

Radgowski v 50 Ct. St. Assoc.

2025 NY Slip Op 32352(U)

July 2, 2025

Supreme Court, New York County

Docket Number: Index No. 155700/2018

Judge: Nicholas W. Moyne

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

GRZEGORZ RADGOWSKI,

Plaintiff,

- v -

50 COURT STREET ASSOCIATES, JOSEPH P. DAY
REALTY CORP., EMIL LLC, CELTIC GENERAL
CONTRACTORS, INC., FRANCO RESTORATION CORP.,
FRAN-CO REMODELING CORP.,

Defendant.

-----X

50 COURT STREET ASSOCIATES, JOSEPH P. DAY REALTY
CORP.

Plaintiff,

-against-

NEW FORCE CONSTRUCTION CORP.

Defendant.

-----X

INDEX NO. 155700/2018

MOTION DATE 07/28/2023,
07/28/2023,
07/29/2023

MOTION SEQ. NO. 005 006 007

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595920/2018

The following e-filed documents, listed by NYSCEF document number (Motion 005) 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 284, 287, 289, 292, 296, 299, 302, 305, 306, 307, 308, 309, 314, 317, 319, 329, 336, 337, 338, 339, 340

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 285, 290, 293, 297, 300, 303, 310, 311, 312, 313, 315, 321, 322, 323, 324, 325, 330, 335, 341

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 286, 291, 294, 298, 301, 304, 316, 318, 320, 326, 327, 328, 331, 332, 333, 334, 342

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

Upon the foregoing documents, it is

Motion Sequences 005, 006, and 007 are consolidated herein for disposition.

Plaintiff, Grzegorz Radgowski (“Radgowski”), commenced the underlying action against defendants, 50 Court Street Associates (“50 Court”) and Joseph P. Day Realty Corp. (“JPD Realty”), (collectively, “50 Court”),¹ to recover for personal injuries allegedly sustained on April 14, 2018, when, while working on a construction project at the premises located at 50 Court Street, Brooklyn, New York, he was struck by a section of sidewalk bridge/shed that collapsed while being dismantled.

Now, in Motion Sequence 005, third-party defendant, New Force Construction Corp. (“New Force”), moves for an order, pursuant to CPLR § 3212, granting summary judgment on the issue of liability and dismissing the plaintiff’s Labor Law §§ 240(1) and 241(6) claims, as well as dismissing all claims asserted against them, including the defendants/third-party plaintiffs’ claims for common law/indemnification, contractual indemnification and breach of contract/failure to procure insurance coverage.²

In Motion Sequence 006, Radgowski moves for an order, pursuant to CPLR § 3212, granting partial summary judgment in his favor and against defendants, 50 Court and JPD Realty, on the issue of liability on his Labor Law § 240(1) claim.

In Motion Sequence 007, defendants/third-party plaintiffs, 50 Court and JPD Realty, move for an order, pursuant to CPLR §§ 3211 and 3212, granting summary judgment and dismissing: 1. the plaintiff’s amended complaint; 2. the third-party counterclaims of third-party defendant, New Force, for common law indemnification/contribution, contractual indemnification and breach of contract including failure to procure additional insured coverage;

¹ The claims against any of additional parties named in the amended complaint and/or captions have been discontinued or dismissed. (NYSCEF Doc. No. 26; 92; 194; 283)

² In both the motion papers, as well as at oral argument, the plaintiff has advised it is not opposing the portion of the motion seeking dismissal of his Labor Law § 241(6) claim (NYSCEF Doc. No. 317, n. 2). Accordingly, the Labor Law § 241(6) claim may be dismissed.

and/or 3. granting summary judgment in favor of 50 Court on the third-party claims against New Force for contractual indemnification and breach of contract.

Relevant Facts:

This action arises from personal injuries sustained by the plaintiff, Grzegorz Radgowski, on April 14, 2018, at the premises located at 50 Court Street, Brooklyn, New York. At the time of the incident, Mr. Radgowski was an employee of New Force Construction Corp. ("New Force") and was serving as a Supervisor or Foreman on the job site. The premises at 50 Court Street were owned by 50 Court Street Associates and the property was managed by JPD Realty. 50 Court and JPD Realty contracted with New Force for the construction, erection, deconstruction, dismantling, and removal of a sidewalk shed/bridge adjacent to the building. This sidewalk shed was installed to protect pedestrians while work was being performed on the exterior of the building

As the building is located on a corner, the sidewalk bridge consisted of different sections on each side of the building that connected and met in the middle to form the shape of an "L". Aside from constructing and deconstructing the sidewalk shed, New Force was not otherwise involved with the project or day-to-day work of the project, but did return to the job site to complete repairs and/or "inspect" the scaffolding (NYSCEF Doc. No. 254 at 206; 242 at 57, 41-43). After it was erected, the sidewalk bridge then remained in place until the façade restoration and repair services to the exterior were completed and/or substantially completed in March of 2018.

Plaintiff was an employee of New Force, and, on the day of the accident, plaintiff was on the job site serving in the role of Supervisor and/or Foreman (NYSCEF Doc. No. 242 at 34). Plaintiff alleges that the day before the accident, he was called by his boss who directed him to

go to the job site the following day to work on taking the scaffolding down (pg 153). Prior to the date of the accident, dismantling of the scaffolding had already begun with the section on one side of the building having been taken down, but with the section on the other side of the building and the corner piece still remaining (pg. 72-73; 159; 168; 171).

On April 14, 2018, the date of the accident, plaintiff was the only Forman/Supervisor on site, was the designated OSHA competent person, and was in charge of, oversaw, and/or supervised the crew and the disassembling of the sidewalk shed (161; 169). After arriving on the site, the New Force workers began to take the remaining sections of the sidewalk shed apart- starting at the top and working down (154-155). That morning, the workers removed the top/flooring for the entirety of the remaining sections of the shed, including all planking and sheathing, before starting to move on (NYSCEF Doc. No. 242 at 74; 158-160 ; 170). After finishing this top portion, the workers then began working on the bottom of the bridge- made up of steel beams (horizontal beams) being held up by posts (vertical legs) and bracings (cross-bracings) that formed an "X" formation between the two sides (170-171)

The incident occurred when a section of the sidewalk shed/bridge collapsed onto the plaintiff while it was being dismantled. The plaintiff asserts that the corner section of the sidewalk shed, which was not actively being dismantled at the moment of the accident, collapsed due to inadequate bracing. The plaintiff contends that this collapse was a direct consequence of the application of the force of gravity to the unsecured shed section and the defendants' failure to provide adequate protection, as "braces" are a statutorily enumerated safety device under Labor Law § 240(1).

CPLR § 3212:

On a CPLR § 3212 motion, the facts must be viewed in the light most favorable to the non-moving party (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]). “The 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” (*Saunders v J.P.Z. Realty, LLC*, 175 AD3d 1163, 1164 [1st Dept 2019], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). However, once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form to sufficient to establish the existence of material issues of fact which require a trial of the action: mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Labor Law § 240(1):

Plaintiff argues that as required under New York Labor Law § 240(1), it was the defendants’ nondelegable duty to provide the plaintiff proper protection, the defendants failed to do so, and this failure resulted in sustaining injuries when the sidewalk bridge collapsed onto him. Labor Law § 240(1), known as the “Scaffold Law” provides that, “[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.” The statute protects workers by imposing the

responsibility for safety practices on those best situated to bear that responsibility (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500 [1993]), and mandating that the statute should “be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed” (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 101 [2015]). The statute imposes absolute liability on building owners and contractors whose failure to “provide proper protection to workers employed on a construction site” proximately causes injury to a worker (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

However, not every falling worker or object at a construction site gives rise to the extraordinary protections of Labor Law § 240(1) (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]) rather, liability “depends on whether the injured worker's task creates an elevation-related risk of the kind that the safety devices listed in section 240(1) protect against” (*Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139 [2011] [internal citations omitted]). There are two distinct sources of elevation-related risks, those cases involving a “falling worker” or a “falling object” (*Toefer v Long Is. R.R.*, 4 NY3d 399, 407 [2005]). As the plaintiff's case involves a falling scaffold bridge, the latter applies (*Fabrizi v 1095 Ave. of Americas, L.L.C.*, 22 NY3d 658, 662 [2014]). Accordingly, the plaintiff must show that at the time it fell, the object was in the process of being hoisted or secured, or required securing for the purposes of the undertaking (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 64 [1st Dept 2023]).

Here, the plaintiff has established entitlement to partial summary judgment as to liability on the § 240(1)-claim, having shown both a violation of the statute and that the violation was the proximate cause of his injuries (*see Aburto v City of New York*, 94 AD3d 640 [1st Dept 2012]). Specifically, plaintiff has made the requisite prima facie showing that he was struck by a falling object, which required securing for the purposes of the undertaking, and that the lack of adequate

overhead protection or safety devices failed to shield him against the falling of such object and therefore proximately caused his injuries (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept 2024]; *Hyatt v Queens W. Dev. Corp.*, 194 AD3d 548, 549 [1st Dept 2021]).

Plaintiff has established that while his co-workers were in the process of dismantling a heavy-duty sidewalk shed, the corner-section of the shed he was standing underneath fell and/or collapsed onto him from above, striking and injuring him. The evidence demonstrates that the shed elements should have been secured to prevent against falling (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 65 [1st Dept 2023]; *Rutkowski v New York Convention Ctr. Dev. Corp.*, 146 AD3d 686, 686 [1st Dept 2017]). The evidence contained in the record, including the expert affidavits submitted by New Force and 50 Court, the deposition testimony, and the OSHA investigation file, conclusively shows that the subject section of the sidewalk bridge required bracing or the use of temporary securing devices between the columns supporting the cross-beams and LS-beams for stability and/or to prevent tilting or falling during the disassembly process (NYSCEF Doc. No. 311 at 4; 325 at 8; 254 at 122, 148; 256 at 41). However, it is undisputed that on the date of the accident, no temporary diagonal bracing or other similar devices were present.

Accordingly, plaintiff has met his burden of demonstrating that the bridge or bridge components should have been adequately secured for the purposes of the undertaking (*Ortega v Trinity Hudson Holding LLC*, 176 AD3d 625 [1st Dept 2019]; *see also Spero v 3781 Broadway, LLC*, 214 AD3d 546, 547 [1st Dept 2023]), but at the time of the accident, no such devices were installed/constructed, in place, or otherwise operated so as to provide him adequate protection (*Viruet v Purvis Holdings LLC*, 198 AD3d 587, 588 [1st Dept 2021]). Further, as the shed collapsed and/or fell because of the effects of gravity, the harm the plaintiff sustained is directly

attributable to the risk posed by the physically significant elevation differential (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 64 [1st Dept 2023]). Thus, plaintiff has met his burden of establishing a violation of the statute (*Gallegos v Bridge Land Vestry, LLC*, 188 AD3d 566, 567 [1st Dept 2020]), which proximately caused his injuries (*Ruiz v Phipps Houses*, 216 AD3d 522 [1st Dept 2023]).

