

Vargas v 622 Third Ave. Co. LLC

2023 NY Slip Op 30958(U)

March 28, 2023

Supreme Court, New York County

Docket Number: Index No. 158087/2016

Judge: Paul A. Goetz

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. PAUL A. GOETZ</u>	PART	47
	<i>Justice</i>		
-----X		INDEX NO.	<u>158087/2016</u>
JASON VARGAS,			12/20/2021,
	Plaintiff,	MOTION DATE	<u>12/20/2021</u>
			12/20/2021
- v -		MOTION SEQ. NO.	<u>002 003 004</u>
622 THIRD AVENUE COMPANY LLC, J.T. MAGEN & COMPANY INC, THE INTERPUBLIC GROUP OF COMPANIES,			

**DECISION + ORDER ON
MOTION**

622 THIRD AVENUE COMPANY LLC, J.T. MAGEN & COMPANY INC, THE INTERPUBLIC GROUP OF COMPANIES,	
Defendants.	
-----X	

622 THIRD AVENUE COMPANY LLC	Third-Party
Plaintiff,	Index No. 595936/2017
-against-	

JK FLOORING, INC., ARCHITECTURAL FLOORING RESOURCE, INC.	
Defendants.	
-----X	

THE INTERPUBLIC GROUP OF COMPANIES	Second Third-Party
Plaintiff,	Index No. 595269/2018
-against-	

J.T. MAGEN & COMPANY, INC.	
Defendant.	
-----X	

The following e-filed documents, listed by NYSCEF document number (Motion 002) 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 297, 303, 308, 310, 349, 353, 354, 355, 356, 357, 358, 359, 360, 386

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 298, 301, 302, 304, 307, 311, 315, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330,

331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 351, 352, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 004) 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 299, 300, 305, 306, 309, 312, 314, 316, 317, 350, 361, 362, 363, 364, 365, 366, 367, 368, 370

were read on this motion to/for DISMISSAL.

This is an action to recover damages for personal injuries allegedly sustained by a union floor installer on Saturday, December 7, 2013, when, while working at a construction site located at 622 Third Avenue, New York, New York (the Premises), he slipped in a puddle of water at the top of a fire egress stairway, causing him to fall down the stairs.

In motion sequence number 002, third-party defendant Architectural Flooring Resource, Inc. (Architectural) moves, pursuant to CPLR § 3212, for summary judgment dismissing the third-party complaint against it. Architectural also seeks summary judgment in its favor on its contractual indemnification crossclaim against third-party defendant JK Flooring Inc. (JK Flooring).

In motion sequence number 003, defendant/second third-party defendant J.T. Magen & Company, Inc. (JT Magen) moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaint, the second third-party complaint and all crossclaims asserted against it.

In relation to motion sequence number 003, defendant/second third-party plaintiff The Interpublic Group of Companies, Inc. (Interpublic) cross-moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaint as against it, as well as for summary judgment in its favor on its contractual indemnification claim as against JT Magen.

In motion sequence number 004, JK Flooring moves, pursuant to CPLR § 3212, for summary judgment dismissing the third-party complaint and all crossclaims against it.

In relation to motion sequence number 004, defendant/third-party plaintiff 622 Third Avenue Company, LLC (622 Third Ave) cross-moves, pursuant to CPLR § 3212, for summary judgment in its favor on its contractual indemnification claim against JK Flooring.

The motions are consolidated for disposition.

BACKGROUND

On the day of the accident, the Premises was owned by 622 Third Ave. 622 Third Ave leased several floors of the Premises (including the 20th and 22nd floors) to Interpublic. Interpublic, in turn, subleased those floors to its wholly owned subsidiary, non-party McCann Erickson (McCann). McCann hired JT Magen to provide construction services in connection with a project at the Premises that entailed, among other things, the interior renovation of the 20th floor (the Project). Separately, McCann also hired Architectural to perform flooring installation work on the Project. Architectural subcontracted the flooring installation work to JK Flooring. Plaintiff was an employee of JK Flooring.

Plaintiff's Deposition Testimony

Plaintiff Jason Vargas testified that on the day of the accident, he was employed by JK Flooring as a carpet installer. His direct supervisor was John Knopf, the owner of JK Flooring. JK Flooring was hired by Architectural to install carpet at the Project (plaintiff's tr at 141).

The day before the accident, Knopf informed plaintiff of the scope of JK Flooring's work at the Project, which included installing carpet on the 20th floor. Knopf also directed plaintiff to "see the super in the morning" at the Project for further information (*id.* at 27). The superintendent, "Mike," worked for JT Magen, the general contractor (*id.* at 28)

On the day of the accident – which was his first day at the Project (*id.* at 24) – Plaintiff entered the Premises, rode the freight elevator to the 20th floor and spoke with Mike. Mike

directed plaintiff towards the areas where plaintiff would need to install carpet, and then left plaintiff to do his work (*id.* at 31). Plaintiff was the sole JK Flooring employee at the Project that day. He saw other trades present at the Premises but did not know who they were or what they were doing.

Plaintiff testified that the accident occurred after a few hours of work. Specifically, the accident occurred inside a stairwell on the 22nd floor “leading downwards” (*id.* at 25). Plaintiff explained that Mike informed him that the bathrooms on the 20th floor were not functional but that a bathroom on the 22nd floor was available for use (*id.* at 101).

A few hours into the day, plaintiff needed to use the bathroom. He did not specifically recall how he got to the 22nd floor (*id.* at 104), though he testified that he might have used “the freight [elevator] if they weren’t transporting the material at that moment” (*id.* at 103).

Plaintiff explained that to get from the 22nd floor back to the 20th floor, Mike told him he could use “a specific staircase . . . right next to the freight elevators” (*id.* at 38). He later explained that he was “instructed that if the elevators [] were being used, that [he] could use the stairwell” (*id.* at 223). Plaintiff also testified that he could use either the staircase or the freight elevator to reach the 22nd floor (*id.* at 227).

Plaintiff decided to use the stairway to return to the 20th floor. He opened the door to the stairway and noted that it was “very dark” (*id.* at 47), though he could see the landing and the stairway itself. He took two or three steps past the doorway onto the landing and, as he neared the first step down, he “slipped right down the staircase” hitting his head, neck and back on the stairs as he fell (*id.* at 49).

Plaintiff did not see anything on the landing or the stairway prior to the accident. After he stood up and looked around, plaintiff saw that there was “[w]ater leaking from the standpipe

which was located behind the door” (*id.* at 58). Specifically, a valve on the pipe leaked, creating a pool of water on the landing approximately six inches wide (*id.* at 67, 70).

Plaintiff took several pictures of the puddle immediately after the accident. He then reported the accident to Mike, the JT Magen superintendent. Mike then investigated the accident scene, took photographs and prepared an accident report. Mike also told plaintiff that he had asked “the building to fix this” earlier in the morning of the day of the accident (*id.* at 92).

After receiving a copy of the accident report, plaintiff left the job site and went to the hospital under his own power. He was able to return to work one week later.

Deposition Testimony of Kenneth Kay (622 Third Ave’s Witness)

Kenneth Kay testified that on the day of the accident, he was a vice president of non-party Cohen Brothers Realty Corp. (Cohen Brothers). Cohen Brothers is a real estate owner/developer/manager. According to Kay, Cohen Brothers managed the Premises, but did not have any employees there. It also did not hire anyone to manage the Premises.

Kay testified that 622 Third Ave entered into a lease agreement with Interpublic. Pursuant to the lease, Interpublic was allowed to conduct construction projects for its benefit at its leased portion of the Premises. Kay reviewed a copy of the lease agreement and confirmed it was the agreement between 622 Third Ave and Interpublic (the 622 Third Ave/Interpublic Agreement) that was in force at the time of the accident (Kay tr at 14). Kay confirmed that the 622 Third Ave/Interpublic Agreement required 622 Third Ave to maintain all “fire stairs” (*id.* at 32). He further testified that tenants such as Interpublic had no responsibility to maintain common areas.

Interpublic also leased out a portion of its leasehold at the Premises to McCann (*id.* at 28). Kay was not familiar with the a lease between Interpublic and McCann.

The building management was handled directly by 622 Third Ave. 622 Third Ave was responsible for the maintenance and repair of the common areas of the Premises (*id.* at 19). 622 Third Ave hired a maintenance company and a plumbing contractor to handle any issues at the Premises (*id.* at 21).

Kay was unfamiliar with any construction work going on at the Premises and was not familiar with any of the contractors working on the Project. If any contractor noticed a problem in a common area (not an under-construction area) such problem should be “reported to the property manager” (*id.* at 53). The property manager would then remedy the issue or schedule a contractor if needed. On a weekend, there would not typically be any building staff, except a building engineer (*id.* at 67).

Kay did not know any specifics about plaintiff’s accident.

Deposition Testimony of Andrew Peters (622 Third Ave’s Chief Engineer)

Andrew Peters testified that on the day of the accident, he was 622 Third Ave’s chief engineer at the Premises, which he described as a 40-story tall commercial building. His supervisor was the building manager, also employed by 622 Third Ave. Peters’ duties included overseeing the Premises’ systems, including “the plumbing systems” and “fire systems” (Peters tr at 18). His responsibilities included “inspections” of standpipes (*id.* at 23). These inspections were typically done weekly by building staff (*id.* at 110).

Peters also testified that the stairwell where the standpipe was located was “an emergency exit” that was not supposed to be regularly used (*id.* at 30). There were signs posted on both sides of the door stating “that the stairwell was off limits” (*id.* at 31).

Peters recalled the Project but did not remember many specifics. He did recall that JT Magen had requested that the sprinkler system on the subject floors be shut off – called a “drain

down” (*id.* at 50) – on a daily basis for the duration of the Project. This entailed turning off the valve on the standpipes on any floor where work was being done. Then Peters, or another worker, would perform an inspection of the floor to make sure that the sprinklers drained. A second inspection would happen “a half hour later” (*id.* at 50). Tenants and contractors were not allowed to manipulate the standpipes or sprinkler systems (*id.* at 135). The standpipes were located inside the emergency exit stairwells.

Sometimes, a 622 Third Ave employee would have to perform a drain down on the weekend. Peters was shown an email and confirmed that there was a request to drain down the sprinklers on the 22nd floor on Saturdays (*id.* at 82).

Peters was unaware of plaintiff’s accident. At the deposition, Peters was shown a photograph depicting the subject standpipe and puddle of water. He testified that the standpipe itself was unlikely to have leaked. Rather, he explained, the “valves” attached to the standpipe likely leaked (*id.* at 64).

Peters also testified that there was a single freight elevator at the Premises, and that it was controlled by an operating engineer, employed by 622 Third Ave. It would not normally run on weekends, but JT Magen had specifically requested it for Saturdays during the Project.

Peters did not recall whether he was informed of any standpipe or sprinkler leak issues by JT Magen (*id.* at 99). If he had been informed of a leak, “[t]he repair would be noted in the logbook” (*id.* at 118).

Deposition Testimony of Judy Ferber (Interpublic’s Witness)

Judy Ferber testified that on the day of the accident she was employed as the “vice president, agency operations manager” for non-party McCann World Group (World Group), an advertising agency (Ferber tr at 10). World Group is a subsidiary of McCann. McCann is a

wholly owned subsidiary of Interpublic. Interpublic leased 16 floors of the Premises. Prior to taking possession of those floors, Interpublic renovated seven floors (*id.* at 19).

Ferber's duties as operations manager included coordinating with the various construction companies and project managers on the Project, including JT Magen. Ferber testified that, to her understanding, JT Magen hired all subcontractors, including Architectural (*id.* at 27), but she was uncertain. Ferber was present at the Premises on the day of the accident, but she did not witness it. She learned about it later that day.

The Project did not entail any work in the stairwells (*id.* at 28). The Project did require that the sprinkler systems be drained. McCann or the general contractor would "notify the building office" that the sprinklers needed to be drained, and then 622 Third Ave would "drain it and put it back on when the work was completed" (*id.* at 29). 622 Third Ave charged McCann a fee for draining the sprinklers (*id.* at 31).

Ferber also testified that 622 Third Ave instructed that workers were not allowed to use the passenger elevators. The freight elevator was operational on the day of the accident, but there were "long waits" for it to reach a floor (*id.* at 43). She was unsure if workers were prohibited from using the stairs.

McCann's leased space did not include the fire-exit stairwells (*id.* at 88). Had anyone from McCann seen a hazard in the stairwell, they would have informed 622 Third Ave (*id.* at 89).

Finally, Ferber testified that there were two stairwells at the Premises – one on the north side (where the accident occurred) and one on the south side. McCann's employees often used the south stairwell to travel between floors (*id.* at 69). They were not allowed to use the north stairwell because it was the designated emergency fire exit (*id.* at 90).

Deposition Testimony of Michael Tedaldi (JT Magen's Project Superintendent)

Michael Tedaldi testified that on the day of the accident, he was a project superintendent for JT Magen. JT Magen is a general contractor and construction management company. It was hired to provide general contractor services for an “interior fit-out” on several floors of the Premises, including the 20th and 22nd floors (Tedaldi tr at 22 and 39). He was present at the Project most days, including the day of the accident. He did not witness the accident, and he was unaware if anyone saw it (*id.* at 95).

His duties on the Project included overseeing daily activities at the Project, as well as “safety, scheduling, and quality assurance” on the 20th floor (*id.* at 20). His job also entailed communicating with McCann – specifically with Ferber – regarding drain downs and use of the freight elevator (*id.* at 29-30). JT Magen’s work did not include anything dealing with “base building infrastructure” such as standpipes (*id.* at 41). His work further included coordinating the trades, including trades that were not hired by JT Magen (*id.* at 227).

Tedaldi was familiar with Architectural and JK Flooring. He did not know who hired them, but he believed that they were hired by McCann (*id.* at 153).

According to Tedaldi, the “[t]ypical building protocol was for use of freight elevators only” to travel between floors (*id.* at 44). This information was commonly known, as “it was posted on signage on all the doors” (*id.* at 44). Tedaldi also testified that he would tell this to workers. Tedaldi would arrange with 622 Third Ave if the Project needed to use the freight elevator on the weekend (*id.* at 128).

Tedaldi learned of the accident shortly after it happened and met with and spoke to plaintiff. He also viewed the accident location and took photos of its condition. He did not recall any issues with water leaking in the stairwells prior to the accident (*id.* at 58).

Tedaldi reviewed a copy of JT Magen's accident report and confirmed that he filled it out. He also confirmed that he personally witnessed the puddle that plaintiff slipped in and that its source was the valve on the standpipe (*id.* at 65 ["I noticed water dripping from the sprinkler system . . . out of the valve assembly"]). He had not seen any water leaking from the standpipe prior to plaintiff's accident (*id.* at 111). He also recalled that the stairwell was well lit (*id.* at 178).

Tedaldi also testified that JT Magen was not responsible for the emergency staircases because "[t]hey were not part of the project" (*id.* at 67 and 125 ["it was not part of the project scope"]).

Finally, Tedaldi did not remember telling plaintiff that he was aware of the leak prior to the accident or that he had informed 622 Third Ave of the problem (*id.* at 108-109). He believed that 622 Third Ave had the responsibility to clean up the puddle from the leak (*id.* at 197), and he had no recollection of directing one of JT Magen's laborers to clean it (*id.* at 198).

Deposition Testimony of Mark Koreich (JK Flooring's Project Manager)

Mark Koreich testified that on the day of the accident, he was the project manager for JK Flooring at the Project. His duties included ensuring that "jobs run per schedule, per budget and are done correctly" (Koreich tr at 12-13). JK Flooring is a flooring installation company, focusing on carpet, vinyl and wood flooring. His supervisor was John Knopf, the owner of JK Flooring.

JK Flooring was hired by Architectural, via a purchase order, to install carpet on the 20th floor of the Premises. Architectural provided the materials for the Project while JK Flooring provided the labor (*id.* at 22). An Architectural project manager would be present "a couple times a week" (*id.* at 31).

Koreich testified that he would work with the JT Magen supervisor with respect to scheduling – i.e. where and when JK Flooring workers would install the carpeting (*id.* at 30). Otherwise, JK Flooring typically had a foreman onsite that would direct its own workers (*id.* at 62).

According to Koreich, if JK Flooring had any questions, they would typically ask JT Magen. He also testified that JT Magen could stop work if it saw a dangerous condition or activity.

Koreich was not present at the Premises on the day of the accident. He did not learn about it until several years later (*id.* at 40). Prior to reading documents presented at the deposition, he did not know anything about how the accident occurred.

Deposition Transcript of Selina Ramoutar (Architectural’s General Manager)

Selina Ramoutar testified that at the time of the accident, she was Architectural’s general manager. Her duties included oversight of human resources, accounting and legal issues (Ramoutar tr at 12). Architectural is a “flooring dealer,” specializing in commercial spaces, such as office buildings (*id.* at 12). They perform no labor. The actual installation is performed by subcontractors that Architectural hires (*id.* at 13). Architectural hired JK Flooring to install flooring at the Project, via a work order (*id.* at 17). Ramoutar was unsure who hired Architectural, though her review of documents presented to her at the deposition, she identified McCann as the “end user” i.e. the “final client who is actually going to be using the carpet” (*id.* at 36).

Ramoutar also testified that Architectural was not present at the Premises every day, and its project manager did not have the authority to direct or control JK Flooring’s work. If

Architectural saw JK Flooring installing flooring incorrectly, it could only inform JK Flooring's foreman.

Architectural did not receive notice that plaintiff was injured. Ramoutar first received notice of plaintiff's accident in 2017, four years after the accident (*id.* at 29).

Ramoutar was shown an agreement between Architectural and JK Flooring. She acknowledged that it contains a blanket indemnity agreement (*id.* at 27).

The McCann/JT Magen Agreement

In pertinent part, the agreement between McCann and JT Magen (the McCann/JT Magen Agreement) requires JT Magen to abide by the "Landlord's rules and regulations relating to construction" (JT Magen's notice of motion, exhibit K, § 8.2 [b]). These rules and regulations were annexed to the agreement as exhibit D and provide, in relevant part, the following:

"NOTE: Absolutely no one, but the Building Engineer is permitted to touch the Building's sprinkler system for any reason, at any time"

(*id.*, exhibit K-1 [emphasis in original]).

DISCUSSION

"It is well settled that 'the 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'" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a

trial of the action” (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010]). “The court’s function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility” (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Procedural Issues

Timeliness of Interpublic’s Cross Motion

Plaintiff and 622 Third Ave argue that Interpublic’s cross-motion, which seeks summary judgment dismissing the complaint and summary judgment in Interpublic’s favor on its contractual indemnification claims against JT Magen, is untimely.

No fewer than five discovery conference orders including the last order on March 23, 2021 required that dispositive motions be filed within 60 days of the note of issue. Plaintiff filed the note of issue on April 30, 2021, therefore the time to file dispositive motions expired on June 29, 2021. JT Magen timely filed its summary judgment motion on June 18, 2021. Interpublic cross-moved against JT Magen on November 5, 2021, several months late.

In *Brill v City of New York* (2 NY3d 648, 652 [2004]), the Court of Appeals determined that courts should not consider late summary judgment motions without “a satisfactory explanation for the untimeliness” – i.e. showing good cause for the delay – even if it means

permitting less than meritorious claims or defenses to continue to trial. A late cross-motion seeking relief that is nearly identical to the relief sought in a timely motion for summary judgment is not untimely (*see Altschuler v Gramatan Mgt., Inc.*, 27 AD3d 304, 304 [1st Dept 2006] [cross motion that “was largely based on the same arguments raised in [the movant’s] timely motion” was not untimely and was properly considered]).

Here, Interpublic fails to establish good cause for its delay in filing its motion. Its argument that this case is complex is insufficient to establish good cause for the delay, especially in light of the other parties’ ability to timely file their motions.

Interpublic’s argument that its untimely cross-motion should be considered because it is largely identical to the JT Magen motion is partially correct. The court may consider that part of Interpublic’s cross-motion that is directly addressed to the JT Magen motion’s claims as against Interpublic, as JT Magen moves for similar relief as to its claims against Interpublic (*Altschuler*, 27 AD3d at 304). However, the court cannot consider the part of Interpublic’s cross-motion that seeks relief against plaintiff and other non-movants. “The rule is that a cross motion is an improper vehicle for seeking relief from a nonmoving party” (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 88 [1st Dept 2013]).

“A cross motion is merely a motion by any party against the party who made the original motion Allowing movants to file untimely, mislabeled ‘cross motions’ without good cause shown for the delay, affords them an unfair and improper advantage. Were the motions properly labeled they would not be judicially considered without an explanation for the delay”

(*id.* at 87-88 [internal quotation marks and citations omitted]).

Accordingly, only that part of Interpublic’s cross-motion that seeks relief as against the direct movant, JT Magen will be considered and the remainder of its cross-motion will be denied.

The Labor Law § 240 (1) Claim (Motion Sequence Number 003)

JT Magen moves for summary judgment dismissing the complaint as against it.

Labor Law § 240 (1), also known as the Scaffold Law, provides, as relevant:

“All contractors and owners and their agents . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing 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.”

Labor Law § 240 (1) “imposes a nondelegable duty on owners and contractors to provide devices which shall be so constructed, placed and operated as to give proper protection to those individuals performing the work” (*Quiroz v Memorial Hosp. for Cancer and Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022] [internal quotation marks and citations omitted]). It “was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

The absolute liability under section 240 “is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*O'Brien v. Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 33 [2017] [internal quotation marks and citation omitted]). In addition, Labor Law § 240 (1) “must be liberally construed to accomplish the purpose for which it was framed” (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006] [internal citations omitted]).

But not every worker who falls at a construction site is afforded the protections of Labor Law § 240 (1), and “a distinction must be made between those accidents caused by the failure to

provide a safety device . . . and those caused by general hazards specific to a workplace” (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]; *Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 267 [1st Dept 2007] [section 240 (1) “does not cover the type of ordinary and usual peril to which a worker is commonly exposed at a construction site”). Instead, liability “is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Therefore, to prevail on a section 240 (1) claim, a plaintiff must establish that the statute was violated, and that this violation was a proximate cause of the plaintiff’s injuries (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]).

As an initial matter, JT Magen argues that it is not a proper Labor Law defendant such that Labor Law §§ 240 (1) or 241 (6) could apply to it. It argues that the Project itself did not involve the stairwell and that JT Magen had no contractual responsibility to maintain it (*see e.g. Balthazar v Full Circle Constr. Corp.* 268 AD2d 96, 98 [1st Dept 2000] [a claim will not lie against a general contractor where the work that caused the injury was “outside the scope of the general contractor’s contract”] [citation omitted]).

JT Magen also argues that it was not an agent of the owner with respect to the stairwell, and was not responsible for that area, for the standpipe, or for any of the valves connected to the standpipe (*see Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 193 [1st Dept 2011] [an entity becomes a statutory agent under the Labor Law when it has been “delegated the supervision and control either over the specific work area involved or the work which [gave rise] to the injury”] [internal quotation marks and citation omitted]).

The record establishes that 622 Third Ave was responsible for the maintenance and operation of the common areas of the Premises, including the stairwell where plaintiff's accident occurred and the subject standpipe (Kay tr at 19 [testifying that 622 Third Ave was responsible for maintaining all common areas at the Premises], and 32 [acknowledging that 622 Third Ave maintained all "fire stairs"]; Peters tr at 18 [stating that his duties on behalf of 622 Third Ave included overseeing "the plumbing systems" and "fire systems"] and 23 [his responsibility included "inspections" of standpipes]). The record also establishes that JT Magen, the general contractor for the Project, did not have any contractual obligations with respect to the accident location such that it assumed any duties from 622 Third Ave with respect to that area (Ferber tr at 28 [noting that the Project did not entail any work in the subject stairwell], 29 [noting that 622 Third Ave would turn off the water to the floor and was responsible for turning it back on]; Tedaldi tr at 41 [JT Magen's work did not include work on "base building infrastructure" such as standpipes]), 67 and 125 [the stairwells were "not part of the project" and "not part of the project scope"]]).

The Project's scope of work explicitly did not include the safety or maintenance of the stairwell where plaintiff's accident occurred, or the maintenance or operation of the standpipe and its valves. JT Magen, as the general contractor of the Project, therefore, was never delegated the authority to supervise or control the stairwell, the operation of the standpipe's valves, or the cleaning or maintenance of the stairwell – duties that were left to the control of the Premises' owner (*Balthazar*, 286 AD3d at 98; *Nascimento*, 86 AD3d at 193).

Therefore, because plaintiff's accident arose from a leak that existed in an area outside the scope of JT Magen's contractual purview and was caused or created by the actions of workers not under its control, JT Magen is not a proper Labor Law defendant in this action.

Accordingly, JT Magen is entitled to summary judgment dismissing the Labor Law §§ 240 (1) and 241 (6) claims against it.¹

The Common-Law Negligence and Labor Law § 200 Claims

JT Magen moves for summary judgment dismissing the common-law negligence and Labor Law § 200 claims against it.

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” (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *see also Bradley v HWA 1290 III LLC*, 157 AD3d 627, 630 [1st Dept 2018]). Labor Law § 200 (1) states, in pertinent part, as follows:

“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.”

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the premises (*see Ruisech v Structure Tone Inc.*, 208 AD3d 412, 414 [1st Dept 2022]; *Cappabianca v Skanska USA Bldg., Inc.*, 99 AD3d 139, 144 [1st Dept 2012]).

Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor is only “liable if it actually exercised supervisory control over the injury producing

¹ None of the other motions or cross motions seeks relief with respect to (or addresses the merits of) plaintiff's section 240 (1) or 241 (6) claims.

work” (*Ruisech*, 208 AD3d at 414 [internal quotation marks omitted]; *Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d 542, 543 [1st Dept 2022] [“Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work”] [citations omitted]).

Where an injury stems from a dangerous condition on the premises, an owner may be liable in common-law negligence and under Labor Law § 200 ““when the owner [or contractor] created the dangerous condition causing an injury or when the owner [or contractor] failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice”” (*Bradley*, 157 AD3d at 630; quoting *Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]).

Here, the accident occurred when plaintiff slipped on a puddle of water in the emergency stairwell on the 22nd floor of the Premises. Therefore, this accident implicates both the means and methods of the work (access to plaintiff’s work area) and a dangerous condition inherent in the Premises (a leaking pipe that created the puddle).

With respect to the means and methods analysis, plaintiff testified that he was instructed to see JT Magen, the general contractor (Mike), to obtain information about the Project. According to plaintiff, Mike informed him that the bathroom on the floor where plaintiff was working (the 20th floor) was not functional but that he could use the bathroom on the 22nd floor. Plaintiff further testified that Mike told him to use the staircase where plaintiff’s accident occurred to access the bathroom on the 22nd floor. Indeed, JT Magen acknowledges that its work included coordinating the work of the subcontractors including those not hired by JT Magen.

With respect to the dangerous condition analysis JT Magen did not create the leak that caused plaintiff to slip and fall. However, plaintiff testified that JT Magen knew of the condition. While JT Magen argues it did not have a duty to maintain the stairwell where plaintiff's accident occurred, since it supervised the subcontractors on the Project, a question of fact remains as to whether it had either actual or constructive notice of the puddle in the stairwell where plaintiff's accident occurred and whether it breached a duty to ensure that the condition was remedied.

