

**Graves v Sava Serbian Orthodox Church**

2024 NY Slip Op 30999(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 157595/2019

Judge: David B. Cohen

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

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

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CASANDRA HARRIS GRAVES,  
Plaintiff,

- v -

SAVA SERBIAN ORTHODOX CHURCH A/K/A SAVA  
SERBIAN ORTHODOX CATHEDRAL OF NEW YORK  
CITY, SERBIAN ORTHODOX CHURCH AND SCHOOL  
COMMUNITY OF ST. SAVA CATHEDRAL, SRPSKA  
ISTOCN-PRVOSLAVNA CRKVA SVETOGA SAVE A/K/A  
SERBIAN EASTERN-ORTHODOX CHURCH OF SAINT  
SAVA,

Defendant.

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SAVA SERBIAN ORTHODOX CHURCH A/K/A SAVA  
SERBIAN ORTHODOX CATHEDRAL OF NEW YORK CITY,  
SERBIAN ORTHODOX CHURCH AND SCHOOL  
COMMUNITY OF ST. SAVA CATHEDRAL

Plaintiff,

-against-

G.P.J. O'DONOGHUE CONTRACTING CORP.

Defendant.

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SRPSKA ISTOCN-PRVOSLAVNA CRKVA SVETOGA SAVE  
A/K/A SERBIAN EASTERN-ORTHODOX CHURCH OF SAINT  
SAVA

Plaintiff,

-against-

G.P.J. O'DONOGHUE CONTRACTING CORP.

Defendant.

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**INDEX NO.** 157595/2019  
**MOTION DATE** 11/06/2023,  
11/06/2023  
**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595231/2020

Second Third-Party  
Index No. 595121/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 102, 103, 104, 105, 106,

107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 157, 158, 160, 161, 162, 165, 166, 167

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 159, 163, 164

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

In this Labor Law action, plaintiff moves (Seq. 001), pursuant to CPLR 3212, for summary judgment against defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save, also known as Serbian Eastern-Orthodox Church of Saint Sava (Saint Sava),<sup>1</sup> on the issue of liability under Labor Law §§ 240(1) and 241(6). Saint Sava cross-moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claims. Saint Sava also moves separately (Seq. 002), pursuant to CPLR 3212, for summary judgment against second third-party defendant G.P.J. O'Donoghue Contracting Corp. (G.P.J.) on its claims for contractual and common-law indemnification.

### I. Factual and Procedural Background

This case arises from an incident on April 9, 2018, in which plaintiff's husband was allegedly injured after falling through an opening in the floor while working at a building located at 15 West 25th Street in Manhattan (the premises) (NYSCEF Doc No. 56), which was owned by Saint Sava (Doc No. 67). Plaintiff commenced this action against defendants alleging claims of common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6) (Doc No. 50). Saint Sava joined issue by its answer dated January 27, 2023, denying all substantive allegations of wrongdoing and asserting various affirmative defenses (Doc No. 56). Shortly thereafter, Saint

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<sup>1</sup> Although there are three defendants identified in the caption, there is only one entity actually involved in this litigation, and against whom plaintiff is seeking partial summary judgment. At his deposition, a member of Saint Sava's Board of Trustees explained that Saint Sava is colloquially referred to by many names, but its registered corporate name is Srpska-Istocn Pravoslavna Crkva Svetoga Save (NYSCEF Doc No. 67).

Sava commenced a third-party action against G.P.J. asserting claims of, among other things, common-law and contractual indemnification (Doc No. 105). G.P.J. then joined issue with its answer dated February 23, 2023, asserting counterclaims for common-law indemnification and contribution (Doc No. 84).

Plaintiff now moves for partial summary judgment on her Labor Law §§ 240(1) and 241(6) claims (Doc No. 47), which Saint Sava and G.P.J. oppose (Doc Nos. 116, 120). Saint Sava also cross-moves for summary dismissal of plaintiff's common-law negligence and Labor Law § 200 claims (Doc Nos. 103, 116),<sup>2</sup> and moves separately for, among other things, summary judgment on its common-law and contractual indemnification claims against G.P.J. (Doc No. 74), which G.P.J. opposes (Doc No. 145).

A. Deposition Testimony of Plaintiff (Doc No. 108)

At her deposition, plaintiff testified that her husband worked as a project manager for G.P.J., but he never discussed any safety protocols or work events with her. She was not familiar with the incident that caused his injuries but stated that two other men working at the premises on the date of the incident spoke to her at the hospital shortly after the incident occurred. One worker explained what happened while the other translated his words to English. The two men told her that her husband was injured after being knocked over by a tool, which caused him to fall through an opening in the floor.

B. Deposition Testimony of Former G.P.J. Laborer (Doc No. 68)

One of G.P.J.'s former laborers testified that plaintiff's husband worked for G.P.J. on the date of the accident and was his supervisor on the construction project. The premises had one ground level with a cellar level beneath it, and there were multiple openings in the floor of the

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<sup>2</sup> Plaintiff does not oppose Saint Sava's motion for summary dismissal of her common-law negligence and Labor Law § 200 claims.

ground level. When the former laborer first started on the project, any openings were either covered with plywood or surrounded by a guardrail, and safety devices such as harnesses and tethers were available at the premises. However, he could not state whether those procedures were followed on the date of the incident or in the days before, because he was not present at the premises on the date of the accident and could not provide the last time he was at the premises prior to that date.

On the day of the accident, he arrived at the premises shortly after plaintiff's husband was injured and completed an accident report that same day, based on what was told to him by a coworker present at the time. When shown a copy of the accident report, he confirmed that it accurately reflected his understanding of what transpired.

C. G.P.J. Accident Report (Doc No. 64)

The G.P.J. accident report provided that plaintiff's husband attempted to loosen a machine stuck in the floor of the ground level. After plugging in the machine and turning it on, it spun and struck his leg, knocking him over the edge of a nearby opening in the floor. He fell down approximately eleven feet onto the floor of the cellar level.

D. Deposition Testimony of Former G.P.J. Vice President (Doc No. 62)

At his deposition, G.P.J.'s former vice president confirmed much of the testimony provided by G.P.J.'s former laborer. G.P.J. was the general contractor and responsible for renovating the inside of the premises after a fire caused several structural pieces to fall from the ceiling onto the floor of the ground level, resulting in large openings in the floor. During the construction project, small openings were supposed to be covered by plywood, with large openings surrounded by barriers indicating the area was cordoned off. He did not witness

plaintiff's husband fall into the opening and was not working at the premises that day, but he was informed of the accident over the phone by an employee shortly after it occurred.

When shown a photograph of the area where plaintiff's husband fell (Doc No. 69), he confirmed that it accurately depicted the area. In the photograph, there are two large openings in the floor of the ground level, and a piece of a barrier next to the far side of one opening. Despite the presence of the barrier, he conceded that plaintiff's husband was still required to perform work in that area. Although he could not specify which opening plaintiff's husband fell in, he admitted that the uncovered openings were unsafe and the area contained no tie-off points for any worker to potentially attach a safety harness.

E. Affidavit of G.P.J.'s Expert (Doc No. 119)

In his affidavit, G.P.J.'s construction site safety expert opined that the area where plaintiff's husband fell was considered a controlled access zone, where individuals should not be working without safeguards. He also described plaintiff's husband's conduct as unsafe, because he positioned himself between the machine and the opening in the floor, and turning on the machine created a risk that the machine would spin and become uncontrollable. G.P.J.'s expert concluded that plaintiff's husband was provided with adequate safety devices because of the presence of barricades and safety harnesses. He reached his conclusion after reviewing, among other things, deposition testimony, statements made by workers present at the premises, various accident reports, and a photograph of the area. However, he never visited the premises and inspected the area himself.

F. Contract Between Saint Sava and G.P.J. (Doc No. 61)

Pursuant to the contract, the scope of work to be performed by G.P.J. included, among other things, removal of interior stone and veneer, with G.P.J. maintaining control over the

“means, methods, techniques, sequences[,] and procedures” of the work performed at the premises. The contract also contained an indemnification provision that listed Saint Sava as the party to be indemnified “from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from” the work done by G.P.J. It also provided that G.P.J. would indemnify Saint Sava to the fullest extent of the law, limited only to the negligent acts of G.P.J., its subcontractors, and anyone directly or indirectly employed by it, “regardless of whether or not such claim, damage, loss[,] or expense [was] caused in part by a party indemnified” by the contract.

## II. Legal Analysis and Conclusions

### A. Plaintiffs’ Motion for Partial Summary Judgment

#### 1. Plaintiff’s Labor Law § 240(1) Claims

Plaintiff contends that she has made a prima facie showing that Saint Sava violated the statute and such violation caused her husband’s injuries because the opening in the floor of the ground level should have been covered, and the lack of safety devices caused her husband’s injuries. Saint Sava argues in opposition that plaintiff’s husband was the sole proximate cause of his accident because he failed to use adequate safety devices available to him. G.P.J. argues in opposition that it has demonstrated triable questions of fact exist regarding whether plaintiff’s husband was the sole proximate cause of his accident, based on the affidavit from its expert witness.

“Labor Law § 240(1) imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks in circumstances specified by the statute” (*Soto v J. Crew Inc.*, 21 NY3d 562, 566

[2013] [citations omitted]; see *Healy v EST Downtown, LLC*, 38 NY3d 998, 999 [2022]). A plaintiff seeking summary judgment on the issue of liability “must establish that the statute was violated and that such violation was a proximate cause of his injury” (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]; see *Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 405 [1st Dept 2018]).

Plaintiff made a prima facie showing that Saint Sava violated the statute. Courts in this State “have repeatedly held that [Labor Law § 240(1)] is violated when workers fall through unprotected floor openings” (*Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc.*, 104 AD3d 446, 450 [1st Dept 2013]; see *Devlin v AECOM*, \_\_ AD3d \_\_\_, 2024 NY Slip Op 00673, \*1 [1st Dept 2024] [“Plaintiff’s fall through an insufficiently guarded opening in the floor of the worksite . . . warrants summary judgment on [his] claim pursuant to Labor Law § 240(1)”]; *Burke v Hilton Resorts Corp.*, 85 AD3d 419, 419-420 [1st Dept 2011]). The accident report and testimony from plaintiff, G.P.J.’s former vice president, and G.P.J.’s former laborer establish that plaintiff’s husband fell through an unguarded opening in the floor of the ground level. G.P.J.’s former vice president also admitted at his deposition that there were no adequate safety devices available in the area of the incident.

Saint Sava failed to satisfy its shifted burden to demonstrate the existence of triable questions of fact. Although one of G.P.J.’s former employees testified that safety devices were available at the premises when he worked on the project initially, he was not present on the date of the accident and could not recall when he was last there. Thus, his testimony failed to raise a question of fact regarding whether adequate safety devices were available on the day of plaintiff’s accident.

G.P.J.'s contentions are also unavailing. It relies solely on its expert's affidavit to argue questions of fact exist, however, the affidavit contains no foundational facts, such as an inspection of the premises, and the expert's conclusions were based entirely on a review of hearsay evidence. "[Although] hearsay may be considered in opposition to a summary judgment motion, it is insufficient to defeat summary judgment where, as here, it is the only evidence upon which denial of summary judgment would be based" (*Clarke v Empire Gen. Contr. & Painting Corp.*, 189 AD3d 611, 612 [1st Dept 2020]). Thus, G.P.J. failed to demonstrate that questions of fact existed (*see Brown v Shurgard Stor. Ctrs. LLC*, 203 AD3d 453, 454 [1st Dept 2022] [finding party failed to demonstrate existence of question of fact because expert affidavit contained no foundational facts to support expert's conclusion]).

Therefore, Saint Sava, as the property owner, is strictly liable under the statute and plaintiff is entitled to summary judgment on the issue of liability as against it (*see Piccone v Metropolitan Tr. Auth.*, 205 AD3d 628, 628-629 [1st Dept 2022] [granting plaintiff partial summary judgment on Labor Law § 240(1) claims after he established that he fell through unguarded manhole and defendants failed to identify questions of fact]; *Alonzo*, 104 AD3d at 450 [similar]).

## 2. Plaintiff's Labor Law § 241(6) Claims

Since plaintiff is entitled to summary judgment on liability on his Labor Law § 240(1) claim, it is unnecessary to address his Labor Law § 241(6) claim; as his damages are the same under either theory of liability and he may only recover once, the issue is academic (*see Corleto v Henry Restoration Ltd.*, 206 AD3d 525, 526 [1st Dept 2022] [deeming issue of Labor Law § 241(6) claim academic after finding plaintiff entitled to partial summary judgment on Labor Law § 240(1) claim]; *Jerez v Tishman Constr. Corp. of N.Y.*, 118 AD3d 617, 617-618 [1st Dept

2014] [similar]). However, in an effort to aid any potential appellate review, plaintiff's Labor Law § 241(6) claim is analyzed.

Plaintiff contends that she has made a prima facie showing that Saint Sava violated 12 NYCRR 23-1.7(b)(1) because the opening in the floor was not covered or otherwise protected by guardrails. Saint Sava maintains in opposition that there are questions of fact regarding whether plaintiff's husband was the sole proximate cause of his accident because he was in control of covering any openings in the floor. G.P.J. maintains in opposition that a violation of the Industrial Code is not determinative of negligence, it is only evidence of negligence to be considered, and that questions of fact exist regarding why plaintiff's husband was allowed to work in the area where his incident occurred.

The Industrial Code provides that “[e]very hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part” (12 NYCRR 23-1.7 [b] [1] [i]; *accord Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 140 [2011]). However, the regulation “only applies to openings large enough for a person to fall completely through” (*Marte v Tishman Constr. Corp.*, 223 AD3d 527, 529 [1st Dept 2024]; *see Favaloro v Port Auth. of N.Y. & N.J.*, 191 AD3d 524, 525 [1st Dept 2021] [concluding regulation “applies to openings deep enough for a person to fall all the way through”]).

As with her Labor Law § 240(1) claims, plaintiff has made a prima facie showing that Saint Sava violated the Industrial Code. The evidence established that plaintiff's husband was injured after falling through an opening in the floor that was uncovered, and the opening was large enough for a person to fall through (*see Alonzo*, 104 AD3d at 450 [finding 12 NYCRR 23-1.7(b)(1)(i) violated “because the hole into which plaintiff fell was dangerous and unguarded”];

*cf. Vitale v Astoria Energy II, LLC*, 138 AD3d 981, 983 [1st Dept 2016] [finding no Industrial Code violation because “openings of the grid were not of a dimension that would have permitted the plaintiff’s body to completely fall through”]).

For the same reasons Saint Sava and G.P.J. failed to demonstrate that questions of fact existed regarding plaintiff’s Labor Law § 240(1) claims, they fail to do so with respect to her Labor Law § 241(6) claims. Therefore, plaintiff is entitled to partial summary judgment on those claims (*cf. Radeljic v Certified of N.Y., Inc.*, 161 AD3d 588, 589 [1st Dept 2018] [denying plaintiff summary judgment because defendant raised issues of fact regarding presence of safety harness and barricade]).

*B. Saint Sava’s Cross-Motion for Summary Dismissal*

Since plaintiff is entitled to summary judgment on the issue of liability under Labor Law § 240(1), her common-law negligence and Labor Law § 200 claims are moot, thereby rendering Saint Sava’s cross-motion academic (*see Keilitz v Light Tower Fiber N.Y., Inc.*, 221 AD3d 429, 431 [1st Dept 2023] [deeming Labor Law § 200 and common-law negligence claims moot after granting plaintiff summary judgment on the issue of liability under Labor Law § 240(1)]; *Viruet v Purvis Holdings LLC*, 198 AD3d 587, 588-589 [1st Dept 2021] [similar]). In any event, as plaintiff does not oppose Saint Sava’s cross-motion for summary dismissal of her common-law negligence and Labor Law § 200 claims, the cross-motion is granted and those claims are dismissed.<sup>3</sup>

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<sup>3</sup> In her reply papers in support of her motion for partial summary judgment, plaintiff explicitly declined to oppose Saint Sava’s cross-motion (Doc No. 165 at 9).

C. Saint Sava's Motion for Summary Judgment on Its Indemnification Claims

1. Saint Sava's Contractual Indemnification Claims

Saint Sava contends that it has made a prima facie showing that it is entitled to full contractual indemnification because the injuries suffered by plaintiff's husband arose out of the work performed by G.P.J. and the language of the contract between Saint Sava and G.P.J. clearly and unambiguously provided that G.P.J. would indemnify Saint Sava in those instances. G.P.J. argues in opposition that contractual indemnification is not warranted because it has not been found liable. It also contends that the indemnification clause is unenforceable because it violates General Obligations Law § 5-322.1.

Contrary to G.P.J.'s contention, "the indemnification provision, which has a savings clause limiting any indemnification to the extent permitted by law, does not violate General Obligations Law § 5-322.1(1), which allows contractual provisions requiring indemnification whether or not the promisor is partially negligent" (*Mancusi v Avalonbay Communities, Inc.*, 199 AD3d 463, 464 [1st Dept 2021]; *see Alvarado v SC 142 W. 24 LLC*, 209 AD3d 422, 424 [1st Dept 2022] [granting contractual indemnification because provision only required that accident arise out of contractors work and did not "run afoul of" General Obligations Law]).

Further, the provision is enforceable, because it requires G.P.J. to indemnify Saint Sava for claims "arising out of or resulting from performance of the Work . . . only to the extent caused by the negligent acts or omissions of [G.P.J.], a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable" (*Guevara-Ayala v Trump Palace/Parc LLC*, 205 AD3d 450, 451-452 [1st Dept 2022] [internal quotation marks and citation omitted] [finding indemnification clause enforceable using identical language to instant contract]).

However, there has been no finding that G.P.J. was negligent in connection with the accident suffered by plaintiff's husband. Plaintiff only moved for partial summary judgment against Saint Sava, she did not seek any relief against G.P.J., as it is not a named defendant in this action. Thus, there has been no finding that G.P.J. or any of its subcontractors were negligent. Saint Sava, therefore, "is entitled to indemnification only conditionally, pending a determination of negligence and apportionment of fault" (*id.* at 452; *see Sunun v Klein*, 188 AD3d 507, 509 [1st Dept 2020] [finding defendant entitled to conditional contractual indemnification based on similar contractual language and lack of negligence determination]).

## 2. Saint Sava's Common-Law Indemnification and Contribution Claims

Because of the finding set forth above that Saint Sava is entitled to conditional summary judgment on its contractual indemnification claims, the branch of its motion seeking summary judgment on its claims for common-law indemnification and contribution is academic (*see Weidman v Tremont Renaissance Hous. Dev. Fund Co., Inc.*, \_\_ AD3d \_\_, 2024 NY Slip Op 00750, \*2 [1st Dept 2024] [denying defendant's motion for summary judgment on common-law indemnification and contribution claims as academic because defendant granted summary judgment on contractual indemnification claims]). However, in an effort to aid any potential appellate review, Saint Sava's arguments regarding its common-law indemnification and contribution claims are analyzed.

"To establish a claim for common-law indemnification, the one seeking indemnity must prove not only that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident but also that it was not guilty of any negligence beyond the statutory liability" (*Winkler v Halmar Intl., LLC*, 206 AD3d 458, 461 [1st Dept 2022] [citations omitted]). "The right to contribution and apportionment of liability among alleged multiple

wrongdoers arises when they each owe a duty to plaintiff or to each other and by breaching their respective duties they contribute to plaintiff's ultimate injuries" (*Trustees of Columbia Univ. v Mitchell/Giurgola Assoc.*, 109 AD2d 449, 454 [1st Dept 1985]).

Here, as with Saint Sava's contractual indemnification contentions, there has been no finding that G.P.J. was negligent. Although Saint Sava is entitled to summary dismissal of plaintiff's common-law negligence and Labor Law § 200 claims, there has been no finding that G.P.J. was negligent. Thus, Saint Sava is only entitled to conditional common-law indemnification (*see Bacova v Paramount Leasehold, L.P.*, 223 AD3d 428, 430-431 [1st Dept 2024]; *Shah v 20 E. 64th St. LLC*, 222 AD3d 417, 418 [1st Dept 2023]).

### 3. Dismissal of G.P.J.'s Counterclaims against Saint Sava

Saint Sava contends that G.P.J.'s counterclaims against it for common-law indemnification should be dismissed, because Saint Sava was not negligent beyond its statutory liability.<sup>4</sup> G.P.J. did not address this contention in its opposition papers.

Saint Sava has demonstrated that G.P.J. will be unable to establish that it is entitled to common-law indemnification. As discussed above in section II.C.2, in order to establish common-law indemnification, a party seeking indemnification must demonstrate that it was free of negligence and that the party providing the indemnification was negligent (*see Winkler*, 206 AD3d at 461). As plaintiff's common-law negligence and Labor Law § 200 claims against Saint Sava have been dismissed (*see* Section II.B, *supra*), G.P.J. will be unable to satisfy one of the elements necessary to obtain common-law indemnification. Therefore, Saint Sava has made a

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<sup>4</sup> Saint Sava also contends, confusingly, that G.P.J.'s counterclaims for contractual indemnification should be dismissed for similar reasons. However, G.P.J. never asserted a contractual indemnification counterclaim against Saint Sava in its answer to Saint Sava's third-party complaint (Doc No. 84), a fact that Saint Sava mentioned in a footnote of its motion papers (Doc No. 101 at 19 n 6). Therefore, only Saint Sava's request for dismissal of G.P.J.'s counterclaim for common-law indemnification will be addressed.

prima facie showing that it is entitled to dismissal of G.P.J.'s counterclaim against it for common-law indemnification, and that claim is dismissed without opposition.

The parties remaining contentions are either without merit or need not be addressed given the findings outlined above.

Accordingly, it is hereby:

ORDERED that the branch of plaintiff's motion (Seq. 001) seeking summary judgment on the issue of liability under Labor Law § 240(1) as against defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save is granted; and it is further

ORDERED that the branch of plaintiff's motion (Seq. 001) seeking summary judgment on the issue of liability under Labor Law § 241(6) as against defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save is denied as academic; and it is further

ORDERED that the cross-motion (Seq. 001) by defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save seeking summary judgment dismissing plaintiff's common-law negligence and Labor Law §200 claims is denied as academic; and it is further

ORDERED that the branch of the motion (Seq. 002) by defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save seeking summary judgment on its claims of contractual indemnification against third-party defendant G.P.J. O'Donoghue Contracting Corp. is conditionally granted to the extent that G.P.J. O'Donoghue Contracting Corp. will be required to indemnify Srpska-Istocn Pravoslavna Crkva Svetoga Save to the extent that G.P.J. O'Donoghue Contracting Corp. may be found negligent; and it is further

ORDERED that the branch of the motion (Seq. 002) by defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save seeking summary judgment on its claims of common-law

indemnification and contribution against third-party defendant G.P.J. O'Donoghue Contracting Corp. is denied as academic; and it is further

ORDERED that the branch of the motion (Seq. 002) by defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save seeking summary judgment dismissing third-party defendant G.P.J. O'Donoghue Contracting Corp.'s counterclaim for common-law indemnification is granted; and it is further

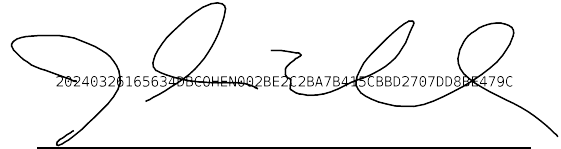
ORDERED that third-party defendant G.P.J. O'Donoghue Contracting Corp.'s counterclaim for common-law indemnification against defendant Srpska-Istocn Pravoslavna Crkva Svetoga Save is severed and dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B), and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Case* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the parties are to appear for a settlement/trial scheduling conference in person at 71 Thomas Street, Room 305, on August 7, 2024, at 10:00 a.m.



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3/26/2024  
DATE

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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE