SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

----------X

GERALD VASSELL,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, C.A.C. INDUSTRIES INC.

Defendant.

----------X

INDEX NO. 159259/2025

MOTION DATE 09/26/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to DISMISS.

Defendant New York City School Construction Authority ("SCA") seeks dismissal of Plaintiff Gerald Vassell's ("Plaintiff") complaint as against it and dismissal of the cross-claims brought against it by co-defendants City of New York and New York City Department of Environmental Protection (the "City Defendants"), pursuant to CPLR § 3211 and CPLR §3212. SCA also seeks costs and attorneys' fees pursuant to CPLR § 8303-a. For the reasons stated below, the court grants SCA's unopposed motion in its entirety, dismisses Plaintiff's claims and the City Defendants' cross-claims against SCA, and finds that the continuation of the claims against SCA justifies an award of costs and reasonable attorneys' fees under CPLR § 8303-a.

BACKGROUND AND PROCEDURAL HISTORY

On or about October 29, 2024, Plaintiff alleges that he sustained injuries when an excavator struck his work truck while he was seated inside at 1184–1202 Avenue W, Brooklyn, New York. Subsequently, on or about January 6, 2024, Plaintiff served a notice of claim naming the New York City School Construction Authority ("SCA"), along with other municipal and private parties. Plaintiff thereafter commenced this action by filing a summons and complaint on or about July 18, 2025. The City Defendants answered the complaint and, on August 18, 2025, asserted cross-claims against SCA for indemnification and contribution. On February 25, 2025, SCA served a Demand for a Stipulation of Discontinuance upon Plaintiff's counsel, asserting that SCA had no involvement with or responsibility for the subject premises or the operation that allegedly caused the accident. To date, no stipulation of discontinuance has been executed. In further support of its position, SCA submitted an affidavit from its Chief Project Officer, Colin Albert, attesting that, on or before October 29, 2024, SCA did not own, lease, operate, manage, inspect, design,

construct, maintain, control, or otherwise bear responsibility for the premises where the accident occurred. The affidavit further established that SCA did not direct, supervise, or control any work at that location, nor did it enter into any contracts to perform work there.

ARGUMENTS

SCA's principal argument is straightforward: SCA argues that it has presented prima facie documentary and affidavit evidence showing that it did not own, control, supervise, manage, contract for, or otherwise have any responsibility for the subject premises or the work being performed there on or before October 29, 2024 — facts that, if credited, defeat each theory of liability asserted against SCA (common-law negligence, and claims under Labor Law §§ 200, 240(1) and 241(6)).

Next, SCA avers that the City Defendants' cross-claims for contractual indemnity, contribution, and common-law indemnity cannot stand because SCA never contracted with them to perform work at the subject premises, and because there is no evidentiary basis that SCA participated in or controlled the work that allegedly caused Plaintiff's injury.

SCA contends that Plaintiff was presented with the evidence of SCA's lack of involvement and was asked to discontinue the claims against SCA; nonetheless Plaintiff has refused to do so. SCA asserts that maintenance of the claims against it is frivolous under CPLR § 8303-a, and thus warrants an award of costs and reasonable attorneys' fees.

No opposition papers were submitted in response to the motion.

DISCUSSION

On a motion for summary judgment pursuant to CPLR § 3212, the movant bears the initial burden of producing evidence in admissible form establishing a prima facie entitlement to judgment as a matter of law by eliminating any material issue of fact (*see* Winegrad v *New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once the movant satisfies this threshold, the burden shifts to the opposing party to produce evidentiary proof of material facts sufficient to require a trial. If the opponent fails to meet that burden, summary judgment must be granted (*see Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Bradt v John Hancock Mut. Life Ins. Co.*, 98 AD2d 886, 887 [3d Dept 1983]). The court must evaluate the record rigorously, requiring the non-moving party to produce more than "a scintilla" of evidence or conclusory allegations (*see Zuckerman*, 49 NY2d at 562).

Here, the New York City School Construction Authority ("SCA") has satisfied its prima facie burden by submitting admissible affidavits and documentary evidence—most notably the affidavit of its Chief Project Officer, Colin Albert—establishing that SCA had no involvement with the subject premises, no contractual relationship or supervisory control, and no authority to regulate the work or equipment that allegedly caused Plaintiff's injuries. Having failed to submit admissible proof in opposition, neither Plaintiff nor the City Defendants have raised a triable issue of fact. Accordingly, the court turns to the substantive claims.

I. Plaintiff's Common-Law Negligence Claim and Labor Law § 200

Liability for dangerous or defective conditions on real property generally requires proof of ownership, occupancy, control, or special use of the property (*see Butler v Rafferty*, 100 NY2d 265, 270 [2003]). Labor Law § 200 codifies the common-law duty of owners and contractors to provide workers with a safe environment, but liability under that provision requires a showing that the defendant either exercised supervisory control over the work or had authority to remedy an unsafe condition, as well as actual or constructive notice of the condition (*see Comes v N.Y. State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]; *Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]). Absent ownership, occupancy, management, or supervisory authority, liability under either common-law negligence or Labor Law § 200 cannot attach.

The uncontroverted affidavit of SCA's Chief Project Officer establishes that, on or before the date of the accident, SCA neither owned, controlled, leased, managed, supervised, nor contracted to perform work at the subject premises. Those facts, unrebutted in the record, are fatal to Plaintiff's negligence and Labor Law § 200 claims, which are therefore dismissed.

II. Labor Law § 240(1)

Labor Law § 240(1) imposes strict liability on owners, contractors, and their agents for injuries resulting from elevation-related risks, but only where the defendant had the authority to supervise and control the work and where the injury was a direct consequence of a failure to provide adequate protection (*see Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015]; *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]; *Blake v Neighborhood Hous. Servs. of N.Y.* City, 1 NY3d 280, 287 [2003]). Courts have consistently held that the statute does not apply to every entity connected to a construction site, but only to those with supervisory control or authority over the work (*see Russin v Picciano & Son*, 54 NY2d 311, 317–318 [1981]; *Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]; *Walls v Turner Constr. Co.*, 4 NY3d 861, 863 [2005]).

Because SCA had no supervisory authority over the work at issue, it cannot be held liable under § 240(1). Plaintiff's § 240(1) claim is therefore dismissed.

III. Labor Law § 241(6)

To sustain a claim under Labor Law § 241(6), a plaintiff must demonstrate a violation of a specific, applicable regulation promulgated under the Industrial Code and that such violation was a proximate cause of the accident (*see Rizzuto*, 91 NY2d at 349; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 503 [1993]). As with Labor Law § 240(1), liability under § 241(6) depends upon whether the defendant was an owner, contractor, or agent with the requisite authority to supervise or control the work (*see Blake*, 1 NY3d at 287; *Maddox v Tishman Constr. Corp.*, 138

AD3d 646, 647 [1st Dept 2016]; *Balbuena v New York Stock Exch., Inc.*, 49 AD3d 374, 375 [1st Dept 2008]).

SCA's affidavit establishes conclusively that it exercised no such authority and had no role at the site. Plaintiff has not identified any specific regulation applicable to SCA's conduct. Accordingly, Plaintiff's § 241(6) claim fails as a matter of law.

IV. City Defendants' Cross-Claims: Contractual Indemnity, Common-Law Indemnity, Contribution

Contractual indemnification requires the existence of an agreement manifesting a clear intent to indemnify (see *Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987]). No such contract exists here. The City Defendants' cross-claim for contractual indemnity therefore fails.

Common-law indemnification, in turn, is available only to parties held vicariously liable without actual fault (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377–378 [2011]; *Trustees of Columbia Univ. v Mitchell/Giurgola Assoc.*, 109 AD2d 449, 453 [1st Dept 1985]). As the record establishes SCA's complete non-involvement, the claim must also be dismissed.

Contribution similarly requires proof that the proposed contributor owed a duty to the injured party and breached that duty, thereby contributing to the harm (see *Jehle v Adams Hotel Assoc.*, 264 AD2d 354, 355 [1st Dept 1999]). Because SCA neither owed nor breached any such duty, the contribution claim cannot stand.

Accordingly, all cross-claims against SCA are dismissed.

V. Attorneys' Fees Under CPLR § 8303-a

Although SCA requests costs and attorneys' fees pursuant to CPLR § 8303-a, the court declines to impose sanctions at this juncture. While the claims against SCA lack merit, the court cannot conclude on the present record that Plaintiff's counsel acted in bad faith or that the continuation of the claims was wholly frivolous. Nevertheless, counsel are cautioned that the maintenance of claims in the face of unrefuted documentary and affidavit evidence establishing a defendant's complete lack of involvement with the subject premises or the alleged incident may, in the future, warrant the imposition of costs and attorneys' fees under CPLR § 8303-a.

Accordingly, it is hereby

ORDERED that defendant New York City School Construction Authority's motion granted to the extent that the complaint is dismissed with prejudice as against said defendant; and it is further

ORDERED that all cross-claims for contractual indemnification, common-law indemnification, and contribution asserted by the City of New York and the New York City

Department of Environmental Protection against defendant New York City School Construction Authority are dismissed with prejudice; and it is further

ORDERED that the branch of the motion seeking attorneys' fees pursuant to CPLR 8303-a is denied without prejudice, with the caution that the maintenance of claims in the face of unrefuted documentary and affidavit evidence demonstrating a defendant's lack of involvement may, in the future, warrant the imposition of costs and fees under CPLR § 8303-a; and it is further

ORDERED that counsel for that defendant New York City School Construction Authority shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to enter judgment dismissing all claims and cross-claims against defendant New York City School Construction Authority; and it is further

ORDERED that thee Clerk of the Court and the Clerk of the General Clerk's Office are further directed to amend their records to reflect the removal of defendant New York City School Construction Authority from the caption herein; and it is further

ORDERED that service of this order upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in Section J of the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases.

This constitutes the decision and order of the court.

10/2/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE