

**Ritorto v 1350, LLC**

2025 NY Slip Op 31866(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 160751/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

JOSEPH RITORTO,

Plaintiff,

- v -

1350, LLC, SL GREEN REALTY CORP.,

Defendant.

-----X

1350, LLC, SL GREEN REALTY CORP.

Plaintiff,

-against-

ALLIANCE ELEVATOR COMPANY, LLC D/B/A UNITEC
ELEVATOR COMPANY

Defendant.

-----X

INDEX NO. 160751/2021
MOTION DATE 09/17/2024
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party
Index No. 595935/2022

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of March 25, 2025, Defendant/Third-Party Plaintiffs 1350 LLC and SL Green Realty Corp. (collectively "Third-Party Plaintiffs") motion for summary judgment on their third-party claims for contractual indemnification and common law indemnification against Third-Party Defendant Alliance Elevator Company, LLC d/b/a Unitec Elevator Company ("Unitec") is granted in part and denied in part.1

1 This case and the accompanying motions were transferred to Part 33 on January 20, 2025.

## I. Background

On March 22, 2019, Plaintiff worked as a mechanic's helper for Third-Party Defendant Alliance Elevator Company LLC d/b/a Unitec Elevator ("Unitec") who was modernizing elevators at 1350 Sixth Avenue, New York, New York (the "Building") (NYSCEF Doc. 66 at 12-14). 1350 LLC owned the Building and SL Green managed the Building (NYSCEF Doc. 67 at 15). Plaintiff was working in the "pits" where the elevator shaft ended in the basement (NYSCEF Doc. 66 at 56). His supervisor, Chris Bellantone, instructed him to screw in a metal sheets to protect wires coming out of the wall (NYSCEF Doc. 66 at 77-78). To reach the trough, Plaintiff had to climb up to an elevated platform, and then use interlocking ladders placed on the platform. He interlocked four five-foot long fiberglass ladders (NYSCEF Doc. 66 at 60) Plaintiff ascended the ladders wearing a harness and made it up fifteen to sixteen feet when he was knocked off the ladder by an elevator, which should not have been in operation, and fell to the ground (NYSCEF Doc. 66 at 79-80). Plaintiff was wearing a harness but there was nowhere for him to tie off his lanyard, nor was a safety line available. All witnesses agree there was no safety line but Plaintiff should have been provided one (NYSCEF Doc. 70 at 106; 124-25).

In motion sequence 002, this Court granted Plaintiff summary judgment against Third-Party Plaintiffs on his Labor Law § 240(1) claim and granted Third-Party Plaintiffs' cross motion for summary judgment dismissing Plaintiff's Labor Law §§ 241(6), 241-a, 200, and common law negligence claims. In this motion, Third-Party Plaintiffs seek summary judgment on their contractual indemnification and common law indemnification claims asserted against Unitec.

## II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v*

*Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Third-Party Plaintiffs' motion for summary judgment on their contractual indemnification claim is granted. No party disputes the validity or applicability of the contract or indemnification clause agreed to by the parties. However, Unitec opposes by arguing that the motion is premature because the clause is only triggered by a finding of negligence against Unitec, which has not yet happened. The exact language of the clause can be found in Article 9 of the contract executed between Unitech and 1350 LLC, and reads as follows:

“(a) To the fullest extent permitted by law, [Unitec] shall indemnify and hold harmless (i) Owner and the Owner Parties, (ii) the owner and tenant of each Building where Work is to be performed hereunder, and the respective directors, officers, shareholders, partners, members, managers, employees and agents of each such owner and tenant and (iii) such other parties in interest as Owner may designate in writing from time to time (collectively, the “Owner Indemnified Parties”) from and against all losses, liabilities, damages, judgments, costs, fines, penalties, actions or proceedings and attorneys’ fees, and shall defend the Owner Indemnified Parties in any action or proceeding...for personal injury to or death of any person...as a result of the (x) acts, omissions or other conduct of Contractor, or any acts, omissions or other conduct of its officers, directors, employees, subcontractors or agents, in connection with Contractor’s performance of the Work and its other obligations under this agreement, (y) Contractor’s performance or failure to perform under this Agreement....”

Unitec’s argument regarding prematurity fails because the only liability imposed on Third-Party Plaintiffs is vicarious liability pursuant to Labor Law § 240(1) – every other claim against the Third-Party Plaintiffs was dismissed on Motion sequence 003, without opposition. In such a circumstance, and giving the language of the indemnification clause, Third-Party Plaintiffs are entitled to summary judgment on their contractual indemnification claim against Unitec (*see Robles v 635 Owner, LLC*, 192 AD3d 604, 605 [1st Dept 2021]; *Kehoe v 61 Broadway Owner LLC*, 186 AD3d 1143, 1145 [1st Dept 2020]). Therefore, Third-Party Plaintiffs motion for

summary judgment on their contractual indemnification claim is granted (see also *Jenkins v Related Companies, L.P.*, 114 AD3d 435, 436 [1st Dept 2014]). Because Third-Party Plaintiffs are entitled to contractual indemnification, their claim for common law indemnification is academic (*Weidman v Tremont Renaissance Housing Dev. Fund Co., Inc.*, 224 AD3d 488, 491-92 [1st Dept 2024]).

Accordingly, it is hereby

ORDERED that 1350 LLC and SL Green Realty Corp.’s motion for summary judgment on their claim for contractual indemnification against Alliance Elevator Company, LLC d/b/a Unitec Elevator Company is granted; and it is further

ORDERED that 1350 LLC and SL Green Realty Corp.’s motion for summary judgment on their claim for common law indemnification against Alliance Elevator Company, LLC d/b/a Unitec Elevator Company is denied as academic; and it is further

ORDERED that within ten days of entry, counsel for Third-Party Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/23/2025  
DATE

*Mary V Rosado JSC*  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	