

Kear v Metlife, Inc.

2025 NY Slip Op 33731(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 152781/2018

Judge: Kathleen Waterman-Marshall

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

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

MICHAEL KEAR, DONNA KEAR,
Plaintiff,

- v -

METLIFE, INC., 200 PARK, L.P., STRUCTURE TONE, LLC,
Defendant.

-----X

METLIFE, INC., 200 PARK, L.P., STRUCTURE TONE, LLC
Plaintiff,

-against-

NEAD ELECTRIC, INC.

Defendant.

-----X

INDEX NO. 152781/2018
MOTION DATE 10/21/2024,
10/22/2024
MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595998/2020

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 101, 103, 122, 128, 133

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 126, 127, 129, 130, 132, 134

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

This matter was administratively transferred to Part 31 after these motions were fully submitted. On July 8, 2025, this Court held oral argument on the motions and directed the parties to order the transcript, which they provided to the Court on September 22, 2025.

Upon the foregoing documents and following on-the-record oral argument, the motion by plaintiff Michael Kear (“Mr. Kear”) for partial summary judgment on his Labor Law § 241(6) claim (motion seq. 003) is denied.

Upon the same record, the motion by defendants/third-party plaintiffs Metlife, Inc. (“Metlife”), 200 Park, L.P. (“200 Park”), and Structure Tone, LLC (“Structure Tone”) (collectively, “the GC Defendants”) for summary judgment dismissing the complaint in its entirety and for contractual indemnification against third-party defendant Nead Electric, Inc. (“Nead”) (motion seq.

004) is granted in part. The cross-motion of third-party defendant Nead dismissing the third-party complaint is granted in part

Background

200 Park owns, and Metlife is the tenant of several floors in, the building located at 200 Park Avenue in Manhattan (“the Building”). Metlife hired Structure Tone to be the construction manager for renovations to its premises. Structure Tone hired Nead as a subcontractor to perform temporary light and power work at the project. Nead employed Mr. Kear on the project as a “locker pup,” his duties included transferring materials and equipment from loading and storage areas to the sites where trade workers were performing construction work.

As part of the ongoing construction work, Masonite boards had been placed on certain portions of the third floor to protect the finished floor. On December 16, 2016, while Mr. Kear was pushing a flatbed handcart over these Masonite boards, the tape holding one of the boards failed. The edge of the board rose and, after the handcart passed over the board, Mr. Kear tripped on the raised edge of the board, fell, and sustained injuries. Mr. Kear contends the tape failed because of debris (alleged to be sawdust) under the board, which caused the board to “see saw” when he passed over it. The area of Mr. Kear’s accident comprised a 20-foot by 30-foot room, with a wall on his right side. Mr. Kear brought this action alleging violations of Labor Law §§ 200, 240(1), and 241(6). MetLife, 200 Park, and Structure Tone filed a third-party action against Nead for contractual and common law indemnification, among other things.

Mr. Kear moved for partial summary judgment on his Labor Law § 241(6) claim.

In response, MetLife, 200 Park, and Structure Tone moved for summary judgment dismissing Mr. Kear’s complaint in its entirety and for summary judgment on their third-party contractual defense and indemnification claims against Nead. Nead cross-moved for summary judgment dismissing the third-party complaint in its entirety.

Discussion

“Summary judgment is a drastic remedy” (*Vega v Restani Const. Corp.*, 18 NY3d 499 [2012]). On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing that they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). The facts must be viewed “in the light most favorable to the non-moving party” (*Vega*, 18 NY3d at 503).

“When a plaintiff moves for summary judgment, it is proper for the court to ... deny summary judgment if facts are alleged in opposition to the motion which, if true, constitute a meritorious defense” (*Nassau Trust Co. v Montrose Concrete Products Corp.*, 56 NY2d 175 [1982]). Where a defendant moves for summary judgment and establishes a prima facie entitlement to such relief as a matter of law, the burden shifts to the plaintiff to raise a triable issue of fact” (*Kesselman v Lever House Rest.*, 29 AD3d 302 [1st Dept 2006]). However, a “feigned issue of fact” will not defeat summary judgment (*Red Zone LLC v Cadwalader, Wickersham & Taft LLP*, 27 NY3d 1048 [2016]). A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also JMD Holding Corp. v Congress Financial Corp.*, 4 NY3d 373 [2005]).

I. Labor Law § 200

Labor Law § 200 is a “codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work” (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Allen v Cloutier Constr. Corp.*, 44 NY2d 290 [1978]). It provides, in pertinent part:

All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded and lighted as to provide reasonable and adequate protection to all such persons

(Labor Law § 200).

The party responsible under Labor Law § 200 must, therefore, have control over the activity bringing about the injury (*Russin v Picciano & Son*, 54 NY2d 311 [1981]). Accordingly, a breach of Labor Law § 200 is, effectively, a breach of the common law duty to maintain a safe work site (*Allen*, 44 NY2d at 299). If the dangerous condition or defect arose from the contractor’s methods, the owner will not be liable under § 200 or the common law, absent a showing the owner exercised some control or supervision over the operation (*Comes*, 82 NY2d at 877; *see also Lombardi v Stout*, 80 NY2d 290, 295 [1992]). However, where the plaintiff’s injuries arose from a dangerous condition on the premises not caused by the contractor’s methods, liability under Labor Law § 200 will attach if the property owner had control over the work site and notice of the dangerous condition (*Bradley v HWA 1290 III LLC*, 157 AD3d 627 [1st Dept 2018]; *Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]).

MetLife and 200 Park’s motion for summary judgment dismissing the Labor Law § 200 claim against them is granted. There is no evidence that MetLife, as lessee, or 200 Park, as owner, controlled the work site, had notice of the condition, or created the condition which caused Mr. Kear to fall. There is no evidence that MetLife or 200 Park placed the Masonite boards or had notice, either constructive or actual, regarding the condition of the Masonite board and alleged debris underneath. Instead, the evidence shows that the Masonite board did not become dislodged or raised until the moment Mr. Kear passed over it. To the extent that MetLife’s project manager walked the construction site, he was focused on the quality of the work, not site safety – as evidenced by MetLife taking photos of poor-quality work but not of safety conditions. On the other hand, there is no dispute that Structure Tone controlled the methods of construction, as general contractor. Accordingly, summary judgment dismissing the Labor Law § 200 claims against MetLife and 200 Park is warranted, and the GC Defendants’ motion for summary judgment is granted to that extent.

However, issues of fact preclude summary judgment dismissing Mr. Kear’s Labor Law § 200 claim as against Structure Tone. Simply put, the parties do not know who installed the Masonite board on which Mr. Kear fell. Mr. Kear believes it may have been Structure Tone, and alleges that he saw Structure Tone carpenters working in the area the day before his accident – implying that Structure Tone carpenters created the debris covered by the Masonite board and installed the boards over the debris. Structure Tone disputes that it ever hired carpenters, and claims it would have instead engaged a subcontractor to perform carpentry work; thus, it claims Mr. Kear is mistaken that

he saw Structure Tone carpenters working in the area the day before his accident. However, Structure Tone also conceded that it may have installed the Masonite boards.

Structure Tone testified that it does not provide training regarding the method of installing Masonite boards, and the responsibility of correctly securing Masonite boards would fall on whichever entity installed the boards, either Structure Tone or a subcontractor. However, somewhat contradictorily, Structure Tone also testified that one of its foremen would instruct laborers on the installation of Masonite boards. For this reason alone, there are sharp questions of fact as to whether Structure Tone's methods caused the dangerous condition alleged, or if Structure Tone otherwise had control over the placement of the Masonite boards. Accordingly, Structure Tone is not entitled to summary judgment dismissing Mr. Kear's Labor Law § 200 claims as against it.

II. Labor Law § 240(1)

MetLife, 200 Park, and Structure Tone seek summary judgment dismissing Mr. Kear's Labor Law § 240(1) claim in its entirety. Mr. Kear has not opposed summary judgment dismissing his Labor Law § 240(1) claim; consequently, the § 240(1) claim is deemed abandoned (*Gamez v Sandy Clarkson LLC*, 221 AD3d 453, 454 [1st Dept 2023]; *Keuhne & Nagel, Inc. v Baiden*, 36 NY2d 539 [1975]).

In any event, Mr. Kear's Labor Law § 240(1) claim would be dismissed as that statute applies to elevation-related hazards and "injuries resulting from other types of hazards are not compensable under [Labor Law § 240(1)] even if proximately caused by the absence of an adequate scaffold or other required safety device" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]). It is undisputed that Mr. Kear did not trip due to an elevated-related hazard, and instead tripped at the same height that he was walking. Trips and falls upon the same level are not within the ambit of Labor Law § 240(1) (*Ghany v BC Tile Contrs., Inc.*, 95 AD3d 768 [1st Dept 2012]). Accordingly, the GC Defendants are entitled to summary judgment dismissing Mr. Kear's Labor Law § 240(1) claim.

III. Labor Law § 241(6)

MetLife, 200 Park, and Structure Tone seek summary judgment dismissing each of the Industrial Code violations alleged by Mr. Kear. Mr. Kear moves for summary judgment in his favor only as to the Industrial Code § 23-1.7(e)(1) violation, and opposes dismissal only as to the Industrial Code § 23-1.7(e)(1) and (2) violations. Consequently, all Industrial Code violations, except for § 23-1.7(e)(1) and (2), are deemed abandoned and dismissed (*Gamez*, 221 AD3d at 454; *Keuhne & Nagel, Inc.*, 36 NY2d 539).

"Labor Law § 241(6), by its very terms, imposes a *nondelegable* duty of reasonable care upon owners and contractors to 'provide reasonable and adequate protection and safety' to person employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed," as well as comply with the rules and regulations as promulgated by the Department of Labor (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998] [emphasis in original]; *Ross*, 81 NY2d at 501-02; Labor Law § 241). A violation of Labor Law § 241(6) "is merely some evidence of negligence which the jury may consider on the question of defendant's negligence" (*Rizzuto*, 91 NY2d at 349 citing *Teller v Prospect Hgts. Hosp.*, 280 NY 456, 460 [1939]). "Thus, once ... a concrete specification of the [Industrial] Code has been violated, it is for the jury to determine whether the negligence of some part to, or participant in, the construction project caused plaintiff's injury" (*id.* at 350). "To succeed on a cause of action alleging a violation of Labor Law §

241 (6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the accident” (*Tompkins v Turner Constr. Co.*, 221 AD3d 745 [2d Dept 2023]).

Mr. Kear alleges that defendants violated Industrial Code § 23-1.7(e)(1) and (2). Industrial Code § 23-1.7(e)(1) provides:

Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping.

Industrial Code § 23-1.7(e)(2) provides:

Working areas. The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

However, where the alleged dangerous condition is an “integral part” of the construction, it will not be found to violate Industrial Code § 23-1.7(e)(1) or (2) (*Conlon v The Carnegie Hall Socy.*, 159 AD3d 655 [1st Dept 2018]; *Bazdaric v Almah Partners LLC*, 209 NY3d 310 [2024]). “[A]s a general rule, where Masonite is ‘an integral part of the construction,’ a Labor Law § 241 (6) claim ... should be dismissed” (*Krzyzanowski*, 179 AD3d at 480). To be an integral part of the construction, the dangerous condition must be inherent to the task at hand (*Bazdaric*, 209 NY3d at 320), and the exception applies with equal force to Industrial Code §§ 23-1.7(e)(1) and 23-1.7(e)(2) (*Krzyzanowski*, 179 AD3d at 480). Thus, the inquiry into whether a violation of Industrial Code § 23-1.7(e)(1) or (2) occurred is twofold: the area must be a passageway or work area, and the dangerous condition must not be integral part of the construction.

Here, the Masonite board Mr. Kear allegedly tripped on was integral to the construction. The Masonite boards were placed on the floor to protect the completed flooring while construction in the area continued. Under these same circumstances, the Appellate Division, First Department has repeatedly found that Masonite boards are an integral part of the construction and do not constitute a tripping hazard under Industrial Code § 23-1.7(e)(1) or (e)(2) (*Balbuena v 395 Hudson NY, LLC*, 214 AD3d 586 [1st Dept 2023] [integral to construction exception applied to Masonite boards temporarily placed down to cover carpet]; *Thomas v Goldman Sachs Headquarters, LLC*, 109 AD3d 421 [1st Dept 2013] [exception applied to Masonite board placed on floor]; *Krzyzanowski*, 179 AD3d at 481 [exception applied to temporary boards placed as protective floor covering]). Thus, Mr. Kear’s allegation that the integral to construction exception does not apply here because the Masonite must be a part of the permanent construction for the exception to apply is without merit as directly contradicted by governing First Department authorities.

To the extent that Mr. Kear’s claim may be understood to allege that debris was covered by Masonite boards and that the debris, not the Masonite board, was a dangerous condition violating Industrial Code § 23-1.7(e)(1) or (e)(2), this claim is without factual support. Mr. Kear alleges that he was caused to fall by the raised piece of Masonite, not that he tripped on any debris underneath the board.

Assuming, *arguendo*, that Mr. Kear's Labor Law § 241(6) claims were not dismissed as barred by the integral to construction exception, they would nevertheless be dismissed upon the ground that the area in which he fell was not a passageway. While the Industrial Code does not define the term "passageway," "courts have interpreted the term [passageway] to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area" *Quigley v Port Authority of New York*, 168 AD3d 65 [1st Dept 2018] citing *Steiger v LPCiminelli, Inc.*, 104 AD3d 1246, 1250 [4th Dept 2013]; *Ghany v BC Tile Constrs., Inc.*, 95 AD3d at 769 [open area not a passageway]).

Here, the Masonite board did not constitute a pathway or defined walkway under Industrial Code § 23-1.7(e)(1). Mr. Kear testified that the area where he fell was not a hallway, but that it was bound by a wall on one side and was approximately a 20-foot by 30-foot open area on the other side. Although he considered the area to be a pathway to take in heavy deliveries or equipment, the record does not establish that the Masonite boards covered only a narrow portion of the floor, creating a pathway/walkway within the ambit of Industrial Code § 23-1.7(e)(1). Rather, the record tends to show that the boards covered a larger area, open area not contemplated by Industrial Code § 23-1.7(e)(1). Under these circumstances, it cannot be said, as a matter of law, that the location of Mr. Kear's accident is a passageway under Industrial Code § 23-1.7(e)(1).

Mr. Kear's reliance on *Tompkins v Turner Constr. Co.* (221 AD3d 745 [2d Dept 2023]) and *Lois v Flintlock* (137 AD3d 446 [1st Dept 2016]) for the proposition that the Masonite boards on the floor constituted a passageway under Industrial Code § 23-1.7(e)(1) is misplaced; both matters are factually inapposite. *Tompkins* provides no insight into whether an area, as that presented herein or otherwise, constitutes a passageway. In *Lois*, the court denied defendants summary judgment dismissing the Industrial Code § 23-1.7(e)(1) claim where the plaintiff was required to walk in a two-to three-foot space between piles of debris. Notably, the *Lois* plaintiff had not sought, nor was he awarded, summary judgment on the passageway issue.

Accordingly, MetLife, 200 Park, and Structure Tone is entitled to summary judgment dismissing Mr. Kear's Labor Law § 241(6) claim alleging violations of Industrial Code §§ 23-1.7(e)(1) and (2), and, by the converse, Mr. Kear is not entitled to summary judgment in his favor on this Labor Law Section and these Industrial Code provisions.

IV. Indemnification

MetLife, 200 Park, and Structure Tone's third-party complaint against Nead asserts claims for: common law indemnification; contractual indemnification; contribution; and breach of contract (failure to procure insurance). However, these parties seek only summary judgment on their contractual indemnification claim against Nead. Nead cross-moves for summary judgment dismissing the entire third-party complaint.

Given that MetLife, 200 Park, and Structure Tone have not opposed Nead's request for dismissal of their common law indemnification, contribution, and breach of contract claims, these claims are deemed abandoned (*Gamez*, 221 AD3d at 454; *Keuhne & Nagel, Inc.*, 36 NY2d 539). The only portion of the third-party complaint remaining is that seeking contractual indemnification from Nead.

Section 11.2 of the Subcontract provides:

To the fullest extent by Law, Subcontractor will indemnify and hold harmless Structure Tone, Inc., the owner of the project, the owner of the property where the job/project is located, and all parties required to be indemnified by the prime contract entered into by Structure Tone, Inc. in connection with the job/project work, and any of their trustees, officers, members, directors, agents, affiliates, parents, subsidiaries, and servants and employees from and against any and all claims, suits, liens, judgments, damages, losses and expenses including reasonable legal fees and costs arising in whole or in part and in any manner from the acts, omissions, breach or default of Subcontractor, sub-subcontractors, its officers, directors, agents, employees and Subcontractors in connection with the performance of any work by subcontractor, its employees and sub-subcontractors pursuant to this Subcontract/Purchase Order or a related Proceed Order. Subcontractor will defend and bear all costs of defending any action or proceedings brought against Structure Tone, Inc. and or Owner, their officers, directors, agents and employees, arising in whole or in part out of any such acts, omission, breach or defaults.

The Appellate Division, First Department's decision in *Cackett v Gladden Props. LLC*, is controlling here as the indemnification agreement in this matter is identical to that in *Cackett*, which, notably, was also a subcontract agreement between Structure Tone and a subcontractor (183 AD3d 419 [1st Dept 2020]; see also *Cackett v Gladden Properties, LLC* Index No. 157267/2014 at NYSCEF Doc. No. 271). There, the Appellate Division, First Department held that the phrase "in connection with the performance of any work by or for it" required the subcontractor to indemnify Structure Tone – notwithstanding that there was no evidence of negligence by the subcontractor – as the accident arose out of the subcontractor's employee's work (*id.* at 421-22). Nevertheless, *Cackett* held that because issues of fact existed as to Structure Tone's own negligence, summary judgment on indemnification was inappropriate (*id.*). The Appellate Division expressly rejected Structure Tone's argument that it should be awarded conditional contractual indemnification pending a determination of its own negligence, because a subcontractor cannot agree to indemnify a general contractor for the general contractor's own negligence under General Obligations Law § 5-322.1(1) (*id. comparing Auliano v 145 E 15th St. Tenants Corp.*, 129 AD3d 469 [1st Dept 2015] [granting conditional summary judgment to owner despite issues of fact as to owner's negligence] with *Arias v Recife Realty Co., N.V.*, 172 AD3d 631 [1st Dept 2019] [denying summary judgment on indemnification as precluded by issues of fact regarding contractor's own negligence]). Instead, under these circumstances, the Appellate Division, First Department held summary judgment should be denied as premature (*id.*).

The GC Defendants' reliance on *Gervasi v FSP 787 Seventh LLC*, 228 AD3d 459 [1st Dept 2024] is misplaced. *Gervasi* involved identical indemnification language as contained in the Structure Tone subcontract, and the Appellate Division, First Department again found that the indemnification provision did not require negligence on behalf of the subcontractor to trigger the subcontractor's indemnification obligation; it was sufficient that the injury arose out the injured plaintiff's work for the subcontractor on behalf of the general contractor (*id.*). However, in *Gervasi*, unlike *Cackett*, conditional summary judgment was awarded to the general contractor because there was no evidence that the general contractor created the dangerous condition (*compare id. with Cackett*, 183 AD3d 419).

The indemnification provision at issue here is identical to that of *Cackett* and *Gervasi*, it requires Nead to indemnify MetLife, 200 Park, and Structure Tone for Mr. Kear's injuries, as they arose out of his work for Nead. However, as with *Cackett*, MetLife, 200 Park, and Structure Tone's motion for summary judgment on their contractual defense and indemnification claims against Nead is denied as premature. As noted above, there are questions of fact on Mr. Kear's Labor Law § 200 claim, in other words, whether Structure Tone was negligent regarding the placement of the Masonite boards and whether such negligence caused Mr. Kear's accident and injuries. The parties do not know who placed the Masonite boards, and Structure Tone's testimony was ambivalent as to whether it controlled or directed the placement of the boards by a subcontractor. Under these circumstances, Structure Tone may be the sole proximate cause of Mr. Kear's injuries and, as such, may not seek indemnification for its own negligence. In accordance with Appellate Division, First Department's decision in *Cackett*, the jury must first pass upon the negligence of Structure Tone, if any, before it is appropriate to determine the extent of contractual indemnification.

Contrary to the GC Defendants' contention, neither *Brooks v Judlau Contr., Inc.*, nor *Munoz v JDS Seagirl LLC* require granting conditional indemnification (11 NY3d 204 [2008]; 227 AD3d 547 [1st Dept 2024]). Those cases held that the phrase "to the fullest extent permitted by law" properly limited a general contractor's indemnification to avoid indemnification for their own negligence. Notably, conditional summary judgment was not awarded in either case; instead, summary judgment dismissing the indemnification claim was denied (*id.*).

Nead's reliance on *Arias v Sanitation Salvage Corp.* (199 AD3d 554 [1st Dept 2021]), for the contention that an employee's routine performance of their duties does not trigger indemnification, is misplaced. The Appellate Division, First Department has already passed upon the exact indemnification provision at issue here and found that it requires a subcontractor to indemnify the general contractor where the employee's injury arose out of their work, irrespective of the subcontractor's own negligence (*Cackett*, 183 AD3d 419 [1st Dept 2020]; *Gervasi*, 228 AD3d 459). In any event, the indemnification agreement in *Arias v Sanitation Salvage Corp.* was not related to construction work and contained a provision triggering indemnification for acts, omissions, or negligence (199 AD3d at 557). Similarly, Nead's reliance on *Sternkopf v 395 Hudson N.Y., LLC* for the proposition that indemnification is not triggered here is also misplaced (227 AD3d 579 [1st Dept 2024]). The plaintiff in *Sternkopf* was not performing work duties and thus the indemnification provision for liability arising out of the subcontractor's work was not triggered (*id.*). That is markedly different from this matter where Mr. Kear was performing his work duties at the time of his accident. *Orella v 5541-1274 Fifth Ave. Manhattan LLC*, also cited by Nead, is factually distinguishable (234 AD3d 527 [1st Dept 2025]). There, the indemnification provision for work arising out of the subcontractor's duties "is part of an enumerated list dependent on the terms of indemnity set forth in the first sentence of the clause," which is not present here (*id.*).

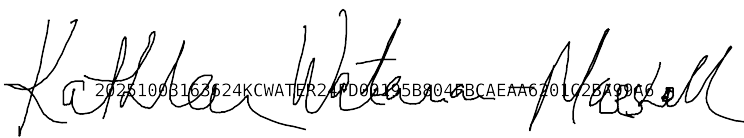
Consequently, MetLife, 200 Park, and Structure Tone are not entitled to summary judgment awarding them contractual indemnification at this time, and such request is denied as premature. Nead is entitled to summary judgment dismissing the common law indemnification, contribution, and breach of contract claims asserted in the third-party complaint, and those claims only are dismissed.

Accordingly, it is

ORDERED that Mr. Kear's motion for summary judgment on his Labor Law § 241(6) claim is denied; and it is further

ORDERED that the GC Defendants’ motion for summary judgment dismissing the complaint is granted to the extent of dismissing Mr. Kear’s Labor Law §§ 240(1) and 241(6) claims in their entirety and dismissing the Labor Law § 200 claim as against MetLife and 200 Park only, and is otherwise denied as to its contractual indemnification claim against Nead; and it is further

ORDERED that Nead’s cross-motion for summary judgment dismissing the third-party complaint against it is granted to the extent of dismissing claims for common law indemnification, contribution, and breach of contract (failure to procure insurance), and is otherwise denied.



10/3/2025
DATE

KATHLEEN WATERMAN-MARSHALL,
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