SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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JOSE N. CANALES,

Plaintiff,

- v -

NOBLE CONSTRUCTION GROUP, LLC,350 EAST HOUSTON LLC,

Defendant.

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INDEX NO. 161247/2019

MOTION DATE 03/11/2025

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

NOBLE CONSTRUCTION GROUP, LLC, 350 EAST HOUSTON LLC

Plaintiff,

-against-

C & L CONCRETE CORP.

Defendant.

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Third-Party
Index No. 595182/2020

NOBLE CONSTRUCTION GROUP, LLC, 350 EAST HOUSTON LLC

Plaintiff,

-against-

TEAM ELECTRIC INC., TEAM ELECTRIC CORP.

Defendant.

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Second Third-Party
Index No. 595970/2021

C & L CONCRETE CORP.

Plaintiff,

-against-

TEAM ELECTRIC INC., TEAM ELECTRIC CORP.

Defendant.

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Third Third-Party
Index No. 596029/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 163, 164, 165, 182, 187, 188, 189

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 161, 166, 167, 168, 169, 170, 171, 172, 177, 178, 179, 180, 181, 184, 185, 186

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 162, 173, 174, 175, 176, 183

were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 003, 004 and 005 are consolidated for disposition. Team Electric, Inc. and Team Electric Corp.'s (collectively "Team Electric") motion (MS003) for summary judgment is denied in its entirety. Defendants' motion (MS004) to dismiss the complaint and on its third-party complaint is granted in part and denied in part. Plaintiff's motion for partial summary judgment on his Labor Law §§ 204(1) and 241(6) claims is granted in part and denied in part.

Background

In this Labor Law action, plaintiff contends that he was working for third-party defendant C&L Concrete Corp. ("C&L Concrete"). He testified that he was told by his supervisor on site (Jorge) to get five guys to move an electrical box (NYSCEF Doc. No. 124 at 69). Plaintiff explained that the metal box was an electrical panel and a Bobcat was initially used to unload it from the delivery truck (*id*. at 71, 76). He added that this electrical panel was nine feet by five feet and weight approximately 800 pounds (*id*. at 76-77).

Plaintiff admitted that the machine used to lift the panel—the Bobcat—was not the proper tool but that when he told his supervisor Jorge about this, Jorge responded that a representative from the general contractor (defendant Noble) insisted the work had to be done (*id*. at 79). Plaintiff observed that his supervisor fit the box into the bucket of the Bobcat and it overlapped a bit—meaning it did not quite fit (*id*. at 81). Jorge then moved the box from the truck to the inside of the building using the Bobcat (*id*. at 85). Plaintiff and five of his coworkers were then told to lift and move the box (*id*. at 88-89).

While these six people were moving/pushing that eight hundred pound, nine foot by five foot box, plaintiff testified that "The guy who was next to me, pushing it from the back tangled himself in some rebar" and "When he got tangled, he let go of the panel and the panel fell on top of me" (*id*. at 91). At that point the six people involved (plaintiff and five other workers) divided themselves with three on each side to move the panel (*id*. at 92). Plaintiff explained that the panel fell on his right shoulder and the right part of his chest (*id*. at 97). He added that "The box turns on it—turned on its side and it fell on top of me against my chest and against the wall" and that he was stuck against the wall (*id*.).

The parties offer diverging views on the central question of who ordered and participated in the decision to move this heavy electrical box by hand. Team Electric, an electrical subcontractor on the site, admits that the incident arose out of the delivery of the electrical box ordered by Team Electric. However, it insists that Mr. Palmieri, an employee of the general contractor defendant Noble Construction LLC ("Noble"), handled the deliveries (as there were many such deliveries) and blames him from not safely handling the delivery.

Mr. Palmieri testified that he was aware of this delivery for Team Electric but that he was not sure when it was going to be delivered (NYSCEF Doc. No. 153 at 25). He admitted that if a

delivery could not be handled "We would turn them away or we would tell them they would have to wait until whatever we were doing was done" (*id*.). Team Electric insists that Mr. Palmieri could only identify two Team Electric employees present when the electrical box was delivered and that he should have turned away the delivery as that was nowhere near enough people to deal with such a large order.

Noble blames Team Electric for not properly receiving its delivery and claims it never told C&L Concrete to help out with moving the box. It insists that it merely coordinated deliveries but that the individual contractors were responsible for unloading equipment.

Labor Law §240(1)

Plaintiff moves (MS005) for summary judgment on his Labor Law § 240(1) claim. He contends that this statute applies to both falling worker and falling object cases. Plaintiff argues that he and his coworkers were not provided with the requisite hoisting device to transport this equipment and that, instead, they were told to carry the panel by hand.

In opposition, defendants insist that this Labor Law section is inapplicable because the cause of plaintiff's accident was due to his coworker tripping and not the force of gravity. Defendants also move for summary judgment in MS004 and seek to dismiss plaintiff's claim based on Labor Law § 240(1). They make arguments similar to those raised in opposition to plaintiff's motion, including that this was not a gravity-related incident.

"Labor Law § 240(1), often called the 'scaffold law,' provides that all 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" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The central question in connection with plaintiff's Labor Law § 240(1) claim is whether the incident here constitutes a falling object case sufficient to render this statute applicable to plaintiff's accident. "With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured. Thus, for section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68, 727 NYS2d 37 [2001]).

Here, the Court finds that plaintiff's accident was not caused by the force of gravity. Rather, according to plaintiff's testimony, the accident was caused by his coworker tripping over rebar. Although plaintiff's expert contends that the box should have been moved with hoisting equipment (NYSCEF Doc. No. 136 at 4), that does not mean that this is a Labor Law § 240(1) case. The fact is that the proximate cause of the incident was not that the object fell from a height; rather, plaintiff was purportedly injured because something on the ground caused

plaintiff's coworker to lose his balance (*c.f. Jackson v Hunter Roberts Constr. Group, LLC*, 161 AD3d 666, 667, 78 NYS3d 310 [1st Dept 2018] [dismissing a Labor Law § 240(1) claim where the "impetus" for the accident was "plaintiff's loss of balance, rather than the direct consequence of the force of gravity"]).

Labor Law § 241(6)

"The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6). . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" *(Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

"Section 241(6) subjects owners and contractors to liability for failing to adhere to required safety standards whether or not they themselves are negligent. Supervision of the work, control of the worksite, or actual or constructive notice of a violation of the Industrial Code are not necessary to impose vicarious liability against owners and general contractors, so long as some actor in the construction chain was negligent" (*Leonard v City of New York*, 216 AD3d 51, 55-56, 188 NYS3d 471 [1st Dept 2023]).

Plaintiff alleges violations of Industrial Code sections §§ 23- 1.5, 23-1.7, 23-1.23, 23-2.1, 23-2.2, 23-2.4, 23-4.1, 23-4.2, 23-4.3, 23-4.4, 23-6.1. Defendants seek summary judgment dismissing all of these sections. In opposition and in his affirmative motion for summary judgment (MS005), plaintiff raises arguments only in support of 23-1.7(e)(1). This specific Industrial Code section concerns tripping hazards and provides that "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."

Here, the raised rebar clearly constituted an obstruction along the passageway that could cause tripping as evidenced by both plaintiff's testimony and the photographs submitted on this record (NYSCEF Doc. No. 126). The Court therefore grants plaintiff's motion to the extent he seeks summary judgment on this Labor Law § 241(6) claim premised on Industrial Code Section 23-1.7(e)(1) as to liability only. The Court grants the remaining portions of defendants' motion to dismiss this cause of action as plaintiff did not address these other Industrial Code sections in his papers.

Labor Law § 200

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

"Claims for personal injury under this statute and the common law fall under two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-44, 950 NYS2d 35 [1st Dept 2012]). "Where an existing

defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*id.* at 144).

Defendants contend that this cause of action should be dismissed because they did not control plaintiff's work nor did they have any notice concerning the dangerous condition.

In opposition, plaintiff argues that the work at issue—moving the electrical box—was not part of his typical concrete work. He argues that it was a part of third-party defendant Team Electric's work and that this task was performed at the direction of the general contractor Noble.

The Court denies this branch of defendant's motion. Plaintiff's foreman (Mr. De Souza) testified that a Noble supervisor directed C&L Concrete to move the subject electrical equipment (NYSCEF Doc. No. 111 at 37). Apparently, Mr. De Souza's boss Pat (the general manager of C&L) was told by Mr. Palmieri of Noble to move the box. While Mr. De Souza's assertion is hearsay, it can still be considered in a motion for summary judgment as it is not the only evidence (*Narvaez v NYRAC*, 290 AD2d 400, 40, 737 NYS2d 76 [1st Dept 2002]). Plaintiff submits the affidavit of Mr. Pita (NYSCEF Doc. No. 168), a foreman for Noble on the day of the accident, who claims that Noble was "involved in the decision" to have C&L Concrete move the electrical box. Taken together, these raise an issue of fact concerning Noble's control over the means and methods of the work.

To the extent that Noble insists that it never directed C&L Concrete to move the box, that does not compel the Court to grant this branch of the motion. To be sure, Noble submitted the affirmation of Mr. Palmieri in reply (NYSCEF Doc. No. 185) who contends that he had no role in the moving of this box. And Noble insists that the affidavit of Mr. Pita was fraudulent on the ground that Mr. Pita was at a different worksite that day.

But this Court cannot make such factual determinations on a motion for summary judgment. In other words, the Court cannot simply credit defendants' version and reject plaintiff's arguments raised in opposition based on likelihoods or what argument is more persuasive. A fact finder will have to consider the varying contentions about Noble's involvement in the moving of the electrical box and the veracity of Mr. Pita's assertions and will ultimately determine who was responsible for directing concrete workers, including plaintiff, to manually move a huge, heavy electrical box instead of trying to utilize the appropriate machinery to assist in this task.

However, the Court dismisses plaintiff's Labor Law § 200 claim to the extent it is alleged against the owner 350 East Houston LLC as there is no indication this entity had anything to do with controlling plaintiff's work that day.

Third-Party Issues

In motion sequence 003, Team Electric claims that it had nothing to do with the accident and blames Noble for not properly handling the delivery. It claims that Mr. Palmieri should have realized that there were not enough Team Electric employees on site to handle a large electrical box and that he should not have tasked a concrete subcontractor to move the box. In fact, Team Electric's witness testified that there was no reason why these concrete subcontractor employees would have been moving an electrical box nor would he have allowed it (NYSCEF Doc. No. 156 at 98). He added that moving this box manually, as opposed to using the proper equipment, was not an acceptable or safe way to move the electrical box (*id.*).

Team Electric seeks dismissal of defendants' claims for contractual indemnity on the ground that Team Electric did not control or supervise plaintiff's work nor did Team Electric direct plaintiff to do this task. It insists that under the terms of the subcontract, Team Electric

owes indemnity if an injury arises out of its work but that was not the case here. It also seeks dismissal of both Noble's and C&L Concrete's claims for common law indemnification.

In opposition, defendants argue that if there was any active negligence, then it was at least in part committed by Team Electric. They point out that the trade contract included installation of lighting, alarms and radio systems which necessarily involved installing the electrical end box at issue here. Defendants emphasize that the individual subcontractors are responsible for unloading their own equipment.

The Court denies all requests for relief with respect to the third-party complaints. That is, the Court denies Team Electric's motion (MS003) and defendants' motion (MS004) to the extent it seeks third-party relief. The fact is that at this stage of the case, the Court cannot determine who directed C&L Concrete to help out with the unloading and movement of the electrical box. The deposition testimony from the various witnesses supports many differing interpretations.

Team Electric insists it was Mr. Palmieri who asked C&L Concrete to help out; Mr. Palmieri denies this assertion. Of course, Team Electric's witness argued that this type of box should never be moved manually and he would never have allowed it (although he was not present when this occurred). Meanwhile, Mr. Palmieri testified that "the subcontractor would be in charge of their own-offloading and they would bring whatever equipment is necessary to handle whatever it is they are receiving" (NYSCEF Doc. No. 109 at 24). He also insisted that it was Team Electric's determination to bring the electric box inside the building (NYSCEF Doc. No. 110 at 33) and that he had no idea how the electric box ended up in its final location (*id*. at 31). Moreover, Mr. De Souza (of C&L Concrete) testified that there was at least one Team Electric employee (possibly more than one) who helped them move the box (NYSCEF Doc. No. 111 at 71).

Simply put, the Court cannot ascertain as a matter of law who decided to make the C&L Concrete employees get involved in the moving of the electrical box, who decided it should be moved by hand once in the building and the extent to which Noble and Team Electric were involved in this task and decision making. It could be that a fact finder assigns blame solely to Noble, solely to Team Electric or reaches some other conclusion entirely. Therefore, this Court cannot make a finding with respect to indemnification, even for C&L Concrete's common law indemnification and contribution claims raised against Team Electric. It is undisputed that there was no contract between these two subcontractors but if a fact finder assigns blame on Team Electric, then C&L Concrete might be able to recover against Team Electric under these theories. But on these papers, where everyone blames each other with sworn testimony, summary judgment cannot be granted on this issue.

Summary

As discussed in this decision, there is little dispute about what happened to plaintiff. He was hit by a heavy electrical box when a co-worker lost his balance while he (and other workers) was carrying this heavy object. That is why plaintiff is entitled to summary judgment on his Labor Law § 241(6) claim based upon a tripping hazard—the rebar. Because the force of gravity was not involved, the Court dismissed the Labor Law § 240(1) claim.

What is hotly disputed is how C&L Concrete's employees ended up moving this box manually. No one claims that this was part of C&L Concrete's typical tasks at the job site; clearly, someone must have directed them to help out with Team Electric's delivery. There is testimony that Noble's construction super (Mr. Palmieri) directed C&L Concrete to assist with the electrical box while Noble disputes this assertion and contends that Team Electric was responsible. Therefore, because this Court cannot make factual determinations on a motion for

summary judgment, the Court denies the indemnification branches of the motion as well as the request for relief related to plaintiff's Labor Law § 200 claim. A fact finder will have to reach a conclusion about how C&L Concrete got involved with moving this electrical box.

Accordingly, it is hereby

ORDERED that Team Electric, Inc. and Team Electric Corp.'s motion (MS003) for summary judgment is denied in its entirety; and it is further

ORDERED that defendants' motion (MS004) for summary judgment is granted only to the extent that plaintiff's Labor Law § 240(1) and Labor Law § 241(6) claims premised on all Industrial Code violations except for 23-1.7(e)(1) are severed and dismissed as is plaintiff's Labor Law § 200 claim to the extent it is asserted against 350 East Houston LLC; and it is further

ORDERED that plaintiff's motion (MS005) for summary judgment is granted only as to liability on his Labor Law § 241(6) claim premised on Industrial Code Section 23-1.7(e)(1) and denied with respect to the other requested relief.

3/17/2025
DATE

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE