Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31
Justice

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JOSE PALAGUACHI and MARIA TENECELA,

Plaintiff,

-against-

LIME CONSTRUCTION NY CORP., BRG 18 LLC, GREEN FOREST LLC and MAJOR MECHANICAL & IRON WORKS CO., INC.,

Defendants.

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LIME CONSTRUCTION NY CORP.,

Third-Party Plaintiff,

- against -

DHL DESIGN NY, INC.,

Third-Party Defendant.

----------X

GREEN FOREST LLC.,

Second Third-Party Plaintiff,

- against-

DHL DESIGN NY, INC.,

Second Third-Party Defendant.

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BRG 18 LLC.,

Third Third-Party Plaintiff,

- against -

DHL DESIGN NY, INC.,

Third Third-Party Defendant.

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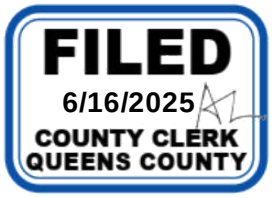
Index No: 716187/2019
Motion Date: May 7, 2025
Motion Cal. No: 18
Motion Seq. No: 7



The following numbered papers read on this motion by defendant third-party plaintiff Lime Construction NY Corp. (Lime) for summary judgment dismissing the amended complaint and all cross-claims against it; cross-motion by defendant second third-party plaintiff Green Forest LLC (Green) for summary judgment dismissing the amended complaint and all cross-claims against it; cross-motion by defendant third third-party plaintiff BRG 18 LLC (BRG) for summary judgment dismissing the amended complaint and on its cross-claims against Lime, Green, and defendant Major Mechanical & Iron Works Co., Inc. (Major); cross-motion by Major for summary judgment dismissing the amended complaint against it and on its cross-claims against Green, Lime, and BRG; cross-motion by the plaintiffs Jose Palaguachi and Maria Tenecela for summary judgment on a claim as against Lime, Green, and BRG.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits.....	EF 178-195
Answering Affirmation.....	EF 226-228
Reply Affirmation.....	EF 248
Answering Affirmation.....	EF 261
Reply Affirmation – Exhibit.....	EF 264
Answering Affirmation – Exhibits.....	EF 278-280
Reply Affirmation.....	EF 296
Answering Affirmation.....	EF 299
Reply Affirmation.....	EF 300
Notice of Cross-Motion - Affirmation - Exhibits.....	EF 214-221
Answering Affirmation.....	EF 223-224
Answering Affirmation.....	EF 263
Reply Memorandum.....	EF 290
Reply Memorandum.....	EF 302
Answering Affirmation – Exhibits.....	EF 278-280
Notice of Cross-Motion – Affirmation – Exhibits.....	EF 230-247
Answering Affirmation – Exhibit.....	EF 250-252
Answering Affirmation.....	EF 262
Answering Affirmation.....	EF 274-276
Answering Affirmation – Exhibits.....	EF 278-280
Reply Affirmation.....	EF 309
Notice of Cross-Motion – Affirmation – Exhibit...	EF 258-260
Answering Affirmation.....	EF 270-272
Reply Affirmation.....	EF 294
Answering Affirmation – Exhibits.....	EF 278-280
Reply Affirmation.....	EF 292,295
Answering Affirmation – Exhibit.....	EF 285-286
Reply Affirmation.....	EF 293

Reply Affirmation.....	EF 306
Notice of Cross-Motion – Affirmation – Exhibits……..	EF 266-269
Answering Affirmation.....	EF 281-283
Answering Affirmation.....	EF 288
Reply Affirmation.....	EF 297
Answering Affirmation.....	EF 299
Reply Affirmation.....	EF 301

Upon the foregoing papers it is ordered that the motion and cross- motions are determined as follows:

On September 20, 2019, plaintiffs commenced this action to recover damages for personal injuries and loss of services sustained on June 7, 2019. According to the second amended complaint dated December 2, 2021, Palaguachi, an employee of third-party defendant DHL Design NY, Inc. (DHL), was injured when he fell from a scaffold while working on a construction project on premises owned by BRG and leased by Green at which Lime, Major and DHL performed construction work. The second amended complaint alleged causes of action for common-law negligence, violations of Labor Law §§ 200, 240 [1], and 241 [6], and loss of services on behalf of Tenecela, Palaguachi's spouse. In their respective answers to the second amended complaint, defendants asserted cross-claims for contribution and common-law and contractual indemnification against each other. Lime, BRG, and Major also asserted cross-claims for breach of contract to procure insurance against their respective co-defendants. Lime now moves and Green, BRG, and Major separately cross-move for summary judgment dismissing the amended complaint (*see* CPLR 3212 [b]). In their respective motions, Lime and Green also seek, in effect, dismissal of the cross-claims against them. In addition, BRG seeks summary judgment on its cross-claims for common-law indemnification against Green, Lime, and Major and for contractual indemnification against Green. Also, Major seeks summary judgment on its cross-claims for contribution and common-law indemnification against Green, Lime, and BRG. Plaintiffs cross-move for summary judgment on their Labor Law § 240 [1] claim against Lime, BRG, and Major.

The court first addresses defendants' contentions that the Labor Law claims should be dismissed against them because they are not proper defendants. BRG and Green contend that they did not supervise or provide equipment for the work and were not responsible for site safety. Lime argues that it was not a statutory agent. Major maintains it was not an owner or general contractor. Labor Law §§ 240 [1] and 241 [6] apply to contractors, owners and their agents (*see Sanatass v Consolidated Investing Co., Inc.*, 10 NY3d 333, 339 n 3 [2008]; *Albanese v City of New York*, 5 NY3d 217, 219 [2005]). Labor Law § 200 codifies the common-law duty of owners and general contractors to maintain a safe construction site (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]), and also applies to statutory agents (*see Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 434–35 [2015]; *Hill v Mid Is. Steel Corp.*, 164 AD3d 1425, 1426 [2d Dept 2018]). A party that is not an owner or general contractor may be liable as a statutory agent if it "had the

ability to control the activity which brought about the injury" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863–64 [2005], *see Cando v Ajay Gen. Contr. Co. Inc.*, 200 AD3d 750, 754 [2d Dept 2021]; *Jin Gak Kim v Kirchoff-Consigli Constr. Mgt., LLC*, 197 AD3d 1289, 1290–91 [2d Dept 2021]). In opposition, plaintiffs expressly do not oppose dismissal of the common-law negligence claim against Lime, the Labor Law § 200 and common-law negligence claim against Green and BRG, or the Labor Law § 200, 240 [1], and 241 [6] claims against Major. Therefore, dismissal of the Labor Law §§ 200, 240 [1], and 241 [6] claims against Major, the Labor Law § 200 and common-law negligence claims against BRG and Green, the common-law negligence claim against Lime is appropriate (*see Delgado v All-Safe, Inc.*, 119 AD3d 515, 516 [2d Dept 2014]; *Vella v One Bryant Park, LLC*, 90 AD3d 645, 647 [2d Dept 2011]; *Fumo v NAB Constr. Corp.*, 19 AD3d 446, 448 [2d Dept 2005]).

Since BRG owns the premises, it may be held liable under Labor Law §§ 240 [1] and 241 [6]. Contrary to BRG's contention, an owner's liability under those statutes does not require its supervision or control over the worksite (*see Gordon v Eastern Ry. Supply*, 82 NY2d 555, 560 [1993]; *Ferreira v Village of Kings Point*, 68 AD3d 1048, 1050 [2d Dept 2009]). Although Green contracted with Lime and Major to perform work on the premises, that the tenant instead of the owner contracted for the work also does not affect the owner's liability (*see Sanatass*, 10 NY3d at 340; *Markey v C.F.M.M. Owners Corp.*, 51 AD3d 734, 737 [2d Dept 2008]). Similarly, a general contractor may be liable under Labor Law §§ 240 [1] and 241 [6] despite its lack of supervision and control of the work (*see Barreto*, 25 NY3d at 433; *Rizzuto*, 91 NY2d 343, 348–49 [1998]; *Allen v Cloutier Constr. Corp.*, 44 NY2d 290, 300 [1978]; *Ochoa v JEM Real Estate Co., LLC*, 223 AD3d 747, 748 [2d Dept 2024]). For the construction work on the premises, Green retained Lime, which subcontracted work to DHL. Since Lime was a general contractor, it may be liable under Labor Law §§ 240 [1] and 241 [6]. Under the circumstances, the court need not address Lime's contentions that it was not a statutory agent. With respect to Green, a tenant may be held liable under the Labor Law if it contracts for or controls the work (*see Rizo v 165 Eileen Way, LLC*, 169 AD3d 943, 946 [2d Dept 2019]; *Seferovic v Atlantic Real Estate Holdings, LLC*, 127 AD3d 1058, 1059–60 [2d Dept 2015]; *Lopez-Dones v 601 W. Assoc.*, LLC, 98 AD3d 476, 479 [2d Dept 2012]). Here, Lime supported its motion with Green's contracts with Lime and Major for the work on the premises. Thus, the record shows the existence of fact issues establishing that Green may be liable under the Labor Law §§ 240 [1] and 241 [6] claims (*see Rizo*, 169 AD3d at 946; *Markey*, 51 AD3d at 737; *Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616, 618 [2d Dept 2008]).

Turning to the Labor Law § 241 [6] claim, plaintiffs assert this claim against only BRG, Green, and Lime, as set forth above. To establish liability for a Labor Law § 241 [6] violation, a plaintiff must show that a violation of an applicable Industrial Code proximately caused his injuries (*see Ochoa*, 223 AD3d at 749; *Guoxing Song v CA Plaza, LLC*, 208 AD3d 760, 761 [2d Dept 2022]). Here, plaintiffs' bill of particulars dated September 18, 2020, alleged defendants violated Industrial Code section 12 NYCRR §§ 23-5.18 [g] and [h] and Occupational Safety and Health Administration regulations. It is well settled that liability under Labor Law § 241 [6] cannot be based on OSHA violations (*see Wetter v Northville Indus. Corp.*, 185 AD3d 874, 876 [2d Dept

2020]; *Marl v Liro Engrs., Inc.*, 159 AD3d 688, 689 [2d Dept 2018]). Regarding the Industrial Code provisions, BRG and Lime contend that they are inapplicable. Green contends that it did not breach the Industrial Code provisions because it did not provide any equipment for the work. In opposition to defendants' motion and cross-motions, plaintiffs do not oppose dismissal of the Labor Law § 241 [6] claim insofar as based on 12 NYCRR 23-5.18 [h]. Therefore, dismissal of the Labor Law § 241 [6] claim to the extent it is based on 12 NYCRR § 23-5.18 [h] is appropriate (*see generally Delgado*, 119 AD3d at 516; *Vella*, 90 AD3d at 647; *Fumo*, 19 AD3d at 448). Whenever a manually propelled mobile scaffold "is in use and is occupied by any person, such scaffold shall rest upon a stable footing, the platform shall be level and the scaffold shall stand plumb. All casters or wheels shall be locked in position" (12 NYCRR § 23-5.18 [g]). This Industrial Code provision is sufficiently specific to support a Labor Law § 241 [6] claim (*see Karwowski v Grolier Club of City of N.Y.*, 144 AD3d 865, 867 [2d Dept 2016]). However, BRG and Lime correctly point out that Palaguachi's testimony that he and a co-worker locked the wheels of the scaffold before Palaguachi used it demonstrates that 12 NYCRR § 23-5.18 [g] was not violated. Although plaintiffs contend in opposition that the floor was unstable because the scaffold's wheel moved into it, plaintiffs point to no evidence establishing the floor's instability. Palaguachi testified that the floor had holes but did not testify that it was unstable. Also, at a June 2, 2021 deposition, Palaguachi testified that scaffolds move when a person walks on top of it (*see* NY St Cts Elec Filing [NYSCEF] Doc No. 187 at 119), without attributing the movement to the floor. Plaintiffs' speculation regarding the unstable floor is insufficient to raise fact issues. Since defendants' evidence shows that the Industrial Code regulation cited by plaintiffs was not violated and plaintiffs fail to raise fact issues, dismissal of the Labor Law § 241 [6] claim is appropriate (*see Davila v City of New York*, 232 AD3d 580, 583 [2d Dept 2024]; *Titov v V&M Chelsea Prop., LLC*, 230 AD3d 614, 616–17 [2d Dept 2024]; *La Veglia v St. Francis Hosp.*, 78 AD3d 1123, 1126 [2d Dept 2010]).

The court now addresses the claim based on violation of Labor Law § 240 [1], which imposes on owners and general contractors a nondelegable duty to provide necessary safety devices for workers subjected to elevation-related hazards (*see Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]; *Soto v J. Crew Inc.*, 21 NY3d 562, 566 [2013]). As noted above, plaintiffs now assert this claim against only BRG, Green, and Lime. Since those defendants' only contention supporting dismissal of the Labor Law § 240 [1] claim is that they were not proper defendants, which the court rejected above, denial of the branches of their respective motions to dismiss that claim is appropriate.

Plaintiffs also seek summary judgment on this claim against those defendants. In opposition, BRG and Green contend that the court should not consider plaintiffs' cross-motion because it is untimely. A preliminary conference order dated October 5, 2020, provided that "any motion for summary judgment shall be made within one hundred twenty (120) days of the filing of the Note of Issue" (NYSCEF Doc No. 36 at 3). Plaintiffs filed a note of issue on April 8, 2024 (*see* NYSCEF Doc No. 238), which made August 6, 2024, the deadline for filing summary judgment motions. Lime timely filed its motion and Green and BRG timely filed their cross-motions for summary judgment. Although plaintiffs' cross-motion for summary judgment filed on

March 4, 2025 was untimely, courts may consider untimely cross-motions for summary judgment where a timely summary judgment motion on nearly identical grounds has been made (*see Dojce v 1302 Realty Co., LLC*, 199 AD3d 647, 649-50 [2d Dept 2021]; *Cruz v 1142 Bedford Ave., LLC*, 192 AD3d 859, 863 [2d Dept 2021]; *Sikorjak v City of New York*, 168 AD3d 778, 780 [2d Dept 2019]). Since Lime's motion and Green's and BRG's separate cross-motions for summary judgment seek, among other things, dismissal of the Labor Law § 240 [1] claim, they are nearly identical to plaintiffs' summary judgment cross-motion on that claim (*see Cruz*, 192 AD3d at 863; *Sikorjak*, 168 AD3d at 780). Therefore, the court considers plaintiffs' untimely cross-motion.

On the merits, plaintiffs rely on Palaguachi's testimony that he and a co-worker locked the wheels of a scaffold Palaguachi used and that a wheel of the scaffold fell into a hole on the floor, which caused him to fall to the floor. This evidence demonstrates that the scaffold failed to provide Palaguachi with proper protection, which proximately caused his injury (*see Wilson v Bergon Constr. Corp.*, 219 AD3d 1380, 1382 [2d Dept 2023]; *Jimenez v RC Church of Epiphany*, 85 AD3d 974, 974–75 [2d Dept 2011]; *Tapia v Mario Genovesi & Sons, Inc.*, 72 AD3d 800, 801 [2d Dept 2010]). In opposition, although BRG and Green contend that plaintiffs did not identify a defect in the scaffold, the evidence that the scaffold did not provide Palaguachi with proper protection is sufficient to establish a Labor Law § 240 [1] violation. Although Green and Lime also point to the testimony of Aaron Lee, Lime's project manager, that DHL's owner told him that Palaguachi fell after trying to move the scaffold while he was on top of it, inadmissible hearsay is insufficient to raise fact issues (*see Casasola v State of New York*, 129 AD3d 758, 759–60 [2d Dept 2015]; *Ernest v Pleasantville Union Free School Dist.*, 28 AD3d 419, 419–20 [2d Dept 2006]; *Segarra v All Boroughs Demolition & Removal*, 284 AD2d 321, 322 [2d Dept 2001]). In addition, BRG's and Lime's contention that the scaffold's moving demonstrated that Palaguachi had not locked the wheels is mere speculation which also does not raise fact issues (*see Ernest*, 28 AD3d at 419–20; *Segarra*, 284 AD2d at 322). Green maintains that conflicting testimony and credibility issues preclude summary judgment to plaintiffs but does not identify the conflicting testimony or the credibility issues raised.

BRG, Green, and Lime also contend that Palaguachi was the sole proximate cause of plaintiffs' injury. No liability under Labor Law § 240 [1] exists where a plaintiff was the sole proximate cause of the accident (*see Barreto*, 25 NY3d at 433; *Paiba v 56-11 94th St. Co., LLC*, 228 AD3d 881, 882 [2d Dept 2024]). Sole proximate cause is established with proof that adequate safety devices were available to plaintiff, that plaintiff knew of that availability and an expectation that they be used, that plaintiff chose not to use them for no good reason, and that plaintiff would not have been injured had that choice not been made (*see Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp.*, 34 NY3d 1166, 1167–68 [2020]; *Gallagher v New York Post*, 14 NY3d 83, 88 [2010]; *Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]). Thus, the contention of BRG, Green, and Lime that Palaguachi fell because he leaned over to hand a tool to a co-worker does not demonstrate that he was the sole proximate cause of the accident. Since defendants fail to show that Labor Law § 240 [1] was not violated, Palaguachi's conduct cannot be the sole proximate cause of the accident (*see Caballero v Benjamin Beechwood, LLC*, 67 AD3d 849, 852 [2d Dept 2009]). Since BRG, Green, and Lime do not raise fact issues, plaintiffs are entitled to summary judgment on their Labor Law § 240 [1] claim against them (*see Hossain v Condominium Bd. of*

Grand Professional Bldg., 221 AD3d 981, 983 [2d Dept 2023]; *Casasola*, 129 AD3d at 759–60; *Felix v Independence Sav. Bank*, 89 AD3d 895, 895–96 [2d Dept 2011]; *Caballero*, 67 AD3d at 852; *Ernest*, 28 AD3d at 419–20; *Segarra*, 284 AD2d at 322).

Lime is the only defendant against which plaintiffs asserts a Labor Law § 200 claim. That statute codifies the duty of owners and general contractors of a construction site and their agents to maintain site safety (*see Rizzuto*, 91 NY2d at 352; *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877-78 [1993]). If a plaintiff's injuries arose from the manner of the work performed, owners and general contractors are liable for a Labor Law § 200 violation upon a showing that they had authority to supervise and control that work (*see Hamm v Review Assoc., LLC*, 202 AD3d 934, 938 [2d Dept 2022]; *Eliassian v G.F. Constr., Inc.*, 190 AD3d 947, 950 [2d Dept 2021]). To demonstrate entitlement to summary judgment dismissing the Labor Law § 200 claim arising from an alleged defective condition, a defendant must prove "that it neither created the dangerous condition nor had actual or constructive notice of it" (*Alexandridis v Van Gogh Contr. Co.*, 180 AD3d 969, 972 [2d Dept 2020]; *see Tomlinson v Demco Props. NY, LLC*, 189 AD3d 1294, 1295 [2d Dept 2020]). If both a premises defect and the manner of work were involved in the accident, a defendant seeking summary dismissal must address both liability standards (*see Hamm*, 202 AD3d at 938; *Salgado v Rubin*, 183 AD3d 617, 619 [2d Dept 2020]). Here, although plaintiffs' bill of particulars alleged only a premises defect, the second amended complaint alleged that both a premises defect and the manner of work caused plaintiffs' injuries. Palaguachi testified that he was injured in a fall when the wheel of a scaffold upon which he was working fell into a hole in the floor. According to Palaguachi, the hole, which was 10 centimeters wide and was used by plumbers for installation of pipes, was covered with gray tape which prevented him from seeing it.

To support the branch of its motion seeking dismissal of the Labor Law § 200 claim, Lime points to Lee's testimony denying that he saw tape-covered drainpipe holes in the days preceding Palaguachi's injury. Lee testified that the plumbers used spray-painted water bottles to mark the holes. Citing Palaguachi's testimony that tape concealed the hole, Lime contends it could not have constructive notice because the defect was latent. Constructive notice is not imputed to a party for a defect which is latent and not discoverable upon reasonable inspection (*see Agosto v Museum of Modern Art*, 219 AD3d 674, 676 [2d Dept 2023]; *Buffalino v XSport Fitness*, 202 AD3d 902, 903–04 [2d Dept 2022]). However, even accepting Lime's evidence as establishing Lime lacked actual or constructive notice of the defective condition, Lime fails to demonstrate it did not create it. Although Lime maintains that Major was responsible for the holes because they were part of its plumbing work, Lime presents no evidence that they created them. Mark Belau, Major's owner, denied that Major made the holes because it lacked the tools and equipment to make them. Although he further testified that the holes were made in his presence, he did not know the contractor that made them. Since Lime raises no arguments and presents no evidence showing that it did not make the holes in the floor, it fails to meet its initial burden for dismissing the Labor Law § 200 claim (*see Rodriguez v HY 38 Owner, LLC*, 192 AD3d 839, 842 [2d Dept 2021]; *Pineda v Elias*, 125 AD3d 738, 739 [2d Dept 2015]; *Garcia v Market Assoc.*, 123 AD3d 661, 665 [2d Dept 2014]). Considering Lime's failure to demonstrate dismissal of the Labor Law 200 claim based on a premises defect, the court need not address Lime's contentions regarding dismissal of the claim

based on the manner of work (*see generally Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 673 n 1 [2d Dept 2018]).

The court now addresses the branch of Major's motion seeking dismissal of the common-law negligence claim. As noted above, it is now the only claim in the amended complaint plaintiffs assert against Major. According to Belau, Green hired Major as a plumbing subcontractor. Regarding a dangerous condition, a subcontractor may be liable for common-law negligence where it had control over the work site and it created the injury-causing condition or had notice of it (*see Uhl v D'Onofrio Gen. Contrs., Corp.*, 197 AD3d 770, 772 [2d Dept 2021]; *Martinez v 281 Broadway Holdings, LLC*, 183 AD3d 712, 715 [2d Dept 2020]; *Vita v New York Law Sch.*, 163 AD3d 605, 607 [2d Dept 2018]). To support its motion, Major only argues that the Labor Law claims should be dismissed against it because it did not supervise or control the worksite or the injury-causing work. Since Major raises no arguments supporting dismissal of the common-law negligence claim against it, its dismissal is unwarranted (*see generally Smith v City of New York*, 288 AD2d 369, 370 [2d Dept 2001]). In any event, considering Belau's testimony that Major only used plywood and never used painted plastic bottles to cover holes for plumbing work, Lee's testimony that the plumbers used painted water bottles to mark the holes, and Palaguachi's testimony that the hole into which the scaffold wheel fell was for plumbing and was covered with only tape, factual issues exist whether Major created the condition by failing to properly cover the hole (*see Delaluz v Walsh*, 228 AD3d 619, 622–23 [2d Dept 2024]; *Berman-Rey v Gomez*, 153 AD3d 653, 654–55 [2d Dept 2017]). Thus, denial of summary judgment dismissing the common-law negligence claim against Major is appropriate (*see Delaluz*, 228 AD3d at 623; *Zong Wang Yang v City of New York*, 207 AD3d 791, 795-96 [2d Dept 2022]; *Martinez*, 183 AD3d at 715; *Berman-Rey*, 153 AD3d at 655). Since defendants fail to support their respective summary judgment motion and cross-motions to dismiss the complaint with any arguments regarding Tenecela's loss of services claim, summary judgment dismissing that claim is unwarranted (*see generally Smith*, 288 AD2d at 370).

Turning to the branches of defendants' motions seeking summary judgment on their cross-claims against each other, BRG seeks summary judgment on its common-law indemnification cross-claims against Green, Lime, and Major. A party seeking common-law indemnification must show it was not negligent and that the proposed indemnitor's actual negligence contributed to plaintiff's injury or, absent negligence, the indemnitor's authority to direct, supervise, and control the injury-causing work (*see Zong Wang Yang*, 207 AD3d at 796; *Cando*, 200 AD3d at 752). As addressed above, the Labor Law § 200 and common-law negligence claims are dismissed against BRG, but plaintiffs are entitled to summary judgment on the Labor Law § 240 [1] claim against it. Thus, BRG demonstrates it was not negligent and only statutorily liable. Since the Labor Law § 200 claim has not been dismissed against Lime and the common-law negligence claim has not been dismissed against Major, BRG is entitled to summary judgment on its common-law indemnification against them (*see Van Nostrand v Race & Rally Constr. Co.*, 114 AD3d 664, 668 [2d Dept 2014]; *Wahab v Agris & Brenner, LLC*, 102 AD3d 672, 674–75 [2d Dept 2013]; *see also Rizo*, 169 AD3d at 947). However, considering dismissal of the Labor Law § 200 and common-law negligence claim against Green, BRG fails to establish Green's liability for Palaguachi's injury and is not entitled to common-law indemnification against it (*see Shaughnessy v Huntington Hosp.*

Assn., 147 AD3d 994, 999 [2d Dept 2017]; *Mendelsohn v Goodman*, 67 AD3d 753, 754 [2d Dept 2009]).

BRG also seeks contractual indemnification against Green. The contract's specific language governs the existence of a right to contractual indemnification (*see Zong Wang Yang*, 207 AD3d at 796; *Crutch v 421 Kent Dev., LLC*, 192 AD3d 977, 981 [2d Dept 2021]). If the agreement's language and purpose and the surrounding facts and circumstances clearly imply a duty to indemnify, such duty may be found (*see Zong Wang Yang*, 207 AD3d at 796; *Crutch*, 192 AD3d at 981). The party seeking contractual indemnification must also demonstrate its freedom from negligence (*see Crutch*, 192 AD3d at 981). BRG points to Section 23.9 of its lease with Green, which provided that Green would indemnify BRG "from and against all . . . claims arising from any act or omission of Tenant, its subtenants, contractors, agents, employees, invitees or visitors. . . ." (NYSCEF Doc No. 243 at 28). Since Palaguachi's injuries potentially arose from acts or omissions by contractors Lime and Major, or both of them, the lease furnishes a basis for BRG to seek contractual indemnification against Green. Considering that the liability of Lime and Major have not been determined, conditional summary judgment on BRG's common-law and contractual indemnification claims is appropriate (*see Graziano v Source Bldrs. & Consultants, LLC*, 175 AD3d 1253, 1260 [2d Dept 2019]; *Jardin v A Very Special Place, Inc.*, 138 AD3d 927, 930 [2d Dept 2016]; *Van Nostrand*, 114 AD3d at 668; *Wahab*, 102 AD3d at 674–75).

Next, the court turns to the branch of Major's motion for summary judgment on its contribution and common-law negligence cross-claims against BRG, Green, and Lime. Given the existence of factual issues regarding Major's negligence, Major is not entitled to summary judgment on its common-law indemnification claim (*see Guaman-Sanango v 57 E. 72nd Corp.*, 227 AD3d 680, 682 [2d Dept 2024]; *McDonnell v Sandaro Realty, Inc.*, 165 AD3d 1090, 1098 [2d Dept 2018]; *Ginter v Flushing Terrace, LLC*, 121 AD3d 840, 845 [2d Dept 2014]). Contribution requires that the contributing party's breach of duty had a part in causing or worsening plaintiff's injury (*see Balanta v Guo Lin Wu*, 220 AD3d 720, 721 [2d Dept 2023]). The absence of negligence by BRG and Green, as well as fact issues regarding Major's and Lime's negligence, renders summary judgment on Major's contribution claim inappropriate (*see Guaman-Sanango*, 227 AD3d at 682–83; *Roblero v Bais Ruchel High Sch., Inc.*, 175 AD3d 1446, 1448–49 [2d Dept 2019]; *Troia v City of New York*, 162 AD3d 1089, 1093 [2d Dept 2018]).

Finally, regarding the branches of Lime's motion and Green's cross-motion for summary judgment dismissing the cross-claims against them, cross-claims for contribution, common-law and contractual indemnification, and breach of contract to procure insurance were asserted against them. To demonstrate entitlement to summary judgment dismissing a contribution claim, a defendant must show that its work did not cause or contribute to plaintiff's injury or that it did not owe a duty of reasonable care independent of a contractual obligation or such duty to plaintiff at all (*see Flood v Ahern Painting Contrs., Inc.*, 219 AD3d 1408, 1409–10 [2d Dept 2023]; *Calle v 16th Ave. Grocery, Inc.*, 219 AD3d 450, 452 [2d Dept 2023]; *English v Wainco Goshen 1031, LLC*, 218 AD3d 444, 445 [2d Dept 2023]; *Keller v Rippowam Cisqua Sch.*, 208 AD3d 654, 655–56 [2d Dept 2022]). A party may establish entitlement to summary judgment dismissing a common-law indemnification claim with proof it was not negligent and did not have authority to

supervise, direct, or control the injury-causing work (*see Flood*, 219 AD3d at 1409; *Calle*, 219 AD3d at 452; *Keller*, 208 AD3d at 655). Since issues of fact remain regarding Lime's liability for Palaguachi's injury, dismissal of the contribution and common-law indemnification claims against it is unwarranted (*see Keller*, 208 AD3d at 655; *Daeira v Genting N.Y., LLC*, 173 AD3d 831, 835–36 [2d Dept 2019]; *Seales v Trident Structural Corp.*, 142 AD3d 1153, 1159–60 [2d Dept 2016]). However, since Green demonstrates its nonliability for Palaguachi's injury, it is not liable for contribution or common law indemnification (*see Marquez v L & M Dev. Partners, Inc.*, 141 AD3d 694, 699–700 [2d Dept 2016]; *Karanikolas v Elias Taverna, LLC*, 120 AD3d 552, 556–57 [2d Dept 2014]; *Linares v United Mgt. Corp.*, 16 AD3d 382, 385 [2d Dept 2005]).

A party seeking summary judgment dismissing a contractual indemnification claim must demonstrate that it had no contractual obligation to indemnify the party seeking indemnification against it (*see Dow v Consolidated Edison Co. of N.Y., Inc.*, 226 AD3d 648, 649 [2d Dept 2024]; *Meadowbrook Pointe Dev. Corp. v F&G Concrete & Brick Indus., Inc.*, 214 AD3d 965, 970 [2d Dept 2023]). Similarly, a party seeking to dismiss such a breach of contract to procure insurance claim may satisfy its burden by demonstrating that no contract required it to procure insurance (*see Crutch*, 192 AD3d at 984–85; *Desena v North Shore Hebrew Academy*, 119 AD3d 631, 636 [2d Dept 2014]). Lime's evidence demonstrates that its contract with Green did not contain any provision for indemnification or insurance procurement, and that it did not enter into any contracts with BRG or Major (*see Rivera v 203 Chestnut Realty Corp.*, 173 AD3d 1085, 1087 [2d Dept 2019]; *Pantaleo v Bellerose Senior Hous. Dev. Fund Co., Inc.*, 147 AD3d 777, 778 [2d Dept 2017]). Since, as pointed out by Lime, BRG, Green, and Major did not raise any arguments opposing dismissal of the contractual indemnification and breach of contract to procure insurance cross-claims, their dismissal is warranted (*see Rivera*, 173 AD3d at 1087; *Pantaleo*, 147 AD3d at 778–79). Likewise, Green correctly contends that indemnification and insurance procurement provisions were not present in its contracts with Lime and Major. Lime and Major also raise no arguments opposing these cross-claims' dismissal. Therefore, dismissal of the contractual indemnification and breach of contract to procure insurance cross-claims by Lime and Major against Green is appropriate (*see Rivera*, 173 AD3d at 1087; *Pantaleo*, 147 AD3d at 778–79). Green did not argue that BRG's contractual indemnification cross-claim should be dismissed, so the branch of Green's motion seeking that relief is denied (*see generally Smith*, 288 AD2d at 370).

Accordingly, the branches of Lime's motion for summary judgment dismissing the common-law negligence and Labor Law § 241 [6] claims and the contractual indemnification and breach of contract to procure insurance cross-claims are granted. The branches of Green's cross-motion for summary judgment dismissing the Labor Law §§ 241 [6] and 200 and common-law negligence claims, the contribution and common-law indemnification cross-claims, and Lime's and Major's cross-claims for contractual indemnification and breach of contract to procure insurance cross-claims against it are granted. The branches of BRG's cross-motion for summary judgment dismissing the common-law negligence and Labor Law § 241 [6] and 200 claims against it are granted. The branches of BRG's cross-motion on its cross-claims for common-law indemnification against Lime and Major and for contractual indemnification against Green are granted to the extent of awarding conditional summary judgment on those cross-claims. The branches of Major's cross-motion for summary judgment dismissing the Labor Law §§ 200, 240

[1], and 241 [6] claims against it are granted. Plaintiff's motion for summary judgment on its Labor Law § 240 [1] claim against BRG, Green, and Lime is granted. The remaining branches of the motion and cross-motions are denied.

Dated: June 10, 2025

J.S.C.