

Douso v Gotham Gen. Carpentry, Inc.

2025 NY Slip Op 31052(U)

March 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 513416/2021

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 26th day of March 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

JOSEPH DOUSO,

Plaintiff,

-against-

GOTHAM GENERAL CARPENTRY, INC.
and MAKE THE ROAD NEW YORK,

Defendants.

DECISION & ORDER

Index No.: 513416/2021

Calendar No.: 14-18

Motion Seq.: 11-15

Return Date: 1/30/2025

MAKE THE ROAD NEW YORK,

Third-Party Plaintiff,

-against-

KBE-NY, LLC,

Third-Party Defendant.

KBE-NY, LLC,

Second Third-Party Plaintiff,

-against-

GOTHAM GENERAL CARPENTRY, INC. and
URBAN FOUNDATION/ENGINEERING, LLC,

Second Third-Party Defendants.

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
MS_011 Urban Foundation's Notice of Motion for Summary Judgment, Affirmation, Affidavits & Exhibits (NYSCEF 298-310)	1, 2
Make the Road's Affirmation in Opposition & Exhibit (NYSCEF 452-453).....	3
Plaintiff's Affirmation in Opposition (NYSCEF 476).....	4
Gotham's Affirmation in Opposition (NYSCEF 485).....	5
Urban Foundation's Reply Affirmation (NYSCEF 493).....	7
MS_012 Make the Road's Notice of Motion for Summary Judgment, Affirmation, Affidavits & Exhibits (NYSCEF 313-319)	8, 9
Urban Foundation's Affirmation in Opposition & Exhibits (NYSCEF 442-451).....	10
Plaintiff's Affirmation in Opposition (NYSCEF 477-479)	11
Gotham's Affirmation in Opposition (NYSCEF 484, 491).....	12
KBE-NY's Counter Statement of Material Facts (NYSCEF 492)	13
Make the Road's Reply Affirmations (NYSCEF 496-499)	14
MS_013 KBE-NY's Notice of Motion dismissing Plaintiff's and Third-Party Plaintiff's Complaint, Affirmation, Affidavits & Exhibits (NYSCEF 320-350).....	15, 16
Plaintiff's Affirmation in Opposition (NYSCEF 480-481)	17
KBE-NY's Reply Affirmation & Exhibits (NYSCEF 494)	18
MS_014 KBE-NY's Notice of Motion for Summary Judgment on the Second Third-Party Complaint and Counterclaims, Affirmation/Affidavits & Exhibits (NYSCEF 391-428)	19, 20
Plaintiff's Affirmation in Opposition (NYSCEF 482).....	21
Gotham's Affirmation in Opposition & Exhibits (NYSCEF 486-490).....	22
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MS_015 Gotham’s Notice of Motion for Summary, Judgment
Affirmation, Affidavits and Exhibits (NYSCEF429-430).....24, 25
Make the Road’s Affirmation in
Opposition & Exhibit (NYSCEF 454-455).....26
KBE-NY’s Affirmation in Opposition (NYSCEF 461).....27
Urban Foundation’s Affirmation in
Opposition & Exhibits (NYSCEF 462-475).....28
Plaintiff’s Affirmation in Opposition (NYSCEF 483).....29
Gotham’s Reply Affirmations (NYSCEF 500-503).....30

Upon the foregoing papers and after oral argument, the decision and order of the Court

is as follows:

Procedural History

Plaintiff commenced this action for personal injuries arising out of a work-related accident against the owner of the premises, Make the Road New York (“MTR”) and the drywall subcontractor, Gotham General Carpentry Inc. (“Gotham”). The complaint alleges violations of Labor Law § 200, § 240 [1], and § 241 [6]. In a supplemental verified bill of particulars, plaintiff alleges violations of Industrial Code 12 NYCRR § 23-1.7, § 23.1.7 [e], § 23.1.7 [e] [1], § 23.1.7 [e] [2], § 23.1.7 [f], § 23-2.7[e].

MTR commenced a third-party action against the general contractor (plaintiff’s employer), KBE-NY, LLC (“KBE”) seeking contractual and common law indemnification and contribution, attorneys’ fees and expenses and breach of contract based on KBE’s failure to procure insurance for the benefit of MTR.¹ KBE commenced a second third-party action against Gotham and the concrete subcontractor, Urban Foundation/Engineering, LLC (“Urban”) seeking

¹ NYSCEF 47

contractual and common law indemnification and attorneys' fees and expenses pursuant to the respective subcontracts entered into between the parties, and breach of contract.²

Plaintiff previously moved for summary judgment on the Labor Law § 241 [6] cause of action premised upon violations of 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e] as against defendant, MTR, only.³ By an order dated 10/10/2024 and served with Notice of Entry on 10/18/2024, the motion was denied.⁴ The parties did not file a notice of appeal or serve a motion to reargue (CPLR § 2221) or modify (CPLR § 5015 [b]) the 10/10/2024 order.

Now, MTR, Gotham and KBE, (collectively "defendants") have moved for summary judgment dismissing plaintiff's complaint in its entirety, and thereafter dismissing the third-party and second third-party complaints, cross claims and counterclaims for indemnification and contribution. MTR, Gotham and KBE have each moved for summary judgment on their claims for indemnification and contribution, breach of contract and attorneys' fees and expenses. Urban has only moved for summary judgment dismissing the second third-party complaint.

Facts

Plaintiff was a construction supervisor employed by KBE for the construction of a community center on the property owned by MTR.⁵ KBE subcontracted with Urban and Gotham. During construction, two sets of temporary stairs were built by Gotham from the ground floor to the cellar.⁶ KBE testified that Gotham was responsible for safe entrance and exit

² NYSCEF 185

³ Plaintiff's Notice of Motion did not specify whether plaintiff was seeking summary judgment against Gotham or MTR (NYSCEF 243). However, in plaintiff's affirmation in support of the motion, summary judgment was requested against only MTR (NYSCEF 244).

⁴ NYSCEF 352

⁵ See Plaintiff Statement of Material Facts in response to MTR's motion (NYSCEF 478, ¶¶25-28). MTR's Statement of Material Facts related solely to its motion for summary judgment as against KBE (MS_012). Neither KBE, MTR nor the other defendants submitted a response to plaintiff's statement. Therefore, all factual allegations are deemed admitted.

⁶ *Id.* at ¶29-30

from the basement's floor to the concrete landing poured by Urban⁷ that was connected to the temporary stairway constructed by Gotham.⁸ Urban testified that the concrete landing was not part of the temporary staircase but would become part of the permanent stairway.⁹ The trades on the jobsite were to provide their own access from the basement's floor to this permanent landing/slab and the temporary stairway.¹⁰ Therefore, a stand-alone wooden box/step was placed below the concrete landing/slab.¹¹ All defendants deny having placed the wooden box adjacent to the concrete landing/slab.

Plaintiff's accident occurred after he stepped up from basement's floor onto the wooden box intending to then step onto the concrete landing to enter the temporary stairway enroute to the first floor on the west side of the project.¹² Plaintiff alleges that his accident occurred because his foot became caught on the "too-high" riser that measured more than nine inches between the wooden box and the concrete landing/slab.¹³ As he was falling, plaintiff put his hand out but there was no handrail to grab to break to his fall.¹⁴

Summary Judgment

When deciding a summary judgment motion, the Court's only role is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party,

⁷ NYSCEF 286, pp.19-23; 29-31

⁸ NYSCEF 249, pp.62-64

⁹ NYSCEF 286, p.52

¹⁰ NYSCEF 286, 63:14-25, 64:1-4

¹¹ NYSCEF 478, ¶32, NYSCEF 301, p.4-5, 13

¹² NYSCEF 478 at ¶30

¹³ *Id.* at ¶¶29-37; NYSCEF 301, pp.7-10

¹⁴ NYSCEF 478, ¶37

affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

Labor Law § 241 (6)

“Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. A violation of an explicit and concrete provision of the Industrial Code by a participant in a construction project constitutes some evidence of negligence, for which the owner or general contractor may be held vicariously liable” (*Bravo v 609 W. 56th Street Property, LLC*, 234 AD3d 735 [2d Dept. 2025] [internal quotations and citations omitted]).

This section of the Labor Law is a “hybrid statute” because the first sentence reiterates the general common-law standard of care, while the second sentence imposes a nondelegable duty with respect to compliance with rules of the Commissioner [Industrial Code] which contain specific, positive command[s]” (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 317 [2024], citing *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 503-504, [1993]; *see also Toussaint v Port Auth. of N.Y. & NJ*, 38 NY3d 89, 93 [2022]). Thus, an owner or general contractor is vicariously liable without regard to fault and in the absence of control or supervision of the worksite once plaintiff establishes a violation of a specific and applicable Industrial Code (*Bazdaric v Almah Partners LLC*, 41 NY3d 317, citing *Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 348–350; *Toussaint v Port Auth. of N.Y. & NJ*, 38 NY3d 94; and *Nostrom v A.W. Chesterton Co.*, 15 NY3d 502, 507 [2010]). Finally, “[t]he Industrial Code should be sensibly

interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the workplace” (*Bazdaric v Almah Partners LLC*, 41 NY3d 317).

a) **Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and 12 NYCRR § 23-2.7 [e] and the Order dated 10/10/2024**

The motions by MTR, Gotham and KBE seeking to dismiss plaintiff’s Labor Law § 241 [6] cause of action based on Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e] are denied based on the order dated 10/10/2024 (*Brownrigg v New York City Housing Authority*, 29 AD3d 721, 722 [2nd Dept 2006]). The Order states that, “plaintiff’s motion for summary judgment as to Labor Law § 241 [6] against Make the Road, based on Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and Industrial Code § 23-2.7 [e] is denied as there is a triable question of fact based on the papers submitted on the motion.”¹⁵ Therefore, the Court found, *inter alia*, that questions of fact exists whether (1) plaintiff’s work fell within the scope of Labor Law § 241 [6] and Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e]; (2) one ore more of the subcontractors were negligent in the placement of the wooden box, and (3) Gotham negligently constructed the temporary stairway (*see Vernieri v Empire Realty Co.*, 219 AD2d 593, 595 [2nd Dept 1995]). This determination became the law of the case (*Brownrigg v New York City Housing Authority*, 29 AD3d 722).

Inherent in the Order is this Court’s rejection of Gotham’s request for summary judgment in its opposition to plaintiff’s motion. Gotham requested that the Court “search the record” and award summary judgment in its favor as it did not “build the riser” (CPLR § 3212 [b]).¹⁶ Based on the pictures of the wooden box and the concrete slab, there was an approximate 17-inch drop from the top of the concrete slab to the basement’s floor.¹⁷ Therefore, Gotham’s arguments in

¹⁵ NYSCEF 351

¹⁶ NYSCEF 296, ¶¶3 and 46

¹⁷ NYSCEF 309, ¶¶10-12 and NYSCEF 310, ¶14

support of the current motion overlook the fact that although it did not build the riser/wooden box, the Court previously found that a question of fact exists whether it was negligent by failing to construct temporary steps leading from the basement's floor to the concrete landing and install safety hand railings on either side (*Mena v 5 Beekman Prop. Owner, LLC*, 212 AD3d 466, 467 [1st Dept 2023]). The Court also did not search the record to grant summary judgment based on movant's argument concerning "integral part of the work being performed."¹⁸ This argument is without merit (*Bazdaric v Almah Partners LLC*, 41 NY3d 316-317).

Accordingly, Gotham's only remedy was a motion pursuant to CPLR § 2221 to reargue the denial of its request per CPLR § 3212 [b] and/or a motion pursuant to CPLR § 5015 [b].

Instead of adjourning plaintiff's motion, defendants chose to proceed separately with oral argument on plaintiff's motion and separately file successive motions and risk a binding adverse determination against them. Plaintiff's underlying motion was filed on 3/26/2024,¹⁹ but defendants waited until 10/8/2024, two days before oral argument on 10/10/2024, to start filing successive motions for summary judgment on the same issues even though depositions were completed by June 2024, and they filed opposition by 9/26/2024.²⁰

This litigation strategy cannot be countenanced. The Court may not revisit the foregoing triable issues of fact through successive motions for summary judgment absent extraordinary circumstances such as a change in the law or a showing of new evidence (*Brownrigg v New York City Housing Authority*, 29 AD3d 722 and *Alam v Uddin*, 160 AD3d 917). The motions do not

¹⁸ NYSCEF 288, ¶¶ 31-33 and 42; NYSCEF 288, ¶¶ 4, 11, 18-20, 42. The argument concerning "sole proximate cause" is rendered moot by the withdrawal of the Labor Law § 240 (1) cause of action.

¹⁹ NYSCEF 243

²⁰ NYSCEF 298, 313, 320, 391, and 429. Plaintiff's note of issue filed on 3/5/2024 was vacated and refiled on 8/21/2024 while plaintiff's motion for summary judgment was pending.

establish that (1) there has been a change in the law or (2) MTR, Gotham and KBE are in possession of “new evidence” (*Brownrigg v New York City Housing Authority, supra*).

Therefore, all motions for summary judgment seeking to dismiss plaintiff’s Labor Law § 241 [6] cause of action based on Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e] are denied.

b) The Order dated 10/10/2024 and Gotham’s Motion for Summary Judgment on Common Law Negligence, Labor Law § 200 and § 241 [6] (MS 015).

The question of fact concerning whether plaintiff’s work falls within the scope of Labor Law § 241 [6] and the Industrial Code is a separate issue from whether liability may be imposed against the drywall subcontractor Gotham under a direct cause of action per Labor Law § 200 and 241 [6]. The plain language of Labor Law § 200 and § 241 [6] only imposes liability against contractors and owners, and their agents. A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has been delegated the authority to control the work or activity which brought about the injury (*Guclu v 900 Eighth Avenue Condominium, LLC*, 81 AD3d 592, 593 [2d Dept. 2011] [internal quotations omitted]). Gotham established as a matter of law that (1) it was not the agent of the general contractor, KBE-NY, or the owner, MTR and (2) it did not entirely displace MTR’s duty to maintain the premises in a safe condition (*Espinal v Melville Snow Contr., Inc.*, 98 NY2d 136, 140 [2002]).

In opposition, plaintiff failed to demonstrate a triable issue of fact that the duty to control the work and conform it to the requirements of the Labor Law had been delegated to Gotham by KBE or MTR (*see Walls v Turner Construction*, 4 NY3d 861, 864 [2005]; *Delaluz v Walsh*, 228 AD3d 619, 621 [2d Dept. 2024]). Therefore, plaintiff’s common law negligence, Labor Law § 200 and § 241 [6] causes of action are dismissed in their entirety against Gotham as a direct defendant. However, as discussed below, Gotham’s motion seeking dismissal of MTR’s cross-

claims, and KBE's second third-party complaint for indemnification and contribution is denied as to only the Labor Law § 241 [6] cause of action based on Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e]. Accordingly, MTR's cross-claims against Gotham for indemnification and contribution are converted to a third-party action.

Labor Law § 240 (1) and Labor Law § 241 (6) based on Industrial Codes 12 NYCRR § 23-1.7 [e] [2] and § 23-1.7 [f]

In opposition to the motions for summary judgment, plaintiff withdrew the cause of action under Labor Law § 240 [1] and did not address Industrial Codes 12 NYCRR § 23-1.7 [e] [2] and § 23-1.7 [f]. Therefore, plaintiff's Labor Law § 240 [1] cause of action is dismissed. The Labor Law § 241 [6] cause of action predicated on Industrial Codes 12 NYCRR § 23-1.7 [e] [2] and § 23-1.7 [f] is also dismissed as to (1) MTR as a direct defendant and (2) all movants on their cross claims, counterclaims third-party claims, and second third-party claims for contribution and indemnification under 12 NYCRR § 23-1.7 [e] [2] and § 23-1.7 [f] only.

Labor Law § 200 and Common Law Negligence

Labor Law § 200 only applies to owners, general contractors, or their agents because it is a codification of their common-law duty to maintain a safe workplace (*Delaluz v Walsh*, 228 AD3d 619, 621 [2d.Dept. 2024]). "An implicit precondition to [the] duty to provide a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition" (*id.* [internal citations and quotations omitted]; *Guclu v 900 Eighth Avenue Condominium, LLC*, 81 AD3d 593).

An owner and general contractor may also be held liable "[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, [an owner and/or general contractor] may be liable under Labor Law

§ 200 if it either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition” (*Banscher v Actus Lend Lease, LLC*, 132 AD3d 707, 709 [2d Dept. 2015]). Notice is required because Labor Law § 200 is an outgrowth of the basic common-law principle that they should not be held [vicariously] responsible for the negligent acts of others over whom they had no direction or control (*Marte v Tishman Construction Corporation*, 223 AD3d 527, 527 [1st Dept. 2024]; and see *Ross v Curtis-Palmer Hydro-Electro Co.*, 81 NY2d 494, 505-506 [1993] [Labor Law § 200]).

MTR established its *prima facie* entitlement to summary judgment that it neither controlled the means and methods of the work being performed or had notice of the wooden box on the premises. In opposition, plaintiff failed to raise a triable question of fact to impose liability per Labor Law § 200 and common law negligence (*Guclu v 900 Eighth Avenue Condominium, LLC*, 81 AD3d 593; *Banscher v Actus Lend Lease, LLC*, 132 AD3d 709; *Espinal v Melville Snow Contr., Inc.*, 98 NY2d 140). Therefore, the motions are granted, and plaintiff’s common law negligence and Labor Law § 200 cause of actions are dismissed as to (1) MTR as a direct defendant and (2) all movants on their cross claims, counterclaims third-party claims, and second third-party claims for contribution and indemnification under common law negligence and Labor Law § 200 only.

Indemnification and Contribution

Common law indemnification is generally available to indemnitee “who is held responsible solely by operation of law because of [its] relation to the actual wrongdoer” (*McCarthy v Turner Construction, Inc.*, 17 NY3d 369, 376 [2011]). Therefore, the indemnitee cannot obtain common-law indemnification “unless it has been held vicariously liable without

proof of any negligence or actual supervision on its own part” (*McCarthy v Turner Construction, Inc.*, 17 NY3d 378).

To impose liability for contractual indemnification against an indemnitor, they must *actually* exercise supervision and control over the work; contractual authority standing alone is insufficient (*id.*; and *Chapa v. Bayles Props., Inc.*, 221 AD3d 855, 857 [2d Dept. 2023]). An indemnitee’s right to contractual indemnification also “depends upon the specific language of the contract” (*Chapa v. Bayles Props., Inc.*, 221 AD3d 857). The contractual language must not violate General Obligations Law § 5-322.1, which “permits a partially negligent general contractor to seek contractual indemnification from its subcontractor so long as the indemnification provision does not purport to indemnify the general contractor for its own negligence” (*Feliz v Citnalta Constr. Corp.*, 217 AD3d 750, 752 [2d Dept 2023] [internal citations omitted]; *Caracciolo v SHS Ralph, LLC*, 226 AD3d 861, 864 [2d Dept 2024]; *Brooks v Judlau Constr. Inc.*, 11 NY3d 204, 207 [2008]).

MTR’s motion for summary judgment granting indemnification and contribution (MS 012) and KBE’s motions for summary judgment dismissing the third-party complaint (MS 013) and Gotham’s second third-party counterclaims and granting indemnification from Gotham (MS 014).

MTR’s motion for indemnification against KBE is denied. Plaintiff’s deposition testimony demonstrates that he did not sustain a grave injury.²¹ Moreover, the record is devoid of evidence that KBE constructed the wooden box or was otherwise guilty of negligence or wrongdoing, which would trigger the right to indemnification and contribution by KBE under the contract (*Agurto v One Boerum Dev. Partners, LLC*, 221 AD3d 442, 444 [1st Dept 2023]).²²

²¹ A grave injury is defined as a permanent total disability under section 11, *i.e.*, an injury that results in (1) the unemployability in any capacity, which keeps with legislative intent and sets a more objectively ascertainable test than equivalent, or competitive, employment and/or (2) can participate in activities of daily living (*See Rubeis v Aqua Club Inc.*, 3 NY3d 408, 417 [2004]). Here, plaintiff has made no such claims.

²² NYSCEF 459, p.46, §3.18.1

MTR's remaining claims in the third-party complaint against KBE are without merit and are moot. Based on the foregoing, KBE's motion to dismiss the third-party complaint and second third-party counterclaims is granted (MS_013 and MS_014).

MTR's motion seeking an order of conditional common law and contractual indemnification from Gotham for any verdict or settlement in plaintiff's favor is granted (*McCarthy v Turner Construction, Inc.*, 17 NY3d 378). Based on the record, MTR as an absentee owner is free from negligence and vicariously liable for any potential award or settlement in favor of the plaintiff per Labor Law § 241 [6] (*Feliz v Citnalta Constr. Corp.*, 217 AD3d 752; *Agurto v. One Boerum Dev. v Partners, LLC*, 221 AD3d 444). In the contract between KBE and Gotham, Gotham agreed to indemnify the owner, MTR and KBE against "all damages, loss and expense, including attorney's fees and costs resulting, relating to or arising out of Subcontractor's Work under this Agreement."²³ This broad language establishes as a matter of law that Gotham agreed to indemnify KBE and MTR when a claim arose out of the work being performed regardless of whether Gotham was actually negligent (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 119 [1st Dept 2024]). Therefore, since the contract lacked a "negligence trigger," MTR and KBE are entitled contractual indemnification (*Gervasi v FSP 787 Seventh, LLC*, 228 AD3d 459, 461 [1st Dept 2024]). KBE's motion seeking a conditional order of contractual indemnification for attorney's fees and expenses from Gotham is also granted (MS_014). A hearing on attorney's fees and expenses as to MTR and KBE shall be held at the conclusion of this action.

²³ NYSCEF 424, p.6, ¶6

Based on the foregoing, Gotham's motion for summary judgment dismissing all claims for contribution and indemnification and for a conditional order of indemnification is denied (MS_015).

Urban's motion for summary judgment dismissing the second-third party complaint (MS 011).

It is undisputed that Urban completed its work in November 2020 and returned to the site on the date of the accident solely to review "punch list" items for the foundation walls only.²⁴ The undisputed evidence establishes that plaintiff's accident did not arise from Urban's work at the premises (*Torres-Quito v 1711 LLC*, 227 AD3d 119).²⁵ There is also no evidence that the wooden box was present on the job site before Urban left the work site in November 2020 to create the inference that Urban constructed it. Under the terms of its contract, Urban only poured the concrete landing. Therefore, Urban's motion to dismiss the second third-party complaint, claims, together with all cross claims and counterclaims is granted (*id.*) (MS_011).

This Court has considered the parties remaining contentions and finds same to be without merit.

Accordingly, it is hereby

ORDERED that the motions for summary judgment dismissing plaintiff's Common Law Negligence, Labor Law § 200, and Labor Law § 241 [6] based on Industrial Codes 12 NYCRR § 23-1.7 [e] [2] and § 23-1.7 [f] causes of action is GRANTED (Motion Seq. 12, 13, 14, and 15), and it is further

²⁴ NYSCEF 299, ¶25

²⁵ NYSCEF 302, p.6, ¶6

ORDERED that the motions for summary judgment dismissing plaintiff's Labor Law § 241 [6] and Industrial Codes 12 NYCRR § 23-1.7 [e] [1] and § 23-2.7 [e] cause of action is DENIED (Motion Seq. 12, 13 and 15), and it is further

ORDERED that second third-party URBAN FOUNDATION/ENGINEERING, LLC's, motion for summary judgment dismissing the second third-party complaint and all crossclaims for contribution and indemnification against it is GRANTED (MS_011), and it is further

ORDERED that defendant MAKE THE ROAD NEW YORK's motion for summary judgment on its claims for contractual indemnification, common law indemnification and breach of contract against second third-party defendant URBAN FOUNDATION/ENGINEERING, LLC is DENIED (MS_012), and it is further.

ORDERED that defendant MAKE THE ROAD NEW YORK's motion for summary judgment on its claims for contractual indemnification and common law indemnification against third-party defendant KBE-NY, LLC is DENIED (MS_012), and it is further.

ORDERED that defendant MAKE THE ROAD NEW YORK's motion for summary judgment on its claims for breach of contract against third-party defendant KBE-NY, LLC for failing to procure insurance is DENIED (MS_012), and it is further.

ORDERED that defendant MAKE THE ROAD NEW YORK's motion for summary judgment on its claims for a conditional order of contractual indemnification and common law indemnification against defendant/second third-party defendant GOTHAM GENERAL CARPENTRY INC. is GRANTED (MS_012), and it is further,

ORDERED defendant MAKE THE ROAD NEW YORK's cross claims against GOTHAM GENERAL CARPENTRY INC. are severed and converted to a third-party action, and it is further

ORDERED that upon service of this Order with Notice of Entry, the Clerk of the Court is directed to convert MAKE THE ROAD NEW YORK's cross claims to a third-party action without the need to purchase an index number, and it is further

ORDERED that defendant MAKE THE ROAD NEW YORK's cross claims against GOTHAM GENERAL CARPENTRY, INC. in its answer dated 7/8/2021 (NYSCEF 8) shall stand as the pleadings in the third-party action, and it is further

ORDERED that third-party defendant KBE-NY, LLC's motion for summary judgment dismissing the third-party complaint and all cross claims against it is GRANTED (MS_014), and it is further

ORDERED that second third-party plaintiff KBE-NY, LLC's motion for summary judgment on its second third-party complaint against second third-party defendant URBAN FOUNDATION/ENGINEERING, LLC is DENIED (MS_014), and it is further

ORDERED that second third-party plaintiff KBE-NY, LLC's motion for summary judgment on its second third-party complaint against GOTHAM GENERAL CARPENTRY for a conditional order of indemnification for attorney's fees and expenses is GRANTED (MS_014), and it is further


ORDERED that a hearing as to indemnification for attorney's fees and expenses shall be held at the conclusion of this action (MS_012 & MS_014), and it is further

ORDERED that defendant GOTHAM GENERAL CARPENTRY INC.'s motion for summary judgment dismissing plaintiff's complaint against it as a direct defendant is GRANTED (MS_015), and it is further

ORDERED that defendant GOTHAM GENERAL CARPENTRY INC.'s motion for summary judgment dismissing all cross claims by defendant MAKE THE ROAD NEW YORK and KBE-NY, LLC's second third-party complaint against it is DENIED (MS_015), and it is further

ORDERED that defendant GOTHAM GENERAL CARPENTRY INC.'s motion for conditional summary judgment on its common law indemnification and/or contribution against all co-defendants is DENIED (MS_015).

This constitutes the decision and order of the Court.

ENTER: 

Hon. Annie J. Swern, J.S.C.
Dated: 3/26/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____