Because JT Magen had supervisory control over plaintiff's means of access to his work area and questions of fact exist as to whether it had notice of the condition and failed to remedy it, plaintiff's common-law negligence and Labor Law § 200 claims cannot be dismissed on summary judgment (*see Miano v Skyline New Homes Corp.*, 37 AD3d 563, 566 [2nd Dept 2007] [holding general contractor failed to establish entitlement to summary judgment on plaintiff's Labor Law § 200 and common-law negligence claims where it failed to show "it had no supervisory control over the plaintiff's means of access to [his work area]").

Accordingly, JT Magen is not entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claims against it.

622 Third Ave's Third-Party Claims for Contractual Indemnification Against Architectural (Motion Sequence Number 002)

Architectural moves for summary judgment dismissing 622 Third Ave's contractual indemnification claim against them.

"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'" (*Karwowski v 1407 Bdwy. Real Estate, LLC*, 160 AD3d

82, 87 – 88 [1st Dept 2018]; quoting *Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987]; *see also* *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]).

“In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]; *see also* *Lexington Ins. Co. v Kiska Dev. Group LLC*, 182 AD3d 462, 464 [1st Dept 2020][denying summary judgment where indemnitee “has not established that it was free from negligence”]).

Further, unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, “[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant” (*Correia*, 259 AD2d at 65).

Architectural argues that it does not have a contract with 622 Third Ave and, therefore, there is no applicable contractual indemnification provision between these parties. In opposition, 622 Third Ave does not raise any argument with respect to contractual indemnification and does not otherwise oppose the dismissal of this claim.

Accordingly, Architectural is entitled to summary judgment dismissing 622 Third Ave’s contractual indemnification claim against it.

Architectural and 622 Third Ave’s Contractual Indemnification Claims against JK Flooring (Motion Sequence Number 002 and 004 and 622 Third Ave’s Cross-Motion)

Architectural moves for summary judgment on its cross-claim for contractual indemnification against JK Flooring. 622 Third Ave moves for summary judgment on its third-party claim for contractual indemnification against JK Flooring. JK Flooring moves for summary judgment dismissing both claims.

Additional facts relevant to this claim

Architectural and JK Flooring entered into a “Subcontractor Indemnity Agreement” on June 4, 2012 (the Architectural/JK Flooring Indemnity Agreement) (JK Flooring’s notice of motion, exhibit AA; NYSCEF Doc. No. 209). It provides the following in pertinent part:

All Contracts, Purchase Orders, Work Orders, Job Orders, etc. accepted by [JK Flooring] shall be presumed accepted subject to all terms and conditions of this Blanket Agreement.

* * *

7. Contractual Indemnification Agreement
[JK Flooring] shall indemnify and hold harmless Architectural Flooring, owner, owner’s consultants, the building landlord, and their directors, officers, employees, agents and representatives, and any other parties required by contract from and against all claims . . . arising out of or resulting from the performance of the Work, provided that any such claim . . . [is] caused in whole or in part by any negligent act or omission of [JK Flooring] . . . excluding, however, the sole negligence of the parties indemnified hereunder

(*id.*).

Procedural Issues

As an initial matter, JK Flooring argues that this provision was not in force and effect at the time of the accident. Specifically, it argues that the Architectural/JK Flooring Indemnification Agreement was “only in effect for one year and expired on June 4, 2013” (months before the accident) (affidavit of JK Flooring’s owner, John Knopf, ¶ 6; NYSCEF Doc. No. 180). JK Flooring provides no foundation or evidence to support John Knopf’s statement that the indemnification provision expired after one year. Further, the agreement itself has no language supporting such an understanding. JK Flooring seeks to improperly add a condition to the agreement that does not appear on its face and therefore, its argument that the Architectural/JK Flooring Indemnification Agreement expired after one year is rejected (*Cohen-Davidson v Davidson*, 291 AD2d 474, 475 [2d Dept 2002] [“A court may not write into

a contract conditions the parties did not insert by adding or excising terms under the guise of construction, and it may not construe the language in such a way as would distort the contract's apparent meaning”). Since it is uncontested that JK Flooring was performing work at the Premises pursuant to an Architectural work/purchase order with respect to the Project, the Architectural/JK Flooring Indemnification Agreement was in full force and effect at the time of the accident.

Pursuant to General Obligations Law § 5-322.1, an indemnification provision in a construction contract which purports to indemnify a party for its own negligence is against public policy and is void and unenforceable (*Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 786, 795 [1997], *rearg denied* 90 NY2d 1008 [1997]). However, an indemnification agreement that authorizes partial indemnification “to the fullest extent permitted by law” is enforceable (*Brooks v Judlau Contr., Inc.*, 11 NY3d 204, 210 [2008]; *Francis v Plaza Constr. Corp.*, 127 AD3d 427, 428 [1st Dept 2014]; *Guzman v 170 W. End Ave. Assoc.*, 115 AD3d 462, 464 [1st Dept 2014]; *Dutton v Pankow Bldrs.*, 296 AD2d 321, 322 [1st Dept 2002], *lv denied* 99 NY2d 511 [2003]). Furthermore, even if the clause does not contain this limiting language, it may nevertheless be enforced where the party to be indemnified is found to be free of any negligence (*Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 179 [1990]).

Architectural is entitled to summary judgment on its indemnification claim against JK Flooring since it has established that it was free from any negligence as it did not perform any labor or supervision at the Project (*Correia v Professional Data Mgmt., Inc.*, 259 A.D.2d 60, 65, 693 N.Y.S.2d 596 [1st Dept 1999] [holding "the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability. Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant").

JK Flooring is not entitled to summary judgment dismissing the indemnity claims against it because issues of fact remain regarding whether it was negligent. It instructed plaintiff to go to the Project and see JT Magen the general contractor for further instructions and did not have anyone at the project supervising plaintiff. Since 622 Third Ave's chief engineer testified that the stairwell where plaintiff's accident occurred had a sign posted that it was "off limits" and JT Magen's project superintendent also testified regarding signage posted and that he also would tell workers not to use the stairwells and to use the freight elevators instead, plaintiff's use of the stairwell "can imputed to [JK Flooring] his employer for purposes of contractual indemnity" (*Mercado v Caithness Long Island, LLC*, 104 AD3d 576, 578 [1st Dept 2013]).

622 Third Ave is not entitled to summary judgment on its indemnity claim against JK Flooring because a question of fact remains as to whether it was negligent. One of 622 Third Ave's own witnesses (Kenneth Kay) acknowledged that it was 622 Third Ave's responsibility to maintain the fire stairwells and the leased spaces to Interpublic and McCann did not include the fire stairwells and they were not a part of the JT Magen's project. Therefore, a question of fact remains as to whether 622 Third Ave failed to properly maintain the stairwell where plaintiff's accident occurred.

Accordingly, Architectural's summary judgment motion on its contractual indemnification claim as against JK Flooring will be granted and JK Flooring's motion for summary judgment dismissing this same claim will be denied and both 622 Third Ave and JK Flooring's motions for summary judgment on 622 Third Ave's claim for contractual indemnification as against JK Flooring will also be denied.

***Interpublic and JT Magen's Contractual Indemnification Claims against JK Flooring
(Motion Sequence Number 004)***

JK Flooring also moves for summary judgment dismissing Interpublic and JT Magen's contractual indemnification cross-claims, relying on the same arguments discussed above. However, as discussed above a question of fact remains as to whether plaintiff used the stairwell despite instructions and signs instructing him not to.

Accordingly, JK Flooring is not entitled to summary judgment dismissing Interpublic and JT Magen's contractual indemnification claims against it.

***Interpublic's and 622 Third Ave's Contractual Indemnification Claims against JT Magen
(Motion Sequence Number 003 and Interpublic's Cross-Motion)***

JT Magen moves for summary judgment dismissing Interpublic and 622 Third Ave's contractual indemnification claims against it and Interpublic cross-moves for summary judgment in its favor on the same claim.

In support of its motion JT Magen submits the construction agreement it entered into with McCann for the Project. This agreement contains the indemnification provision. However, the agreement with McCann is not properly authenticated pursuant to CPLR § 4515 (a) as it is attached to JT Magen's attorney's affirmation and therefore is not admissible (*Clarke v Am. Truck & Trailer, Inc.*, 171 AD3d 405, 406 [1st Dept 2019] [holding *inter alia* that an agreement attached to an attorney's affirmation is not properly authenticated and therefore not admissible and not an appropriate basis upon which to grant summary judgment]).

Accordingly, JT Magen has failed to establish its *prima facie* entitlement to summary judgement on 622 Third Ave and Interpublic's indemnification claims against it and its motion for summary judgment dismissing these claims will be denied (*id.*; *see also Garces v Windsor Plaza, LLC*, 189 AD3d 539, 540 [1st Dept 2020] [holding *inter alia* general contractor failed to

establish its *prima facie* entitlement to summary judgment on its contractual indemnification claim because it failed to authenticate the contract]).

Interpublic's cross motion for summary judgment on its contractual indemnification claim against JT Magen suffers from the same defect as JT Magen's motion for summary judgment, the agreement it submits in support is attached to its attorney's affirmation and is therefore not properly authenticated.

Accordingly, Interpublic has failed to establish its *prima facie* entitlement to summary judgment on its indemnification claim against JT Magen and its motion for summary judgment on this claim will be denied (*id.*).

622 Third Ave's Common-Law Indemnification and Contribution Third-Party Claim Against Architectural (Motion Sequence Number 002)

Architectural moves for summary judgment dismissing 622 Third Ave's common-law indemnification and contribution claims as against it.

"To be entitled to common-law indemnification, a party must show (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2) that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012]; see also *McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377–378 [2011]; *Muriqi v Charmer Indus. Inc.*, 96 AD3d 535, 536 [1st Dept 2012]).

"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" (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003], *lv dismissed* 100 NY2d 614 [2003] [internal quotation marks and citation omitted]). "The 'critical requirement' for apportionment by contribution under CPLR article 14 is that 'the breach of duty by the contributing party must

have had a part in causing or augmenting the injury for which contribution is sought” (*Raquet v Braun*, 90 NY2d 177, 183 [1997], quoting *Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 71 NY2d 599, 603 [1988]).

Architectural argues that it cannot be liable for common-law indemnification or contribution because it was not negligent with respect to plaintiff’s accident. It is uncontested that Architectural did not create the leak and puddle that caused plaintiff’s accident or have actual or constructive notice of it and did not perform any of the labor or supervision at the Project (Correia, 259 AD2d at 65.

622 Third Ave argues that Architectural was negligent because it failed to inform plaintiff of the Premises rule that the stairwell was off limits. However, 622 Third Ave provides no evidence that Architectural was aware of this rule, had a duty to inform plaintiff of the rule, and, even assuming arguendo that such a duty existed, cites to no case law that would support a finding that Architectural’s failure to inform plaintiff of the building’s rules could be construed as a cause of plaintiff’s accident.²

Finally, 622 Third Ave argues that Architectural should be held liable to it for common-law indemnification under a theory that Architectural violated Labor Law § 241 (6). Such argument is devoid of merit. Architectural was not sued by plaintiff. Therefore, no Labor Law claim lies against Architectural.

Accordingly, Architectural is entitled to summary judgment dismissing 622 Third Ave’s common-law indemnification and contribution claims against it.

² 622 Third Ave’s 49-page affirmation in opposition cites no cases and is not supported by a separate memorandum of law.

The Common-Law Indemnification and Contribution Claims Against JT Magen (Motion Sequence Number 003 and Interpublic's Cross-Motion)

JT Magen moves for summary judgment dismissing all common-law indemnification and contribution claims against it. Interpublic cross-moves for summary judgment on its common-law indemnification claim against JT Magen.

As discussed above, because JT Magen had supervisory control over plaintiff's means of access to his work area and questions of fact exist as to whether it had notice of the condition and failed to remedy it, it is not entitled to summary judgment dismissing the common-law indemnification contribution claims against it (*see Miano*, 37 AD3d at 566).

Accordingly, JT Magen is not entitled to summary judgment dismissing the common-law indemnification and contribution claims against it.

Interpublic is not entitled to summary judgment in its favor on its common law indemnification claim against JT Magen because it only requested summary judgment on its contractual indemnification claim against JT Magen in its cross-notice of motion; it did not request summary judgment of its common-law indemnification claim (CPLR 2215 [a]; *Flores v Flores*, 22 AD3d 372, 372 – 373 [1st Dept 2005] [holding court properly refused to grant relief not included in cross-motion]; *CitiMortgage, Inc. v Salko*, 179 AD3d 1009, 1011 [2nd Dept 2020] [holding court should not have granted relief that was not sought in cross motion]).

Accordingly, Interpublic is not entitled to summary judgment on its common law indemnification claim as against JT Magen.

The Common-Law Indemnification and Contribution Claims Against JK Flooring (Motion Sequence Number 004)

JK Flooring, plaintiff's employer, moves for summary judgment dismissing the common-law indemnification and contribution claims against it pursuant to the statutory protections afforded a worker's employer under Worker's Compensation Law § 11.

"An employer's liability for an on-the-job injury is generally limited to workers' compensation benefits, but when an employee suffers a 'grave injury' the employer also may be liable to third parties for indemnification or contribution" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 412-413 [2004]). Worker's Compensation Law § 11 defines "grave injury" as "death, permanent and total loss of use or amputation of an arm, leg, hand or foot, . . . or an acquired injury to the brain caused by an external physical force resulting in permanent total disability."

Here, plaintiff does not assert a grave injury as contemplated by the Worker's Compensation Law. Therefore, all claims for common-law indemnification and contribution against JK Flooring are statutorily barred.

Accordingly, JK Flooring is entitled to summary judgment dismissing all claims for common-law indemnification and contribution.

The Breach of Contract for the Failure to Procure Insurance Claim Against JT Magen (Motion Sequence Number 003)

JT Magen seeks dismissal of the entire second third-party complaint as against it. That complaint contains a claim for breach of contract for the failure to procure insurance. JT Magen has failed to raise any arguments with respect to this claim in its motion.

Accordingly, JT Magen is not entitled to summary judgment dismissing the second third-party complaint against it.

The parties' remaining arguments have been considered and are unpersuasive.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

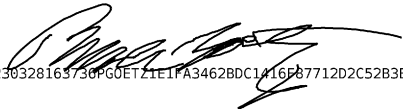
ORDERED that third-party defendant JK Flooring, Inc.'s (JK Flooring) motion (motion sequence number 004), pursuant to CPLR § 3212, for summary judgment dismissing the third-party action and all cross-claims as against it is granted solely with respect to the common law indemnification and contribution claims as against it and those claims are dismissed and the remainder of the motion is otherwise denied; and it is further

ORDERED that third-party defendant Architectural Flooring Resource, Inc.'s (Architectural) motion (motion sequence number 002), pursuant to CPLR § 3212, for summary judgment dismissing the third-party action and all cross-claims as against it is granted solely with respect to 622 Third Ave's contractual and common law indemnification and contribution claims and those claims are dismissed as against it and with respect to Architectural's contractual indemnification claim as against JK Flooring and the remainder of the motion is otherwise denied; and it is further

ORDERED that defendant/second third-party defendant J.T. Magen & Company, Inc.'s (JT Magen) motion (motion sequence number 003), pursuant to CPLR § 3212, for summary judgment dismissing the complaint, second third-party complaint and all cross-claims against it is granted to the extent that plaintiff's Labor Law §§ 240 (1) and 241 (6) claims as against JT Magen are dismissed, and the remainder of the motion is otherwise denied; and it is further

ORDERED that defendant/second third-party plaintiff The Interpublic Group of Companies, Inc.'s (Interpublic) cross-motion, pursuant to CPLR § 3212, for summary judgment dismissing the complaint and for summary judgment in its favor on its third-party claims against JT Magen is denied; and it is further

ORDERED that defendant/third-party plaintiff 622 Third Avenue Company, LLC's (622 Third Ave) cross-motion, pursuant to CPLR § 3212, for summary judgment in its favor on its third-party claim for contractual indemnification from JK Flooring is denied; and it is further **ORDERED** that the remainder of the action is severed and shall continue.



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<u>3/28/2023</u>			<hr/>	
DATE			PAUL A. GOETZ, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE