

Orosco v 56th & Park (NY) Owner, LLC

2025 NY Slip Op 33437(U)

September 12, 2025

Supreme Court, New York County

Docket Number: Index No. 156890/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X	INDEX NO.	<u>156890/2021</u>
WELMAN OROSCO,		12/16/2024,
		12/16/2024,
Plaintiff,		12/16/2024,
		12/16/2024,
- v -	MOTION DATE	<u>12/17/2024</u>
56TH AND PARK (NY) OWNER, LLC, RENOV INC, WF		
PLUMBING & HEATING L, MCGRAW HUDSON		002 003 004
CONSTRUCTION CORPORATION, MUESER RUTLEDGE	MOTION SEQ. NO.	<u>005 006</u>
CONSULTING ENGINEERS PLLC,		

Defendants.

**DECISION + ORDER ON
MOTION**

56TH AND PARK (NY) OWNER, LLC

Plaintiff,

Third-Party
Index No. 595746/2022

-against-

CGI NORTHEAST INC, MCGRAW HUDSON
CONSTRUCTION CORPORATION and MUESER RUTLEDGE
CONSULTING ENGINEERS, PLLC

Defendants.

MUESER RUTLEDGE CONSULTING ENGINEERS, PLLC

Plaintiff,

Second Third-Party
Index No. 595150/2024

-against-

MACKLOWE INVESTMENT PROPERTIES, LLC, MACKLOWE
PROPERTIES, INC., and MACKLOWE PROPERTIES, LLC

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 292, 297, 302, 305, 310, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373,

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were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 291, 296, 301, 309, 313, 314, 315, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 485, 486, 487, 488, 531, 535, 540, 545, 546, 547, 548

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 287, 288, 290, 295, 300, 307, 308, 316, 317, 318, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 479, 480, 489, 534, 541, 549, 550, 551, 552

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 238, 239, 240, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 293, 298, 303, 312, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 484, 490, 491, 492, 493, 494, 495, 537, 542, 561

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 294, 299, 304, 306, 311, 481, 482, 483, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 533, 538, 543, 557, 558, 559, 560

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, motion sequences 002 through 006 are consolidated for disposition and decided as follows:

- A. Plaintiff Welman Orosco's ("Plaintiff") motion for summary judgment on the issue of liability on his Labor Law § 241(6) claim ("Mot. Seq. 002") is granted in part and denied in part.
- B. Defendant/Third-Party Defendant Mueser Rutledge Consulting Engineers, PLLC's ("Mueser Rutledge") motion for summary judgment dismissing Plaintiff's Amended

Complaint and dismissing all third-party claims and crossclaims asserted against it (“Mot. Seq. 003”) is granted.

- C. Defendant/Third-Party Defendant McGraw Hudson Construction Corporation (“McGraw Hudson”) and Second Third-Party Defendants Macklowe Investment Properties, LLC, Macklowe Properties, Inc., and Macklowe Properties, LLC (collectively “Macklowe”)’s motion for summary judgment dismissing Plaintiff’s Complaint and any cross-claims and third-party claims asserted against them, and summary judgment in favor of McGraw on its claim for contractual indemnification against Defendant/Third-Party Plaintiff 56th and Park (NY) Owner, LLC (“56th and Park”) (“Mot. Seq. 004”) is granted in part and denied in part.
- D. Third-Party Defendant CGI Northeast, Inc.’s (“CGI”) motion for summary judgment dismissing the Third-Party Complaint and any other claims asserted against it (“Mot. Seq. 005”) is granted in part and denied in part.
- E. 56th and Park’s motion for summary judgment dismissing Plaintiff’s Complaint and all crossclaims asserted against it, and seeking summary judgment against McGraw, CGI, and Mueser Rutledge on its claims for contractual and common law indemnification, and contribution (“Mot. Seq. 006”) is granted in part and denied in part.¹

I. Background

On June 3, 2021, CGI employed Plaintiff at 432 Park Avenue, New York, New York (the “Premises”), and instructed him to drill holes in the floor of a refrigerated cellar in the basement of the Premises to address a water leakage issue, when the Hilti hammer drill he was using hit an

¹ Motion Sequences 002 through 006 were marked fully submitted on June 16, 2025.

electrical conduit, caught fire, exploded, and electrocuted Plaintiff, throwing him backwards (NYSCEF Docs. 219; 222 at 30; 32; 65-66, and 223 at 43-44; 81).

