SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD G. LATIN** **PART** **46M**

Justice

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ALBERT LUCENTE,

Plaintiff,

- v -

USTA NATIONAL TENNIS CENTER INCORPORATED, UNITED STATES TENNIS ASSOCIATION, HUNT CONSTRUCTION GROUP, INC.,RUTTURA & SONS CONSTRUCTION CO., INC.,LEGACY YARDS TENANT, LLC,TUTOR PERINI BUILDING CORP.,

Defendant.

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INDEX NO. 157825/2018

MOTION DATE 09/23/2024, 10/24/2024, 10/25/2024, 10/25/2024, 10/25/2024, 10/25/2024

MOTION SEQ. NO. 003 004 005 006 007 008

DECISION + ORDER ON MOTION

LEGACY YARDS TENANT, LLC,, TUTOR PERINI BUILDING CORP.

Plaintiff,

-against-

ADCO ELECTRICAL CORP.

Defendant.

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Third-Party
Index No. 595938/2019

LEGACY YARDS TENANT, LLC,, TUTOR PERINI BUILDING CORP.

Plaintiff,

-against-

Defendant.

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Second Third-Party
Index No. 595390/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 385, 386, 387, 402

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 326, 327, 344, 345, 346, 347, 348, 349, 350, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 384, 396

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 196, 197, 198, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 328, 334, 335, 380, 381, 382, 383, 388, 389, 398, 399, 400, 401

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 329, 336, 337, 338, 397

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 330, 339, 340, 351, 390, 391, 404, 405, 406, 407

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 331, 332, 333, 341, 342, 343, 352, 353, 354, 355, 356, 357, 358, 392, 393, 394, 395, 403, 408, 409, 410

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

As a preliminary matter, motion sequence # 2 was withdrawn by the movant. Upon the foregoing cited papers, and after oral argument, the remaining motions are decided as follows:

Background

This personal injury action stems from two injuries suffered by plaintiff Albert Lucente from two separate incidents (NYSCEF # 1). First, Plaintiff alleged he sustained personal injuries on May 5, 2016 regarding a reconstruction project as an electrician for subcontractor ADCO Electrical Corporation ("ADCO") (*id.* at 6-7). Plaintiff alleged he stepped on a cover of a drainage trench, which the cover broke and plaintiff fell and sustained injuries (*id.* at 7).

The second incident involved plaintiff working as an electrician involving electrical installation at the 10 Hudson Yards project (*id.* at 18). On November 3, 2016, plaintiff was working on the 43rd floor of 10 Hudson Yards on a ladder (*id.*). Plaintiff alleged his immediate work vicinity was "energized with live electrical current," which caused plaintiff to be "thrown from and/or fall from the elevated work location on a ladder" (*id.* at 18-19).

Procedural History

On August 22, 2018, plaintiff commenced this action by filing a complaint against USTA National Tennis Center Incorporated, United States Tennis Association, Hunt Construction Group, Inc., Ruttura & Sons Construction Co., Inc., Legacy Yards Tenant, LLC. and Tutor Perini Building Corp. (NYSCEF # 1). On September 27, 2018, USTA National Tennis Center Incorporated, United States Tennis Association, Hunt Construction Group, Inc., and Ruttura & Sons Construction Co., Inc. filed a motion to sever the actions which was denied on April 3, 2019 (NYSCEF # 139). On October 30, 2019, Legacy Yards Tenant, LLC. and Tutor Perini Building Corp filed a third-party complaint impleading ADCO Electrical Corp. (NYSCEF # 144). On April 30, 2021, Legacy Yards and Tutor Perini filed a second third-party complaint impleading The Boston Consulting Group (NYSCEF # 152). On August 31, 2021, Boston Consulting filed a third third-party complaint impleading Structure Tone (NYSCEF # 154). On June 28, 2024, plaintiff filed the note of issue (NYSCEF # 166).

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which

require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

Motion # 3

On September 23, 2024, third-party defendant Structure Tone filed a motion pursuant to CPLR 3212 granting summary judgment on its contractual indemnification claim against third-party ADCO (NYSCEF # 136). Third-Party ADCO opposes the motion (NYSCEF # 385). ADCO avers issues of fact exist to preclude summary judgment because ADCO was not negligent and plaintiff did not sustain a "grave injury" and Structure Tone's common law claims against plaintiff's employer ADCO are barred by the Workers' Compensation laws (NYSCEF # 385 at 3-8).

Contract Indemnification

Contractual indemnification depends upon the specific language of the contract (*see Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3d 415 [1st Dept 2021], citing *Alfaro v 65 W. 13th Acquisition, LLC*, 74 AD3d 1255, 1255 [2d Dept 2010]).

The Structure Tone and ADCO contract indemnification clause provides:

> "11.2 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" (NYSCEF # 167 at 5).

Here, the indemnification contract provision clearly states and obligates ADCO to to indemnify Structure Tone for all claims which are "in connection with the job/project work" (NYSCEF # 167 at 5). Since plaintiff's accident arose out of his work for the same project with which ADCO was subcontracted to perform, plaintiff's accident necessarily arose out of the work that ADCO subcontracted with Structure Tone to perform, thus triggering ADCO's contractual duty to indemnify Structure Tone (*see Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3d 415 [1st Dept 2021], citing *Lesisz v Salvation Army*, 40 AD3d 1050, 1052 [2d Dept 2007]). Because the indemnification provision does not condition on any negligence by the parties, ADCO's arguments regarding negligence does not apply (NYSCEF # 385 at 3-8). Accordingly, ADCO's duty to indemnify under the agreement was triggered by the fact that the accident arose from plaintiff's performance of his work as an employee at the project site (*see Cackett v Gladden Properties, LLC*, 183 AD3d 419, 422 [1st Dept 2020]). Even though indemnification was not conditional pursuant to GOL, Structure Tone must be free from negligence. Here, Structure Tone did not provide a showing that they were not negligent. Structure tone had a duty to supervise the means and methods, and both Plaintiff and foreman testified they had the responsibility to turn off the electricity.

Thus, Structure Tone's motion for summary judgment on its indemnification is conditionally granted on showing Structure Tone was not negligent (*see Hartrum v Montefiore Hosp. Hous. Section II Inc.*, 237 AD3d 429, 433 [1st Dept 2025]).

Motion # 4

On October 24, 2024, plaintiff filed a motion pursuant to CPLR 3212 seeking partial summary judgment against defendants USTA National Tennis Center Incorporated and Hunt Construction Group, Inc. under Labor Law § 240(1), for injuries sustained by Plaintiff on May 5, 2016 (NYSCEF # 171). In addition, plaintiff asserted claims against defendant Legacy Yards Tenant, L.P. under Labor Law §§ 240(1) and 241(6) for injuries sustained by plaintiff on November 3, 2016 (NYSCEF # 171). Plaintiff withdraws all claims against Tutor Perini Building Corp.

Structure Tone, Legacy Yards Tenant, LP i/s/h/a Legacy Yards Tenant, LLC, USTA National Tennis Center Incorporated, United States Tennis Association, Hunt Construction Group, Inc., Ruttura & Sons Construction Co., Inc., and ADCO oppose the motion (NYSCEF ## 326, 344, 359, 384). ADCO avers issues of fact exist to preclude summary judgment because ADCO was not negligent and plaintiff did not sustain a "grave injury" and Structure Tone's common law claims against plaintiff's employer ADCO are barred by the Workers' Compensation laws (NYSCEF # 385 at 3-8).

I. Flushing Meadows – Corona Park, Flushing New York Construction Project

a. Liability Under Labor Law § 240(1)

Labor Law § 240(1) mandates that building owners and contractors "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"

(*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 6-7 [2011], quoting Labor Law § 240(1)).

The statute imposes absolute liability on building owners and contractors whose failure to "provide proper protection to workers employed on a construction site" constitute proximate cause of injury to a construction worker (*Wilinski*, 18 NY3d at 7, quoting *Misseritti v Mark IV Const. Co., Inc.*, 86 NY2d 487, 490 [1995]). An "accident alone" does not sufficiently establish a violation of Labor Law § 240(1) or causation (*Cutaia v Bd. of Managers of 160/170 Varick St. Condominium*, 38 NY3d 1037, 1038 [2022]). In addition, Labor Law § 240(1) is designed to protect against "harm directly flowing from the application of the force of gravity to an object or person" (*id.*, quoting *Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 501 [1993]).

Labor Law 240(1) is to be interpreted as "liberally as may be for the accomplishment of the purpose for which it was thus framed" (*Rocovich v Consol. Edison Co.*, 78 NY2d 509, 513 [1991]). Thus, this section has been interpreted to impose absolute liability for a breach which has proximately caused an injury (*id.*). "Negligence, if any, of the injured worker is of no consequence" (*id.*; *see Bland v Manocherian*, 66 NY2d 452, 459-461 [1985]). In furtherance of the legislature's purpose of protecting workers "against the known hazards of the occupation" § 240(1) is nondelegable and that "an owner is liable for a violation of the section even though the job was performed by an independent contractor over which it exercised no supervision or control" (*Rocovich*, 78 NY2d at 513).

However such occupational hazards must fall within the statute's meaning (*see Toefer v Long Is. R.R.*, 4 NY3d 399, 406-07 [2005], citing *Rocovich*, 78 NY2d at 509).In *Rocovich*, the court discussed the occupational hazards against which this statute was directed (*see Rocovich*, 78 NY2d at 513). The court pointed out that while the hazards themselves are not spelled out in the

statute, they can be inferred from the "protective means" set forth in the statute "for the hazards' avoidance"—scaffolding, hoists, stays, ladders and so forth (*see Toefer*, 4 NY3d at 406-07 [2005], citing *Rocovich*, 78 NY2d at 513). More specifically, the *Rocovich* court explained:

> "The various tasks in which these devices are customarily needed or employed share a common characteristic. All entail a significant risk inherent in the particular task because of the relative elevation at which the task must be performed or at which materials or loads must be positioned or secured. The contemplated hazards are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured. It is because of the special hazards in having to work in these circumstances, we believe, that the Legislature has seen fit to give the worker the exceptional protection that section 240(1) provides" (*Rocovich*, 78 NY2d at 514).

The above-quoted language from *Rocovich* identifies two distinct sources of elevation-related risk: "the relative elevation at which the task must be performed" and the elevation "at which materials or loads must be positioned or secured" (*id.*).

In *Narducci*, the court explained "[n]ot every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]. In other cases involving falls of workers, the court held that where a plaintiff "was exposed to the usual and ordinary dangers of a construction site, and not the extraordinary elevation risks envisioned by Labor Law § 240(1)," the plaintiff cannot recover under the statute (*see Rodriguez v Margaret Tietz Ctr. for Nursing Care, Inc.*, 84 NY2d 841, 843 [1994]).

Plaintiff avers that there is no triable issues of fact regarding defendants' liability under Labor Law § 240(1) (NYSCEF # 192 at 2-6). More specifically, plaintiff asserts the temporary cover on the trough "masqueraded as a temporary walking surface" and thus was inadequate to

protect against Plaintiff from falling (*id.* at 2). Plaintiff states that the temporary covering over a trench on a construction site is a "device" within the meaning of the statute (*id.* at 4). Plaintiff primarily cites to *Rubio v New York Proton Mgt., LLC*, 192 AD3d 438, 439 [1st Dept 2021] arguing similarities to this current case.

In *Rubio*, the plaintiff showed that a plywood sheet covering a three-foot deep trench at the construction site where he was working gave way when he walked across it, causing him to fall into the trench below and suffer injury (*see id.*) The unsecured plywood sheet through which plaintiff fell was an inadequate safety device (*see id.*, citing *Alonzo v Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc.*, 104 AD3d 446, 450 [1st Dept 2013]). The *Rubio* court rejected defendants' argument that plaintiff was not exposed to a gravity-related risk that required protection under the statute (*see id.*). The gravity-related risk was the three-foot deep trench, and the unsecured plywood sheet placed over it was inadequate, because it gave way, and failed to protect plaintiff from injury (*see id.*). In addition, the defendants failed to raise an issue of fact as to the plywood sheet's inadequacy (*see id.*).

In *Sunun v Klein*, 188 AD3d 507, 508 [1st Dept 2020], plaintiff was allegedly injured when he stepped on an area of ground that had been excavated to create a trench, and then backfilled with soil, during an earlier phase of the construction project. The area was not guarded after it was backfilled and plaintiff testified his leg sank into the ground to the middle of this thigh (*see id.*). The *Sunun* court found no safety devices were provided to plaintiff to protect him against the gravity-related risk of descending a significant distance into the trench and granted plaintiff partial summary judgment on the Labor Law § 240(1) claim (*see id.*).

Here, and similar to *Sunun*, there is no dispute that plaintiff was injured when he stepped on a cover of a drainage trench, which the cover broke and plaintiff fell and sustained injuries

(NYSCEF # 1 at 7). Plaintiff stated he "stepped on the mound of sand, and there was what looked like to be cement on top of the trough, like a cover" (NYSCEF # 184 at 23). In addition, the shortness of the distance of plaintiff's fall of whether it was at least two feet deep is irrelevant (*see Megna v Tishman Const. Corp. of Manhattan*, 306 AD2d 163, 164 [1st Dept 2003], citing *Siago v Garbade Const. Co.*, 262 AD2d 945 [4th Dept 1999] [holding that although the height differential of plaintiff's injury was no more than 18 inches, the determination whether Labor Law § 240 (1) applies does not depend upon the distance that a worker falls]).

Plaintiff's injuries were proximately caused by a failure to provide adequate safety devices to protect him from the elevation-related risk of falling into a drainage system while he was working on the construction site (*see Demetrio v Clune Constr. Co., L.P.*, 176 AD3d 621, 622 [1st Dept 2019]; *see also Gjeka v Iron Horse Transp., Inc.*, 151 AD3d 463, 463 [1st Dept 2017]). Plaintiff was provided "a hard hat, goggles, a safety vest" (NYSCEF # 184 at 37). No fall protection equipment such as a harness or lanyard was provided (*see id*. at 38).

Here, the elevation differential between the top of the cover and the ground level of the trough to which plaintiff's foot and leg sank is analogous to elevation differential in *Sunan*, as well as the risk that a worker standing on a platform on a body of water would fall into the water (NYSCEF # 188; *see Sunun*, 188 AD3d at 509; *see also Pipia v Turner Constr. Co.*, 114 AD3d 424, 426-427 [1st Dept 2014]).

Accordingly, plaintiff was exposed to the dangers of gravity, his injury flowed directly from the forces of gravity, and the violation of the statute is a proximate cause of Plaintiff's injuries (*Cutaia v Bd. of Managers of 160/170 Varick St. Condominium*, 38 NY3d 1037, 1038 [2022]). In addition, defendants failed to show that plaintiff was the sole proximate cause of his injury to defeat a § 240(1) claim as he wasn't told or instructed not to walk on or to walkaround the cover

(*see Oleo v Charis Christian Ministries, Inc.*, 106 AD3d 521, 522 [1st Dept 2013]). Because the duty imposed under § 240(1) is nondelegable, USTA National Tennis Center Incorporated and Hunt Construction Group, Inc. are liable under Labor Law § 240(1) (*see Rocovich*, 78 NY2d at 513).

Accordingly, summary judgment for violation of Labor Law 240(1) is granted in favor of plaintiff.

II. 10 Hudson Yards Construction Project

a. Liability Under Labor Law § 240(1)

Plaintiff avers, and the Court agrees, that there are no triable issues of fact regarding Legacy Yards Tenant, LCC's ("Owner") liability under Labor Law § 240(1).Accordingly, plaintiff's motion is also granted under this section.

Plaintiff was standing on a six foot A-frame ladder when he was electrocuted by exposed electrical wire on his left hand (NYSCEF # 184 at 128-131). Once plaintiff got shocked, he and the ladder fell (*id*. at 133).

Partial summary judgment on the issue of liability on the Labor Law § 240(1) cause of action is warranted under the circumstances (*see DelRosario v United Nations Fed. Credit Union*, 104 AD3d 515 [1st Dept 2013] [granting partial summary judgment on plaintiff's Labor Law § 240(1) when plaintiff stood on an A-frame ladder and was struck on the left side of his face by a live, energized and exposed electrical wire]).

The record establishes that the ladder provided to plaintiff was inadequate for the task of preventing his fall when he came into contact with the exposed wire and that was a proximate cause of his injury (*see id.*; *see also Vukovich v 1345 Fee, LLC*, 61 AD3d 533, 533 [1st Dept 2009] [granting partial summary judgment on plaintiff's Labor Law § 240(1) when plaintiff received an

electrical shock and fell from five to seven feet from an unsecured A-frame ladder]; *see also Quackenbush v Gar-Ben Assoc.*, 2 AD3d 824, 825 [2d Dept 2003] [granting summary judgment on plaintiff's Labor Law § 240(1) when plaintiff fell from a ladder at 14 feet to the floor after sustaining an electric shock in the course of connecting a ceiling fixture]).

b. Liability Under Labor Law § 241(6)

In addition, plaintiff avers Legacy Yards Tenant, LLC's ("Owner") is liable under Labor Law § 241(6) (NYSCEF # 192 at 8-10).

The *Ross* court held that Labor Law § 241(6) is a hybrid statutory claim and cannot be construed as imposing common law standards of care upon contractors, owners and their agents to provide a safe place to work (*see Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 504 [1993]). Section 241(6) holds a nondelegable duty onto contractors, owners and their agents vicariously liable for non-compliance with the expressly stated directives from the Industrial Commission on whether a party did exercise direction and control over the work (*id.* at 505). Only specific or concrete provisions can be used to support a § 241(6) cause of action, not general provisions that simply repeat common law principals (*id.* at 504).

In this case, plaintiff alleges that Owner violated Industrial Code Rule 23, §23-1.13 (b)(3-5) (NYSCEF # 192 at 8). "These code sections are clear and specific in their commands that before work is started, it is to be ascertained whether the work will bring a worker into contact with an electric power circuit, and, if so, that the worker not be permitted to come into contact with the circuit without it being de-energized" (*DelRosario*, 104 AD3d at 516, citing 12 NYCRR 23-1.13; *see also Hernandez v Ten Ten Co.*, 31 AD3d 333 [1st Dept 2006] [finding 12 NYCRR 23-1.13 provides guidelines to protect workers against electrocution, and is sufficiently specific to support

a Labor § 241(6) claim]). Thus, these regulations unequivocally direct employers to specific guidelines for to protect against electrocution (*see Hernandez*, 31 AD3d 333).

Accordingly, plaintiff is entitled to judgment as a matter of law on the issue of Owner's liability under Labor Law § 241(6) predicated on violations of 12 NYCRR 23-1.13 and the motion is granted.

Motion # 6

United States Tennis Association Incorporated, USTA National Tennis Center Incorporated, Hunt Construction Group, Inc., and Ruttura & Sons Construction Co. move for summary judgment against plaintiff's claims under Labor Law §§ 240(1), 200, and common-law negligence pertaining to the tennis court injury (NYSCEF # 222). (Plaintiff withdrew his 241(6) claim at oral argument).

Liability Under Labor Law § 240(1)

Labor Law § 240(1) impose a nondelegable duty on contractors and owners (*see Costa v State*, 141 AD3d 43, 45 [1st Dept 2016], citing *Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 606 [1993]). Absolute liability applies all owners, which includes all "owners in fee, even though the property might be leased to another" (*Costa*, 141 AD3d at 45, quoting *Coleman v City of New York*, 91 NY2d 821, 823 [1997]). Absolute liability will also apply "even though the job was performed by an independent contractor over which it exercised no supervision or control" (*Rocovich*, 78 NY2d at 513). The act of leasing its property to another entity does not in itself allow the owner of the property to avoid absolute liability under the Labor Law (*see Costa*, 141 AD3d at 46).

In *Coleman*, the court declined to relieve the City of New York of the responsibilities of ownership under the Labor Law where it had leased the site of the accident to the Transit Authority,

and a Transit Authority employee was injured while performing repair work (*see Coleman*, 91 NY2d at 822). The Court rejected the City's argument that it should not be strictly liable because of lack of control (*see id.*, citing *Gordon v E. Ry. Supply, Inc.*, 82 NY2d 555, 558 [1993] [holding "[l]iability rests upon the fact of ownership and whether Eastern had contracted for the work or benefitted from it are legally irrelevant"]). Instead, the *Coleman* court held "that the broad reach of owner liability under Labor Law § 240(1) could not be eliminated without an exception carved out by the legislature (see *id.*). Thus, the mere act of leasing the property to another entity does not alone allow the owner to avoid the broad reach of owner liability under Labor Law § 240(1) (*see Costa*, 141 AD3d at 46).

Here, plaintiff does not contest the dismissal against United States Tennis Association (NYSCEF # 336 at 2). Thus, summary judgment to dismiss United States Tennis Association as a party to this action is granted. However, summary judgment is denied for the remaining defendants in this motion sequence.

The remaining defendants in this motion seek to avoid liability under Labor Law § 240(1) by contending that they were not an "owner" for the purposes underlying the statute (*see Sanatass v Consol. Inv. Co., Inc.*, 10 NY3d 333, 340 [2008]). In addition, defendants assert that they did not "direct, control, or supervise the injury producing work" (NYSCEF # 225 at 7).

However, past case law makes clear that "so long as a violation of the statute proximately results in injury, the owner's lack of notice or control over the work is not conclusive—this is precisely what is meant by absolute or strict liability in this context" (*Sanatass*, 10 NY3d at 340, citing *Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 289 [2003]). Even the lack of "any ability" on the owner's part to ensure compliance with the statute is legally

irrelevant (*see Coleman,* 91 N.Y.2d at 823). Thus, defendants' dismissal of plaintiff's Labor Law § 240(1) is denied (*see id.*).

Liability Under Labor Law § 200 and Common Law Negligence

Labor Law § 200 is a codification of the common-law duty of a landowner to provide workers with a reasonably safe place to work (*see Lombardi v Stout,* 80 NY2d 290, 294 [1992], citing *Allen v Cloutier Const. Corp.*, 44 NY2d 290, 296 [1978]). It is plaintiff's position there is a question of fact on whether defendants NTC and Hunt actual or constructive notice of the alleged dangerous condition (NYSCEF # 338 # 10). The court agrees.

Section 200(1) covers all places to which the Labor Law applies such as construction areas (*see Jock v Fien*, 80 NY2d 965, 967 [1992]). It requires those places to be "so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety" of employees (Labor Law § 200(1)). It also requires all machinery equipment and devices in such places to be "placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons" (*Jock*, 80 NY2d at 967, quoting Labor Law § 200(1)).

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 (*see Lombardi v Stout*, 80 NY2d 290, 294-95 [1992], citing *Allen v Cloutier Const. Corp.*, 44 NY2d 290, 299; *see also Persichilli v Triborough Bridge and Tunnel Auth.*, 16 NY2d 136, 145 [1965]).

Based on the contrasting accounts provided by plaintiff and defendants, there is an issue of fact (NYSCEF ## 338, 397). Plaintiff asserts defendants had constructive notice of the alleged defect with the Styrofoam coverings by submitting Joseph Bianco's deposition (NYSCEF # 338

at 9-10; NYSCEF # 187 at 24-25). Mr. Bianco testified other workers including himself encountered the same issue encountered by plaintiff by stating:

> "it happened to me. I fell through one, also a few weeks before. I mean, I didn't go all the way through. It broke and I kind of realized what I did. I shouldn't have went up there. It wasn't a permanent footing but it was happening a lot. Not just to us, to other trades too" (NYSCEF # 187 at 24).

Moreover, Mr. Bianco testified the alleged defective/unsafe covers were also items that appeared to be stepped on and were not easily avoidable for an individual to walk over (*id.* at 24-25).

> "It was a bad setup. It looked like something you could step on and we're in sand so you couldn't really step over it because it's not like you were going from one permanent structure to another. It wasn't something that you could really hop over, you know. People would forget that it wasn't able to be stepped on" (*id.)*.

In addition, the styrofoam covers were stated to be "blended in with the concrete," which bears the question of whether the covers can be considered as "open and obvious" asserted by defendants (*id.* at 25; NYSCEF # 225 at 11). Accordingly, there is a question of fact regarding the conditions of the covers, as well as whether defendants were on notice regarding the defects based on the testimony of Mr. Bianco that the covers seemingly posed issues to other trade members and not only to plaintiff (NYSCEF # 187 at 24). Thus, a question of fact exists on notice.

Motion # 7: (BCG's Motion)

Defendant Boston Consulting Group, Inc ("BCG") moves for summary judgment dismissing plaintiff's complaint, granting indemnification for BCG against Structure Tone and ADCO and dismissing all cross claims regarding plaintiff's alleged injury involving electrical installation at the 10 Hudson Yards project (NYSCEF # 245).

Liability Under Labor Law § 240(1)

BCG's motion for summary judgment against plaintiff's Labor Law § 240(1) claim is denied for the foregoing reasons in granting plaintiff's Labor Law § 240(1) stated above.

Liability Under Labor Law § 241(6)

BCG's motion for summary judgment against plaintiff's Labor Law § 241(6) claim is denied for the foregoing reasons in granting plaintiff's Labor Law § 241(6) stated above.

Contract Indemnification

Contractual indemnification depends upon the specific language of the contract (*see Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3d 415 [1st Dept 2021], citing *Alfaro v 65 W. 13th Acquisition, LLC*, 74 AD3d 1255, 1255 [2d Dept 2010]).

The BCG and Structure Tone contract indemnification clause provides:

> "3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to party or person described in this Section 3.18" (NYSCEF # 272 at 19).

Here, the indemnification contract provision clearly states and obligates Structure Tone to indemnify BCG for all claims which are "claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work" (*id.*).

However, the clause covers only to "negligent acts or omissions" (*id.*). Here, there is an issue of fact regarding whether Structure Tone and its subcontractors are negligent as to the set up and design of the alleged covers (*see Cacket*, 183 AD3d at 422).

In addition, Structure Tone's and ADCO's indemnification clause provides:

> "1.0 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Structure Tone, Inc., the Owner, the Architect and all of their parents, subsidiaries, affiliates, agents, officers and employees from and against all claims, damages, losses, penalties, intellectual property law violations, and expenses, including, but not limited to, attorney's fees and court costs, arising out of, or resulting from the performance, or failure in performance, of Subcontractor's Work and obligations as provided in the Contract Documents, including any extra Work, and from any claim, damage, loss or expense which (1) is attributable to bodily injury, sickness, disease, death, injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any acts, omissions or negligence of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether it is caused in part by the acts, omissions or negligence of a party indemnified hereunder." (NYSCEF # 273 at 8).

Similar to BCG's contract with Structure Tone, the indemnification clause covers "any acts, omissions or negligence" (*id.*). Here, there is an issue of fact regarding whether the ADCO was negligent (*see Cacket*, 183 AD3d at 422).

Accordingly, BCG's contract indemnification claims against Structure Tone and ADCO are denied.

Motion # 8 (ADCO's Summary Motion Tennis Court)

Liability Under Labor Law § 240(1) (Tennis Court & Hudson Yards)

ADCO's motion for summary judgment against plaintiff's Labor Law § 240(1) claim is denied for the foregoing reasons in granting plaintiff's Labor Law § 240(1) stated above.

Liability Under Labor Law § 241(6)

ADCO's summary judgment motion of the 241(6) claim for plaintiff's first injury in the tennis courts is granted. Accordingly, plaintiff's assertion is deemed abandoned and defendants' motion is granted as stated previously.

ADCO's motion for summary judgment against plaintiff's Labor Law § 241(6) claim for the alleged electrocution at the Hudson Yards property is denied for the foregoing reasons in granting plaintiff's Labor Law § 241(6) stated above.

Common Law Indemnification / Contribution

A party's right to indemnification may arise from a contract or may be implied based upon the law's notion of what is fair and proper between the parties (*see Mas v Two Bridges Assoc. by Nat. Kinney Corp.*, 75 NY2d 680, 684 [1990]).

Common law indemnity is a restitution concept which permits shifting the loss because failing to do so would result in the unjust enrichment of one party at the expense of the other (*see McCarthy v Turner Const., Inc.*, 17 NY3d 369, 374-75 [2011], citing *McDermott v City of New York*, 50 NY2d 211, 216-217 [1980]); *see also Rosado v Proctor & Schwartz, Inc.*, 66 NY2d 21, 22 [1985] [stating indemnity may be implied "to prevent a result which is regarded as unjust or unsatisfactory" and "is frequently employed in favor of one who is vicariously liable for the tort of another]). Common-law indemnification is generally available "in favor one who is held

responsible solely by operation of law because of his relation to the actual wrongdoer" (*McCarthy*, 17 NY3d at 375 [2011], quoting *Mas*, 75 NY2d at 690).

A party's authority to "supervise the work and implement safety procedures is not alone a sufficient basis for requiring common-law indemnification" (*id.* at 378). Liability for indemnification may only be imposed against those parties who exercise actual supervision (*see id.*)

Here, ADCO's claims for dismissing its common law indemnification against its fellow defendants are denied for the foregoing reasons stated above. There is an issue of fact of whether ADCO was negligent in the implementation and safety of the covers at the tennis court and injury involving plaintiff at the Hudson Yards property.

Conclusion

In view of the above, it is

ORDERED that Structure Tone's motion sequence 3 for summary judgment on indemnification is conditionally granted;

ORDERED that plaintiff's partial summary judgment from motion sequence 4 is granted in its entirety;

ORDERED that defendants United States Tennis Association Incorporated, USTA National Tennis Center Incorporated, Hunt Construction Group, Inc., and Ruttura & Sons Construction Co. for summary judgment against plaintiff's claims under Labor Law §§ 240(1) and 241(6) are granted. Claims under Labor Law § 200 and common-law negligence are denied for motion sequence 6.

ORDERED that BCG's motion sequence 7 for summary judgment against plaintiff's claims under its Labor Law §§ 240(1), 241(6), and contract indemnification are denied;

ORDERED that ADCO's motion sequence 8 for summary judgment for plaintiff's Labor Law § 241(6) claim for the drainage cover injury is granted. ADCO's summary judgment motion to dismiss plaintiff's Labor Law § 241(6) claim stemming from the Hudson Yards property is denied. ADCO's summary judgment motion on its indemnification and contribution claim is denied.

10/21/2025
DATE

RICHARD G. LATIN, 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