

Williams v McAlpine Contr. Co.

2023 NY Slip Op 32574(U)

July 26, 2023

Supreme Court, New York County

Docket Number: Index No. 159851/2019

Judge: Mary V. Rosado

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

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

JEFFREY WILLIAMS,

Plaintiff,

- v -

MCALPINE CONTRACTING CO., SANDY 350 LLC,

Defendant.

-----X

MCALPINE CONTRACTING CO., SANDY 350 LLC

Plaintiff,

-against-

BEDROCK PLUMBING & HEATING, INC.

Defendant.

-----X

**ORDER - SUMMARY
JUDGMENT**

Third-Party
Index No. 595251/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 81, 82, 83, 84, 85, 86, 87, 88, 89, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument which took place on April 11, 2023, with Wade T. Morris Esq. appearing for Plaintiff Jeffrey Williams ("Plaintiff"), Leslie Luke, Esq. appearing for Defendants/Third-Party Plaintiffs McAlpine Contracting Co. (the "GC") and Sandy 350 LLC (the "Owner") (together "Defendants"), and John Sandercock, Esq. appearing for Third-Party Defendant Bedrock Plumbing & Heating, Inc. ("Bedrock"), Defendants' motion for summary judgment dismissing all claims brought against them by Plaintiff, and against Bedrock on Defendants' third-party claims, is granted in part and denied in part.

I. Background

This is an action by Plaintiff to recover for damages he allegedly sustained on April 2, 2019 while working on the construction project at 350 Clarkson Avenue in Kings County (the “Project”). Plaintiff initiated this action against Defendants on October 9, 2019 (NYSCEF Doc. 1). Defendants filed a Verified Answer on December 16, 2019 (NYSCEF Doc. 5). On March 10, 2020, Defendants commenced a third-party action as against Bedrock (NYSCEF Doc 6). Bedrock filed a Verified Answer to Verified Third-Party Complaint on May 26, 2020 (NYSCEF Doc. 11).

On November 21, 2022, Plaintiff filed a motion requesting summary judgment on the issue of liability against the Defendants and the dismissal of Defendants’ first and second affirmative defenses (“Motion Sequence 1”) (NYSCEF Doc. 60). On January 19, 2023, Bedrock filed an Affirmation in Opposition to Plaintiff’s motion (NYSCEF Doc. 76) and cross-moved for an Order dismissing Plaintiff’s claims arising under Labor Law § 240(1) (NYSCEF Doc. 75).

On January 27, 2023, Defendants filed the instant motion for an Order, pursuant to CPLR §3212, granting summary judgment against Plaintiff and dismissing all claims against them, as well as granting Defendants summary judgment against Bedrock on their contractual indemnification and breach of contract claims (NYSCEF Doc. 81). Defendants argue that Plaintiff’s Labor Law §240(1) cause of action must be dismissed because Plaintiff was not engaged in activity protected under §240(1) (NYSCEF Doc. 83 at p. 6-9), and that Plaintiff’s Labor Law §241(6) claim must be dismissed because the Industrial Code violations relied upon by Plaintiff are either inapplicable or cannot be proven (*Id.* at p. 9-13). Further, Defendants argue that Plaintiff’s negligence and Labor Law §200 causes of action should be dismissed because Defendants neither directed nor controlled Plaintiff’s work, and because Plaintiff’s accident did

not occur due to any dangerous or defective condition of which Defendants had notice (*Id.* at p. 13-19). Finally, Defendants argue that the terms of the subcontractor agreement between the GC and Bedrock for Bedrock to perform work at the subject premises (the “Agreement”) contains an indemnity provision entitling Defendants to summary judgment on their contractual indemnification against Bedrock, and that Bedrock breached provisions of the Agreement by failing to obtain required insurance (*Id.* at p. 19-23).

On February 13, 2023, Plaintiff filed an Affirmation (NYSCEF Doc. 93) and Memorandum of Law (NYSCEF Doc. 94) in Opposition to Defendants’ motion for summary judgment. Plaintiff does not oppose Defendants’ motion with respect to Labor Law §240(1) (NYSCEF Doc. 94 at p. 2). Plaintiff argues that the evidence establishes, pursuant to Labor Law §200, that Defendants are liable for Plaintiff’s injuries because Plaintiff’s injuries were caused by dangerous means and methods of performance at the worksite, and because Plaintiff’s injuries were caused by a dangerous premises condition of which Defendants had notice (NYSCEF Doc. 93 at p. 21). Plaintiff further argues that there is evidence that Defendants may be liable for workplace violations of Labor Law §241(6) (NYSCEF Doc. 94 at 14-17). Specifically, Plaintiff argues that issues of fact exist as to whether Plaintiff tripped as he attempted to step off the narrow, raised ledge, and thus whether there was a violation of Industrial Code §1.7(e), as well as to whether the subject area was “used to transport vehicular and/or pedestrian traffic” as required under Industrial Code §1.22. (*Id.* at p. 14-16).

Defendants filed an Affirmation (NYSCEF Doc. 99) and Memorandum of Law (NYSCEF Doc. 100) in Reply on February 26, 2023. Defendants argue in reply that because Plaintiff has conceded that this is not a Labor Law §240(1) case, Plaintiff’s Labor Law §240(1) cause of action should be dismissed as abandoned (NYSCEF Doc. 99 at p. 2). Defendants argue

further that because Plaintiff's opposition papers failed to claim "that there is any admissible evidence to prove that [Defendants] violated Industrial Code provisions 12 NYCRR §§23-1.4, 23-1.5, 23-1.7(d) and (f), 23-1.8, 23-1.15, 23-1.16, 23-1.17, 23-1.21, 23-1.30, 23-2.1, 23-3.3, 23-6.1, 23-6.2 or 23-6.3", Defendants are entitled to judgment as a matter of law dismissing each of the above industrial code sections relied upon by Plaintiff in support of his §241(6) claims as abandoned as well. With respect to Plaintiff's claims that Defendants violated 12 NYCRR §23-1.7(e), Defendants contend that section is not applicable because "Plaintiff's expert's opinion and his employer's testimony are of no significance and are insufficient to create any issue of fact given Plaintiff's own testimony (as the only witness with alleged personal knowledge) in which he expressly denied "tripping" on any portion of the curbing prior to the subject incident" (NYSCEF Doc. 99 at ¶10). With respect to Plaintiff's claims regarding violations of 12 NYCRR §23-2.22, Defendant contends that this section is inapplicable because there is no admissible evidence in Plaintiff's opposition papers that the subject curb was constructed as a runway or ramp for the use of persons (*Id.* at ¶15). Defendants reiterate their arguments with respect to Plaintiff's Labor Law §200 claims; namely, that Defendants have established that they did not exercise the degree of control over Bedrock's operations required to predicate liability for violations of Labor Law §200 (*Id.* at p. 6-9), and that Defendants have established that there was no defective or dangerous condition that proximately caused Plaintiff's injury (*Id.* at p. 9-15). Finally, Defendants argue that they are entitled to summary judgment against Bedrock on their third-party claim of breach of contract because they met their burden of establishing that Bedrock failed to obtain requisite insurance as required by the Agreement, and on their third-party claim of contractual indemnification because the Agreement required Bedrock to indemnify and hold Defendants harmless from all claims arising in whole or in part in

connection with the performance of Bedrock's work, and because Defendants established that they were free from negligence (*Id.* at p. 15).

On June 6, 2023, Bedrock filed an Affirmation in partial opposition to Defendants' Motion for Summary Judgment (NYSCEF Doc. 101). Bedrock's opposition contends that Defendants are not entitled to summary judgment on the issue of contractual indemnification because they cannot be indemnified against their own negligence, and there are questions of fact concerning whether Defendants' own negligence was a proximate cause of Plaintiff's injuries (*Id.* at p. 3-5). With respect to Defendants' claim for breach of contract, Bedrock contends that Defendants' claims are barred by the doctrine of anti-subrogation, and because Defendants have not proffered any evidence that Bedrock breached its contract to provide excess insurance coverage (*Id.* at p. 6-8).

On June 25, 2023, Defendants filed an Affirmation (NYSCEF Doc. 102) and Memorandum of Law (NYSCEF Doc. 103) in reply to Bedrock opposition papers. In reply, Defendants contend that because Plaintiff cannot sustain any negligence claims against Defendants, and because Plaintiff's expert affidavit is of no probative value, Bedrock raised no genuine issues of fact with respect to Defendants' contractual indemnification claim (*Id.* at p. 1). With respect to Defendants' breach of contract claim against Bedrock, Defendants contend that Bedrock has failed to show that the anti-subrogation rule has any applicability as to the excess coverage required for Defendants, and that because Defendants have met their burden of showing that Bedrock failed to obtain the requisite insurance naming Defendants as additional insureds, their breach of contract claim for failure to procure insurance should be granted.

II. Discussion

A. Standard

Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. (See e.g., *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (see *Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

B. Defendants’ Motion for Summary Judgment

i. Dismissal of Plaintiff’s Labor Law §240(1) Cause of Action

Defendants argue that Plaintiff’s Labor Law §240(1) cause of action should be dismissed because Plaintiff was not performing any task that involved a physically significant elevation-related risk (NYSCEF Doc. 84 p. 2). Plaintiff declined to oppose Defendants’ motion to dismiss Plaintiff’s Labor Law §240(1) claims (NYSCEF Doc. 93 at ¶3). Failure to oppose a motion seeking dismissal of a claim constitutes the abandonment of that claim (*Jamie Ng v NYU Langone Med. Ctr.* 157 AD3d 549, 550 [1st Dept 2018]). Because Plaintiff does not oppose Bedrock’s cross-motion to dismiss, Plaintiff’s Labor Law §240(1) claims are dismissed as abandoned.

ii. Dismissal of Plaintiff's Labor Law §241(6) Cause of Action

Defendants contend that Plaintiff's Labor Law §241(6) claim must be dismissed because the Industrial Code violations relied upon by Plaintiff are either inapplicable or cannot be proven (NYSCEF Doc. 84 pp 4-7). Plaintiff's reply papers do not claim that there is any admissible evidence to prove that Defendants violated Industrial Code provisions 12 NYCRR §§23-1.4, 23-1.5, 23-1.7(d) and (f), 23-1.8, 23-1.15, 23-1.16, 23-1.17, 23-1.21, 23-1.30, 23-2.1, 23-3.3, 23-6.1, 23-6.2 or 23-6.3, as alleged in Plaintiff's Bill of Particulars (NYSCEF Doc. 94 pp 14-16).

Whereas Plaintiff's opposition fails to rebut Defendants' *prima facie* showing that the aforementioned provisions have no applicability to the facts of the instant case or are insufficient to impose liability on Defendants, they are entitled to judgment as a matter of law dismissing each of the above industrial code sections relied upon in support of his §241(6) claim as abandoned.

Plaintiff's opposition does contend, however, that material issues of fact remain regarding the application and violation of 12 NYCRR §§23-1.7(e) and 23-1.22 (*Id.*).

12 NYCRR §23-1.22, entitled "Structural Runways, Ramps and Platforms," pertains to runways and ramps used to transport vehicular and pedestrian traffic. 12 NYCRR §23-1.22(b)(2) states, in relevant part, that:

Runways and ramps constructed for the use of persons only shall be at least 18 inches in width and shall be constructed of planking at least two inches thick full size or metal of equivalent strength. Such surface shall be substantially supported and braced to prevent excessive spring or deflection. Where planking is used it shall be laid close, butt jointed and securely nailed.

Defendants argue that 12 NYCRR §23-1.22 is inapplicable to the facts of the instant case because the curb was not constructed for use of persons to walk along it (NYSCEF Doc. 84 at p. 6). In support of this contention, Defendants cite to the testimony of Bedrock's Project Manager, Pedro Cerna, in which Mr. Cerna states that the curb was a constructed as concrete footer upon which

windows would be erected, that the curb was blocked off, not intended to be a walkway for people, and that no Bedrock employees were permitted to walk on the curb (NYSCEF Doc. 69 at pp 51, 59-60).

In opposition, Plaintiff cites to the Examination Before Trial testimony of Samuel Matthew, the Site Safety Manager (“SSM”), in which Mr. Matthew stated that “small skinny guy can pass through [the gap], skinny” (NYSCEF Doc. 34 at p. 185). However, Mr. Matthew also stated that walking on the curb would be a “violation” (*Id.*). In further opposition, Plaintiff cites to Plaintiff’s Examination Before Trial testimony in which he states that he saw multiple people utilize the path (NYSCEF Doc. 67 at p. 79), and that he was told by a GC worker that the path was the route that everyone was taking (*Id.* at p. 77).

Absent from Plaintiff’s opposition is any assertion that the subject curb itself was a ramp or runway constructed for the use of persons. Further, Plaintiff fails to present any evidence to controvert Mr. Cerna’s testimony that the curb was constructed as a footer not intended to be a walkway for people. Accordingly, Plaintiff has failed to present a material issue of fact regarding the applicability of 12 NYCRR §23-1.22. Defendants are therefore entitled to judgment dismissing Plaintiff’s Labor Law §241(6) claims premised on violations of Industrial Code 12 NYCRR §23-1.22.

12 NYCRR §23-1.7(e), entitled “Tripping and Other Hazards,” contains the following language:

- (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.
- (2) Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from

sharp projections insofar as may be consistent with the work being performed.

Defendants contend that 12 NYCRR §23-1.7(e) “is inapplicable to the instant case inasmuch as there is absolutely no evidence showing, or even suggesting, that Plaintiff fell due to any debris, tools or tripping hazards” (NYSCEF Doc. 84 at p. 5). In support of this assertion, Defendants point to Plaintiff’s Examination Before Trial where Plaintiff expressly denied noticing any debris, trash or other materials when he walked through the pathway prior to the subject incident (NYSCEF Doc. 85 at p. 82).

In opposition, Plaintiff argues that the six-inch ledge off which Plaintiff fell, was, itself, a tripping hazard (NYSCEF Doc. 94 at p. 14). In support of this contention, Plaintiff cites to the testimony of Pedro Cerna, which specifically states that Plaintiff reported tripping over a curb (NYSCEF Doc. 69 at p. 50), as well as the expert affidavit of Edward W. Lindh, in which Mr. Lindh opines that “the curb in question was undoubtably not safe, was both a slipping and tripping hazard under 1.7(d) & (e)” (NYSCEF Doc. 97 at ¶39). Defendants’ contention that Mr. Lindh’s testimony lack probative value because he has no personal knowledge, did not personally inspect the subject area and bases his opinion on speculation belied by the facts on the record, is not persuasive. The Court of Appeals has held that “an expert’s opinion need not be based upon personal knowledge...[and he] may instead ground his opinion on facts in evidence” (*Admiral Ins. Co. v Joy Contrs., Inc.* 19 NY3d 448, 457 [2012]). Mr. Lindh contends that his opinions are based on his review and analysis of the accident including the “McAlpine Incident Report; Bedrock incident Report; Site Safety Daily Inspections; Project Specific Construction Documents and Drawings; Site photos; sign in sheets; Pre-Shift meeting Logs; Emails between McAlpine and Bedrock; McAlpine Bedrock Contract; and pleadings, bills of particulars, discovery responses, and depositions in this case,” and asserts that those materials “are sufficient to conduct a full analysis

of the subject accident and to form an opinion about the factors causing such accident” (NYSCEF Doc. 97 ¶2-3). Therefore, the Court finds that Mr. Lindh’s expert testimony is sufficiently supported by facts on the record.

Although there is no contention in the record of any accumulation of dirt and debris on the pathway that could cause tripping, in light of the foregoing, Plaintiff has demonstrated a material issue of fact regarding whether Plaintiff’s accident occurred as a result of obstructions or conditions which could cause tripping, and thus, whether there was a violation of Industrial Code §1.7(e).

iii. Dismissal of Plaintiff’s Negligence and Labor Law §200 Causes of Action

Labor Law §200 codifies an owner or general contractor’s common law duty to maintain a safe construction site (*Burkoski v. Structure Tone, Inc.*, 40 AD3d 378, 836 NYS2d 130 (1st Dept. 2007)). To prevail on a Labor Law §200 claim “against an owner or general contractor, a Plaintiff must prove that the party so charged exercised direct supervisory control over the manner in which the activity alleged to have caused the injury was performed” (*Id.* at 381).

Plaintiff’s opposition relies on *Santos v. Condo 124 LLC*, 161 AD3d 650, 78 NYS3d 113 (1st Dept. 2018) in support of the conclusion that the right to exercise control over work is the determining factor in assigning liability under Labor Law §200 (NYSCEF Doc. 62 at ¶50).

Plaintiff’s reliance is misplaced. In *Santos*, the First Department addressed who was considered a statutory agent of an owner or a general contractor for the purposes of the New York Labor Law (*Santos* at 653). The *Santos* decision does not present a rule assigning liability in all Labor Law cases. Contrary to Plaintiff’s contention, the First Department has determined that “where...injury results from the means and methods of the work, an owner can only be found to be negligent if it exercised actual supervision or control over the work...mere authority to

supervise or control work is insufficient” (*Gonzalez v. DOLP 205 Properties II, LLC*, 206 A.D.3d 468, 471 171 N.Y.S.3d 61 [1st Dep’t. 2022]).

Defendants argue, as an initial matter, that neither the Owner nor the GC exercised the requisite direct supervisory control over the manner of Plaintiff’s work sufficient to impose liability under Labor Law §200 (NYSCEF Doc. 84 at p. 8). In their opposition papers, Plaintiff concedes that the GC did not directly supervise Plaintiff’s work (NYSCEF Doc. 94 at p. 5) but contends that direct supervisory control need only be proven in a case against an owner (*Id.*). However, as shown above, the First Department’s ruling in *Burkoski* explicitly states that proof of direct supervisory control by the party so charged is required to prevail on a Labor Law §200 claim “against an owner or general contractor” (*Burkoski* at 381). While Plaintiff’s opposition papers outline the supervisory responsibility and authority of the GC at the worksite, absent from Plaintiff’s opposition is any evidence or assertion that the GC exercised actual supervision or control over Plaintiff’s work. Absent such a showing, Plaintiff fails to raise a triable issue of fact regarding his Labor Law §200 Causes of Action.

iv. Defendants Third-Party Claims Against Bedrock for Contractual Indemnification and Breach of Contract

Defendants contend that they are “entitled to contractual indemnification against Bedrock because the subcontractor agreement between the GC and Bedrock (the “Agreement”) clearly and unambiguously obligated Bedrock to defend and indemnify Defendants from and against claims resulting from the acts and omissions of Bedrock in connection with the performance of its work, which includes the subject incident relating to their own employee” (NYSCEF Doc. 84 at pp 14-15).

A party seeking contractual indemnification must establish that it was free from negligence (*Uluturk v. City of New York*, 298 A.D.2d 233, 748 NYS2d 371 [1st Dep’t. 2002]).

“Where a triable issue of fact exists regarding the indemnitee's negligence, a conditional order of summary judgment for contractual indemnification must be denied as premature” (*Spielmann v 170 Broadway NYC LP*, 187 AD3d 492 [1st Dept 2020]). Here, Defendants contend that they have established that Plaintiff cannot sustain any negligence claims against them (NYSCEF Doc. 103 at p. 1). However, Plaintiff raises issues of material fact regarding Defendant's negligence by contending, *inter alia*, that he was directed to the Path by a female worker who was “part of the cleanup crew” (NYSCEF Doc. 67 at p. 76-77), that he saw multiple people utilizing the Path (*Id.* at p. 79), that the Path “was maybe six inches in height, width might've been four to five inches wide” (*Id.* at p. 63), that the path was so narrow it was “like walking on a tightrope” (*Id.* at 86) and made walking on the raised curb unavoidable (*Id.* at 93), that the normal door providing access to Bedrock's shop was blocked (*Id.* at p. 78) and Plaintiff was not informed of an alternate route between the second and third floors (*Id.* at 79). Because Plaintiff has demonstrated the presence of material issues of fact regarding the Defendants' negligence, Plaintiff has also demonstrated a material issue of fact regarding Defendants' indemnification claim. Accordingly, Defendants' motion for summary judgment on their third-party claims of contractual indemnification against Bedrock must be denied.

“A party moving for summary judgment on its claim for failure to procure insurance meets its *prima facie* burden by establishing that a contract provision requiring the procurement of insurance was not complied with...[t]he burden then shift[ing] to the opposing party, who may raise an issue of fact by tendering the procured insurance policy in opposition to the motion” (*Benedetto v. Hyatt Corp.*, 203 A3d 505, 165 NYS3d 45 [1st Dept. 2022]). A moving party may show that a contract provision requiring the procurement of insurance was not complied with “by submitting, for example, copies of the contract requiring the procurement of

insurance and of correspondence from the insurer of the party against whom summary judgment is sought indicating that the moving party was not named as an additional insured on any policies issued” (*Dorset v 285 Madison Owner LLC* 214 AD3d 402, 404 185 NYS3d 61 [1st Dept 2023]).

Here, Bedrock does not deny that the Agreement expressly provides that Bedrock would obtain an “[u]mbrella policy with a limit of not less than \$5,000,000, providing excess coverage” (NYSCEF Doc. 57 at p. 23) and naming Defendants as additional insureds. Bedrock’s opposition papers argue that Defendants have not established that Bedrock breached its contract to provide excess insurance coverage (NYSCEF Doc. 101 at p. 7).

While Defendants did submit copies of the contract requiring the procurement of insurance (NYSCEF Doc. 57), they fail to present any additional evidence indicating that Defendants were not named as additional insureds on any policies issued. Without such evidence, Defendants have failed to meet their *prima facie* burden of establishing that a contract provision requiring the procurement of insurance was not complied with. Accordingly, Defendants’ motion for summary judgment on their third-party claims for breach of contract against Bedrock must be denied.

Accordingly, it is hereby,

ORDERED that Defendants/Third Party Plaintiffs McAlpine Contracting Co. and Sandy 350 LLC’s motion for summary judgment dismissing Plaintiff Jeffrey Williams Labor Law §240(1) claims is granted; and it further

ORDRED that Defendants/Third Party Plaintiffs McAlpine Contracting Co. and Sandy 350 LLC’s motion for summary judgment dismissing Plaintiff’s Labor Law §241(6) causes of action stemming from alleged violations of Industrial Code provisions 12 NYCRR §§23-1.4, 23-

1.5, 23-1.7(d) and (f), 23-1.8, 23-1.15, 23-1.16, 23-1.17, 23-1.21, 23-1.22, 23-1.30, 23-2.1, 23-3.3, 23-6.1, 23-6.2 or 23-6.3 is granted; and it is further

ORDERED that Defendants/Third Party Plaintiffs McAlpine Contracting Co. and Sandy 350 LLC's motion for summary judgment dismissing Plaintiff's Labor Law §241(6) Causes of Action stemming from alleged violations of Industrial Code 12 NYCRR §23-1.7(e) is denied; and it is further

ORDERED that Defendants/Third Party Plaintiffs McAlpine Contracting Co. and Sandy 350 LLC's motion for summary judgment dismissing Plaintiff's Negligence and Labor Law §200 Causes of Action is granted; and it is further

ORDERED that Defendants/Third Party Plaintiffs McAlpine Contracting Co. and Sandy 350 LLC's motion for summary judgment on their third-party claims of contractual indemnification and breach of contract against Third-Party Defendant Bedrock Plumbing & Heating, Inc is denied; and it is further

ORDERED that within ten days of entry, counsel for Defendants is directed to serve a copy of this Decision and Order, with notice of entry on all parties; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/26/2023
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, J.S.C.

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