At an IAS Term, Part 73 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 16th day of ~~June~~ July, 2025.

P R E S E N T:

HON. PETER P. SWEENEY,
Justice.

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MILTON UBILLA,
Plaintiff,
-against-

Index No.: 504256/21

MARC SCOTT REALTY CORP., WILLOUGHBY MANAGEMENT LLC, EDITH COURT PROPERTIES LLC, BRP ASSOCIATES INC., ONE 70 GROUP LLC, CFSC MAINTENANCE LLC, THE CITY OF NEW YORK, NEW YORK CITY HEALTH & HOSPITAL CORP., HHC KINGS COUNTY HOSPITAL CENTER and THE BRONX CENTER FOR RENAL DIALYSIS d/b/a WILLIAMSBURG CENTER FOR RENAL DIALYSIS,
Defendants.

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CFSC MAINTENANCE LLC d/b/a ONE 70 GROUP LLC and ONE 70 GROUP LLC,

Third-Party Plaintiffs,

-against-

K&L SERVICES, LLC,
Third-Party Defendant.

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CFSC MAINTENANCE LLC d/b/a ONE 70 GROUP LLC and ONE 70 GROUP LLC,

Second Third-Party Plaintiffs,
-against-

COUNTY ELECTRICAL CONTRACTO INC.,

Second Third-Party Defendant.

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K&L SERVICES, LLC,

Third Third-Party Plaintiff,

-against-

NARANJAL CONSTRUCTION CORP., CCH INTERIOR GROUP CORP. and CCH INTERIOR CORP.,

Third Third-Party Defendant.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	252-253, 270, 271-272, 291-292, 309, 316-317, 345, 360-361
Opposing Affidavits (Affirmations)	350, 351, 352, 355, 357, 358, 372 374, 375, 377, 380, 382, 388, 389, 390, 392
Affidavits/ Affirmations in Reply	366, 384, 386, 391, 393, 394, 396, 399, 401, 404, 406

Upon the foregoing papers, third-party defendant/third third-party plaintiff K&L Services LLC, (K&L Services) moves for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the third-party action and all claims and cross-claims against it (motion sequence number 12). Plaintiff Milton Ubilla moves for an order, pursuant to CPLR 3212, granting him partial summary judgment with respect to liability on his Labor Law § 240 (1) cause of action as against defendant Marc Scott Realty Corp. (Marc Scott Realty), defendant Willoughby Management LLC. (Willoughby Management), defendant/third-party plaintiff/second third-party plaintiff CFSC Maintenance LLC d/b/a One 70 Group LLC, (CFSC), defendant/third-party plaintiff/second third-party plaintiff One 70 Group LLC, and defendant The Bronx Center for Renal Dialysis d/b/a Williamsburg Center for Renal Dialysis (Bronx Center) (motion sequence number 13). Marc Scott Realty, Willoughby Management, and defendant Edith

Court Properties LLC (Edith Court) (collectively referred to as the Marc Scott Defendants) move for an order, pursuant to CPLR 3212, granting them: (1) summary judgment dismissing the complaint and all cross-claims and counter-claims as against Willoughby Management and Edith Court; (2) summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action as against Marc Scott Realty; and (3) summary judgment in favor of the Marc Scott Defendants on their common-law indemnification and contractual indemnification claims as against the Bronx Center, CFSC, One 70 Group, second third-party defendant County Electrical Contractor, Inc. (County Electrical) and K&L Services (motion sequence number 14). Bronx Center moves for an order extending its time to move for summary judgment (motion sequence number 15). County Electrical moves for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the second third-party complaint of CFSC and One 70 Group LLC (collectively referred to as the One 70 Group) and any cross-claims (motion sequence number 16). Finally, the One 70 Group cross-moves for an order, pursuant to CPLR 3212, granting it summary judgment dismissing plaintiff's Labor Law § 240 (1) cause of action (motion sequence number 17).

K&L Services' motion (motion sequence number 12) is granted to the extent that the contribution and common-law indemnification claims against it are dismissed. K&L Services' motion is otherwise denied.

Plaintiff's motion (motion sequence number 13) is granted to the extent that plaintiff is granted partial summary judgment in his favor with respect to liability as against Marc

Scott Realty, the Bronx Center and CFSC Maintenance LLC. Plaintiff's motion is otherwise denied.

Marc Scott Defendants' motion (motion sequence number 14) is granted to the extent that: (1) the complaint and all cross-claims and counterclaims are dismissed as against Edith Court and Willoughby Management; (2) plaintiff's Labor Law § 200 and common-law negligence causes of action are dismissed as against Marc Scott Realty; and (2) Marc Scott Realty is granted summary judgment in its favor with respect to its contractual indemnification cross-claims against Bronx Center and CFSC Maintenance LLC. The Marc Scott Defendants' motion is otherwise denied.

The Bronx Center's motion (motion sequence number 15) is denied.

County Electrical's motion (motion sequence number 16) is granted and the second third-party complaint and any cross-claims/counterclaims against it are dismissed.

The One 70 Group's cross-motion (motion sequence number 17) is denied.

In view of the foregoing, and in view of the stipulations discontinuing the action as against the City of New York, New York City Health & Hospital Corp., HHC Kings County Hospital Center and BRP Associates Inc., (NY St Cts Elec. Filing [NYSCEF] Doc Nos. 142 and 145), the action is severed accordingly and the caption is amended to read as follows:

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MILTON UBILLA,

Plaintiff,

-against- Index No.: 504256/21

MARC SCOTT REALTY CORP., WILLOUGHBY MANAGEMENT LLC, ONE 70 GROUP LLC, CFSC

MAINTENANCE LLC, and THE BRONX CENTER FOR RENAL DIALYSIS d/b/a WILLIAMSBURG CENTER FOR RENAL DIALYSIS,

Defendants.
----------X
CFSC MAINTENANCE LLC d/b/a ONE 70 GROUP LLC and ONE 70 GROUP LLC,

Third-Party Plaintiffs,

-against-

K&L SERVICES, LLC,

Third-Party Defendant.
----------X
K&L SERVICES, LLC,

Third Third-Party Plaintiffs,

-against-

NARANJAL CONSTRUCTION CORP., CCH INTERIOR GROUP CORP. and CCH INTERIOR CORP.,

Third Third-Party Defendant.
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BACKGROUND

In this action, plaintiff pleads causes of action premised on common-law negligence and violations of Labor Law §§ 200, 240 (1) and 241 (6) based on injuries he alleges he suffered on July 7, 2020 when, while using a grinder to cut pieces of iron off of a basement wall, the ladder on which plaintiff was standing moved, and caused plaintiff to fall to the ground. The basement area at issue was located in a building owned by Marc Scott Realty and was in the part of the building Marc Scott Realty leased to the Bronx Center to be used as a dialysis center. After leasing the space, the Bronx Center hired CFSC as the general contractor for a construction project involving the conversion of the leased space into a

dialysis center.[1] CFSC hired County Electrical as the electrical subcontractor for the project and hired K&L Services as a subcontractor for the project. Although the contract between the CFSC and K&L Services (CFSC/K&L Contract) only specifically mentions plumbing and sprinkler work, Ben Diamond, K&L Services' chief strategy officer and the person who handled the signing of the CFSC/K&L Contract, testified at his deposition that K&L Services was primarily hired to provide labor at the site for the One 70 Group. As K&L Services did not have any of its own employees, it subcontracted with third third-party defendant Naranjal Construction Corp. (Naranjal) to provide laborers. Plaintiff was employed by Naranjal as a laborer.

According to plaintiff's testimony at his General Municipal Law § 50-h hearing (50-h hearing) and at his deposition, Jorge Chavez, plaintiff's supervisor at Naranjal, who plaintiff understood was Naranjal's owner, instructed plaintiff to see One 70 Group's supervisor when he started working at the project. Plaintiff knew this One 70 Group supervisor as Sam,[2] and it was Sam who instructed plaintiff to get his instructions from a foreman on the job who plaintiff knew as Walter. Plaintiff, however, did not know who Walter worked for, but believed Walter was employed by One 70 Group because he was in charge of the job, which belonged to One 70 Group. It was Walter who gave plaintiff

[1] In the various contracts relating to One 70 Group, it is "CFSC Maintenance, LLC dba ONE70 Group" that is identified as the contracting party. The parties, including One 70 Group, do not address whether One 70 Group LLC exists as a legal entity and whether One 70 Group LLC has any connection to this action. The parties and the deposition witnesses, however, generally identify the general contractor as One 70 Group.

[2] Although plaintiff recalled that Sam worked for One 70 Group at the time of his 50-h hearing, by the time of his deposition, he could not recall if Sam worked for One 70 Group. At a later point in the same deposition, upon viewing the accident report prepared by One 70 Group which identified Sam Imamovic as the person who created the report, plaintiff stated that Sam Imamovic was the Sam plaintiff had been referring to in his earlier testimony.

his daily work assignments, and if Walter was not there, plaintiff would receive instructions from Sam. It was Sam and Walter who told plaintiff he had permission to grab tools from an equipment storage closet or box located at the jobsite. Plaintiff did not see any other Naranjal employees while he was at the worksite, he did not receive any work instructions from Jorge, and he only saw Jorge when he got paid.

On the morning of his accident, Walter first instructed plaintiff to sweep and clean debris left by workers on the first floor of the project. After doing this work, Walter instructed plaintiff to cut off some iron bars that were projecting from a wall in the basement in order to allow them to place a flat piece of plywood over the wall. In order to perform this work, plaintiff obtained a grinder from a closet that contained work tools and grabbed an A-frame ladder that was in the basement. Plaintiff, in his 50-h hearing testimony, stated that the ladder was an A-frame ladder that was approximately eight or nine feet tall, and that it had approximately 10 steps. In order to reach the bars he had been directed to cut, plaintiff climbed up onto the 8th step of the ladder from the floor, leaving two or three steps above the step on which he was standing. Plaintiff asserted that the grinder he was using to cut the iron bars was very heavy, and thus he needed to hold it with two hands while he cut the bars. Prior to the accident, plaintiff did not have any problems with the ladder. However, while he was cutting the last bar, plaintiff stated that his leg got tangled with the grinder's electric cord, and that he "had to let it go and that's when the ladder was unbalanced" (Plaintiff's 50-h transcript at 38, lines 9-18). When asked if the ladder tipped over, plaintiff stated, "Yes, the ladder unbalanced and then I fell down first to the right side and then the ladder fell on me" (Plaintiff's 50-h transcript at 38, lines 19-

22). Although plaintiff, at his deposition, did not recall the power cord for the grinder playing a role in the accident, he similarly testified that the accident occurred when the ladder moved while he was using the grinder to cut one of the metal bars (6/23/22 deposition at 33, lines 8-9, at 34, at 74, lines 13-22). Plaintiff did not notice any problems with the ladder when he checked it out when he first set it up, and he did not have any problems with the ladder while he was using it prior to the accident, and there was nothing broken or defective on the ladder that caused plaintiff to fall.

DISCUSSION

Procedural Issues

One 70 Group initially argues that County Electrical's motion should be denied as untimely because it was made more than 60 days after the filing of the note of issue in violation of Kings County Supreme Court Uniform Civil Term Rules, part C, rule 6 (*see* CPLR 3212 [a]). This court rejects this argument because the preliminary conference order in this case dated October 4, 2021 (NYSCEF Doc No. 334) provided that summary judgment motions were to be filed no later than 90 days after the filing of the note of issue and County Electrical's motion was timely pursuant to the order because it moved for summary judgment within 90 days of the filing of the note of issue. In the absence of an order or other directive explicitly vacating or modifying the time directives in the preliminary conference order, the 90-day time period provided in the order governs here regardless of whether or not the City of New York or any other defendant represented by the Corporation Counsel remained in the action (*see Freire-Crespo v 345 Park Ave. L.P.*, 122 AD3d 501, 502 [1st Dept 2014]; *see also Lopez v Metropolitan Tr. Auth.*, 191 AD3d

508, 508 [1st Dept 2021]; *Waxman v Hallen Constr. Co., Inc.*, 139 AD3d 597, 598 [1st Dept 2016]).

Although One 70 Group's cross-motion was made more than 90 days after the filing the note of issue, it may be considered even in the absence of a showing of good cause for the delay since the cross-motion was made on grounds nearly identical to plaintiff's timely motion (*see Cruz v 1142 Bedford Ave., LLC*, 192 AD3d 859, 863 [2d Dept 2021]; *Sheng Hai Tong v K&K 7619, Inc.*, 144 AD3d 887, 890 [2d Dept 2016]).

The court, however, declines to grant Bronx Center's request that this court extend its time to move for summary judgment. In so doing, the court assumes that the change of counsel that came about when a different insurance carrier had taken over the defense of Bronx Center would constitute good cause warranting some extension of time as of July 2, 2024 filing of the motion. This July 2, 2024 filing date was shortly before the consent to substitute counsel was filed on July 10, 2024 (NYSCEF Doc No. 312) and before the 90th day to file summary judgment motions, which was August 1, 2024.[3] This motion for an extension, however, was not submitted for determination until November 4, 2024, a date more than 90 days after the August 1, 2024 deadline for filing summary judgment motions, and this court sees no reason why the Bronx Center's new counsel would have been unable to move for summary judgment at some point prior to the November 4, 2024 submission date. As such, this court sees no grounds warranting an extension of time at this juncture.

[3] The note of issue was filed on May 3, 2024. As such, the last date to file summary judgment motions pursuant to the preliminary conference order was August 1, 2024.

The court also rejects K&L Services' assertion that the court should deny the motions by the Marc Scott Defendants, plaintiff, and County Electrical because those parties each failed to provide a statement of material facts in support of their motions. In this regard, the court notes that the version of Uniform Rules for Trial Courts (22 NYCRR) § 202.8-g that has been in effect since July 1, 2022 only directs the submission of a statement of material fact when required by the court, and this court does not require such a statement (*see Taveras v Incorporated Village of Freeport*, 225 AD3d 822, 823 [2d Dept 2024]; Uniform Rules for Trial Cts [22 NYCRR] § 202.8-g [a]).

One 70 Group asserts that plaintiff's motion should be denied because he failed to submit a complete set of the pleadings in this action in support of his motion in violation of CPLR 3212 (b). This objection is largely without merit as many of the missing pleadings are original pleadings that are no longer operative in view of subsequent amendments or are pleadings that relate to parties no longer in the action. To the extent that plaintiff failed to provide some of the operative pleadings, this court choses to ignore plaintiff's failure because the pleadings plaintiff did not submit have no bearing on plaintiff's motion. The court notes that these pleadings are properly before it in any event, as they were submitted in support of motions by other parties that were argued and provided concurrently with plaintiff's motion, are available on NYSCEF, and because One 70 Group has not alleged any prejudice resulting from plaintiff's failure (*see Wade v Knight Transp., Inc.*, 151 AD3d 1107, 1109 [2d Dept 2017]; *see also Flushing AV Laundromat, Inc. v Dekao Qu*, 229 AD3d 516, 518 [2d Dept 2024]; CPLR 2001). To the extent that the Marc Scott Defendants' likewise have failed to submit a complete set of pleadings in their original motion papers,

the court chooses to ignore their failure also since they submitted a complete set of pleadings in reply, the missing pleadings are already before the court as they have been provided with other motions submitted at the same time, and the pleadings are available on NYSCEF (*see Wade*, 151 AD3d at 1109; *see also Flushing AV Laundromat, Inc.*, 229 AD3d at 518; CPLR 2001).

Proper Defendants

The Marc Scott Defendants seek dismissal of the action as against Willoughby Management and Edith Court on the grounds that they are not owners of the property at issue and did not play a role in the project. Notably, in this respect, Scott Fishman, a vice president of both Marc Scott Realty and Willoughby Management and an owner of Edith Court, testified at his deposition that Edith Court did not own, and had no ownership or management connection with the property at issue. With regard to Willoughby Management, Fishman asserted that, when doing business for Marc Scott Realty, he did so on behalf of Marc Scott Realty, not through Willoughby Management, and that Willoughby Management had no involvement with the property at issue. Through this evidence, the Marc Scott Defendants have demonstrated that Willoughby Management and Edith Court are not owners, contractors or agents thereof within the meaning of the Labor Law (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318 [1981]; *St. John v State of New York*, 124 AD3d 1399, 1399-1400 [4th Dept 2015]), that they do not owe plaintiff a duty of care under the common-law (*St. John*, 124 AD3d at 1400), and that there is no basis for any claim against them for contribution or indemnification (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377-378 [2011]; *Debennedetto v Chetrit*, 190 AD3d 933, 938

[2d Dept 2021]). As plaintiff and the other parties to this action did not oppose this aspect of the Marc Scott Defendants' motion, the Marc Scott Defendants are entitled to dismissal of the complaint and all cross-claims as against Willoughby Management and Edith Court.[4]

Labor Law § 240 (1)

Labor Law § 240 (1) imposes absolute liability on owners and contractors or their agents when they fail to protect workers employed on a construction site from injuries proximately caused by risks associated with falling from a height or those associated with falling objects (*see Wilinski v 334 East 92nd Housing Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). With respect to falls from ladders, the Appellate Division, Second Department has emphasized that "[t]he mere fact that a plaintiff fell from a ladder does not, in and of itself, establish that proper protection was not provided" (*Karanikolas v Elias Taverna, LLC*, 120 AD3d 552, 555 [2d Dept 2014] [internal quotation marks omitted]; *see Cutaia v Board of Mgrs. of the 160/170 Varick St. Condominium*, 38 NY3d 1037, 1038-1039 [2021]; *Orellana v 7 W. 34th St., LLC*, 173 AD3d 886, 888 [2d Dept 2019]). In order to find the absence of proper protection, "[t]here must be evidence that the ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor in causing the plaintiff's injuries"

[4] Although, in support of his own motion, plaintiff argued that Willoughby Management could be held liable as an agent of the owner by acting as a managing agent or property manager (*see Merino v Continental Towers Condominium*, 159 AD3d 471, 472 [1st Dept 2018]; *Ragubir v Gibralter Mgt. Co., Inc.*, 146 AD3d 563, 564-565 [1st Dept 2017]; *Corona v Metropolitan 298-308 Assoc.*, 281 AD2d 447, 447-448 [2d Dept 2001]; *see also Guaman-Sanango v 57 E. 72nd Corp.*, 227 AD3d 677, 680 [2d Dept 2024]), plaintiff has pointed to no evidentiary proof showing that Willoughby Management played such a role with respect to the subject premises.

(*Karanikolas*, 120 AD3d at 555 [internal quotation marks omitted]; *Hugo v Sarantakos*, 108 AD3d 744, 745 [2d Dept 2013]).

Here, plaintiff's deposition testimony that he fell to the ground after the ladder moved shows that the ladder was inadequately secured and is sufficient to establish plaintiff's prima facie entitlement to summary judgment on his Labor Law § 240 (1) cause of action (*see Paiba v 56-11 94th St. Co., LLC*, 228 AD3d 881, 882 [2d Dept 2024]; *Garcia v Emerick Gross Real Estate, L.P.*, 196 AD3d 676, 677-678 [2d Dept 2021]; *Hoxhaj v West 30th HL LLC*, 195 AD3d 503, 503 [1st Dept 2021]; *Salinas v 64 Jefferson Apts., LLC*, 170 AD3d 1216, 1222 [2d Dept 2019]; *Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 759-760 [2d Dept 2018]; *Goodwin v Dix Hills Jewish Ctr.*, 144 AD3d 744, 745-747 [2d Dept 2016]).[5] Given plaintiff's deposition testimony regarding the movement of the unsecured ladder, plaintiff was not required to show that the ladder was defective in order to make out his prima facie burden (*see Rodriguez v Milton Boron, LLC*, 199 AD3d 537, 538 [1st Dept 2021]; *Von Hegel v Brixmor Sunshine Sq., LLC*, 180 AD3d 727, 730 [2d Dept 2020]; *Mingo v Lebedowicz*, 57 AD3d 491, 493 [2d Dept 2008]; *Whalen v ExxonMobile Oil Corp.*, 50 AD3d 1553, 1554 [4th Dept 2008], *lv denied* 53 AD3d 1124

[5] Although there are some Appellate Division, Second Department cases suggesting that a plaintiff must show more than a ladder moved or shook in order to make out a prima facie showing of a Labor Law § 240 (1) violation (*see Joseph v 210 W. 18th, LLC*, 189 AD3d 1384, 1385 [2d Dept 2020]; *Yao Zong Wu v Zhen Jia Yang*, 161 AD3d 813, 814-815 [2d Dept 2018]), these cases appear to run contrary to the general trend of Second Department cases which hold that the shaking of a ladder or similar such movement is sufficient for a prima facie showing (*see e.g. Rivas v Purvis Holdings, LLC*, 222 AD3d 676, 677 [2d Dept 2023]; *Vicuna v Vista Woods, LLC*, 168 AD3d 1124, 1125 [2d Dept 2019]; *Poalacin v Mall Props., Inc.*, 155 AD3d 900, 904 [2d Dept 2017]; *Alvarez v Vingsan L.P.*, 150 AD3d 1177, 1179 [2d Dept 2017]; *Goodwin*, 144 AD3d at 745, 747; *LaGiudice v Sleepy's Inc.*, 67 AD3d 969, 971 [2d Dept 2009]; *Ricciardi v Bernard Janowitz Constr. Corp.*, 49 AD3d 624, 625 [2d Dept 2008]). Moreover, plaintiff testified that after the ladder moved and caused him to fall, it ended up falling to the ground with him (*see Cabrera*, 163 AD3d at 759-760).

[4th Dept 2008]). Plaintiff also had no obligation to explain why the ladder moved (*see Hoxhaj*, 195 AD3d at 504; *Salinas*, 170 AD3d at 1222 [ladder moved for no apparent reason]; *Cabrera*, 163 AD3d at 759-760 [ladder moved for no apparent reason]).

Contrary to arguments made in opposition to plaintiff's motion, there are no evidentiary facts suggesting that plaintiff simply lost his balance and fell and caused the ladder to fall as he was already falling to the ground (*see Woods v Design Ctr., LLC*, 42 AD3d 876, 877 [4th Dept 2007]; *cf. Durkin v Long Is. Power Auth.*, 37 AD3d 400, 401 [2d Dept 2007]; *Costello v Hapco Realty*, 305 AD2d 445, 446-447 [2d Dept 2003]). This court also rejects One 70 Group's assertion that plaintiff's own actions in allowing his legs to become entangled with the grinder's electrical cord were the sole proximate cause of the accident. Simply put, in the absence of evidence that plaintiff was ever instructed or directed on how to avoid such an entanglement and had the equipment or means of doing so, plaintiff's operation of the grinder in such a manner, while perhaps constituting comparative fault, does not constitute the sole proximate cause of the accident (*see Begnoja v Hudson Riv. Park Trust*, --- AD3d ---, 2025 NY Slip Op 02847, *1 [1st Dept 2025]; *Calloway v American Park Place, Inc.*, 221 AD3d 1473, 1474 [4th Dept 2023]; *Salinas*, 170 AD3d at 1218; *Nieto v CLDN NY LLC*, 170 AD3d 431, 432 [1st Dept 2019]; *Goodwin*, 144 AD3d at 747; *Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616, 618-619 [2d Dept 2008]).

The fact that a plaintiff may have been the sole witness to his accident does not preclude an award of summary judgment in plaintiff's favor in the absence of a triable issue of fact regarding plaintiff's credibility (*see e.g. Klein v City of New York*, 89 NY2d 833,

834-835 [1996]; *Medina v 1277 Holdings, LLC*, 234 AD3d 839, 842 [2d Dept 2025]; *Cardenas v 111-127 Cabrini Apts. Corp.*, 145 AD3d 955, 957 [2d Dept 2016]). One 70 Group, in opposition to the motion, posits that the difference between plaintiff's 50-h hearing testimony and his deposition testimony regarding the impact of the cord on the accident is a material inconsistency -- requiring denial of the motion. However, since, under both versions of plaintiff's testimony, it was the movement of the ladder that ultimately caused plaintiff to fall, the inconsistency does not present a bona fide issue regarding the plaintiff's credibility as to a material fact requiring denial of the motion (*see Hartrum v Montefiore Hosp. Housing Sect. II Inc.*, --- AD3d ---, 2025 NY Slip Op 02008, *2 [1st Dept 2025]; *Romanczuk v Metropolitan Ins. & Annuity Co.*, 72 AD3d 592, 592 [1st Dept 2010]; *Hanna v Gellman*, 29 AD3d 953, 954 [2d Dept 2006]; *see also Klein*, 89 NY2d at 835; *Cardenas*, 145 AD3d at 957; *Melchor v Singh*, 90 AD3d 866, 869 [2d Dept 2011]).

Accordingly, defendants have failed to demonstrate a factual issue as with whether Labor Law § 240 (1) was violated. Plaintiff is thus entitled to summary judgment in his favor on his section 240 (1) cause of action as against Marc Scott Realty, Bronx Center, and CFSC since there is no dispute that they are entities that may be held liable under section 240 (1). Namely, Marc Scott Realty may be held liable as the fee owner of the property (*see Gordan v Eastern Ry. Supply*, 82 NY2d 555, 559-560 [1993]), the Bronx Center may be held liable as an owner since it leased the property and contracted for the work at issue to be performed (*see Rizo v 165 Eileen Way, LLC*, 169 AD3d 943, 946 [2d Dept 2019]; *see also Ferluckaj v Goldman Sachs & Co.*, 12 NY3d 316, 319-320 [2009]), and CFSC may be held liable as the general contractor for the project (*see McCarthy v*

Turner Constr., Inc., 17 NY3d 369, 374 [2011]; *Pipia v Turner Constr. Co.*, 114 AD3d 424, 427 [1st Dept 2014], *lv dismissed* 24 NY3d 1216 [2015]; *Guclu v 900 Eighth Ave. Condominium, LLC*, 81 AD3d 592, 593 [2d Dept 2011]).

On the other hand, plaintiff has failed to demonstrate his prima facie entitlement to summary judgment as against One 70 Group. As noted above, it is CFSC that is identified as the contractor in the contract with the Bronx Center and in the subcontracts with K&L Services and County Electrical. Although One 70 Group's deposition witness testified that he was employed by the company, he lacked knowledge of its corporate structure or the precise nature of its relationship with CFSC. In sum, plaintiff has failed to present facts demonstrating, as a matter of law, that One 70 Group acted as the general contractor or that it is even a jural entity amenable to suit (*see Honeyman v Curiosity Works, Inc.*, 120 AD3d 1302, 1303 [2d Dept 2014]).

For the reasons discussed herein, One 70 Group's cross-motion seeking dismissal of plaintiff's Labor Law § 240 (1) cause of action must be denied.

Common-Law Negligence and Labor Law § 200

With respect to the portion of the Marc Scott Defendant's motion seeking dismissal of plaintiff's common-law negligence and Labor Law § 200 causes of action as against Marc Scott Realty, the Marc Scott Defendants have demonstrated Marc Scott Realty's prima facie entitlement to summary judgment dismissing those causes of action through evidence showing the accident arose out of plaintiff's means and methods of performing the work (*see Przyborowski v A&M Cook, LLC*, 120 AD3d 651, 652-653 [2d Dept 2014]; *see also Breslin v Macy's, Inc.*, 211 AD3d 569, 569-570 [1st Dept 2022]) and showing that

Marc Scott Realty did not exercise more than general supervisory control over the work (*see Pisculli v Tew*, --- AD3d ---, 2025 NY Slip Op 02947, *2 [2d Dept 2025]; *Wilson v Bergon Constr. Corp.*, 219 AD3d 1380, 1383 [2d Dept 2023]). Inasmuch as plaintiff failed to oppose this branch of the Marc Scott Defendants' motion, Marc Scott Realty is entitled to summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action as against it.

Contribution, Indemnification and Insurance Issues

County Electrical's Motion

Turning to County Electrical's motion, the indemnification provision of its contract with CFSC, as is relevant here, provides that, "the Subcontractor shall defend and shall indemnify, and hold harmless, at Subcontractor's sole expense, the Contractor, all entities the Contractor is required indemnify and hold harmless, the owner of the property . . . from and against all liability . . . for bodily injury . . . arising out of or resulting from the work covered by the contract to the extent such work was performed by or contracted through the Subcontractor or by anyone for whose acts the Subcontractor may be held liable, excluding only liability created by the sole and exclusive negligence of the indemnified parties" (CFSC/County Electrical contract rider § 1, NYSCEF Doc No. 337).

County Electrical asserts that One 70 Group is not entitled to contractual indemnification from it because the accident did not arise out of the work County Electrical was contracted to perform. In support of this assertion, County Electrical points to the terms of the contract showing that County Electrical was to perform electrical work, such as the installation of wiring, electrical panels and light fixtures. County Electrical also points to

the deposition testimony of its owner and president, Mayer Weber, who likewise stated that County Electrical performed electrical work and further stated that its attendance records showed that it had no supervisors or employees at the jobsite on the date of the accident, July 6, 2020, and that none of its supervisors or employees who worked at the jobsite in July 2020 were named Walter or Sam. This evidence, when considered in conjunction with the fact that plaintiff was not employed by County Electrical or one of its subcontractor's and plaintiff's testimony that he was removing iron bars from a basement wall at the direction of persons who were, as shown by Weber's testimony, not employed by County Electrical, is sufficient to demonstrate that the accident did not arise from County Electrical's work or work contracted on its behalf (*see DiBrino v Rockefeffer Ctr. N., Inc.*, 230 AD3d 127, 136-137 [1st Dept 2024]).

Contrary to One 70 Group's assertion, the hearsay statements in the accident report suggesting that the plaintiff's work was in preparation for County Electrical's later installation of an electrical panel do not create an issue of fact. The mere fact that County Electrical would later perform work at that location in no way demonstrates that plaintiff's work arose from the work County Electrical was hired or contracted to perform. Likewise, the fact that the ladder plaintiff was using at the time of the accident may have belonged to County Electrical does not demonstrate an issue of fact in this respect because, assuming that the ladder belonged to County Electrical, plaintiff testified that the ladder was not defective, and that no defect in the ladder caused his fall. As such, the ladder merely constituted the situs of the accident (*see DiBrino*, 230 AD3d at 136-137; *see also Worth Constr. Co., Inc. v Admiral Ins. Co.*, 10 NY3d 411, 416 [2008]; *Pereira v Hunt/Bovis Lend*

Lease Alliance II, 193 AD3d 1085, 1090-1091 [2d Dept 2021]; *Stout v 1 E. 66th Corp.*, 90 AD3d 898, 903 [2d Dept 2011]; *Brown v Two Exch. Plaza Partners*, 146 AD2d 129, 135-136 [1st Dept 1989], *affd* 76 NY2d 172 [1990]; *cf. Urbina v 26 Ct. St. Assoc., LLC*, 46 AD3d 268, 271-274 [1st Dept 2007]). As One 70 Group has failed to demonstrate an issue of fact in this respect, County Electrical is entitled to dismissal of its contractual indemnification claim.

Since the insurance procurement provision of the CFSC/County Electrical Contract only applies to claims arising out of County Electrical's work, it has likewise demonstrated its entitlement to dismissal of the breach of insurance procurement requirements (*see Nicholson v Sabey Data Ctr. Props., LLC*, 205 AD3d 620, 622 [1st Dept 2022]; *New York City Hous. Auth. v Merchants Mut. Ins. Co.*, 44 AD3d 540, 542 [1st Dept 2007]; *Belcastro v Hewlett-Woodmere Union Free School Dist. No. 14*, 286 AD2d 744, 746-747 [2d Dept 2001]). Moreover, County Electrical has provided a copy of the insurance policy containing a blanket additional insured endorsement that shows, at least facially, that the policy complies with the additional insured requirements of the CFSC/County Electrical contract (*see Langer v MTA Capital Constr. Co.*, 184 AD3d 401, 402-403 [1st Dept 2020]; *Perez v Morse Diesel Intl., Intl., Inc.*, 10 AD3d 497, 498 [1st Dept 2004]; *see also Kassis v Ohio Cas. Ins. Co.*, 12 NY3d 595, 599-600 [2009]).

County Electrical is also entitled to dismissal of K&L Service's cross-claims for contractual indemnification and breach of contract for failing to obtain insurance as it has demonstrated that K&L Service has no contract with County Electrical and is not a third-party beneficiary of CFSC's contract with County Electrical. K&L Services, in opposition,

has not demonstrated an issue of fact in this regard as it has stated its intention to withdraw these contractual claims.

The record, as discussed above, demonstrates, prima facie, that County Electrical is entitled to dismissal of all the common-law indemnification and contribution claims against it because it has shown that it was not in contractual privity with plaintiff's employer, had no authority to supervise or control plaintiff's work or a duty to provide him with any equipment (*see DiBrino*, 230 AD3d at 136-137; *Vargas v New York City Tr. Auth.*, 60 AD3d 438, 441 [1st Dept 2009]). Additionally, County Electrical has also shown that the ladder, assuming that it belonged to County Electrical, was not defective and was not a proximate cause of the accident (*see e.g. Mammone v T.G. Nickel & Assoc., LLC*, 144 AD3d 761, 762 [2d Dept 2016]; *cf. Hamm v Review Assoc., LLC*, 202 AD3d 934, 939-940 [2d Dept 2022]). As the opposition papers do not point to any evidentiary proof suggesting that County Electrical supervised or controlled the work or was negligent, County Electrical is entitled to dismissal of the contribution and common-law indemnification claims against it (*see Quiroz v New York Presbyt./Columbia Univ. Med. Ctr.*, 202 AD3d 555, 557 [1st Dept 2022]; *Debennedetto v Chetrit*, 190 AD3d 933, 938 [2d Dept 2021]; *Gonsalves v 35 W. 54 Realty Corp. Corp.*, 147 AD3d 815, 817 [2d Dept 2017]; *see also McCarthy*, 17 NY3d at 377-378).[6]

K&L Services' Motion

[6] Although the Marc Scott Defendants' oppose County Electrical's motion, the court notes that they did not plead cross-claims or commence a third-party action as against County Electrical.

Turning to K&L Services' motion, it initially asserts that One 70 Group and the Marc Scott Defendants' contractual indemnification and breach of contract to procure insurance claims must be dismissed because plaintiff's accident did not arise from the work covered under K&L Services' contract with CFSC (CFSC/K&L Contract).[7] The work specifically identified in the contract relates to plumbing and sprinkler work. Frank Backus, One 70 Group's project manager, testified at his deposition that he believed that this work was performed by an entity known as Frankie Plumbing & Heating, whose work estimate was appended as an exhibit to the CFSC/K&L Contract. Backus, however, could not state with certainty that plaintiff's work was unrelated to the plumbing/sprinkler work. In contrast, K&L Services' own deposition witness, Ben Diamond, who, in addition to being a chief strategy officer of One 70 Group, was a chief strategy officer for K&L Servicers, testified that he negotiated and signed the CFSC/K&L Contract for K&L Services, and testified that One 70 Group hired K&L Services to provide labor for general construction work at the project. To the extent that the provision of general laborers for One 70 Group is inconsistent with the scope of work specified in the CFSC/K&L Contract, Diamond's testimony, in conjunction with K&L Service's actual provision of laborers through K&L Services subcontract with Naranjal, presents an issue of fact as to whether the provision of labor services constituted a fully performed oral modification of the scope of work provisions of the CFSC/K&L Contract (*see Burhmaster v CRM Rental Mgt., Inc.*, 166 AD3d 1130, 1134-1135 [3d Dept 2018]; *see also Torres v Accumanage, LLC*, 210 AD3d

[7] The indemnification provision at issue is contained in the rider to the contract between CFSC and K&L Services (CFSC/K&L Contract Rider, NYSCEF Doc No. 267) and its language is identical to that of the CFSC/County Electrical contract rider quoted above.

718, 720 [2d Dept 2022]; *Saeteros v Seven Up Realty, LLC*, 187 AD3d 559, 559-560 [1st Dept 2020]; *T & N W. Galla Pizzeria v CF White Plans Assoc.*, 185 AD2d 270, 271-272 [2d Dept 1992]; *cf. Lombardo v Tag Ct. Sq., LLC*, 126 AD3d 949, 950 [2d Dept 2015]). K&L Services has thus failed to demonstrate, prima facie, that plaintiff's accident did not arise from work covered under the contract.

K&L Services also contends that the One 70 Group cannot obtain indemnification because One 70 Group cannot establish its freedom from negligence. Although plaintiff's deposition testimony regarding the supervision of his work by Sam and Walter may be enough to demonstrate factual issues as to whether his work was supervised by One 70 Group supervisors, and thus present factual issues regarding One 70 Group's negligence, this testimony fails to demonstrate such supervision as a matter of law. K&L Services has thus failed to demonstrate its prima facie entitlement to dismissal of the Marc Scott Defendants and One 70 Group contractual indemnification and insurance procurement claims.

On the other hand, through Diamond's deposition testimony that K&L Services had no employees at the job site and that K&L Services only involvement with respect to the project was the hiring of Naranjal to provide labor for One 70 Group, K&L Services has demonstrated, prima facie, that it was not negligent and did not supervise or control the injury-producing work (*see Quiroz*, 202 AD3d at 557; *Debennedetto*, 190 AD3d at 938; *Gonsalves*, 147 AD3d at 817; *see also McCarthy*, 17 NY3d at 377-378). Contrary to One 70 Group's assertions, Diamond's testimony shows that he had sufficient knowledge of K&L Services operations to provide a basis of knowledge for his testimony. That K&L

Services' contract with One 70 Group may have required it to supervise plaintiff's work does not, in and of itself, make out the actual supervision or control that is required to make out a contribution or common-law indemnification claim (*McCarthy*, 17 NY3d at 377-378; *Quiroz*, 202 AD3d at 557; *Debennedetto*, 190 AD3d at 938; *Gonsalves*, 147 AD3d at 817). As the Marc Scott Defendants and the One 70 Group have failed to demonstrate an issue of fact in this respect, K&L Services is entitled to dismissal of the contribution and common-law indemnification claims against it.

Marc Scott Defendant's Motion

The Marc Scott Defendants have demonstrated Marc Scott Realty's prima facie entitlement to summary judgment on its contractual indemnification claim as against the Bronx Center based on the indemnification provision of its lease rider (*see Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 496-497 [1st Dept 2018]; *see also Bilska v Truszkowski*, 171 AD3d 685, 687 [2d Dept 2019]). The Bronx Center does not address this aspect of the Marc Scott Defendants' motion in its opposition papers, and as such, has failed to demonstrate an issue of fact. Marc Scott Realty is thus entitled to summary judgment in its favor on its contractual indemnification claim as against Bronx Center.

The Marc Scott Defendants have also demonstrated their prima facie entitlement to summary judgment in Marc Scott Realty's favor with respect to Marc Scott Realty's contractual indemnification claim as against CFSC. CFSC correctly asserts that Marc Scott Realty is not an owner within the meaning of the Bronx Center/CFSC contract, which contract specifically identifies the owner as the Bronx Center (*see Bowden*, 2025 NY Slip Op 03155, *2). However, in addition to the owner, the indemnification provision of the

Bronx Center/CFSC Contract Rider requires CFSC to indemnify "all entities the Owner is required to indemnify and hold harmless." Given this language, and given that, pursuant to its lease with Marc Scott Realty, the Bronx Center is required to indemnify Marc Scott Realty, CFSC is likewise required to indemnify Marc Scott Realty under the terms of the rider (*see Cunningham v Alexander's King Plaza, LLC*, 22 AD3d 703, 707 [2d Dept 2005]). Contrary to One 70 Group's assertion, the issue of fact as to whether plaintiff's work falls within the specific scope of K&L Service's contract with CFSC does not create an issue of fact with respect to CFSC's contract with the Bronx Center. In this regard, plaintiff's work was undoubtedly performed within the broad scope of CFSC's work as general contractor for the project involving the "[c]omplete gut renovation and conversion of existing first floor and cellar to new 24-station chronic renal dialysis extension clinic" (CFSC/Bronx Clinic Contract at § 3.3.2, NYSCEF Doc No. 304).

Since the Marc Scott Defendants have demonstrated that Marc Scott Realty was not negligent, since Marc Scott Realty is an entity entitled to indemnification under the contract, and since plaintiff's work arose out of its contract with the Bronx Center, Marc Scott Realty is entitled to summary judgment in its favor on its contractual indemnification claim as against CFSC. On the other hand, the motion is denied with respect to One 70 Group because the CFSC/Bronx Center Contract only specifically imposes the duty to indemnify on CFSC, and because, as noted above with respect to plaintiff's motion, it is not clear that One 70 Group LLC is a jural entity.

With respect to K&L Services, the CFSC/K&L Contract Rider indemnification provision contains the requirement that K&L Services indemnify all entities that CFSC is

required to indemnify. Accordingly, because Marc Scott Realty is one of those entities, Marc Scott Realty is an entity K&L Services is required to indemnify (*see Cunningham*, 22 AD3d at 707). However, the factual issues discussed above as to whether the work plaintiff was performing at the time of the accident arose out of the CFSC/K&L Contract require denial of the portion of the Marc Scott Defendants' motion for contractual indemnification against K&L Services (*see Burhmaster*, 166 AD3d at 1134-1135; *see also Torres*, 210 AD3d at 720; *cf. Lombardo*, 126 AD3d at 950).

The portion of the Marc Scott Defendant's motion seeking contractual and common-law indemnification from County Electrical is denied because the Marc Scott Defendants have not pleaded cross-claims or third-party claims for such relief, and, even if they had, the motion would be denied for the reasons discussed above in dismissing the action as against County Electrical. Likewise, the evidence requiring dismissal of the contribution and common-law indemnification causes of action as against K&L Services requires denial of the portion of the Marc Scott Defendants' motion seeking summary judgment on their common-law indemnification claim against K&L Services. The portion of the Marc Scott Defendants' motion seeking common-law indemnification from the Bronx Center is denied because the accident resulted from the means and methods of plaintiff's work and the Marc Scott Defendants' have failed to demonstrate that the Bronx Center supervised or controlled such work. Finally, while, contrary to One 70 Group's contentions, there is some circumstantial evidence suggesting that One 70 Group actually supervised or controlled plaintiff's work, the portion of the Marc Scott Defendants' motion seeking summary judgment on its common-law indemnification claim as against One 70 Group must be

denied because the record fails to show such actual supervision or control as a matter of law.

This constitutes the decision, order and judgment of the court.

ENTER

J.S.C.

HON. PETER P. SWEENEY, J.S.C.