Contrary to 50 Court's argument, the fact that the "shed/bridge post/leg/vertical support" which fell was not in the process of being hoisted or secured at the time the incident occurred is of no moment. Plaintiff has established that the object is one that should have been secured for the purposes of the undertaking (*Quattrocchi v F.J. Sciame Const. Corp.*, 11 NY3d 757, 759 [2008][liability in falling object cases is not limited to those cases in which the object is in the process of being hoisted or secured]). Similarly unavailing is 50 Court's argument that the plaintiff's motion failed to identify a safety device which could have prevented the accident. Plaintiff was not required to submit any expert testimony concerning a required safety device (*Cazho v Urban Builders Group, Inc.*, 205 AD3d 411, 411 [1st Dept 2022]), and has demonstrated that he was injured when the scaffold shed and/or components fell on him because no elevation-related safety device was provided or operated to afford him adequate protection (*Viruet v Purvis Holdings LLC*, 198 AD3d 587, 588 [1st Dept 2021]). Nonetheless, plaintiff has demonstrated that the sidewalk shed lacked proper bracing- a specifically enumerated safety device within the statute (*see Misseritti v Mark IV Const. Co., Inc.*, 86 NY2d 487, 491 [1995]).

Therefore, based on the evidence presented, plaintiff has made a prima facie showing that he was injured by a falling object that should have been secured by a safety device contemplated by Labor Law 240(1), and that the failure to provide such a device was the proximate cause of

his injuries (*Carranza v Mem. Hosp. for Cancer and Allied Diseases*, 225 AD3d 536, 536 [1st Dept 2024]; *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009]).

New Force argues that the 240(1) claim must be dismissed because the plaintiff's actions were the sole proximate cause of the accident, alleging that the cause of the condition resulting in the accident was the plaintiff's failure to properly execute his supervisory responsibilities, not a statutory violation. There can be no liability under the statute where a plaintiff's own actions are the sole proximate cause of the accident (*Barreto v Metro. Transp. Auth.*, 25 NY3d 426, 433 [2015] [*emphasis added*]). Therefore, when a plaintiff establishes a statutory violation as the proximate cause of an accident, the defendant must show that and/or raise an issue of fact as to whether the plaintiff's conduct, rather than the violation, was the sole proximate cause of the accident (*Quiroz v Mem. Hosp. for Cancer and Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022]; *Morales v 2400 Ryer Ave. Realty, LLC*, 190 AD3d 647, 647 [1st Dept 2021]).

The burden of providing a safety device is squarely on contractors and owners and their agents (*Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 10 [1st Dept 2011]). However, a plaintiff may be found to be the sole proximate cause of his own injuries upon a showing that the plaintiff: (1) had adequate safety devices available; (2) knew both that the safety devices were available and that they were expected to use them; (3) chose for no good reason not to do so; and (4) would not have been injured had they not made that choice (*Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1168 [2020]).

New Force fails to make a prima facie showing that they did not violate Labor Law § 240(1) or raise a triable issue of fact as to whether the plaintiff's own conduct was the sole proximate cause for the accident, not a statutory violation (*Salcedo v Sustainable Energy Options, LLC*, 190 AD3d 439, 439 [1st Dept 2021]). New Force contends that plaintiff was the

cause of the underlying accident because, as the designated competent person and supervisor on the site, the plaintiff was responsible for overseeing the disassembly and was authorized to stop any unsafe work or take action to correct said conditions. New Force relies on the affidavit of its expert, Preston R. Quick, P.E., who opined that the incident was caused by the plaintiff's failure to properly execute his responsibilities as the designated competent person and supervisor relative to the dismantling and removal of the remaining shed. Specifically, Quick identified the plaintiff's failure to make reasonable observations of the sidewalk shed assembly and failure to identify the dismantling work prior to the incident as creating an independent and unstable assembly of sidewalk shed components (i.e., no means to prevent sway and displacement), which should have been obvious to plaintiff based on his training and experience (NYSCEF Doc. No. 325 at 9). Therefore, New Force alleges that the plaintiff observed and should have identified the worker's improper removal of LS beams, which could have prevented the accident, but he failed to do so, and this failure caused the incident.

The affidavit of New Force's expert is insufficient to show a triable issue of fact as to whether the plaintiff was the sole proximate cause of the accident. With regards to the allegation that the plaintiff was the sole proximate cause of the accident, the allegations and conclusions contained in Quick's affidavit are entirely speculative, conclusory, vague, and make no reference to evidence in the record (*Gomez v Trinity Ctr. LLC*, 195 AD3d 502, 503 [1st Dept 2021]; *Ortega v Trinity Hudson Holding LLC*, 176 AD3d 625, 626 [1st Dept 2019]; *White v 31-01 Steinway, LLC*, 165 AD3d 449, 452 [1st Dept 2018]). Additionally, New Force has not pointed to any evidence suggesting that adequate safety devices (i.e. bracing components) were readily available at the site on the date of the accident (*Rivas v Nestle Realty Holding Corp.*, 188 AD3d 430, 431 [1st Dept 2020]), the plaintiff knew that these materials were available and that he was

expected to use them (*Perez v 1334 York, LLC*, 234 AD3d 455, 457 [1st Dept 2025]), but disregarded these instructions or chose not to use the devices for no good reason (*Gutierrez v 451 Lexington Realty LLC*, 156 AD3d 418, 419 [1st Dept 2017]).

Additionally, the allegations that plaintiff was familiar with the shed because he was involved with the construction in 2017, had previously received some formal training on workplace safety and/or with the removal of supported-scaffold systems are insufficient to raise a triable issue of fact on causation. These allegations are speculative, unsupported by the evidence in the record, and do not otherwise indicate that the plaintiff was instructed, knew, or should have known he was expected to utilize any particular device; in this case bracing (*Goundan v Pav-Lak Contr. Inc.*, 188 AD3d 596, 597 [1st Dept 2020]; *Gonzalez v City of New York*, 151 AD3d 492, 493 [1st Dept 2017]). Importantly, the record demonstrates that prior to the accident, the plaintiff had not received any directions, training, documentation or information advising the plaintiff on New Force's protocol for dismantling or disassembling a scaffold/sidewalk shed (NYSCEF Doc. No. 256). Additionally, there is no evidence establishing that on the date of the accident, the plaintiff received any specific directions pertaining to the disassembling or dismantling process (*Cardona v New York City Hous. Auth.*, 153 AD3d 1179, 1179 [1st Dept 2017]), or, prior to the workers starting their work, instructions as to how to assess the status or condition of the shed and/or to check for or install any braces therein (NYSCEF Doc. No. 254 at 97). Nor was the plaintiff required to request that any such devices be provided/installed (*DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 47 [1st Dept 2014]).

Thus, any failure by the plaintiff to make observations or identify issues would constitute acts/omissions amounting to comparative negligence at most (*Hernandez v 767 Fifth Partners, LLC*, 194 AD3d 649 [1st Dept 2021]; *Loaiza v Museum of Arts and Design*, 228 AD3d 511, 512

[1st Dept 2024]). Notably, comparative negligence is not a defense to a Labor Law 240(1) violation (*Encarnacion v 3361 Third Ave. Hous. Dev. Fund Corp.*, 176 AD3d 627, 629 [1st Dept 2019]). Notwithstanding, this conduct would not render the plaintiff the *sole* proximate cause because if a violation of Labor Law § 240(1) is a proximate cause of an injury, the plaintiff cannot be solely to blame for it, and defendants' liability for failing to provide adequate safety devices, i.e., a scaffold with proper bracing and/or support, would not be reduced (*Quiroz v Mem. Hosp. for Cancer and Allied Diseases*, 202 AD3d 601, 605 [1st Dept 2022]).

Further, New Force's reliance on the case of *Berenson v Jericho Water Dist.*, 33 AD3d 574, 576 (2d Dept 2006) is unavailing. Contrary to its' contention, New Force has failed to offer any evidence showing that the plaintiff, or the workers he was supervising, disobeyed instructions or engaged in an unauthorized activity or imprudent act causing the bridge/bridge components to collapse (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 39 [2004]; *Stoilas v City of New York* [Sup Ct, NY County 2024]; compare *Peranzo v WFP Tower D Co. L.P.*, 201 AD3d 486, 488 [1st Dept 2022]; *Reyes v Astoria 31st St. Developers, LLC*, 190 AD3d 872 [2d Dept 2021] [the plaintiff's action of engaging in an activity that he was not authorized or instructed to engage in was the sole proximate cause of his injuries]). Rather, New Force's own expert specifically noted that the collapse "at the sidewalk corner was causally related to the absence of diagonal bracing at the time of the incident" and that "there was no evidence of any temporary diagonal bracing on the 8 columns at the sidewalk corner to prevent east-west sway and/or displacement of the cross-beams and columns" (NYSCEF Doc. No. 325).

Nonetheless, "[t]he Labor Law does not require a plaintiff to have acted in a manner that is completely free from negligence. It is absolutely clear that if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it" (*Cazho v Urban*

Builders Group, Inc., 205 AD3d 411, 412 [1st Dept 2022][internal quotations omitted]). As it is undisputed that the corner section of the shed lacked the requisite securing at the time of the accident (*compare Fundus v Scarola*, 214 AD3d 479, 480 [1st Dept 2023]), constituting a breach of the defendants' statutory duty under § 240(1), the plaintiff cannot be the sole proximate cause of the accident (*Gutierrez v Turner Towers Tenants Corp.*, 202 AD3d 437 [1st Dept 2022]). Considering, New Force has failed to demonstrate an issue of fact or show that the sole proximate cause of the accident was the plaintiff's own conduct, rather than a violation of the statute.

New Force also argues the 240(1)-statute does not apply, or liability may not be imposed, under the facts presented in this case. New Force asserts that where use of such a safety device would defeat or be contrary to the purpose of the work, no liability will attach for the failure to provide such a device (*Ragubir v Gibraltar Mgt. Co., Inc.*, 146 AD3d 563, 564 [1st Dept 2017]). Considering, liability under Labor Law § 240(1) may not be imposed in those cases where the objects that injured the plaintiffs were themselves the target of demolition when they fell as imposing liability for failure to provide protective devices to prevent the walls or objects from falling, when their fall was the goal of the work, would be illogical (*Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139-40 [2011], citing *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 11 [2011]).

New Force asserts that, as a matter of law, the plaintiff cannot recover under Labor Law § 240(1) due to the fact that: (1) the dismantling of the sidewalk bridge and lowering of the equipment was intentional and the goal of the work; and (2) it is undisputed that the shed/shed equipment that fell was set to be demolished and removed. New Force alleges that plaintiff testified he oversaw the dismantling and removal of the sidewalk shed from the side of the

building and this process began by removing the top elements of the entire structure first. After the workers completed removing the entire top section of the bridge, they began working to remove the horizontal beams that connected the legs. Following the beams, the legs were slated to be removed and to do so, the clamps and fasteners holding the bridge in place were deliberately loosened and then these items would be lowered to the ground. New Force asserts that accordingly, the dismantling of the shed and the lowering of the equipment was intentional and the goal of the work.

