

**Canela v Marine Terrace Hous. Dev. Fund Corp.**

2025 NY Slip Op 32677(U)

February 26, 2025

Supreme Court, Bronx County

Docket Number: Index No. 29349-2017E

Judge: Myrna Socorro

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

# 9-16

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 9**

-----X  
**Juan Carlos Canela,**

**Plaintiff**

**Index №. 29349-2017E  
Motion seqs 9, 10, 11, 12, 13,  
14, 15 and 16**

**-against-**

**Marine Terrace Housing Development Fund  
Corporation, Marine Terrace Preservation L.P.,  
Skyline Restoration Inc., Skyline Facade  
Restoration Inc., Spring Scaffolding LLC,  
Pofi Construction Corp., and A.M.K.  
Contracting Corp.,**

**Defendants**

**DECISION & ORDER  
Hon. Myrna Socorro, J.S.C.**

-----X  
**POFI CONSTRUCTION CORP.,  
Third-Party Plaintiff,**

**-against-**

**SKY VL CONSTRUCTION CORP  
and KAJAVI CORP.,  
Third-Party Defendants.**

-----X  
**POFI CONSTRUCTION CORP.,  
Second Third-Party Plaintiff,**

**-against-**

**SPRING INSTALLATIONS, LLC,  
Second Third-Party Defendant.**

-----X  
**SPRING SCAFFOLDING LLC,  
Third Third-Party Plaintiff,**

**-against-**

**SPRING INSTALLATIONS, LLC,  
Third Third-Party Defendant.**

-----X

The following papers were read on the motion by the plaintiff (Seq. No. 9) for **summary judgment**; on the motion by second third-party defendant/third third-party defendant Spring Installations, LLC (“Spring Installations”) (Seq. No. 10) for **summary judgment**; on the motion by third-party defendant Sky VL Construction Corp. (Seq. No. 11) for **summary judgment**; and on the motion by third-party defendant Kajavi Corp. (Seq. No. 12) for **summary judgment**; on the motion by

defendant/second third-party plaintiff Pofi Construction Corp. (Seq. No. 13) for **summary judgment**; on the motion by defendants Skyline Restoration Inc. and Skyline Façade Restoration Inc. (collectively “Skyline”) (Seq. No. 14) for **summary judgment**; on the motion by defendant A.M.K. Contracting Corp. (“A.M.K.”) (Seq. No. 15) for **summary judgment**; and on the motion by defendant/third third-party plaintiff Spring Scaffolding LLC (“Spring Scaffolding”) (Seq. No. 16) for **summary judgment**, all orally argued and marked submitted on June 3, 2024.

Papers	NYSCEF Doc. No.
<b>Motion seq #9</b>	
Notice of Motion by Plaintiff – Affirmation in Support and Exhibits	# 265-292
Defendants Marine Terrace Housing Development Fund Corporation’s & Marine Terrace Preservation, L.P.’s Affirmation in Opposition and Exhibit	# 431-433
Defendant Spring Scaffolding LLC’s Affirmation in Opposition and Exhibits	# 434-436
Defendants Skyline Restoration Inc.’s and Skyline Façade Restoration Inc.’s Affirmation in Opposition, Statement of Material Facts, and Exhibits	# 437-442
Defendant A.M.K. Contracting Corp’s Affirmation in Opposition and Exhibits	# 458-463
Plaintiff’s Memorandum of Law in Reply	# 474
<b>Motion seq #10</b>	
Notice of Motion by Second Third-Party Defendant/Third Third-Party Defendant Spring Installations LLC – Affirmation in Support, Memorandum of Law in Support, Statement of Material Facts and Exhibits	# 295-319
Defendant Spring Scaffolding LLC’s Affirmation in Opposition and Response Statement of Material Facts	# 451-452
Defendant A.M.K. Contracting Corp’s Affirmation in Opposition and Exhibit	# 468-469
Reply Affirmation to A.M.K. Contracting Corp.	# 470
Reply Affirmation to Spring Scaffolding LLC	# 471-472
<b>Motion seq #11</b>	
Notice of Motion by Third-Party Defendant Kajavi Corp. – Statement of Material Facts, Affirmation in Support, and Exhibits	# 324-354
<b>Motion seq #12</b>	
Notice of Motion by Second Third-Party Defendant Site Safety LLC – Affirmation in Support, Statement of Material Facts and Exhibits	# 355-364

<b>Motion seq #13</b> Notice of Motion by Second Third-Party Plaintiff Pofi Construction Corp. – Affirmation in Support, Statement of Material Facts and Exhibit	# 365-370
<b>Motion seq #14</b> Notice of Motion by Defendants Skyline Restoration Inc. and Skyline Façade Restoration Inc. – Affirmation in Support, Statement of Material Facts and Exhibits	# 372-386
Plaintiff’s Affirmation in Opposition, Memorandum of Law in Opposition, Counterstatement of Material Facts, and Exhibits	# 453-457
A.M.K. Contracting Corp’s Affirmation in Partial Opposition	# 464-467
Reply Affirmation	# 477
<b>Motion seq #15</b> Notice of Motion by Defendant A.M.K. Contracting Corp – Affirmation in Support and Exhibits	# 387-408
Plaintiff’s Affirmation in Opposition, Memorandum of Law in Opposition, Counterstatement of Material Facts, and Exhibits	# 482-486
Reply Affirmation	# 473
<b>Motion seq #16</b> Notice of Motion by Defendant Spring Scaffolding LLC – Affirmation in Support, Statement of Material Facts, and Exhibits	# 409-429
Plaintiff’s Affirmation in Opposition, Counterstatement of Material Facts, Memorandum of Law in Opposition, and Exhibits	# 487-491
Reply Affirmations	# 475-476, 478-479

Motion by plaintiff (Seq. No. 9), for an order pursuant to CPLR §3212, granting judgment on the Labor Law §240(1) and §241(6) claims; motion by second third-party defendant/third third-party defendant Spring Installations (Seq. No. 10), for an order pursuant to CPLR §3212, dismissing the second third-party complaint and third third-party complaints; motion by third-party defendant Sky VL Construction Corp (Seq. No. 11), for an order pursuant to CPLR §3212, dismissing all claims against it; motion by third-party defendant Kajavi Corp. (Seq. No. 12), for an order pursuant to CPLR §3212, dismissing plaintiff’s complaint and all cross-claims and third-party claims against it; motion by defendant/second third-party plaintiff Pofi Construction Corp. (Seq. No. 13), for an order pursuant to CPLR §3212, dismissing the plaintiff’s complaint and all cross-claims and counterclaims against it; the motion by defendant Skyline (Seq. No. 14), for an order pursuant to CPLR §3212, dismissing all claims and cross-claims against it; motion by defendant A.M.K. (Seq. No. 15), for an order pursuant to CPLR §3212, dismissing plaintiff’s complaint and granting judgment against defendant Skyline Restoration, Inc. for defense and indemnification; motion by

defendant/third third-party plaintiff Spring Scaffolding (Seq. No. 16), for an order pursuant to CPLR §3212, dismissing the amended complaint and all cross-claims against it, are decided as follows:

Preliminarily, there was no opposition submitted to the motions by third-party defendant Sky VL Construction Corp (Seq. No. 11), third-party defendant Kajavi Corp. (Seq. No. 12), and defendant/second third-party plaintiff Pofi Construction Corp. (Seq. No. 13). Accordingly, the motions by third-party defendant Sky VL Construction Corp (Seq. No. 11), third-party defendant Kajavi Corp. (Seq. No. 12), and defendant/second third-party plaintiff Pofi Construction Corp. (Seq. No. 13), are granted, without opposition, and all claims, cross-claims and counterclaims as against them are dismissed.

