Supreme Court of the State of New York
County of Kings
Part LL1

EDWIN WILFREDO SOPA CAHUANO,

Plaintiff,

against

2320 CONEY LLC, COOK EQUITIES LLC, RATAN REALTY L.L.C., ALL BOROUGH GROUP SERVICE INC., and RICHMOND CONSTRUCTION INC.,

Defendants.

ALL BOROUGH GROUP SERVICES INC.,

Third-Party Plaintiffs,

against

RICHMOND CONSTRUCTION INC.,

Third- Party Defendant.

ALL BOROUGH GROUP SERVICES INC.,

Second Third-Party Plaintiff,

against

JW SALINAS CORP.,

Second Third-Party Defendant.

Index Number 529982/2021
Seqs. 003–005

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–3
Order to Show Cause and Affidavits Annexed.	4–6
Answering Affidavits	
Replying Affidavits	7–9
Exhibits	Var.
Other	

Introduction

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 003), defendants All Borough Group Services Inc. (All Borough) and Richmond Construction Inc. (Richmond)'s motion for summary judgment (Seq. 004), and JW Salinas Corp. (Salinas)'s motion for summary judgment (Seq. 005) are decided as follows:

Procedural Posture

Plaintiff commenced this action to recover for damages that he claims to have sustained on October 5, 2021, when he tripped and fell while carrying rebar at a construction site. All Borough, the general contractor for the project, discontinued its third-party action against Richmond, the super-structure sub-contractor, when Richmond agreed to accept All Borough's tender. The owner of the premises, 2320 Coney LLC, is in default. All Borough commenced a second third-party against Salinas, the concrete sub-sub-contractor. Salinas employed the plaintiff.

Facts

The essential facts of plaintiff's accident are undisputed. On October 5, 2021, plaintiff was carrying five pieces of rebar which were each twenty to twenty-five feet long. Plaintiff was carrying the rebar bundle across an uncovered rebar grid on the top floor of the new construction, and he had completed this trip multiple times that day. A yellow extension cord was laying across the rebar grid. An authenticated photograph of the site is in the record depicting the rebar grid and the yellow extension cord. Plaintiff claims that he tripped over the electrical cord with his right foot and then could not "get up" with his left foot because of loose plumbing sleeves, which plaintiff calls "black pipes," scattered on the decking (Sopa EBT at 18). Yi Liu (All Borough representative) and Amnider Singh (Richmond representative) confirmed that these black pipes were plumbing sleeves (Singh EBT at 81; Liu EBT at 87).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the

non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

As an initial matter, plaintiff does not oppose defendants' motion with respect to his Labor Law § 240 (1) claim. Therefore, that claim is dismissed.

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury, (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]). Plaintiff alleges that defendants violated 12 NYCRR 23-1.7 (e) (1) and (2). Plaintiff does not oppose defendants' motion with respect to the other Industrial Code violations in his pleadings; defendants' motion is therefore granted with respect to these violations.

Rule 1.7 (e) (1) applies only to passageways. Here, the plaintiff has not demonstrated that the area where he was walking was a passageway; that code provision is therefore inapplicable. Rule 1.7 (e) (2) reads:

> **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.

Here, it is clear that plaintiff's accident occurred in a covered working area. The plaintiff alleged that he tripped due to an improperly placed extension cord and an accumulation of plumbing sleeves. This testimony is sufficient to make out plaintiff's prima facie entitlement to summary judgment as a matter of law (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310 [2024]).

In opposition, and in support of their own motion, defendants advance two arguments. First, defendants argue that the extension cord does not constitute "accumulated debris" or

"scattered tools," and that plaintiff's accident does not constitute a violation of Rule 1.7 (e) (2). However, defendants fail to account for plaintiff's testimony that his fall was also proximately caused by an accumulation of plumbing sleeves, or "black pipes." The court need not resolve the issue of whether the cord alone constitutes a violation of the Rule, as the cord and the plumbing sleeves when taken together do.

Second, defendants argue that the cord was integral to the plaintiff's work because it was providing illumination. This argument is unavailing because, even if the court accepts arguendo that that the cord was necessary for illumination in the open air working area, a particular configuration is not integral "where a safer alternative would have accomplished the same goal" (*Bazdaric*, 41 NY3d at 321). Here, the defendants have not demonstrated that there was no safer alternative configuration, such as suspending the extension cord over the work area.

Notably, defendants do not argue the plaintiff tripped on something besides the extension cord or the plumbing sleeves; i.e., something which may have been integral to the plaintiff's work. On the papers before the court, plaintiff has demonstrated his prima facie entitlement to summary judgment, and defendants have not rebutted that showing. Additionally, defendants do not raise the issue of plaintiff's comparative fault in either their opposition or their own motion. Therefore, plaintiff's motion is granted and defendants' arguments about comparative fault are deemed abandoned (*see Medina v 1277 Holdings, LLC*, 234 AD3d 839, 843 [2025]).

Labor Law § 200

Plaintiff moves with respect only to Richmond on his Labor Law § 200 claim; plaintiff waives his claim against All Borough. "Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and

for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). In a case where the question arises out of means or manner of the work, "recovery . . . cannot be had under Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work" (id.). Here, Richmond's contract with All Borough obliges Richmond to "provide all material, labor, equipment, supervision and required insurance to perform the work required for [the foundation and superstructure portion]" of this project. There are questions of fact as to whether Richmond's contractual authority extended to the specific work that plaintiff was performing; therefore, Richmond and plaintiff's motions are both denied as to plaintiff's Labor Law § 200 claim.

Contractual Indemnification

All Borough and Salinas each moved for summary judgment on All Borough's contractual indemnification claim against Salinas. To prevail on the claim for contractual indemnification, "a party . . . must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Hirsch v. Blake Hous., LLC*, 65 AD3d 570, 571 [2nd Dept. 2009]). Conversely, the sub-contractor must show that it is not liable for indemnification in this instance based on the "specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]).

The sub-sub-contract between Richmond and Salinas obligates Salinas to indemnify the "Owner," "Richmond Construction," and, *inter alia*, Richmond's "agents." The contract does not contain a prima facie obligation for Salinas to indemnify the general contractor. Here, All Borough contends that it is entitled to contractual indemnification from Salinas because it was an

"agent" of Richmond. All Borough does not substantiate this argument. That said, Salinas also fails to substantially respond to All Borough's agency arguments. Therefore, given the ambiguity of All Borough's relationship to Richmond and the record before the court, both parties' motions are denied with respect to All Borough's contractual indemnification claim against Salinas (*see Skrok v Grand Loft Corp.*, 218 AD3d 702 [2d Dept 2023]).

Breach of Contract and Common-Law Indemnification

Salinas also moved for summary judgment on All Borough's breach of contract claim against it for failure to procure insurance, and All Borough did not oppose this part of Salinas' motion. Therefore, Salinas' motion is granted as to All Borough's breach of contract claim.

Finally, Salinas moved for summary judgment on All Borough's common-law indemnification and contribution claims. To prevail on a motion for summary judgment based upon common-law indemnification, the movant must show that it was not negligent, that alleged indemnitor was "responsible for negligence that contributed to the accident or, in the absence of any negligence, that [the movant] had [no] authority to direct, supervise, and control the work giving rise to the injury" (*Poalacin v Mall Properties, Inc.*, 155 AD3d 900, 909 [2d Dept 2017]). "[A] conclusion that [the defendant] is not liable to [the plaintiff] for the injuries sustained by him necessarily defeats the cross-claims for [common-law] indemnification and contribution asserted against [the defendant] by [other] defendants (*Stone v Williams*, 64 NY2d 639, 642 [1984]; *see also Rodriguez v Yosi Trucking*, 151 AD2d 556 [2d Dept 1989]).

Salinas contends that the common-law indemnification claims against it must be dismissed because they are barred by Workers' Compensation Law § 11. However, it is a logical prerequisite that for the protections of WCL § 11 to inure a party must have actually provided Workers' Compensation coverage. Here, Salinas has not demonstrated that it provided Workers'

Compensation coverage. There is, therefore, a question of fact as to whether Salinas is entitled to the protection of the statute, and its motion is denied with respect to All Borough's common-law indemnification and contribution claims.

Conclusion

Plaintiff's motion (Seq. 003) is granted with respect to his Labor Law § 241 (6) claim as predicated on a violation of Rule 1.7 (e) (2); the remainder of the motion is denied.

Defendants All Borough and Richmond's motion (Seq. 004) is granted to the extent that plaintiff's Labor Law § 240 (1) claim, plaintiff's Labor Law § 241 (6) claim (except as predicated on Rule 1.7 [e] [2]), and plaintiff's Labor Law § 200 claim against All Borough are all dismissed; the remainder of the motion is denied.

Salinas' motion (Seq. 005) is granted to the extent of dismissing All Borough's claim for breach of contract; the motion is otherwise denied.

March 24, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court