However, New Force has failed to demonstrate how securing the sidewalk shed components against collapse would have been contrary to the purpose of the work or defeated the task at hand (*Rutkowski v New York Convention Ctr. Dev. Corp.*, 146 AD3d 686, 686 [1st Dept 2017]; cf. *Salazar v Novalex Contr. Corp.*, 18 NY3d 134, 139 [2011]). Additionally, the evidence, including that of New Force's own expert, establishes that temporary diagonal bracing should have been installed in the corner section to prevent against sway or displacement upon removal of the LS-beams (NYSCEF Doc. No. 325 ¶ 16). New Force has not offered any evidence to suggest how using bracing or other means to secure would have interfered with or precluded the workers from completing their assigned task (*Mannino v Waldorf Exteriors, LLC*, 235 AD3d 470, 471 [1st Dept 2025]). Considering, there is evidence establishing that bracing would not have been impractical or contrary to the very work at hand (*Sinai v Luna Park Hous. Corp.*, 209 AD3d 600, 601 [1st Dept 2022]), and securing to regulate the descent so as to prevent against falling would not have been contrary to the purpose of the work (*Mayorga v 75 Plaza LLC*, 191 AD3d 606 [1st Dept 2021]).

Nor has New Force shown that at the time it fell, the corner-section of the sidewalk bridge was the intended target of the work. New Force has not identified anything suggesting

that it was intentional for the subject section of the bridge to fall or that these components were deliberately dropped (*compare Torres v Love Lane Mews, LLC*, 156 AD3d 410, 411 [1st Dept 2017], *with Roberts v Gen. Elec. Co.*, 97 NY2d 737, 738 [2002] [Section 240[1] did not apply when the plaintiff was injured by a piece of asbestos that had been cut and deliberately dropped as the situation was not one where a securing device would have been necessary or expected]). Rather, the evidence, including the testimony of New Force supervisor, Norbert Wlodkowski, who stated that “the sections of the bridge collapsed and the bridge the way it’s build doesn’t collapse by itself, there has to be a mistake at this assembly done so the sections collapsed” demonstrates that the collapse of this portion of the shed structure was not intentional (NYSCEF Doc. No. 254 at 101; *Malan v FSJ Realty Group II LLC*, 213 AD3d 541, 542 [1st Dept 2023]; *Albuquerque v City of New York*, 188 AD3d 515 [1st Dept 2020]; *cf. Ofri v Waldbaum, Inc.*, 285 AD2d 536 [2d Dept 2001]). Additionally, the evidence establishes that the disassembly process was sequential and at the time of the accident, the workers were not working to remove the bottom shed components (*i.e.* the horizontal beams connecting the legs) for the section of the bridge the plaintiff was standing directly under.

The court agrees with the plaintiff’s assertion that the facts of the present case are analogous to those in other recent cases also involving sections of a scaffold/sidewalk bridge collapsing during the dismantling process where, at the time it collapsed, those portions were not the immediate subject of the occurring work. In those cases, the First Department held that liability was not precluded in situations where the dismantling of a scaffold was completed in sections or the work was occurring in stages (“bay by bay”), and the collapsing portion of the scaffold/bridge/shed was not the target of the work (*Hyatt v Queens W. Dev. Corp.*, 194 AD3d 548, 549 [1st Dept 2021]; *Leveron v Prana Growth Fund I, L.P.*, 181 AD3d 449 [1st Dept 2020];

Ragubir v Gibraltar Mgt. Co., Inc., 146 AD3d 563, 564 [1st Dept 2017]). Here, similar to the above-cases, the dismantling process was meant to occur in stages or to be completed in sections and, at the time of the accident, the portion of the shed that collapsed onto the plaintiff was not the subject or intended target of the work that was happening.

Finally, both 50 Court and New Force assert that the plaintiff was not subject to an elevation-related risk to which the protective devices enumerated in the statute would apply. Since the hazards that Labor Law § 240(1) is intended to prevent are those that, by virtue of height differentials (*i.e.* work relating to the effects of gravity), there can be no liability under the statute where there is no appreciable height differential between a worker and the falling object that strikes him (*Makarius v Port Auth. of New York and New Jersey*, 76 AD3d 805, 807 [1st Dept 2010]). “[T]he decisive question as to whether the statute applies to a particular accident is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against harm directly flowing from the application of the force of gravity to an object or person” (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept 2024], citing *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

First, New Force argues that the plaintiff is not entitled to the protection of the statute because he did not know/could not remember what caused his injury or what direction the object moved. Specifically, New Force asserts that at his deposition, the plaintiff testified that he did not know what portion of the sidewalk shed connected with his body or if the object that came into contact with his left arm moved vertically, horizontally, or sideways. Accordingly, New Force contends that the plaintiff cannot prove, as a matter of law, that his injuries were the direct consequence of a failure to protect against a risk arising from a physically significant elevation differential.

However, the argument that the plaintiff did not observe how the object fell or could not identify the exact piece of the sidewalk shed that stuck him is unavailing. As plaintiff asserts, a plaintiff “is not required to show the exact circumstances under which the object fell,” provided he can demonstrate that the lack of a protective device called for under Labor Law § 240(1) proximately caused his injuries (*Fromel v W2005/Hines W. Fifty-Third Realty, LLC*, 232 AD3d 513, 514 [1st Dept 2024]; see also *Harsanyi v Extell 4110 LLC*, 220 AD3d 528, 529 [1st Dept 2023] [a prima facie case is not dependent on identifying an object, where plaintiff provides sufficient evidence to establish, prima facie that the accident was the result of a statutory violation]). As the plaintiff has established the proximate cause of the scaffold/sidewalk shed collapse was due to the failure to properly brace in violation of the 240(1) statute, the plaintiff’s inability to identify the exact object or its origin does not preclude summary judgment in his favor (*Torres-Quito v 1711 LLC*, 227 AD3d 113, 117 [1st Dept 2024]; *Malan v FSJ Realty Group II LLC*, 213 AD3d 541, 542 [1st Dept 2023]).

Additionally, 50 Court argues summary judgment is not warranted as the plaintiff cannot show that the sidewalk shed, 12’ tall shed/post/leg/vertical support falling to strike the plaintiff’s arm that was positioned 6’ above his head, generated enough force to be “significant” as required by the statute. Plaintiff has established that the accident involved the direct application of the force of gravity to the unsecured section of the sidewalk bridge (*O’Brian v 4300 Crescent L.L.C.*, 180 AD3d 437, 438 [1st Dept 2020]), and neither 50 Court, nor New Force, offer any evidence to demonstrate or raise a triable issue of fact as to whether the distance the shed fell was de minimis or as to the force capable of being generated by the collapse of the sidewalk shed or its’ components (*Spero v 3781 Broadway, LLC*, 214 AD3d 546, 547 [1st Dept 2023]; *Melendez v Brown-United, Inc.*, 209 AD3d 437, 438 [1st Dept 2022]). Similarly unavailing is 50 Court’s

argument that there can be no 240(1) violation because there was no foreseeable need to use a safety device during the dismantling. However, the un-foreseeability argument is unsuccessful because the evidence establishes that the fall of the shed/components is exactly the kind of foreseeable harm or consequence that would result without the use of securing devices to stabilize it (*Melendez v Brown-United, Inc.*, 209 AD3d 437, 438 [1st Dept 2022]; *Diaz v Raveh Realty, LLC*, 182 AD3d 515, 516 [1st Dept 2020]). Accordingly, as 50 Court and New Force have failed to raise a triable issue of fact on the Labor Law § 240(1) claim, plaintiff is entitled to partial summary judgment on the issue of liability.

Labor Law § 200:

In their motion, the 50 Court defendants seek summary judgment dismissing the plaintiff's common law negligence and Labor Law § 200 claims alleging a lack of proof regarding their liability. Section 200 of the Labor Law "is a codification of the common-law duty imposed upon an owner or general contractor to maintain a safe construction site" (*DiBrino v Rockefeller Ctr. N., Inc.*, 230 AD3d 127, 131 [1st Dept 2024] [internal citation omitted]). Claims under Labor Law § 200 and the common law fall into two broad categories: those arising from an alleged defect or dangerous condition on the premises and those arising from the manner in which the work was performed (*Prevost v One City Block LLC*, 155 AD3d 531, 533 [1st Dept 2017]). Here, plaintiff's claim is premised on the theory that the corner-section of the sidewalk shed constituted a dangerous and defective condition. Thus, liability attaches if an owner had actual or constructive notice of the dangerous condition or created the condition (*Herrero v 2146 Nostrand Ave. Assoc., LLC*, 193 AD3d 421, 423 [1st Dept 2021]).

50 Court argues that plaintiff cannot show that either 50 Court and JPD Realty had actual or constructive notice of the unsafe condition that caused the claimed accident, nor that they

created the subject hazard. The motion must be denied as 50 Court and JPD Realty failed to satisfy their requisite burden of offering evidence to establish a lack of notice of the shed condition causing the plaintiff's accident (*see Aur v Manhattan Greenpoint Ltd.*, 132 AD3d 595, 595 [1st Dept 2015] [Where a defendant's motion is premised on an argument that the plaintiff cannot succeed on a claim, the defendant has the burden of demonstrating the plaintiff's inability to prove the essential elements of the claim]).

Specifically, 50 Court and JPD Realty failed to offer any evidence that conclusively shows a lack of actual or constructive notice of the sidewalk shed condition (*see Cavedo v Flushing Commons Prop. Owner, LLC*, 217 AD3d 561, 562 [1st Dept 2023]; *cf. Galeno v Everest Scaffolding, Inc.*, 202 AD3d 433, 435 [1st Dept 2022]). As raised by both the plaintiff and New Force in their opposition to the motion, 50 Court and JPD Realty have failed to present any proof as to when the area and/or shed was last inspected prior to the date of the accident (*see Coon v WFP Tower B Co. L.P.*, 220 AD3d 407, 409 [1st Dept 2023]; *Padilla v Touro Coll. Univ. Sys.*, 204 AD3d 415, 416 [1st Dept 2022]; *Quigley v Port Auth. of New York*, 168 AD3d 65, 68 [1st Dept 2018]). Considering that merely pointing to gaps in the plaintiff's proof is insufficient, the defendants have failed to submit any evidence establishing a lack of notice as required for prima facie entitlement to dismissal of the Labor Law § 200 and common-law negligence claims (*Kolakowski v 10839 Assoc.*, 185 AD3d 427, 428 [1st Dept 2020]; *Torres v Merrill Lynch Purch.*, 95 AD3d 741, 742 [1st Dept 2012]).

Further, as there are issues of fact as to 50 Court's negligence, if any, the portion of the motion seeking summary judgment in its favor on their claims for, and dismissal of the common-law indemnification and contribution claims asserted against them, is denied (*Sandoval-Morales*

v 164-20 N. Blvd., LLC, 231 AD3d 501, 504 [1st Dept 2024]; *Vitucci v Durst Pyramid LLC*, 205 AD3d 441, 444 [1st Dept 2022]).

Contractual Indemnification:

50 Court also seeks summary judgment in its favor on the contractual indemnification claim against New Force and dismissal of the contractual/common law indemnification counterclaims by New Force. 50 Court claims it is entitled to contractual indemnification from New Force based on the clear language of the indemnification provision contained in the parties' Proposal, dated April 20, 2017 (NYSCEF Doc. No. 273). 50 Court's motion must be denied as it cannot establish entitlement to contractual indemnification as a matter of law.

"A contractual obligation to indemnify must be clearly manifested in the parties' agreement, and a contract assuming an obligation to indemnify must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" (*Orellana v 5541-1274 Fifth Ave. Manhattan LLC*, 234 AD3d 527, 528 [1st Dept 2025]). Accordingly, "the intention to indemnify must be 'unmistakably clear from the language of the promise'" (*Needham & Co., LLC v UPHealth Holdings, Inc.*, 212 AD3d 561, 561 [1st Dept 2023], quoting *Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 492 [1989]). Considering, summary relief is appropriate on a claim for contractual indemnification where the agreement contains a clear and unambiguous provision running from one party to the other (*see Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 496 [1st Dept 2018]; *Cordeiro v TS Midtown Holdings, LLC*, 87 AD3d 904, 907 [1st Dept 2011]).

50 Court and JPD Realty assert that the Proposal's indemnification provision clearly obligates New Force to defend, indemnify and hold harmless 50 Court and JPD Realty from

liability for claims arising out of or resulting from New Force's work at the subject building. 50 Court and JPD Realty rely on the provision entitled, "Indemnity Clause", which provides,

"To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless Owner and/or Managing Agent from any and all claims, suits, damages, liabilities, professional fees including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the work of the Contractor, its agents, servants, subcontractors or employees, at premises owned by Owner, This agreement to indemnify specifically contemplates (1) full indemnity in the event of liability imposed against the Owner and/or Managing Agent without negligence and solely by reason of statute, operation of law, or otherwise, and (2) partial indemnity in the event of any actual negligence on the part of Owner and/or Managing Agent causing or contributing to the underlying claim, in which event, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, by operation of law, or otherwise" (NYSCEF Doc. No. 273 at 3).

However, in opposition, New Force contends there are questions of fact as to the respective parties' duties to indemnify as the Proposal contains two different indemnity clauses. Specifically, New Force asserts there are dual indemnity clauses in the Proposal, relying on Paragraph 15 of the "Terms & Conditions" which includes,

"To the fullest extent permitted by law, the Customer agrees to indemnify, defend and hold harmless New Force Construction Corp. its officers, directors, agents, employees and partners (hereafter collectively "Indemnitees") from any and all claims, suits, damages, liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries, property damage (including loss of use thereof), trespass, nuisance or any other action or legal proceeding, brought against any of the Indemnitees by any person or entity, arising out of or in connection with the Project, including but not limited to the use and/or operation of the leased equipment, Attorneys' fees, court costs, expenses and disbursements shall be defined without limit to include those fees, costs, etc incurred in defending the underlying claim and those fees, costs, etc incurred in connection with the enforcement of this Subcontract Agreement. Prior to using New Force Construction Corp's equipment for any reason, the Customer shall name New Force Construction Corp as an additional insured, and shall require any contractor, subcontractor, sub-subcontractor or other entity to provide a written indemnification and a hold harmless Agreement to

New Force Construction Corp. and to name New Force Construction Corp. as an additional insured” (NYSCEF Doc. No. 273 ¶ 15).

As the Proposal includes two contradictory provisions about the parties’ duties to indemnify, it cannot be shown that, as a matter of law, the Proposal contains unmistakably clear language of the parties’ intent (*Universal Am. Corp. v Natl. Union Fire Ins. Co. of Pittsburgh, Pa.*, 25 NY3d 675, 680 [2015]; *Peranzo v WFP Tower D Co. L.P.*, 201 AD3d 486, 487 [1st Dept 2022]). Therefore, as the language of the parties’ agreement is not clear enough to enforce an obligation of either party to indemnify, the motion(s) for summary judgment on the contractual indemnification claim(s) must be denied (*see Ruisech v Structure Tone Inc.*, 208 AD3d 412, 417 [1st Dept 2022], *affd as mod*, 42 NY3d 1061 [2024]; *Cooper v BLDG 7th St. LLC*, 231 AD3d 533, 533 [1st Dept 2024]).

Failure to Procure:

Additionally, 50 Court is not entitled to summary judgment in its favor on the claim against New Force for breach of contract for failure to procure insurance. “A party moving for summary judgment on its claim for failure to procure insurance meets its prima facie burden by establishing that a contract provision requiring the procurement of insurance was not complied with” (*Benedetto v Hyatt Corp.*, 203 AD3d 505 [1st Dept 2022]). “A moving party may make that showing by submitting, for example, copies of the contract requiring the procurement of insurance and of correspondence from the insurer of the party against whom summary judgment is sought indicating that the moving party was not named as an insured on any policies issued” (*Dorset v 285 Madison Owner LLC*, 214 AD3d 402, 404 [1st Dept 2023]). 50 Court and JPD Realty rely on Paragraph 6 of the “Terms & Conditions” section, which provides,

“The quotation in the scope of work includes standard general liability and worker's compensation insurance New Force Construction Corp agrees to name the Customer, upon signing of this document and such parties named in writing

by the Customer prior to installation as additionally insured as evidenced by a certificate of insurance that will be provided by New Force Construction Corp upon request Any coverage to additional insured shall apply only to occurrences that arise out of New Force Construction Corp's sole and exclusive negligence and which occur during the time period when New Force Construction Corp or its subcontractor are physically at the job site performing the "work" of assembling the equipment and/or disassembling the equipment at the end of the rental period" (NYSCEF Doc. No. 273 ¶ 6).

