross v Curtis-Palmer Hydro-Elec. Co., at 501). Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no §240(1) liability exists (Nieves v Five Boro A.C. & Refrig.

Corp., at 915, citing Melber v 6333 Main St., 91 NY2d 759, 763-764 [1998]). The Court of Appeals had found that "violation of the statute alone is not enough; plaintiff [is] obligated to show that the violation was a contributing cause of his fall, and second, that when those elements are established, contributory negligence cannot defeat the plaintiff's claim" (Blake v Neighborhood Hous. Servs. of New York City, Inc., 1 NY3d 280, 287 [2003]). The Court of Appeals pointed out that "not every worker who falls at a construction site, and not any object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)." (Blake v Neighborhood Hous. Servs. of New York City, Inc., 1 NY3d 280, 288, [2003]).

Further, no liability exists under Labor Law §240(1) if the worker's own actions were the sole proximate cause of the accident (Baretto v Metropolitan Transp. Authority, 25 NY 3d 426[2015]). "If the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation (Blake v Neighborhood Housing Services of New York City, Inc. 1 NY 3d 280 denied the motion. The purpose of Labor Law §240(1) is the protection of workers from injury, and the statute "is to be construed as liberally as may be for the accomplishment of [that] purpose" (Goodwin v Dix Hills Jewish Ctr., 144 AD3d 744, 746 [2d Dept 2016]).The statute is not limited to protecting workers who are working at an elevated workplace, it applies to any difference in height (Groves v Land's End Housing Co, 80NY2d 978 [1992]).

No liability under section §240(1) can be found when the safety devices that plaintiff alleges were absent were readily available at the work site, but not in the immediate vicinity of the accident, *and* plaintiff knew he [or she] was expected to use them but for no good reason chose not to do so, causing an accident. In such cases, plaintiff's own negligence is the sole

proximate cause of his [or her] injur[ies]" (Przyborowski v A & M Cook, LLC, 120 AD3d 651, 653 [2d Dept 2014]).

To support his motion, plaintiff introduced the testimony of Trade Source Supervisor Jonathan Bobinski as well as documentary evidence, accident reports made contemporaneous with the accident. Similar to the Second Department case, *DeSerio v City of New York,* plaintiff here through his deposition testimony, demonstrated his prima facie entitlement to judgment as a matter of law on the issue of liability under that statute when he testified that an employee from Hall directed him to retrieve the subject ladder, which the plaintiff ascended without a spotter, and which shifted and shook before he fell (DeSerio v City of New York, 171 AD3d 867, 868 [2d Dept 2019]). Plaintiff does not have to prove that the ladder was defective in order to comply with Labor Law §240(1) which requires proof that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent.

However, defendants demonstrated that there are triable issues of fact as to how this accident occurred and it cannot be concluded as a matter of law, that the alleged failure to provide plaintiff with proper protection proximately caused his injuries (Yao Zong Wu v Zhen Jia Yang, 161 AD3d 813, 814–15 [2d Dept 2018]). There are issues of fact as to whether plaintiff simply lost his footing while using the ladder, or other causes of the accident, that precludes awarding on summary judgment on plaitniff's Labor Law §240(1) claim. Thus, it cannot be concluded, as a matter of law, that defendants failed to provide the plaintiff with proper protection or that any alleged failure to provide and properly place adequate safety devices proximately caused his injuries (Artoglou v Gene Scappy Realty Corp., 57 AD3d 460, 461 [2d Dept 2008]).

Accordingly, on this branch of the parties' motions pursuant to Labor Law §240(1), summary judgment is denied to both plaintiff and moving defendants, as there are triable issues of fact as to whether the accident was caused by a violation of Labor Law §240(1).

Labor Law §241(6)

Labor Law § 241(6), which was enacted to provide workers engaged in construction, demolition, and excavation work with reasonable and adequate safety protections, places a nondelegable duty upon owners and general contractors, and their agents to comply with the specific safely rules set forth in the Industrial Code ("the Code") (Ross v. Curtis Palmer Hydro-Elec. Co.,81 NY2d 494 [1993]). Liability may be imposed under Labor Law §241 (6) even where the owner or contractor did not supervise or control the work site. The causes of action must be based upon violations of specific codes, rules, or regulations applicable to the circumstances of the accident (Reyes v Arco Wentworth Mgt. Corp., 83 AD3d 47, 53 [2d Dept 2011]). To state a cause of action pursuant to §241(6), a plaintiff must allege that the property owners violated a regulation that sets forth a specific standard of conduct and not simply a recitation of common-law safety principles (Gonzalez v Perkan Concrete Corp., 110 AD3d 955 [2d Dept 2013]). Thus, a distinction has been drawn between general and specific commands found in the Code, *inter alia,* the violation of a general safety provision does not give rise to liability under Labor Law Section §241(6) (see Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494 [1993]). In this regard, once it has been alleged that a concrete specification of the Code has been violated, it is for the jury to determine whether the negligence of some party to, or participant in, the construction project caused plaintiff's injury (Rizzuto v L.A. Wenger Contr. Co., Inc., 91 NY2d 343, 350 [1998]). If proven, the general contractor (or owner, as the case may be) is vicariously

liable without regard to his or her fault (Monroe v City of New York, 67 A.D.2d 89, 104 [2d Dept 1979]). The Second Department in Seaman v Bellmore Fire District (59 AD3d 515 [2d Dept 2009]), held "where such a violation [of a specific Industrial Code rule or regulation] is established, it does not conclusively establish a defendant's liability as a matter of law, but constitutes some evidence of negligence and thereby reserves, for resolution by a jury, the issue of whether the equipment, operation or conduct at the worksite was reasonable and adequate under the particular circumstances". Therefore, this issue must go to the jury for determination as to whether any negligence of some party to, or participant in, the construction project caused plaintiffs injury, and if proven, the general contractor (or owner, as the case may be) is vicariously liable without regard to his or her fault. "Contributory and comparative negligence are valid defenses to a section §241(6) claim, moreover, breach of a duty imposed by a rule in the Code is merely some evidence for the fact finder to consider on the question of defendant's negligence" (Misicki v Caradonna 12 NY3d 511, 515[2009]).

At the outset, the following sections of the Industrial Code do not apply to the circumstances at issue: 12 NYCCR 23-1.7 (d) refers to slipping hazards, which prohibits employers from allowing any employee to utilize a floor or other elevated working surface, which is in a slippery condition. There has been no testimony that the ladder was in any way slippery causing plaintiff to misstep and fall from the ladder; 12 NYCRR 23-1.7(e)(2) does not reference the utilization of ladder but only references tripping hazards from scattered tools and materials and sharp projections; 12NYCRR 23-1.7(f) no reference to utilization of step ladders; 23-1.21(c)) refers to single ladders consisting of rung and cleat type ladders consisting of a single section not to exceed 30 feet in length. This is not the type of ladder utilized by plaintiff,

and as such, this particular subsection has no relevance to plaintiff's accident. In light of the foregoing, summary judgment is awarded, as these Industrial Code provisions cited by the plaintiff are inapplicable to the facts of this case (Artoglou v Gene Scappy Realty Corp., 57 AD3d 460, 461 [2d Dept 2008]).

Turning to the applicable sections of the Industrial Code:12 NYCRR 23-1.5, reflects the general responsibility of employers including that all employers, owners, contractors and their agents are obligated by law to provide safe working conditions, personal protective equipment and safe places to work for persons employed in construction, demolition and the alike.

12 NYCRR 23-1.21: (b) (1) Strength. Every ladder shall be capable of sustaining without breakage, dislodgment or loosening of any component at least four times the maximum load intended to be placed thereon. Moving defendants argue that the testimony does not support a claim because plaintiff testified that he used the ladder without incident before and there is no evidence that the ladder was unable to sustain plaintiff's weight.

Proper Safety Footings 23-1.21(b)(3)(i)(iv) and 23-1.21(b)(4)(ii)- A lack of proper safety feet rendered the ladder unstable and was a clear defect that caused the ladder failure and was a proximate cause of plaintiff's fall.

23-1.21 (e) requires every step ladder to be open to its full position and the spreaders shall be locked. Plaintiff testified that he opened the ladder completely and locked the spreaders on both sides of the ladder.

12 NYCRR 23-1.21 iv- When work is being performed from ladder rungs between six and 10 feet above the ladder footing, a leaning ladder shall be held in place by a person stationed at the foot of such ladder unless the upper end of such ladder is secured against side slip by its

position or by mechanical means. When work is being performed from rungs higher than 10 feet above the ladder footing, mechanical means for securing the upper end of such ladder against side slip are required and the lower end of such ladder shall be held in place by a person unless such lower end is tied to a secure anchorage or safety feet are used.

Plaintiff also cites other regulations in 23-2.1.

In opposition, moving defendants allege there has been no testimony regarding any defects with the ladder prior the accident taking place. They point out that plaintiff utilized the ladder in the morning and it was held by Otis Moore and then utilized the same ladder again in the afternoon. In the afternoon, plaintiff placed the ladder, opened it up, locked the cross braces, stabilized the ladder and moved to his position on the ladder to perform work in assisting Moore in the installation of ductwork. Plaintiff was directed to push harder by Moore and when he did so, the ladder allegedly wobbled causing plaintiff to fall to the ground and the ladder to fall in the opposite direction. Defendants also point out that there has been no testimony that there were any defects in the ladder prior to the accident taking place, and any defects with respect to the cross brace portion of the ladder were not determined until after the incident occurred. They further point out that plaintiff testified that there were rubber feet on the ladder, and that he did not notice anything wrong with the steps of the ladder and that he himself opened the ladder and locked it in place. After locking the ladder in place, plaintiff wiggled it to make sure it was steady and then got on the ladder. Moving defendants continue that plaintiff's own testimony establishes that the ladder was stable at the time he was utilizing it as directed by Moore and that it was properly opened and placed on the floor in a stable condition.

Taking into consideration, the parties' submissions, plaintiff failed to present uncontroverted evidence that defendants violated said Industrial codes, or whether each such violation was a proximate cause of plaintiff's injuries, and whether if conditions were different, the result of whether the ladder would have given way (Karanikolas v. Elias Taverna, LLC, 120 AD3d 552, [2d Dept 2014]).Triable issues exists as to the alleged defects in the ladder after the incident, and there is also quesiton as to whether defects existed before the incident took place.

Labor Law §200 and Common Law Negligence

It is well settled that "cases involving Labor Law §200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed (Ortega v Puccia, 57 AD3d 54, 61 [2d Dept 2008]). Labor Law §200 codifies the common-law duty of an owner or employer to provide workers with a reasonably safe place to work. "To be held liable under Labor Law §200 for injuries arising from the manner in which work is performed, a defendant must have 'authority to exercise supervision and control over the work' " (Rojas v Schwartz, 74 AD3d 1046 [2d Dept 2010]). If dangerous or defective equipment was provided to the worker and the worker was injured by it, the property owner will only be liable under Labor Law §200 if it was possessed of the authority to supervise or control the means and methods of the work (Reyes v Arco Wentworth Mgt. Corp., 83 AD3d 47, 51 [2d Dept 2011]); Ortega v. Puccia, 57 AD3d 54, 61 [2d Dept 2008]; Giovanniello v E.W. Howell, Co., LLC, 104 AD3d 812, 813-14 [2d Dept 2013]).

Defendants argue that dismissal of plaintiff's Labor Law §200 claims is warranted because there is no evidence that Redcom directed, supervised or controlled the work that gave

rise to the occurrence, and no evidence that plaintiff was injured as the result of a dangerous condition at the premises. Redcom did not provide any ladders to any workers at the site and based upon the testimony of Bobinski of Tradesource, neither did that entity. Rather, plaintiff used ladders provided by Hall or the ladders from other trades with the subject ladder being utilized by plaintiff in the morning of the incident and subsequently in the afternoon regardless of who the ownership of the ladder is, plaintiff was directed to use the ladder by Moore, his immediate supervisor from Hall. There has been no testimony that there was a defective condition of the floor where plaintiff placed the ladder. Plaintiff testified he opened the ladder, stabilized it, locked the spreaders, and then ascended the ladder.

In order to obtain summary judgment, moving defendants are required to establish that they neither created the alleged danger or defect in the instrumentality nor had actual or constructive notice of the dangerous or defective condition (Artoglou v Gene Scappy Realty Corp., 57 AD3d 460, 462 [2d Dept 2008]). Redcom's CEO John Malarbe testified that Redcom was the agents of Frederick S. Fish Investment Co. No. 32-Scarsdale, LLC and Stephen Oder Scarsdale, LLC, but disagreed that Redcom was actually the general contractor (NYSCEF Doc No. 140 at pg. 17-18), even though there is a contract between Redcom as contractor and Hall as subcontractor (NYSCEF Doc No. 104). Malarbe observed that Hall portrayed shoddy workmanship, that the ability and quality of its worker was poor and not consistent. Redcom claims that it did not supply equipment such as ladders to sub-contractors and Redcom.

If Redcom had the authority to choose the subcontractors who did the work, and entered into contracts with them, it had the authority to exercise control over the work, even if it did not actually do so (Guanopatin v Flushing Acquisition Holdings, LLC, 127 AD3d 812, 814 [2d Dept

2015]). Based upon the record, there are triable issues of fact that preclude summary judgment motion on the Labor Law §200 claim and the common-law negligence cause of action (Slikas v Cyclone Realty, LLC, 78 AD3d 144, 149 [2d Dept 2010]).

Turning next to moving defendants' application that Hall owes them common law and contractual indemnity as a matter of law. Hall opposes the motion and submits that Redcom is not entitled to summary judgment relative to its contractual indemnity claim because Redcom's cross-claim against Hall is barred by the anti-subrogation rule since both parties are covered by the same insurance policy. Recom and indemnitor Hall are both insured by the same insurance company. The argument is that given that both Redcom and Hall are covered by the same policy for purposes of plaintiff's claims herein, Redcom's claims against Hall are barred by the anti-subrogation rule at least up to the limit of the insurance policy. It was explained by moving defendants, that Travelers refused the acceptance of defense, and since the tender of defense and indemnification was never accepted, the antisubrogation rule is inapplicable. However, since there has been no determination as to negligence of Hall in this matter, the portion of defendants' motion seeking common law and contractual indemnification on behalf of defendants is denied.

Accordingly, it is hereby

ORDERED, that plaintiffs' motion (Seq 1) for summary judgment is **denied**; and it is further

ORDERED, that moving defendants (Seq 2) motion is **granted** to the extent that various Industrial Codes sections were found to be inapplicable, and denied otherwise; and it is further

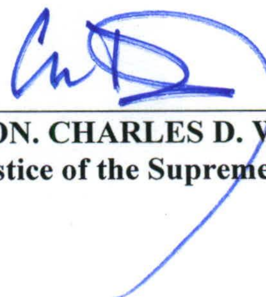
ORDERED, that the parties are directed to appear at a settlement conference on May 19, 2020 at 9:15 A.M*. in courtroom 1600, the Settlement Conference Part of the

Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied.

This constitutes the decision and order of the court.

Dated: **March 16, 2020**
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF

* Subject to change due to current Coronavirus crisis. Check with the Settlement Conference Part to confirm.