

Calderon v 157 W. 79th St. Owners Corp.
2023 NY Slip Op 35203(U)
March 3, 2023
Supreme Court, Queens County
Docket Number: Index No. 719807/2018
Judge: Karina E. Alomar
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Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE KARINA E. ALOMAR
JUSTICE

IAS PART 23

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HENRY LEONEL CALDERON,

Plaintiff,

-against-

Index No.: 719807/2018

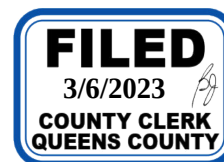
Motion Date: 1/19/23

Motion Sequence No.: 3, 4

157 WEST 79TH STREET OWNERS CORPORATION,
AKAM ASSOCIATES, INC. MIDBORO MANAGEMENT
INC. and GRUDA-NI CONSTRUCTION CORP.,

Defendants.

-----X
157 WEST 79TH STREET OWNERS CORPORATION,
AKAM ASSOCIATES, INC. and MIDBORO
MANAGEMENT INC.,



Third-Party Plaintiffs,

-against-

MARY FRANKLIN BOYD,

Third-Party Defendants.

-----X
MARY FRANKLIN BOYD,

Second Third-Party Plaintiff,

-against-

VJ HOME IMPROVEMENT CORP.,

Second Third-Party Defendants.

-----X
The following numbered papers read on these motions by plaintiff and Third-Party defendant/ second third-party plaintiff MARY FRANKLIN BOYD for summary judgment on the issue of liability, and defendants 157 WEST 79TH STREET OWNERS CORPORATION and MIDBORO MANAGEMENT INC.'s cross-motion for summary judgment and dismissing plaintiff's claims pursuant to CPLR §3212

PAPERS

NUMBERED

Notice of Motion-Affidavits-Exhibits-Opposition-Reply.....ECF Nos. 50 - 137

Notice of Motion-Affidavits-Exhibits-Opposition-Reply..... ECF Nos. 70 – 135

Upon the foregoing documents, it is ordered that third-party defendant/second third-party plaintiff Mary Franklin Boyd's (hereinafter, "Ms. Boyd") motion for an order granting summary judgment on the issue of liability dismissing all causes of action within the third-party action against Mary Franklin Boyd, and plaintiff's motion for an order granting summary judgment with respect to liability under Labor Law §241(6) as against defendants 157 West 79th Street Owners Corporation ("157 Owners Co.") and Midboro Management, Inc. ("Midboro"), and against defendant 157 West 79th Street Owners Corporation pursuant to Labor Law § 200 and common law negligence are decided as follows:

By way of background, the premises at 157 West 79th Street is a 12-story residential apartment consisting of 60 units all owned by individual shareholders of the 157 West Corporation. The building consisted of five apartments per floor and two passenger elevators, one of which could be converted to a service elevator to access the roof and basement. In September 2018, two sets of apartments on the ninth floor were under construction, including the units owned by Boyd. The renovation of the units consisted of the installation of new bathrooms, living room, kitchen, painting, plastering and new doors. The superintendent of the building, Nermin Bicic, worked at the premises from 8:00 am to 4:00 p.m. and was on call for emergencies. Bicic did not have any maintenance responsibilities for individual units, but was in charge of snow removal, cleaning the elevator, sweeping and washing the sidewalks. The building porters, who reported to Bicic, were responsible for maintaining the common areas, including the lobby, hallways, sweeping and mopping the basement, and sweeping the service entrance stairs and hosing the front sidewalk and service entrance when it was not raining. Bicic's office was located in the basement of the building. The service elevator and service entrance stairs outside of the building were the only access to the basement. The base of the staircase has a buzzer for anyone who sought access to the service entrance. Bicic testified that on the date of the incident, he did not see dirt, debris or water on the staircase where plaintiff's accident occurred.

Defendant 157 Owners Corp. is and/or was the owner of the premises located at 157 West 79th Street, New York City, New York. Defendant Midboro was the management company and statutory agent for 157. Third-party defendant/second third-party plaintiff Ms. Boyd, a shareholder of 157 West 79th Street Owners Corporation and the owner of Units 9C and 9D at the premises, contracted with plaintiff's employer, second third-party defendant VJ, to combine her two apartments ("the project").

