

Martinez v Demar Mech., Inc.
2024 NY Slip Op 35371(U)
September 24, 2024
Supreme Court, Queens County
Docket Number: Index No. 721287/2019
Judge: Cassandra A. Johnson
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Cassandra A. Johnson IA Part 2
Justice

-----X
JUAN MARTINEZ,

Plaintiff,

-against-

Index
Number 721287/2019

DEMAR MECHANICAL, INC., A/K/A
DEMAR PLUMBING CORP., 667 ELEVENTH
AVENUE REALTY LLC., REDCOM CM, INC.,
CR SAFETY GROUP, INC., MELLIFONT
CONSTRUCTION CORP. and TRADE
OFF, LLC.,

Motion
Date April 24, 2024

Motion Seq. Nos. 3-9

Defendants,

-----X
677 ELEVENTH AVENUE REALTY, LLC.,

Third-Party Plaintiff,

-against-

ENERGY PLUS NY, INC.,

Third-Party Defendant,

-----X
DEMAR MECHANICAL INC. A/K/A DEMAR
PLUMBING CORP., i/s/h/a DEMAR
MECHANICAL INC. A/K/A DEMAR
PLUMBING CORP.,

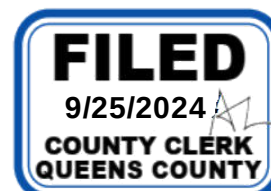
Second Third-Party Plaintiff,

-against-

ENERGY PLUS NY, INC.,

Second Third-Party Defendant,

-----X



The following numbered papers read on these motions: (1) the motion by the defendant Mellifont Construction Corp. for summary judgment dismissing the complaint and all cross-claims asserted against it; (2) the separate motion by the defendants 677 Eleventh Avenue Realty, LLC and Redcom CM Inc. for (a) summary judgment dismissing all cross-claims asserted against them, (b) summary judgment on their cross-claim for contractual indemnification asserted against the defendant Demar Mechanical Inc. a/k/a Demar Plumbing Corp., and (c) summary judgment on 677 Eleventh Avenue Realty, LLC's first third-party claim for contractual indemnification asserted against the first/second third-party defendant Energy Plus NY, Inc.; (3) the plaintiff's separate motion, in effect, for partial summary judgment as to liability against the defendants 677 Eleventh Avenue Realty, LLC and Redcom CM Inc. on his Labor Law § 200 claim and so much of his Labor Law § 241 (6) claim as is predicated on alleged violations of sections 23-1.7 (e) (1) and (e) (2) of the Industrial Code; (4) the separate motion by the defendant Demar Mechanical Inc. a/k/a Demar Plumbing Corp. for (a) summary judgment dismissing the complaint and all cross-claims asserted against it, (b) summary judgment on its cross-claims for common-law indemnification and contribution asserted against the defendants 677 Eleventh Avenue Realty, LLC, Redcom CM Inc., and Trade Off, LLC, and (c) summary judgment on its third-party claims asserted against the first/second third-party defendant Energy Plus NY, Inc.; (5) the cross-motion by plaintiff for partial summary judgment as to liability against the defendant Demar Mechanical Inc. a/k/a Demar Plumbing Corp. on his Labor Law § 200 claim and so much of his Labor Law § 241 (6) claim as is predicated on alleged violations of sections 23-1.7 (e) (1) and (e) (2) of the Industrial Code; (6) the separate motion by the first/second third-party defendant Energy Plus NY, Inc. for summary judgment dismissing the complaint and the first and second third-party complaints; (7) the separate motion by the defendant Trade Off, LLC for summary judgment dismissing the complaint and all cross-claims asserted against it; and (8) the separate motion by the defendant CR Safety Group Inc. for summary judgment dismissing the complaint and all cross-claims asserted against it.

Papers
Numbered

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Answering Affidavits – Exhibits	EF 377-385
	EF 433-438
Reply Affidavits	EF 493

Seq #4

Notice of Motion – Affidavits – Exhibits	EF 168-179
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Answering Affidavits – Exhibits	EF 301-312
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Seq #5

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Seq #6

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	EF 413-426
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Upon the foregoing papers it is ordered that the motions and cross-motion are consolidated for the purpose of a single order and are determined as follows:

The plaintiff commenced this action in December 2019 against, among others, the defendants Demar Mechanical Inc. a/k/a Demar Plumbing Corp. (Demar), 677 Eleventh Avenue Realty, LLC (677 Realty), Redcom CM Inc. (Redcom), and CR Safety Group Inc. (CR Safety) to recover damages for injuries he allegedly sustained while working on a construction project in Manhattan. The complaint asserts causes of action for common-law negligence as well as violations of Labor Law §§ 200, 240 (1), and 241 (6). According to the plaintiff, his accident occurred as follows. He was working for first/second third-party defendant Energy Plus NY Inc. (Energy Plus) and was responsible for insulating copper pipes at the job site. At one point, while he was working on the third or fourth floor of the building, the plaintiff needed to run an extension cord to another area to charge a scissor lift that he was using to access pipes in the ceiling. After he alighted from the lift and began walking towards the outlet, he stepped on a loose pipe located in between several large garbage bins, causing him to fall backwards and sustain injuries to, among other areas, his back and right shoulder.

After answering the complaint, 677 Realty commenced a third-party action against Energy Plus, asserting a single cause of action for contractual indemnification. Demar then commenced a second third-party action against Energy Plus, asserting claims for contractual indemnification, common-law indemnification, contribution, and breach of contract.

The plaintiff subsequently filed an amended complaint which, among other things, added the defendants Mellifont Construction Corp. (Mellifont) and Trade Off, LLC (Trade Off) as defendants. 677 Realty and Redcom collectively answered the amended complaint, asserting cross-claims for contractual indemnification, common-law indemnification, and contribution against Demar, Mellifont, and Trade Off. Demar's answer to the amended complaint asserts cross-claims for contractual indemnification, common-law indemnification, and contribution against 677 Realty, Redcom, CR Safety, Mellifont, and Trade Off. CR Safety's answer to the amended complaint asserts cross-claims for contractual indemnification, common-law indemnification, and contribution against 677 Realty, Redcom, Demar, Mellifont, and Trade Off. Mellifont's answer to the amended complaint asserts cross-claims for common-law indemnification and contribution against 677 Realty, Redcom, CR Safety, Demar, and Trade Off. Trade Off's answer to the amended complaint asserts cross-claims for contractual indemnification, common-law indemnification, and contribution against 677 Realty, Redcom, CR Safety, Demar, and Mellifont.

Discovery having been completed, all parties move for summary judgment.

Mellifont's motion (Sequence #3)

Mellifont seeks summary judgment dismissing the complaint and all cross-claims asserted against it. With respect to the plaintiff's claims, Mellifont asserts that its only connection to this action is the fact that it owned the garbage bins that were in the vicinity of the plaintiff's accident. On this point, Mellifont contends that the garbage bins were rented to Redcom pursuant to an oral agreement, that it was not responsible for removing trash and debris from inside the construction site, and that it was not responsible for moving the garbage bins around the construction site. To the contrary, Mellifont argues that its only role was to have trucks arrive at the construction site and haul away trash that was brought out to its employees by other laborers. Mellifont further asserts that the plaintiff's testimony demonstrates that there was no defect or other issue with these garbage bins that caused or contributed to the plaintiff's accident. Under these circumstances, Mellifont argues that it is not a proper Labor Law defendant and did not breach a duty to the plaintiff.

Similarly, Mellifont asserts that because it was not negligent, all cross-claims for common-law indemnification and contribution asserted against it should be dismissed. Mellifont also argues that the contractual indemnification cross-claims asserted against it by 677 Realty, Demar, CR Safety, and Trade Off are subject to dismissal because it did not enter into any agreements with these defendants. With respect to Redcom's contractual indemnification cross-claim, Mellifont contends that the agreement to rent the garbage bins was merely an oral agreement which did not include any promise or representation concerning indemnification.

The plaintiff's claims

Labor Law §§ 240 (1) and 241 (6)

" 'Labor Law §§ 240 (1) and 241 (6) apply to owners, contractors, and their agents' " (*Alexandridis v Van Gogh Contr. Co.*, 180 AD3d 969, 973 [2d Dept 2020], quoting *Fucci v Douglas S. Plotke, Jr., Inc.*, 124 AD3d 835, 836 [2d Dept 2015] [internal quotation marks omitted]). " 'A party is deemed to be an agent of an owner or general contractor under the Labor Law when [he or she] has supervisory control and authority over the work being done where a plaintiff is injured' " (*Navarra v Hannon*, 197 AD3d 474, 475 [2d Dept 2021], quoting *Sanders v Sanders-Morrow*, 177 AD3d 920, 922 [2d Dept 2019] [internal quotation marks omitted]; see *Medina v R.M. Resources*, 107 AD3d 859, 860 [2d Dept 2013]). "To impose such liability, the defendant must have the authority to control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition" (*Delahaye v Saint Anns School*, 40 AD3d 679, 683 [2d Dept 2007]; see *Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]). "However, where a separate prime contractor has been delegated the

authority to supervise and control the plaintiff's work, the contractor 'becomes a statutory "agent" of the owner or general contractor' " (*Barrios v City of New York*, 75 AD3d 517, 518 [2d Dept 2010], quoting *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]). "The 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 Contr. Corp.*, 192 AD3d 782, 784 [2d Dept 2021], quoting *Williams v Dover Home Improvement*, 276 AD2d 626, 626 [2d Dept 2000]).

Here, Mellifont's submissions are sufficient to establish prima facie entitlement to summary judgment dismissing the plaintiff's Labor Law §§ 240 (1) and 241 (6) claims asserted against it, as the deposition testimony demonstrates that Mellifont is not the owner, general contractor, or agent of the owner or general contractor (*see Fiore v Westerman Constr. Co., Inc.*, 186 AD3d 570, 571-572 [2d Dept 2020]; *Sanders v Sanders-Morrow*, 177 AD3d at 920, 922 [2d Dept 2019]; *Marquez v L & M Dev. Partners, Inc.*, 141 AD3d 694, 697 [2d Dept 2016]). The parties' testimony shows that Mellifont's only role at the construction site was to haul away debris. Although Mellifont's garbage bins were present at the construction site, Mellifont's employees never entered the construction site. Rather, Mellifont's garbage bins would be filled by Trade Off employees, who would then bring full garbage bins outside of the building to be loaded into Mellifont's trucks for removal.

The plaintiff opposes this branch of Mellifont's motion. He relies on certain deposition testimony of the parties and submits the supplemental affidavit of John Coniglio, his site safety expert. Based on these submissions, the plaintiff asserts that there is an issue of fact as to whether Mellifont is a proper Labor Law defendant because there is testimony which shows that Mellifont was responsible for cleanup at the construction site. This contention, however, is insufficient to raise an issue of fact. Rather, as Mellifont correctly notes in its reply, the deposition testimony upon which the plaintiff relies does not show that Mellifont was responsible for removing debris from within the construction site.

This branch of Mellifont's motion is therefore granted.

Labor Law §200 and common-law negligence

"Labor Law § 200 is a codification of the common-law duty of owners, contractors, and their agents to provide workers with a safe place to work" (*Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). "Cases involving Labor Law § 200 fall into two broad categories, namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]). Where an accident was caused by the manner in

which the work was performed, “recovery against a property owner cannot be had ‘unless it is shown that the [owner] had the authority to supervise or control the performance of the work’ ” (*Lazo v Ricci*, 178 AD3d 811, 813 [2d Dept 2019], quoting *Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). Conversely, “[w]here a plaintiff’s injuries stem not from the manner in which the work was being performed, but, rather, from a dangerous condition on the premises, a contractor may be liable in common-law negligence and under Labor Law § 200 only if it had control over the work site and either created the dangerous condition or had actual or constructive notice of it” (*Sotomayer v Metropolitan Transp. Auth.*, 92 AD3d 862, 864 [2d Dept 2012]).

Here, the plaintiff’s deposition testimony is sufficient to establish prima facie entitlement to summary judgment dismissing the plaintiff’s Labor Law § 200 and common-law negligence claims asserted against Mellifont. To the extent that the plaintiff alleges, in his bill of particulars, that his accident involved the manner in which his work was performed, his testimony shows that Mellifont did not supervise or control the manner of his work (*see Argueta v City of New York*, 223 AD3d 862, 864-865 [2d Dept 2024]). Similarly, to the extent that the plaintiff alleges that a defective premises condition contributed to his accident, Mellifont’s submissions demonstrate that it did not control the work site and that there were no defects with the garbage bins that caused or contributed to the plaintiff’s accident (*see Navarro v City of New York*, 75 AD3d 590, 592-593 [2d Dept 2010]).

Energy Plus opposes Mellifont’s motion and submits, among other things, the transcripts from the deposition of the plaintiff and the defendants’ witnesses. Energy Plus contends that Mellifont’s motion should be denied because the evidence does not identify the specific party that was responsible for the pipe which caused the plaintiff’s injury. This contention is insufficient to raise an issue of fact, as it fails to sufficiently address Mellifont’s proof that its employees were not responsible for cleaning up debris at the construction site and were not physically present on the job.

The plaintiff also opposes this branch of Mellifont’s motion. However, in asserting that Mellifont is not entitled to summary judgment dismissing his Labor Law § 200 asserted against it, the plaintiff relies on an argument that is substantively identical to his argument on Labor Law §§ 240 (1) and 241 (6). Thus, for the same reasons, this argument is insufficient to raise an issue of fact.

This branch of Mellifont’s motion is therefore granted.

The remaining defendants' cross-claims for contractual indemnification

Mellifont established prima facie entitlement to summary judgment dismissing the contractual indemnification claims asserted by 677 Realty, Redcom, Demar, CR Safety, and Trade Off. A party's right to contractual indemnification is dependent on the specific language of the contract (*see O'Donnell v A.R. Fuels, Inc.*, 155 AD3d 644, 645 [2d Dept 2017]). Here, Mellifont's submissions demonstrate that there was no written contract between Mellifont and any of the remaining defendants with respect to the garbage bins, and that the rental agreement for the garbage bins between Redcom and Mellifont was an oral agreement which lacked any promises concerning indemnification (*see Holub v Pathmark Stores, Inc.*, 66 AD3d 741, 742 [2d Dept 2009]).

This branch of Mellifont's motion is unopposed and is therefore granted.

The remaining defendants' cross-claims for common-law indemnification and contribution

Mellifont also established prima facie entitlement to summary judgment dismissing the common-law indemnification and contribution claims asserted by 677 Realty, Redcom, Demar, CR Safety, and Trade Off. "A party can establish its prima facie entitlement to judgment as a matter of law dismissing a cause of action for common-law indemnification, arising out of a workplace injury, asserted against it by establishing that it was not negligent, and that it did not have the authority to direct, supervise, or control the work giving rise to the injury" (*Council on Foreign Relations, Inc. v ABC Interiors Unlimited, Inc.*, 189 AD3d 1168, 1168 [2d Dept 2020]). Similarly, "[a] party moving for summary judgment dismissing a third-party cause of action for contribution establishes its prima facie entitlement to judgment as a matter of law by demonstrating that it did not owe or breach a duty of reasonable care to the plaintiff, or a duty of reasonable care independent of its contractual obligations" (*Carrillo v 457-467 Atl., LLC*, 193 AD3d 911, 913 [2d Dept 2021]). Here, for the reasons set forth above, Mellifont's submissions sufficiently demonstrate that it was not negligent and that it did not have the authority to direct, supervise, or control the work (*see Carrillo*, 193 AD3d 912-913).

These branches of Mellifont's motion are unopposed and are therefore granted.

The plaintiff's motion (Sequence #5)

In support of his separate motion, the plaintiff submits the pleadings and the transcripts from the depositions of the plaintiff and the defendants' witnesses. Based on these submissions, the plaintiff asserts that he is entitled to partial summary judgment as to liability on so much of his Labor Law § 241 (6) claim as is predicated

on alleged violations of sections 23-1.7 (e) (1) and (e) (2) of the Industrial Code because the area he was traversing is both a “passageway” and a “working area” for the purposes of these subsections, and his description of the accident demonstrates that the pipe he stepped on constitutes a tripping hazard. The plaintiff further argues that the pipe is a dangerous condition at the construction site, and thus, he is entitled to partial summary judgment as to liability on his Labor Law § 200 claim.

The court notes, however, that the plaintiff’s moving papers, by and large, merely refer to “the defendants.” The plaintiff’s notice of motion and statement of material facts do not refer to any particular defendant, or defendants, against whom he seeks relief. However, the plaintiff’s memorandum of law makes discrete references to both 677 Realty and Redcom. Thus, as is best understood, the plaintiff is seeking summary judgment against 677 Realty and Redcom only.

Labor Law § 241 (6)

“Labor Law § 241 (6) imposes on owners and contractors a nondelegable 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’ ” (*Graziano v Source Bldrs. & Consultants, LLC*, 175 AD3d 1253, 1258 [2d Dept 2019], quoting *Perez v 286 Scholes St. Corp.*, 134 AD3d 1085, 1086 [2d Dept 2015]). “To establish liability under Labor Law § 241 (6), a plaintiff or a claimant must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case” (*Aragona v State of New York*, 147 AD3d 808, 809 [2d Dept 2017]).

As is relevant here, 12 NYCRR 23-1.7 includes the following:

(e) Tripping and other hazards.

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

The plaintiff asserts that a workplace accident can fall under both of these subsections and that his accident renders both provisions applicable. While the First Department case upon which he relies stands for this proposition (*see Rosi v 140 W. JV Mgr. LLC*, 171 AD3d 668, 668 [1st Dept 2019]; *see also Canning v Barneys N.Y.*, 289 AD2d 32, 34 [1st Dept 2001]), the Second Department does not follow this approach (*see Titov v V&M Chelsea Prop., LLC*, --- AD3d ---, 2024 NY Slip Op 04221 at *2 [2d Dept 2024]; *Dyszkiewicz v City of New York*, 218 AD3d 546, 548 [2d Dept 2023]). The plaintiff, in his deposition testimony, characterized the area where his accident occurred as a hallway, but also explained that the area was “very long” and approximately 70 meters wide. Thus, despite the plaintiff’s attempt to couch the area where his accident occurred as both a “passageway” and a “working area,” the court finds that section 23-1.7 (e) (1) of the Industrial Code is inapplicable here (*see Stewart v Brookfield Office Props, Inc.*, 212 AD3d 746, 747 [2d Dept 2023]).