Plaintiff commenced this action to recover for personal injuries allegedly sustained as a result of an accident at a building renovation project located at 20-32 and 20-44 19th Street, Queens County while being employed by second third-party defendant Spring Installations, LLC (“Spring Installations”) as a laborer. The owners of the premises, Marine Terrace Housing Development Fund Corporation and Marine Terrace Preservation, L.P. (collectively “Marine Terrace”), hired A.M.K. to serve as general contractor to perform the renovation of the premises. A.M.K. contracted with Skyline to oversee the exterior renovation. Skyline contracted with Spring Scaffolding to erect the scaffolds on the premises. Spring Scaffold subcontracted with Spring Installations to supply laborers to erect the scaffolds. Plaintiff testified that he was tasked with handing planks of wood from a flatbed truck to a person on a rolling tower to erect a sidewalk bridge. He further testified that he was using a makeshift bridge consisting of two planks of wood to perform his job. Plaintiff testified that as he was passing a plank of wood from the flatbed truck to the rolling tower, he placed one foot on the flatbed and one foot on the makeshift bridge when one of the planks suddenly broke causing him to fall five- to six-feet to the ground below and sustaining injury. Plaintiff testified that he wore a harness that he brought to the job but has never tied off his harness on other jobs that involved working off the back of a flatbed truck where “[i]t is very low” as compared to working over a bridge or scaffold (NYSCEF Doc No. 344 at 114-115).

In support of plaintiff’s motion for summary judgment (seq #9), the plaintiff argues that the defendants violated Labor Law §240(1) by failing to provide him with an adequate safety device to prevent his fall. Plaintiff submits the non-party deposition of Henry Cabrera who testified that he worked with plaintiff on the date of his alleged incident and that he was employed by Spring Scaffold to install scaffolding. Cabrera testified that he and plaintiff were the only workers unloading planks off the flatbed truck at the time of the accident. He testified that plaintiff was situated on the truck and Cabrera was standing on the rolling tower or platform receiving the planks and passing them off to other workers on the sidewalk bridge. Plaintiff also contends the defendants

violated Labor Law §241(6) as predicated on Industrial Codes 12 NYCRR § 23-1.22(b)(2) and §23-1.16(b).

In support of its motion for summary judgment (seq #10), second third-party defendant Spring Installations argues any claims against it for common-law indemnification and/or contribution should be dismissed as barred by Workers Compensation Law §11 where plaintiff did not sustain a “grave injury” under the statute. Spring Installations contends that any claims for contractual indemnification against it should be dismissed as barred by the rule against anti-subrogation. Further, it argues that any claims for breach of contract for failure to procure should be dismissed as it submitted its policy of insurance demonstrating Spring Installations procured a policy that complied with its contractual obligations.

In support of its motion for summary judgment (seq #14), defendant Skyline argues that it is not a proper Labor Law defendant as it was not an owner, general contractor, or agent of either. Skyline contends that it did not have any employees on the jobsite; that it performed no work; and that it did not control the plaintiff’s work.

In support of its motion for summary judgment (seq #15), defendant A.M.K. argues that it was only a construction manager on the project and not an owner or general contractor to be liable under the Labor Law. A.M.K. further argues that it did not possess the requisite authority to control the plaintiff’s work. Moreover, A.M.K. contends that Skyline is required to defend and indemnify it as plaintiff’s accident arose out of the negligence of Skyline or Skyline’s subcontractors to trigger the indemnity provision in the parties’ construction contract and that said contract required Skyline to procure insurance for the benefit and protection of A.M.K. and its agents as additional insureds.

In support of its motion for summary judgment (seq #16), defendant/third third-party defendant Spring Scaffolding argues that plaintiff’s amended complaint and all cross-claims should be dismissed against it as plaintiff’s accident did not result from a gravity-related hazard to fall under Labor Law 240(1). Spring Scaffolding also argues that none of the alleged Industrial Code violations are applicable to the herein facts to be liable under Labor Law 241(6). It also contends that it cannot be liable under Labor Law 200 as it did not possess the authority to direct or control the plaintiff’s work when Spring Scaffolding subcontracted the entirety of the work to plaintiff’s employer, Spring Installations.

