SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LETICIA M. RAMIREZ** **PART** **29**

Justice

----------X

JOSEPH V. COLON,

Plaintiff,

- v -

RIOS SENIOR RESIDENCE HOUSING DEVELOPMENT FUND CORPORATION,

Defendant.

----------X

INDEX NO. 160515/2022

MOTION DATE 06/16/2025, 06/16/2025, 06/20/2025

MOTION SEQ. NO. 002 003 004

----------X

RIOS SENIOR RESIDENCE HOUSING DEVELOPMENT FUND CORPORATION,

Third-Party Plaintiff,

-against-

TRANSEL ELEVATOR & ELECTRIC, INC.,

Third-Party Defendant.

----------X

DECISION + ORDER ON MOTION

Third-Party
Index No. 595484/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 72, 73, 87, 88, 93, 96, 97

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 91, 92, 94, 99, 100, 101

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89, 90, 95, 98

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

Under motion sequence #2, plaintiff Joseph V. Colon moves pursuant to *CPLR§3212* for summary judgment on the issue of liability as to his *Labor Law § 240(1)* claim. Defendant Rios Senior Residence Housing Development Fund Corporation and third-party defendant Transel Elevator and Electric, Inc., (hereinafter, "Rios" and "Transel") both oppose alleging there are no violations of the statute and move under motion sequence #3 and 4 for summary judgment seeking dismissal of the instant action. The Court consolidates all motions for disposition herein.

Plaintiff commenced this action on December 8, 2022, to recover for personal injuries allegedly sustained on January 15, 2021, when he was an elevator constructor performing repair work at 335 E. 105th Street in Manhattan. After Rios joined issue on May 26, 2023, Rios filed a third-party complaint against Transel on May 26, 2023. Transel joined issue on the third-party complaint on June 19, 2023. A preliminary conference ensued on February 9, 2024, and a compliance conference on June 26, 2024. The Note of Issue was filed on March 18, 2025.

Plaintiff argues he is entitled to summary judgment where Rios violated *§ 240(1)* by failing to provide plaintiff with a proper safety device to prevent him from suffering a gravity-related injury. Specifically, plaintiff argues Rios failed to provide plaintiff with a safety device to "mediate or control the descent of the elevator cab"

and that, because the elevator's safety device failed to control the descent of the elevator, this constitutes a violation of the statute. In opposition, Rios argues that the Appellate Division has determined that matters involving similar fact patterns fall outside the scope of *§ 240(1)*. In reply, plaintiff contends that liability under *Labor Law § 240(1)* in *Sharp v. Scandic Wall Ltd. Partnership,* 306 A.D.2d 39 (1st Dept. 2003) supports plaintiff's position, proving Rios violated the statute.

On May 23, 2024, plaintiff appeared for a deposition where he testified, he worked for Transel as a route elevator mechanic responsible for a number of elevators in the upper east side of Manhattan. To perform his work, plaintiff was given a harness, hard hat, a voltmeter, safety glasses and gloves. On the date of the accident, plaintiff was called to assist another mechanic, Thomas Leho, at the end of his workday on a two-man job. The job consisted of repairing and locating an open-door lock circuit.

When plaintiff arrived at the building, he took the second elevator to the top floor, where he found Mr. Leho working on the top operator (i.e., the equipment that opens and closes the elevator car door). Mr. Leho told plaintiff he needed to get on top of the elevator car to gain access to the top. At that point, Mr. Leho got the elevator to move so plaintiff could get in. Mr. Leho wanted plaintiff to stay in the car to control it once the elevator returned to service. As plaintiff was in the car, Mr. Leho managed to have the elevator lowered with a door tomahawk, so the top was leveled with the area where Mr. Leho needed to work on the elevator's operator. Once Mr. Leho made the necessary adjustments, the elevator's door was closed and the elevator was allowed to return to service, but the car didn't move. Plaintiff attempted to have the elevator move by pressing the 9th floor button, but nothing happened. At this point, Mr. Leho told plaintiff that he'll go into the motor room on the roof to see if he can get the elevator running. Mr. Leho called plaintiff from the motor room to tell him he will reset the controller and take it from there.

Once the controller was reset, the elevator started descending and plaintiff couldn't control it. The elevator ended up stopping at the pit. When asked if it was a free fall, plaintiff stated that the elevator fell at contract speed (i.e., the normal operating speed) and slammed on the metal. Plaintiff does not know why the elevator behaved in that manner. Upon impact, plaintiff slouched down and tried to absorb the impact. Plaintiff called Mr. Leho and had a conversation with him, where they didn't know what happened, but Mr. Leho then managed to get the elevator leveled with the lobby floor so the doors would open, and plaintiff could step out.

"On a motion for summary judgment, the court's function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact" (*Martin v. Citibank, N.A.*, 64 A.D.3d 477, 478 [1st Dept. 2009]; *see also Sheehan v. Gong*, 2 A.D.3d 166, 168 [1st Dept. 2003]. And "all of the evidence must be viewed in the light most favorable to the opponent of the motion" (*People v. Grasso*, 50 A.D.3d 535, 544 [1st Dept. 2008]).

In order to prevail in a *Labor Law Section§ 240* case, a plaintiff must prove that (1) he is a member of the class of workers that the statute was designed to protect, (2) the statute was violated, and (3) the breach of duty was a proximate cause of plaintiff's injuries (*See, Koenig v. Patrick Construction Co.,* 298 N.Y. 313 [1948]; *Crawford v. Leimzider*, 100 A.D.2d 568, 473 N.Y.S2d 498 [2nd Dept. 1984]).

Section 240(1) of the Labor Law 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 Labor Law was enacted to protect workers by placing ultimate responsibility for safety practices on owners and contractors rather than on workers themselves (*See, Panek v. Albany County,* 99 N.Y.2d 452, 457

[2003]; *Martinez v. NYC,* 93 N.Y.2d 322 [1999]). The statute is construed liberally in favor of construction workers (*Rocovich v. Con. Ed.,* 78 N.Y.2d 509 [1991]), because such workers "are scarcely in a position to protect themselves from accidents" (*Koenig v. Patrick Constr. Co.,* 298 N.Y. 313, 319 [1948]; *Quigley v. Thatcher,* 207 NY 66, 68 [1912]). Violation of the statute results in absolute liability for injuries proximately caused as a consequence thereof (*Zimmer v. Chemung County Performing Arts, Inc.* 65 N.Y.2d 513 [1985]). The duty imposed by the statute is nondelegable, and when violation of same causes injury to a member of the class for whose benefit the statute was enacted, the owner, general contractor and their agents are liable (*Haimes v. N.Y. Telephone Co.,* 46 N.Y.2d 132 [1978]). This remains true even where the owner exercises no supervision, control or direction of the work (*Id.*).

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505, 618 NE2d 82, 601 NYS2d 49 [1993]). "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, 950 NYS2d 35 [1st Dept 2012]). "Where … the accident arises … from a dangerous premises condition, a property owner is liable under *Labor Law § 200* when the owner created the dangerous condition … or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9, 919 NYS2d 129 [1st Dept 2011] [internal quotation marks omitted]). "It is settled law that where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under section 200 of the Labor Law (*Lombardi v. Stout*, 80 N.Y.2d 290, 604 N.E.2d 117, 590 N.Y.S.2d 55 [1992]). Similarly, where the dangerous condition arises from a subcontractor's methods or materials, "recovery against the … general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation" (*See Reilly v. Newireen Assocs.*, 303 A.D.3d 214, 756 N.Y.S.2d 192 [1st Dept. 2003]).

Labor Law § 241(6) "requires owners and contractors to 'provide reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501, 618 N.E.2d 82, 601 N.Y.S.2d 49 [1993]. "[T]he duty to comply with the Commissioner's regulations is nondelegable" (*Id.*, 81 N.Y.2d 502). "*Labor Law § 241 (6)* is, in a sense, a hybrid, since it reiterates the general common-law standard of care and then contemplates the establishment of specific detailed rules through the Labor Commissioner's rule-making authority" (*Id.* 81 N.Y.2d 503). Traditionally, provisions that merely incorporate the general common-law standard are treated differently from provisions containing specific commands and standards (*See Ross*, supra at 503). "The latter have been held to create duties that are nondelegable … while the former do not" (*Id.*).

Here, plaintiff's *§ 240* claim must be dismissed in light of consistent Appellate Division caselaw holding that a "passenger elevator [is] not a safety device for protecting a construction worker from a risk posed by elevation as contemplated by *Labor Law § 240(1)*" (See, *Smith v. Extell W. 45th St. LLC*, 143 A.D.3d 647 [1st Dept. 2016]; referencing *Kleinberg v. City of New York*, 61 A.D.3d 436 [1st Dept. 2009] [*§240(1)* claim was properly dismissed where plaintiff was injured when the service elevator allegedly went into a free fall or overspeed and crashed to the bottom of the shaft from 80 to 100 feet]; see also *DiPilato v. H. Park Cent. Hotel, L.L.C.*, 17 A.D.3d 191 [1st Dept. 2005] [*§240(1)* claim was properly dismissed where plaintiff was injured when the passenger elevator plunged approximately 18 floors to the elevator pit below]. *Sharp*, supra, is distinguishable from the aforementioned cases.

In *Sharp*, the Appellate Division held that plaintiff was protected by section 240(1) since "[h]e was injured because the elevator he was hoisting to the ground fell, and the elevator fell because the hoist he was using, once removed, was not, as the statute requires, 'so constructed, placed and operated as to give proper protection" (See *Sharp*, supra, at 306 A.D.2d at 40). Here, plaintiff was not hoisting the elevator nor was he using a hoist to perform

his work. Therefore, plaintiff's motion for summary judgment must be denied, and Rios's and Transel's motions must be granted to the extent that plaintiff's *§ 240(1)* claim is dismissed.

Next, plaintiff's *Labor Law § 200* claim must also be dismissed. The Court finds that this case does not fall under the means and methods category of cases; rather, an analysis of whether a dangerous condition existed on the premises is warranted. Here, the evidence demonstrates that Rios, through the deposition of Mr. Craig Harty, the Director of Maintenance for Hope Community Inc. (Rio's property manager), was not aware of the underlying reason why the elevator wasn't working, and a defect was never reported to OSHA, NYC or any governing body. Mr. Leho, who testified that he was the route elevator mechanic assigned to service/repair the subject building, also stated that he did not know why the elevator descended the way it did, he did not learn afterwards what caused the elevator to behave the way it did, and he did not know of any action the building management or super could have taken to prevent the elevator from behaving in this way. Therefore, the record demonstrates that Rios and Transel's mechanic (1) did not know what caused the elevator to behave the way it did and therefore (2) they could not have had notice of an alleged defect that has never been identified. Plaintiff's argument that there must have been some defect that prevented the elevator from performing normally and that Transel and Rios have failed to prove they lacked notice of this "unknown" defect is insufficient to raise a material issue of fact where parties' deposition—including plaintiff's—establish that no specific defect has been identified and that therefore they could not have had notice of an unknown defect.

Lastly, plaintiff's *Labor Law § 241(6)* claim must be summarily dismissed, as plaintiff does not oppose dismissal and has not specifically cited a violation of the Industrial Code to sustain his claim (*See Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 505, 618 N.E.2d 82, 601 N.Y.S.2d 49 [1993]).

Next, Transel claims that Rios's common-law indemnification and contribution claims against it must be dismissed in light of *Worker's Compensation Law § 11* because Transel is plaintiff's employer, and plaintiff did not suffer a "grave injury" within the meaning of the statute. Transel also contends that Rios's breach of contract claim must also fail because it obtained the requisite insurance coverage mandated by their agreement. In partial opposition to the motion, Rios argues that it is entitled to summary judgment on their contractual indemnification claim where plaintiff was injured within the scope of his employment and the plain language of the agreement between the parties establishes Transel's responsibility to defend and indemnify Rios.

"A contract that provides for indemnification will be enforced as long as the intent to assume such a role is 'sufficiently clear and unambiguous'" (*Bradley v. Earl B. Feiden, Inc.*, 8 N.Y.3d 265, 274, 864 N.E.2d 600, 832 N.Y.S.2d 470 [2007] citing, *Rodrigues v N & S Bldg. Contrs., Inc.*, 5 NY3d 427, 433, 839 NE2d 357, 805 NYS2d 299 [2005]). "A court must also be careful not to interpret a contracted indemnification provision in a manner that would render it meaningless" (*Id.*, Bradley, supra, at 8 N.Y.3d 274*; see also Levine v Shell Oil Co.*, 28 NY2d 205, 212, 269 NE2d 799, 321 NYS2d 81 [1971]). "When the intent is clear, an indemnification agreement will be enforced even if it provides indemnity for one's own or a third party's negligence" (*Id.*, Bradley, *supra*, at 8 N.Y.3d 274; *see, e.g. Levine*, 28 NY2d at 210, 213 [indemnification agreement which covered "any and all claims, suits, loss, cost and liability on account of injury or death of persons or damage to property" held enforceable to require operator of gas station to cover the owner of the station's own negligence].

Here, given that the Court has dismissed plaintiff's complaint in its entirety, Rios's claims for common-law indemnification and contribution claims are deemed moot. As to Rios's claim for contractual indemnification, a review of the agreement between Rios and Transel demonstrates that the contractual indemnification clause reads as follows:

> "The Contractor hereby agrees to indemnify and save Harmless the Owner of the premises, the Owner's representatives, agents and employees and any subsidiaries, *from and against all liability claims and demands on account of injury to persons* including death resulting there from and damage to property *arising out of the performance of this Contract by the Contractor*, employees, and agents of the Contractor and Contractor's property,

> except from and against such claims and demands which may arise out of the sole negligence of the Owner or his agents, or any subsidiaries. The Contractor shall, at his or its own expense, defend any and all actions at law brought against the Owner, or his agents, based thereon and shall pay all Attorney fees and all other expense and promptly discharge any judgment arising there from. These conditions shall also apply to any of the Contractor's subcontracted operations" (italicize added).

Here, the Court finds that Transel's duty to defend and indemnify is clearly implied from the language and purpose of the entire agreement. However, given that plaintiff's claims have been dismissed, Rios's contractual indemnification claim has been rendered academic. The Court, however, finds that plaintiff's claims "aris[e] out of the performance of [Transel's] Contract" and therefore, in light of the clause's language stating that Transel "shall pay all Attorney fees and all other expense," Rios shall be entitled to reasonable attorney fees and costs in defending this action.

Finally, Transel has submitted a copy of a Commercial General Liability Insurance Policy with a policy period of June 24, 2020 to June 24, 2021, issued on July 15th, 2020 and demonstrating under form CG 20 10 04 13 that "additional insured person(s) or organization(s) means "Any person or organization for whom [Transel is] … performing operations when [Transel] and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy" and "Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1, above." Therefore, the Court finds that Transel obtained insurance in favor of Rios and therefore Transel is entitled to summary judgment dismissing Rios's breach of contract claim. Accordingly, it is

ORDERED: Plaintiff's motion pursuant to *CPLR § 3212* for an order seeking summary judgment on his *Labor Law § 240(1)* claim on the issue of liability is hereby denied;

ORDERED: Defendant Rios Senior Residence Housing Development Fund Corporation's motion pursuant to *CPLR § 3212* for an order granting it summary judgment dismissing plaintiff's complaint is hereby granted and plaintiff's complaint is dismissed;

ORDERED: Defendant Rios Senior Residence Housing Development Fund Corporation's motion pursuant to *CPLR § 3212* for an order granting it summary judgment on its claim for contractual indemnification as against Defendant Transel Elevator and Electric, Inc. is granted to the extent it is entitled to reasonable attorney fees and costs in defending this action;

ORDERED: Defendant Transel Elevator and Electric, Inc.'s motion pursuant to *CPLR § 3212* for an order granting it summary judgment dismissing plaintiff's complaint is hereby granted and plaintiff's complaint is hereby dismissed, as against it;

ORDERED: Defendant Transel Elevator and Electric, Inc.'s motion pursuant to *CPLR § 3212* seeking an order dismissing the third-party complaint is hereby granted.

This constitutes the Decision and Order of this Court.

20251009115140LRAMIREZ24C5BED0C84C4E3A9CD25B3399AA0484

10/09/25
DATE

LETICIA M. RAMIREZ, J.S.C.

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