At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of June, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

NICHOLAS MAZZOLA,

Plaintiff,

-against-

THE CLARIDGE'S COMPANY, LLC, MANHATTAN SKYLINE MANAGEMENT CORP., and SUN BUILDING CONSULTING, INC.,

Defendants.

----------X

THE CLARIDGE'S COMPANY, LLC and MANHATTAN SKYLINE MANAGEMENT CORP.,

Third-Party Plaintiffs,

-against-

BULADO GENERAL CONTRACTORS CORP.,

Third-Party Defendant.

----------X

Index No. 522355/17
Mot. Seq. Nos. 9-10

DECISION AND ORDER

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion and Affidavits (Affirmations) Annexed	202-219, 248-250; 202-247
Opposing Affidavits (Affirmations)	281-297, 318; 298-317; 323-324
Affidavits/Affirmations in Reply	325; 336

Upon the foregoing papers in this action to recover damages for personal injuries, defendant Sun Building Consulting, Inc. (Sun) and third-party defendant Bulado General Contractors Corp. (Bulado) separately move for an order, pursuant to CPLR 3212, granting them summary judgment dismissing the complaint/cross-claims and the third-party complaint, respectively, as against them (Mot. Seq. Nos. 9 and 10, respectively).

On November 24, 2016, plaintiff Nicholas Mazzola (plaintiff), age 34, was injured when a piece of the fourth-floor balustrade[1] in the façade of a mixed-use building located on the Avenue of Americas in Manhattan dislodged and hit him (the accident). The Claridge's Company, LLC and Manhattan Skyline Management Corp. (collectively, the Claridge defendants) owned and managed the building, respectively. The Claridge defendants contracted with Sun to inspect the building façade, and with Bulado to perform the building-façade repairs.

Two of Sun's pre-accident inspections of the building façade are relevant at this stage of litigation: Sun's initial inspection which it performed in either 2011 or 2012 (the initial inspection), and Sun's subsequent inspection which it performed in February-March 2016, or approximately eight months before the accident (the subsequent inspection). Sun's initial inspection of the building façade concluded that the building façade revealed no cracks and "loose objects."[2] Similarly, Sun's subsequent inspection in February-March 2016: (1) detected no "[s]ignificant deterioration [or] any movement" in the building façade; (2) concluded that the "[w]ater-tightness of the exterior surfaces" of the building façade was good; and (3) generally categorized the building façade as "safe."[3] In connection with Sun's subsequent inspection of the building façade, Bulado erected a scaffold to allow access. In the approximately eight-month interval between Sun's subsequent inspection in February-March 2016 and plaintiff's accident in November 2016, Bulado did not perform, nor was it asked to perform, any repair or other work on the building façade.

In January 2020, plaintiff's separate, previously commenced actions against the Claridge defendants and Sun were consolidated into a single action. Post-consolidation, the Claridge defendants cross-claimed against Sun for, *inter alia*, common-law contribution and indemnification.[4] Thereafter, the Claridge defendants impleaded Bulado for common-law

---

[1] "Balustrade" is defined, in relevant part, as the "[p]rotective barrier approximately 900 mm to 1200 mm (35 in. to 47 in.) high at the edge of openings in floors or at the side of stairs, landings, balconies, mezzanines, galleries, raised walkways, or other locations; [a balustrade] may be solid or [may] have openings in it." *The Wiley Dictionary of Civil Engineering & Construction* (edited by L.F. Webster), page 48 (1997).

[2] EBT transcript of Sun's witness Weikou Chen, held on November 19, 2020, page 29, lines 11-16; page 28, lines 15-25.

[3] Sun's Local Law 11/1998, Cycle 8-B report (undated), page 15 (NYSCEF Doc No. 216).

[4] Notice of Cross-Complaint Against Sun, dated February 21, 2020, First Count (NYSCEF Doc No. 42). The parties did not discuss – and, accordingly, the Court does not address – the Claridge defendants' remaining cross-claims against Sun for contractual indemnification and breach of contract to obtain insurance in the Second and Third Counts of their Cross-Complaint, respectively.

contribution and indemnification.[5] On March 3, 2023, plaintiff filed a note of issue and certificate of readiness. The instant motions for summary judgment timely followed.

"[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue" (*Rotuba Extruders, Inc v Ceppos*, 46 NY2d 223, 231 [1978] [internal quotation marks omitted]). "[T]he proponent of a summary judgment motion must make 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]). When evaluating a motion for summary judgment, "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Const Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks omitted]). "It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega*, 18 NY3d at 505).

Sun asserts that it owed plaintiff no duty of care because its façade-inspection contract was with the Claridge defendants. It is well-established that "the existence of a contractual relationship by itself generally is not a source of tort liability to third parties" (*Landon v Kroll Lab. Specialists, Inc.*, 22 NY3d 1, 6 [2013], *rearg denied* 22 NY3d 1084 [2014]). In *Espinal v Melville Snow Contrs., Inc.* (98 NY2d 136 [2002]), however, the Court of Appeals recognized "three situations in which a party who enters into a contract to render services may be said to have assumed a duty of care – and thus be potentially liable in tort – to third persons: (1) *where the contracting party, in failing to exercise reasonable care in the performance of his duties, launches a force or instrument of harm*; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties[;] and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely" (*Espinal*, 98 NY2d at 140 [internal quotation marks, citations, and alterations omitted; emphasis added]). "Where the pleadings do not allege facts which would establish the applicability of any of the *Espinal* exceptions, a defendant is not required to affirmatively demonstrate that the exceptions do not apply in order to establish its prima facie entitlement to judgment as a matter of law" (*Walsh v Steel O-III, LLC*, 230 AD3d 536, 537 [2d Dept 2024]).

[5] Third-Party Complaint, dated January 4, 2021, First and Second Causes of Action (NYSCEF Doc No. 48). Bulado answered the third-party complaint without interposing any counterclaims or cross-claims. *See* Bufalo's Answer, dated February 19, 2021 (NYSCEF Doc No. 58).

Here, Sun demonstrated its prima facie entitlement to judgment as a matter of law dismissing plaintiff's claims against it by coming forward with evidence that plaintiff was not a party to the façade-inspection contract. Because plaintiff failed to allege in his pleadings[6] any facts that would establish a possible applicability of any of the *Espinal* exceptions, Sun was not required to demonstrate affirmatively that none of those exceptions applied in order to establish its prima facie entitlement to judgment as a matter of law (*see Walsh*, 230 AD3d at 537; *Turner v Birchwood on the Green Owners Corp.*, 171 AD3d 1119, 1121 [2d Dept 2019]; *Koslosky v Malmut*, 149 AD3d 925, 926 [2d Dept 2017], *lv denied* 29 NY3d 919 [2017]).

In opposition, plaintiff failed to raise a triable issue of fact as to whether Sun launched an instrument of harm.[7] Sun "did nothing more than neglect to make the [building façade] safer – as opposed to less safe – than it was before" the post-accident inspection and repairs were made (*Church v Callanan Indus., Inc.*, 99 NY2d 104, 112 [2002]; *Ileiwat v PS Marcato El. Co., Inc.*, 178 AD3d 517, 519 [1st Dept 2019]; *Berger v NYCO Plumbing & Heating Corp.*, 127 AD3d 676, 678 [2d Dept 2015]). Under the circumstances of this case, Sun's initial and subsequent inspections of the building façade did not create or exacerbate a dangerous condition (*see Stiver v Good & Fair Carting & Moving, Inc.*, 9 NY3d 253, 257 [2007]).[8] An "awareness of a [dangerous] condition and failure to warn does not amount to launching an instrument of harm" (*Woods v Harris-Camden Term. Equip. Inc.*, 223 AD3d 505, 508 [1st Dept 2024]); *see Skeete v Greyhound Lines, Inc.*, 209 AD3d 415, 417 [1st Dept 2022]).

With respect to the Claridge defendants' cross-claim for contribution, Sun established, prima facie, that the Claridge defendants were not entitled to contribution, since Sun did not owe a duty of reasonable care to plaintiff or a duty of reasonable care independent of its contractual obligations to the Claridge defendants (*see Turner*, 171 AD3d at 1122; *Cunningham v North*

---

[6] Complaint as to Sun, dated September 25, 2019; Bill of Particulars as to Sun, dated January 28, 2020 (NYSCEF Doc Nos. 204 and 215, respectively).

[7] Plaintiff's opposition to Sun's motion is premised, in its entirety, on his contention that the first *Espinal* exception applied, in that Sun allegedly launched an instrument of harm. *See* Plaintiff's Affirmation in Opposition to Sun's Motion, dated December 6, 2023, ¶¶ 22-28 (NYSCEF Doc No. 324). Plaintiff's papers did not cite either to the second or the third *Espinal* exceptions of detrimental reliance and total displacement, respectively. Plaintiff's failure to address the second and third *Espinal* exceptions amounted to a concession.

[8] *Compare Bass v LT 424 LLC*, 236 AD3d 426, 427 (1st Dept 2025) ("There is evidence that an additional inspection, prior to plaintiff's 2015 accident, in connection with a larger proposed project to restore the façade, placed [the building inspector] on notice of the defective condition of the façade's water table. While bids were received for work that included repairing stone cracks and spalls, it does not appear that [the building inspector] took any action on those proposals prior to the accident occurring.") (internal citation omitted).

Shore Univ. Hosp. at Glen Cove Hous., Inc., 123 AD3d 650, 651 [2d Dept 2014]). In opposition to this branch of Sun's motion, the Claridge defendants failed to raise a triable issue of fact.

The Claridge defendants' cross-claim for common-law indemnification, is also subject to dismissal. Inasmuch as plaintiff's complaint and bill of particulars alleged, as against the Claridge defendants, that the latter were liable for their own active negligence, and not based on vicarious liability or a nondelegable duty,[9] the Claridge defendants are not entitled to common-law indemnification (*see Board of Managers of Olive Park Condominium v Maspeth Props., LLC*, 170 AD3d 645, 647 [2d Dept 2019]; *Torres v 63 Perry Realty, LLC*, 123 AD3d 911, 912 [2d Dept 2014]; *Great Am. Ins. Cos. v Bearcat Fin. Servs., Inc.*, 90 AD3d 533 [1st Dept 2011], *lv dismissed* 18 NY3d 951 [2012]).

The Claridge defendants' remaining cross-claims for contractual indemnification and failure to procure insurance remain undisturbed, however, because Sun failed to address those cross-claims in its papers.

Turning to Bulado, the Court finds that it established, prima facie, its entitlement to judgment as a matter of law dismissing the third-party complaint. The record is undisputed that, during the relevant time, Bulado last performed work on the building façade in 2014 or two years before the accident, and that Sun approved Bulado's work. Bulado's erection of a scaffold in March 2016 to assist Sun in inspecting the building façade did not constitute an assumption of duty (concurrent with that of Sun) of inspecting the building façade. Bulado, as a contractor, had no duty to inspect the building façade, as it did not own or control the building (*see Severinghaus v TUFCO, Inc.*, 208 AD3d 1119, 1120 [1st Dept 2022]). In opposition to Bulado's prima facie showing, the Claridge defendants failed to raise a triable issue of fact. The opinion of the Claridge defendants' expert Andrew R. Yarmus, P.E. (in ¶ 13 of his affidavit, dated October 17, 2023), that Sun had failed to observe "the deterioration of the [fourth-floor] balustrade[,] as well as the deterioration of a portion of the limestone very near and below it," did not constitute probative evidence of negligence by Bulado because the expert's inferences as to the quality of the work performed by Bulado two years before the accident, and as to the subsequent cause of the accident, were speculative.

[9] Complaint as to Claridge Defendants, dated November 15, 2017, ¶¶ 42-43; Verified Bill of Particulars as to Claridge Defendants, dated November 15, 2018, ¶ 5 (NYSCEF Doc Nos. 224 and 151, respectively).

The parties' remaining contentions were considered and found unavailing or moot in light of the court's determination. All relief not expressly granted herein is denied.

Accordingly, it is hereby

ORDERED that, in Mot. Seq. No. 9, Sun's motion is granted to the extent that: (1) plaintiff's claims against Sun, and (2) the Claridge defendants' cross-claims for common-law contribution and indemnification against Sun, are dismissed without costs or disbursements, and the remainder of Sun's motion is denied; and it is further

ORDERED that, in Mot. Seq. No. 10, Bulado's motion for summary judgment dismissing the third-party complaint is granted, and the third-party complaint is dismissed in its entirety without costs or disbursements; and it is further

ORDERED that the action is severed and continued on plaintiff's claims against the Claridge defendants and on the latter's cross-claims against Sun for contractual indemnification and breach of contract to obtain insurance; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this decision and order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the court.

ENTER,

Hon. Ingrid Joseph, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice