Villa v 83rd St. Tenants, Inc.
2024 NY Slip Op 35037(U)
September 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 703381/2020
Judge: Karina E. Alomar
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Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE **KARINA E. ALOMAR** IAS PART 23
JUSTICE

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WILSON SAQUICELA VILLA,

Plaintiff,

Index No.: 703381/2020
Motion Date: 08/29/2024
Motion Seq. No.: 3

-against-

83RD STREET TENANTS, INC., WILLIAM K. CONSTRUCTION GROUP, INC., and BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC,

Defendants.

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83RD STREET TENANTS, INC., and BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC,

Third-Party Plaintiffs,

-against-

SRCC CORP.,

Third-Party Defendant.

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The following numbered papers 88 to 191 read on this: (1) motion by plaintiff for an order pursuant to CPLR §3212 granting summary judgment of the issue of liability pursuant to Labor Law§§ 240(1) and 241(6); and (2) defendant/third-party plaintiffs 83rd Street Tenants Inc (hereinafter, "83rd Inc") and Brown Harris Steven Residential Management LLC's ("Brown LLC") cross-motion (a) compelling SRCC Corp to respond to the court's May 15, 2024, order, (b) pursuant to CPLR §3212 dismissing plaintiff's Labor Law §§200 and 241(6) claims, and (c) pursuant to CPLR §3212 granting 83rd Inc and Brown LLC summary judgment as against third-party defendant SRCC Corp on the claims for Contractual Indemnity and Breach of Contract for failing to comply with the insurance procurement clause

PAPERS	NUMBERED
Notice of Motion, Affidavit, Exhibits……	EF No: 88 – 110
Affirmations in Opposition, Exhibits…….....	EF No: 117 – 132
Notices of Cross-Motion, Affidavit, Exhibits…	EF No: 133 – 188
Affirmations in Reply, Exhibit..……..……..	EF No: 189 – 191

Upon the foregoing cited papers, it is hereby ordered that plaintiffs motion pursuant to CPLR §3212 and defendant/third-party plaintiffs cross-motion for an order compelling SRCC

Corp to respond to the court's May 15, 2024, order, and pursuant to CPLR §3212, is decided as follows:

Plaintiff commenced the instant Labor Law action on February 26, 2020, to recover for personal injuries allegedly sustained as the result of a work-related accident which occurred on January 31, 2020, at 8 East 83rd Street, New York, (the "premises"). Defendant 83rd Inc is the owner of the subject premises, and defendant Brown LLC was the managing agent of the building. Whereas defendant William K Construction Group Inc ("William Inc") was the general contractor for the construction, renovation and alteration of the premises, and third-party defendant SRCC Corp ("SRCC") was plaintiff's employer at the time of the accident.

Plaintiff's Deposition Transcript

In support of his motion plaintiff submits, inter alia, his deposition transcript dated February 2, 2022. Plaintiff averred that at the time of the accident he had been employed by SRCC for approximately 6 months. Plaintiffs work duties included painting, patching, and demolition. During the six months plaintiff had one supervisor called Roman. Mr. Roman was the person that gave plaintiff daily instructions and work tools or equipment, including personal protective equipment or safety devices. Mr. Roman was also the person that told plaintiff which job site to go to on a particular day. Plaintiff averred that no other person aside from Roman and SRCC foreman Freddy would give plaintiff instructions on how to perform his job.

On January 31, 2020, plaintiff was working at the subject premises. Plaintiff had been working at the premises for approximately 2 or 3 months prior to the date of the accident, January 31, 2020. At the time of the accident plaintiff was working by himself at the front side of the building, on the outside. Plaintiff had been tasked by the SRCC foreman called Freddy to paint the front left side of the building. When plaintiff arrived at the job site the painting materials had already been set and placed for him to use. Plaintiff averred that he did not "punch in" to work on said date.

Plaintiff averred that at the time of the accident he had been on the second level of a scaffold by the sidewalk, standing on top of two wooden OSHA planks. Plaintiff was on a ten feet tall metal scaffold with a wooden plank platform, but without any railings or bars, above a wooden bridge built above the sidewalk. The wooden bridge itself reached the second level of the building. The scaffold was 5 feet long and 2 feet wide and had two wooden planks as platforms (each plank on different heights). The wooden OSHA planks on the scaffold were twelve feet long and six inches wide. Plaintiff did not participate in the construction of the scaffold or the bridge.

