SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** 33M
Justice

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ENRIQUE MARQUEZ,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, METRO-NORTH COMMUTER RAILROAD COMPANY, HENNINGSON, DURHAM & RICHARDSON, ARCHITECTURE AND ENGINEERING, P.C.

Defendants.

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INDEX NO. 452786/2022

MOTION DATE 04/22/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85
were read on this motion to/for JUDGMENT - SUMMARY.

Appearances:
Plaintiff: Shulman & Hill, PLLC (Timothy Norton, Esq.)
MTA Defendants: Hill Rivkins LLP (Charles Henderson, Esq.)
Defendant Henningson, Durham & Richardson, Architecture and Engineering, P.C.: L'Abbate, Balkan, Colavita & Contin, LLP (Douglas R. Halstrom, Esq.)

Upon the foregoing documents, and after oral argument, which took place on September 9, 2025, Plaintiff Enrique Marquez's motion for summary judgment on his Labor Law § 240(1) claim against Defendants Metropolitan Transportation Authority ("MTA"), Metro-North Commuter Railroad Company ("Metro-North"), and Henningson, Durham & Richardson, Architecture and Engineering, P.C. ("Henningson") (collectively "Defendants") is granted. Henningson's cross-motion for summary judgment dismissing the Complaint and all claims asserted against is denied.

I. Background

Non-party MFM Contracting employed Plaintiff as a dock builder at a construction project located at the Harlem River Lift Bridge (the "Project"). Metro North owns the bridge (NYSCEF

Doc. 59 at 13; 17). Henningson was retained to provide construction management services at the Project (NYSCEF Doc. 47). MFM Contracting provided labor to complete the Project (NYSCEF Doc. 46 at 21). According to Metro-North, Henningson was also responsible for ensuring MFM Contracting adhered to site safety standards (NYSCEF Doc. 59 at 267). Henningson employed a safety engineer in its office at the Project, created its own safety plan for the Project, reviewed MFM Contracting's safety plan (NYSCEF Doc. 46 at 212-13) and Henningson's inspectors surveyed the Project for safety deficiencies daily (NYSCEF Doc. 50).

On May 18, 2021, Plaintiff was removing timber from a pier, when his coworker asked him to step to the side, and Plaintiff lost his balance and fell approximately 11 feet to a floating barge in the river (NYSCEF Doc. 45 at 32; 41; 44-45). Mr. Juh, a structural engineer employed by Metro-North, admitted that on the date of Plaintiff's accident, Plaintiff was not provided with any guardrails, nets, harnesses or other fall protection systems (NYSCEF Doc. 59 at 180-87; 233; 241). Plaintiff moves for summary judgment on his Labor Law § 240(1) claim, while Henningson cross moves for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it.

II. Discussion

A. Plaintiff's Motion

Plaintiff's motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim is granted. Plaintiff met his *prima facie* burden through his uncontroverted testimony, and the testimony of Defendants' witnesses, which establish he fell from a height while engaged in construction work and was injured due to the absence of any adequate fall protection, including a harness, netting, or a safety rail (*see, e.g. Velez v LSG 105 W. 28th, LLC*, 236 AD3d 617, 617 [1st Dept 2025] citing *DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 45 [1st Dept 2014];

see also Loaiza v Museum of Arts and Design, 228 AD3d 511, 512 [1st Dept 2024] citing *De Jesus v 888 Seventh Ave. LLC*, 114 AD3d 587, 588 [1st Dept 2014]).

There is no dispute that Metro North and MTA are proper Labor Law defendants. It is further undisputed that Henningson is a statutory agent of Metro North and was Metro North's representative on the project. Henningson was present daily, retained a site safety engineer, created its own site safety plan, reviewed and approved MFM Contracting's site safety plan, and inspected safety deficiencies at the Project daily. Henningson's witness admitted it had the authority to issue a stop work order if it observed a safety violation and had the authority to ask contractors to conform to safety standards, and Henningson did issue a stop work order because of Plaintiff's accident (NYSCEF Doc. 46 at 54; 57-58; 153-54). These undisputed facts, which establish Henningson's right to exercise control over the injury producing work, make Henningson a proper Labor Law § 240(1) defendant (*Walls v Turner Const. Co.*, 4 NY3d 861, 863064 [2005]; *Winkler v Halmar International, LLC*, 206 AD3d 508, 510 [1st Dept 2022]). Because Plaintiff established a *prima facie* violation of Labor Law § 240(1), the burden shifts to Defendants to raise an issue of fact.

In opposition, Defendants fail to raise a triable issue of fact. Henningson's argument that it is not a proper Labor Law § 240(1) defendant has already been rejected in the Court's analysis of Plaintiff's *prima facie* case. Metro North's reliance on the affidavit of Dumas Gabbriellini, III, MFM Contracting's Corporate Health & Safety Director, is insufficient as it relies on secondhand hearsay accounts (*see Berrones v 130 E. 18 Owners Corp.*, 239 AD3d 500, 501 [1st Dept 2025]; *Rivera v 712 Fifth Ave. Owner LP*, 229 AD3d 401, 402-03 citing *Garcia v 122-130 E. 23rd St. LLC*, 220 AD3d 463, 464-65 [1st Dept 2023]). Mr. Gabbriellini's affidavit is also flawed because he does not state specifically when and who instructed Plaintiff to use various safety devices, nor

does he state the devices were readily available for Plaintiff, instead stating vaguely that "[a]t all relevant times" Plaintiff was provided "with all the necessary safety equipment needed to complete [his] work on the Project safely" and that Plaintiff "was informed of the presence and location of the…safety equipment" (NYSCEF Doc. 64 at ¶¶ 11-12; *see also Ying Choy Chong v 457 W. 22nd St. Tenants Corp.*, 144 AD3d 591, 592 [1st Dept 2016]).

Under these circumstances, where there is no specific, first-hand evidence that Plaintiff disregarded an immediate and direct order regarding safety, Plaintiff cannot be considered a recalcitrant worker or the sole proximate cause of his accident (*see e.g. Lemache v Elk Manhasset LLC,* 222 AD3d 591, 592 [1st Dept 2023]; *Pirozzo v Laight Street Fee Owner LLC*, 209 AD3d 596, 597 [1st Dept 2022] citing *Valdez v City of New York*, 189 AD3d 425 [1st Dept 2020]). The Labor Law recognizes the realities of the construction site and does not require Plaintiff to demand an adequate safety device be given to him when he is instructed to work in a dangerous condition (*DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 47 [1st Dept 2014]). As Defendants failed to raise a triable issue of fact through the submission of admissible evidence, Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted.

B. Henningson's Cross Motion

Henningson's cross motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is denied. As a preliminary matter, because Plaintiff is granted summary judgment on his Labor Law § 240(1) claim against Henningson, the branch of Henningson's motion for summary judgment seeking dismissal of the Labor Law § 240(1) claim is denied. Moreover, because Plaintiff is granted summary judgment under Labor Law § 240(1), Henningson's motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim is denied as academic (*Pimentel v DE Freight LLC*, 205 AD3d 591, 593 [1st Dept 2022]). Given the

evidence of Henningson's authority to supervise safety and issue stop work orders, its motion for summary judgment dismissing Plaintiff's Labor Law § 200 claim premised on a theory that it did not supervise or control Plaintiff's work is insufficient to succeed on summary judgment (*Winkler v Halmar Intl., LLC*, 206 AD3d 508, 510 [1st Dept 2022]). Although Henningson relies on language in its bid proposal to establish it lacked authority to control or supervise safety, that language is contrary to the undisputed facts and testimony showing that when performing on the Project, Henningson did in fact exercise control and supervision over safety at the Project (*see Zuluaga v P.P.C. Const., LLC*, 45 AD3d 479, 480 [1st Dept 2007] citing *Bush v Gregory/Madison Ave. LLC*, 308 AD2d 360, 361 [2003]).

Due to issues of fact surrounding the apportionment of fault for Plaintiff's accident between Henningson and Metro North, Henningson's motion for summary judgment dismissing Metro North's common law indemnification, contribution, and contractual indemnification claims is denied as premature (*Cackett v Gladden Properties, LLC*, 183 AD3d 419, 422 [1st Dept 2020] citing *Arias v Recife Realty Co., N.V.*, 172 AD3d 631 [1st Dept 2019]). Although Henningson argues the indemnification clause runs afoul of General Obligations Law § 5-322.1, it contains the requisite savings language requiring indemnification only "to the fullest extent permitted by law" (*see Williams v City of New* York, 74 AD3d 479 [1st Dept 2010]).

Finally, Henningson is not entitled to summary judgment dismissing Metro North's claim for breach of contract for failure to procure insurance. All that is submitted in support of dismissal of this claim is an endorsement stating that the "Triborough Bridge & Tunnel Authority/MTA" is an additional insured under a Liberty Mutual Fire Insurance Company general liability policy. This endorsement alone, without a copy of the applicable insurance policy, is insufficient to show

conclusively the requisite coverage exists (*Ruisech v Structure Tone Inc.*, 208 AD3d 412, 417 [1st Dept 2022]; *Prevost v One City Block LLC*, 155 AD3d 531, 536 [1st Dept 2017]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim against Defendants MTA, Metro-North, and Henningson is granted; and it is further

ORDERED that Henningson's cross motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/10/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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