At the time of Plaintiff's accident, 56th and Park was the sponsor of a condominium that was being constructed at the Premises (NYSCEF Doc. 223 at 27-28; 30). 56th and Park hired CGI to address leaks in the basement cellar where Plaintiff was injured (NYSCEF Doc. 223 at 39-40; 44). 56th and Park hired McGraw Hudson to serve as developmental manager and oversee the construction manager and general contractors at the Premises, and hired Mueser Rutledge to serve as the civil engineer on the project (NYSCEF Doc. 223 at 41-42; 63-64). According to 56th and Park's witness, CGI and McGraw Hudson should have coordinated with the Premises' building management, team First Service Residential, to ensure electricity was powered off to the room where Plaintiff was drilling (NYSCEF Doc. 223 at 52-43; 204).

Victor Mora, who testified on behalf of McGraw, stated that CGI, Mueser Rutledge, and McGraw attended an inspection of the location where Plaintiff was injured prior to Plaintiff's injury (NYSCEF Doc. 224 at 52). However, invoices and e-mail correspondence show that the last time Mueser Rutledge was involved with the Premises was at least six months prior to Plaintiff's accident. Mr. Mora testified he attended the inspection as a representative of McGraw and on behalf of 56th and Park, and he authorized CGI to perform the drilling work (NYSCEF Doc. 224 at 53; 164). He also testified that nobody requested the power be turned off so that CGI could perform the drilling work (NYSCEF Doc. 224 at 63). He further admitted he had as-built drawings that detailed the locations of electrical conduits beneath the floor, but he did not provide them to CGI prior to Plaintiff's accident (NYSCEF Doc. 224 at 89). CGI's witness, Leonidas Tsampas, testified CGI received instruction from Mr. Mora (NYSCEF Doc. 225 at 51-52). He testified he did not look at the as built plans until after the accident (NYSCEF Doc. 225 at 88-89). He also

testified CGI never provided training to employees to ensure they would not drill holes into areas with electrical conduits, and they relied on the building owner to inform them of the location of electrical conduits (NYSCEF Doc. 225 at 104-107; 188). Each party now moves for summary judgment. The motions are consolidated for disposition and decided as follows.

II. Discussion

A. Plaintiff's Motion (Mot. Seq. 002)

Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4) against 56th and Park, McGraw Hudson, and Mueser Rutledge is granted in part and denied in part. Labor Law § 241(6) imposes a non-delegable duty upon an owner and general contractor to “respond in damages” if a worker engaged in construction is injured due to inadequate safety and protection, even if the worker sustains an injury because of another party's negligence (*Rizzuto v L.A. Wenger Contracting Co.*, 91 NY2d 343, 350 [1998]). A general contractor is not absolved of liability for lack of notice or for lack of an opportunity to cure the dangerous condition (*Gallina v MTA Capital Construction Company*, 193 AD3d 414 [1st Dept 2021]). Other contractors may be held liable under Labor Law § 241(6) only if they “had the authority to supervise and control the work giving rise to the obligations imposed by these statutes, which would render it the general contractor's statutory agent” (*see Nascimento v Bridgehampton Const. Corp.*, 86 AD3d 189, 192-93 [1st Dept 2011]).

Here, there is no dispute that 56th and Park is a statutory owner while McGraw Hudson can be categorized as either the owner's agent or a general contractor. Although McGraw Hudson claims it served as a “development manager” which is distinct from a general contractor, this argument is engaging in semantics. The undisputed testimony of multiple witnesses established

that McGraw Hudson was responsible for overseeing the construction of the Premises and the various general contractors. It is further undisputed that Victor Mora, McGraw Hudson's employee, reviewed proposals from contractors on behalf of 56th and Park, ensured punch list items were completed, managed the day-to-day work at the Premises, instructed Plaintiff and his coworkers where to drill, and had the authority to shut off electrical power and to stop unsafe work at the Premises. This is more than sufficient to designate McGraw Hudson as a general contractor or, alternatively the agent of 56th and Park, the statutory owner under Labor Law § 241(6) (*Douglas v Tishman Constr. Corp.*, 205 AD3d 570, 571 [1st Dept 2022]; *see also Lind v Tishman Constr. Corp. of N.Y.*, 180 AD3d 505 [1st Dept 2020]).

However, Mueser Rutledge, which was the civil engineer, did not exercise the requisite supervision and control to be considered a proper Labor Law § 241(6) defendant. Specifically, Mueser Rutledge was asked to review water leakage in October of 2019 and June of 2020 and issued sketches for specific waterproofing repairs to a foundation wall in an area where there were no electrical conduits (NYSCEF Doc. 336 at 144-145). The work which gave rise to Plaintiff's injury took place from a new leak in a new location far from the foundation wall and was not noticed until May 2021. Mueser Rutledge was not contacted to provide any analysis or inspection as to this leak, which was handled exclusively between McGraw and CGI. The lack of involvement is reflected by the absence of any invoices from Mueser Rutledge during this time. Therefore, Plaintiff's motion is denied as to Mueser Rutledge, for it is not a proper Labor Law § 241(6) defendant (*see, e.g. Savlas v City of New York*, 167 AD3d 546, 547 [1st Dept 2018] citing *Hutchinson v City of New York*, 18 AD3d 370 [1st Dept 2005]).

56th and Park's argument that Plaintiff failed to establish he was engaged in work covered by Labor Law § 241(6) is without merit. Plaintiff was engaged in repair work, performing punch

list items, which required him to drill holes into the ground which would then be injected with waterproofing material. This constitutes construction and/or excavation within the meaning of Labor Law § 241(6) (*see e.g. Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878 [2003]; *Hernandez v Ten Ten Co.*, 31 AD3d 333, 333-34 [1st Dept 2006]). Indeed, the protection of the Labor Law has been afforded to workers engaged in waterproofing work (*Guzman v 170 West End Ave. Associates*, 115 AD3d 462, 463 [1st Dept 2014]).

Finally, the undisputed facts establish 56th and Park and McGraw Hudson's liability to Plaintiff for his injuries based on his Labor Law § 241(6) claim predicated on a violation of Industrial Code §§ 23-1.13(b)(3) and (4) (*see Rubino v 330 Madison Co., LLC*, 150 AD3d 603, 604 [1st Dept 2017]). Pursuant to § 23-1.13(b)(3), 56th and Park and McGraw Hudson were required to "ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool or machine into physical or electrical contact therewith." Moreover, § 23-1.13(b)(4) prohibited plaintiff from:

"work[ing] in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means. In work areas where the exact locations of underground electric power lines are unknown, persons using jack hammers...which may contact such power lines shall be provided with insulated protective gloves, body aprons and footwear."

The undisputed testimony establishes violations of both provisions. Nobody checked the plans to ascertain the location of electrical conduits prior to instructing Plaintiff to drill a hole in the floor, even though Mr. Mora had the plans readily accessible, and those plans clearly detailed the locations of electrical conduits. Nor was electrical power shut off in the area where Plaintiff was required to work. These undisputed facts establish Plaintiff's entitlement to summary

judgment on his Labor Law § 241(6) claim against 56th and Park and McGraw Hudson (*see also Britt v Levgar Equities Corp.*, 227 AD3d 437, 438 [1st Dept 2024] citing *Higgins v TST 375 Hudson, L.L.C.*, 179 AD3d 508, 510 [1st Dept 2020]).