Plaintiff averred that on the date of the accident he was not provided any type of harness or protective device although plaintiff had made such request to the SRCC foreman when plaintiff had arrived for work. Plaintiff averred that in previous instances he would ask for protective devices/equipment from SRCC foreman Freddy and from Roman, but plaintiff was not provided with such devices/equipment.

At the time of the accident plaintiff was standing on a singular wooden plank on the scaffold working alone. There were no objects on the wooden plank aside from the paint bucket to the right of where plaintiff was standing. While plaintiff was painting, the wooden plank upon which plaintiff was standing moved causing plaintiff to lose his balance and fall on his back.

Plaintiff fell onto the bridge, plaintiff's back, neck, legs, knees, and right arm contacted the scaffold steps and the right side of the bridge protector (wooden railing). Plaintiff does not recall seeing anyone on the bridge except for his co-worker Miguel Bonilla.

Affidavit of Miguel Angel Bonilla Cando

In support of his motion plaintiff submitted, inter alia, the affidavit of Mr. Cando dated February 16, 2023. Mr. Cando averred that on January 31, 2020, he did not see the accident as it occurred, but he heard something move and then hear a loud crash of someone falling. Mr. Cando saw plaintiff on the sidewalk bridge. Plaintiff was wearing no safety equipment or harness, as there was nowhere to anchor/tie a harness. Mr. Cando further averred that: there was no safety netting in the area; the scaffold did not have guardrails; and the planks on the scaffold were not secured to the frames.

Affidavit of Roman Rosa Martinez

In opposition defendants submit, inter alia, the affidavit of Mr. Martinez dated April 13, 2023. Mr. Martinez averred that he was on the bridge on January 31, 2020. On said date. Mr. Martinez never saw the plaintiff working and did not see any person getting injured or heard of anyone getting injured.

Worker's Compensation Hearing: Rosa Martinez

On September 21, 2020, the Worker's Compensation hearing was conducting before the Honorable. Lucky Enobakhare.

Mr. Martinez testified during the hearing and averred that in January of 2020, he was overseeing the project at the premises. In January of 2020, the foreman for SRCC at the premises was Freddie Ayala, who no longer works for SRCC.

Mr. Martinez averred that he maintains a record of what workers are working at specific sites and on what days. The time sheets are completed every Wednesday upon receipt of all the sing-in sheets for the week. According to his records plaintiff's last day at the job site was on January 30, 2020 (the day before the accident).

Mr. Martinez averred that he had never been notified of the accident prior to the commencement of the lawsuit. Mr. Martinez averred that on January 31, 2020, he did not receive any phone call from plaintiff notifying him that he would be late to work. Mr. Martinez also did not give plaintiff a phone call to inquire as to why plaintiff was not at the job site.

Upon the conclusion of the hearing, the Honorable Lucky Enobakhare held that plaintiff had established that he worked on the day of the accident and Mr. Martinez lacked personal knowledge of the accident. The Hon. Enobakhare's decision read in part as follows:

> "Mr. Martinez…testified today, he did not work with the claimant and he was not there when the accident happened. He did not say that he saw the accident. If anything, with regard to his testimony, it would relate to notice and notice is not an issue in this case. And even if it were, Mr. Wilson

> Saquicela-Villa testified credibly that he told his foreman and the foreman does not work there anymore."

Mirsad Bukovic's Deposition on behalf of 83rd Inc

On July 11, 2022, the deposition of Mirsad Bukovic, residential manager/superintendent for 83rd Inc, was conducted. Mr. Bukovic averred that construction projects on-going at the building would be outside of the purview of his responsibilities as a resident manager/superintendent. Mr. Bukovic also averred that he did not have any interactions with any of the companies, trades, contractors, or subcontractors that were working on construction projects at the premises.

Mr. Bukovic averred that in January of 2020 there was an outside clad replacement and façade restoration to the premises. Mr. Bukovic was unaware of any scaffolds located on the sidewalk bridge. Mr. Bukovic did not have access to the bridge. Mr. Bukovic would interact with SRCC just on general upkeep but did not inquire as to how the project job was being conducted. Weekly meeting was held in which Mr. Bukovic was in attendance, the meetings covered general progress reports and did not cover safety concerns. Mr. Bukovic was not aware of the project's day-to-day operations or the work conducted on top of the bridge.

Jeffrey Alan Smith's Deposition on behalf of SRCC

On July 20, 2022, the deposition of Jeffrey Alan Smith, project manager of SRCC, was conducted. Mr. Smith averred that his duties as project manager included project organization, "coordination with ownership," and scheduling coordination. Mr. Smith further averred that although the SRCC and 83rd Inc contract relating to the project name him as the president of SRCC he is not the president, his mother, Bette Smith, is the president of SRCC. SRCC was the general contractor on the project. However, Mr. Smyth was an authorized agent of SRCC.

