

**Jun Lim Chang v 37 Plaza LLC**

2025 NY Slip Op 33866(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 153252/2020

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

JUN LIM CHANG,

Plaintiff,

- v -

37 PLAZA LLC,RANS D DESIGN, INC.,

Defendant.

-----X

37 PLAZA LLC

Plaintiff,

-against-

H POINT INC.

Defendant.

-----X

RANS D DESIGN, INC.

Plaintiff,

-against-

H POINT INC

Defendant.

-----X

INDEX NO. 153252/2020

MOTION DATE 10/07/2024, 10/09/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

Third-Party Index No. 595598/2021

Second Third-Party Index No. 595312/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 149, 151, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 184, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 212, 213, 214, 215

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 148, 150, 152, 178, 179, 180, 181, 182, 183, 185, 186, 206, 207, 208, 209, 210, 211, 216, 217, 218

were read on this motion to/for JUDGMENT - SUMMARY

### FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a construction site accident that occurred on May 31, 2019, at the premises located at 37-02 Queens Boulevard, Queens, New York. Plaintiff, is the Administrator of the Estate of Deok Hyun Ko (“Decedent”). At the time of the alleged incident, the property was owned by defendant 37 Plaza LLC and was undergoing general construction. Defendant RANS Design, Inc. served as the general contractor and was responsible for hiring and coordinating with subcontractors. One such subcontractor, H Point Inc., had been retained to perform HVAC and structural steelwork, including the creation of an interior stairwell opening between the first and second floors.

In Motion Sequence 001, Defendant, RANS Design, Inc (“RANS”) moves for Summary Judgement dismissing Plaintiff’s Labor Law § 200 and common law negligence claims for dismissal of cross-claims asserted by Co-Defendants 37 Plaza LLC (“37 Plaza”) and H Point Inc. (“H Point”), and for common law indemnity against H Point. Defendant/Third Party Plaintiff 37 Plaza cross-moves for summary judgment for contractual indemnification against RANS, for dismissal of Plaintiff’s Labor Law § 200 and common law negligence claims and for dismissal of cross-claims asserted by RANS and H Point for common law contribution or indemnity and to grant common law indemnity against H Point.

In Motion Sequence 002, Plaintiff moves for partial summary judgment on the issue of liability under Labor Law §§ 240(1) and 241(6), citing Defendants’ failure to provide legally required fall protection for work performed in proximity to an unguarded, elevated opening. Defendant RANS opposes the motion, on the grounds that issues of fact remain as to what RANS role in the construction were at the time of the incident a contention which ultimately

amounts to one that RANSO is an improper Labor Law Defendant. 37 Plaza submits no opposition.

### LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

Labor Law §240(1) states "All contractors and owners and their agents...in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure 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 absolute liability upon owners, contractors, and their agents where a breach of this statutory duty proximately causes an injury. (*See Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 556 [1993]). "[T]he reach of Labor Law §240(1) is limited to such specific gravity-related accidents as [a worker] falling from a height or being struck by a falling object that was

improperly hoisted or inadequately secured” (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]).

“To succeed on a cause of action under Labor Law § 240(1), a plaintiff must establish that the defendant violated its duty and that the violation proximately caused the plaintiff’s injuries. The burden then shifts to the defendant to raise a triable issue of fact” (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298, 1301 [2d Dept 2020]). “The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards, and do not encompass any and all perils that may be connected in some tangential way with the effects of gravity” (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022]).

“Labor Law § 240(1) applies to both ‘falling worker’ and ‘falling object’ cases.” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-68 [2001]). With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to ‘a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured.’” (Id. quoting *Rocovich v Consol. Edison Co.*, 78 NY2d 509, 514 [1991]).

For Plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 (1992)). Here, plaintiff’s claim under Labor Law §241(6) is based on violation of Industrial Codes 23-1.7(b) and 23-1.16(b); which states as follows:

- i) 23-1.7(b);  
(b) Falling hazards  
(1) Hazardous openings.

- iii) Where employees are required to work close to the edge of such an opening, such employees shall be protected as follows:
- (a) Two-inch planking, full size, or material of equivalent strength installed not more than one floor or 15 feet, whichever is less, beneath the opening; or
  - (b) An approved life net installed not more than five feet beneath the opening; or
  - (c) An approved safety belt with attached lifeline which is properly secured to a substantial fixed anchorage. (emphasis added)
- ii) 23-1.16(b);
- (b) Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet.

Next, Labor Law §200 codifies the common law duty of an owner to provide construction workers with a safe place to work (*See Comes v New York State Elec. and Gas Corp.*, 82 NY2d 876 (1993)). Labor Law §200 and common law claims fall under two 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 (1st Dept 2012)). Under the first group, the owner had to have either created the condition or have actual or constructive notice of it (*Id* at 144). In the second category, the owner or general contractor is liable if “it actually exercised supervisory control over the injury-producing work” (*Id*).

Labor Law § 200 claims against a premises owner or contractor can arise from either the manner in which the work is performed or a dangerous or defective condition at the work site. (*Martinez v City of New York*, 73 AD3d 993 [2d Dept 2010]). For the former, the owner or contractor is liable only if it exercised supervision or control of the work that led to the injury.

(*Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343 [1998]). Where the injury arises from a dangerous or defective condition, an owner or contractor is liable if they created the condition, or failed to remedy it when they had actual or constructive notice. (*Williams v McAlpine Contr. Co.*, 235 AD3d 521, 522 [1st Dept 2025]).

Finally, as to Defendants contractual indemnification, common law indemnification, and contribution claims, it is well-established that a party cannot be indemnified for their own negligence, and contractual indemnification clauses are to be enforced only when the “intention to indemnify can be clearly implied from the language and purpose of the entire agreement, and the surrounding facts and circumstances” (*See Masciotta v Morse Diesel Int’l, Inc.*, 303 A.D.2d 309 [1st Dept 2003]). “In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Correia v. Pro. Data Mgmt., Inc.*, 259 A.D.2d 60 (1st Dept 1999)). As to common-law indemnification, the one seeking indemnity must prove “...not only that the proposed indemnitor’s negligence contributed to the causation of the accident, but also that the party seeking indemnity was free from negligence” (*See Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 (1st Dept 2010)). Similarly, contribution is only available where tortfeasors combine to cause an injury (*Godoy v Alabaster of Miami*, 302 AD2d 57 [2d Dept 2003]).

### **DISCUSSION**

#### *Labor Law 240(1)*

On the date of the accident, workers employed by H Point, including Decedent Mr. Ko, were engaged in cutting through a reinforced concrete slab, which comprised the floor of the second level and ceiling of the first level, to create the opening for the stairwell. A forklift was positioned on the first floor below the area being cut to receive the removed slab sections. It is

undisputed that as part of his job, Decedent, Mr. Ko, was working in close proximity to the edge of the opening on the second floor at the time of the accident.

According to testimony from Mohamed Gomaa, a forklift operator for H Point, a section of the slab measuring approximately two feet by three feet became lodged due to entanglement with rebar embedded in the concrete. As Mr. Ko attempted to assist in dislodging the slab from above, the forklift shifted, causing the cut piece of concrete to fall, ultimately bringing Mr. Ko down with it through the unguarded opening to the first floor.

Jun H. Song, the building manager for 37 Plaza LLC, admitted that no safety harnesses or tie-off points were provided for interior work prior to the accident. He asserted that RANSO, as the general contractor, had control over safety protocols and also had the authority to stop work on site. He confirmed that the general contractor, RANSO, was responsible for overall site safety. Mr. Song did not witness the accident but arrived shortly thereafter to find Mr. Ko lying on the first floor, conscious but unresponsive.

Jae Hyuk Ryu, a principal of RANSO, testified that his company served both as general contractor and design consultant on the project. He confirmed that regular coordination meetings took place with the property owner and that there was no designated safety officer assigned to the project. Although Mr. Ryu was on site at the time of the accident, he did not observe the incident directly. As RANSO was the general contractor, RANSO's contention that they are an improper Labor Law defendant is without merit.

Labor Law §240(1) was enacted to place responsibility for elevation-related safety practices on owners and contractors "ultimate responsibility for safety on the owner and general contractor" (*Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513, 524 [1985]; 1969 NY Legis Ann, at 407). The statute is to be construed liberally to achieve its purpose of

protecting workers from the special hazards of elevation differentials (*see Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009]).

Moreover, the nature of the accident is precisely the type contemplated by Labor Law § 240(1). Mr. Ko was pulled through an unguarded opening by a falling slab, undoubtedly a gravity-related hazard within the scope of both falling worker and falling object scenarios (*see Narducci*, 96 NY2d 259 [2001]).

Defendants' contention that Plaintiff was the sole proximate cause of his fall is unsupported by the submitted evidence. To establish the recalcitrant worker defense, it must be shown that the worker "had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured." (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 40 [2004]). Here, the record confirms that no safety devices were provided at all. Thus, Defendants cannot meet their burden to raise a triable issue of fact.

Given the above, it is uncontroverted that Plaintiff's injuries were sustained as a result of gravity and that adequate safety measures were not in place, which is exactly what Labor Law § 240(1) was legislated to address. As such, Plaintiff's motion for summary judgment pursuant to Labor Law § 240(1) anticipates is granted.

*Labor Law 241(6)*

In his deposition, Mr. Gomaa, the forklift operator on site, further testified that no workers, including Mr. Ko, were wearing safety harnesses at the time of the accident. When asked why, he responded that "there was no spot to put the safety belt in," confirming that there was no appropriate anchorage point for a fall protection system. As such, Plaintiff's claims

pursuant to Labor Law § 241(6) are granted, as both Industrial Codes 23-1.7(b) and 23-1.16(b) require that a safety belt be provided. The testimony of Mr. Gomaa conclusively establishes that none were provided, and that therefore Plaintiff's injuries are connected to violations of the Industrial codes. Finally, neither RANSD nor 37 Plaza submit substantive opposition to Plaintiff's Labor Law § 241(6) claim, other than the argument set forth by RANSD that they are an improper Labor Law Defendant. That argument is without merit. As such, Plaintiff's motion for summary judgment as to his claims pursuant to Labor Law § 241(6) is granted.

*Labor Law § 200 and Common Law Negligence*

Issues of fact remain as to the degree of supervisory control exercised by RANSD and 37 Plaza which ultimately warrant denial of both Defendants' motions and cross-motions for Summary Judgment dismissing Plaintiff's Labor Law § 200 and common law negligence claims. Claims under Labor Law §200 and common law negligence arise under two distinct theories: (i) the manner and means of the work, and (ii) a dangerous or defective condition on the premises. Where the claim is based on the means and methods of the work, liability may only be imposed upon an owner or general contractor if they actually supervised or controlled the injury-producing work *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). Where the claim is based on a dangerous condition, liability attaches if the owner or contractor created the condition or had actual or constructive notice of it. (*Williams v McAlpine Contr. Co.*, 235 AD3d 521, 522 [1st Dept 2025]).

The record contains conflicting evidence regarding RANSD's role at the site. While RANSD contends it had completed its general contractor role and was only performing carpentry on the sixth floor at the time of the incident, deposition testimony, RANSD's executed subcontract agreement with H Point, RANSD's Jobsite Safety Agreement with H Point were

both in force at the time of the accident. RANSO continued to have representatives on site at the time of the accident.

The owner, 37 Plaza LLC's, representative, Mr. Song, further testified that RANSO had responsibility for site safety and had authority to stop unsafe work. These conflicting assertions by the parties create triable issues of fact as to whether RANSO exercised supervisory control over the injury-producing work.

Similarly, there is conflicting evidence as to 37 Plaza's role. H Point asserts that 37 Plaza's representatives were on site daily, had offices at the premises, participated in meetings, and were present at the time of the accident. While 37 Plaza maintains that its representative, Mr. Song, did not direct the means or methods of the work, this deposition testimony raises issues of fact regarding whether 37 Plaza had actual supervisory involvement sufficient to sustain liability under Labor Law §200 or common-law negligence. Accordingly, summary judgment dismissing Plaintiff's Labor Law §200 and common-law negligence claims is denied as to both RANSO and 37 Plaza.

*Contractual Indemnification, Common Law Indemnification, and Contribution*

*Contractual Indemnification*

37 Plaza seeks summary judgment for contractual indemnification against RANSO, citing the written construction agreement which includes an indemnification clause. It is well settled that contractual indemnification provisions are enforceable only where the intention to indemnify is clear and the indemnitee is free from negligence (*Masciotta v Morse Diesel Int'l, Inc.*, 303 A.D.2d 309 [1st Dept 2003; *Correia v. Pro. Data Mgmt., Inc.*, 259 A.D.2d 60 [1<sup>st</sup> Dept 1999]).

Here, issues of fact remain as to whether 37 Plaza was itself negligent in relation to site supervision and safety. Testimony from H Point and RANS D placed 37 Plaza's representatives on site with daily involvement and authority over certain aspects of the work. Because an indemnitee may not obtain contractual indemnification for its own negligence, and questions of fact remain as to 37 Plaza's potential negligence, summary judgment on contractual indemnification is denied at this stage.

*Common Law Indemnification and Contribution*

RANS D seeks common law indemnification against H Point, and 37 Plaza seeks the same against both RANS D and H Point. Common law indemnification requires a showing that the party seeking indemnity was free from negligence and held liable solely by operation of law. (*Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 [1st Dept 2010]). Contribution is only available where multiple tortfeasors combine to cause an injury (*Godoy v Alabaster of Miami*, 302 AD2d 57 [2d Dept 2003]).

The evidence establishes that H Point and its employees, including the decedent, performed the slab cutting that led to Decedent's accident. Testimony by Mr. Gomaa confirms that no harnesses, planking, or lifelines were provided, and that the anchorage points required by Industrial Code §23-1.16(b) were absent. To the extent Plaintiff has prevailed under Labor Law §§240(1) or 241(6), RANS D and 37 Plaza may be liable purely by operation of law. Thus, both RANS D and 37 Plaza have preserved claims for conditional common law indemnification against H Point, contingent upon proving their own freedom from negligence.

However, issues of fact remain regarding whether RANS D and/or 37 Plaza were negligent in their supervisory roles, and therefore their entitlement to indemnification cannot be resolved as a matter of law on this record. Similarly, because factual questions remain

concerning the respective roles of each Defendant, the Court does not grant summary judgment dismissing contribution claims at this time.

The Court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby


ORDERED that Plaintiff's motion for Summary Judgment pursuant to Labor Law §§ 240(1) and § 241(6) for violations of Industrial Code §§ 23-1.7(b) and 23-1.16(b) is granted; and it is further

ORDERED that Defendant RANS Design Inc's motion seeking Summary Judgment dismissing Plaintiff's Labor Law § 200 and common law negligence, dismissing cross-claims asserted by Co-Defendants 37 Plaza LLC and H Point Inc. and for common law indemnity against H Point Inc. is denied in its entirety; and it is further

ORDERED that Defendant/Third Party Plaintiff 37 Plaza's cross-motion for summary judgment for contractual indemnification against RANS Design Inc., for dismissal of Plaintiff's Labor Law § 200 and common law negligence claims, and for dismissal of cross-claims asserted by RANS Design Inc. and H Point Inc. for common law contribution or indemnity and to grant common law indemnity against H Point Inc. is denied in its entirety.

The foregoing constitutes the decision and order of the court.

10/6/2025  
DATE

  
**HON. LESLIE A. STROTH**  
**J.S.C.**

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION  OTHER

GRANTED  DENIED  GRANTED IN PART

APPLICATION:  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE