At an IAS Term, Part 81 (MOA) of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 5th day of April, 2023.

P R E S E N T:
HON. CARL J. LANDICINO,
Justice.

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BRYAN STALIN AVECILLA SANDOVAL

Plaintiff,

-against-

1112 PROSPECT, PLLC and KAIETEUR CONSTRUCTION, INC.

Defendants.

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Index No.: 525803/2018

DECISION AND ORDER

Motion Sequence #2, #3

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

	Papers Numbered (NYSCEF)
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	30-31, 33-41, 43-44,
Opposing Affidavits (Affirmations)	45-46, 48-49, 51,
Reply Affirmation or Affidavit	53, 54, 55
Memorandum of Law	32

Upon the foregoing papers, and after oral argument with no opposition, the Court finds as follows:

Plaintiff Bryan Stalin Avecilla Sandoval (hereinafter the "Plaintiff") alleges causes of action for violations of New York State Labor Law §§200 and 241(6), and common law negligence against Defendants 112 Prospect, PPLC ("Prospect") and Kaieteur Construction, Inc. ("Defendant Kaieteur") (hereinafter referred to collectively as the "Defendants"). Plaintiff alleges in his Verified Bill of Particulars that he was injured on November 26, 2018 while working at 134-45 161" Street in Queens, New York (hereinafter the "Premises"). Specifically, the Plaintiff alleges that he suffered personal injuries when a piece of wood shot into his eye.

Defendant Kaieteur now moves (motion sequence #2) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the complaint. Defendant Kaieteur argues that the Plaintiff's Labor Law 241(6) claim against it should be dismissed as Defendant Kaieteur it is not an "agent" under the Labor Law. Defendant Kaieteur also argues that the Plaintiff's Labor Law 241(6) claim against it should be dismissed as the Industrial Code provision pled was not violated. Defendant Kaieteur also argues that the Plaintiff's Labor Law 200 claim should be dismissed as against it since it did not supervise or control Plaintiffs work. Defendant Kaieteur also seeks summary judgment on its cross-claims against Defendant Prospect for common law indemnification.

Both the Plaintiff and Defendant Prospect oppose this motion. The Plaintiff argues that the motion by Defendant Kaieteur should be denied as there are issues of fact relating to whether Defendant Kaieteur served as the general contractor on the Premises and exercised supervisory authority and control over the project. Moreover, the Plaintiff argues that the motion by Defendant Kaieteur should be denied as there are issues of fact concerning whether safety goggles were available and whether as a result, Defendant Kaieteur violated Industrial Code 12 NYCRR 23-1.8(a). Defendant Prospect also argues that there are issues of fact regarding whether Defendant Kaieteur directly supervised the work and was present on the Premises. Defendant Prospect argues that, the Court should also deny Defendant Kaieteur's application for common law indemnification, given that Defendant Kaieteur is not free from liability.

Defendant Prospect cross-moves (motion sequence #3) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the complaint. Defendant Prospect adopts Kaieteur's position and argues that the Plaintiff's Labor Law 241(6) claim against it should be dismissed as the Industrial Code was not violated. Defendant Prospect also argues that the Plaintiff's Labor Law 200 claim should be dismissed as against it since it did not supervise or control Plaintiffs work.

Both the Plaintiff and Defendant Kaieteur oppose this motion. The Plaintiff argues that the cross motion by Defendant Prospect is untimely.[1] Defendant Kaieteur argues that Defendant Prospect has failed to meet its *prima facie* burden regarding both the Plaintiff's Labor Law 241(6) claim and the Plaintiff's Labor Law 200 claim.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff,* 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], *citing Andre v. Pomeroy,* 35 NY2d 361, 364, 362 N.Y.S.2d 131 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], *citing Alvarez v. Prospect Hospital*, 68 NY2d320, 324, 508 N.Y.S.2d 923 [1986]; *Winegrad v. New York Univ. Med. Ctr.,* 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Garnham & Han Real Estate Brokers v. Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick,* 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, "[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case..."

[1] Although untimely, the Court will address the motion by Defendant Prospect since it raises the same arguments in relation to the Plaintiff's Labor Law 200 and 241(6) claims, namely that the Industrial Code was not violated and that it did not otherwise supervise the Plaintiff's work. *See Vitale v. Astoria Energy II, LLC*, 138 A.D.3d 981, 983, 30 N.Y.S.3d 213, 216 [2d Dept 2016].

if they can show "...that the defendant's negligence was a proximate cause of the alleged injuries." *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Labor Law § 200, Common Law Negligence

Liability under Labor Law § 200, relates to two different theories of liability. Liability may be found if the construction site at the premises is dangerous or unsafe or if the Defendant exercised supervision and control over the means and methods of the work. Under the theory of unsafe premises "a property owner may be held liable in common-law negligence and under Labor Law § 200 when the owner has control over the work site and either created the dangerous condition causing an injury, or failed to remedy the dangerous defective condition while having actual or constructive notice of it." *Korostynskyy v. 416 Kings Highway, LLC*, 136 AD3d 758, 759, 24 N.Y.S.3d 747, 748 [2d Dept 2016]. For injuries arising from the manner in which work is performed, the liability must be premised upon one having the authority to exercise supervision and control over the work. *See Lombardi v Stout*, 80 NY2d 290, 295 [1992]; *Hernandez v Pappco Holding Co.*, 136 AD3d 981, 982 [2nd Dept, 2016]; *Torres v City of New York*, 127 AD3d 1163, 1165 [2nd Dept, 2015]; *Gallello v MARJ Distribs. Inc.*, 50 AD3d 734, 735 [2nd Dept, 2008]. "A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed." *Torres v Perry St. Dev. Corp.*, 104 AD3d 672, 676 [2nd Dept, 2013] quoting *Ortega v Puccia*, 57 AD3d 54, 62 [2nd Dept, 2008]. "[T]he right to generally supervise the work, stop the contractor's work if a safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law §200 or for common-law negligence." *Banscher v*

Actus Lend Lease, LLC, 132 AD3d 707, 709 [2nd Dept, 2015], quoting *Gasques v State of New York*, 59 AD3d 666, 668 [2009], *affd.* 15 NY3d 869 [2010].

Plaintiff sat for deposition on February 18, 2021 (NYSCEF Docs. #36). When asked who he was working for at the Premises on the day of his accident, the Plaintiff stated, "Henry Rojas Construction." When asked how long he had been working for that company prior to the accident date, the Plaintiff stated, "[a]lmost two years." When asked who was in charge on the day of the accident, the Plaintiff stated, "Byron was the person in charge that day." (Page 8). When asked whether Byron was an underling of Henry Rojas, the Plaintiff stated, "[y]es." When asked whether Byron was on the job site each day, the Plaintiff stated, "[y]es." (Page 9). When asked if anyone else supervised his work, the Plaintiff stated, "[t]hey used to call him Italia. I don't remember his name." When asked how he was supervised, the Plaintiff stated, "[s]o generally, the general instructions were given to me by Henry. I didn't know much about this work. So Italia was my teacher and Byron was around just ensuring that everything was being done." (Page 10) When asked if he received instructions from anyone else, the Plaintiff stated, "[t]here were only those three people I mentioned." When asked what task he was performing when he was injured, the Plaintiff stated,"[w]e were at the demolition and we were removing wood. I was going to do it with my hands, but Italia told me to use two hammers that was faster for the demolition. And when I did it with the hammer, a piece of wood came in my eye." When asked whether he ever wore goggles when doing this work, the Plaintiff stated, "[w]e never used them. If there was any need we had to bring them." (Pages 11-12). When asked who was on the Premises when the accident happened, the Plaintiff stated, "[i]t was me, Byron, Italia, and another Byron that is the younger brother of Henry." (Page 13). When asked whether he ever spoke to the owner of the Premises, the Plaintiff stated, "[n]o." When asked if he ever saw the owner speak to his supervisors, the Plaintiff stated, "[y]es, once." The Plaintiff also stated that "[i]t was the first day we arrived to the job and he was speaking to Henry while he was preparing the tools and

everything to start working." (Pages 15-16). Plaintiff stated that he had asked for protection and specifically requested goggles two days prior to the accident (Pages 38-29). The Plaintiff later clarified that the owner he observed Rojas speaking to was a person from Defendant Kaieteur, who he believed owned the Premises (Pages 55-56). He also acknowledged that there were no other contractors or trades at the Premises during the time he was working there. Although he did state that the person Rojas was speaking to, who he believed was from Kaieteur, would "come during the day to look at the project." (Pages 56-57).

Udit Meetoo sat for deposition on February 25, 2021 (NYSCEF Docs. #37). When asked who he was employed by, Mr. Meetoo stated, "Kaieteur Construction Inc." When asked what his position was with them, Mr. Meetoo stated, "I'm the president." When asked what his duties were, he stated, "I manage the entire corporation." When asked to explain, Mr. Meetoo stated, "I bring in the work, I pay the bills, I coordinate everything." (Page 8). When asked what type of business Kaieteur is, Mr. Meetoo stated, "[i]t's a small licensed general contractor in one to two-family residential buildings." When asked if he oversees physical labor, Mr. Meetoo stated, "[o]ccasionally, yes." (Page9). When asked if he had any OSHA certifications, Mr. Meetoo stated, "I recently have 62-hours OSHA because I'm a licensed construction superintendent also." When asked when he first became a licensed construction superintendent, Mr. Meetoo stated, "I believe it was around 2012." (Pages 11-12). When asked how many employees Defendant Kaieteur had in November of 2018, Mr. Meetoo stated, "I don't recall exact amount, maybe about two to five the most." When asked if there were any other officers in the company, Mr. Meetoo stated, "[n]o." When asked what type of employees he had in 2018, Mr. Meetoo stated "[g]eneral construction worker." (Page 13). When asked whether he was familiar with the Premises, Mr. Meetoo stated, "[f]rom my recollection I think it was a conversion from a one-family to a two-family." When asked if Defendant Kaieteur was the general contractor, Mr. Meetoo stated, "[k]ind of." When he was

asked to explain, he stated "specific clients I help them get the permits for me to get a portion of the work." "I'm not in charge of the entire project." When asked what type of permits he assisted with, Mr. Meetoo stated, "[t]he general construction permit." When asked if his company engaged in any construction work on this project, Mr. Meetoo stated, "[a]s I'm trying to remember, I don't recall if I did any of the work on the job." (Page 15). As to whether Defendant Kaieteur hired any other companies for that project, Mr. Meetoo stated, "[n]o." When asked what work the company performed on that project, Mr. Meetoo stated "I don't recall if we actually labor on the job." (Pages 14-16). He stated that he had no familiarity with Rojas General Contractors prior to this lawsuit. He could not recall whether he was at the Premises or had any role of the safety practices at the Premises. (Pages 17-18). When asked what communications he had with the owner of the Premises, Mr. Meetoo stated, "[w]ell, I'll just follow up with Mike [the individual he previously identified as the owner of the Premises], see how is the job progressing, if everything is okay." (Page 29). When asked whether he would stop by the Premises, Mr. Meetoo stated, "[o]ccasionally I will drop by." (Page 30). He stated that Mike would hire the subcontractors and that he had no oversight on that hiring except that he asked that the subcontractors cover his company with insurance." (Page 34).

Yochai Barnir sat for deposition on February 23, 2021 (NYSCEF Docs. #38). When asked whether he was familiar with 1122 Prospect Place, LLC, Mr. Barnir stated, "[y]es, that is my company." (Page 7). When asked whether he was familiar with the Premises, Mr. Barnir stated, "[t]his is a property we bought." Mr Barnir then stated, "[w]e fix and sell it." (Page 10). When asked whether he hired contractors to renovate the property, Mr. Barnir stated, "[y]es, Kaieteur." (Page 11). When asked who the general contractor was at the Premises, Mr. Barnir stated, "[t]he general contractor was Kaieteur." When asked what type of work they were hired to perform at the Premises, Mr. Barnir stated, "[w]e taking down to convert it from one family to two family." When asked if Defendant Kaieteur hired subcontractors, Mr. Barnir stated, "I bring the subcontractor over with Kaieteurs permission, yes." He also acknowledged that

he hired Rojas Construction. (Page 12-14). After he previously indicated that he communicated with Henry Rojas and his brother, he stated that he communicated with the Rojas brother while the work was ongoing, "[o]ne time in the day just to come to look, they're doing the job right, in the morning, and they're working wlth the blueprint." When asked if there were project meetings, Mr. Barnir stated, "[b]efore we start, yeah we go over the blueprint and from there they covered. " When asked whether there were safety meetings, Mr. Barnir stated, "I told them that everybody needs to be safe." When asked who he told that everybody needs to be safe, Mr. Barnir stated, "[t]he owner and the boss's brother. I'm not talking to the workers." (Page 17-18). When asked how often he visited the Premises, Mr. Barnir stated, "[a]lmost every day. Almost one or two times a day." When asked what he did at the Premises, Mr. Barnir stated, "I mean, make sure they execute the job what supposed to be done, and make sure everybody is working safe." (Pages 19-20). When asked whether he or his company supplied any safety equipment, Mr. Barnir stated "I don't mean-- no we don't supply any safety equipment." When asked if he observed workers wearing goggles, Mr. Barnir stated, "[t]hey got the pairs the goggles, they got the gloves, they got the shoes, they got the holster, they got everything." When asked whether he ever spoke to anyone about not wearing goggles, Mr. Barnir stated, "I don't remember, no." (Pages 23-24).

Byron Jaramillo sat for deposition on April 14, 2021 (NYSCEF Docs. #39). When asked where he was employed, Mr. Jaramillo stated,"Z. Rojas Construction." When asked how long he had been employed with that company, Mr. Jaramillo stated, "[a]bout eight years." When asked whether he remembered the subject accident, Mr. Jaramillo stated "[y]es, yes, I do remember." (Page 6). When asked what his role was, Mr. Jaramillo stated, "I'm like a manager for the company, but I work with everyone at the same time anyway." Mr. Jaramillo stated, "I just -- my job is to check on the workers that they have all the safety gear with them, that they have a hardhat, they have a harness, that they wear gloves." When asked whether workers' equipment included goggles, Mr. Jaramillo stated, "[y]es, of course. We have to give

them goggles. We give them the whole equipment." Mr. Jaramillo then stated, "just some workers, once I leave their side, they remove equipment." (Pages 7-8). When asked whether he remembered the Plaintiff's accident, Mr. Jaramillo stated, "[y]es. He told me he had a problem with his sight and they took him to the hospital." As to where he was when the accident occurred, Mr. Jaramillo stated, "I was on another corner of the job and he was doing something and I think he removed his goggles and he was counting on something and something flew into his eyes, I don't know exactly." (Page 9). Mr. Jaramillo stated, "[e]veryone is given goggles every day. The problem is we cannot be with them every moment of the day and they do take it off." (Page 11). When asked if anyone that was from the Rojas company was present when the Plaintiff had his accident, Mr. Jaramillo stated, "No. Only me and Mr. Rojas." (Page 17).

Turning to the merits of the Defendants' motion in relation to the Plaintiff's Labor Law §200 and common law negligence claims, the Court finds that both Defendant Kaieteur and Defendant Prospect have provided sufficient evidence to meet their *prima facie* burden in relation to the dismissal of Plaintiff's claim. The Defendants contend that the Plaintiff's accident arose as a result of demolition work at the Premises during which the Plaintiff, purportedly at the direction of his supervisor, was utilizing two hammers resulting in wood flying into his eye. Both Defendants contend that they did not exercise supervision and control over work performed at the construction site and as a result cannot be held liable under a common law negligence or a Labor Law §200 theory of liability. The Defendants rely on the testimony of the Plaintiff, the testimony of Mr. Meetoo, the president of Defendant Kaieteur Construction, Yochai Barnir, a principal of Defendant Prospect, and Byron Jaramillo, an employee of non-party Rojas Construction. The evidence presented reflected that neither Defendant conducted day to day supervision at the Premises. It is clear that "mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspect the work product is insufficient to impose liability under

Labor Law 200." *Medina-Arana v. Henry St. Prop. Holdings, LLC*, 186 AD3d 1666, 1668, 131 N.Y.S.3d 110, 114 [2d Dept 2020], quoting *Ortega v. Puccia*, 57 A.D.3d 54, 61, 866 N.Y.S.2d 323, 329 [2d Dept 2008].

In opposition, the Plaintiff has failed to raise a material issue of fact. The Court finds that in the instant proceeding, the accident at issue was based on the means and methods of the work and was not a product of a defective or dangerous condition at the Premises. This is because Plaintiffs' allegation relates to the nature of the demolition work and how it was conducted. "[W]hen a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work." *Ortega v. Puccia*, 57 AD3d 54, 61, 866 N.Y.S.2d 323, 330 [2d Dept 2008]; *see also Kusayev v. Sussex Apartments Assocs., LLC*, 163 AD3d 943, 945, 83 N.Y.S.3d 262, 265 [2d Dept 2018]; *Wejs v. Heinbockel*, 142 AD3d 990, 992, 37 N.Y.S.3d 569, 571 [2d Dept 2016]. As a result, the Plaintiffs' common law negligence and Labor Law 200 claims are dismissed as against the Defendants.

Labor Law § 241(6)

Labor Law § 241 (6) imposes on owners and contractors a non-delegable duty "to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed." *Perez v. 286 Scholes St. Corp.*, 134 AD3d 1085, 1086, 22 N.Y.S.3d 545, 546 [2d Dept 2015]; *Lopez v. New York City Dept. of Envtl. Protection,* 123 AD3d 982, 983, 999 N.Y.S.2d 848, 850 [2d Dept 2014]. To establish liability under Labor Law § 241 (6), a plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision mandating compliance with concrete, or clear, specifications. *See Misicki v.*

Caradonna, 12 NY3d 511, 515, 882 N.Y.S.2d 375, 377 [2009]; *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505, 601 N.Y.S.2d 49, 55 [1993]; *La Veglia v. St. Francis Hosp.*, 78 AD3d 1123, 912 N.Y.S.2d 611 [2d Dept, 2010]; *Pereira v. Quogue Field Club of Quogue, Long Is.*, 71 AD3d 1104, 898 N.Y.S.2d 220 [2d Dept 2010].

As to Defendant Kaieteur, the Court finds that there is an issue of fact regarding whether Defendant Kaieteur was the general contractor and subject to the Plaintiff's claims made pursuant to Labor Law 241(6). Udit Meetoo, the President of Defendant Kaieteur, acknowledged his work at the Premises and when asked if he was the general contractor stated "[k]ind of." (Page 14). Additionally, when Mr. Barnir (Defendant Prospect) was asked whether he had hired a general contractor for the project, he stated, "[y]es, Kaieteur." Defendant Kaieteur argues that its role does not qualify it as a general contractor subject to Labor Law 241(6). Neither the testimony of Udit Meetoo nor that of Mr. Barnir suggests that Defendant Kaieteur lacked the authority to enforce safety standards and choose responsible subcontractors or that Defendant Kaieteur otherwise lacked the authority to control or supervise the work being performed. Unlike the requirement of a party to exercise supervision and control over the work in order to be liable under a Labor Law 200 claim relating to means and methods, Labor Law 241(6) only requires that in order to be deemed a statutory owner, contractor or agent, "[t]he determinative factor is whether the Defendant had the right to exercise control over the work, not whether it actually exercised that right." *Kavouras v. Steel-More Contracting Corp.*, 192 AD3d 782, 784, 144 N.Y.S.3d 84, 87 [2d Dept 2021], *quoting Williams v Dover,* 276 AD2d at 626; *see also Guanopatin v. Flushing Acquisition Holdings, LLC,* 127 AD3d 812, 813, 7 N.Y.S.3d 322, 324 [2d Dept 2015]. There remains an issue of fact as to whether Kaieteur was a contractor or agent as defined pursuant to Labor Law 241(6).

Turning to the merits of the Defendants' motion in relation to the Plaintiff's Labor Law §241(6) claim based upon the alleged violation of Industrial Code Industrial Code § 23-1.8(a), the Court finds that

issues of fact remain to be resolved at trial. Industrial Code § 23-1.8(a), provides that "[a]pproved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons while employed in welding, burning or cutting operations or in chipping, cutting or grinding any material from which particles may fly, or while engaged in any other operation which may endanger the eyes." Courts have held that Industrial Code § 23-1.8(a) can support a Labor Law § 241(6) cause of action. *See Quiros v. Five Star Improvements, Inc.,* 134 AD3d 1493, 1495, 22 N.Y.S.3d 736, 737 [2d Dept 2015]. There are triable issues of fact as to whether the Plaintiff was provided eye protection, whether the Plaintiff may have failed to utilize that protection and whether the lack of goggles were a proximate cause of the alleged injury. See *Quiros v. Five Star Improvements, Inc.,* 134 AD3d 1493, 1495, 22 N.Y.S.3d 736, 737 [2d Dept 2015].

Common Law Indemnification

Turning to the merits of Defendant Kaieteur's application for common law indemnification, the Court finds that it has failed to meet its *prima facie* burden. Defendant Kaieteur argues that it is entitled to summary judgment on its cross-claim for common law indemnification as 1) Defendant Prospect hired the Plaintiff's employer, and 2) Defendant Prospect was otherwise responsible for correcting any unsafe conditions. "In order to establish their claim for common-law indemnification, the [moving] defendants were required to prove not only that they were not negligent, but also that the proposed indemnitor, [the contractor or subcontractor], was responsible for negligence that contributed to the accident or, in the absence of any negligence, that it had the authority to direct, supervise, and control the work giving rise to the injury." *Poalacin v. Mall Properties, Inc.,* 155 AD3d 900, 909, 64 N.Y.S.3d 310, 319 [2d Dept 2017]. In the instant matter, Defendant Kaieteur has failed to show that Defendant Prospect was negligent

or had that authority, as a matter of law. As a result, Defendant Kaieteur's application for common law indemnification is denied.

Based upon the foregoing, it is hereby Ordered that:

Defendant Kaieteur's motion (motion sequence #2) for summary judgment is granted solely to the extent that the Plaintiff's Labor Law 200 and common law negligence claims are dismissed.

Defendant Prospect's motion (motion sequence #3) for summary judgment is granted solely to the extent that the Plaintiff's Labor Law 200 and common law negligence claims are dismissed.

Any relief not explicitly granted herein is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
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