B. Mueser Rutledge's Motion (Mot. Seq. 003)

Mueser Rutledge's motion dismissing Plaintiff's claims, all crossclaims, and all third-party claims asserted against it is granted. Plaintiff only opposes dismissal of Plaintiff's Labor Law §241(6) claims predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4) and Labor Law § 200, therefore the remainder of Plaintiff's claims against Mueser Rutledge are dismissed as abandoned. As to Plaintiff's remaining claims, as explained in Mot. Seq. 002, Mueser Rutledge did not exercise the requisite control and supervision over Plaintiff's work to be subjected to liability under Labor Law §241(6), therefore this claim is dismissed (*Hutchinson v City of New York*, 18 AD3d 370 [1st Dept 2005]). Mueser Rutledge was not involved or contacted whatsoever with respect to the waterproofing work that took place in June of 2021 (*see* NYSCEF Doc. 185 and 189), and Mueser Rutledge never authorized its prior schematics to be used for the June 2021 work. The last time it worked at the Premises was six months prior to Plaintiff's accident (*see* NYSCEF Doc. 175). For the same reason, there is no basis to hold Mueser Rutledge liable under Labor Law § 200, as it did not control the means and methods of Plaintiff's work, nor did it have any notice that Plaintiff would be drilling a hole in the floor on June 3, 2021 (*see generally Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). Because all direct claims against Mueser Rutledge have been dismissed and there is no evidence they were actively negligence, all crossclaims and third-party claims, which are contingent on some finding of negligence against Mueser Rutledge, are dismissed.

C. McGraw Hudson & Macklowe's Motion (Mot. Seq. 004)

McGraw Hudson & Macklowe's motion for summary judgment is granted in part and denied in part. Plaintiff only opposes dismissal of Plaintiff's Labor Law §241(6) claims predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4) and Labor Law § 200, therefore the remainder of Plaintiff's claims against McGraw Hudson are dismissed as abandoned.² However, as explained in Mot. Seq. 002, Plaintiff is entitled to summary judgment against McGraw Hudson on Plaintiff's Labor Law §241(6) claims predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4). Therefore, McGraw Hudson's motion for summary judgment dismissing these claims is denied.

McGraw Hudson is not entitled to dismissal of Plaintiff's Labor Law § 200 claim asserted against it. There remain questions of fact as to whether McGraw Hudson had actual or constructive notice of the electrical conduits beneath the floor where Plaintiff was drilling. Specifically, there is evidence that at all times prior to Plaintiff's accident, McGraw Hudson possessed as-built plans which detailed the locations of underground electrical conduits. Nonetheless, McGraw Hudson never consulted the as-built plans, nor did it ever shut the power off prior to Plaintiff beginning his work. The presence of active electrical conduits under the floor in the location where Plaintiff was to drill a hole in the ground constituted a dangerous condition for which McGraw Hudson may be held liable. Therefore, McGraw Hudson's motion for summary judgment dismissing Plaintiff's Labor Law § 200 claim is denied (*see also Maldonado v Hines 1045 Avenue of the Americas Investors LLC*, 227 AD3d 502, 503 [1st Dept 2024]; *see also Verel v Ferguson Elec. Const. Co., Inc.*, 41 AD3d 1154, 1155-56 [1st Dept 2007]).

² Plaintiff does not assert any claims against Macklowe.

McGraw Hudson's motion for summary judgment on its contractual indemnification claim against 56th and Park is denied based on evidence and issues of fact surrounding McGraw Hudson's active negligence in causing Plaintiff's injury. Moreover, the contract McGraw Hudson relies on is executed between non-party CIM/56th Street (NY), LLC, not 56th and Park. In fact, 56th and Park is mentioned nowhere in the contract. It is well established that indemnification provisions shall be strictly construed and should not be interpreted to create obligations that are not expressly and unambiguously stated (*Weidman v Tremont Renaissance Hous. Dev. Fund. Co., Inc.*, 224 AD3d 488, 491 [1st Dept 2024]; *Maggio v 24 West 57 APF, LLC*, 134 AD3d 621, 627-28 [1st Dept 2015]). The deposition testimony of Mr. Hayner, who was produced on behalf of 56th and Park, establishes that 56th and Park is related to CIM/56th Street (NY), LLC but never established that 56th and Park assumed CIM/56th Street (NY), LLC indemnification obligations pursuant to the contract executed between CIM/56th Street (NY), LLC and McGraw Hudson. These issues of fact also preclude McGraw Hudson's motion for summary judgment dismissing 56th and Park's contractual indemnification claim and breach of contract for failure to procure insurance claims asserted against McGraw Hudson. Likewise, because there is evidence of McGraw Hudson's negligence, there is no basis to grant McGraw Hudson summary judgment dismissing 56th and Park's negligence, contribution, and common law indemnification claims asserted against it.

Macklowe's motion for summary judgment dismissing the second third-party complaint asserted against it is granted. Mueser Rutledge submits no affirmative opposition to Macklowe's motion (*see* NYSCEF Doc. 489 at ¶ 5). Mueser Rutledge no longer has a contribution or common law indemnification crossclaim against McGraw Hudson as Plaintiff's claims against Mueser Rutledge have been dismissed, therefore these crossclaims are dismissed. Likewise, there exists no promise to procure insurance, nor is there any explicit promise by McGraw Hudson to

indemnify Mueser Rutledge which requires dismissal of the contractual indemnification and failure to procure insurance crossclaims.

McGraw Hudson's motion for summary judgment dismissing CGI's contractual indemnification and breach of contract for failure to procure insurance crossclaims is granted. CGI entered a contract with 56th and Park, not McGraw and Hudson (NYSCEF Doc. 280). Moreover, the indemnification and insurance clauses in those contracts do not run in CGI's favor but instead foist insurance and indemnification obligations on CGI (NYSCEF Doc. 280 at § 14[a]). Thus there is no basis for CGI's contractual indemnification and breach of contract crossclaims. Nor is CGI's crossclaim for common law indemnification viable in lieu of evidence that CGI was actively negligent in failing to properly scan the work area for electrical conduits (*see generally Attia v Slazer Enterprises*, 215 AD3d 413, 414 [1st Dept 2023]). However, given the questions of fact as to the apportionment of negligence between CGI and McGraw Hudson, dismissal of CGI's contribution crossclaim is unwarranted.

D. CGI's Motion (Mot. Seq. 005)

CGI's motion for summary judgment dismissing the third-party complaint and all crossclaims asserted against it is granted in part and denied in part. CGI's motion to dismiss Mueser Rutledge's crossclaims for common-law indemnification and contribution asserted against it is granted. There is no basis for these claims as Plaintiff's Complaint against Mueser Rutledge is dismissed, thus there is no legal vehicle through which Mueser Rutledge may be held liable and seek contribution and common law indemnification. The remainder of CGI's motion, which seeks dismissal of the third-party complaint asserted against it, is denied. There are numerous issues of fact regarding CGI's active negligence, including the fact that it failed to conduct a scan of the work area to ensure there were no electrical conduits present, its failure to ensure electrical power

was shut off prior to instructing Plaintiff to begin drilling, and its failure to ask for as-built plans prior to drilling a hole in the ground. Based on these facts, 56th and Park maintains viable contribution, common law indemnification, and contractual indemnification claims against CGI. Moreover, CGI failed to establish it procured the requisite insurance coverage to show entitlement to summary judgment dismissing 56th and Park's breach of contract for failure to procure insurance claim (*Ruisech v Structure Tone Inc.*, 208 AD3d 412, 417 [1st Dept 2022]; *Prevost v One City Block LLC*, 155 AD3d 531, 536 [1st Dept 2017]).

E. 56th and Park's Motion (Mot. Seq. 006)

56th and Park's motion for summary judgment is granted in part and denied in part. Plaintiff only opposes dismissal of Plaintiff's Labor Law §241(6) claims predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4) and his Labor Law § 200 claim, therefore the remainder of Plaintiff's claims against 56th and Park are dismissed as abandoned. As Plaintiff was granted summary judgment against 56th and Park on his Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4), 56th and Park's motion to dismiss those claims is denied.

56th and Park's motion for summary judgment dismissing Plaintiff's Labor Law § 200 claim is granted. 56th and Park did not control the means or methods of Plaintiff's work, and there is no evidence that it knew the electricity remained on while Plaintiff commenced his work. Nor is there evidence 56th and Park was present at the site at or around the time Plaintiff drilled a hole near the electrical conduit such that 56th and Park could be charged with notice (*DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 626 [1st Dept 2015]). The unrefuted evidence shows 56th and Park relied on CGI and McGraw Hudson to maintain competent supervisors at the Premises to ensure safety protocols were followed. 56th and Park's employees were rarely, if ever, on the

Premises during the water remediation projects. Therefore, the Labor Law § 200 claim asserted against 56th and Park is dismissed (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 at 133 [1st Dept 2012]).

56th and Park's motion for summary judgment on its indemnification and contribution claims against Mueser Rutledge is denied as those claims were dismissed in Mot. Seq. 003. 56th and Park's motion for summary judgment on its contractual indemnification claim against McGraw Hudson is denied as there are issues of fact as to whether McGraw Hudson promised to indemnify 56th and Park. 56th and Park is neither a signatory nor explicitly named in the indemnification agreement between McGraw Hudson and non-party CIM/56th Street (NY), LLC, and the record is muddled as to 56th and Park and CIM/56th Street (NY), LLC's relationship.

However, as there is no evidence 56th and Park was actively negligent but is held liable purely through vicarious means pursuant to Labor Law § 241(6), it is granted summary judgment on its common law indemnification claim against McGraw Hudson conditioned on an apportionment of negligence against McGraw Hudson at the time of trial (*see Mattioli v Zuckerman*, 292 AD2d 268, 268-69 [1st Dept 2002]). 56th and Park is likewise entitled to summary judgment on its contractual indemnification claim against CGI conditioned on a finding of negligence against CGI at the time of trial (*Agard v Port Auth. of N.Y. and N.J.*, 227 AD3d 404, 405 [1st Dept 2024]; *Travalja v 135 West 52nd Street Owner LLC*, 232 AD3d 503, 505 [1st Dept 2024]). In light of the Court conditionally granting 56th and Park summary judgment against CGI, 56th and Park's motion for summary judgment on its common law indemnification and contribution claims against CGI are academic.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion (Mot. Seq. 002) for summary judgment on his Labor Law § 241(6) claims predicated on violations of Industrial Code §§ 23-1.13(b)(3) and (4) is granted as to 56th and Park and McGraw Hudson, but denied as to Mueser Rutledge; and it is further

ORDERED that Mueser Rutledge's motion (Mot. Seq. 003) for summary judgment dismissing Plaintiff's Amended Complaint, all crossclaims and third-party claims asserted against it is granted; and it is further

ORDERED that McGraw Hudson and Macklowe's motion for summary judgment (Mot. Seq. 004) is granted to the extent that CGI's crossclaims for contractual indemnification, common law indemnification, and breach of contract for failure to procure insurance crossclaims against McGraw Hudson are dismissed, Mueser Rutledge's crossclaims against McGraw Hudson are dismissed, Mueser Rutledge's Second Third-Party Complaint against Macklowe is dismissed, and Plaintiff's Labor Law § 240(1) and § 241(6) claims (except for the § 241[6] claims predicated on violations of Industrial Code §§ 23-1.13[b][3] and [4]) are dismissed, and the remainder of the motion is denied; and it is further

ORDERED that CGI's motion for summary judgment for summary judgment (Mot. Seq. 005) is granted to the extent that Mueser Rutledge's crossclaims for common-law indemnification and contribution asserted against CGI are dismissed, and the remainder of CGI's motion is denied; and it is further

ORDERED that 56th and Park's motion for summary judgment (Mot. Seq. 006) is granted to the extent that Plaintiff's Labor Law §§ 240(1), 241(6) (except for the § 241[6] claims predicated on violations of Industrial Code §§ 23-1.13[b][3] and [4]) and 200 claims are dismissed, and 56th and Park is entitled to common law indemnification from McGraw Hudson conditioned on an

apportionment of negligence against McGraw Hudson at the time of trial, and contractual indemnification from CGI conditioned on an apportionment of negligence against CGI at the time of trial, and the remainder of 56th and Park’s motion for summary judgment for summary judgment is denied; and it is further

ORDERED that any further relief not expressly addressed herein is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/12/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE