At an IAS Term, Part 64 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 24th day of July, 2020.

PRESENT:
HON. KATHY J. KING,
Justice.

Zong Wang Yang and Rui Xian Chen,

Plaintiffs,

DECISION

against -

Index No. 520955/2016

The City of New York, Brooklyn Navy Yard Development Corporation, Plaza Construction LLC, ZHN Contracting Corporation and Martin Associates, Inc.,

Defendants.

Plaza Construction LLC,

Third-Party Plaintiff,

- against -

ZHN Contracting Corp. and A-tech Electric Enterprises, Inc.

Third-Party Defendants.

Plaza Construction LLC,

Second Third-Party Plaintiff,

- against –

Martin Associates, INC,

Second-Third-Party Defendant.

The following papers numbered 1 to 4 read herein:	Papers Numbered
Notice of Motion/Cross Motion, Affirmation (Affidavit), and Exhibits Annexed	1-2, 3-4, 5-6, 7-8, 9-10
Affirmation (Affidavit) in Opposition and Exhibits Annexed	11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Reply Affirmation (Affidavit) and Exhibits Annexed	23, 24, 25, 26, 27, 28, 29

Upon the foregoing papers, Motion Sequence Numbers 3, 4, 5, 6 and 7 are hereby consolidated for disposition.

Mot. Seq. No. 3

Plaintiff's motion for partial summary judgment, pursuant to CPLR 3212, for liability under Labor Law 240 (1) against defendants City of New York ("the City"), Brooklyn Navy Yard Development Corporation ("BNYDC")[1] and Plaza Construction ("Plaza"). Plaza and A-Tech submit opposition to the requested relief.

Mot. Seq. No. 4

Third-Party defendant A-Tech Electric Enterprises, Inc.'s (A-Tech) motion for summary judgment, pursuant to CPLR 3212, for dismissal of all claims under Labor Law 240 (1), Labor Law 246 (1) and Labor Law 200/common law negligence against them. Plaintiff and Plaza submit opposition to the requested relief.

Mot. Seq. No. 5

Defendant Martin Associates, Inc.'s motion for summary judgment, pursuant to CPLR 3212, dismissing the first cause of action (negligence), Labor Law Labor Law 240 (1), Labor Law 246 (1) and Labor Law 200 plaintiff's second amended verified complaint; dismissing the Second Third-Party Complaint of Plaza; and, dismissing all cross claims. Plaintiff submits partial opposition to the requested relief.

Mot. Seq. No. 6

Defendant Plaza's motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiffs' Labor Law 200 and common law negligence claim and dismissing the derivative cause of action of plaintiff's Rui Xian Chen; summary against third-party defendants A-Tech and ZHN Contracting Corp. (ZHN) on Plaza's claim and cross claim for contractual indemnification and defense. Plaintiff, A-Tech, submits opposition to the requested relief.

Mot. Seq. No. 7

Defendant/third-party defendant ZHN's motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's complaint and the third-party action asserting claims for indemnification and contribution. A-tech and Plaza submit opposition and plaintiff submits partial opposition to the requested relief.

PROCEDURAL HISTORY

[1] The City and BNYDC did not move for summary judgment and have not submitted opposition to plaintiff's requested relief; however, pursuant to stipulation dated March 5, 2019, the legal positions set forth in Plaza's motion for summary judgment and opposition are deemed to have been submitted by The City and BNYDC.

Plaintiffs Zong Wang Yang ("Yang") and Rui Xian Chen[2] seek to recover damages for personal injuries arising from an alleged incident that took place during the course of Yang's employment on September 9, 2016. Plaintiff commenced the instant action against The City of New York ("The City"), Brooklyn Navy Yard Development Corp, Plaza Construction ("BNYDC") and Plaza Construction LLC ("Plaza), and asserts causes of actions against the named defendants under Labor Law §§200, 240(1) and 241(6), as well as common law negligence. Thereafter, Plaza filed a Third-Party action against ZHN Contracting Corp. and A Tech Electrical Enterprises, Inc., and a Second Third Party action against Martin Associates, Inc. Plaintiff's complaint was amended on June 21, 2017 and May 4, 2018, respectively, to assert claims against ZHN Contracting Corp. and Martin, two (2) of the subcontractors contracted by Plaza Construction to perform work on the project.

BACKGROUND AND FINDINGS OF FACT

The alleged accident took place on September 9, 2016, at the Brooklyn Navy Yard-Building 77 ("Building 77"), an 18-story commercial and manufacturing building located in Brooklyn, NY, which was under renovation at the time of the accident. It is undisputed that the City is the owner of the subject premises and BNYDC managed the premises pursuant to an agreement with the City. BNYDC hired Plaza as the general contractor for the renovation of the subject premises. A Tech, Plaintiff's employer, was a subcontractor for installation of the fire alarm and fire prevention system. Martin was the HVAC subcontractor. ZHN was the masonry subcontractor, whose work included building concrete masonry unit (CMU) walls adjacent to the

[2] Plaintiff Yang is an employee of defendant Martin. Plaintiff Rui Xian Chen, Yang's wife, asserts a derivative claim. Plaintiff Yang will be referred to as "plaintiff" individually throughout this decision.

shaftway openings from the 2nd to the 16th floors. All the subcontractors, except for A Tech were hired by Plaza.[3]

On September 9, 2016, the date of the accident, Plaintiff testified that he worked for A Tech as an electrician, and that he received his work assignments from A Tech foreman, Daniel Meyers ("Meyers"). He testified that on the date of the accident, he was instructed by Meyers to install smoke detectors on the mechanical room of the 16th floor and was given an eight-foot A frame ladder to perform this task. There was a standalone, interior wall that separated the shaft opening from the rest of the mechanical room; the other side of the shaft opening was the existing wall of the mechanical room. Plaintiff testified that there was an opening in the floor inside the "mechanical room" that was covered with three to four 2 x 6 aluminum planks with the same size wood planks on top. Plaintiff testified that electrical piping had already been installed to the ceiling and he was tasked to install fire alarm boxes to the pipes and that he had to install the fire alarm onto the fire alarm pipe which was affixed to the ceiling in the center of the opening. There was nothing spray painted on top of the planks. There was no yellow tape or 4x4 plywood restricting entry into shaft opening. Plaintiff testified that there were no signs around the opening.

Plaintiff testified he needed to put a ladder in the area where the opening in the floor was located so he could reach the area where he needed to install the fire alarm box. Prior to setting up his ladder, plaintiff stepped onto the planks to test for sturdiness and the planking tipped causing him to fall down the shaftway opening. He landed onto the concrete ground on the 15th Floor. At the time of his accident, plaintiff was not wearing a harness or tied off to an anchor point.

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[3] A Tech was retained by non-party EJ, the primary electrical contractor on the job.

Michael Marcolini ("Marcolini"), testified that he was Plaza's senior superintendent, at the time of the accident, and responsible for monitoring the progress of construction and managing the safety of the project. He testified that Plaza retained ZHN to build CMU walls to enclose the air duct shaft. ZHN was responsible for building three of the walls and an existing wall was part of the perimeter of the building. Marcolini testified that Plaza implemented a policy at the project site permitting the trades to remove protections to complete work in and around the shaft opening and also requiring them to restore the protections after completion of their work. Marcolini did not observe the shaft opening in the condition depicted in the post-accident photographs nor did he receive any complaints with respect to the condition of the shaft opening prior the alleged accident.

Meyers testified that ZHN put aluminum scaffold planks over the shaft opening to catch mortar from the wall construction and prevent it from falling into the shaft below. Meyers testified that he was not aware of any complaints about the shaft and that many of the workers on the job were Chinese, like plaintiff. He explained that despite the language barrier, he communicated with these workers based on their basic knowledge of the trade and showing them the task at hand, through the use of oral instruction and blueprints. According to Meyers, on the day of the accident, he assigned plaintiff to work with Weing Guang Cheng ("Jon"), because Jon understood more English than plaintiff and could communicate with him about the job. Meyers testified that the day prior to the accident, plaintiff and Jon had performed work on the non-shaft side of the CMU wall. On the day of the accident, he instructed plaintiff and Jon to continue working in the mechanical room. Meyers was notified about that plaintiff had fallen into the shaft opening about 8:00 – 9:00 a.m.

Moore, A Tech's sub-foreman on the job site for fire alarm installation, testified that on September 9, 2016, the date of the accident, he went to the 16th floor mechanical room to ensure that Yang and Jon understood their assignment for routing the conduits and to show them the shaft. Moore testified that he observed the planks covering the shaft opening. Moore further testified that he did not know who owned the planks or who placed that planks over the shaft opening, but believed that the planks may have been used to prevent mortar from falling into the shaft. Moore testified that he pointed to the shaft and specifically instructed Yang and Jon not to go into the shaft. He also explained that although the blueprints for the project indicated that the smoke head required mounting inside the shaft, he instructed plaintiff and Jon to mount closer to the wall. As a result, Moore testified that he instructed Yang and Jon to put a ladder next to the wall that was only halfway high and install the fire alarm box a "half arm's length" into the shaft, so that the wall would be between the ladder and the shaft. Moore was concerned that Yang and Jon did not understand the instructions about the shaft and conveyed his concerns to Meyers, who then went to the 16th floor to speak to Yang and Jon. According to Moore, Meyers gestured made a big "X" with his hands and crossed his arms in front of him, while at the same time standing next to the wall to show where he wanted the smoke head. Moore testified that the open side of the shaft was not covered on the date of the accident, and that an orange mesh safety netting was rolled up in a ball on the corner of the shaft. Moore also testified that there were aluminum scaffold planks resting on either side of the shaft and covering the shaft.

Zakir Nassem ("Nassem"), testified that he is the owner of ZHN, and was responsible for erecting concrete walls for the elevator shafts and the duct shafts throughout the building for the subject renovation project. At the time of the accident, ZHN had not completed the construction

of the CMU wall adjacent to the shaft opening since according to Nassem Plaza instructed ZHN to suspend work to the CMU walls on the 16th floor. Naseem testified that there was fall protection around the shaft opening on the 16th floor in the form of a metal steel angle with three levels of ropes approximately forty-two inches high, yellow construction netting, and a sign warning not to enter the area. Nassem testified that ZHN's work on the CMU walls required removal of the fall protections, which were removed at the direction of Plaza by another subcontractor. Nassem testified that ZHN placed aluminum scaffold planks across the shaft opening on the 16th floor for protection during construction of the CMU wall, but ZHN had removed the planks prior to the accident. Naseem, acknowledge that scaffold planks depicted in the post-accident photos are identical to ZHN's planks.

Standard for Summary Judgment

Summary judgment is a drastic remedy that deprives a litigant of his day in court and thus, should only be employed when there is no doubt as to the absence of triable issues of material fact (*see Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept. 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). "[T]he 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" (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The motion should be granted only when it is clear that no material and triable issue of fact is presented (*see Di Mena & Sons v City of New York*, 301 NY 118 [1950]). If the

existence of an issue of fact is even arguable, summary judgment must be denied (*see Phillips v Kantor & Co.*, 31 NY2d 307 [1972], *Museums at Stony Brook v Vil. Of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]).

Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman*, 49 NY2d at 561).

Applicable Law

I. Labor Law 240(1)

Labor Law §240 (1) provides, in pertinent part, that:

> "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, [or] altering . . . 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."

"[T]he duty imposed by Labor Law 240(1) is non-delegable and . . . an owner is subject to liability for violation thereof regardless of whether actual supervision or control over the work" has been exercised (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). To achieve that goal, the statute imposes absolute liability where the failure to provide [proper] protection is a proximate cause of a worker's injury" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 96 [2015]; *see Wilinksi v 334 92nd Hous. Dev. Fund. Corp.*, 18 NY3D 1, 7 [2011]).

Labor Law 240(1) relates only to special hazards involving elevation-related risks (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015]). 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 (*Melber v 6333 Main St., Inc.*, 91 NY2d 759, 763 [1998][internal citations omitted]. Liability may, therefore, be imposed under the statute only where the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential (*see id.* at 90; *see also Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009][internal citations omitted]).

Labor Law § 241(6) "imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501-02 [1993]). To sustain a cause of action under Labor 241(6), a plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision that is applicable given the circumstances of the accident, and that sets forth a concrete standard of conduct rather than a mere reiteration of common law principles (*see* id.). While plaintiff claims violations of Industrial Code under Labor 241(6), plaintiff concedes Martin and ZHN are not proper Labor Law defendants. The Court agrees.

Labor Law §200 (1) provides, in pertinent part, that:

> "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".

Labor Law 200 is a codification of the common-law negligence imposing a duty upon

owners and general contractors or their agents to provide workers with a safe place to work (NY Labor Law 200). It is well settled that an implicit precondition to this duty is that the party to be charged with that obligation "have the *authority to control the activity bringing about the injury to enable it to avoid* or correct an unsafe condition" (*Russin v Picciano & Son*, 54 NY2D 311, 317 [1981] [emphasis supplied][internal citations omitted]; *see also, Ross v Curtis-Palmer Hydro-Elec. Co.*, *supra*, at 505-506; *Lombardi v Stout*, 80 NY2D 290, 295).

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (Motion Seq. No. 3)

Plaintiff moves for partial summary judgment pursuant to Labor Law 240(1) against defendants City, BNYDC, and Plaza. Here, plaintiff has established prima facie entitlement to summary judgment, since the accident resulted from his falling through the 16th floor shaft, which lacked proper protection. The Court finds that even if the planks covering the shaft are considered a makeshift scaffold, a failure to safeguard the shaft opening to prevent falling from a elevation i.e., 16th to 15th floor, is a violation of the Labor Law 240(1) (*see Runner*, 13 NY3d at 599. Plaza and A-Tech, in opposition, raise a triable issue of fact regarding whether plaintiff was the sole proximate cause of his accident, since the testimony of Meyers and Moore indicate that plaintiff was told not to work in the shaft opening. Significantly, the testimonial evidence shows that plaintiff was directed to install the smoke detector by placing his ladder on the non-shaft side of the CMU wall, and instead, plaintiff attempted to install the smoke detector over the shaft opening and stepped onto the planks to see if they were sturdy enough to support a ladder. Accordingly, plaintiff's motion for summary judgment is denied.

A-TECH'S MOTION FOR SUMMARY JUDGMENT (Mot. Seq No. 4)

The Court finds that A-Tech has not established prima facie entitlement to summary

judgment as a matter of law for dismissal of the Third-Party claims. The Indemnification and Hold Harmless Conditions provision set forth in Article 25 of the electrical trade contract between A-Tech and Plaza requires defense and indemnification for any accidents "arising out of or in connection with or as a result or consequence of the performance of the Work of the Subcontractor, as well as any additional work, extra work, or add on work, whether or not caused in whole or in part by the Subcontractor or any person or entity employed directly or indirectly by the Subcontractor." It is well settled that a party's right to contractual indemnification is governed by the specific language of the controlling contract (*see Tolpa v One Astoria Square,* 125 AD3d 755, 756 [2d Dept 2015]). The obligation for indemnification pursuant to the contractual provision between the parties exists whether or not plaintiff was the a recalcitrant worker, and thus, A-Tech arguments in support of its motion is unavailing, and Plaza is entitled to contractual indemnification from A-Tech. Therefore, A-Tech's motion for summary judgment is denied.

MARTIN'S MOTION FOR SUMMARY JUDGMENT (Mot. Seq No. 5)

Martin moves for dismissal of all claims under Labor Law 240 (1), Labor Law 246 (1) and Labor Law 200/common law negligence and cross claims.

Martin has established prima facie that it is not a covered defendant under Labor Law 240(1), 241(6), and Labor Law 200/common law negligence, since the record shows that Martin is not an owner, general contractor or agent thereof. In opposition, defendant Plaza fails to raise a triable issue of fact. The Court notes that there is no opposition to the requested relief by plaintiff. Based on this finding, all cross claims asserted against Martin are dismissed since the alleged injury did not arise out of, nor, was it related to the actual performance of Martin's work. Thus, Martin's motion summary judgment is granted in its entirety.

PLAZA'S MOTION FOR SUMMARY JUDGMENT (Mot. Seq No. 6)

Defendant Plaza moves for summary judgment, pursuant to CPLR 3212, dismissing plaintiffs' Labor Law 200 and common law negligence claim.

Plaza has established its prima facie entitlement to summary judgment based on its Labor Law 200 and common law negligence claim, since Plaza did not control the means and methods by which plaintiff performed his work (*see Ortega v Puccia*, 57 AD3d 54, 61 [2nd Dept. 2008]). The testimony of the plaintiff, Meyers, and Moore establishes that A-Tech had supervisory control over the plaintiff's work including the work he was performing at the time of the alleged accident. However, in opposition, plaintiff has raised a triable issue fact, since the testimony of Marcolini, shows that Plaza was responsible for implementing policy to ensure proper protection around the shaft opening (*see* Labor Law 240(1)). Thus, Plaza's motion for summary judgment dismissing plaintiff's Labor Law 200 claim is denied.

Plaza also moves for summary judgment on the cross claims against A-Tech and ZHN for common law and contractual indemnification, and insurance procurement. It is well settled that a party's right to contractual indemnification is governed by the specific language of the controlling contract (*see Tolpa v One Astoria Square,* 125 AD3d 755, 756 [2d Dept 2015]).

The branch of Plaza's motion seeking summary judgment against third-party defendant A-Tech is granted as the Court finds the obligation for indemnification pursuant to the contractual provision between the parties exists whether or not plaintiff was a recalcitrant worker.

The branch of Plaza's motion seeking summary judgment against third-party ZHN for contractual indemnification is denied as material issues of fact exist as to whether Plaza failed to ensure that proper fall protections were provided at the shaft.

Plaza further moves for summary judgment dismissing plaintiff Rui Xian Chen's derivative cause of action pursuant to CPLR 3126. The Court finds defendant Plaza has failed to make a clear showing that plaintiff Rui Xian Chen's failure to comply with court ordered discovery was willful and contumacious. Plaintiff, in opposition, has established that Plaintiff Rui Xian Chen has been available and willing to comply with the court-ordered discovery. Therefore, Plaza's motion for summary judgment dismissing plaintiff Rui Xian Chen derivative cause of action is denied.

ZHN'S MOTION FOR SUMMARY JUDGMENT (Mot. Seq No. 7)

Defendant/third-party defendant ZHN's moves for summary judgment, dismissing plaintiff's complaint and the third-party action asserting claims for indemnification and contribution.

Firstly, ZHN's motion for summary judgment under Labor Law 240(1) and Labor Law 241(6) is granted without opposition. Plaintiff does not object to the branch of ZHN's motion to dismiss plaintiffs' claims under Labor Law 240(1) and 241(6) as plaintiff concedes that ZHN is not a proper Labor Law defendant. Further, defendant Plaza and A-Tech makes no arguments in opposition to the branch of ZHN's motion for summary judgment seeking to dismiss plaintiff's Labor Law 240(1) and 241(6) claims.

As to the branch of ZHN's motion seeking summary judgment under Labor Law 200, ZHN has established prima facie entitlement to summary judgment dismissing plaintiff's Labor Law 200 claims as a matter of law since ZHN has demonstrated that it never exercised, control over the work performed by the plaintiff at the subject premises, as plaintiff testified that he did not take direction or instructions from anyone other than Meyers and A-Tech personnel.

Plaintiff and Plaza, in opposition, raise a triable issues of fact. The record establishes that before ZHN began its work on the 16th floor shaft, the opening had protection in the form of metal angles with three levels of rope as well as signs saying not to enter the area and construction netting. He further testified that the protection was removed at the direction of Plaza when ZHN began its work and ZHN put its planks in a corner outside of the mechanical room on the 16th floor. Naseem acknowledged that aluminum scaffolding planks that are depicted in the photograph of the 16th floor shaft taken on the date of the accident after the accident occurred are identical to ZHN's planks, but indicated that they did not have ZHN's identifiable markings. Thus, the Court finds that triable issues of fact exist as to whether ZHN covered the shaft opening with the planks and whether Plaza instructed any of its sub-contractors to remove the planks. Therefore, the branch of ZHN's motion for summary judgment dismissing the plaintiff's Labor Law 200 claim is denied.

ZHN's motion for summary judgment dismissing the third-party claims which asserts claims for indemnification and contribution is denied. While ZHN's contract with Plaza, requires it to defend and indemnify for any accidents "arising out of or are connected with or are claim to arise out of or be connected with the performance of work by the subcontractor, or any of its sub-subcontractors, any act or omission of any of the foregoing." It is well settled that a party's right to contractual indemnification is governed by the specific language of the controlling contract (*see Tolpa,* 125 AD3d at 756. Notwithstanding this contractual indemnification provision, Plaza and A-Tech raise an issue of fact as to whether ZHN's covered the shaft with the planks.

Based on the foregoing, it is hereby;

ORDERED, that Plaintiff's motion for partial summary judgment on liability pursuant to Labor Law 240(1) against Plaza is denied (Mot. Seq.#3); and it is further,

ORDERED, that Third Party Defendant A-Tech motion for summary judgment pursuant to CPLR 3212, for dismissal of all claims under Labor Law 240(1), Labor Law 241(6), and Labor Law 200/ common law negligence dismissing is denied (Mot. Seq.#4); and it is further.

ORDERED, that Defendant/Second Third-party Defendant Martin's motion for summary judgment dismissing the first cause of action (negligence), Labor Law Labor Law 240 (1), Labor Law 246 (1) and Labor Law 200 plaintiff's second amended verified complaint; dismissing the Second Third-Party Complaint of Plaza; and, dismissing all cross claims is granted. (Mot. Seq.#5); and it is further,

ORDERED, that Defendant/ Third-Party plaintiff Plaza's motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's Labor Law 200/common law negligence claim; dismissing the derivative cause of action of plaintiff's Rui Xian Chen; granting summary judgment against Third-Party Defendants A-Tech and ZHN on Plaza's third-party claims and cross claim for contractual indemnification and defense is denied. Further, the Court directs Plaintiff Rui Xian Chen to appear for a virtual deposition no later than 60 days for the date of this order (Mot. Seq#6); and it is further,

ORDERED, that Defendant/Third-party Defendant ZHN's motion for summary judgment, pursuant to CPLR 3212, dismissing plaintiff's complaint and third-party action asserting claims for indemnification and contribution is granted to the extent of dismissing plaintiff's Labor Law 240(1) and 241(6) claims. In all other respects, Defendant/ Third Party Defendant ZHN's motion for summary judgment is denied (Mot. Seq.#7).

This constitutes the decision/order of the Court.

ENTER,

HON. KATHY J. KING
J.S.C.

HON. KATHY J. KING
J.S.C

KINGS COUNTY CLERK
FILED
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