### **Summary Judgment Review**

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC*, 157 AD3d 479 [1<sup>st</sup> Dept 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508; 894 NYS 2d 422 [1<sup>st</sup> Dept 2010].

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. *See CPLR § 3212[b]*; *Friends of Thayer Lake LLC v. Brown*, 27 NY3d 1039; 33 NYS 3d 853 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]. The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]. If the movant fails to make such prima facie showing then the motion must be denied regardless of the sufficiency of the opposing papers *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY 2d 851; 487 NYS 2d 316 (1985)

Once the movant has made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY 2d 320; 508 NYS 2d 923 [1986]; and *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment. *See Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004].

### **Proper Labor Law Defendants**

Generally, a party will be held liable as an "owner" under the Labor Law where it contracted for the construction work being performed at the time of the plaintiff's accident (*see Tropea v Tishman Constr. Corp.*, 172 AD3d 450 [1st Dept 2019]). Further, a party that is delegated the authority to supervise and control the injury-producing work renders it liable as a statutory agent of the owner or general contractor (*see Otero v 635 Owner LLC*, 210 AD3d 435 [1st Dept 2022]; *see also Santos v Condo 124 LLC*, 161 AD3d 650 [1st Dept 2018]). The parties' actual course of practice is controlling for the purposes of determining whether a party is a statutory agent of the owner or general contractor for the purposes of Labor Law §240(1) (*see Ortega v Catamount Constr. Corp.*, 264 AD2d 323 [1st Dept 1999]).

The court finds A.M.K. is a proper Labor Law defendant. A.M.K.'s contentions that strict liability cannot be imposed under the Labor Law because it was a construction manager that did not exercise actual control or supervision over the injury-producing work is without merit. The label of

“construction manager” does not necessarily bar the imposition of strict liability under Labor Law §240(1) or §241(6) (*see Walls v Turner Constr. Co.*, 4 NY3d 861 [2005]). The record evidence demonstrated that A.M.K. had the authority to supervise and control the injury-producing work as its contractual obligations under its contract with Marine Terrace, the owners of the premises, included being responsible for coordinating all portions of the work. Although A.M.K. delegated all of the exterior facade renovation work to Skyline, A.M.K., under its contract with Marine Terrace, was solely responsible for the control over the construction means and methods of the work. Therefore, whether A.M.K. actually exercised supervision and control over the injury-producing work is irrelevant (*see Barreto v Board of Mgrs. of 545 W. 110th St. Condominium*, 224 NYS3d 69; 2025 NY Slip Op 00185 [1st Dept 2025]; *see also Tuccillo v Bovis Lend Lease, Inc.*, 101 AD3d 625 [1st Dept 2012]).

Here, the court also finds defendant Skyline is a proper party for purposes of the Labor Law and operated as a statutory agent for A.M.K. The record evidence demonstrated that Skyline subcontracted the scaffold installation to Spring Scaffolding, which in turn contracted with plaintiff’s employer, Spring Installations, to perform the actual installation, thereby possessing the authority to exercise supervision and control over the injury-producing work (*see Badzio v E. 68th St. Tenants Corp.*, 200 AD3d 591 [1st Dept 2021]). Whether Skyline actually exercised supervision and control over the work that brought about the plaintiff’s injuries is irrelevant. Likewise, whether Skyline delegated its contractual responsibility to supervise and control the injury-producing work to Spring Scaffolding is of no moment, as it does not absolve defendant Skyline from the imposition of strict liability under Labor Law §240(1) and §241(6) (*see id.*).

Likewise, defendant Spring Scaffolding is a proper Labor Law defendant as the scope of its contractual responsibilities amount to being a contractor or statutory agent within the meaning of the Labor Law. Here, Spring Scaffolding was delegated the supervision and authority over the work when it actually coordinated and retained plaintiff’s employer, Spring Installations, to supply the labor to perform the scaffolding installation (*see Otero v 635 Owner LLC*, 210 AD3d 435 [1st Dept 2022]).

#### **Labor Law §240(1)**

Labor Law §240(1) provides in part: “All 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 failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident” (*Cherry v Time Warner, Inc.*, 66 AD3d 233, 235 [1st Dept 2009] [citations and quotations omitted]).

The Court of Appeals has held that “[n]ot every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law §240(1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]; see *Nieves v Five Boro Air Conditioning & Refrigeration Corp.*, 93 NY2d 914, 916 [1999], holding “[t]he core objective of the statute in requiring protective devices for those working at heights is to allow them to complete their work safely and prevent them from falling. Where an injury results from a separate hazard wholly unrelated to the risk which brought about the need for the safety device in the first instance, no section 240 (1) liability exists”).

This court finds plaintiff’s five- to six-foot fall from a flatbed truck is not the type of elevation-related hazard contemplated by Labor Law §240(1) (see *Toefer v Long Island R.R.*, 4 NY3d 399 [2005]; see *Pitang v Beacon Broadway Co., LLC*, 231 AD3d 414 [1st Dept 2024]; see also *James v Alpha Painting & Constr. Co, Inc.*, 152 AD3d 447 [1st Dept 2017]). As the Court of Appeals has held, the risk of falling or alighting from a construction vehicle is not an elevation-related risk that calls for the provision of any of the safety devices listed in §240(1) (see *Bond v York Hunter Constr., Inc.*, 95 NY2d 883 [2000]; see also *Landa v City of New York*, 17 AD3d 180 [1st Dept 2005]). Accordingly, plaintiff’s Labor Law §240(1) claim must be dismissed.

#### **Labor Law §241(6)**

Labor Law §241(6) imposes a nondelegable duty of reasonable care upon owners and contractors “to provide reasonable and adequate protection and safety” to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (see *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]). The standard of liability under Labor Law §241(6), requires that a plaintiff allege that an owner or general contractor breached a specific rule or regulation containing a positive command (see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). In addition, Labor Law §241(6) requires that a plaintiff establish that a violation of a safety regulation was the proximate cause of the accident (see *Gonzalez v Stern's Dep't Stores*, 211 AD2d 414 [1st Dept 1995]).

In support of his Labor Law §241(6) claim, the plaintiff cites Industrial Codes 12 NYCRR §23-1.22(b)(2) (Structural runways, ramps and platforms; Runways and ramps) and §23-1.16(b) (Safety belts, harnesses, tail lines, and lifelines; Attachment required), therefore, abandoning all other predicates not raised in his legal arguments, and as such those claims are dismissed to that extent (*see Burgos v Premier Props. Inc.*, 145 AD3d 506 [1st Dept 2016]; *see also 87 Chambers, LLC v 77 Reade, LLC*, 122 AD3d 540 [1st Dept 2014]).

Insofar as the Labor Law §241(6) claim is predicated on a violation of 12 NYCRR §23-1.22(b)(2), plaintiff failed to establish *prima facie* that the plywood plank or platform constituted a runway or ramp intended for the use of “persons only” under the provision (*see Fischer v VNO 225 W. 58th St. LLC*, 215 AD3d 486 [1st Dept 2023]).

Industrial Code 12 NYCRR §23-1.16(b) requires an approved safety belt or harness to be provided to an employee for his personal safety in the performance of his work whenever required and that such safety belt or harness must be properly attached to a secure anchored tail line or hanging lifeline. However, the record raised triable issues of fact as to whether fall protection is warranted in the line of work that plaintiff was performing.

#### **Labor Law 200/Common-Law Negligence**

Moreover, the branches of the defendants’ (Spring Scaffolding, A.M.K. and Skyline) summary judgment motions to dismiss the Labor Law §200 and common-law negligence claims as against them is denied. Although the record demonstrates that Spring Scaffolding, A.M.K. and Skyline did not direct, supervise, or direct the means and methods of the plaintiff’s work, a defendant may still be held liable if it either created the dangerous condition or failed to remedy it despite having actual or constructive notice thereof (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). Said defendants failed to establish *prima facie* that they neither created nor had notice of a hazardous condition resulting in the plaintiff’s injuries to support dismissal of the Labor Law §200 and common-law negligence claims against them (*see Padilla v Touro Coll. Univ. Sys.*, 204 AD3d 415 [1st Dept 2022]). The defendants submitted no evidence of when the work site was last inspected as part of their moving papers (*see id.*; *see also Kolakowski v 10839 Assoc.*, 185 AD3d 427 [1st Dept 2020]; *Pereira v New Sch.*, 148 AD3d 410 [1st Dept 2017]).

Furthermore, there is record evidence that a Skyline employee was on site on a daily basis to ensure site safety as well as evidence that it was Spring Scaffolding’s responsibility to ensure “that the work was proceeding on schedule” (NYSCEF Doc No. 427, Lorant Varga aff).

**Pofi Construction Corp.'s Second Third-Party Complaint against Spring Installations**

There was no opposition to the branch of Spring Installation's summary judgment motion seeking dismissal of the second third-party complaint by Pofi Construction Corp. Therefore, Spring Installation's request for dismissal of the second third-party complaint, is granted without opposition.

**Spring Scaffolding's Third Third-Party Complaint against Spring Installations**

Spring Installations seeks dismissal of Spring Scaffolding's third third-party claims sounding in common-law indemnification and/or contribution, contractual indemnification and breach of contract for failure to procure.

As to Spring Scaffolding's third-party claim sounding in common-law indemnity and contribution against Spring Installations, Plaintiff's employer, this court finds Spring Installations did not establish its *prima facie* entitlement to dismissal of said claim as evidence in the record suggest plaintiff's injuries may be "grave" within the meaning of the statute (*see Cashbamba v 1056 Bedford LLC*, 168 AD3d 638 [1st Dept 2019]). The test that the Court of Appeals adopted "for permanent total disability under section 11 is one of unemployability *in any capacity*" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 417 [1st Dept 2004]). The medical records submitted in support of the motion by Spring Installations do not rule out that plaintiff did not sustain a brain injury rendering him unemployable in any capacity (*see generally Rucinski v More Restoration Co. Inc.*, 210 AD3d 604 [1st Dept 2022]).

With respect to Spring Scaffolding's contractual indemnification claim against Spring Installations, the relevant indemnification provision contained in the subcontract between the parties provides, in pertinent part, as follows:

**SECTION 8. INDEMNIFICATION.** To the fullest extent permitted by law, Subcontractor [Spring Installations] shall indemnify and hold harmless Owner and Contractor [Spring Scaffolding] and their agents and employers from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's [Spring Installations'] operations performed under this Agreement...The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor [Spring Scaffolding], or their agents or employees, but Subcontractor [Spring Installations] shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor [Spring Scaffolding] or their agent or employees...

(NYSCEF Doc No. 317 at 27-28).

“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., Inc.*, 70 NY2d 774, 777 [1987].

Here, Spring Installations failed to demonstrate *prima facie* that the subject indemnification provision was not triggered by plaintiff’s accident in the course of performing Spring Installations’ work (*see Asian v Flintlock Constr. Servs., LLC*, 225 AD3d 462 [1st Dept 2024]). The subject indemnification provision also does not run afoul of General Obligations Law §5-322.1 as it sufficiently contains the appropriate savings clause “to the fullest extent permitted by law” (*Brooks v Judlau Contr., Inc.*, 11 NY3d 204, 210 [2008]; *see Guzman v 170 W. End Ave. Assoc.*, 115 AD3d 462, 464 [1st Dept 2014]; *see also Dutton v Pankow Bldrs.*, 296 AD2d 321, 322 [1st Dept 2002]).

Moreover, Spring Installations failed to establish its *prima facie* entitlement to dismissal of Spring Scaffolding’s third-party claim for breach of contract for failure to procure. Spring Installations appended a commercial general liability policy that does not identify Spring Installations or Spring Scaffolding as an insured (*see generally Public Adm’r of Queens County v 124 Ridge LLC*, 203 AD3d 493 [1st Dept 2022]).

**A.M.K.’s Cross-Claim for Contractual Indemnification against Skyline Restoration, Inc.**

A.M.K. seeks summary judgment against Skyline Restoration, Inc. on its contractual indemnification claim pursuant to the indemnification provision in the owner-contractor construction agreement between the parties, which provides, in pertinent part, as follows:

**§ 9.15 INDEMNIFICATION**

**§ 9.15.1** To the fullest extent permitted by law, the Contractor [Skyline Restoration, Inc.] shall indemnify and hold harmless the Owner [A.M.K.], Architect, Architect’s consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work...but only to the extent caused by the negligent acts or omissions of the Contractor [Skyline Restoration, Inc.], a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

(NYSCEF Doc No. 383 at 12)

As there are triable issues of fact as to the negligence of A.M.K. and/or Skyline in causing or contributing to the plaintiff’s accident, A.M.C.’s request for summary judgment on its contractual indemnification claim against Skyline Restoration, Inc. is premature.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by any movant was not addressed by the court, it is hereby denied.

Accordingly, it is hereby,

**ORDERED**, that the motion by plaintiff (Seq. No. 9) seeking summary judgment on the Labor Law §240(1) and §241(6) claims, is **DENIED**; and it is further

**ORDERED**, that the summary judgment motion by Spring Installations, LLC (Seq. No. 10) seeking dismissal of the second third-party and third third-party complaints, is **GRANTED TO AN EXTENT**; and it is further

**ORDERED**, that the summary judgment motion by Sky VL Construction Corp. (Seq. No. 11) seeking dismissal of all claims against it, is **GRANTED without opposition**; and it is further

**ORDERED**, that the summary judgment by Kajavi Corp. (Seq. No. 12) seeking dismissal of all claims against it, is **GRANTED without opposition**; and it is further

**ORDERED**, that the Second Third-Party Complaint by Pofi Construction Corp. against Spring Installations LLC and Kajavi Corp. is **dismissed**; and it is further

**ORDERED**, that the summary judgment motion by Pofi Construction Corp. (Seq. No. 13) seeking dismissal of all claims against it, is **GRANTED without opposition**; and it is further

**ORDERED**, that the summary judgment motion by Skyline Restoration Inc. and Skyline Facade Restoration Inc. (Seq. No. 14), seeking dismissal of all claims against them, is **GRANTED TO AN EXTENT**; and it is further

**ORDERED**, that the summary judgment motion by A.M.K. Contracting Corp. (Seq. No. 15), seeking dismissal of plaintiff's complaint and judgment on its contractual indemnification claim against Skyline, is **GRANTED TO AN EXTENT**; and it is further

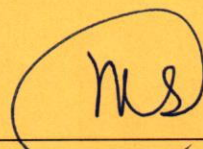
**ORDERED**, that the summary judgment motion by Spring Scaffolding LLC (Seq. No. 16) seeking dismissal of the amended complaint and all cross-claims, is **GRANTED TO AN EXTENT**; and it is further

**ORDERED**, that plaintiff's Labor Law §240(1) claim is **Dismissed**; and it is further

**ORDERED**, the movants of each motion shall serve a copy of this order with notice of entry upon all parties within fifteen (15) days from the date of this Decision and Order.

This constitutes the decision and order of this court.

Dated: February 26, 2025



\_\_\_\_\_  
HON. MYRNA SOCORRO, J.S.C.