Adonis v Hudson CBD Flatbush LLC
2021 NY Slip Op 32209(U)
October 18, 2021
Supreme Court, Kings County
Docket Number: Index No. 511763/2015
Judge: Devin P. Cohen
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Supreme Court of New York
County of Kings
Part 91

Index Number 511763/2015
SEQ#'S 012, 013, 014, 015 & 016

CEGISMAN ADONIS,

Plaintiff,

against

HUDSON CBD FLATBUSH LLC, LETTIRE CONSTRUCTION CORP., EAGLE MASONRY CORP., FORWARD MECHANICAL CORP, GIANT TAPING AND PLASTERING INC.

Defendant.

HUDSON CBD FLATBUSH LLC AND LETTIRE CONSTRUCTION CORP.,

Third-Party Plaintiff,

against

EAGLE MASONRY CORP., ROSENWACH TANK CO., FORWARD MECHANICAL, AND GIANT TAPING & PLASTERING, INC.

Third-Party Defendant.

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

	Papers Numbered
Notice of Motion and Affidavits Annexed	1-5
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	6-14
Replying Affidavits	15-17
Exhibits	Var.
Other	

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Upon review of the foregoing papers,[1] plaintiff's motion for summary judgment (Seq. 012), defendants/third-party plaintiffs Hudson CBD Flatbush, LLC ("Hudson") and Lettire Construction Corp.'s ("Lettire") motion for summary judgment (Seq. 013), defendant/third-party defendant Forward Mechanical Corp.'s ("Forward") motion for summary judgment (Seq. 014), defendant/third-party defendant Giant Taping and Plastering, Inc.'s ("Giant") motion for

[1] This court will not consider any of the reply papers in further support of cross-motions as such papers are not authorized by CPLR 2214, and were not solicited by the court.

summary judgment (Seq. 015), and defendants/third-party plaintiffs Hudson and Lettire's motion for summary judgment and to strike the answer of defendant/third-party defendant Eagle Masonry Corp. ("Eagle") to the third-party complaint (Seq. 016) are decided as follows:

Introduction

Plaintiff commenced this action against defendants Hudson and Lettire for injuries he claims to have sustained as a result of an accident on June 10, 2015 caused by defendants' negligence and violations of New York Labor Law §§ 200, 240 (1), and 241 (6). A third-party action was commenced by Hudson and Lettire against Eagle, Rosenwach Tank Co., LLC ("Rosenwach"), Forward, and Giant for common-law indemnification and contribution, contractual indemnification, and breach of contract for failure to obtain insurance. In January 2016, the plaintiff amended his complaint to include the third-party defendants as direct defendants. Forward asserted cross-claims against Hudson and Lettire for common-law contribution and indemnity, contractual indemnity, and breach of contract based on Hudson and Lettire's failure to procure insurance for Forward. Giant asserted cross-claims against Hudson and Lettire for common-law contribution and indemnity and contractual indemnity. Eagle Masonry asserted cross-claims against Hudson and Lettire for common-law indemnity and contribution.

Factual Background

The key facts in this case are undisputed. Plaintiff Cegisman Adonis was an employee of third-party defendant Rosenwach (Adonis EBT at 13). Mr. Adonis was standing at the rear of a

flatbed truck waiting to unload the truck when a brick fell from approximately the twentieth floor of the site located a 626 Flatbush Avenue, Brooklyn, NY (*id.* at 37). George Jozan, a project manager for the general contractor Lettire, testified that this property is owned by defendant Hudson (Mr. Jozan EBT at 16–17). The general contractor at the site was defendant Lettire (*id.* at 16). Rosenwach was a sub-contractor hired to install a water tank on top of the building (*id.* at 43). Defendant Eagle was responsible for providing the bricks at the work site (*id.* at 32). Defendant Forward was a sub-contractor responsible for handling the plumbing and some HVAC work at the site (*id.*; Forward sub-contract). Finally, defendant Giant was the sub-contractor responsible for framing, window installation, and exterior sheeting (*id.*; Giant sub-contract).

On the morning of the accident, Mr. Adonis arrived at the job site on Flatbush Avenue. Mr. Adonis reported directly to Mr. Rosenwach, and Mr. Adonis was responsible for overseeing the installation of a new water tank on top of the building (Adonis EBT at 23). Mr. Adonis arrived at the work site in a company van. Approximately twenty minutes after his arrival a flatbed truck arrived carrying materials for the job (*id.* at 26). Mr. Adonis approached the truck and instructed the crew to loosen the straps on the materials that the truck carried so they could be loaded onto a lift operated by a Lettire employee. At this point, one or more bricks fell from approximately the twentieth floor of the work site. Mr. Adonis was struck in the hand by a falling brick and was injured (Jozan EBT at 51–53; Supervisor Accident Report from June 10th, 2015; Adonis EBT at 43–44).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making

a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Plaintiff's Motion for Summary Judgment under § 240 (1) and Defendants Hudson and Lettire's Cross-Motion under the Same (Seqs. 012 and 013)

Labor Law § 240 (1) imposes upon owners and general contractors a non-delegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]). The purpose of the statute is to safeguard workers from "gravity-related accidents [such] as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (*Ross v Curtis Palmer Hydro Electric Co.*, 81 NY2d 494, 501 [1993]).

To prevail on his Labor Law § 240(1) claim, plaintiff must prove that defendants violated the statute and that the violation was a proximate cause of the accident (*Escobar v Safi*, 150 AD3d 1081, 1082 83 [2d Dept 2017]). "With respect to falling objects, Labor Law § 240 (1) applies where the falling of an object is related to 'a significant risk inherent in . . . the relative elevation . . . at which materials or loads must be positioned or secured'" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267–68 [2001], quoting *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991] [alteration in original]). In that regard, "a plaintiff must show that, at the time the object fell, it was being hoisted or secured, or that the falling object required securing for the purposes of the undertaking" (*Banscher v Actus Lend Lease, LLC*, 103 AD3d 823, 824 [2d Dept 2013]). It is irrelevant whether the object that fell was in the process of being hoisted or was stationary prior to

falling (*Escobar v Safi*, 150 AD3d 1081, 1083 [2d Dept 2017], citing *Outar v City of New York*, 286 AD2d 671 [2d Dept 2001] [affirmed 5 NY 3d 731 (2005)]).

Plaintiff claims that an unsecured brick fell from a height and caused him injury, constituting a violation of Labor Law § 240 (1). Because he used company transport and was on the job site for the sole reason that he was employed to perform construction at that site (Adonis EBT at 18–20), Mr. Adonis contends that he was engaged in covered work at the time of the accident even if he was not actually performing an act of construction or demolition at the moment of accident. More specifically, even if Mr. Adonis was giving directions to his team at the moment of the occurrence, the fact that Mr. Adonis was engaged in the larger task of constructing a water tank places his activity within the auspices of Labor Law § 240 (1) (*see Fitzpatrick v New York*, 25 AD3d 755, 757 [2d Dept 2006]). Finally, plaintiff argues that given the undisputed testimony that the brick fell from a height, the safety equipment present was inadequate to meet the requirements of § 240(1) (*see Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1994]). Mr. Jozan testified that there was a three-inch gap between the safety netting and the wall through which the brick fell (Jozan EBT at 101–102). By alleging that he was properly at the work site, engaged in covered work, and suffered an injury because of inadequate safety equipment, plaintiff has made out a prima facie case for summary judgment on his § 240 (1) claim.

All defendants oppose plaintiff's motion on substantially the same grounds, excepting the contentions of Giant Taping and Forward that they are inappropriate defendants under § 240 (1) which will be addressed with their motions for summary judgment, below. First, defendants contend that there is no proof that the falling bricks were in the process of being hoisted or secured, nor that the bricks required securing (*Miles v Buffalo State Alumni Ass'n, Inc.*, 121 AD3d 1573 [4th Dept

2014]; *Seales v Trident Structural Corp.*, 142 AD3d 1153 [2d Dept 2016]). However, unlike the storage of drywall in *Miles* and *Seales*, the bricks in question here were stored on a scaffold on the twentieth floor of a building—a much clearer elevation-related risk than storing drywall on a cart (*Miles*) or on the landing of a stairwell (*Seales*). In a more analogous case, the court held in *Outar* that a dolly being stored on a 5½ foot high wall was an object that required securing for the undertaking of moving pieces of a track (*Outar,* 286 AD2d 671 at 672; aff'd 5 NY3d 731 [2005]). The bricks on a elevated scaffolding presented a sufficiently clear elevation-related risk to warrant Stop Work Orders (Jozan EBT at 88–89), and they should have been secured while scaffold bracing was removed (*see e.g. Castillo v 62–25 30th Avenue Realty, LLC, et al.*, 47 AD3d 865, 866 [2d Dept 2008]).

Second, defendants argue that because plaintiff was not actually constructing the water tank at the time he was injured he was not engaged in covered work and the accident is not covered by Labor Law § 240 (1). However, as indicated above, where an employee was engaged in a larger project of covered work, Labor Law § 240 (1) still applies even if the specific task of the moment did not fall under the description provided by the statute (*see Fitzpatrick*, 25 AD3d at 757 [fall from a ladder while replacing "photo cell should not be viewed in isolation from the totality of [the plaintiff's] activities," and was therefore part of the qualified work of restoring light to a parking lot]; *see also Canfield v Forman Jay, LLC*, 46 Misc. 3d 1210[A] at *3 [Sup. Ct., Kings County 2015] [construction of a temporary tiki hut as part of a movie set constituted "protected activity" under Labor Law § 240(1)]).

Here, Mr. Adonis was on the job site and instructing his crew on the process of moving materials for the tank. That undertaking was undeniably a part of the larger project of constructing

a water tower atop the building. Therefore, Mr. Adonis was engaged in work covered by Labor Law § 240. Having demonstrated that he was struck by an object that should have been secured, and that he was engaged in covered work at the time of his accident, Mr. Adonis' motion for summary judgment on his Labor Law § 240 (1) claim is granted as to liability against defendants Hudson and Lettire.

Forward and Giant Taping's Motions for Summary Judgment (Seqs. 014 and 015)

Defendants Giant Taping and Forward move for summary judgment as to both plaintiff's claims and all third-party claims against them. Specifically, Forward and Giant Taping move for summary judgment dismissing plaintiff's claims under Labor Law §§ 200, 240 (1), 241 (6), and for dismissal of third-party plaintiff's actions for indemnification and contribution. Plaintiff acknowledges that Giant Taping is an improper labor law defendant under Labor Law § 240 (1), and that claim is, therefore, dismissed on consent (Aff. in Opp. to Giant Taping's motion at ¶ 42).

Plaintiff's Claims under Labor Law § 200 and 241(6)

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]). In a case where the question arises out of means or manner of the work, the threshold question is whether the defendant had "supervisory authority" over the work that lead to the injury (*id.*).

In order to prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury (4) the proximate

cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]).

Both Labor Law §§ 200 and 241 (6) only apply to sub-contractors in situations where the sub-contractor exercised control over work sufficient to have a duty to ensure that it was safely carried out (*Myles v Claxton*, 115 AD3d 654 [2d Dept 2014]) or where there is a contractual duty delegating responsibility to "correct unsafe conditions or maintain work site safety" (*Musillo v Marist Coll.*, 306 AD2d 782, 784 [3d Dept 2003]).

Forward retained plaintiff's employer Rosenwach (Adonis EBT at 18–19). Prior to commencing work, Mr. Adonis' employer sent him to meet with representatives of Lettire several weeks prior to arriving for work (*id.* at 21). Lettire's representative testified that Lettire hired and oversaw the work of sub-contractors (Jozan EBT at 24–25). Upon arriving at the work site, plaintiff met with a Forward foreman upon arrival at the site (Adonis EBT at 18–19). The Forward foreman introduced the plaintiff to an employee of the general contractor, Lettire, who was operating the hoist with which plaintiff intended to work (*id.* at 39–42). Mr. Adonis then proceeded to act in accordance with the plan provided by the hoist operator, and did not consult with the Forward foreman for further instruction (*id.*). Because Forward retained the plaintiff's employer, and because the plaintiff received direction from a Forward foreman upon arrival at the site, Forward has failed to make a prima facie showing sufficient to warrant judgment as a matter of law, and the plaintiff has not affirmatively moved for summary judgment against Forward. Therefore, Forward's motion for summary judgment on plaintiff's claims under Labor Law §§ 200, 240 (1), and 241 (6) is denied (*cf. Lillis v City of New York*, 226 AD2d 592 [2d Dept 1996]).

As to Giant, there is no evidence to indicate that this sub-contractor was authorized to supervise either the work related to masonry or the work being performed by Mr. Adonis. No evidence indicates that Giant was even involved in either the construction of the water tank or masonry work at the site. Furthermore, the sub-contract executed between Lettire and Giant did not establish a sufficiently broad contractual responsibility to supervise the job site such that it was an agent of the general contractor. No contractual provisions have been identified that would confer such a duty on Giant. Accordingly, Giant's motion for summary judgment is granted.

Third-Party Plaintiffs' Claims against Forward

Forward also moves for summary judgment on third-party plaintiffs Hudson and Lettire's claims against it as a sub-contractor for common-law indemnification, contractual indemnification, and contribution, and breach of contract for failure to procure insurance.

To prevail on summary judgment for common-law indemnification, the sub-contractor movant must prove that Hudson and Lettire are "responsible for negligence that contributed to the accident or, in the absence of any negligence, that [it] had [no] authority to direct, supervise, and control the work giving rise to the injury" (*Poalacin v Mall Properties, Inc.*, 155 AD3d 900, 909 [2d Dept 2017]). To prevail on the claim for contractual indemnification, the sub-contractor must show that they are not liable for indemnification in this instance based on the "specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]).

As will be laid out more fully below, there is a question of fact as to whether Hudson and Lettire negligently violated Industrial Code § 23–1.7 (a), underpinning liability under Labor Law §241 (6). There is an additional outstanding question of fact as to the scope of Forward's control

over the plaintiff, as outlined in the above section.

The relevant contractual provisions in the sub-contracts executed by Lettire with Forward limit indemnification to claims "arising out of or related to the performance of the [sub]contract" (Forward subcontract at ¶ 4.6.1). Plaintiff's employer was sub-contracted by Lettire, and plaintiff would not have been on the job site but for the sub-contract executed by Forward in performance of their responsibilities under their contract with Lettire. Therefore, a question of fact exists as to whether plaintiff's injury arose out of the performance of Forward's sub-contract with Lettire.

Finally, Forward argues that Hudson and Lettire's claim for breach of contract for failure to procure insurance should be dismissed because Forward will not be required to indemnify Hudson and Lettire, and even if it were to be required to do so the damages incurred by Hudson and Lettire in having to acquire their own insurance are marginal (citing *Inchaustegui v 666 5th Ave. Ltd. P'ship*, 96 NY2d 111 [2001]). However, Forward's first argument draws an incorrect parity that does not exist between indemnification and the contractual duty to procure insurance. Second, there is no evidence Forward procured any insurance (differentiating this case from the situation in *Inchaustegui*). Accordingly, Forward is not entitled to summary judgment dismissing Hudson and Lettire's claims for common-law indemnity, contribution, contractual indemnity, or breach of contract.

Third-Party Plaintiffs' Claims against Giant

Giant also moves for summary judgment on third-party plaintiffs Hudson and Lettire's claims against it as a sub-contractor for common-law indemnification, contractual indemnification, and contribution. Unlike Forward, defendant/third-party defendant Giant was not a supervisor of plaintiff's work, and plaintiff never met with a Giant employee. Moreover,

Giant did not supervise any work done with bricks. Giant is therefore entitled to summary judgment as to the claims for common-law indemnity and contribution against it as a third-party defendant.

The relevant contractual provisions in the sub-contracts executed by Lettire with Giant limit indemnification to claims "arising out of or related to the performance of the [sub]contract" (Giant subcontract at ¶ 4.3.1). Giant did not execute a sub-contract with plaintiff or plaintiff's employer in the course of performing its responsibilities under its own sub-contract with Lettire. Therefore Giant is also entitled to summary judgment on the third-party plaintiffs' claim for contractual indemnification (*Poalacin*, 155 AD3d at 909).

Hudson and Lettire's Motion for Summary Judgment to Dismiss Claims under Labor Law §§ 200 and 241 (6) and to Strike the Answer of Eagle Masonry to the Third-Party Complaint (Seq. 016)

Defendants Hudson and Lettire argue that plaintiff's claims under Labor Law § 200 and common-law negligence should be denied because they were not the immediate supervisors of the masonry work performed by Eagle (Giant Employee Isadro Velazquez EBT at 23, 45; Jozan EBT at 40, 41, 47) (*Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 670 [2d Dept 2018] [awarding summary judgment where the plaintiff testified the general contractor gave the plaintiff "no instructions where to work, what equipment to use, or the manner in which [to do the work"]). Because this cause of action is based on the allegation of unsafe means and methods, the defendants make out a prima facie case to dismiss plaintiff's claim under Labor Law § 200 and common-law negligence. Plaintiff does not provide evidence to rebut defendants' claims, but instead points to the general duty of general contractors or owners. Therefore, these

defendants' motion for summary judgment on plaintiff's Labor Law § 200 claim is granted.

These defendants also seek summary judgment on plaintiff's claim under Labor Law § 241 (6), which is underpinned by alleged violations of Industrial Code §§ 23–1.7 (a) (1–2) (exposure to falling hazards), 23–1.19 and 23–2.6 (catch platforms), and 23–2.1(a)(the storage of equipment in a safe and orderly manner).[2] Defendants first contend that plaintiff was not engaged in enumerated activity at the time of the accident and cannot therefore perfect a prima facie case under § 246 (1). However, as has been addressed above, plaintiff's activity was part of a larger activity that was qualifying work.

Defendants' second argument is that neither the general contractor nor the owner was a supervisor of the plaintiff or the work sufficient to warrant liability under §241 (6), and moreover that neither defendant violated an enumerated section of the Industrial Code. As to the first point, it is statutorily clear that owners and general contractors have a non-delegable duty under § 241(6). The defendants' contention that the statute does not apply to them because they were not supervisors appears to be a result of sections copied verbatim from sub-contractor defendant Forward's opposition papers. Defendants also argue that they did not violate the specified sections of the Industrial Code (§§ 1.7 [a] [1–2], 1.19, 2.6, and 2.1 [a]).

Section 1.7 (a) of the Industrial Code states:

> (a) Overhead hazards.
>
> (1) Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. Such overhead protection shall consist of tightly laid

[2] Plaintiff also originally alleged violations of Industrial Code §§ 23–1.33, 23–2.1(b), and 23–2.6 which were withdrawn by plaintiff on consent. After defendants filed their opposition, plaintiff agreed in his reply to withdraw the allegation that these sections were violated.

> sound planks at least two inches thick full size, tightly laid three-quarter inch exterior grade plywood or other material of equivalent strength. Such overhead protection shall be provided with a supporting structure capable of supporting a loading of 100 pounds per square foot.
>
> (2) Where persons are lawfully frequenting areas exposed to falling material or objects but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas.

Neither party submits any evidence as to whether the area where the accident occurred was one that was "normally exposed to falling objects," as it is used in the Industrial Code, and so there is a question of fact as to whether this provision of the industrial code was violated (*see Amerson v Melito Const. Corp.*, 45 AD3d 708, 709 [2d Dept. 2007]). Therefore, this decision need not address the other alleged violations of the Industrial Code; neither party is entitled to summary judgment on this claim.

Cross-claims by Forward and Giant Taping

Defendants/third-party plaintiffs Hudson and Lettire further move for dismissal of the cross-claims against them by defendants/third-party defendants Forward, Giant, and Eagle. Hudson and Lettire argue that the language of their contracts is clear: contractual indemnification responsibilities and contractual obligations to procure insurance flow from the general contractor and owner to the sub-contractors, and not in the other direction (Forward sub-contract at ¶ 4.6.1, Schedule H; Giant Taping sub-contract ¶ 4.3.1; Eagle sub-contract at ¶ 4.6.1). These cross-claims for contractual indemnity and breach of contract should therefore be dismissed.

Because the language of the contracts does not consider the issue of negligence in assigning contractual indemnification or the requirement of insurance, and does not contemplate

those obligations flowing in both directions, Hudson and Lettire are entitled summary judgment on the issue of breach of contract as to Forward and contractual indemnification as to Giant Taping and Forward (*Dos Santos*, 85 AD3d at 722). However, there is an outstanding question of fact about the negligence of Hudson and Lettire. Above, plaintiff's claim under Labor Law § 241 (6) was not dismissed due to questions of fact about whether the area where plaintiff was injured was one normally exposed to falling objects. Because the violation of an administrative regulation is some evidence of negligence, and a question of fact remains as to whether an administrative regulation was violated to trigger a Labor Law § 241 (6) claim, Hudson and Lettire are not entitled to summary judgment on the common-law indemnification and contribution cross-claims against them (*Long v Forest-Fehlhaber*, 55 NY2d 154, 159 [1982]).

Claims by and against defendant/third-party defendant Eagle Masonry

Finally, these defendants move for the striking of defendant/third-party-defendant Eagle's answer pursuant to CPLR § 3126, and summary judgment in favor of defendant's cross-claim against Eagle and dismissing Eagle's cross-claim against them. This court has "broad discretion to oversee the discovery process" (*Bouri v Jackson*, 177 AD3d 947, 949 [2d Dept 2019], quoting *Castillo v Henry Schein, Inc.*, 259 AD2d 651, 652 [2d Dept 1999]). To wit, this court has the authority to strike defendants' answer when they refuse to obey a discovery order (*Bouri*, 177 AD3d at 949, citing CPLR § 3126), although this is a drastic remedy (*Read v Dickson*, 150 AD2d 543, 544 [2d Dept 1989]).

Unlike *Read*, where the Appellate Division vacated the striking of a defendant's answer because the defendant provided an excuse and only had one non-appearance for a deposition, defendant/third-party defendant Eagle Masonry eschewed five court orders to appear for an EBT

(Hudson and Lettire's Aff. in Supp., Exhibit DD). It is clear from the persistence of Eagle's failure to appear for court-ordered depositions that said non-appearance is a willful and contumacious disregard of the court's orders and their responsibilities as defendants, and serves to deprive opposing parties of evidence essential the prosecution of the matter at bar. Accordingly, Eagle's answer to the third-party complaint is stricken, as are Eagle's cross-claims against Hudson and Lettire. Defendants/third-party plaintiffs Hudson and Lettire are entitled to summary judgment on their claims for breach of contract and contractual indemnity.

Conclusion

The parties' motions are decided as follows:

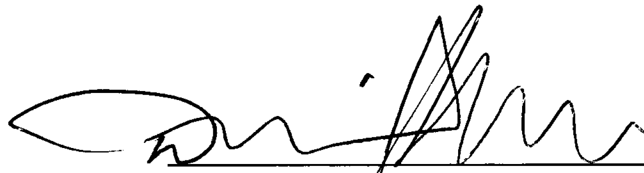
Plaintiff's motion for partial summary judgment (Seq. 012) against defendants Hudson and Lettire pursuant to Labor Law § 240 (1) is granted. Hudson's and Lettire's motion for summary judgment (Seq. 013) on the § 240 (1) claim is therefore denied.

Forward's motion for summary judgment (Seq. 014) is denied in full. Giant Taping's (Seq. 015) motions for summary judgment is granted, dismissing both plaintiff's and third-party plaintiffs' claims against it.

Defendants/third-party plaintiffs Hudson's and Lettire's motion for summary judgment (Seq. 016) is granted to the extent of dismissing plaintiff's claim under Labor Law § 200 and common-law negligence, dismissing Forward's cross-claim for breach of contract, dismissing Forward's and Giant Taping's cross-claims for contractual indemnification, and to the extent of striking defendant/third-party defendant Eagle's answer to the third-party complaint and affording the relevant relief. Motion sequence 016 is denied as to the dismissal of plaintiff's

claim under Labor Law § 241(6) and Forward's and Giant Taping's cross-motions for common-law indemnification and contribution.

This constitutes the decision of the court.



October 18, 2021
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Justice of the Supreme Court

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