Nevertheless, the plaintiff’s submissions are sufficient to demonstrate prima facie entitlement to summary judgment as to liability on so much of his Labor Law 241 (6) cause of action asserted against 677 Realty and Redcom as is predicated on an alleged violation of 12 NYCRR 23-1.7 (e) (2) (*see Lopez v New York City Dept. of Envtl. Protection*, 123 AD3d 982, 984 [2d Dept 2014]). The parties’ deposition testimony demonstrates that 677 Realty, as the owner of the property, and Redcom, as the construction manager and de facto general contractor, are proper parties under the Labor Law (*see Walls v Turner Constr. Co.*, 4 NY3d 861, 864 [2005] [internal quotation marks omitted]; *Van Blerkom v America Painting, LLC*, 120 AD3d 660, 662 [2d Dept 2014]). Moreover, the plaintiff’s account of the accident establishes that he was traversing a working area when his accident occurred and that the pipe which caused his accident constitutes a tripping hazard.

677 Realty and Redcom collectively oppose the plaintiff’s motion. Relying on the plaintiff’s testimony and the testimony of the witnesses for Redcom and Demar, 677 Realty and Redcom assert that this branch of the plaintiff’s motion should be denied because the plaintiff cannot identify the area where his accident occurred, the area where the plaintiff’s accident allegedly occurred was not a “working area” within the meaning of section 23-1.7 (e) (2) of the Industrial Code, and in any event, the pipe which allegedly caused the plaintiff’s accident was an integral part of the work being done at the construction site. These arguments all fail to raise an issue of fact.

677 Realty and Redcom contend that the motion must be denied because the plaintiff could not recall whether he was on the third or fourth floor when his accident occurred, his motion must be denied. This argument fails because it overlooks the testimony and manpower logs which indicate that Energy Plus was assigned to third floor on the date of plaintiff’s accident. 677 Realty and Redcom further argue that the area where the plaintiff’s accident occurred was not a working area, but rather a

storage area for the garbage bins on the third floor. However, this argument is belied by both the plaintiff's testimony and the manpower logs which detail the extent of the work being performed on the floor where the plaintiff's accident occurred (*see Gancarz v Brooklyn Pier 1 Residential Owner, L.P.*, 190 AD3d 955, 957 [2d Dept 2021]). Thus, the court rejects the contention that the area where the plaintiff's accident occurred is merely a staging area or storage area for the garbage bins.

Finally, 677 Realty and Redcom concede that the pipe is construction debris but insist that it was an integral part of the work being performed because such debris "is a normal, expected condition of an active construction site." This argument is unavailing because section 23-1.7 (e) (2) specifically applies to garbage, construction materials, and similar debris (*see Ramsey v Leon D. DeMatteis Constr. Corp.*, 79 AD3d 720, 723 [2d Dept 2010]; *Quinn v Whitehall Props., II, LLC*, 69 AD3d 599 [2d Dept 2010]).

Demar, Mellifont, CR Safety, and Trade Off also oppose the plaintiff's motion. However, because the plaintiff failed to meet his prima facie burden with respect to the portion of his Labor Law § 241 (6) as is asserted against those defendants, their opposition papers need not be addressed (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Labor Law § 200

As set forth previously, "[l]iability based on a dangerous condition on the premises depends on a defendant having had control over the work site and having either created the dangerous condition or had actual or constructive notice of it" (*Daeira v Genting N.Y., LLC*, 173 AD3d 831, 835 [2d Dept 2019] [internal citations, quotation marks, and brackets omitted]). However, in support of this branch of the motion, the plaintiff merely proffers a conclusory and unsubstantiated assertion that "Defendants also violated Labor Law § 200 by allowing this dangerous condition to remain for several hours." To the extent that the plaintiff asserts that the affidavit of John Coniglio, his site safety expert, is sufficient to meet his prima facie burden, this affidavit was not submitted with the plaintiff's moving papers.

This branch of the plaintiff's motion is therefore denied in its entirety, regardless of the sufficiency of the parties' opposition papers (*see Winegrad*, 64 NY2d at 853).

Demar's motion (Sequence #6)

In support of its motion, Demar submits, among other things, the pleadings, the transcripts from the deposition of the plaintiff and the defendants' witnesses, the

contract between 677 Realty, Redcom, and Demar, the subcontract between Demar and Energy Plus (the Energy Plus subcontract), and the affidavit of Serge Buidyk. Based on these submissions, Demar argues that it is entitled to summary judgment dismissing the plaintiff's Labor Law § 240 (1) claim insofar as asserted against it because the plaintiff's accident was in no way caused by a gravity-related risk. Demar further asserts that it is entitled to summary judgment dismissing the plaintiff's Labor Law § 241 (6) claim insofar as asserted against it because each of the alleged Industrial Code provisions which form the basis for the plaintiff's claim either lack the requisite specificity to support a Labor Law § 241 (6) claim, are inapplicable to the plaintiff's accident, or were not violated. Demar also contends that the plaintiff's Labor Law § 200 and common-law negligence claims fall squarely within the "premises liability" class of claims and argues that because the pipe which caused the plaintiff's accident could not have been one of the pipes that Demar used at the construction site, these claims must be dismissed.

Demar further asserts that pursuant to the Energy Plus subcontract, Energy Plus was required to indemnify Demar for all claims arising from Energy Plus's work. Because the plaintiff's accident fits within this covered category of claims, Energy Plus was negligent in supervising the plaintiff, and Demar was free from negligence, Demar argues that it is entitled to summary judgment on its second third-party claim for contractual indemnification. Demar also argues that it is entitled to summary judgment on its second third-party claim for breach of contract because, when comparing insurance requirements set forth in the Energy Plus subcontract to the insurance coverage that Energy Plus procured, there is a substantial gap in coverage. In any event, Demar contends that Energy Plus failed to list Demar as an additional insured, as required by the Energy Plus subcontract. On its second third-party claims for common-law indemnification and contribution, Demar asserts that it is entitled to summary judgment on these claims because Energy Plus was responsible for the means and methods of its work and for cleaning up discarded debris.

Finally, Demar argues that it is entitled to summary judgment on its cross-claims for common-law indemnification and contribution asserted against Redcom and Trade Off because Redcom was responsible for overall site safety and Trade Off was responsible for handling the garbage bins and cleaning up construction debris that was not center piled at the site.

The plaintiff's claims

Labor Law §240 (1)

Under Labor Law § 240 (1), "[a]ll contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 [construction workers employed on the premises]" (Labor Law § 240 [1]; see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500 [1993]). Labor Law § 240 (1) "imposes on owners or general contractors and their agents a nondelegable duty, and absolute liability for injuries proximately caused by the failure to provide appropriate safety devices to workers who are subject to elevation-related risks" (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]). To recover, the injured plaintiff "must have suffered an injury as 'the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential'" (*Soto v J. Crew Inc.*, 21 NY3d 562, 566 [2013], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). Critically, "[t]he 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'" (*Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 915-916 [1999], quoting *Ross*, 81 NY2d at 501 [emphasis in original]).

Here, the plaintiff's account of how his accident occurred demonstrates, prima facie, that "the risk to plaintiff was not the type of extraordinary peril section 240 (1) was designed to prevent," but rather, his accident was "the result of the usual and ordinary dangers at a construction site" (*Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 916 [1999]; see *Cohen v Mem. Sloan-Kettering Cancer Ctr.*, 11 NY3d 823, 825 [2008]; *Krarunzhiy v 91 Cent. Park W. Owners Corp.*, 212 AD3d 722, 723-724 [2d Dept 2023]). The plaintiff's opposition papers do not address this branch of Demar's motion, and thus, it is granted.

Labor Law §241 (6)

In his bill of particulars, the plaintiff bases his Labor Law § 241 (6) cause of action on alleged violations of sections 23-1.5 (a) and (b), 23-1.7 (d), (e) (1), (e) (2), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.30, 23-1.32, 23-1.33 (a), (d) (1), and (d) (2), 23-2.1 (a) (1), (a) (2), and (b), 23-2.4, 23-3.3 (c), (e) (1), (e) (2), (e) (3), (f), (k) (1) (i), (k) (1) (ii), and (l), and 23-5.1 (b) and (f) of the Industrial Code. Yet as Demar correctly contends, sections 23-1.5 (a) and (b) are too general to support a cause of action under Labor Law § 241 (6) (see *Guallpa v Canarsie Plaza, LLC*, 144 AD3d 1088, 1091 [2d Dept 2016]; *Ulrich v Motor Parkway Props., LLC*, 84 AD3d 1221, 1224 [2d Dept 2011]).

Moreover, for the same reasons as were stated above, Demar's submissions demonstrate, prima facie, that section 23-1.7 (e) (1) is inapplicable. In addition, the plaintiff's description of the work he was performing, the accident location, and the manner in which he fell are sufficient to demonstrate, prima facie, that sections 23-

1.7 (d), (e) (1), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.1, 23-2.4, 23-3.3, and 23-5.1 are inapplicable (see *Verdi v SP Irving Owner, LLC*, 227 AD3d 932, 936-937 [2d Dept 2024]; *Ramones v 425 County Rd., LLC*, 217 AD3d 977, 980 [2d Dept 2023]; *Leighton v Chaber, LLC*, 204 AD3d 903, 904 [2d Dept 2022]; *Turgeon v Vassar Coll.*, 172 AD3d 1134, 1135 [2d Dept 2019]; *Ginter v Flushing Terrace, LLC*, 121 AD3d 840, 843-844 [2d Dept 2014]; *Griffiths v FC-Canal, LLC*, 120 AD3d 1100, 1102 [1st Dept 2014]; *Ramirez v Metro. Transp. Auth.*, 106 AD3d 799, 801 [2d Dept 2013]; *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 147 [1st Dept 2012]; *Gray v City of New York*, 87 AD3d 679, 680 [2d Dept 2011]; *Erickson v Cross Ready Mix, Inc.*, 75 AD3d 524, 525 [2d Dept 2010]; *Morgan v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 50 AD3d 866, 867 [2d Dept 2008]; *Giordano v Forest City Ratner Companies*, 43 AD3d 1106, 1107-1108 [2d Dept 2007]).

However, as noted previously, the court does not agree with Demar's contention that the area where the plaintiff's accident occurred was not a "working area" within the meaning of section 23-1.7 (e) (2) (see *Gancarz*, 190 AD3d at 957). In addition, the conflicting testimony concerning lighting conditions in the area where the plaintiff's accident occurred is insufficient to establish prima facie entitlement to summary judgment on the alleged violation of section 23-1.30 (see *McKinney v Empire State Dev. Corp.*, 217 AD3d 574, 576 [1st Dept 2023]; *Lucas v KD Dev. Const. Corp.*, 300 AD2d 634, 635 [2d Dept 2002]). Finally, Demar's conclusory and unsubstantiated assertion that there is no evidence that it was issued written notice by the commissioner regarding any imminent dangers on this worksite is insufficient to meet its prima facie burden with respect to the alleged violation of section 23-1.32 (see *Iannucci v Kucker & Bruh, LLP*, 161 AD3d 959, 960 [2d Dept 2018]).

Based on the manner in which Demar met its prima facie burden, the plaintiff was only required to oppose so much of this branch of Demar's motion which addressed the alleged violations of sections of sections 23-1.5, 23-1.7 (d), (e) (1), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.1, 23-2.4, 23-3.3, and 23-5.1 (b) of the Industrial Code (see *Winegrad*, 64 NY2d at 853). Yet as is relevant here, the plaintiff's opposition papers only address sections 23-1.7 (e) (1) and 23-2.1. To the extent that the plaintiff relies on certain expert affidavits to demonstrate that a violation of these sections occurred, these affidavits reveal that his expert is impermissibly offering an expert opinion as to a legal conclusion (see *Colon v Rent-A-Ctr., Inc.*, 276 AD2d 58, 61 [1st Dept 2000]). In any event, the plaintiff's argument with respect to section 23-1.7 (e) (1) is effectively identical to the argument raised in support of his motion for summary judgment on Sequence #5; that the area where he fell was both a "passageway" and a "working area." For the reasons previously stated, however, this argument is insufficient to raise an issue of fact with respect to an alleged violation of section 23-1.7 (e) (1) (see *Stewart*, 212 AD3d at 747).

Labor Law §200 and common-law negligence

In support of this branch of its motion, Demar relies on the affidavit of Serge Buidyk, who is employed by Demar as a supervisor. Buidyk affirms that the only pipe that Demar used at the construction site was copper pipe which had a diameter between 3/8" and 1". He also attests that because copper is valuable, all excess copper pipe was removed from the work site each day and stored in Demar's padlocked shanty on the site.

When comparing the plaintiff's description of the pipe which he tripped on to the pipe described by Buidyk, Demar asserts that the pipe which caused the plaintiff's accident could not have belonged to Demar. However, Demar's argument is insufficient to meet Demar's prima facie burden on the plaintiff's Labor Law § 200 and common-law negligence claims. Although Demar relies exclusively on the portions of Buidyk's affidavit which describe certain copper pipes as the only ones used by Demar, his affidavit is contradicted by the testimony of Chris Darlak, Demar's principal. As is relevant here, Darlak testified that Demar also used steel pipe at the construction site. However, Darlak did not describe the color and diameter of this steel pipe. In this regard, the plaintiff described the pipe which caused him to trip as a black pipe, four inches in diameter, but did not testify to its material. In light of this conflicting testimony, Demar's submissions fail to demonstrate, prima facie, that it did not create the allegedly defective condition which caused the plaintiff's accident (*see Samperi v City Safety Compliance Corp.*, 225 AD3d 723, 725 [2d Dept 2024]; *Estrella v ZRHLE Holdings, LLC*, 218 AD3d 640, 642 [2d Dept 2023]). This branch of Demar's motion is therefore denied in its entirety, regardless of the sufficiency of the plaintiff's opposition papers (*see Winegrad*, 64 NY2d at 853).

The defendants' cross-claims for contractual indemnification, common-law indemnification, and contribution against Demar

677 Realty, Redcom, CR Safety, and Trade Off each assert cross-claims for contractual indemnification against Demar. In addition, 677 Realty, Redcom, Mellifont, CR Safety, and Trade Off each assert cross-claims for common-law indemnification and contribution against Demar. Although Demar's notice of motion indicates that it seeks summary judgment dismissing these claims, Demar's motion papers do not substantively address these cross-claims. This branch of Demar's motion is therefore denied in its entirety, regardless of the sufficiency of the parties' opposition papers (*see Winegrad*, 64 NY2d at 853).

Demar's cross-claims for common-law indemnification and contribution against 677 Realty, Redcom, and Trade Off

"In order to establish a claim for common-law indemnification, a party must prove not only that it was not negligent, but also that the proposed indemnitor's actual negligence contributed to the accident, or, in the absence of any negligence, that the indemnitor had the authority to direct, supervise, and control the work giving rise to the injury" (*Mohan v Atlantic Ct., LLC*, 134 AD3d 1075, 1078-1079 [2d Dept 2015]). Here, however, because Demar failed to establish prima facie entitlement to summary judgment dismissing the plaintiff's Labor Law § 200 and common-law negligence claims, it also failed to establish that it was not negligent (*see McDonnell v Sandaro Realty, Inc.*, 165 AD3d 1090, 1097-1098 [2d Dept 2018]).

To prevail on a third-party cause of action for contribution, a defendant must show that the party against whom contribution is sought owed it a duty of reasonable care independent of its contractual obligations or that a duty was owed to the plaintiff as an injured party and that a breach of this duty contributed to the alleged injuries (*see Abramowitz v Home Depot USA, Inc.*, 79 AD3d 675, 677 [2d Dept 2010]; *see Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 125 AD2d 754, 756 [3d Dept 1986], *affd* 71 NY2d 599 [1988]). Here, however, Demar's arguments are insufficient to meet this burden (*see Morris v Home Depot USA*, 152 AD3d 669, 671-672 [2d Dept 2017]). This branch of Demar's motion is therefore denied in its entirety, regardless of the sufficiency of the parties' opposition papers (*see Winegrad*, 64 NY2d at 853).

Demar's second third-party claims against Energy Plus

Contractual indemnification

"[A] party seeking contractual indemnification pursuant to a contract relative to the construction of a building must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Mogrovejo v HG Hous. Dev. Fund Co., Inc.*, 207 AD3d 461, 463 [2d Dept 2022]; *see* General Obligations Law § 5-322.1). Here, because Demar failed to demonstrate that it was free from negligence in this action, it also failed to show prima facie entitlement to contractual indemnification from Energy Plus (*see Chuqui v Amna, LLC*, 203 AD3d 1018, 1023 [2d Dept 2022]). Moreover, because Energy Plus is not an insurer, its "duty to defend is no broader than its duty to indemnify" (*Rodriguez v Waterfront Plaza, LLC*, 207 AD3d 489, 491 [2d Dept 2022]). Thus, because Demar is not entitled to indemnification from Energy Plus at this juncture, it is also not entitled to a defense or attorneys' fees (*see Zapototsky v Ascape Landscape & Constr. Corp.*, 221 AD3d 1055, 1057 [2d Dept 2023]; *Bellefleur v Newark Beth Israel*

Med. Ctr., 66 AD3d 807, 809 [2d Dept 2009]). This branch of Demar's motion is therefore denied in its entirety, regardless of the sufficiency of Energy Plus's opposition papers (*see Winegrad*, 64 NY2d at 853).

Breach of contract

"A party seeking summary judgment based on an alleged failure to procure insurance naming that party as an additional insured must demonstrate that a contract provision required that such insurance be procured and that the provision was not complied with" (*Rodriguez v Savoy Boro Park Assoc. Ltd. Partnership*, 304 AD2d 738, 739 [2d Dept 2003]). Here, Demar asserts that Energy Plus was required to name Demar as an additional insured but failed to do so. However, Demar's submissions are insufficient to demonstrate that Energy Plus breached the subcontract by failing to name Demar as an additional insured (*see Breland-Marrow v RXR Realty, LLC*, 208 AD3d 627, 629 [2d Dept 2022]). Article 24.4 of the Energy Plus subcontract states that the Commercial General Liability insurance "shall include insured contract coverage including indemnity for damages or injuries to the Subcontractor employees(s) and shall not exclude any Additional Insured's." Critically, however, Article 24.10 defines "Additional Insureds" to include, among others "the Construction Manager *or* Demar" (NY St Cts Elec Filing [NYSCEF] Doc No. 213 [emphasis added]). The certificate of insurance lists, among others, Redcom as an additional insured, but omits Demar. Under the circumstances, this is sufficient to meet the "additional Insureds" requirement in the Energy Plus subcontract.

However, Demar's submissions establish, *prima facie*, that Energy Plus breached the Energy Plus subcontract by failing to procure sufficient general liability and umbrella coverage under its insurance policy (*see Georges v Resorts World Casino New York City*, 189 AD3d 1549, 1551 [2d Dept 2020]; *cf. McDonnell v Sandaro Realty, Inc.*, 165 AD3d 1090, 1098 [2d Dept 2018]). Article 24.4 of the Energy Plus subcontract requires Energy Plus to obtain General Commercial Liability insurance with limits of \$2,000,000 per occurrence and \$4,000,000 general aggregate and Excess/Umbrella Liability insurance with limits of \$10,000,000 per occurrence and \$10,000,000 general aggregate. Yet the certificate of insurance obtained by Energy Plus demonstrates that its General Commercial Liability insurance has limits of only \$1,000,000 per occurrence and \$2,000,000 general aggregate and Excess/Umbrella Liability insurance with limits of only \$5,000,000 per occurrence and \$5,000,000 general aggregate.

To the extent that Energy Plus opposes this branch of Demar's motion, its arguments are substantively lacking. Energy Plus submits, among other things, the Energy Plus subcontract, the certificate of insurance, and a copy of its insurance policy and asserts, in broad terms, that these procurements were sufficient to meet the

insurance requirements of the Energy Plus subcontract. However, because these submissions are identical to those relied upon by Demar in support of its motion, Energy Plus's opposition fails to raise an issue of fact as to whether Energy Plus procured sufficient insurance coverage, as required by the Energy Plus subcontract.

The parties' remaining opposition papers do not address Demar's arguments on this point. This branch of Demar's motion is therefore granted.

Common-law indemnification and contribution

For the same reasons as set forth previously, Demar's contentions fail to establish prima facie entitlement to summary judgment on its second third-party claims for common-law indemnification and contribution asserted against Energy Plus (*see McDonnell*, 165 AD3d at 1097-1098; *Morris*, 152 AD3d at 671-672). Although Demar points to certain provisions of its subcontract that were purportedly breached by Energy Plus, Demar fails to explain how these breaches constitute negligence or otherwise contributed to the plaintiff's accident. This branch of Demar's motion is therefore denied, regardless of the sufficiency of Energy Plus's opposition papers (*see Winegrad*, 64 NY2d at 853).

The plaintiff's cross-motion (Sequence #6)

The plaintiff cross-moves for summary judgment on his Labor Law §§ 200 and 241 (6) claims insofar as asserted against Demar and relies on the same evidentiary materials that were submitted in support of his separate motion for summary judgment on Sequence #5. The arguments raised on his cross-motion are also nearly identical to those raised in his separate motion for summary judgment.

Labor Law § 241 (6)

This branch of the plaintiff's cross-motion is denied. The plaintiff's submissions fail to establish, prima facie, that Demar is a proper party under the Labor law. A subcontractor may be liable for violations of Labor Law §§ 240 (1) and 241 (6) where the owner or general contractor delegates the duty to conform to the requirements of the Labor Law to the subcontractor through the grant of authority to supervise and control the work which brought about the injury (*see Eliassian v G.F. Constr., Inc.*, 190 AD3d 947, 949 [2d Dept 2021]; *Van Berkomp v America Painting, LLC*, 120 AD3d 660, 661 [2d Dept 2014]). The plaintiff's submissions do not include the contract between 677 Realty, Redcom, and Demar, and the deposition testimony submitted by the plaintiff is unclear as to the extent of the authority granted to Demar and the extent to which Demar controlled Energy Plus's work.

Labor Law § 200

This branch of the plaintiff's cross-motion is also denied. In asserting that Demar created the allegedly defective condition which caused his accident, the plaintiff does not affirmatively demonstrate that the pipe that he tripped on was used, placed, or otherwise discarded by Demar. Rather, the plaintiff merely contends that because "[t]here is no evidence that the source from which the loose pipe could have originated involved Energy Plus or any other contractor," it follows that "[t]here is no other reasonable inference . . . that the location of the loose pipe on the floor and the resulting danger caused came from Demar's work" (NY St Cts Elec Filing [NYSCEF] Doc No. 446). This argument fails for two reasons. First, when considering the plaintiff's cross-motion for summary judgment, the facts must be viewed in the light most favorable to Demar (*see Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]), and the plaintiff's argument here essentially asks this court to do the opposite. In any event, the plaintiff's argument is, at best, speculative and insufficient to establish, *prima facie*, that Demar created the allegedly defective condition at issue here.

The motion by 677 Realty and Redcom (Sequence #4)

In support of their motion, 677 Realty and Redcom submit, among other things, copies of the plaintiff's deposition transcripts, the subcontract between 677 Realty, Redcom, and Demar (the Demar subcontract), and the Energy Plus subcontract. Based on these submissions, 677 Realty and Redcom assert that the Demar subcontract and the Energy Plus subcontract contain broad indemnification provisions which require Demar and Energy Plus, respectively, to defend and indemnify 677 Realty and Redcom from any action that arises from the performance of their work. Because the plaintiff's accident occurred during the performance of his work in connection with both the Demar subcontract and the Energy Plus subcontract, 677 Realty and Redcom contend that the indemnification provisions in each subcontract were triggered, and thus, 677 Realty and Redcom are entitled to summary judgment on their cross-claim for contractual indemnification against Demar and their first third-party claim for contractual indemnification against Energy Plus.

The cross-claim for contractual indemnification against Demar

"The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances" (*George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]; *see Shea v Bloomberg, L.P.*, 124 AD3d 621, 622 [2d Dept 2015]). Here, the relevant portion of the Demar subcontract requires Demar to indemnify and defend, among others, 677 Realty and Redcom against all claims

"in connection with and/or arising out of...bodily injury (including death), personal injury or property damage resulting from any negligent, willful or wrongful act by Contractor, Contractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, (hereinafter collectively referred to as "Contractor Parties") in connection with or arising out of the Work" (NY St Cts Elec Filing [NYSCEF] Doc No. 173).

677 Realty and Redcom assert that this language does not require a finding of negligence against Demar or its subcontractors in order to trigger the indemnification provision. The court disagrees. To the extent that 677 Realty and Redcom rely on *Brown v Two Exch. Plaza Partners* (76 NY2d 172 [1990]), the indemnification provision at issue there is distinguishable. In *Brown*, the First Department found:

"[t]hat [indemnification] clause require[d] the subcontractor to indemnify Fuller against, among other things, personal injury to any person 'arising out of, in connection with or as a consequence of the performance of the [subcontractor's] Work and/or any act or omission of the Subcontractor or any of its subcontractors . . . as it relates to the scope of this Contract' " (*Brown v Two Exch. Plaza Partners*, 146 AD3d 139, 133-134 [1st dept 1989], *affd* 76 NY2d 172 [1990]).

Here, however, the Demar subcontract's indemnification provision with respect to bodily injuries does not contain similar "and/or" language. Therefore, in the absence of any language which demarcates claims for bodily injury that result from "any negligent act by Demar or its subcontractors" from claims for bodily injury that arise "in connection with or arising out of the Work," it is not enough to merely demonstrate that the plaintiff's accident fell within the scope of Demar's work. Rather, in order to meet their prima facie burden on their cross-claim for contractual indemnification against Demar, 677 Realty and Redcom were also required to demonstrate that the plaintiff's accident resulted from the negligence of Demar or one of its subcontractors.

Notably, the arguments raised and the evidence submitted by 677 Realty and Redcom do not address the potential negligence of Demar or its subcontractors. Thus, 677 Realty and Redcom failed to meet their prima facie burden on their contractual indemnification cross-claim against Demar (*see Leon-Rodriguez v R.C. Church of Saints Cyril and Methodius*, 192 AD3d 883, 887 [2d Dept 2021]; *Zukowski v Powell Cove Estates Home Owners Assn., Inc.*, 187 AD3d 1099, 1102 [2d Dept 2020]). This branch of their motion is therefore denied, regardless of the sufficiency of Demar's opposition papers (*see Winegrad*, 64 NY2d at 853).

The first third-party claim for contractual indemnification against Energy Plus

To the extent that 677 Realty and Redcom contend that the Energy Plus subcontract includes a provision which requires Energy Plus to defend and indemnify 677 Realty, their evidentiary submissions do not support this argument. Significantly, Article 4.1 of the Energy Plus subcontract, in relevant part, sets forth the following:

“Sub-Contractor shall indemnify, defend, and hold harmless the Demar Owner, parent company’s, Contractor, corporations, subsidiary and affiliated companies including joint ventures and partnerships and their respective agents, consultants principals, members, partners, directors, officers and employees from and against all claims or causes of action, lawsuits, damages, losses, judgments, liens and expenses (including but not limited to all attorney’s fees and legal costs and expenses), for personal or bodily injury, sickness, diseases or death or injury to or destruction of tangible property including loss of use arising from, or in connection with, the performance of the services by this Subcontractor under this indemnity agreement irrespective of the causes of such injury, damage or loss” (NY St Cts Elec Filing [NYSCEF] Doc No. 171).

Although 677 Realty and Redcom rely on this provision, it does not identify 677 Realty as a party to be indemnified, either explicitly or by reference. This branch of their motion is therefore denied, regardless of the sufficiency of Energy Plus’s opposition papers (*see Winegrad*, 64 NY2d at 853).

The defendants’ cross-claims for contractual indemnification, common-law indemnification, and contribution against 677 Realty and Redcom

Although their notice of motion requests summary judgment dismissing the various cross-claims asserted against each of them, the motion papers submitted by 677 Realty and Redcom do not substantively address any of the cross-claims. This branch of their motion is therefore denied, regardless of the sufficiency of the parties’ opposition papers (*see Winegrad*, 64 NY2d at 853).

Energy Plus’s motion (Sequence #7)

In support of its separate motion, Energy Plus submits, among other things, the third-party pleadings, excerpts from the transcripts of the depositions of the plaintiff and the defendants’ witnesses, the Energy Plus subcontract, and a certificate of insurance. Based on these submissions, Energy Plus first notes that it is permitted to raise the same defenses to the main action that a defendant/third-party plaintiff (i.e., 677 Realty) may assert (*see CPLR 1008; Lewis v Borg-Werner Corp.*, 35 AD2d 722, 723

[2d Dept 1970]]. This being the case, Energy Plus contends that the plaintiff's Labor Law § 200 and common-law negligence claims must fail because Energy Plus was not responsible for the pipe which caused the plaintiff's injuries, and the admissible evidence does not demonstrate otherwise. Energy Plus also argues that because the plaintiff did not fall from a height, Labor Law § 240 (1) is inapplicable. Energy Plus further contends that the plaintiff's Labor Law § 241 (6) claim must be dismissed because each of the Industrial Code provisions which form the basis for the claim are either insufficiently specific or inapplicable here.

Energy Plus also asserts that it is entitled to summary judgment dismissing the first and second third-party claims for contractual indemnification because there was no contractual relationship between Energy Plus and 677 Realty, and in any event, the indemnity provision in the Energy Plus subcontract would only be triggered in the event that Energy Plus was found to be negligent. Alternatively, Energy Plus asserts that the plaintiff's accident did not arise within the scope of Energy Plus's work. Energy Plus also contends that the second third-party claims for common-law indemnification and contribution are barred by Workers' Compensation Law § 11 (1) because Energy Plus was the plaintiff's employer and the plaintiff did not suffer a grave injury. Finally, Energy Plus asserts that because it procured sufficient Workers' Compensation and general commercial liability insurance, Demar's second third-party claim for breach of contract based on the alleged failure to procure insurance should be dismissed.

The plaintiff's claims

Labor Law §240 (1)

For the reasons previously discussed, the court agrees with Energy Plus's argument that Labor Law § 240 (1) is inapplicable to the plaintiff's accident (*see Cohen*, 11 NY3d at 825; *Nieves*, 93 NY2d at 916; *Krarunzhiy*, 212 AD3d at 723-724). Because the plaintiff's opposition papers do not address this branch of Energy Plus's motion, it is therefore granted.

Labor Law §241 (6)

As an initial matter, the court agrees with Energy Plus's argument that, by failing to specify any particular subsection of sections 23-1.11, 23-1.18, 23-1.22, 23-1.23, and 23-2.4 of the Industrial Code, the plaintiff has abandoned reliance on these provisions (*see Caminiti v Extell W. 57th St. LLC*, 166 AD3d 440, 441 [1st Dept 2018]). However, with respect to the remaining Industrial Code provisions which the plaintiff alleges were violated here, Energy Plus merely asserts that "there is no testimony or admissible documentary evidence establishing that plaintiff's injury resulted from" a

violation of these provisions (NY St Cts Elec Filing [NYSCEF] Doc No. 243). These conclusory assertions are insufficient to affirmatively demonstrate prima facie entitlement to summary judgment (*see Iannucci*, 161 AD3d at 960).

The plaintiff's opposition papers do not address Energy Plus's arguments concerning sections 23-1.11, 23-1.18, 23-1.22, 23-1.23, and 23-2.4 of the Industrial Code. Energy Plus is therefore entitled to summary judgment dismissing so much of the plaintiff's Labor Law § 241 (6) claim asserted against 677 Realty as is predicated on alleged violations of these provisions.

Labor Law §200 and common-law negligence

With respect to these claims, Energy Plus asserts that it was not responsible for debris that other parties created or placed in the area where the plaintiff's accident occurred, and that because the plaintiff "failed to sufficiently demonstrate which party placed the pipe on the floor, plaintiff has failed to demonstrate that any party had notice of the same," and that "[n]o party to this action has demonstrated that movant would have any reason to dispose of piping or segments of piping in the course of its contracted work at the subject premises" (NY St Cts Elec Filing [NYSCEF] Doc No. 243). This argument merely points to gaps in the parties' proof on the issue of negligence and is insufficient to affirmatively demonstrate prima facie entitlement to summary judgment (*see Iannucci*, 161 AD3d at 960).

677 Realty's first third-party claim for contractual indemnification

The court agrees that Energy Plus is entitled to summary judgment dismissing 677 Realty's first third-party claim for contractual indemnification. However, the court reaches this conclusion after searching the record rather than relying on the arguments advanced by Energy Plus (*see* CPLR 3212 [b]). As set forth previously, the Energy Plus subcontract requires Energy Plus to defend and indemnify "the Demar Owner, parent company's, Contractor, corporations, subsidiary and affiliated companies including joint ventures and partnerships and their respective agents, consultants, principals, members, partners, directors, officers and employees" (NY St Cts Elec Filing [NYSCEF] Doc No. 254) but does not require Energy Plus to defend and indemnify 677 Realty. Under these unique and unusual circumstances, the first third-party complaint cannot be maintained.

Demar's second third-party claim for contractual indemnification

In asserting that it is entitled to summary judgment dismissing the second third-party claim for contractual indemnification, Energy Plus argues that the indemnification provision in the Energy Plus subcontract contains a negligence

trigger. This argument, however, is belied by the language of the indemnification provision, which states that Energy Plus shall defend and indemnify, among others, Demar, against:

“all claims or causes of action, lawsuits, damages, losses, judgments, liens and expenses (including but not limited to all attorney's fees and legal costs and expenses), for personal or bodily injury, sickness, diseases or death or injury to or destruction of tangible property including loss of use arising from, or in connection with, the performance of the services by this Subcontractor under this indemnity agreement *irrespective of the causes of such injury, damage or loss*” (NY St Cts Elec Filing [NYSCEF] Doc No. 254 [emphasis added]).

Next, Energy Plus's argument that the plaintiff's accident did not arise within the scope of Energy Plus's work is insufficient to establish prima facie entitlement to summary judgment dismissing Demar's contractual indemnification claim. The plaintiff testified that he was using a scissor lift to perform his work immediately prior to his accident. Other deposition testimony demonstrates that this scissor lift was provided by Energy Plus. The plaintiff further testified that, because the scissor lift had run out of power, he had to run an extension cord to an electrical outlet to charge the battery, and his accident occurred in his effort to reach the outlet. Contrary to Energy Plus's contention, the fact that the plaintiff was not insulating pipes at the precise moment of his accident is of no moment.

This branch of Energy Plus's motion is therefore denied, regardless of the sufficiency of the Demar's opposition papers (*see Winegrad*, 64 NY2d at 853).

Demar's second third-party claim for common-law indemnification and contribution

Energy Plus's submissions are insufficient to establish prima facie entitlement to summary judgment dismissing this claim. Indeed, under Workers' Compensation Law § 11,

“ ‘An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment’ unless the employee ‘has sustained a “grave injury” ’ or where there is a ‘written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant’ ” (*Velazquez-Guadalupe v Ideal Builders and Constr. Services, Inc.*, 216 AD3d 63, 71 [2d Dept 2023], quoting Workers' Compensation Law § 11 [1]).

Here, Energy Plus only contends that it is the plaintiff's employer, that the plaintiff was injured in the course of his employment, and the plaintiff did not suffer a grave injury. This argument fails for two reasons. First it contradicts Energy Plus's prior argument, raised in support of the branch of its motion for summary judgment dismissing Demar's second third-party contractual indemnification claim, that the plaintiff's injury did *not* occur within the scope of his employment. In any event, this argument overlooks the second prong of Workers' Compensation Law § 11 (1) – the express indemnification provision in the Energy Plus subcontract.

This branch of Energy Plus's motion is therefore denied, regardless of the sufficiency of the Demar's opposition papers (*see Winegrad*, 64 NY2d at 853).

Demar's second third-party claim for breach of contract

On this branch of its motion, Energy Plus's submissions and arguments are effectively identical to those raised in opposition to Demar's motion for summary judgment. Thus, for the same reasons as previously discussed, Energy Plus's submissions are insufficient to establish *prima facie* entitlement to summary judgment dismissing this claim.

Trade Off's motion (Sequence #8)

In support of its motion, Trade Off relies on the transcripts from the depositions of the plaintiff and the defendants' witnesses, and a copy of the contract between Redcom and Trade Off (the Trade Off subcontract). Based on these submissions, Trade Off argues that Labor Law § 240 (1) is inapplicable to the plaintiff's accident because he merely tripped and fell at ground level. Trade Off also argues that the plaintiff's Labor Law § 241 (6) claim must be dismissed because each of the Industrial Code provisions which form the basis for the claim are inapplicable here. Trade Off further contends that the plaintiff's Labor Law § 200 and common-law negligence claims asserted against it must be dismissed because it did not control the construction site and neither created the allegedly dangerous condition nor had actual or constructive notice of same. Trade Off further asserts that, because it only entered into a contract with Redcom, the remaining defendants' cross-claims for contractual indemnification should be dismissed. Finally, Trade Off argues that the cross-claims for common-law indemnification and contribution asserted against it should be dismissed because neither the plaintiff nor the defendants can prove that the negligence of Trade Off's employees caused the plaintiff's accident.

The plaintiff's claims

Labor Law §240 (1)

As the court has previously noted, Labor Law § 240 (1) is inapplicable to the plaintiff's accident (*see Cohen*, 11 NY3d at 825; *Nieves*, 93 NY2d at 916; *Krarunzhiy*, 212 AD3d at 723-724). Thus, the court agrees with Trade Off's argument that it is entitled to summary judgment dismissing this claim insofar as asserted against it. Because the plaintiff's opposition papers do not address this branch of Trade Off's motion, it is therefore granted.

Labor Law §241 (6)

On this branch of its motion, Trade Off briefly refers to the Industrial Code violations alleged by the plaintiff, but only provides a substantive argument on sections 23-1.7 (e) (1), (e) (2), and 23-2.1 (b). With respect to the remaining sections, Trade Off merely lists the provisions and asserts, in a conclusory fashion, that "none of the above-noted Industrial Codes apply to the facts of this case. Therefore, these violations should be dismissed" (NY St Cts Elec Filing [NYSCEF] Doc No. 262). Nevertheless, for the reasons discussed previously, section 23-1.7 (e) (2), and not section 23-1.7 (e) (1), is applicable to the plaintiff's accident. Trade Off's submissions, therefore, only establish prima facie entitlement to summary judgment on sections 23-1.7 (e) (1) and 23-2.1 (b). Moreover, because the plaintiff's argument in opposition to Trade Off's motion is effectively identical to his arguments raised in opposition to the other defendants' motions, the plaintiff failed to raise an issue of fact with respect to these provisions of the Industrial Code.

Labor Law §200 and common-law negligence

Trade Off's submissions are sufficient to establish prima facie entitlement to summary judgment dismissing the plaintiff's Labor Law § 200 claim insofar as asserted against it. The deposition testimony reveals that Redcom controlled the manner and method of Trade Off's work by instructing its employees on where to clean on a particular day. Thus, Trade Off did not have control of the work site (*see Thomas v Benton*, 112 AD3d 812, 812 [2d Dept 2013]).

However, Trade Off's submissions fail to establish prima facie entitlement to summary judgment dismissing the plaintiff's common-law negligence claim asserted against it. "[A] subcontractor 'may be held liable for negligence where the work it performed created the condition that caused the plaintiff's injury even if it did not possess any authority to supervise and control the plaintiff's work or work area' " (*Cando v Ajay Gen. Contr. Co. Inc.*, 200 AD3d 750, 753 [2021], quoting *Poracki v St.*

Mary's R.C. Church, 82 AD3d 1192, 1195 [2011]; see *Sledge v S.M.S. Gen. Contrs., Inc.*, 151 AD3d 782, 783 [2017]). "An award of summary judgment in favor of a subcontractor [or prime contractor] dismissing a negligence cause of action is improper where the evidence raises a triable issue of fact as to whether [it] created an unreasonable risk of harm that was the proximate cause of the . . . plaintiff's injuries" (*Poracki v St. Mary's R.C. Church*, 82 AD3d 1192, 1195 [2011] [alterations and internal quotation marks omitted]; see *Sledge v S.M.S. Gen. Contrs., Inc.*, 151 AD3d 782, 783 [2017]). Here, Trade Off merely offers a speculative and conclusory argument that "there is absolutely no evidence in the record" which demonstrates that Trade Off either created the alleged dangerous condition or had actual or constructive notice of same because the pipe which caused the plaintiff's accident "could have been placed, deposited or dropped onto the floor mere minutes before the plaintiff's alleged incident" (NY St Cts Elec Filing [NYSCEF] Doc No. 262).

In opposition to this branch of Trade Off's motion, the plaintiff was only required to raise an issue of fact as to whether Trade Off had sufficient control over the work site to impose liability under Labor Law § 200 (see *Winegrad*, 64 NY2d at 853). The plaintiff's opposition papers, however, only argue that there is an issue of fact as to whether Trade Off created or had actual or constructive notice of the alleged dangerous condition. The plaintiff, therefore, failed to raise an issue of fact on his Labor Law § 200 claim.

The cross-claims for contractual indemnification

677 Realty, Redcom, Demar, and CR Safety all assert cross-claims for contractual indemnification against Trade Off. However, as Trade Off correctly notes, the only contract between any of the parties that is related to Trade Off's work is the Trade Off subcontract. Trade Off therefore established prima facie entitlement to summary judgment dismissing the contractual indemnification cross-claims asserted against it by 677 Realty, Demar, and CR Safety (see *Holub*, 66 AD3d at 742).

However, Trade Off failed to establish prima facie entitlement to summary judgment dismissing Redcom's cross-claim for contractual indemnification asserted against it. As is relevant here, section 7 (b) of the Trade Off subcontract states that Trade Off "shall indemnify and hold [Redcom] harmless for any claims, damages, expenses, (including reasonable attorney's fees) resulting from injury and/or death of any person or damage to or loss of any property (including economic loss) arising out of any negligent act by [Trade Off] during the performance of the Services" (NY St Cts Elec Filing [NYSCEF] Doc No. 275). As previously discussed, Trade Off failed to demonstrate that it is free from negligence.

The only party to oppose this branch of Trade Off's motion was Demar. However, Demar's opposition papers do not substantively address its cross-claim for contractual indemnification asserted against Trade Off. Thus, Trade Off is entitled to summary judgment dismissing the cross-claims for contractual indemnification asserted against it by 677 Realty, Demar, and CR Safety.

The cross-claims for common-law indemnification and contribution

To the extent that Trade Off seeks summary judgment dismissing the cross-claims for common-law indemnification and contribution asserted against it, its position is based on the argument that it was not negligent. However, as previously discussed, this argument is both conclusory and speculative. This branch of Trade Off's motion is therefore denied entirely, regardless of the sufficiency of the parties' opposition papers (*see Winegrad*, 64 NY2d at 853).

CR Safety's motion (Sequence #9)

In support of its separate motion, CR Safety submits, among other things, the pleadings, the transcripts from the depositions of the plaintiff and the defendants' witnesses, and a site safety proposal submitted by CR Safety to Redcom (the proposal). Based on these submissions, CR Safety asserts that the complaint must be dismissed insofar as asserted against it because it is not a proper Labor Law defendant. Specifically, CR Safety contends that, although it was retained by Redcom as a safety consultant, its role at the construction site was not significant enough to warrant a finding that it was an agent of Redcom. On this point, CR Safety points to the language of the proposal and certain deposition testimony to argue that its duties were merely to advise and report to Redcom rather than to monitor and control the work of the various subcontractors.

CR Safety also argues that because it did not control the work site, have actual or constructive notice of the pipe which caused the plaintiff's accident, or control the means and methods of the plaintiff's work, the plaintiff's Labor Law § 200 and common-law negligence claims asserted against it must be dismissed. Moreover, CR Safety contends that the manner in which the plaintiff's accident occurred renders Labor Law § 240 (1) inapplicable. Finally, CR Safety asserts that the plaintiff's Labor Law § 241 (6) claim must be dismissed because each of the Industrial Code provisions which form the basis for the claim are either insufficiently specific, inapplicable, or were not violated.

The plaintiff's claims*CR Safety's status as an agent of Redcom*

CR Safety's submissions are insufficient to demonstrate, prima facie, that it was not an agent of Redcom (see *Daeira v Genting New York, LLC*, 173 AD3d 831, 835 [2d Dept 2019]; *Moscato v Consol. Edison Co. of New York, Inc.*, 168 AD3d 717, 720-721 [2d Dept 2019]). To the extent that CR Safety relies on the proposal's "general conditions" to assert that its duties did not extend to directing individual subcontractors or correcting unsafe conditions at the construction site, CR Safety did not submit any evidence which would show that the proposal, as written, was fully incorporated into a binding contract between Redcom and CR Safety. The proposal is not signed by a member of Redcom and is devoid of any indication that Redcom agreed to the proposal's terms. In addition, at his deposition, the witness for CR Safety, Frank Marino, testified that he could not recall whether a representative from Redcom had signed the proposal or whether any changes were made to the proposal before it was executed. Similarly, Redcom's witness, Peter Cybriwsky, testified that he did not know if CR Safety submitted proposals to Redcom and was not familiar with the specific services that CR Safety provided.

Similarly, the deposition testimony of Marino and Cybriwsky offer inconsistent accounts of CR Safety's duties. For example, whereas Marino testified that CR Safety did not have the authority to stop work at the construction site, he also testified that if debris was seen on the floor at the construction site, CR Safety employees would inform the responsible subcontractor that it needed to be removed. In addition, Cybriwsky testified that CR Safety was responsible for job site safety and ensuring that subcontractors were adhering to safe practices, and that he would report unsafe conditions to CR Safety.

Moreover, contrary to CR Safety's contention, the provisions of the New York City Building Code which relate to "site safety manager's and coordinator's duties" do not support its position. Rather, the relevant provision of the building code requires site safety managers to "immediately notify the person or persons responsible for creating the violation, whether these persons are employed by the general contractor or by subcontractors," and if the site safety manager "is unable to obtain the cooperation of these persons in correcting the violation, he or she shall immediately inform the direct supervisor of the person or company responsible for creating the violation and request that the supervisor order the necessary corrective action" (NY City Bldg Code [Administrative Code of City of NY, title 28, ch 7] § BC 3310.8.2). Under the circumstances here, CR Safety failed to eliminate issues of fact as to whether it "had the right to insist that proper safety practices were followed" (*Seferovic v Atl. Real Estate Holdings, LLC*, 127 AD3d 1058, 1060 [2d Dept 2015]).

Labor Law §240 (1)

Nevertheless, for the reasons previously discussed, CR Safety's submissions are sufficient to demonstrate that the plaintiff's accident does not invoke the protections of Labor Law § 240 (1) (*see Cohen*, 11 NY3d at 825; *Nieves*, 93 NY2d at 916; *Krarunzhiy*, 212 AD3d at 723-724). The plaintiff's opposition papers do not address this branch of CR Safety's motion. Thus, CR Safety is entitled to summary judgment dismissing this claim.

Labor Law §241 (6)

The court notes that although CR Safety refers to the plaintiff's bill of particulars as its "Exhibit C," the filing for "Exhibit C" does not include the plaintiff's bill of particulars. Were the court to overlook this apparent error (*see CPLR 2001*), when examining bills of particulars that the plaintiff served upon other defendants, it is apparent that this branch of CR Safety's motion fails to address a substantial number of alleged Industrial Code violations. This branch of CR Safety's motion is therefore denied entirely, regardless of the sufficiency of the plaintiff's opposition papers (*see Winegrad*, 64 NY2d at 853).

Labor Law §200 and common-law negligence

To the extent that the plaintiff's Labor Law § 200 and common-law negligence claims are predicated on a dangerous premises condition, CR Safety failed to establish prima facie entitlement to summary judgment dismissing this claim. As previously discussed, CR Safety's submissions fail to eliminate issues of fact concerning the degree to which CR Safety controlled the work site. Moreover, to the extent that CR Safety asserts that "there is no evidence that CR Safety had actual or constructive notice of the hazardous condition that allegedly caused plaintiff's injuries" (NY St Cts Elec Filing [NYSCEF] Doc No. 278), this conclusory argument is insufficient to affirmatively demonstrate prima facie entitlement to summary judgment (*see Iannucci*, 161 AD3d at 960).

The defendants' cross-claims for contractual indemnification, common-law indemnification and contribution

It is noted that, although CR Safety's motion papers request summary judgment dismissing the cross-claims asserted against it, this relief was not expressly requested in its notice of motion. A court may grant relief not specifically requested in the notice of motion, pursuant to a general prayer for relief contained in the notice of motion, if the relief " 'is warranted by the facts plainly appearing on the papers on both sides,'

and 'if the relief granted is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party' " (*St. Robert v Azoulay Realty Corp.*, 209 AD3d 781, 784-785 [2d Dept 2022], quoting *Frankel v Stavsky*, 40 AD3d 918, 918-919 [2d Dept 2007]). Here, CR Safety's request for summary judgment dismissing these cross-claims is based on the argument that it was not negligent. However, for the reasons described previously, CR Safety failed to sufficiently demonstrate that it was free from negligence. This branch of CR Safety's motion is therefore denied entirely, regardless of the sufficiency of the parties' opposition papers (*see Winegrad*, 64 NY2d at 853).

Relief upon the court's search of the record

Having disposed of the arguments advanced by the parties, the court notes that there are a series of inconsistencies in the resolution of the many claims before it. Because "[a] court may search the record and grant summary judgment in favor of a nonmoving party only with respect to a cause of action or issue that is the subject of the motions before the court" (*Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429-430 [1996]), the court is inclined to do so here in the interest of judicial economy. Upon a search of the record, summary judgment dismissing the following claims is warranted (*see* CPLR 3212 [b]).

First, whereas Redcom did not move for summary judgment dismissing the plaintiff's Labor Law § 240 (1) claim, Demar, Trade Off, CR Safety, and Energy Plus each separately demonstrated that Labor Law § 240 (1) is inapplicable to the plaintiff's accident. Under these circumstances, the plaintiff cannot maintain a Labor Law § 240 (1) cause of action against any defendant (*see Cohen*, 11 NY3d at 825; *Nieves*, 93 NY2d at 916; *Krarunzhiy*, 212 AD3d at 723-724), and the court grants summary judgment in Redcom's favor dismissing this claim.

Similarly, in opposition to Demar's prima facie demonstration of entitlement to summary judgment dismissing certain portions of his Labor Law § 241 (6) claim, the plaintiff abandoned reliance on sections 23-1.5, 23-1.7 (d), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.4, 23-3.3, and 23-5.1 by failing to address them in his opposition papers (*see Rivas v Purvis Holdings, LLC*, 222 AD3d 676, 678 [2d Dept 2023]). In addition, to the extent that the plaintiff's opposition papers address sections 23-1.7 (e) (1) and 23-2.1, the court previously determined that the plaintiff's arguments were insufficient to raise an issue of fact. Thus, although, on their respective motions for summary judgment, 677 Realty and Redcom did not address Labor Law § 241 (6), and CR Safety, Trade Off, and Energy Plus failed to meet their prima facie burdens with respect to most of the alleged Industrial Code violations, the court nevertheless grants summary judgment in favor of 677 Realty, Redcom, CR Safety, and Trade Off dismissing so much of the plaintiff's Labor Law

§ 241 (6) claim as is predicated on alleged violations of sections 23-1.5, 23-1.7 (d), (e) (1), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.1, 23-2.4, 23-3.3, and 23-5.1 of the Industrial Code.

It is also apparent that several of the defendants' cross-claims can no longer be sustained. For example, where a plaintiff cannot sustain negligence claims against a particular defendant, that defendant's claims for common-law indemnification and contribution against other parties would also fail (*see* CPLR 1401). Thus, because Mellifont is entitled to summary judgment dismissing the complaint and all cross-claims against it, the court grants summary judgment in favor of 677 Realty, Redcom, Demar, CR Safety, and Trade Off dismissing Mellifont's cross-claims for common-law indemnification and contribution asserted against each of them.

Next, by Trade Off's own concession, no contract existed between it and Demar, CR Safety, or 677 Realty. Thus, upon a search of the record, the court grants summary judgment in favor of 677 Realty, Demar and CR Safety dismissing Trade Off's cross-claims for contractual indemnification asserted against each of them.

Lastly, the record demonstrates that there was no contract between Demar and CR Safety. Thus, upon a search of the record, the court grants summary judgment in favor of Demar dismissing CR Safety's cross-claim for contractual indemnification asserted against it, and grants summary judgment in favor of CR Safety dismissing Demar's cross-claim for contractual indemnification asserted against it.

Accordingly, it is

ORDERED that Mellifont's motion for summary judgment dismissing the complaint and all cross-claims asserted against it (Sequence #3) is granted; and it is further,

ORDERED that the branch of the plaintiff's motion, in effect, for partial summary judgment as to liability against 677 Realty and Redcom on so much of his Labor Law § 241 (6) claim as is predicated on an alleged violation of section 23-1.7 (e) (2) of the Industrial Code (Sequence #5) is granted; and it is further,

ORDERED that the branch Demar's motion for summary judgment dismissing the plaintiff's Labor Law § 240 (1) claim insofar as asserted against it is granted; (Sequence #6) and it is further,

ORDERED that the branch of Demar's motion for summary judgment dismissing so much of the plaintiff's Labor Law § 241 (6) claim asserted against it as is predicated on alleged violations of sections 23-1.5, 23-1.7 (d), (e) (1), and (f), 23-

1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.1, 23-2.4, 23-3.3, and 23-5.1 of the Industrial Code (Sequence #6) is granted; and it is further

ORDERED that the branch Demar's motion for summary judgment on its second third-party claim for breach of contract asserted against Energy Plus (Sequence #6) is granted; and it is further,

ORDERED that the branch of Energy Plus's motion for summary judgment dismissing the plaintiff's Labor Law § 240 (1) claim insofar as asserted against 677 Realty (Sequence #7) is granted; and it is further,

ORDERED that the branch of Energy Plus's motion for summary judgment dismissing so much of the plaintiff's Labor Law § 241 (6) claim asserted against 677 Realty as is predicated on alleged violations of sections 23-1.11, 23-1.18, 23-1.22, 23-1.23, and 23-2.4 of the Industrial Code (Sequence #7) is granted; and it is further,

ORDERED that the branch of Energy Plus's motion for summary judgment dismissing the first third-party complaint is (Sequence #7) granted; and it is further,

ORDERED that the branch of Trade Off's motion for summary judgment dismissing the plaintiff's Labor Law §§ 240 (1) and 200 claims asserted against it (Sequence #8) is granted; and it is further,

ORDERED that the branch of Trade Off's motion for summary judgment dismissing the cross-claims for contractual indemnification asserted against it by 677 Realty, Demar, and CR Safety (Sequence #8) is granted; and it is further,

ORDERED that the branch of CR Safety's motion for summary judgment dismissing plaintiff's Labor Law § 240 (1) claim insofar as asserted against it (Sequence #9) is granted; and it is further,

ORDERED that upon a search of the record, summary judgment is granted to Redcom dismissing the plaintiff's Labor Law § 240 (1) claim insofar as asserted against it; and it is further,

ORDERED that upon a search of the record, so much of the plaintiff's Labor Law § 241 (6) claim asserted against 677 Realty, Redcom, CR Safety, and Trade Off as is predicated on alleged violations of sections 23-1.5, 23-1.7 (d), (e) (1), and (f), 23-1.8 (c) (2), 23-1.11, 23-1.18, 23-1.22, 23-1.23, 23-1.33, 23-2.1, 23-2.4, 23-3.3, and 23-5.1 of the Industrial Code is dismissed; and it is further,

ORDERED that upon a search of the record, Mellifont's cross-claims for common-law indemnification and contribution asserted against 677 Realty, Redcom, Demar, CR Safety, and Trade Off are dismissed; and it is further,

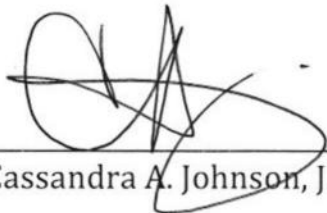
ORDERED that upon a search of the record, Trade Off's cross-claims for contractual indemnification asserted against 677 Realty, Demar, and CR Safety are dismissed; and it is further,

ORDERED that upon a search of the record, CR Safety's cross-claim for contractual indemnification asserted against Demar is dismissed; and it is further,

ORDERED that upon a search of the record, Demar's cross-claim for contractual indemnification asserted against CR Safety is dismissed; and it is further,

ORDERED that all other relief not expressly granted herein is denied.

Dated: September 24, 2024



Hon. Cassandra A. Johnson, J.S.C.

