SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 38

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THOMAS ALEXOPOULOS,

Plaintiff,

-against-

2 RECTOR STREET (NY), LLC, SWEET CONSTRUCTION CORP., and HENICK LANE HVAC, INC.,

Defendants.

INDEX NO. 152402/2018

MOTION DATE 01/9/2025, 01/9/2025, 01/9/2025, 01/9/2025

MOTION SEQ. NO. 012 013 014 015

DECISION + ORDER ON MOTION

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HENICK LANE HVAC, INC.

Plaintiff,

-against-

AJ & SON CONTRACTING, INC.

Defendant.

Third-Party
Index No. 595168/2022

----------X

HENICK LANE HVAC, INC.

Plaintiff,

-against-

A. J. & SON MECHANICAL, INC.

Defendant.

Second Third-Party
Index No. 595197/2022

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 430, 431, 432, 433, 434, 435, 436, 518, 526, 529, 536, 537, 549, 553

were read on this motion to/for JUDGMENT – SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 013) 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 519, 522, 523, 524, 525, 527, 534, 545, 546, 547, 550, 554

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 014) 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 520, 528, 531, 532, 535, 551, 555

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 014) 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 520, 528, 531, 532, 535, 551, 555

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 015) 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 517, 530, 533, 538, 539, 540, 541, 542, 543, 544, 548, 552

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

HON. ASHLEE CRAWFORD:

In this Labor Law action, defendants 2 Rector Street (NY), LLC ("Rector") and Sweet Construction Corp. ("Sweet") move pursuant to CPLR 3212 for summary judgment dismissing plaintiff's claims, as well as the cross-claims asserted against them (motion seq. 012). Plaintiff opposes the motion.

Defendant/third-party-plaintiff/second third-party plaintiff Henick Lane HVAC, Inc. ("Henick") moves for summary judgment dismissing plaintiff's claims and the cross-claims asserted against it, and for summary judgment in Henick's favor on its second third-party claim for contractual indemnification asserted against second third-party defendant A. J. & Son Mechanical, Inc. ("AJSM") (motion seq. 013).[1] Plaintiff, Rector and Sweet, and AJSM separately oppose Henick's motion.

[1] Although Henick moves to dismiss counterclaims against it, no such claims are asserted.

Second third-party defendant AJSM moves for summary judgment dismissing plaintiff's claims and the second third-party claims asserted against it (motion seq. 014). Plaintiff and Henick separately oppose the motion.

Plaintiff moves pursuant to CPLR 2221 for leave to renew or reargue his prior motion for summary judgment as to liability under Labor Law § 240 (1) and, upon renewal or reargument, granting the motion (motion seq. 015).[2] Defendants separately oppose plaintiff's motion.

The foregoing motions are consolidated for disposition herein.

According to plaintiff, on September 20, 2017, he was working as a steamfitter at a construction project at 2 Rector Street, in Manhattan. Plaintiff was employed by second third-party defendant AJSM, which was subcontracted by defendant-subcontractor Henick to perform pipefitting work at the premises. Henick was in turn hired to serve as the HVAC contractor by defendant-general contractor Sweet. Defendant Rector owned the premises. At the time of the accident, plaintiff was working on an elevated outdoor platform on the fourth floor, when he stepped down from the platform's ledge and fell about three feet to the floor below, injuring his knee.

In the complaint, plaintiff asserts claims for violations of Labor Law §§ 200, 240 (1), and 241 (6), and for common law negligence, against the owner, general contractor, and HVAC contractor.

DISCUSSION

A party seeking summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact

[2] By order dated November 20, 2023, the Court (Nock, J.) directed further discovery and, *inter alia*, denied the parties' motions and cross-motions for summary judgment without prejudice to renewal (seqs. 009 and 010) (11/20/23 Order [NYSCEF 361]).

from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]).

I. Labor Law § 240 (1)

Plaintiff moves to renew or reargue his prior motion for summary judgment as to liability on his Labor Law § 240 (1) claim, apparently because the Court (Nock, J.) denied his original motion "without prejudice to renewal" (11/20/23 Order [NYSCEF 361]). Because the Court already granted plaintiff leave to renew his motion, it deems plaintiff's current motion to be for summary judgment under CPLR 3212 (mot. seq. 015). Defendants Rector and Sweet (mot. seq. 012), defendant Henick (mot. seq. 013), and second third-party defendant AJSM (mot. seq. 014) separately move to dismiss plaintiff's Labor Law § 240 (1) claim.

Plaintiff argues that he is entitled to summary judgment as to liability under Labor Law § 240 (1), because Rector, as owner, Sweet, as general contractor, and Henick, as the statutory agent of the owner, owed him a non-delegable duty of care; violated Labor Law § 240 (1) by failing to provide a device to protect him from an elevation-related risk; and the violation was the proximate cause of his accident. Plaintiff insists that no safety device at all was available for his use and, as such, he could not be the sole proximate cause of his injuries. He maintains that his deposition testimony was ambiguous and unclear as to *when* he learned that makeshift stairs

were located 20-30 feet away from the site of his accident, and that he is permitted to "clarify" this ambiguity by submitting an affidavit sworn to several years later, on April 26, 2022 (see Pl's Aff. dated 4/26/22 ¶¶ 6-11 [NYSCEF Doc. 420]; Plaintiff EBT Tr. at 53:19-54:22, 154:15-21 [NYSCEF Doc. 416]). The "clarification" is consistent with Sweet's accident report, which provides that "[t]here were temporary stairs but another subcontractor working on the floor moved the stairs" (Accident Report [NYSCEF Doc. 419]). In any event, plaintiff insists, he was not directed to use the makeshift stairs and there is no proof that he knew he was expected to do so.

Defendants Rector, Sweet, and Henick argue that plaintiff is the sole proximate cause of his injuries, because temporary stairs were available about 20-30 feet from the platform, and plaintiff chose not to move them in front of the platform and use them to safely descend. Defendants argue that plaintiff's affidavit is self-serving and contradicts his deposition testimony concerning when he was aware of the nearby makeshift stairs and, therefore, must be disregarded on summary judgment. Additionally, Henick argues that it is not subject to liability under Labor Law § 240 (1) as a statutory agent of the owner or general contractor, because it did not have the authority to supervise or control the activity that brought about plaintiff's accident.

Labor Law § 240 (1) provides in relevant part that where a building is being erected, repaired, or altered, contractors and owners "shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed." "The statute imposes upon owners, contractors and their agents a nondelegable duty that renders them liable regardless of whether they supervise or control the work" (Barreto v Metropolitan Transp. Auth., 25 NY3d

426, 433 [2015]). "[W]here an accident is caused by a violation of the statute, the plaintiff's own negligence does not furnish a defense; however, where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability" (id. [internal quotation marks omitted]; see Narducci v Manhasset Bay Assoc., 96 NY2d 259, 267 [2001]). "Thus, in order to recover under section 240 (1), the plaintiff must establish that the statute was violated and that such violation was a proximate cause of his injury" (id. [citation omitted]). Labor Law § 240 (1) is to be liberally construed so as to accomplish its legislative purpose of protecting workers (Rocovich v Consolidated Edison Co., 78 NY2d 509, 513 [1991]).

"To raise a triable issue of fact as to whether plaintiff was the sole proximate cause of an accident, the defendant must produce evidence that adequate safety devices were available, that the plaintiff knew they were available and was expected to use them, and that the plaintiff unreasonably chose not to do so, causing the injury sustained" (Nacewicz v Roman Catholic Church of the Holy Cross, 105 AD3d 402, 402-03 [1st Dept 2013]; see Biaca-Neto v Boston Road II Housing Dev. Fund Corp., 34 NY3d 1166, 1167-1168 [2020]).

As to plaintiff's affidavit, an affidavit does not raise a triable issue of fact where it appears to be tailored to avoid the consequence of prior testimony (Garcia-Rosales v 370 Seventh Ave. Assoc., LLC, 88 AD3d 464, 465 [1st Dept 2011]). A court can infer dishonest intent where there is no supporting evidence for the contradictory affidavit (see Fields v Lambert Houses Redevelopment Corp., 105 AD3d 668, 671 [1st Dept 2013]). The Court will consider plaintiff's affidavit, because there is some evidence supporting plaintiff's statements in his affidavit that he was not aware of the stairs at the time of the accident (Plaintiff EBT Tr. at 54:4-22; Pl's Aff. dated 4/26/22 ¶¶ 4-11; Accident Report [NYSCEF Doc. 419]), but the weight accorded the affidavit will be balanced against the other evidence and testimony in the record.

The Court finds that plaintiff's failure to retrieve the staircase, which had been moved by another trade and not replaced, was not the sole proximate cause of the accident (see Linares v Massachusetts Mut. Life Ins. Co., 225 AD3d 520, 521 [1st Dept 2024]; see also DeOleo v 90 Fifth Owner, LLC, 231 AD3d 643, 644 [1st Dept 2024]; cf. Crawford v 14 E. 11th St., LLC, 191 AD3d 461 [1st Dept 2021]). Defendants have not presented evidence that plaintiff knew he was expected to use the staircase or that he unreasonably chose not to do so (see Biaca-Neto, 34 NY3d at 1167-1168).

Concerning Henik, plaintiff has not met his burden of demonstrating its liability as the statutory agent, given that the deposition testimony and Henick's contracts with Sweet and Rector show that Sweet, the general contractor, had the authority to stop work, and that Henick did not have the level of control over plaintiff's work, or the placement of the temporary staircase, to be a statutory agent.[3] Plaintiff's speculative deposition testimony is insufficient proof to the contrary (Rector-Henick Contract [NYSCEF Doc. 413]; Sweet-Henick Contract [NYSCEF Doc. 414]; Rothman EBT Tr. [NYSCEF Doc. 422] at 52:16-54:5; Plaintiff EBT Tr. [NYSCEF Doc. 416] at 85:15-86:9; see Barreto v Bd. of Managers of 545 W. 110th St. Condominium, 234 AD3d 515, 516-517 [1st Dept 2025]; Rodriguez v Riverside Ctr. Site 5 Owner LLC, 240 AD3d 452, 454 [1st Dept 2025], citing Nascimento v Bridgehampton Constr.

[3] In support of its motion for summary judgment, plaintiff argues that Henick is a statutory agent because Henick was delegated the HVAC work and had the power to stop work. In support, plaintiff cites to his own testimony that: Henick and Sweet had the authority to stop plaintiff's work and told the AJSM foreman what needed to be done; Henick supervisor, John Tomarollo, directed him to complete an accident report after he fell; and that the contract provides for Henick to be in charge of HVAC and steam-fitting operations (Seq. 015 Kaplan Memo of Law at 7-8 [NYSCEF Doc. 411]). In opposition, Henick points to the testimony of its witness that Henick did not have the ability to stop work, as well as its contracts with Sweet and Rector (Seq. 015 Hult Memo of Law in Opp at 14 [NYSCEF Doc. 530]). Notably, Henick does not raise this issue in support of its motion to dismiss plaintiff's claims, and instead relies solely on its contention that plaintiff was the sole proximate cause of his injuries.

Corp., 86 A.D.3d 189, 193 [1st Dept 2011]; DeMaria v RBNB 20 Owner, LLC, 129 AD3d 623, 625 [1st Dept 2015]).

Therefore, plaintiff's motion for partial summary judgment as to liability on his Labor Law § 240 (1) claim is granted as against Sweet and Rector, and denied as against Henick (seq. 015); Sweet and Rector's motion for summary judgment dismissing such claim is denied (seq. 012); Henick's motion for summary judgment dismissing such claim based on sole proximate cause is denied (seq. 013), but searching the record, the claim against Henick is dismissed on the basis that it is not a statutory agent; and AJSM's motion for summary judgment dismissing such claim is denied (seq. 014).

II. Labor Law § 200 & Common Law Negligence

Rector and Sweet (mot. seq. 012), Henick (mot. seq. 013), and AJSM (mot. seq. 014) separately move to dismiss plaintiff's claims under Labor Law § 200 and for common law negligence. Plaintiff opposes.

Section 200 (1) "codifies the common law duty to maintain a safe workplace, but to recover under this provision, a plaintiff must show that an owner or general contractor exercised some supervisory control over the operation" (Toussaint v Port Authority of New York and New Jersey, 38 NY3d 89, 94 [2022]). "Claims for personal injury under the statute and the common law fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (Cappabianca v Skanska USA Bldg. Inc., 99 AD3d 139, 143-144 [1st Dept 2012]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (id. at 144). "Where the injury was caused by the manner and means of the work, including the equipment used, the

owner or general contractor is liable if it actually exercised control over the injury-producing work" (id.).

Summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims against Rector, Sweet, and Henick is granted (seq. 012 and seq. 013). The accident arose out of the means and method of plaintiff's work, and plaintiff has not shown that Rector, Sweet, or Henick directed, supervised, or controlled the work. AJSM's motion to dismiss plaintiff's Labor Law § 200 and common law negligence claims is denied as moot.

III. Labor Law § 241 (6)

Defendants Rector and Sweet (mot. seq. 012), defendant Henick (mot. seq. 013), and second third-party defendant AJSM (mot. seq. 014) separately move to dismiss plaintiff's Labor Law § 241 (6) claim.

In opposition, Plaintiff withdraws that part of his Labor Law 241 (6) cause of action based on Industrial Code sections 23.17 (b), 23-1.16, 23-1.17, 23-1.32 and 23-1.18, but maintains that that he has raised material issues of fact with respect to alleged violations of Industrial Code sections 23-2.7 (12 NYCRR 23-2.7 [Stairway requirements during the construction of buildings]) and 23-1.7 (f)(12 NYCRR 23-1.7 [f] [Protection from general hazards – vertical passage]).

Labor Law 241(6) imposes a non-delegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety" to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 348 [1998]). To establish a claim under Labor Law 241 (6), plaintiff must show that defendant violated an Industrial Code regulation that sets forth a specific, positive command, and is not simply a recitation of common-

law safety principles (Toussaint v Port Authority of New York and New Jersey, 38 NY3d 89, 93-94 [2022]; Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 503 [1993]). Plaintiff must also establish that such violation was the proximate cause of the accident (Gonzalez v Stern's Dept. Stores, 211 AD2d 414, 415 [1st Dept 1995]).

Summary judgment dismissing plaintiff's Labor Law 241 (6) claims against Henick, Sweet, and Rector, as predicated on Industrial Code 23-2.7, is granted because plaintiff has not shown a violation of that provision. However, summary judgment is denied as related to Industrial Code § 23-1.7 (f), because defendants failed to establish that the height difference between the raised platform, where plaintiff was working, and the floor did not require a "vertical passage" as contemplated by that provision (Davis v Trustees of Columbia Univ. in the City of N.Y., 199 AD3d 481, 482 [1st Dept 2021]; Ferguson v Durst Pyramid, LLC, 178 AD3d 634, 635 [1st Dept 2019]). Therefore, the motions are denied as to the Industrial Code § 23-1.7 (f) predicate. AJSM's motion to dismiss plaintiff's Labor Law § 241(6) claim is denied as moot.

IV. Third-Party Claims Against AJSM

Henick moves for summary judgment on its third-party claim for contractual indemnification asserted against second third-party defendant AJSM (motion seq. 013). AJSM opposes Henick's motion and moves for summary judgment dismissing all the third-party claims, for contractual indemnification, common law indemnification, common law contribution, and breach of contract (motion seq. 014; *see* second third-party complaint [NYSCEF Doc. 535]). Henick opposes AJSM's motion as to the contractual indemnification claim only.

By not opposing dismissal of the claims for common law indemnification, common law contribution, and breach of contract, Henick is deemed to have abandoned them (see Gamez v Sandy Clarkson LLC, 221 AD3d 453, 454-455 [1st Dept 2023]; Martin Assoc., Inc. v Illinois

Natl. Ins. Co., 188 AD3d 572, 573 [1st Dept 2020]; Saidin v Negron, 136 AD3d 458, 459 [2016], lv dismissed 28 NY3d 1069 [2016], cert denied 583 US 842 [2017]).

As to the contractual indemnification claim, Henick argues that it is entitled to "unconditional" indemnification from AJSM under the broad indemnity provision in their subcontract, because Plaintiff's injuries were related to and connected with AJSM's work at the premises, without the need to show the indemnitor's negligence or fault.

Although AJSM argues the merits of the contractual indemnification claim, it contends that its general liability carrier, non-party Harleysville Preferred Insurance Company, accepted the defense and indemnification of Henick as an additional insured under its policy without reservation, and is therefore covering both AJSM and Henick for the same risk (*see* Henick Tender Letter [NYSCEF Doc. 512]). For this reason, AJSM argues that the anti-subrogation rule bars Henick's contractual indemnification claim asserted against AJSM. Henick argues in opposition that the purported tender acceptance letter is vague and unresolved, and does not bar its contractual indemnification claim.

Under the anti-subrogation rule, an insurer has no right of subrogation against its own insured for a claim arising from the very risk for which the insured was covered (N. Star Reins. Corp. v Cont. Ins. Co., 82 NY2d 281, 294 [1993]). "This [rule] precludes an indemnitee from bringing claims against an indemnitor when they are covered under the same policy" (Lapinsky v Extell Dev. Co., 202 AD3d 478, 480 [1st Dept 2022]).

Because Henick is an additional insured under AJSM's primary and excess commercial general liability policy (NYSCEF Docs. 505 at 71, 512, and 506 at 26), Henick's claim for contractual indemnification is barred except to the extent any recovery by plaintiff exceeds the insurance policies' limits (Urquia v Deegan 135 Realty LLC, 231 AD3d 567, 569 [1st Dept

2024]; Mercado v Caithness Long Is. LLC, 104 AD3d 576, 577-578 [1st Dept 2013]). As such, that part of AJSM's motion seeking dismissal of the second third-party complaint is denied as premature. Henick's motion is denied as premature to the extent it seeks summary judgment on its contractual indemnification claim against AJSM.

V. Contractual Indemnification

Defendant Sweet asserts cross-claims against Rector and Henick for contractual indemnity (NYSCEF Doc. 15), which Henick (mot. seq. 013) and Rector (mot. seq. 012) seek to dismiss. Sweet is deemed to have abandoned its contractual indemnification claims against Henick and Rector, and their motions are granted insofar as they seek dismissal of those claims (see Gamez v Sandy Clarkson LLC, 221 AD3d at 454-455; Martin Assoc., Inc. v Illinois Natl. Ins. Co., 188 AD3d at 573; Saidin v Negron, 136 AD3d at 459).

VI. Common Law Indemnification and Contribution

Rector asserts a cross-claim against co-defendants Sweet and Henick for common law contribution (NYSCEF Doc. 10). Sweet asserts cross-claims against Rector and Henick for common law indemnity and common law contribution (NYSCEF Doc. 15).

Under motion sequence 013, Henick moves for summary judgment dismissing the cross-claims asserted against it (NYSCEF Doc. 437). Rector and Sweet oppose dismissal of the claims for common law indemnification and contribution.

Under motion sequence 012, Rector and Sweet move for summary judgment dismissing the cross-claims asserted against them for common law indemnity and common law contribution (NYSCEF Doc. 430). They do not oppose the motion as directed to each other.

"To be entitled to common-law indemnification, a party must show (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2)

that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work" (Naughton v City of New York, 94 AD3d 1, 10 [1st Dept 2012]). To establish their claim for contribution, Rector and Sweet must show that Henick contributed to plaintiff's injuries by breaching a duty to plaintiff or to Rector and Sweet (Jehle v Adams Hotel Assocs., 264 AD2d 354, 355 [1st Dept 1999]). "[I]f the injured party's underlying complaint fails to state a cause of action, there is no basis for a contribution claim" (id.).

Henick has not met its burden of showing that it was not negligent, or did not exercise actual supervision or control over the injury-producing work, nor has it shown that it did not breach a duty to plaintiff or to Rector and Sweet. Therefore, motion sequence 013 is denied to the extent it seeks dismissal of Rector's cross-claim for common law indemnification as asserted against Henick, and Sweet's cross-claim for common law indemnification and contribution as asserted against Henick. Motion sequence 012, which seeks dismissal of the cross-claims asserted against Rector and Sweet for common law contribution and common law indemnity, is granted without opposition.

VII. Breach of Contract – Failure to Procure Insurance

Sweet asserts cross-claims against Rector and Henick for breach of contract for failure to procure insurance (NYSCEF Doc. 15), which Henick (mot. seq. 013) and Rector (mot. seq. 012) seek to dismiss. Sweet is deemed to have abandoned its breach of contract claim against Henick and Rector and, therefore, their motions are granted insofar as they seek dismissal of that claim (see Gamez v Sandy Clarkson LLC, supra at 454-455; Martin Assoc., Inc. v Illinois Natl. Ins. Co., supra at 573; Saidin v Negron, supra at 459).

For the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion for leave to renew or reargue his prior motion for summary judgment, which the Court deems as made under CPLR 3212 for partial summary judgment as to liability on his Labor Law § 240 (1) claim, is GRANTED only as directed to defendants 2 Rector Street (NY), LLC and Sweet Construction Corp., and is DENIED as directed to defendant/third-party-plaintiff/second third-party plaintiff Henick Lane HVAC, Inc. (mot. seq. 015); and it is further

ORDERED that the motion by defendants 2 Rector Street (NY), LLC and Sweet Construction Corp. for summary judgment dismissing plaintiff's claims and co-defendant's cross-claims asserted against them is GRANTED IN PART as follows (mot. seq. 012):

- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 240 (1) asserted against Rector and Sweet is DENIED;
- that part of the motion for summary judgment dismissing plaintiff's claims for violation of Labor Law § 200 and common law negligence asserted against Rector and Sweet is GRANTED;
- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 241 (6), as premised on Industrial Code § 23-2.7, asserted against Rector and Sweet is GRANTED;
- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 241 (6), as premised on Industrial Code § 23-1.7 (f), asserted against Rector and Sweet is DENIED; and

- that part of the motion for summary judgment dismissing the cross-claims for contractual and common law indemnification, contribution, and breach of contract asserted by Sweet against Rector is GRANTED without opposition;
- that part of the motion for summary judgment dismissing the cross-claim for common law contribution asserted by Rector against Sweet is GRANTED without opposition; and it is further

ORDERED that the motion by defendant/third-party-plaintiff/second third-party plaintiff Henick Lane HVAC, Inc. for summary judgment dismissing plaintiff's claims and defendants' cross-claims asserted against it, and for summary judgment in Henick's favor on its second third-party claim for contractual indemnification asserted against second third-party defendant A. J. & Son Mechanical, Inc., is GRANTED IN PART as follows (mot. seq. 013):

- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 240 (1) on the ground plaintiff is the sole proximate cause of his injuries is DENIED, but searching the record, the claim is DISMISSED as directed to Henick because Henick is not a statutory agent;
- that part of the motion for summary judgment dismissing plaintiff's claims for violation of Labor Law § 200 and common law negligence asserted against Henick is GRANTED;
- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 241 (6), as premised on Industrial Code § 23-2.7, asserted against Henick is GRANTED;
- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 241 (6), as premised on Industrial Code § 23-1.7 (f), asserted against Henick is DENIED;

- that part of the motion for summary judgment on Henick's second third-party claim for contractual indemnification asserted against second third-party defendant A. J. & Son Mechanical, Inc. is DENIED as premature; and
- that part of the motion for summary judgment dismissing Rector's common law indemnity and contribution cross-claims asserted against Henick is DENIED;
- that part of the motion for summary judgment dismissing Sweet's breach of contract cross-claim asserted against Henick is GRANTED and that claim is DISMISSED; and it is further

ORDERED that the motion by second third-party defendant A. J. & Son Mechanical, Inc. for summary judgment dismissing plaintiff's claims and the second third-party claims asserted against it is GRANTED IN PART as follows (motion seq. 014):

- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 240 (1) is DENIED;
- that part of the motion for summary judgment dismissing plaintiff's claims for violation of Labor Law § 200 and common law negligence is DENIED as moot;
- that part of the motion for summary judgment dismissing plaintiff's claim for violation of Labor Law § 241 (6) is DENIED as moot;
- that part of the motion for summary judgment dismissing Henick's second third-party claim for contractual indemnification asserted against AJSM is DENIED as premature;
- that part of the motion for summary judgment dismissing Henick's second third-party claims for common law indemnification and contribution and breach of contract asserted against AJSM is GRANTED; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the parties shall appear for a conference in Part 40, as previously calendared.

This constitutes the decision and order of the Court.

Dated: October 7, 2025

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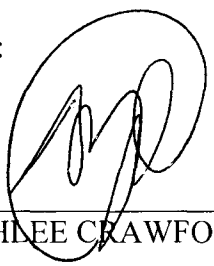

HON. ASHLEE CRAWFORD, A.J.S.C.

10/7/2025
DATE

ASHLEE CRAWFORD, J.S.C.

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