50 Court does not seem to be asserting that New Force failed to procure general liability insurance, failed to name 50 Court and JPD Realty as additional insureds, or that the general liability policy fails to provide the requisite coverage (*see Benedetto v Hyatt Corp.*, 203 AD3d 505 [1st Dept 2022]; *Goya v Longwood Hous. Dev. Fund Co., Inc.*, 192 AD3d 581, 586 [1st Dept 2021]). To the extent 50 Court is alleging as such, these arguments would be unavailing in light of the correspondence from New Force's insurers that is provided in the record (*see Dorset v 285 Madison Owner LLC*, 214 AD3d 402, 404 [1st Dept 2023]; *Payne v NSH Community Services, Inc.*, 203 AD3d 546 [1st Dept 2022]; *Hammer v ACC Constr. Corp.*, 193 AD3d 455 [1st Dept 2021]).

Rather, 50 Court's failure to procure claim is premised on Nationwide E&S/Specialty, New Force's second excess insurer, having denied defendants' request for additional insured coverage, *i.e.* defense and indemnification. 50 Court contends that this denial, allegedly made on grounds that a second layer of additional insured excess coverage was not required by the terms of the Proposal, establishes that New Force breached its' obligation to secure additional insured coverage for 50 Court and JPD Realty. However, an insurer's refusal to indemnify, provide coverage and/or defense under a policy does not establish that the party failed to procure the requisite insurance or additional insured coverage (*Perez v Morse Diesel Intern., Inc.*, 10 AD3d 497, 498 [1st Dept 2004]; *Castro v New York City Tr. Auth.*, 52 AD3d 213, 214 [1st Dept 2008]; *Sicilia v City of New York*, 127 AD3d 628, 629 [1st Dept 2015]; *Frazier v 650 Madison Owner LLC*, 2017 NY Slip Op 30895[U], 6 [Sup Ct, NY County 2017]). As 50 Court and JPD Realty have failed to offer any evidence demonstrating, *prima facie*, that the parties' agreement required New Force to secure excess additional insured coverage, the motion must be denied.

Doctrine of Falsus in Uno:

New Force also argues that its motion should be granted because the plaintiff's testimony submitted in opposition must be disregarded, pursuant to the doctrine of falsus in uno. New Force asserts that the plaintiff's deposition testimony submitted in opposition is untrue and contains numerous falsehoods. New Force points to the following portions of plaintiff's testimony, claiming it is untrue that: he placed cones and put caution tape up to prevent pedestrians from walking underneath the sidewalk bridge, he and his workers were wearing hardhats and safety vests on the morning of the accident, he was not very familiar with the erection/dismantling of scaffolding and his 10-hour and 32-hour OSHA course did not relate to the erection/dismantling of scaffolding.

“The falsus in uno doctrine permits a factfinder to disregard entirely the testimony of a witness who has willfully testified falsely with respect to any material fact. The doctrine, however, is ‘not mandatory,’ and the court is free to credit any part of a witness's testimony that it deems true and disregard what it deems false” (*DiPalma v State*, 90 AD3d 1659, 1660 [4th Dept 2011], quoting *People v Johnson*, 225 AD2d 464, 464 [1st Dept 1996]). Therefore, where a witness has given testimony that is demonstrably false, the court may, in accordance with the maxim falsus in uno falsus in omnibus, choose to discredit or disbelieve other testimony given by that witness (*Washington Mut. Bank v Holt*, 113 AD3d 755, 756-57 [2d Dept 2014]).

However, “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 v Restani Const. Corp.*, 18 NY3d 499, 505 [2012]).

Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge (*Asabor v Archdiocese of New*

York, 102 AD3d 524, 527 [1st Dept 2013]). Accordingly, a determination as to the credibility of the plaintiff or the testimony is for the jury and not for the court to decide on a motion for summary judgment.

Nor do any of these alleged discrepancies in the testimony raise genuine questions of fact (*Sacko v New York City Hous. Auth.*, 188 AD3d 546, 547 [1st Dept 2020]). These factual disputes in the testimony cited by the defendant are insufficient to rebut the plaintiff's showing, as they do not relate to *material* issues (*Valdez v City of New York*, 189 AD3d 425 [1st Dept 2020]; citing *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312 [2004]). Considering, while they may constitute disputed issues of fact or contain inconsistencies, the portions of the plaintiff's deposition testimony at issue does not preclude summary judgment in plaintiff's favor as they do not relate to any dispositive issues raised herein (*Ortiz v Burke Ave. Realty, Inc.*, 126 AD3d 577, 578 [1st Dept 2015]).

Accordingly, it is hereby

ORDERED that Motion Sequence 005, the CPLR § 3212 motion by third-party defendant, New Force Construction Corp., is DENIED; and it is further

ORDERED that Motion Sequence 006, the motion by plaintiff, Grzegorz Radgowski, for partial summary judgment against defendants, 50 Court Street Associates and Joseph P. Day Realty Corp., on the issue of liability under the Labor Law 240 (1) claim is GRANTED with regard to liability; and it is further

ORDERED that the only remaining triable issues of fact relate to the amount of damages to which plaintiff is entitled, if any, and that an immediate trial of the issues regarding damages shall be had before the court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office and shall serve and file with said Clerk a note of issue and statement of readiness


and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial before the undersigned; and it is further

ORDERED that such service upon the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that Motion Sequence 007, the CPLR § 3212 motion by defendants/third-party plaintiffs, 50 Court Street Associates and Joseph P. Day Realty Corp., is DENIED.

The parties shall contact the Court to schedule a pre-trial and settlement conference.

This constitutes the decision and order of the court.



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7/2/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE