SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANCIS A. KAHN, III** **PART** **32**

Justice

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BRIAN KIERNAN,

Plaintiff,

- v -

UNITED STATES TENNIS ASSOCIATION INCORPORATED and HUNT CONSTRUCTION GROUP, INC.,

Defendants.

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UNITED STATES TENNIS ASSOCIATION INCORPORATED and HUNT CONSTRUCTION GROUP, INC.,

Third-Party Plaintiffs,

-against-

ASR ELECTRICAL CONTRACTING, INC. and KND LICENSED ELECTRICAL CONTRACTING & SERVICES CORP.,

Third-Party Defendants.

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KND LICENSED ELECTRICAL CONTRACTING & SERVICES CORP.,

Second Third-Party Plaintiff,

-against-

THE MANHATTAN COMPANY OF NY, LLC,

Second Third-Party Defendant.

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INDEX NO. 154113/2016

MOTION DATE

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 228, 248, 250, 255, 256, 257, 260, 264, 267, 269

were read on this motion to/for JUDGMENT - SUMMARY

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were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

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

Plaintiff Brian Kiernan, a journeyman ironworker, brings this Labor Law and common-law negligence action to recover damages for personal injuries allegedly sustained on May 5, 2016, when he stepped on a loose piece of electrical conduit while working at Arthur Ashe Stadium in Queens County, New York.

In motion sequence no. 003, third-party defendant/second third-party plaintiff KND Licensed Electrical Contracting & Services Corp. (KND) moves, pursuant to CPLR 3212, for summary judgment dismissing the claims, cross-claims and counterclaims asserted against it and for an order precluding second third-party defendant The Manhattan Company of NY, LLC (TMC) from testifying at trial and precluding defendant/third-party plaintiff Hunt Construction Group, Inc. (Hunt) from introducing evidence contrary to its witness's testimony about debris removal.

In motion sequence no. 004, third-party defendant ASR Electrical Contracting, Inc. (ASR) moves, pursuant to CPLR 3212, for summary judgment dismissing the third-party complaint and for an order precluding TMC from testifying at trial and precluding Hunt from introducing evidence contrary to its witness's testimony about debris removal.

In motion sequence no. 005, defendants/third-party plaintiffs United States Tennis Association Incorporated (USTA) and Hunt (together USTA/Hunt) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff cross-moves for partial summary judgment on liability against USTA/Hunt on the Labor Law § 241 (6) claim predicated on alleged violations of Industrial Code (12 NYCRR) §§ 23-1.7 (d) and 23-1.7 (e) (1) and on the Labor Law § 200 and common-law negligence claims.

FACTS

USTA is the national governing body for tennis in the United States (NY St Cts Elec Filing [NYSCEF] Doc No. 196, Noss affirmation, exhibit U, Daniel Zausner [Zausner] affirmation, ¶ 6). Nonparty USTA National Tennis Center, Inc. (NTC) leased the premises known as the USTA Billie Jean King National Tennis Center in Flushing Meadow, Corona Park, Queens County, New York, from nonparty the City of New York (the City) before the accident (*id.*). NTC hired Hunt as its construction manager for the Arthur Ashe Stadium project (the Project) at the premises, which entailed the design and construction of a retractable roof over the stadium (*id.*, ¶ 7; NYSCEF Doc No. 159, Kaye affirmation, exhibit E, Samuel LaForte [LaForte] 10/27/2021 tr at 36).

Section 18 of Hunt's contract with NTC (the Hunt Contract) reads, in relevant part, that "Construction Manager shall at all times keep the Project Site and surrounding areas free from accumulation of debris, waste materials and other rubbish caused by the performance of, or arising in

connection with, the Work"[1] (NYSCEF Doc No. 197, Noss affirmation, exhibit V at 47). Hunt hired TMC to collect and remove construction debris pursuant to a subcontract dated November 3, 2014 (the TMC Subcontract) (NYSCEF Doc No. 82, TMC answer ¶ 27; NYSCEF Doc No. 159 tr at 68; NYSCEF Doc No. 234, Lofrese affirmation, exhibit 1). The TMC Subcontract describes the scope of TMC's work as follows:

> "1. This Subcontractor shall provide carpenter(s), laborer(s), and other manpower to the Project for the purpose of performing general clean-up and other general conditions construction duties as directed by Hunt.
>
> 2. It is understood that Hunt will manage the on-site work being performed by the manpower provided by this Subcontractor" (NYSCEF Doc No. 234 at 4).

Hunt subcontracted part of the electrical work on the Project to ASR (NYSCEF Doc No. 38, ASR answer ¶ 5; NYSCEF Doc No. 226, Lofrese affirmation, exhibit X [the ASR Subcontract]), and part of the mechanical work to nonparty F.W. Sims, Inc. (FW Sims) (NYSCEF Doc No. 160, Kaye affirmation, exhibit F, LaForte 11/10/2021 tr at 28 and 58). FW Sims subcontracted its electrical work to nonparty Control Solutions Group, Inc. (Control Solutions) (*id.* at 79). Control Solutions then hired KND under a purchase order (the KND Purchase Order) as a second-tier subcontractor to perform electrical work (NYSCEF Doc No. 256, Kaye affirmation, exhibit 1 at 21; NYSCEF Doc No. 20, first third-party complaint ¶¶ 22-23). Hunt also retained nonparty Birdair, Inc. (Birdair) to install the roof over the stadium (NYSCEF Doc No. 159 at 88; NYSCEF Doc No. 196, ¶ 16). Birdair employed plaintiff as an ironworker (NYSCEF Doc No. 1, complaint ¶ 9; NYSCEF Doc No. 157, Kaye affirmation, exhibit C, ¶¶ 14-16).

Plaintiff testified that on the date of the accident, his foreman at Birdair tasked him with "stretching fabrics for the roof" (NYSCEF Doc No. 158, Kaye affirmation, exhibit D, plaintiff tr at 38, 41 and 62-63). The accident occurred shortly after 7 a.m. as plaintiff and another ironworker walked on the roofing gutter on the east side of the stadium towards Birdair's gang box (*id.* at 41, 43 and 117). The six-foot wide metal gutter, which circled the exterior perimeter of the stadium, was not enclosed by a roof or an overhang (*id.* at 44, 117 and 119). The surface of the gutter was dry at the time (*id.* at 118), and plaintiff had no difficulty seeing because of lighting conditions (*id.* at 153). Plaintiff testified that prior to the accident, he had to step around "20 feet worth" of construction debris in the gutter (*id.* at 125 and 136). The debris consisted of "wooden planks, plywood, tarps, spools of rope, spools of electrical wiring, plastic bags ... pipe debris up there from scaffolding [and] [e]electrical pipes" (*id.* at 126). He assumed the debris originated from multiple contractors (*id.* at 127).

Plaintiff testified the accident occurred when he "stepped on a pipe that rolled out from under me" (*id.* at 43-44). He explained, "I slipped on a piece of conduit pipe" (*id.* at 45), "[m]aybe an inch-and-a-half wide by two-feet long" piece of what "appeared to have been an electrical conduit pipe" on the ground (*id.* at 46). The steel pipe (*id.* at 131) was "hard and round, and I felt it roll right out from under me" (*id.* at 53). He did not see the conduit before he fell (*id.* at 119) because "[i]t was wedged underneath the tarps and spools of rope" (*id.* at 154). He added that "[m]aybe only a couple of inches were out of the tarp when I was able to get up and see what I had slipped on" (*id.*). Plaintiff was not navigating around any other

[1] The court observes that the Hunt Contract discusses "Work ... in connection with the construction for NTC of a new Grandstand Stadium/ten South Campus tournament filed courts, auxiliary buildings and spectator viewing galleries at the USTA Billie Jean King National Tennis Center" (NYSCEF Doc No. 197 at 1). The contract makes no mention of Arthur Ashe Stadium.

debris when he stepped on the conduit (*id.* at 160). He did not know how long the conduit had been on the ground, which trade left the debris there, or which trade owned or left the blue-colored tarp (*id.* at 154-156). When he pulled the conduit out from underneath the tarp to inspect it, he noticed spools of rope, plywood and wooden planks under the tarp (*id.* at 156). He did not know the purpose of the tarp, its size of the tarp, how long the tarp had been in that location, or how the tarp came to be there (*id.* at 155). He did not notice if the tarp was present in the location the day before the accident (*id.* at 207).

Plaintiff testified that had seen laborers moving job site debris (*id.* at 124), but he did not see any laborers working at the time of the accident (*id.* at 133). He did not know the laborers' cleaning schedule (*id.* at 150). Plaintiff, who had been working at the site for two months before the accident (*id.* at 36), stated that he did not see debris "all the time. But yes, there was consistent debris in the gutter" (*id.* at 150). He could not recall if each trade had a designated area for its debris, stating only that Birdair pushed its debris off to the side (*id.* at 157). Plaintiff also could not recall piling Birdair's debris in any particular manner, and no one instructed him or his co-workers on how to pile their debris (*id.* at 158). Plaintiff also testified that he never complained to anyone about debris before the accident (*id.* at 208), and he was unaware if others had complained (*id.* at 128).

LaForte, Hunt's Safety Director for the Northeast Region, testified that Hunt was involved in three separate projects at the premises, one of which was the Project (NYSCEF Doc No. 159 at 15 and 17). Hunt was responsible for hiring subcontractors and coordinating the work, though it did not direct the means and methods of the actual work (*id.* at 41-42). Mechanical equipment, like air handling units, were installed in an eight- to nine-foot-wide exterior gutter that circled the stadium's roof (*id.* at 58-59 and 62-65). LaForte estimated that five contractors, mostly mechanical trades, worked in the gutter in April and May 2016 (*id.* at 57). LaForte could not recall if KND or ASR were working in the gutter around the time of the accident (*id.* at 116).

Hunt prepared daily reports on the Project (NYSCEF Doc No. 171, Kaye affirmation, exhibit Q). LaForte testified that Hunt would have noted whether KND or ASR had been installing conduits in the roof gutter in the daily reports (NYSCEF Doc No. 159 at 117; NYSCEF Doc No. 160 at 24). LaForte stated that none of Hunt's entries for ASR between May 2 and May 5 indicated that ASR had been working in the east gutter (NYSCEF Doc No. 159 at 11 and 116-118; NYSCEF Doc No. 160 at 24-27, 30 and 39-41). LaForte also could not determine from the daily reports whether KND was working at the site between May 2 and May 5 (NYSCEF Doc No. 159 at 116-118). LaForte testified that the work described in KND's extra work orders dated April 18, 2016 to May 6, 2016 indicated that KND could have performed conduit work in the gutter, but he was unsure exactly where that work took place (*id.* at 131-141).

In addition to LaForte, Hunt employed two project executives; three superintendents tasked with overseeing the foundation, MEP trades, and architectural trades; two area superintendents; and a site safety manager on this Project (*id.* at 36-39 and 111-112). LaForte testified that he walked the site twice every day (*id.* at 57-58). The three trades superintendents and the site safety manager also walked the site each day (*id.* at 58-59). LaForte testified, "[w]e do not specifically at the end of the day walk the job looking for specific safety violations or things of that nature. We do during the course of the day and we get them rectified" (*id.* at 52).

LaForte stated that each subcontractor was responsible for its own housekeeping and that each had to "center pile" its debris close to its work location, though there were no designated areas where subcontractors had to collect their debris (NYSCEF Doc No. 160 at 14, 51 and 67). Hunt hired TMC to

collect and dispose of the debris (NYSCEF Doc No. 159 at 68 and 70). The longest period of time a center pile of debris remained on site before TMC removed it was one day (*id.* at 14). LaForte stated that if debris was not assembled into a center pile, "Hunt would have directed the subcontractor to clean it up or center pile it" (*id.* at 70). If a pipe rolled off a center pile of debris, it was TMC's responsibility to retrieve and "get rid of it" (NYSCEF Doc No. 160 at 49). Subcontractors were not required to continuously monitor their debris once it had been deposited in a center pile (*id.* at 86), as TMC was responsible for maintaining and removing it at that point (*id.* at 88). LaForte could not recall ever seeing tarps covering debris in the gutter, but in a high wind event, TMC would try to cover the debris with tarps and tie down the tarps to prevent the debris from blowing off the roof (*id.* at 47-48). He testified that if there was debris in the gutter and Hunt could identify which trade created it, then Hunt would tell that trade to remove the debris (*id.* at 56). If Hunt was unable to identify the trade responsible for creating the debris, then TMC would dispose of it (*id.*).

Thomas DeNapoli (DeNapoli), KND's project manager, testified that KND performed "control work," or low voltage wiring, on the air handling units for Control Solutions (NYSCEF Doc No. 164, Kaye affirmation, exhibit J, DeNapoli tr at 20 at 14, 22 and 71-72). The air handling units were located in a gutter mechanical space outside the stadium by the roof dome (*id.* at 65-66). KND installed EMT conduits indoors and galvanized matte gray conduits outdoors; the conduits ranged in size from three-fourths inch to one inch in diameter (*id.* at 22, 24 and 30). DeNapoli stated that there were other electrical trades working on the air handling units as well (*id.* at 67). When shown a photograph of the east gutter taken more than one year after the accident, DeNapoli identified two conduits running to a small square box next to an air handling unit as the type of work KND may have performed (*id.* at 68). DeNapoli estimated that the "raceway" piping depicted in the photograph measured between 1½ to two inches in diameter, were larger than the conduits KND used, and had been installed by another trade (*id.* at 70-71).

KND's foreman created daily logs of KND's work (*id.* at 39). DeNapoli testified that, according to the April 28, 2016 entry, KND ran three-quarter inch conduits to garage and control panels, but he did know the exact location (*id.* at 85-86). KND's work on April 29 and May 2 to May 4 involved installing one-inch galvanized conduits on three air handling units, though DeNapoli was unsure where those units were located (*id.* at 102-108). The May 4 entry revealed that KND built a Kindorf wall on the west side of the stadium (*id.* at 114). KND also installed steel sensors, which did not involve conduit work (*id.* at 114-115). On May 5, KND installed three-quarter inch galvanized conduits at four air handling units and changed out a control panel on another unit, though he did not know where any of those units were located (*id.* at 119-120).

DeNapoli testified that KND pushed its debris into center piles throughout the site for Hunt's laborers to retrieve and dispose of at the end of each workday (*id.* at 32-33 and 111). KND's foreman, who was present each day to oversee KND's work (*id.* at 79), the site superintendent and KND's crew were responsible for center-piling KND's debris (*id.* at 46). DeNapoli, who visited the site for half a day every other week (*id.* at 35), stated that he could not recall ever seeing center piles of debris on his visits as he was usually present only in the mornings (*id.* at 50-51).

Christopher Masetti (Masetti), a general foreman employed by ASR, testified that ASR's work involved "power[ing] up the dome" (NYSCEF Doc No. 218, Lofrese affirmation, exhibit P, Masetti 10/12/2023 tr at 11 and 15) and "feed[ing] the HVAC units" with electricity (NYSCEF Doc No. 219, Lofrese affirmation, exhibit Q, Masetti 2/14/2024 tr at 92-93). The work included running conduit, and ASR installed matte silver galvanized conduits ranging in size from three-fourths inch to four inches in diameter outside the stadium (NYSCEF Doc No. 218 at 16 and 18-20). In particular, ASR used three-

fourths inch to two-inch diameter conduits for the HVAC units (NYSCEF Doc No. 219 at 93). ASR installer thinner, lighter metallic conduits, or EMT, in the interior of the stadium where it worked on the fire alarms on the catwalk (*id.* at 125; NYSCEF Doc No. 218 at 19). When shown a picture of the east gutter taken more than a year after the accident, Masetti identified the two-inch wide conduits on a rack that fed the HVAC units as conduits ASR had installed (NYSCEF Doc No. 219 at 101-102).

Masetti's duties as a foreman included creating daily logs to document ASR's work (NSYCEF Doc No. 218 at 26-28; NYSCEF Doc No. 224, Lofrese affimation, exhibit V). Masetti testified that several entries between March 29 and May 7 showed the ASR had worked in the roof gutter (NYSCEF Doc No. 219 at 62, 63-70). Masetti, though, could not recall the specific locations where ASR worked in the gutter. However, Masetti testified that the entries for April 30 and May 2 through May 4 showed that ASR worked on the ground floor, in the chiller plant located outside the stadium, or in the interior catwalk space, not the exterior roof gutter (*id.* at 129-132).

Masetti testified that ASR employees would center pile their debris as they worked and close to where they worked, and that laborers working for the general contractor would pick up the debris throughout the day (*id.* at 50-51, 75 and 110; NYSCEF Doc No. 218 at 32). Masetti was not aware of having received any complaints about ASR failing to properly center pile its debris, about debris needing to be center-piled, or about debris created by ASR (NYSCEF Doc No. 219 at 52). He recalled that the laborers only covered "stuff with tarps is for rain I would imagine" but did not know for sure (*id.* at 141).

The complaint in this action pleads claims under Labor Law §§ 200, 240 (1) and 241 (6) and for common-law negligence against USTA/Hunt (NYSCEF Doc No. 1). USTA/Hunt commenced a third-party action asserting four causes of action each against ASR and KND for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance (NYSCEF Doc No. 20). ASR interposed an answer pleading cross-claims against USTA, Hunt and KND for contribution and indemnification (NYSCEF Doc No. 38). KND asserted counterclaims against USTA/Hunt and cross-claims against ASR for contribution, indemnification and breach of contract for failure to procure insurance in its answer (NYSCEF Doc No. 42). KND commenced a second third-party action against TMC for contribution and indemnification (NYSCEF Doc No. 71). TMC pleaded counterclaims for contribution and common-law and contractual indemnification against KND in its answer (NYSCEF Doc No. 82). ASR also asserted two cross-claims for contribution and common-law indemnification against TMC (NYSCEF Doc No. 93).

USTA/Hunt, KND and ASR now move for summary judgment, and plaintiff cross-moves for partial summary judgment against USTA/Hunt.

DISCUSSION

A party moving for summary judgment bears the burden of "mak[ing] a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024] [internal quotation marks and citation omitted]). If the moving party meets its prima facie burden, "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for [its] failure so to do" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

As a preliminary matter, plaintiff served his cross-motion on December 9, 2024 (NYSCEF Doc No. 235), more than 120 days after he filed the note of issue (NYSCEF Doc No. 148). Nonetheless, the court will consider the cross-motion because it seeks the same relief as that sought in USTA/Hunt's timely summary judgment motion (*see Filannino v Triborough Bridge & Tunnel Auth.*, 34 AD3d 280, 281 [1st Dept 2006], *appeal dismissed* 9 NY3d 862 [2007]).

USTA's Liability

USTA argues that it is entitled to summary judgment because it is not a proper Labor Law defendant. USTA relies on an affirmation from Zausner, NTC's chief operating officer, who affirms that USTA never leased the USTA Billie Jean King National Tennis Center, is not a contractor or agent of the premises owner, and did not contract for any work on the Project (NYSCEF Doc No. 196, ¶¶ 4-7). Zausner further affirms that NTC leased the premises from the City and that NTC hired Hunt to provide construction management services (*id.*, ¶ 7). Hunt later retained ASR and Birdair as subcontractors on the Project (*id.*, ¶¶ 15-16).

Labor Law §§ 240 (1) and 241 (6) impose a nondelegable duty upon owners, general contractors and their agents to comply with the requirements in those statutes (*see Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]; *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318 [1981]). Labor Law § 200, likewise, applies to owners, general contractors and their statutory agents (*see Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 234 AD3d 623, 625 [1st Dept 2025]).

Here, USTA has demonstrated that it was not an owner, general contractor or statutory agent for purposes of the Labor Law (*see Devlin v AECOM*, 224 AD3d 437, 439 [1st Dept 2024]; *DiBrino v Rockefeller Ctr. N., Inc.*, 230 AD3d 127, 131 [1st Dept 2024]; *Otero v 635 Owner LLC,* 210 AD3d 435, 437 [1st Dept 2022]). Given the absence of any evidence of USTA's involvement on the Project or any affirmative act of negligence on its part, USTA is also entitled to the dismissal of the common-law negligence claim against it (*see DiBrino*, 230 AD3d at 132-133; *Hutchinson v City of New York*, 18 AD3d 370, 371 [1st Dept 2005]).

Plaintiff maintains that USTA failed to eliminate all material issues of fact because its witness testified that USTA owned the premises (NYSCEF Doc No. 247, plaintiff mem of law at 16). Plaintiff, presumably, is referring to LaForte's testimony that the "United States Tennis Association" owns the site (NYSCEF Doc No. 159 at 108). LaForte, however, is a Hunt employee, and as such, his testimony is insufficient to raise a triable issue. Zausner affirmed that he is NTC's chief operating officer (NYSCEF Doc No. 196, ¶ 1), and the ASR Subcontract identifies NTC as the Project owner (NYSCEF Doc No. 226 at 2). Accordingly, the complaint against USTA is dismissed.

Labor Law § 240 (1)

Plaintiff concedes that Labor Law § 240 (1) is inapplicable (NYSCEF Doc No. 247, plaintiff's mem of law at 16). Consequently, the Labor Law § 240 (1) claim is dismissed.

Labor Law § 241 (6)

Plaintiff predicates the Labor Law § 241 (6) claim on alleged violations of Industrial Code (12 NYCRR) §§ 23-1.5, 23-1.7, 23-2.1 and 23-1.30 (NYSCEF Doc No. 157, ¶ 5).

"Labor Law § 241 (6) imposes on owners, general contractors, and their agents a nondelegable duty to provide 'reasonable and adequate protection' to workers engaged in construction, demolition, and excavation activities by complying with Industrial Code regulations that specify concrete safety directives, regardless whether they exercised supervision or control over the work" (*Lapinsky v Extell Dev. Co.*, 202 AD3d 478, 479 [1st Dept 2022] [internal citations omitted]; *see also Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]). The regulation cannot "simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]; *Morris v Pavarini Constr.*, 9 NY3d 47, 50 [2007], quoting *Allen v Cloutier Constr. Corp.*, 44 NY2d 290, 297 [1978] [stating that owners and contractors must comply with rules promulgated by the Commissioner of Labor, "but only where the regulation in question contains a "'specific, positive command[ ]'"). To prevail on a Labor Law § 241 (6) claim, the "plaintiff must establish a violation of an implementing regulation which sets forth a specific standard of conduct" and that the violation was a proximate cause of the plaintiff's injuries (*Bucci v City of New York*, 223 AD3d 453, 454-455 [1st Dept 2024]). Comparative or contributory negligence is a valid defense (*see Misicki*, 12 NY3d at 515; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 502 n 4 [1993]).

Hunt moves to dismiss this claim on the grounds that the Industrial Code sections are too general or are inapplicable to the facts. Although plaintiff discusses only 12 NYCRR 23-1.7 (d) and 23-1.7 (e) (1) in his opposing and cross-moving papers, Hunt failed to raise a specific argument addressing the applicability of 12 NYCRR 23-1.7 (e) (2) in its moving papers or in its reply. Hunt's expert, Shawn Rothstein, P.E., also did not opine on whether 12 NYCRR 23-1.7 (e) (2) applied (NYSCEF Doc No. 198, Noss affirmation, exhibit W). Thus, except for Sections 23-1.7 (d) and 23-1.7 (e), plaintiff has abandoned his reliance on those other Industrial Code provisions (*see Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["[w]here a defendant ... moves [for summary judgment], it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section. However, that is not the case where the plaintiff is the moving party"]).

To the extent plaintiff alleges violations of Occupational Safety and Health Administration (OSHA) regulations (NYSCEF Doc No. 157, ¶ 5), OSHA standards are not proper Labor Law § 241 (6) predicates (*see Alberto v DiSano Demolition Co., Inc.*, 194 AD3d 607, 608 [1st Dept 2021]). The part of the Labor Law § 241 (6) claim based on OSHA regulations is dismissed.

A. 12 NYCRR 23-1.7 (d)

Section 23-1.7 (d), titled "Slipping hazards," states that:

> "Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

A plaintiff moving for partial summary judgment on this section must "show that (1) 12 NYCRR 23-1.7 (d) applied under the circumstances; (2) defendants ... violated that section's specific commands; (3) this violation alone, or considered with other undisputed factual evidence, constitutes negligence; and (4) the violation caused [the plaintiff's] injuries" (*Bazdaric*, 41 NY3d at 318). Plaintiff has met his prima facie burden. First, 12 NYCRR 1.7 (d) is a proper Labor Law § 241 (6) predicate (*see Rizzuto*, 91 NY2d at 350-351). Because a loose piece of conduit can cause a person to slip, the conduit may be inherently

slippery (*see Solano v Global 1845 Broadway LLC*, 2025 NY Slip Op 30077[U], *3 [Sup Ct, NY County 2025], citing *Lopez v City of N.Y. Tr. Auth.*, 21 AD3d 259 [1st Dept 2005] [granting the plaintiff partial summary judgment on the Labor Law § 241 (6) claim where "the pencil rod rebar was a foreign substance that caused Plaintiff to lose her footing pursuant to 23-1.7(d)"]). Moreover, the loose conduit did not form part of the gutter, and it was not necessary to the functionality of the gutter (*see Ruisech v Structure Tone Inc.*, 42 NY3d 1061, 1065 [2024], *rearg denied* 43 NY3d 939 [2025] [reasoning that concrete pebbles were not a component of the floor and were not necessary to its functionality]; *Peralta v 204 Keap LLC*, 2024 NY Slip 34004[U], *2-3 [Sup Ct, Kings County 2024] [finding that the dust, debris and loose pieces of wood on which the plaintiff slipped "are not components of stairs nor are they necessary to the stairs functionality, and therefore are foreign substances within the meaning of § 23-1.7(d)"]). Furthermore, the loose conduit was not "inherent to the task at hand" (*Bazdaric*, 41 NY3d at 320).

Hunt maintains that the loose conduit on which plaintiff slipped is not a slippery condition (*see Verdi v SP Irving Owner, LLC*, 227 AD3d 932, 936-937 [2d Dept 2024] ["'demolition' or 'construction debris' ... is not the type of foreign substance contemplated by 12 NYCRR 23-1.7 (d)"]; *Fitzgerald v Marriott Intl., Inc.*, 156 AD3d 458, 459 [1st Dept 2017 [mud-covered insulation not a slippery condition or a foreign substance]). Hunt more particularly argues that the conduit does not "share a common quality common to" the substances listed in the section because ice, snow, water and grease "are, by their nature, types of material that are slippery when in contact with an area where someone walks" (*Bazdaric*, 41 NY3d at 319). Hunt's arguments are unpersuasive. As explained above, the loose electrical conduit is a foreign substance because it created a slippery condition (*Ruisech*, 42 NY3d at 1065 [defendants failed to show that loose concrete pebbles allegedly created during the installation of a channel cut into the floor were not a foreign substance and did not cause a slippery condition]; *Bazdaric*, 41 NY3d at 320 [plastic covering placed over an escalator made the work area slippery on contact]; *Lourenco v City of New York*, 228 AD3d 577, 579 [1st Dept 2024] [plastic sheeting covering a rock and other debris considered a foreign substance under Section 23-1.7 (d)]). Plaintiff testified that he slipped on a loose piece of electrical conduit that "was wedged underneath the tarps and spools of rope" and that "only a couple of inches were out of the tarp" (NYSCEF Doc No. 158 at 154). Accordingly, plaintiff has demonstrated his entitlement to partial summary judgment on the Labor Law § 241 (6) claim predicated on 12 NYCRR 1.7 (d), and Hunt's motion for summary judgment dismissing this part of the claim is denied.

B. 12 NYCRR 23-1 (e) (1)

Section 23-1.7 (e) (1) reads as follows: "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." This section is sufficiently specific to support a Labor Law § 241 (6) claim (*see Nicholson v Sabey Data Ctr. Props., LLC*, 205 AD3d 620, 621 [1st Dept 2022]; *Vieira v Tishman Constr. Corp.*, 255 AD2d 235, 235 [1st Dept 1998]).

