

McKenzie v RXR 9-47 Hall St. Owner, LLC

2025 NY Slip Op 33361(U)

September 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 503879/2021

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2nd day of September 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

KERN McKENZIE,

Plaintiff,

-against-

RXR 9-47 HALL STREET OWNER, LLC, RXR REALTY, LLC, RXR CONSTRUCTION SERVICES LLC and RXR CONSTRUCTION & DEVELOPMENT, LLC,

Defendants.

RXR 9-47 HALL STREET OWNER, LLC, RXR REALTY, LLC, RXR CONSTRUCTION SERVICES LLC and RXR CONSTRUCTION & DEVELOPMENT, LLC,

Third-Party Plaintiffs,

-against -

FAHRENHEIT MECHANICAL LLC,

Third-Party Defendant.

DECISION & ORDER

Index No.: 503879/2021

Calendar No.: 26 & 27

Motion Seq.: 002 & 003

Return Date: 07/17/2025

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
002 Notice of Motion and Supporting Documents (NYSCEF 48-65).....	1, 2
Affirmation in Opposition and Supporting Documents (NYSCEF 98-101)	3
Reply Affirmation and Supporting Documents (NYSCEF 102-103).....	4
003 Notice of Motion and Supporting Documents (NYSCEF 66-84).....	5, 6
Affirmation in Opposition and Supporting Documents (NYSCEF 85-86)	7
Affirmation in Opposition and Supporting Documents (NYSCEF 95-96)	8
Reply Affirmation (NYSCEF 108)	9

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff commenced this action to recover damages for personal injuries sustained while in the course of his employment with third-party defendant as a pipe fitter. The injuries occurred when plaintiff was using a Ridgid Model 918 Roll Groover that was missing a guard.

Immediately before plaintiff's accident, the roll groover was turned off. While plaintiff was threading pipe, his co-worker unexpectedly turned on the machine. This caused plaintiff's glove to become caught on the exposed gears and sucked into the machine, partially amputating his right index finger. Plaintiff underwent multiple surgeries, including what has been described as a "revision amputation of the right index finger."

"Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. A violation of an explicit and concrete provision of the Industrial Code by a participant in a construction project constitutes some evidence of negligence, for which the owner or general contractor may be held vicariously liable" (*Bravo v 609 W. 56th Street Property, LLC*, 234 AD3d 735 [2d Dept. 2025] [internal quotations and citations omitted]).

This section of the Labor Law is a "hybrid statute" because the first sentence reiterates the general common-law standard of care, while the second sentence imposes a nondelegable duty with respect to compliance with rules of the Commissioner [Industrial Code] which contain specific, positive command[s]" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 317 [2024], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 503-504, [1993]; see also *Toussaint v Port Auth. of N.Y. & NJ*, 38 NY3d 89, 93 [2022]). Thus, an owner or general contractor is vicariously liable without regard to fault and in the absence of control or supervision of the worksite once plaintiff establishes a violation of a specific and applicable Industrial Code

(*Bazdaric v Almah Partners LLC*, 41 NY3d 317, citing *Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 348–350; *Toussaint v Port Auth. of N.Y. & NJ*, 38 NY3d 94; and *Nostrom v A.W. Chesterton Co.*, 15 NY3d 502, 507 [2010]). Finally, “[t]he Industrial Code should be sensibly interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the workplace” (*Bazdaric v Almah Partners LLC*, 41 NY3d 317).

Defendants/Third-Party Plaintiffs’ Motion for Summary Judgment (MS 002)

Defendants/Third-Party Plaintiffs have moved for an order per CPLR § 3212 granting summary judgment (1) dismissing plaintiff’s Labor Law § 200 claim and (2) awarding them contractual indemnification against plaintiff’s employer/third-party defendant Fahrenheit Mechanical LLC (Fahrenheit). The motion is granted without opposition as to plaintiff’s Labor Law § 200 claim (*see* Plaintiff’s Affirmation ¶¶6-7).

However, the motion is denied as to their claim for contractual indemnification against third-party defendant Fahrenheit. Both third-party plaintiffs and third-party defendant argue that the missing safety guard was not the proximate cause of plaintiff’s injuries. Rather, plaintiff was solely responsible for putting his finger inside the roll groover. Therefore, the owner and general/construction contractor, RXR 9-47 HALL STREET OWNER, LLC and RXR CONSTRUCTION SERVICES, have not established as a matter of law that they are being held vicariously responsible for the negligence of another party (*Bazdaric v Almah Partners LLC*, 41 NY3d 317, citing *Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 348–350). As to the authorized representative of the owner, RXR REALTY LLC, and the construction manager, RXR CONSTRUCTION & DEVELOPMENT, LLC, the sub-contract with Fahrenheit is vague as to whether it was the intention of the parties to include them in the indemnification provisions.

Third-Party Defendant's Motion for Summary Judgment (MS 003)

Third-Party Defendant, Fahrenheit, has also moved for summary judgment dismissing plaintiff's Labor Law § 241 [6] claim and defendants/third-party plaintiffs' claims for contribution, common-law indemnification and breach of contract.

The motion is denied as to plaintiff's Labor Law § 241 [6] claim. It is a question of fact for the jury whether plaintiff was contributorily negligent or the sole proximate cause of his injuries.

As to third-party defendants' request to dismiss the third-party claims for contribution and common law indemnification as barred by Workers Compensation Law § 11, the motion is denied since there are questions of fact whether plaintiff sustained a total revision amputation, *i.e.*, a grave injury. However, the motion to dismiss third-party plaintiffs' breach of contract claims for failing to procure insurance is granted. Fahrenheit produced proof that it procured insurance per the terms of its contract with third-party plaintiffs.

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that Defendants/Third-Party Plaintiffs' motion for an order per CPLR § 3212 dismissing plaintiff's Labor Law § 200 cause of action is granted without opposition (MS 002), and it is further

ORDERED that Defendants/Third-Party Plaintiffs' motion for an order per CPLR § 3212 on its third-party claims against Third-Party Defendant is denied (MS 002), and it is further

ORDERED that Third-Party Defendant's motion for an order per CPLR § 3212 dismissing plaintiff's Labor Law § 241 [6] claim is denied (MS 003), and it is further

ORDERED that Third-Party Defendant’s motion for an order per CPLR § 3212 dismissing Defendants/Third-Party Plaintiffs’ claims for contribution and common-law indemnification as barred by Workers Compensation Law § 11 is denied (MS 003), and it is further

ORDERED that Third-Party Defendant’s motion for an order per CPLR § 3212 dismissing Defendants/Third-Party Plaintiffs’ breach of contract claim is granted (MS 003).

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.
Dated: 9/2/2025

<p>For Clerks use only:</p> <p>MG _____</p> <p>MD _____</p> <p>Motion seq. # _____</p>
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