Plaintiff Henry Leonel Calderon ("Mr. Calderon") commenced the instant action to recover for injuries allegedly sustained on September 4, 2018, while working for second-third party defendant, VJ Home Improvement Corp. ("VJ") doing general construction work, including demolition and clean-up, on a construction project located at 157 West 59th Street, New York, New York ("the premises"). Plaintiff claims he was injured while carrying a trash can of demolition debris from the basement of the premises. Plaintiff alleges that as he was about to step onto the second or third step from the bottom, his left foot slipped on a mixture of water and dirt on the left side of that step; he fell forward and his left knee hit the stairs, then the weight of the container

came back on him, and he fell back against the left side wall of the basement entrance. Plaintiff further alleges that his supervisor, second third-party defendant VJ's cousin, non-party, Nick, urged plaintiff to continue working.

On June 4, 2019, an order for default judgment against defendant Gruda-Ni Construction was granted in favor of plaintiff. On August 1, 2019, the action was discontinued with prejudice as against Akam Associates, Inc., pursuant to a Stipulation of Discontinuance. On February 26, 2021, an order for default judgment against second third-party defendant VJ Home Improvement Corp., was granted in favor of second-third party plaintiff Mary Franklin Boyd.

Plaintiff now moves for an order granting summary judgment with respect to liability under Labor Law §241(6) as against defendants 157 West 79th Street Owners Corporation ("Owners Co.") and Midboro Management, Inc. ("Midboro"), and against defendant 157 West 79th Street Owners Corporation pursuant to Labor Law § 200 and common law negligence.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see, Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*see, Alvarez*, 68 NY2d at 324; *see also, Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-646 [2d Dept 2006]).

In support of their motion, plaintiff submits, the deposition transcript of plaintiff and the deposition transcript of Nermin Bivic, on behalf of 157th West 79th Street Owners Corporation.

Plaintiff stated that he worked for VJ approximately five or six months before the September 4, 2018, accident. Plaintiff stated that before the accident he had worked at the project location for a month. The plaintiff testified that his duties included, amongst other things, demolition and cleaning demolition debris. He further testified that his supervisor was the owner of VJ and, when the owner was not on the job, the owner's cousin non-party Nick. Plaintiff further testified that on the day of the accident his supervisor was non-party Jimmy, and only the two of them were working on the project on behalf of VJ. Near the time of the accident, plaintiff had been instructed by Jimmy to bring down garbage from the demolition work on the 9th floor to the basement of the premises by himself.

Plaintiff averred that Nick arrived at the premises to pick up the garbage approximately 15 minutes before the accident happened. Plaintiff averred that at the time of the accident plaintiff and Nick were working together in storing seven garbage cans away in Nick's minivan to be transported away from the premises. Plaintiff testified that he would be provided gloves to wear but nothing else. Plaintiff stated that he and Nick would carry the garbage cans up from the basement to the outside using the exterior stairs that lead directly to the outside. Nick would carry the garbage can from the front walking up the stairs, while plaintiff would carry the garbage can from the back. Plaintiff further testified that he remembers that there was water mixed with mud on the third step down of the stairs that had leaked from an air conditioner located above the stairs. Upon stepping on the step plaintiff fell, hit his knee on the stairs, and the garbage container fell on him. Plaintiff testified that when he informed Jimmy of the accident, Jimmy did not pay attention and said "let's go. Let's go" Plaintiff also testified that Nick, upon observing the accident, plaintiff

then proceeded with the job. Plaintiff averred that before the day of the accident he never made any complaints to anyone about the condition of the staircase.

Plaintiff further testified that he had observed water on the stairs each time the air conditioner was turned on, but never witnessed anyone perform any cleaning activities on the staircase during the time he worked at the premises.

Plaintiff also referenced the deposition of Nermin Bicic. Mr. Bicic is the superintendent of the premises, employed by defendant 157 Owners Corp. Mr. Bicic testified that the service entrance was the exclusive means by which construction workers would enter the premises. The service entrance is kept locked closed, and any worker would have to ring the buzzer to gain access into the premises. Furthermore, Mr. Bicic testified that he would have to be notified at least 24 hours in advance of any persons seeking to gain access into the premises. Mr. Bicic also testified that he would receive notice from contractors working at the premises at least 24 hours in advance to when garbage would be taken out, which would prompt Mr. Bicic to lock the elevator to be used exclusively from the 9th floor to the basement.

As part of Mr. Bicic's duties, he stated that he would also visit the units that were under construction every two days. Mr. Bicic averred that upon visiting the units under construction he would take photographs if "something [is] not right," he would then report it to the management company. Mr. Bicic further testified that he would receive the scope of work from management and would then confirm that the contractor was complying with the scope of work as outlined.

Mr. Bicic also testified that the premises' porters would sweep and mop the basement every two days as part of their general responsibilities. Additionally, any contractors that would take out garbage would also sweep the basement every time they made a mess as part of the premises' rules. Mr. Bicic further testified that the porters or himself would clean the staircase that led from the basement to the sidewalk every morning after they hosed it down. These stairs are located immediately by the service entrance that construction workers are required to use to enter the premises. Mr. Bicic averred that on the day of the accident he was in his office located in the corner of the basement and saw plaintiff sweeping the basement after the garbage was taken out but does not remember anything else. Mr. Bicic also testified that prior to the September 4, 2018, accident he had never received any complains about dirt, debris, or wetness on the staircase leading to the service entrance. Mr. Bicic further averred that prior to September 4, 2018, he had never noticed water leaking from any air conditioning unit onto the staircase. Mr. Bicic also averred that in September 2018, no policies were in place requiring him or the premises' porters to inspect or clean the staircase immediately by the service entrance after the initial morning inspection.

In opposition to plaintiff's motion and in support of their cross-motion, defendants 157 West 79th Street Owners Corporation and Midboro Management Inc., submit, inter alia, the affidavit of Andrew R. Yarmus.

Andrew R. Yarmus is a licensed profession engineer and president of an engineering consulting company. Mr. Yarmus deposes that upon his September 6, 2022, inspection of the stairs immediately by the service entrance he observed that the steps were painted with a mixture of sand to create a rough surface to prevent slippage. Me further testified that he had been told that the steps were painted with similar paint, and similar mixture of sand, as they were at the time of the accident on September 4, 2018. Mr. Yarmus also deposes that the American Society of Testing Materials C1028 states that a surface having a static coefficient of friction of 0.5 or greater is

considered to have adequate slip resistance. Mr. Yarmus further deposes that he “measured the static coefficient of friction of the metal steps in the wet and dry conditions at both the second and third steps up from the bottom, and [he] found [that] the coefficient of friction in the wet condition was 0.61 at both steps, and in the dry condition was 0.67 at the third step up from the bottom and 0.69 at the second step up from the bottom. All of these readings are well above the 0.5 level required by good and accepted safety practice for a slip resistant surface.”\

As to the agreement between Boyd and VJ:

Article 11 of the reads as follows in relevant part:

11. The Lessee agrees to save the Lessor harmless from all liability, loss, damage and expense arising from injury to person or property occasioned by the failure of the Lessee to comply with any provision hereof, or due wholly or in part to any act, default or omission of the Lessee or of any person dwelling, working or visiting in the apartment, or by the Lessor, its agents, servants or contractors when acting as agent for the Lessee as in this lease provided. [emphasis added]

Article 6 of the agreement reads as follows in pertinent part:

Shareholder hereby indemnifies and holds harmless the Corporation, the Corporation's Designated Engineer and employees, the Managing Agent, and other shareholders and residents of the Building against any damages suffered to persons or property as a result of the Work. Shareholder shall reimburse the Corporation, the Corporation's Designated Engineer, Managing Agent, and other shareholders and residents of the Building for any losses, costs, fines, fees and expenses (including, without limitation, reasonable attorney's fees and disbursements) incurred as a result of the Work and/or the Shareholder's or any contractor's or consultant's failure to conform with this Agreement or any law or ordinance and which may be incurred by the Corporation in the defense of any suit, action, claim or violation in connection with the Work or the abatement thereof. [emphasis added].

Article 17(a) of the agreement reads as follows in pertinent part:

. . . Materials and rubbish will be placed in barrels or bags before being taken out of the Apartment. All such barrels or bags, rubbish, rubble, discarded equipment, empty packing cartons and other material will be taken out of the building and removed from the Apartment at Shareholder's expense. [emphasis added].

Plaintiff's Labor Law §200 Claim

With respect to plaintiff's Labor Law § 200 and common law negligence claims against defendant 157, plaintiff asserts that 157 had, at a minimum, constructive notice of the hazardous condition of the staircase, an area for which 157 had exclusive responsibility and control.

In opposition, 157 asserts that plaintiff's motion should be denied because the subject exterior staircase was not defective simply because it becomes wet from air conditioner condensation. Additionally, 157 takes the position that there is a question of material fact as to condition of the steps and whether the defendants had notice of the alleged condition.

Section § 200 of the Labor Law is not a strict liability statute but a “negligence statute” codifying the owner’s or general contractor’s common law duty to maintain a safe workplace (*see Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876, 877 [1993]). An owner, lessee or contractor will be held liable for a violation of Labor Law § 200 and common law negligence when the injury complained of falls into one of two categories; 1) those involving the manner in which the work was performed, or 2) those where workers are injured as a result of a dangerous condition at the work site (*see Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]).

Unlike §§ 240 and 241(6) of the Labor Law, liability will only be imposed upon an owner or general contractor under § 200 of the Labor Law where the worker’s injuries were sustained as a result of a dangerous condition at the work site, and then only if the defendant exercised supervisory control over the work performed at the site, or had sufficient authority to control the activity bringing about the injury in order to enable that defendant to avoid or correct an unsafe condition (*see Rizzuto v L.A. Wenger Constr. Co., Inc.*, 91 NY2d 343, 352 [1998]).

Hence, a party’s duty under § 200 is contingent upon contractual or other actual authority to control the activity bringing about the injury (*see Nowak v Smith & Mahoney, P.C.*, 110 AD2d 288, 289 [3d Dept 1985]) as well as proof that the defendant had actual or constructive notice of the alleged unsafe condition or location (*see Canning v Barney’s New York*, 289 AD2d 32 [1st Dept 2001]). It is well settled that evidence of general supervisory control, presence at the worksite or authority to enforce general safety standards is insufficient to establish the necessary control over the work activity that caused the injury (*see Alonzo v Safe Harbors of the Hudson Housing Dev. Fund Co., Inc.*, 104 AD3d 446 [1st Dept 2013]). That a general contractor has an on-site safety manager with responsibility for the safety of the work done by subcontractor, or for holding safety meetings, does not provide “any basis for imposing liability on the general contractor based on an injury allegedly caused by a subcontractor’s work” (*see O’Sullivan v IDI Constr. Co.*, 28 AD3d 225 [1st Dept 2006]).

Rather, “[a]bsent any evidence that [the owner or general contractor] gave anything more than general instructions as to what needed to be done, as opposed to how to do it, these entities cannot be held liable under Labor Law § 200 or for common-law negligence” (*id.*). An owner or general contractor thus will not be liable under § 200 where the evidence demonstrates that plaintiff’s employer, and not the owner or general contractor, specifically controlled the methods by which the plaintiff’s work was performed (*id.*). In contrast, where the general contractor has or exercises the authority to control the methods by which plaintiff’s work is performed, liability may be established (*see Rizzuto*, 91 NY2d 343).

Where, however, the injury arises out of a “dangerous condition on the site,” rather than “the methods or materials” used by the worker or his employer, it is “not necessary to show that [the owner or general contractor] exercised supervisory control over the manner of performance of the injury producing work,” only that it “had notice of the condition” (*see Minorczyk v Dormitory Auth. of State of New York*, 74 AD3d 672 [1st Dept 2010]; *Seda v Epstein*, 72 AD3d 455 [1st Dept 2010]; *Murphy v Columbia Univ.*, 4 AD3d 200 [1st Dept 2004]). “General awareness” that a dangerous condition may be present is insufficient (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 838 [1986]). “The notice must call attention to the specific defect or hazardous condition and its specific location” (*see Mitchell v New York Univ.*,

12 AD3d 200, 201 [1st Dept 2004]). Furthermore, constructive notice of a defect requires that the “defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit defendant’s employees to discover and remedy it” (*id.*).

Applying these principles to the instant case, the court finds that considering the deposition testimony of plaintiff, the superintendent, and the provided photographs which clearly show a water stain directly below the air conditioning unit above the staircase, there was more than mere awareness of the condition on the part of the defendants and is sufficient to establish that it had actual or constructive notice of the slippery staircase at issue in this case. As such, this court has determined that the moving defendants are not entitled to summary judgment dismissing plaintiff’s common law negligence and Labor Law §200 claims.

Plaintiff’s motion for summary judgment under Labor Law §200 as to defendant 157 is granted. Defendant 157 and Midboro’s cross motion to dismiss plaintiff’s claims under Labor Law §200 is denied.

Plaintiff’s Labor Law §241(6) Claim against 157 and Midboro

Plaintiff also moves for an order granting summary judgment under Labor Law §241(6) as to defendants 157 and Midboro. Plaintiff asserts that defendant’s failure to protect plaintiff from slipping hazards on the service entrance staircase was the proximate cause of plaintiff accident and resulting injuries. However, defendants take the position that there are material issues of fact as to whether there was wetness on the steps, and whether this wetness constitutes a dangerous condition. Defendant also argues that the Industrial Code §23-1.7(e)(1) is not applicable.

Pursuant to Labor Law §241(6), all contractors, owners, and their agents are required to keep all areas in which construction work is being performed to be constructed, shored, equipped, guarded arranged operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The duty to comply with the commissioner’s regulations under Labor Law §241(6) is nondelegable. (*see, Long v Forest-Fehlhaber*, 55 NY2d 154, 159 (1982); *Allen v Cloutier Constr. Corp.*, 44 NY2d 290 [1978].)

Here, plaintiff has alleged a violation of Industrial Code §23-1.7(d). §23-1.7 requires that “[e]mployers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.”

Under §23-1.7, a staircase may constitute a passageway when that staircase is the sole exclusive access to the work site. (*Tolk v 11 W. 42 Realty Invs., LLC*, 201 AD3d 491, 160 NYS3d 237 [1st Dept 2022]; *Harasim v Eljin Const. of New York, Inc.*, 106 AD3d 642, 966 NYS2d 387 [2013]). However, a staircase is not a passageway within the meaning of §23-1.7 if it is an open and common area which was remote from the work site. (*Bruder v 979 Corp.*, 307 AD2d 980, 763 NYS2d 667 [2003]).

Here, Mr. Bicic, the superintendent of the premises, testified that the service entrance is the exclusive means by which construction workers enter and exit the premises. Mr. Bicic also

testified that the service entrance is kept locked, and he would need to be notified at least 24 hours in advance of any persons seeking to gain access into the premises. Additionally, article 17(a) of the agreement requires VJ workers to take all “barrels or bags, rubbish, rubble, discarded equipment, empty packing cartons and other material” to be taken out of the building. As previously discussed, the service entrance is the only means of exit for the construction workers. As such, contrary to the defendant’s contention, the staircase constitutes a passageway within the meaning of §23-1.7, as it is not an open and common area and is not remote from the work site.

Plaintiff testified that he was caused to slip on the staircase because there was water, mixed with dirt on the step. Plaintiff also testified that he observed water leaking from the air conditioning unit every time that it was turned on. However, Mr. Bivic testified that he installed the units and never noticed water leaking. Mr. Yarmus deposed that the type of paint mixture used on the stairs creates a rough surface to prevent slippage. Mr. Yarmus further deposed that upon measuring the static coefficient of friction of the second and third steps up from the bottom of the stairs, he found that the coefficient of friction of both steps were above the 0.5 level required by good and accepted safety practice for a slip-resistant surface. However, his inspection took place on September 6, 2022 and it is worth noting that he was “...told that the steps were painted with similar paint, and a similar mixture of sand, as they were at the time of the alleged accident on September 4, 2018.”

It is evident based on the affidavit of Yarmus that the purported paint on the stairs was not the same as the paint observed by Yarmus at the time of his inspection, creating a question as to the condition of the stairs at the time of the accident. Also, it is apparent that Yarmus did not test the air conditioning residue mixed with mud, and thus the conditions present at the time of testing were dissimilar to those present at the time of the incident. As such, summary judgment under 241(6) is warranted as to plaintiff since 157 and Midboro were obligated and failed to provide plaintiff with a safe environment free from slipping hazards, namely water and dirt accumulation on the only staircase that he was able to use to complete his job function. Therefore, plaintiff’s motion for summary judgment is granted as to 157 and Midboro and defendants’ cross motion as to 241(6) is denied. Additionally, as plaintiff alleges additional Industrial Code violations and does not address same in his motion, those remaining sections are hereby dismissed.

Defendant Boyd’s motion for Summary Judgment on the issue of liability and dismissing all causes of action in third-party action

In support of her motion, third-party defendant/second third-party plaintiff Mary Franklin Boyd submits, inter alia, her deposition transcript.

Ms. Boyd is the president of the board of the building and the owner of the apartments under renovation at the time of the alleged accident. Ms. Boyd testified that she hired VJ as the general contractor for the project and entered into an agreement with VJ. Ms. Boyd further testified that she was not living in the apartment while the work was on-going, but there would be times when she would visit the project location and have aesthetic conversations with VJ, but has never given VJ any instructions or directions about how she wanted the work to be performed nor spoke about workers safety. Ms. Boyd also testified that she was not aware of the accident in question until after the lawsuit was filed.

Ms. Boyd argues that the indemnity clause of the lease agreement violates the General Obligation law and is void and unenforceable.

The agreement states in pertinent part:

Indemnification by Shareholder. Shareholder hereby indemnifies and holds harmless the Corporation, the Corporation's Designated Engineer and employees, the Managing Agent, and other shareholders and residents of the Building against any damages suffered to persons or property as a result of the Work. Shareholder shall reimburse the Corporation, the Corporation's Designated Engineer, Managing Agent, and other shareholders and residents of the Building for any losses, costs, fines, fees and expenses (including, without limitation, reasonable attorney's fees and disbursements) incurred as a result of the Work and/or the Shareholder's or any contractor's or consultant's failure to conform with this Agreement or any law or ordinance and which may be incurred by the Corporation in the defense of any suit, action, claim or violation in connection with the Work or tire abatement thereof.

Pursuant to General Obligations Law §5-321, any agreement in connection with or collateral to any lease of real property exempting the lessor from liability for damages for injuries to person or property caused by or resulting from the negligence of the lessor or his employees, in the operation or maintenance of the demised premises or the real property containing the demised premises shall be deemed to be void as against public policy and wholly unenforceable. "A broad indemnification provision in a lease...which is not limited to the lessee's acts or omissions, fails to make exceptions for the lessor's own negligence, and does not limit the lessor's recovery under the lessee's indemnification obligation to insurance proceeds, is unenforceable pursuant to General Obligations Law § 5-321. (*Hadzihasanovic v 155 E. 72nd St. Corp.*, 70 AD3d 637, 896 NYS2d 83 [2010]; *Colosi v RATL, LLC*, 7 AD3d 558, 776 NYS2d 496 [2004]).

Here, the indemnification provision fails to make exceptions for the lessor's own negligence and does not limit the lessor's recovery under the lessee's indemnification obligation. As such, such a broad indemnification provision is void as against public policy and wholly unenforceable. Additionally, the agreement clearly states that the third-party defendant owes indemnity for damages suffered as a result of the work. The work as defined in the agreement is for interior renovations, and the accident occurred on an exterior staircase. It is evident that this provision calls for Boyd to indemnify her fellow apartment dwellers, not the building for their own negligence if a worker slips on a wet exterior staircase. As such, third-party defendant does not owe defendant/third-party plaintiffs' contractual indemnity for damages suffered as a result of an accident that occurred outside of where the work was performed. As to the requirement to procure insurance, Boyd had insurance and is being defended under the Chubb insurance policy, however, the contract does not require her to name the building owners as an additional insured, as such this cause of action is also dismissed. It is evident that she owed no duty to plaintiff, did not control the building's exterior staircase, and was did not create a defective condition.

Accordingly, pursuant to the aforementioned agreement and supporting documents, the four causes of action in the third-party complaint are dismissed.

For the foregoing reasons, it is hereby

ORDERED that, plaintiff's motion for summary judgment with respect to liability under Labor Law §241(6) as against defendants 157 WEST 79TH STREET OWNERS CORPORATION and MIDBORO MANAGEMENT, INC. is granted, it is further

ORDERED that, plaintiff's motion for an order granting summary judgment against defendant 157 WEST 79th STREET OWNERS CORPORATION pursuant to Labor Law § 200 and common law negligence is granted,

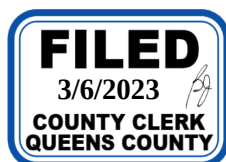
ORDERED that, defendants', 157 WEST 79TH STREET OWNERS CORPORATION and MIDBORO MANAGEMENT, cross motion is denied as to 241(6) Industrial Code 23-1.7(d) but granted as to the additional provisions not addressed by plaintiff and as such those are dismissed, and it is further

ORDERED that, third-party defendant/second third-party plaintiff MARY FRANKLIN BOYD's motion for an order granting summary judgment dismissing all causes of action within the third-party action against MARY FRANKLIN BOYD is granted.

Plaintiff shall serve a copy of this order on the defendants together with notice of entry, within 30 days of the date of the entry of this order.

This constitutes the Decision and Order of this Court.

Dated: March 3, 2023





KARINA E. ADOMAR, J.S.C.