"A passageway for purposes of this regulation 'mean[s] a defined walkway or pathway used to traverse between discrete areas as opposed to an open area'" (*Smith v Extell W. 45th LLC*, 230 AD3d 1044, 1045 [1st Dept 2024], quoting *Quigley v Port Auth. of N.Y. & N.J.*, 168 AD3d 65, 67 [1st Dept 2018]). Indeed, a passageway generally "pertains to an interior or internal way of passage inside a building" (*Quigley*, 168 at 67). Here, plaintiff's accident occurred in an open area, as opposed to a passageway (*see Lester v J.D. Carlisle Dev. Corp., MD.*, 156 AD3d 577, 578 [1st Dept 2017] [roof where the plaintiff was working was an open area]; *Purcell v Metlife, Inc.*, 108 AD3d 431, 432 [1st Dept 2013] [open work area on a roof setback not a passageway]; *Castillo v Starrett City*, 4 AD3d 320, 322 [roof not

a passageway under Section 23-1.7 (e) (1)]). Contrary to plaintiff's contention, the photographs of the east gutter marked at his deposition show an open area (*see Solano v Skanska USA Civ. Northeast Inc.*, 148 AD3d 619, 620 [1st Dept 2017] [photograph of accident location submitted by the plaintiff depicted an open area]). The fact that plaintiff had to walk on the roof gutter to reach Birdair's gang box does not render the accident location a passageway, especially where it is not disputed that multiple contractors worked on the air handling units located in the gutter (*see De Paul v NY Brush LLC*, 120 AD3d 1046, 1047 [1st Dept 2014] ["[t]he accident occurred in an open working area, notwithstanding evidence that workers traversed the plank to get from the street to the job site"]). Accordingly, the Labor Law § 241 (6) claim insofar as it is predicated on 12 NYCRR 23-1.7 (e) (1) is dismissed.

Labor Law § 200 and Common-Law Negligence

Labor Law § 200 codifies "the common-law duty imposed upon an owner or general contractor to maintain a safe construction site" (*Rizzuto*, 91 NY2d at 352). Labor Law § 200 and common-law negligence claims can arise from a dangerous premises condition, the means and methods of how the work was performed, or both (*Moore v URS Corp.*, 209 AD3d 438, 440 [1st Dept 2022]). If the injury results from a dangerous premises condition, liability may be imposed if the owner or general contractor "has control over the work site and actual or constructive notice of the dangerous condition" (*Villanueva v O'Mara Org., Inc.*, 204 AD3d 557, 558 [1st Dept 2022]; *Cappabianca v Skanska USA Bldg., Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). In this case, plaintiff's accident arose out of a dangerous premises condition (*see Davis v Trustees of Columbia Univ. in the City of N.Y.*, 199 AD3d 481, 482 [1st Dept 2021] ["[a]n alleged accumulation of debris may constitute a dangerous condition"]; *Lane v Fratello Constr. Co.*, 52 AD3d 575, 576 [2d Dept 2008] [debris pile created by multiple contractors is a defective premises condition]).

A defendant moving for summary judgment in an action involving a dangerous premises condition must demonstrate that it did not create or have actual or constructive notice of the condition that caused the plaintiff's injury (*see Bradley v NYU Langone Hosps.*, 223 AD3d 509, 510 [1st Dept 2024]). Under these precepts, Hunt has failed to demonstrate its entitlement to summary judgment (*id.*; *Licata v AB Green Gansevoort, LLC*, 158 AD3d 487, 490 [1st Dept 2018] [denying summary judgment to the defendant charged with cleaning garbage on the site]). First, Hunt submits that plaintiff cannot establish that Hunt had constructive notice of the condition because plaintiff testified that he did not know how long the conduit had been present in the gutter before his accident. Hunt, however, cannot carry its prima facie burden by pointing to perceived gaps in plaintiff's proof (*see Pimentel v DE Frgt. LLC*, 205 AD3d 591, 593 [1st Dept 2022] [defendant merely pointed to gaps in the plaintiff's proof, which was insufficient to satisfy its initial burden on summary judgment]; *Jablonsky v Nerlich*, 189 AD3d 1561, 1563 [2d Dept 2020] [defendants "improperly rely upon purported gaps in the plaintiff's proof, rather than affirmative evidence of the defendants' lack of constructive notice"]). Hunt has also failed to affirmatively demonstrate when the area was last cleaned and inspected prior to the accident to demonstrate its lack of constructive notice (*see Cavedo v Flushing Commons Prop. Owner, LLC*, 217 AD3d 561, 562 [1st Dept 2023] [defendants failed to carry their prima facie burden by showing when the area was last cleaned or inspected before the accident]; *Deleo v JPMorgan Chase & Co.*, 199 AD3d 482, 483 [1st Dept 2021] [defendant "presented only general testimony by its employees that the area was inspected daily and that debris was removed by laborers"]; *Ohadi v Magnetic Constr. Group Corp.*, 182 AD3d 474, 476 [1st Dept 2020] [defendants failed to show when the accident location was last cleaned or inspected]).

Plaintiff's cross-motion for partial summary judgment on the Labor Law § 200 and common-law negligence claims is also denied. "To establish negligence in [a] type of slip-and-fall case, a plaintiff must

demonstrate, inter alia, that the defendant breached its duty to the plaintiff by either creating a dangerous condition or, because it had actual or constructive notice thereof, failing to remedy the situation" (*Kesselman v Lever House Rest.*, 29 AD3d 302, 304 [1st Dept 2006]). Plaintiff has failed to tender any evidence that Hunt created the condition and assumes that, because Hunt personnel walked the site each day, Hunt had actual and constructive notice of the condition. This assumption, however, is insufficient to establish that Hunt had either actual or constructive notice of the specific condition that caused him to fall (*see e.g. Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994] [reasoning that the defendant must have notice of the specific condition that caused the plaintiff's accident]).

The Third-Party Claims against ASR and KND

"[C]ommon-law contribution involves the apportionment of liability amongst joint tortfeasors, both of whom owed a duty to an injured plaintiff" (*Aiello v Burns Intl. Sec. Servs. Corp.*, 110 AD3d 234, 247-248 [1st Dept 2013]; *see also* CPLR 1401). Common-law indemnification is predicated upon vicarious liability without actual fault (*J.H. v 1288 LLC*, 171 AD3d 549, 549 [1st Dept 2019]). "To be entitled to common-law indemnification, a party must show (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2) that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012]).

KND argues that it did not contribute to the happening of the accident because plaintiff admitted to slipping on a one and one-half-inch diameter conduit, and the largest conduit KND installed on this Project measured one-inch in diameter. Plaintiff's testimony as to the size of the conduit, though, is not entirely dispositive, as he testified that the conduit measured "[m]aybe an inch-and-a-half wide" (NYSCEF Doc No. 158 at 46). The medical personnel notes from Mobile Medical Corporation also refer to a one and one-half-inch diameter pipe, but it appears that plaintiff was the source of that information (NYSCEF Doc No. 169, Kaye affirmation, exhibit O).

Next, KND contends that multiple electrical contractors worked in the gutter in the days leading up the accident, as evidenced in Hunt's daily reports (NYSCEF Doc No. 171). KND also maintains that its daily reports (NYSCEF Doc No. 172, Kaye affirmation, exhibit R at 10) and Hunt's daily reports (NYSCEF Doc No. 171 at 10) show that KND worked on the west side of the stadium the day before the accident, whereas the accident occurred on the east side. The records, however, fail to conclusively demonstrate that KND performed no work in the east gutter in the days before the accident. Critically, KND's daily logs reveal that its work in the four days immediately preceding the accident involved installing conduits on at least three air handling units in the gutter, and KND's project manager, DeNapoli, was unsure of exactly where those units were located (NYSCEF Doc No. 164 at 102-108). DeNapoli testified that center piles of debris were "supposed to be" removed at the end of each day (*id.* at 50). DeNapoli also testified that "center-piles usually don't happen until towards the end of the day" and could not recall if he had ever seen debris on the ground that had not been center-piled (*id.* at 35). Contrary to KND's assertion, "logical inferences from the record, and not speculation alone, created an issue of fact as to whether the presence of ... [the electrical conduit] in the pile of construction debris ... was a proximate cause of the accident" (*Fedrich v Granite Bldg. 2, LLC*, 165 AD3d 754, 758 [2d Dept 2018]).

Nor has KND demonstrated that Hunt's or TMC's alleged failure to remove the conduit constitutes a superseding, intervening cause of the accident. "Where the acts of a third person intervene between the defendant's conduct and the plaintiff's injury, the causal connection is not automatically severed. In such a case, liability turns upon whether the intervening act is a normal or foreseeable consequence of the

situation created by the defendant's negligence" (*Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980], *rearg denied* 52 NY2d 784 [1980], *rearg denied* 52 NY2d 829 [1980]). The causal nexus may be broken "[i]f the intervening act is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct" (*id.*). Here, "[Hunt's] failure to remove the pipe was not so extraordinary or unforeseeable that [KND] cannot reasonably be held liable for leaving the pipe on the floor in the course of its work" (*Stephens v New York Law Sch.*, 2017 WL 11617006, *19, 2017 NY Misc LEXIS 13691, *53 [Sup Ct, NY County, April 7, 2017, index No. 116200/2009, Kalish, J.); *see also Susko v 337 Greenwich LLC*, 103 AD3d 434, 435 [1st Dept 2013] [whether the planks on a scaffold were improperly removed or possibly stolen by another contractor was not an "extraordinary and/or unanticipated intervening act that constituted a superceding cause for plaintiff's injuries"]). Thus, the part of KND's motion seeking to dismiss the contribution and common-law indemnification claims is denied.

According to the testimonial and documentary evidence, ASR performed no work in the east gutter in the five days preceding the accident. Instead, ASR's work took place on the catwalk in the interior of the stadium, on the ground floor, or in the chiller plant. As such, ASR has demonstrated that it could not have created the condition that caused plaintiff's accident (*see Celentano v City of New York*, 212 AD3d 456, 457 [1st Dept 2023]).

USTA/Hunt, in opposition, contend that ASR's handwritten daily logs closely track ASR's work on the HVAC conduits. USTA/Hunt, though, have not offered any admissible evidence to refute ASR's proof that ASR did not work in the roof gutter in the five days immediately before the accident. Thus, the contribution and common-law indemnification claims against ASR are dismissed.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987] [citation omitted]). A party seeking contractual indemnification must "establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]).

KND submits that "[it] did not have a contract with insurance or indemnity language" (NYSCEF Doc No. 152, Kaye affirmation, ¶ 14). USTA/Hunt, in opposition, furnish a copy of the KND Purchase Order, the pertinent part of which reads:

> "Subcontractor shall **INDEMNIFY** and **HOLD HARMLESS** the Contractor, the Owner and/or the General Contractor/Construction Manager and their respective agents and employees from and against any and all claims, actions, demands, mechanic's liens, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance or non-performance of the Subcontractor's Work under this Subcontract" (NYSCEF Doc No. 256 at 24).

KND, in reply, does not raise any specific argument addressing this provision, whether it is applicable, or whether it may be enforced. Instead, KND asserts only that USTA/Hunt's opposition is untimely, is predicated on speculation, and cannot be triggered in the absence of proof that its actions were connected to the accident. This is insufficient to satisfy KND's prima facie burden on summary judgment. Furthermore, to the extent KND argues that it is not a proper Labor Law defendant, plaintiff has not pleaded any direct claims against it. Nevertheless, whether KND is a proper Labor Law defendant has no

bearing on the contractual indemnification claim brought against it (*see Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3d 415, 428 [1st Dept 2021]). Thus, KND has failed to establish its entitlement to summary judgment dismissing the contractual indemnification cause of action.

ASR moves to dismiss the contractual indemnification claim on the ground that plaintiff's accident did not arise out of ASR's work. The ASR Subcontract contains an indemnification clause in section 33.1 that partially reads:

> "Subcontractor shall defend, indemnify and hold harmless Hunt, the Owner and such other persons or entities as the Contract Documents or this Subcontractor may require against any and all claims arising directly or indirectly out of the Subcontract Work or other involvement with the Project... including, but not limited to, claims for:
>
> ...
>
> (b) injury or death of any person, including employees of Subcontractor" (NYSCEF Doc No. 226 at 36-37).

Since there is no evidence that the accident arose out of ASR's work, the contractual indemnification claim against ASR is dismissed.

"[A] party moving for summary judgment dismissing a breach of contract claim for failure to procure insurance meets its prima facie burden by identifying the contract provision requiring the procurement of insurance and tendering the procured insurance policy that satisfies that requirement" (*Cooper v Bldg 7th St. LLC*, 231 AD3d 533, 534 [1st Dept 2024]).

KND contends that there is no contract requiring it to procure insurance, but USTA/Hunt have submitted a copy of the KND Purchase Order in opposition. Section 8 of the KND Purchase Order sets forth specific insurance requirements (NYSCEF Doc No. 256 at 22). KND has not addressed the breach of contract claim in reply. Thus, KND's motion insofar as it seeks summary judgment dismissing the breach of contract for failure to procure insurance claim is denied.

Section 8 and Attachment V of the ASR Subcontract require ASR to purchase and maintain certain insurance with certain limits (NYSCEF Doc No. 226 at 15 and 85-90), including a general liability policy with $2 million per occurrence limit of liability for personal injury and property damage in which Hunt, USTA National Tennis Center Incorporated, USTA, and others shall be named as additional insureds (*id.* at 88-89). ASR has produced a copy of its policy and the declarations page (NYSCEF Doc No. 227, Lofrese affirmation, exhibit AA).

USTA/Hunt, in opposition, fail to make any argument as to why the insurance procured by ASR is insufficient (*see Norris v Innovative Healtjh Sys., Inc.*, 184 AD3d 471, 473 [1st Dept 2020] [dismissing certain claims as abandoned where the plaintiff did not oppose that part of the defendant's motion]). Thus, the breach of contract cause of action against ASR is dismissed.

Motions for Preclusion

KND and ASR both seek an order precluding TMC from testifying at trial and precluding Hunt from introducing evidence contrary to its witness's testimony about debris removal on the Project. In support, KND submits the April 9, 2024, status conference order in which the court directed TMC to

appear for deposition within 45 days (NYSCEF Doc No. 167, Kaye affirmation, exhibit M). TMC argues that this branch of their motions must be denied because TMC is a defunct business and has furnished KND and ASR with the last known address of its former employee, Peter Pleviritis (NYSCEF Doc No. 168, Kaye affirmation, exhibit N).

CPLR 3126 (2) provides that if a party refuses to obey a discovery order or "wilfully fails to disclose information which the court finds ought to have been disclosed," the court may enter "an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, ... or from using certain witnesses." It is within the court's discretion to preclude a party from introducing evidence at trial where "willful and contumacious conduct may be inferred from [that party's] admitted failure to comply with [its] discovery obligations" (*M13 &M15 Holdings, LLC v Athanson*, 231 AD3d 579, 580 [1st Dept 2025]).

This branch of both motions is denied. TMC has explained that it is no longer in business and TMC's counsel has represented that its witness, who is a former employee, "does not want to cooperate/participate in a deposition" (NYSCEF Doc No. 168). A preclusion order is not warranted where, as here, TMC is a defunct business and the witness is no longer under TMC's control (*see Lee v 13th St. Entertainment LLC*, 161 AD3d 631, 632 [1st Dept 2018] [reversing decision striking defendants' answer for failing to produce former employees for deposition]; *see also Han v New York City Tr. Auth.*, 169 AD3d 435, 435 [1st Dept 2019] [reversing order precluding defendant from calling a former employee at trial]; *Dexter v Horowitz Mgt.*, 267 AD2d 21, 21 [1st Dept 1999] ["[t]here is no evidence that Horowitz Management's failure to produce a witness who had, subsequent to the accident, left its employ was willful and contumacious so as to justify the drastic remedy of preclusion"]).

Accordingly, it is

ORDERED that motion of third-party defendant/second third-party plaintiff KND Licensed Electrical Contracting & Services Corp. for summary judgment and for an order of preclusion (motion sequence no. 003) is denied; and it is further

ORDERED that the motion of third-party defendant ASR Electrical Contracting, Inc. for summary judgment and for an order of preclusion (motion sequence no. 004) is granted to the extent of dismissing the first third-party complaint against it, and the first third-party complaint against third-party defendant ASR Electrical Contracting, Inc. is dismissed, and the balance of the motion is otherwise denied; and it is further

ORDERED that the cross-claims against third-party defendant ASR Electrical Contracting, Inc. by third-party defendant/second third-party plaintiff KND Licensed Electrical Contracting & Services Corp. are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of third-party defendant ASR Electrical Contracting, Inc. dismissing the first third-party complaint and the cross-claims made against it, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion of defendants/third-party plaintiffs United States Tennis Association Incorporated and Hunt Construction Group, Inc. for summary judgment (motion sequence no. 005) is granted to the extent of dismissing the complaint against defendant/third-party plaintiff United States

Tennis Association Incorporated, and the complaint is dismissed as against defendant/third-party plaintiff United States Tennis Association Incorporated, dismissing the Labor Law § 240 (1) claim in its entirety, and dismissing the Labor Law § 241 (6) claim except as predicated on alleged violations of Industrial Code (12 NYCRR) §§ 23-1.7 (d) and 23-1.7 (e) (2), and the balance of the motion is otherwise denied; and it is further

ORDERED that the counterclaims by third-party defendant/second third-party plaintiff KND Licensed Electrical Contracting & Services Corp. and the cross-claims by the third-party defendant ASR Electrical Contracting, Inc. against defendant/third-party plaintiff United States Tennis Association Incorporated are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of third- defendant/third-party plaintiff United States Tennis Association Incorporated dismissing the complaint, counterclaims and the cross-claims made against it, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the cross-motion of plaintiff Brian Kiernan for partial summary judgment (motion sequence no. 005) is granted to the extent of granting plaintiff partial summary judgment on liability against defendant Hunt Construction Group, Inc. on the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code (12 NYCRR) § 23-1.7 (d), and the balance of the motion is otherwise denied.

4/11/2025
DATE

FRANCIS A. KAHN, III, A.J.S.C.
HON. FRANCIS A. KAHN III
J.S.C.

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