Mr. Smith was on the job site/premises three times a week. During the project, SRCC had approximately sixteen employees at the premises. Mr. Smith averred that SRCC didn't have a site safety manager, as the job did not require one, but it was the duty of SRCC superintendent Roman Martinez to review the safety of the site. Whereas Fredi Ayasa was in charge of instructing to workers as to their daily tasks. Mr. Smith averred that the buildings superintendent would sometimes try to give SRCC workers "directions" but it is SRCC's protocol that only the foreman would give SRCC workers work instructions.

Mr. Smith averred that SRCC provides workers with hard hats and safety harnesses to a worker if the worker does not already have a hard hat of safety harness of their own. Workers are required to wear a harness when working at elevated levels wherein they are in danger of falling.

Mr. Smith averred that Universe Restoration was the subcontractor for the pipe scaffolding. Mr. Smith, upon viewing a photograph of the subject scaffold, averred that it appears that the scaffold was in the process of being removed or installed as there would have been netting on the front of the scaffold, there would have been guardrails, and there would have been more than one wooden plank to stand on while in use.

Mr. Smith further averred that, in relation to work hours, it is the foreman's discretion to determine whether an employee did not work on a certain day, and not include them in the time sheet for payroll purposes, in situations when an employee goes to the job site to just pick up tools or when an employee is deemed to not have completed any "work."

SRCC and 83rd Inc General Contract

On June 7, 2019, SRCC and 83rd Inc c/o Brown LLC executed the General Contract and Rider to the Contract. The Contract and Rider to the contract provided that SRCC shall name 83rd Inc, Brown LLC and the employees of each as additional insureds in their insurance policy. The contract required that SRCC procure insurance with a minimum of One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury and property damage and in the minimum of Two Million Dollars ($2,000,000.00) total aggregate liability. Additionally, SRCC was required to procure and maintain Umbrella Liability Insurance providing coverage in a minimum amount of Eight Million Dollars ($8,000,000.00) per occurrence and in the aggregate.

The Rider to the Contract read in part as follows:

> [SRCC] agrees to indemnify, defend and hold harmless [83rd and BROWN HARRIS] from any and all claims, suits, damages, liabilities, professional fees including reasonable attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the Work of [SRCC]."

Discussion

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]). However, failure to make prima facie showing of entitlement to judgment requires denial of the motion, regardless of the sufficiency of the opposing papers. When the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. (*Stone v Goodson*, 8 NY2d 8 [1960]; *Rebecchi v Whitmore*, 172 AD2d 600 [1991]).

Plaintiff's Labor Law §240(1) Claim

Labor Labor Law §240(1), commonly referred to as the "scaffold law," provides, in relevant part:

> All contractors and owners and their agents, except owners of two family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor,

> scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

The requirements of Labor Law § 240(1) are set forth in *Vasquez v Cohen Brothers Realty Corp.*, 105 AD3d 595 [1st Dept 2013]). The Court stated:

> "An owner or its agent is liable under Labor Law Section 240(1) if the plaintiff was injured while engaged in an activity covered by the statute and [was] exposed to an elevation-related hazard for which no safety device was provided or the device provided was inadequate. The statute requires "owners and their agents" to provide workers with adequate safety devices when they engage in activities such as repairing or altering a building. The purpose of the statute is to protect workers by placing the ultimate responsibility for worksite safety on the owner, and Labor Law Section 240(1) imposes strict liability on the owner for a breach of the statutory duty which has proximately caused injury" (*Vasquez*, 105 AD3d at 597).

The purpose of Labor Law § 240(1) is to protect workers by placing responsibility for safety practices at construction sites on owners and general contractors, those best suited to bear the responsibility, instead of on the workers, who are not in a position to protect themselves (*see John v Baharestani*, 281 AD2d 114, 117 [1st Dept 2001]). In order to accomplish its goal of preventing accidents, Labor Law §240(1) places the ultimate responsibility for the maintenance of safety practices and safety devices on the owners and the general contractors and their agents who "are best situated to bear that responsibility," and not on the workers. (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500 [1993]; *Rocovick*, 78 NY2d at 513.)

The Court of Appeals has repeatedly indicated that §240(1) "is to be construed as liberally as may be for the accomplishment of the purpose for which it was framed." (*Martinez v City of New York*, 936 NY2d 322, 326 [1999]; *Melber v 6333 Main Street, Inc.*, 91 NY2d 759, 762 [1998].) It is well established that the duty imposed by §240(1) is non-delegable and that an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has exercised supervision or control over the work." (*Ross*, 81 NY2d at 500; *Rocovick*, 78 NY2d at 513). "Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat plaintiff's motion for summary judgment only if there is a plausible view of the evidence—enough to raise a fact question—that there was no statutory violation and that plaintiff's own acts or omissions were the sole cause of the accident." (*Bermejo v New York City Health & Hosps. Corp.*, 119 AD3d 500, 989 NYS2d 490 [2d Dept 2014] *citing Berenson v. Jericho Water Dist.*, 33 AD3d 574, 822 NYS2d 145 [2d Dept 2006]).

"To recover under Labor Law § 240 (1), a plaintiff must demonstrate that there was a violation of the statute, and that the violation was a proximate cause of the accident." (*Krarunzhiy v 91 Cent. Park W. Owners Corp.*, 212 AD3d 722 [2d Dept 2023], quoting *Meng Sing Chang v Homewell Owner's Corp.*, 38 AD3d 625 [2d Dept 2007]). "The extraordinary protections of Labor

Law § 240 (1) extend only to a narrow class of special hazards and do 'not encompass any and all perils that may be connected in some tangential way with the effects of gravity'." (*Krarunzhiy*, 212 AD3d 722 [2d Dept 2023], quoting *Nieves v Five Boro Air Conditioning & Refrigeration Corp*., 93 NY2d 914 [1999]). "The core objective of the statute in requiring protective devices for those working at heights is to allow them to complete their work safely and prevent them from falling. Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no section 240 (1) liability exists." (*id*).

Herein, plaintiff has demonstrated his entitlement to summary judgment pursuant to Labor Law §240(1) also known as the Scaffold Law. Plaintiff had been directed by SRCC foreman to paint the front side of the building. Plaintiff had requested a safety harness and safety equipment prior to beginning work, but none was provided to him. Plaintiff while in the process of painting the building was on a scaffold composed of two wooden planks at distinct heights without any safety netting or guardrail installed. Moreover, Mr. Cando averred that the wooden planks were not secured to the frames. At the time of the accident, the scaffold and/or wooden plank moved causing plaintiff to lose his balance and fall from the second level of the scaffold to the sidewalk bridge.

Herein, defendants 83rd Inc and Brown LLC contend that plaintiff was not present at the subject premises and thus was not working on the day of the alleged incident, and therefore could not have suffered an injury-producing accident which in turn would afford plaintiff the protection of Labor Law §§240(1) and 241(6). However, such issue had already been heard and decided by the Worker's Compensation Judge Lucky Enobakhare. The Hon. Enobakhare held that Mr. Martinez had no personal knowledge of whether plaintiff was at the premises on the date of the accident and that plaintiff testified credibly that he was at the job site on January 31, 2020, and notified foreman Freddy of the accident. Thus, plaintiff's contention that plaintiff was not at the premises on January 31, 2020, is unavailing. Moreover, Mr. Cando, plaintiff's co-worker, averred that plaintiff was on the premises on January 31, 2020, and that he witnessed the aftermath of the accident on said date.

As such, plaintiff's branch of motion pursuant to CPLR §3212 granting summary judgment on the issue of liability pursuant to Labor Law §240(1) as against 83rd Inc and Brown LLC is granted.

Plaintiff's Labor Law §241(6) Claim

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*., [1978].) To support a cause of action pursuant to Labor Law § 241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision which sets forth specific safety standards. (*Plass v Solotoff*, 5 AD3d 365 [2d Dept 2004]; *D'Elia v City of New York*, 81 AD3d 682 [2d Dept 2011]).

Herein, plaintiff seeks summary judgment as to its Labor Law §241(6) claim in relation to Industrial Codes 12 NYCRR 23-5.1 (c) (2), (e) (1), (j) and 12 NYCRR 23-1.15, given that the scaffold was not equipped with any guardrails and scaffold planks were not laid tight and securely fastened in place. Here plaintiff's branch of motion is granted in as much as it is undisputed that the scaffold did not have a safety netting or guardrail installed, and that the wooden planks were not securely fastened.

With respect to defendant's branch of cross-motion dismissing plaintiff's multiple Industrial Code provisional claims under 12 NYCRR. Plaintiff fails to oppose this branch of defendants' motion with the exception of Industrial Codes 12 NYCRR 23-5.1 (c) (2), (e) (1), (j) and 12 NYCRR 23-1.15. As such, defendant's branch of cross-motion dismissing plaintiff's Labor Law §241(6) claim is denied as against Industrial Codes 12 NYCRR 23-5.1 (c) (2), (e) (1), (j) and 12 NYCRR 23-1.15 only, and granted as to all other Industrial Code provisions.

Plaintiff's Labor Law §200 Claim

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]).

Where, 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*.).

Herein, defendants 83rd Inc as owner of the subject premises and defendant Brown LLC as managing agent of the building have demonstrated that plaintiff did not receive any instructions from someone other than SRCC foremen, and defendants did not exercise any supervisory control over plaintiff's or any other SRCC worker's activities. Moreover, Mr. Bukovic averred that he did

not have access to the bridge. Mr. Smith also averred that no one other than SRCC and Universe Restoration employees would be permitted on the sidewalk bridge.

Furthermore, plaintiff does not oppose 83rd Inc and Brown LLC's motion to dismiss plaintiff's Labor Law §200 claim as against 83rd Inc and Brown LLC only. As such, defendants 83rd Inc and Brown LLC's branch of motion pursuant to CPLR §3212 dismissing plaintiff's Labor Law §200 claim as against 83rd Inc and Brown LLC only is granted.

Defendants 83rd Inc and Brown LLC Indemnification and Breach of Contract Claim, and motion to Compel

Pursuant to CPLR §2215, a party must serve their cross-motion upon the moving party at least three days prior to the time at which the motion is noticed to be heard. However, "if a party makes a motion against a party other than the movant, then the motion is not a cross-motion. Instead, the cross-moving party must make a motion meeting the usual notice requirements of CPLR §2214(b)." (2PT1 West's McKinney's Forms Civil Practice Law and Rules § 5:36). Pursuant to CPLR §2214(b), a notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard.

Herein, defendants 83rd Inc and Brown LLC's second cross motion dated August 19, 2024, seeks an order pursuant to CPLR §3212 for summary judgment as against SRCC on the claims for Indemnification and Breach of Contract. Whereas their first Cross-Motion dated August 12, 2024, includes a branch for an order compelling SRCC to respond to the Court's May 15, 2024, order. The underlying motion and the cross-motions were all fully submitted on August 29, 2024. However, defendants 83rd Inc and Brown LLC failed to serve their Notices of Cross-Motion and supporting papers until August 22, 2024. Thus, defendants failed to comply with the notice requirements of CPLR §2214(b).

Accordingly, it is hereby

ORDERED, that plaintiff's branch of motion pursuant to CPLR §3212 for summary judgment on the issue of liability pursuant to Labor Law §240(1) is granted, it is further

ORDERED, that plaintiff's branch of motion pursuant to CPLR §3212 for summary judgment on the issue of liability pursuant to Labor Law §241(6) is granted solely as to Industrial Codes 12 NYCRR 23-5.1 (c) (2), (e) (1), (j) and 12 NYCRR 23-1.15, it is further

ORDERED, that defendants 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC's branch of cross-motion pursuant to CPLR §3212 dismissing plaintiff's common law negligence and Labor Law §200 claims as against 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC is granted, it is further

ORDERED, that defendants 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC's branch of cross-motion pursuant to CPLR §3212 dismissing plaintiff's Labor Law §241(6) claims as against 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC is denied as against Industrial Codes 12 NYCRR 23-5.1 (c) (2), (e) (1), (j) and 12 NYCRR 23-1.15 only, and granted as to all other Industrial Code provisions, it is further

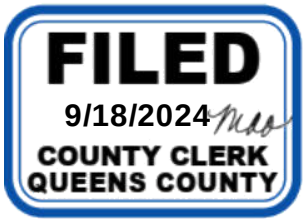
ORDERED, that defendants 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC's branch of cross-motion for an order compelling SRCC Corp to respond to the Court's May 15, 2024, order is denied with leave to refile, it is further

ORDERED, that defendants 83rd Street Tenants Inc and Brown Harris Steven Residential Management LLC's cross-motion pursuant to CPLR §3212 as against SRCC Corp., on the claims for Contractual Indemnity and Breach of Contract is denied with leave to refile, it is further

ORDERED, that plaintiff shall serve a copy of this order, with notice of entry, upon all parties within thirty days from the date of entry.

This constitutes the decision and order of the Court.

Dated: September 18, 2024



HON. KARINA E. ALOMAR, J.S.C.
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