SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR **PART** 34M

Justice

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KENNETH YORK,

Plaintiff,

- v -

TAPPAN ZEE CONSTRUCTORS, LLC, ACK MARINE, GENERAL CONTRACTING, LLC,

Defendants.

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INDEX NO. 154016/2018

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

TAPPAN ZEE CONSTRUCTORS, LLC

Plaintiff,

-against-

LB ELECTRIC CO., LLC,

Defendant.

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Third-Party
Index No. 595608/2018

The following e-filed documents, listed by NYSCEF document number (Motion 003) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 166, 191, 192, 193, 194, 197, 226, 227, 228

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 195, 198, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 224

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 196, 199, 218, 219, 220, 221, 222, 223, 225

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

Plaintiff, Kenneth York (plaintiff), commenced this action for personal injuries pursuant to Labor Law §§ 200/common law negligence, 240, and 241(6), stemming from a December 19, 2016 slip and fall from a barge platform while he was performing work at the Tappan Zee Bridge

Replacement Project (premises). In motion sequence 003, plaintiff now moves pursuant to CPLR 3212 for summary judgment on his claims under Labor Law §§ 240 and 241(6), premised on Industrial Code 23-1.7(d), against defendant Tappan Zee Constructors, LLC (TZC). In motion sequence 004, TZC moves pursuant to CPLR 3212 for summary dismissal of the complaint. In motion sequence 005, third-party defendant LB Electric Co., LLC (LBE), moves to dismiss TZC's third-party complaint, and TZC cross-moves pursuant to CPLR 3212 for summary judgment on the third-party claim for contractual indemnification and to dismiss the crossclaims and counterclaims. The motions and cross-motion are opposed. For the following reasons, plaintiff, TZC, and LBE's respective motions are granted in part, and TZC's cross-motion is granted.

FACTUAL BACKGROUND

Plaintiff alleges that he was injured when he was caused to slip and fall by a wet and icy condition on a barge platform as he crossed from one barge to a second while working at the premises. Plaintiff was employed by LBE to perform electrical work at the premises. TZC was the general contractor for the project.

On the date of accident, plaintiff was assigned to perform his work at Pier 32. To reach the worksite, plaintiff and other workers were transported by a crew boat from Hudson Harbor to barges moored at the pier. There were two barges lying directly next to each other at Pier 32. After departing the crew boat onto the first barge, plaintiff walked in line with the other workers towards the pier. To reach the second barge, plaintiff was required to step from the first barge, over open water, onto the second barge closer to the pier. There was no gangway connecting the first and second barge. As plaintiff was stepping from the first barge to the second barge, his foot slipped on an icy condition on the second barge, and he began to fall. Plaintiff saved himself from falling into the river below by grabbing another worker's backpack. As a result, plaintiff injured his shoulder. According to plaintiff, after being pulled onto the second barge, plaintiff felt ice on the barge with his feet. Plaintiff further testified that the area where plaintiff slipped was slippery, that the area where he slipped was dark, and that the ice was clear. Plaintiff further testified that he did not see or feel any salt or sand on the barge following his fall.

Miguel Sanchez (Sanchez), a worker employed by TZC, testified that he was directly in front of plaintiff at the time of the incident. According to Sanchez, after the incident plaintiff told Sanchez that he slipped on ice. Sanchez testified that he asked plaintiff what caused him to fall, to which plaintiff said "[h]e just lost his footing. He slipped" (NYSCEF doc. no. 117, 114:10-11). Sanchez further testified that he observed ice on the barge. Sanchez also explained that TZC laborers, the workers responsible for salting icy areas on the project, were arriving at the project at the same time as the rest of the workers and did not have the opportunity to salt the barge. Sanchez further testified that the area where plaintiff fell was dark. Sanchez stated that the light was insufficient to see the area where plaintiff fell. Sanchez explained that there was no direct light, and that while there were LED lights on the piers fifty to eighty feet away, the light did not adequately reach the barges. Sanchez further testified he could not see the ice because "[t]here wasn't enough light to see anything like that because it'll blend right in. You know, it's dark. It'll blend right in. So there was no way. It wasn't enough lighting to see anything like that" (id. at 37:6-21).

Plaintiff also signed two accident reports on the date of the incident. The Workers' Compensation – First Report of Injury or Illness states: "After leaving crew boat [at] Pier 32, while stepping from 1st barge onto 2nd barge, right foot slipped out due to ice/slick steel surface. Grabbed co-worker in front while falling to knees (split)." The Safety Committee's Accident Investigation Report states: "[At] 6:10 a.m. after departing crew boat onto material barge #1 [at] Pier 32 mainspan, and then crossing over to material barge #2, right foot slipped out causing 'split" an[d] fell to knee while grabbing onto shoulder/jacket of co-worker in front. Space between barges was approx. 2-3 feet." Both reports list "space between barges, slick conditions on steel decking, (wet, ice, salt)" as the unsafe conditions.

John McCutcheon (McCutcheon), a foreman for LBE and plaintiff's direct supervisor on the date of the incident, testified that LBE, under the direction of TZC, placed lights wherever they instructed LBE to put them. McCutcheon further testified that plaintiff told him that he had slipped on ice as he was stepping over from one barge to the other. McCutcheon further testified that it was regular for workers to cross from barge to barge without the use of a gangway.

Thomas Jason Damiani (Damiani), General Foreman for LBE, drafted an email after plaintiff's incident. According to the email, the area where the alleged ice was located was salted. Damiani obtained this information from McCutcheon. Damiani explained that the LBE workers were instructed not to walk on the barges without a gangway present, but rather to call for one to be put down. Damiani further testified that the lights were LED floodlights and were installed by LBE and that LBE was responsible for installing temporary lighting at the premises. There were various lights set up, including on the towers shining down on the piers. Damiani stated that the temporary lighting from the piers would illuminate the barges.

According to TZC's Site Safety Plan Section XIX L: "Gangways are to be utilized as access from one vessel to another when two or more vessels or other barges are lying abreast" (NYSCEF doc. no. 123).

In support of the branch of his motion pursuant to Labor Law § 240(1), plaintiff argues that TZC failed to provide a bridge between the two barges, resulting in plaintiff's fall. Plaintiff further argues that TZC breached its own safety plan by failing to provide a bridge between the two barges. Plaintiff also argues that he is entitled to summary judgement on his Labor Law § 241(6) claim premised on a violation of Industrial Code § 23-1.7(d) because the platform, an elevated surface above the water being used as a pathway to plaintiff's work area, was made slippery by ice and water, causing him to slip.

In opposition, TZC argues that plaintiff's incident did not occur as a result of a height differential because plaintiff's injury was the result of a slippery surface. TZC next argues that even if the incident was the result of a height differential, plaintiff was a recalcitrant worker and the sole cause of his incident. TZC further contends that plaintiff was not engaged in construction, excavation, or demolition work at the time of the incident, as he was on his way to work. Further, TZC contends that Industrial Code § 23-1.7(d) is inapplicable because plaintiff only speculates that ice caused him to slip. TZC further argues that plaintiff's negligence and Labor Law § 200 claims should be dismissed because there is no proof that TZC was negligent.

Specifically, TZC argues that it did not create or have actual or constructive notice of the dangerous condition which caused the incident.

In support of its motion, LBE first argues that TZC's claims for common law indemnification and contribution should be dismissed because it was plaintiff's employer at the time of loss and plaintiff did not suffer a grave injury. LBE further argues that TZC's claims for contractual indemnification should be dismissed because the indemnification provision in this action has not been triggered and pursuant to the General Obligations Law, LBE cannot indemnify TZC for its own negligence.

In support of its cross-motion, TZC argues that it is entitled to contractual indemnification against LBE because a valid and enforceable contract existed and there is no dispute as to the indemnification provisions at issue. TZC contends that the indemnification provision was triggered when plaintiff commenced this action as a result of the alleged injuries on the premises.

DISCUSSION

Summary Judgment

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Reslani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Labor Law § 240(1)

It is well established that the protection of Labor Law § 240(1) applies to tasks that "entail a significant risk inherent in the particular task because of the relative elevation at which the task must be performed or at which materials or loads must be positioned or secured" (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]). The hazards contemplated by Labor Law § 240(1) are "those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*id.*). Section 240(1) is to be construed as liberally as necessary to effectuate its purpose (*Zimmer v Chemung Cty. Performing Arts. Inc.*, 65 NY2d 513,521 [1985]).

Here, plaintiff's injuries were not the direct consequence of a failure to provide adequate protection against a risk arising from height differential; rather plaintiff's injuries were due to plaintiff slipping on the icy condition the barge (*see Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 99 [2015] [finding that Labor Law § 240(1) was inapplicable where plaintiff, who was

utilizing stilts at the time of the accident, slipped on a patch of ice, which was unrelated to any elevation risk]; *Cohen v Memorial Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 [2008] [finding that Labor Law § 240 (1) was inapplicable where injuries sustained by a worker while he attempted to climb off a ladder and could not clear the first step due to protruding pipes from a nearby unfinished wall because injuries were a result of the usual and ordinary dangers at a construction site not elevation-related hazard]; *Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 916 [1999] [finding that "plaintiff's injury resulted from a separate hazard wholly unrelated to the danger that brought about the need for the ladder in the first instance--an unnoticed or concealed object on the floor"]; *Serrano v Consol. Edison Co. of New York Inc.*, 146 AD3d 405, 406 [1st Dept 2016], *lv dismissed* 29 NY3d 1118 [1st Dept 2017] [finding that plaintiff's slip and fall was from a scaffold caused by dust and paint chips was not gravity related]). The ice that caused plaintiff to slip is indistinguishable from protruding pipes or other object on the floor, which are not hazards that call for elevation-related protected devices. Accordingly, plaintiff's motion for summary judgment on his claim pursuant to Labor Law § 240(1) claim is denied, and TZC's motion to dismiss that claim is granted.

Labor Law § 241(6)

Labor Law § 241(6) "requires owners and contractors to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). This section imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to workers engaged in the inherently dangerous work of construction, excavation or demolition (*see Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501-502 [1993]). In order to recover a claimant need not prove that the owner or contractor exercised supervision or control over the work being performed (*see Ross*, 81 NY2d at 501-502; *Long v Forest-Fehlhaber*, 55 NY2d 154 [1982]).

However, the worker must allege and prove that the owner or contractor violated a rule or regulation of the Commissioner of the Department of Labor which sets forth a specific standard of conduct, as opposed to a general reiteration of the common law (*see Ross*, 81 NY2d at 502-504; *Coyago v Mapa Properties, Inc.*, 73 AD3d 664 [1st Dept 2010] ["A Labor Law § 241(6) claim requires that there be a violation of some specific safety standard"]). The violation of a specific standard of conduct, once proven, does not establish negligence as a matter of law, but rather is some evidence of negligence to be considered with other relevant proof (*see Long*, 55 NY2d at 160).

At the outset, plaintiff's opposition does not oppose the branch of the TZC's motion to dismiss plaintiff's Labor Law § 241(6) claim premised on the violations of Industrial Code §§ 23-1.5, 23-1.5(a), 231.5(c)(1)(2)(3), 23-1.15 23-l.7(e)(l) and 23-l.7(e)(2) or any OSHA violations, and thus, plaintiff's claims under those alleged violations are dismissed (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section"]). Thus, the branch of TZC's motion for summary dismissal as to the above Industrial Code violations is granted.

TZC is also entitled to summary dismissal of plaintiff's claims pursuant to Labor Law § 241(6) premised on Industrial Code § 23-1.7(b)(1) (hazardous openings) and Industrial Code § 23-1.7(c) (drowning hazards). As discussed above, plaintiff testified that his injuries were the result of a slippery condition on the barge, and not a hazardous opening between the barges or related to the risk of drowning.

However, an issue of fact precludes summary dismissal of plaintiff's claims pursuant to Labor Law § 241(6) premised on Industrial Code § 23-1.30, entitled "illumination," which states:

> "Illumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10 foot candles in any area where persons are required to work nor less than five foot candles in any passageway, stairway, landing or similar area where persons are required to pass."

TZC meets its initial burden by establishing that they did not violate that regulation by submitting testimony that LBE set up all the temporary lighting at the premises and that the lights on the pier were working at the time of the incident. In opposition, plaintiff raises a triable issue of fact by submitting his deposition testimony in which he testified that the barge was dark and that he could not see the icy condition prior to his fall and Sanchez's testimony that there were no lighting fixtures on the barge at the time of the incident and that the lighting provided was insufficient to see the hazard. Plaintiff thus raised a triable issue of fact whether the lighting conditions fell below the regulatory standard of 10 foot candles of illumination required by Industrial Code § 23–1.30.

The Court must next determine whether the TZC is entitled to dismissal of plaintiff's remaining claim under Industrial Code § 23-1.7(d). Industrial Code § 23-1.7(d), entitled "slipping hazards," states: "Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

Here, plaintiff establishes his entitlement to summary judgment on his claim under Labor Law § 241(6), premised on Industrial Code § 23-1.7(d), by submitting both plaintiff and Sanchez's testimony demonstrating that there was ice on the platform of the subject barge. Indeed, plaintiff's testimony establishes that he was injured as he was walking on the barges' platforms, which are elevated from the water below, and he slipped on ice on the second barge. Further, plaintiff unambiguously testified that the ice was the cause of his fall. It is also undisputed that water and ice are slipping hazards as defined by Industrial Code § 23-1.7(d) and were required to be removed from the barge platform. Thus, plaintiff establishes a prima facie showing that TZC's failure to provide safe footing for plaintiff to cross from one barge to the second barge is a violation of Industrial Code § 23-1.7(d).

In opposition, TZC fails to raise an issue of fact, as defendant does not submit any proof to dispute plaintiff or Sanchez's testimony. Whether the area was salted at the time of plaintiff's

fall is immaterial, since Industrial Code § 23-1.7(d) states that employers provide a non-slippery surface to work on. Further, TZC's argument that Industrial Code § 23-1.7(d) is inapplicable because the ice that plaintiff claims he slipped on was not a "foreign substance" that needed to be "removed, sanded or covered," as the barge was an area that was exposed to the elements, is without merit (*see Potenzo v City of New York*, 189 AD3d 705 [1st Dept 2020] ["the fact that the area where plaintiff slipped was outdoors does not prevent it from coming within the ambit of 23–1.7(d)"]). Accordingly, plaintiff's motion for summary judgment on his claim pursuant to Labor Law § 241(6) claim premised on Industrial Code § 23-1.7(d) is granted, and TZC's motion to dismiss that claim is denied.

Labor Law § 200

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 (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Cases under Labor Law § 200 fall into two broad categories: those involving injury caused by a dangerous or defective condition at the worksite, and those caused by the manner or method by which the work is performed (*Urban v No. 5 Times Sq. Dev.. LLC*, 62 AD3d 553, 556 [1st Dept 2009]).

Where the defect arises from a dangerous condition on the work site, instead of the methods or materials used by plaintiff and his employer, an owner or contractor "is liable under Labor Law § 200 when [it] created the dangerous condition causing an injury or when [it] failed to remedy a dangerous or defective condition of which [it] had actual or constructive notice" (*Mendoza v Highpoint Assoc, IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011] [internal quotation marks and citation omitted]; *see also Minorczyk v Dormitory Auth of the State of N.Y.*, 74 AD3d 675, 675 [1st Dept 2010]). In the dangerous-condition context, "whether [a defendant] controlled or directed the manner of plaintiff's work is irrelevant to the Labor Law § 200 and common-law negligence claims . . ." (*Seda v Epstein*, 72 AD3d 455, 455 [1st Dept 2010]). The Court finds that plaintiff's injury was the result of a premises defect, as plaintiff was not injured as a result of the means or methods of performing work at the premises.

Here, TZC fails to establish, prima facie, that it did not have notice of the alleged defective condition. Other than TZC's assertion that there was no complaint made about the alleged condition and that no one slipped previously, TZC fails to demonstrate that it did not have constructive notice of the alleged condition. The Court notes that TZC does not argue that it did not have notice of the alleged condition because the condition was not readily apparent.

In opposition, plaintiff requests that the court search the record and grant plaintiff summary judgment on his claim under Labor Law § 200. The Court declines to do so. Even if the Court did search the record, plaintiff is not entitled to summary judgment on that claim. A plaintiff must show more than a mere general awareness that a condition may be present when attempting to establish constructive notice of a particular condition that caused injury (*see Piacquadio v Recine*, 84 NY2d 967 [1994] ["Rather, liability can be predicated only on failure of defendants to remedy specific danger after actual or constructive notice of the specific condition"]). As plaintiff relies on the general awareness that an icy condition on the barge could exist, but not a specific danger, plaintiff is not entitled to the requested relief.

Indemnification and contribution

"Contribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person [internal quotation marks and citations omitted]" (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003]). "To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident' " (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], quoting Correia v Professional Data Mgt., 259 AD2d 60, 65 [1st Dept 1999]

Workers' Compensation Law §§ 11 and 29 (6) "render workers' compensation benefits the exclusive remedy of an injured employee, thereby barring the employee from recovering against a negligent coemployee or employer. These statutes further preclude third parties from seeking contribution or indemnification from the coemployee or employer unless the employee sustained a qualifying grave injury as defined by the statute" (*Isabella v Hallock*, 22 NY3d 788, 793 [2014]).

Here, LBE establishes its prima facie showing that plaintiff was injured in the course of his employment with LBE, and that plaintiff did not suffer a "grave injury" as a result. Thus, TZC's claims for contribution and common law indemnification are barred under Workers' Compensation Law § 11. In opposition, TZC does not dispute that it may not maintain claims for common law indemnification or contribution because of the Workers' Compensation Law. Instead, TZC argues that LBE is contractually obligated to indemnify TZC.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances' " (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; *see also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). Generally, "[a] contract that provides for indemnification will be enforced as long as the intent to assume such a role is sufficiently clear and unambiguous" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007] [internal quotation marks and citations omitted]). The agreement between TZC and LBE to perform the electrical work at the project states as follows:

> "Each and every item of expense necessary for the design, coordination, engineering, supply, fabrication, field erection, application, handling, hauling, unloading and receiving, installation, construction, assembly, testing, evaluation, and quality control of Temporary Electrical Power System on existing bridge, shore power, and Westchester Systems and utility relocation hereinafter called the Work."

Article 28.0 of the agreement states that LBE agreed to "defend indemnify and hold harmless" TZC from and against any claim arising:

> "From injury to or death of persons (including employees of Company, Owner, Contractor and Contractor's subcontractors) or from damage to or loss of property (including the property of Company or Owner) arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor or its subcontractors. Contractor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Company or Owner or arising from use by Contractor of construction equipment, tools, scaffolding or facilities furnished to Contractor by Company or Owner."

(Agreement, Article 28.1.3).

The Court of Appeals has "[i]nterpreted the phrase 'arising out of' in an additional insured clause to mean 'originating from, incident to, or having connection with' " (*Regal Const. Corp. v Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 15 NY3d 34, 38 [2010], quoting *Maroney v New York Cent. Mut. Fire Ins. Co.*, 5 NY3d 467, 472 [2005]). It requires "[o]nly that there be some causal relationship between the injury and the risk for which coverage is provided" (*id.*, [internal quotation marks and citations omitted]).

TZC established that the subject incident arises out of LBE's work pursuant to the agreement. Pursuant to the indemnification clause in the subject agreement, LBE is required to indemnify TZC for claims arising out of or connected with the performance of LBE's work at the project. As the alleged incident occurred during plaintiff's walk over the icy barge to his work area, the indemnification clause was triggered by the incident (*see O'Connor v. Serge Elevator Co.*, 58 NY2d 655, 657 [1982], *amended*, 58 NY2d 799 [1983] [finding that the indemnity clause, which covered injury "arising out of the work which is the subject of this contract," was triggered where plaintiff was leaving the worksite]). Indeed, the only reason plaintiff was at the project site was because he was acting in the course of his employment for TZC's subcontractor, LBE. Thus, LBE's obligations are triggered, and TZC is entitled to contractual indemnification from LBE.

LBE's argument that New York Obligations Law (GOL) § 5-322.1 precludes indemnification herein is without merit. An agreement to indemnify in connection with a construction contract is void and unenforceable to the extent that such agreement contemplates full indemnification of a party for its own negligence (*Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 786, 795 [1997], *rearg denied* 90 NY2d 1008 [1997]). However, an indemnification provision which provides for partial indemnification to the extent that the party to be indemnified was not negligent, or in other words, "to the fullest extent permitted by law," does not violate the GOL (*see Brooks v Judlau Contr., Inc.*, 11 NY3d 204, 210 [2008] [holding that an indemnification provision "to the fullest extent permitted by law" was permissible under the GOL]). There is no dispute that the contractual language clearly provides that the indemnification obligation is only triggered "to the fullest extent permitted by law." Accordingly, the contractual indemnification provision herein does not violate GOL § 5-322.1.

Failure to procure

The Court notes that TZC does not oppose the branch of LBE's motion to dismiss TZC's claims for breach of contract and failure to procure insurance. LBE demonstrates that it properly provided insurance on behalf of TZC in compliance with all contract terms. Accordingly, TZC's claims for breach of contract and failure to procure insurance are dismissed.

Accordingly, it is hereby

ORDERED that plaintiff's motion pursuant CPLR 3212 for summary judgment on his claims against Tappan Zee Constructors, LLC, under Labor Law § 241(6), premised upon a violation of Industrial Code § 23-1.7(d) is granted, with the determination of damages to await trial, and is otherwise denied; and it is further

ORDERED that Tappan Zee Constructors, LLC's motion pursuant to CPLR 3212 for summary dismissal of the complaint is granted as to plaintiff's claims pursuant to Labor Law §§ 240 and 241(6) premised upon a violation of Industrial Code §§ 23-1.5, 23-1.5(a), 23-1.7(e)(1)(2), 23-1.7(b)(1), 23-1.7(c), 23-1.5(c)(1)(2)(3), 23-1.15 23-1.7(e)(l), and any OSHA violations; and it is further

ORDERED that Tappan Zee Constructors, LLC's cross-motion pursuant to CPLR 3212 for summary judgment on its claims for contractual indemnification against LB Electric Co., LLC, is granted; and it is further

ORDERED that LB Electric Co., LLC's motion pursuant to CPLR 3212 for summary dismissal of the third-party complaint is granted as to Tappan Zee Constructors, LLC's third-party claims for breach of contract (failure to procure insurance), common-law indemnification, and contribution.

This constitutes the decision and order of the Court.

1/13/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE