

**Chica v Fountain Seaview B3 Hous. Dev. Fund Co.,
Inc.**

2025 NY Slip Op 34514(U)

July 11, 2025

Supreme Court, Bronx County

Docket Number: Index No. 31972-2019e

Judge: Myrna Socorro

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E#004, E#005,
E#006, & E#007

Supreme Court of the State of New York
County of Bronx: Part Ia9

-----X
Eduardo Chica,

Plaintiff

Index No. 31972-2019e
Motion Seq #4, 5, 6 & 7

-against-

DECISION & ORDER

Fountain Seaview B3 Housing Development
Fund Company, Inc., Chateau GC LLC and
JM3 Construction LLC,

Defendants.

Hon. Myrna Socorro, J.S.C.

-----X
Fountain Seaview B3 Housing Development
Fund Company, Inc., and Chateau GC LLC,
Third-Party Plaintiffs,

-against-

Mooregroup Corporation and Baldwin
Harbor Contracting Inc.,

Third-Party Defendants.

-----X
Fountain Seaview B3 Housing Development
Fund Company, Inc., and Chateau GC LLC,
Second Third-Party Plaintiffs,

-against-

JM3 Contracting Inc.,
Second Third-Party Defendant.

-----X
JM3 Construction, LLC,
Third Third-Party Plaintiff,

-against-

JACG Construction, Inc.,
Second Third-Party Defendant.

-----X
The following e-filed documents,

Motion seq #4 (Summary Judgment) - NYSCEF Doc. #160-183, 186, 262-266, 269-278, 288 and
295-296;

Motion seq #5 (Summary Judgment) - NYSCEF Doc. #188-207, 279-287, 293-294;

Motion seq #6 (Summary Judgment) - NYSCEF Doc. #208-228, 249-255, 289-292;

Motion seq #7 (Leave to Amend/Supplement Bill of Particulars and Summary Judgment) NYSCEF Doc. #229-248- 256-261-299-302

were read and marked submitted after oral argument on November 13, 2024

Defendant/second third-party plaintiff JM3 Construction LLC (JM3) moves pursuant to CPLR §3212 (Seq. #4) to dismiss plaintiff Eduardo Chica's (plaintiff) complaint and defendants/third-party plaintiffs/second third-party plaintiffs Fountain Seaview B3 Housing Development Fund Company (Fountain) and Chateau GC LLC's (Chateau) second third-party complaint.

Fountain and Chateau move pursuant to CPLR §3212 (Seq. #5) to dismiss plaintiff's complaint. Fountain and Chateau further move pursuant to CPLR §3212 (Seq. #6) for summary judgment on their second third-party complaint.

Plaintiff moves pursuant to CPLR §3212 and §3025 (Seq. #7) for partial summary judgment as to liability on his Labor Law §241 (6), and for leave to amend his bill of particulars to allege a violation of Industrial Code 12 NYCRR §23-1.30.

BACKGROUND

This action arises out of a construction accident on July 8, 2019, at the building located at 881 Erskine Street, Brooklyn, New York (the premises). Fountain is the owner of the premises and retained Chateau as general contractor for a construction project. Chateau hired JM3 as a carpentry subcontractor, and third-party defendant Mooregroup Corporation (Mooregroup) as a masonry subcontractor. Plaintiff was employed by Mooregroup.

On the day of the accident, at approximately 8:00 a.m., plaintiff's supervisor directed him to carry two large planks for a scaffold from the front of the premises, through the building, to a rear courtyard where plaintiff and other Mooregroup workers were to reassemble it. Plaintiff carried the planks through the building into a large room that abutted the rear courtyard. Plaintiff described the room as inadequately lit and full of various items of construction debris, which he had to avoid to walk through the room. He stated that two other workers were present in the room doing sheet rock work, though he did not recognize them or know which subcontractor they worked for. As he approached the door out into the courtyard, plaintiff tripped over what he later identified as a two-

foot by three-foot piece of sheet rock and fell through the doorway into the courtyard. Plaintiff commenced this action against Fountain and Chateau, alleging Labor Law §200, §240(1), and §241(6), and common-law negligence claims. Fountain and Chateau commenced a third-party action against Mooregroup and Baldwin Harbor Contracting Inc., which Fountain and Chateau discontinued a few months thereafter (Stipulations of Discontinuance, NYSCEF Doc. #27, 28). Fountain and Chateau then commenced a second third-party action against JM3, after which plaintiff impleaded JM3 as a direct defendant (amended complaint, NYSCEF Doc. #164). During the discovery process, JM3 failed to provide a witness for a deposition, and the court issued an order precluding JM3 from producing documents or witnesses at trial (Order, NYSCEF Doc. #113 [Lucindo Suarez, J.]).

JM3 (Seq. #4) argues that it is entitled to summary judgment dismissing the complaint and the second third-party complaint because it is neither the owner nor the general contractor and it had no control over the work that caused plaintiff's injury. JM3 asserts further that none of the Industrial Code provisions plaintiff cites are applicable, and in any case the debris he tripped over was integral to the work being done at the premises. Finally, JM3 argues that Labor Law § 240(1) does not apply because plaintiff neither fell from a height nor was struck by a falling object.

Plaintiff opposes the motion, arguing that JM3 was the only contractor doing sheetrock work at the premises and therefore was responsible for clearing the sheetrock he tripped over out of the room. JM3's failure to do so was negligent and violates Industrial Code 12 NYCRR §23-1.7(e)(2). Fountain and Chateau also oppose the motion to the extent that JM3 argues it had no control over the work going on in the room where plaintiff tripped, as JM3's contract requires it to center-pile all sheetrock debris for Chateau's laborers to remove.

With regard to Fountain and Chateau's third-party claims, JM3 argues that the accident did not arise out of its work, and therefore Fountain and Chateau are not entitled to indemnification or contribution. Finally, JM3 states that it acquired insurance complying with the contract with Chateau and naming Fountain and Chateau as additional insureds. In opposition, and in support of their own motion (Seq. #6) for summary judgment on the second third-party complaint, Fountain and Chateau argue that JM3's insurance does not comply with the contract, and JM3 was negligent in failing to clean up the sheet rock that plaintiff tripped over.

Fountain and Chateau move (Seq. #5) to dismiss the complaint, arguing that they did not supervise or control Moorehead's work at the premise and that they had no notice of any alleged dangerous condition at the premises. They raise the same arguments as JM3 with regard to Labor Law §240(1) and §241(6). In opposition, plaintiff argues that Chateau was responsible for clearing debris from

the construction site, and that the room where he tripped was inadequately lit. The failure to remedy both these conditions violates the Industrial Code.

Plaintiff moves (Seq. #7) for partial summary judgment on his Labor Law §241(6). The parties raise the same arguments and counter-arguments with respect to this claim as they did in defendants' prior motions.

Finally, plaintiff seeks leave to serve a supplemental bill of particulars alleging a violation of Industrial Code 12 NYCRR §23-1.30, regarding the inadequate lighting in the room where he tripped. He argues that defendants are not prejudiced because he has consistently argued that inadequate lighting caused him to trip. In opposition, defendants argue that plaintiff waited too long to seek leave to serve a supplemental bill of particulars, and they are now prejudiced.

Plaintiff does not defend his Labor Law §240 (1) in opposition to defendants' motions. Accordingly, those branches of defendants' motions to dismiss the Labor Law §240(1) claim are **granted**.

DISCUSSION

Leave to Serve a Supplementary Bill of Particulars

Preliminarily, the court will address that branch of plaintiff's motion for leave to serve a supplemental bill of particulars before turning to the motions for summary judgment. Fountain and Chateau oppose this branch of plaintiff's motion but JM3 does not.

Generally, a party may serve a supplemental bill of particulars without leave of court at any time, but not less than 30 days prior to trial (CPLR 3043 [b], [c]). A bill of particulars is meant to "amplify the pleadings, limit the proof and prevent surprise at trial" (*Harris v Ariel Transp. Corp.*, 37 AD3d 308, 309 [1st Dept 2007]). The fact that a motion for leave to amend a pleading "is made after a note of issue does not of necessity call for its denial" (*Jacobson v. Croman*, 107 AD3d 644, 645 [1st Dept 2013] [internal quotation marks and citation omitted]). Where a motion is made after the note of issue is filed, the plaintiff must show a reasonable excuse for its failure to seek leave prior to filing the note of issue (*Silber v Sullivan Props., L.P.*, 182 AD3d 512, 513 [1st Dept 2020]).

A court has the discretion to allow a party to amend its bill of particulars after a note of issue has been filed, unless the proposed amendment advances a new theory of liability, and the party opposing the amendment shows it will suffer prejudice as a result (*see Chapman v Tovar*, 235 AD3d 552, 552 [1st Dept 2025]). A proposed amendment advances a new theory if it raises a new cause of action not pleaded in the complaint and does not "merely expound on theories of liability" already

set forth in a prior bill of particulars (*Napolitano v Gustavson*, 190 AD3d 530, 531 [1st Dept 2021]).

Here, plaintiff seeks to supplement his bill of particulars to include a violation of Industrial Code 12 NYCRR §23-1.30, which concerns lighting at construction sites. At his deposition, plaintiff testified that the room where he tripped was dimly lit, and he was questioned extensively on this point by defendants. Chateau's witness also testified about the lighting. However, plaintiff has never raised the lack of lighting in the room in any of his prior pleadings, which include the original and five supplemental bills of particulars. Nor does plaintiff provide a reasonable excuse for why he sought leave to include this Industrial Code provision as a new theory of liability approximately four months after filing the Note of Issue and six years after commencing the case (*e.g. Stovall v Lenox Hill Hosp.*, 200 AD3d 570, 571 [1st Dept 2021] [denying leave to amend where plaintiff moved "six months after the note of issue was filed and three years after the action was commenced"]). Defendants would be prejudiced by the supplemental bill of particulars, as discovery has closed, and the subcontractor responsible for installing lighting at the premises is not a party to this action.

The cases plaintiff cites are distinguishable. In *Ross v DD 11th Ave., LLC*, plaintiff was not asserting a new theory of liability and had stated the factual basis for his claim in the original bill of particulars (109 AD3d 604, 606 [2d Dept 2013]; *see also Ferreira v Unico Serv. Corp.*, 262 AD2d 524, 525 [2d Dept 1999]). In *Marte v Tishman Constr. Corp.*, the facts underlying the proposed new Industrial Code provision were uncontroverted (223 AD3d 527, 528-529 [1st Dept 2024]).

Accordingly, that branch of plaintiff's motion seeking leave to serve a supplemental bill of particulars is **denied**.

Summary Judgment Review

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility (*Genesis Merchant Partners L.P. v Gilbride, Tusa, Last & Spellane, LLC*, 157 AD3d 479, 481 [1st Dept 2018]; *Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010]).

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact (CPLR 3212 [b]; *Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [citation omitted]).

If the movant fails to make such prima face showing then the motion must be denied regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Once the movant has made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact requiring a trial (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381, 383-384 [2004]).

Plaintiff's Labor Law §241(6) Claim

Defendants move (Seq. #4 and #5) to dismiss plaintiff's Labor Law §241(6) claim. Plaintiff opposes the motions, and on his own motion (Seq. # 7) seeks partial summary judgment as to liability on this claim.

Labor Law §241(6) imposes on owners and contractors a nondelegable duty to provide “reasonable and adequate protection and safety to persons employed [in] or lawfully frequenting” areas in which construction, excavation, or demolition work is being performed. As a predicate to a cause of action under this section, a plaintiff must allege that the accident was proximately caused by a violation of an Industrial Code regulation “that sets forth a specific standard of conduct and [is] not simply a recitation of common-law safety principles” (*Toussaint v Port Auth. of New York and New Jersey*, 38 NY3d 89, 94 [2022] [internal quotation and citations omitted]). Where a plaintiff establishes that the violation of a specific and applicable Industrial Code regulation was a proximate cause of the accident, an owner or general contractor “is vicariously liable without regard to [their] fault . . . even in the absence of control or supervision of the worksite” (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 317 [2024] [internal quotations and citations omitted]).

Plaintiff only contests the dismissal of, and seeks partial summary judgment on, Industrial Code 12 NYCRR §23-1.7(e)(2). All other predicates not raised in Plaintiff's legal arguments are deemed abandoned and are dismissed to that extent (*see Burgos v Premier Props. Inc.*, 145 AD3d 506, 508 [1st Dept 2016]; *see 87 Chambers, LLC v 77 Reade, LLC*, 122 AD3d 540, 542 [1st Dept 2014]). Industrial Code §23-1.7 (e) (2) provides that “[t]he parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.” Plaintiff testified that while walking through the room and avoiding various items of construction debris, he tripped and fell on a piece of sheet rock that should have been removed.

Defendants argue that the sheet rock plaintiff claims he tripped over was “integral to the work,” and therefore they should not be liable for failing to remove it. The Court of Appeals has held that “this doctrine . . . applies only when the dangerous condition is inherent to the task at hand, and not, as is the case here, when a defendant or third party’s negligence created a danger that was avoidable without obstructing the work or imperiling the worker” (*Bazdaric*, 41 NY3d at 320). Here, while plaintiff alleges that there were workers in the room “doing sheetrock” work (plaintiff 4/9/21 EBT, NYSCEF Doc. #171 at TR:40-42), defendants provide no evidence that removing the debris, or at minimum clearing it from the room would have “obstruct[ed] the work or imperil[ed]” the workers in the room (*id.*). Thus, plaintiff has established a prima facie violation of Industrial Code 12 NYCRR §23-1.7 (e) (2).

JM3 argues that it should not be liable because it was not working in the room where plaintiff tripped and had not been for three weeks prior. Chateau’s daily log for the day of the accident shows that JM3 was working on the third and fifth floors of the building (site log 7/8/19, NYSCEF Doc. #177 at 1). The same designation appears for JM3 in the daily logs going back to June 17, 2019 (site logs, NYSCEF Doc. #178 at 265-299). Chateau’s superintendent, Timothy Gorgijanidze, testified that he obtained the information in the daily logs from walking the job site, and that if the log stated that JM3 was working on the third and fifth floors then they would not have been working anywhere else in the building (Gorgijanidze 12/19/22 EBT, NYSCEF Doc. #176 at TR:10-11). Gorgijanidze also submits an affidavit in which he attempts to equivocate on the content of the daily logs (Gorgijanidze aff., NYSCEF Doc. #263), but the court views this as contradicting his earlier deposition testimony and declines to consider it on that basis (*e.g. Lambert v Bonilla*, 201 AD3d 502, 503 [1st Dept 2022] [holding that “motion courts should not consider affidavits submitted in opposition to summary judgment motions when the facts alleged therein materially conflict with the party’s prior deposition testimony”]).

Fountain, Chateau, and plaintiff also argue that JM3 was the only subcontractor working with sheet rock at the premises (Chateau-JM3 scope of work rider, NYSCEF Doc. #266), and accordingly JM3 must be responsible for the sheetrock being in the room where plaintiff tripped. This argument is ultimately speculative, as no party submits any evidence contradicting the daily logs showing JM3 was not working in the room, or explaining how the sheet rock found its way there (*e.g. Espinal v Trezechahn 1065 Ave. of Americas, LLC*, 94 AD3d 611, 613 [1st Dept 2012] [holding that “(p)laintiff’s contention that the unlikelihood of an occurrence does not mean it is impossible rests on mere speculation, which is insufficient to defeat a motion for summary judgment”]). Moreover, Gorgijanidze testified that, although each subcontractor was supposed to center-pile its own debris, Chateau was ultimately responsible for removing debris from the premises (Gorgijanidze 9/26/22 EBT, NYSCEF Doc. #175 at TR:40-41).

Accordingly, that branch of JM3's motion (Seq. #4) to dismiss plaintiff's Labor Law §241(6) claim against it is **granted**. That branch of Fountain and Chateau's motion (Seq. #5) to dismiss Labor Law §241(6) claim is **denied**. That branch of plaintiff's motion (Seq. #7) for partial summary judgment on this claim is **granted as to Fountain and Chateau only**.

Plaintiff's Labor Law §200 and Common-Law Negligence Claims

Defendants move (Seq. #4 and #5) to dismiss plaintiff's Labor Law §200 and common-law negligence claims. Plaintiff opposes the motions.

Labor Law §200 codifies landowners' and general contractors' common-law duty to maintain a safe workplace. Claims under Labor Law §200 fall under two categories: those arising from an alleged defect or dangerous condition existing on the premises, and those arising from the manner in which the work was performed (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]).

Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor either created the condition or had actual or constructive notice of the condition (*Mendoza v Highpoint Assocs., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]).

On the other hand, where the injury was caused by the manner of the work, liability attaches where the owner or general contractor had "authority to control the activity bringing about the injury to enable [a defendant] to avoid or correct an unsafe condition" (*Cappabianca*, 99 AD3d at 145; *Foley v Consol. Edison Co. of New York, Inc.*, 84 AD3 476, 477-478 [1st Dept 2011]).

Here, plaintiff's accident did not arise out of the manner of plaintiff's work, as plaintiff was moving the scaffold pieces to the courtyard when he tripped over construction debris generated by other workers. To the extent defendants argue that plaintiff could have taken a different route from the front of the building to the rear courtyard, it is undisputed that plaintiff was following directions given to him by his foreman.

The construction debris in the room where plaintiff fell constitutes a dangerous condition (*e.g. Nankervis v Long Is. Univ.*, 78 AD3d 799, 800 [2d Dept 2010]). JM3, as set forth above, established that it had no connection to the debris in the room, and therefore cannot have created the dangerous condition, or had actual or constructive notice of it. Similarly, the record does not reflect that Fountain, the owner, had any presence at the premises such that it could have had notice or that it created the condition.

Chateau, as set forth above, was ultimately responsible for clearing debris from the premises (Gorgijanidze 9/26/22 EBT, NYSCEF Doc. #175 at TR:40-41). Thus, Chateau cannot establish prima facie that it did not cause the condition that led to plaintiff's injury. The cases Chateau cites on this point are distinguishable (*see O'Sullivan v IDI Const. Co., Inc.*, 7 NY3d 805, 806 [2006] [finding that general contractor had only general supervisory control over the worksite]; *Mitchell v New York Univ.*, 12 AD3d 200, 201 [1st Dept 2004] [finding that general contractor had only general notice of work site conditions and not specific condition causing plaintiff's injury]).

Accordingly, that branch of JM3's motion (Seq. #4) to dismiss plaintiff's Labor Law §200 and common-law negligence claims against it is **granted**. That branch of Fountain and Chateau's motion (Seq. #5) to dismiss these claims is **granted as to Fountain and denied as to Chateau**.

Fountain and Chateau's Claim for Breach of Contract for Failure to Procure Insurance

JM3 moves to dismiss Fountain and Chateau's third-party claim against it for breach of contract for failure to procure insurance. Fountain and Chateau oppose the motion, and on their own motion seek summary judgment in their favor on this claim. A party is liable for failure to procure insurance, where that party does not comply with a contract provision between the parties requiring that party to procure insurance (*Dorset v 285 Madison Owner LLC*, 214 AD3d 402, 404 [1st Dept 2023], citing *Benedetto v Hyatt Corp.*, 203 AD3d 505, 506 [1st Dept 2022]).

The insurance procurement rider to Chateau and JM3's contract provides that JM3 shall procure insurance naming Fountain and Chateau as additional insureds, with \$10,000,000 in commercial general liability coverage (contract rider, NYSCEF Doc. #264 at 1-2 of 4). The policies provided by JM3 (NYSCEF Doc. #180-182) total only \$7,000,000 in coverage, and JM3 does not make any argument sufficient to remedy the discrepancy.

Accordingly, that branch of JM3's motion (Seq. #4) to dismiss Fountain and Chateau's claim for breach of contract for failure to procure insurance is **denied**. That branch of Fountain and Chateau's motion (Seq. #6) for summary judgment on this claim is **granted as to liability only**. The amount of Fountain and Chateau's damages, if any, shall be determined at trial.

Fountain and Chateau's Claims for Common-Law Indemnification and Contribution

JM3 moves (Seq. #4) to dismiss Fountain and Chateau's third-party claim against it for common-law indemnification and contribution. Fountain and Chateau oppose the motion, and on their own motion (Seq. #6) seek summary judgment in their favor on these claims.

To establish a claim for common-law indemnification, “the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident” (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021] [internal quotations and citation omitted]). A party cannot obtain common-law indemnification unless it has been held to be vicariously liable without proof of any negligence or actual supervision on its own part (*McCarthy v Turner Const., Inc.*, 17 NY3d 369, 377-78 [2011]). A party may seek contribution where “two or more tortfeasors combine to cause an injury,” and contribution is assessed “in accordance with the relative culpability of each such person” (*Godoy v Abamaster of Miami, Inc.*, 302 AD2d 57, 61 [2d Dept 2003]).

Here, the record does not reflect any negligence on JM3’s part. Fountain and Chateau therefore have no grounds to seek either indemnification or contribution against it. Accordingly, that branch of JM3’s motion (Seq. #4) to dismiss these claims is **granted**, and that branch of Fountain and Chateau’s motion (Seq. #6) for summary judgment on these claims is **denied**.

Fountain and Chateau’s Claim for Contractual Indemnification

JM3 moves to dismiss Fountain and Chateau’s third-party claim against it for contractual indemnification. Fountain and Chateau oppose the motion, and on their own motion seek summary judgment in their favor on this claim.

A party is entitled to full contractual indemnification provided that the “intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances” (*Drzewinski v Atlantic Scaffold & Ladder Co., Inc.*, 70 NY2d 774, 777 [1987] [internal quotations and citations omitted]). To obtain conditional relief on a claim for contractual indemnification, the one seeking indemnity must establish that it was free from any negligence and may be held liable solely by virtue of statutory or vicarious liability (*Spielmann v 170 Broadway NYC LP*, 187 AD3d 492, 494 [1st Dept 2020]). Conversely, “where a triable issue of fact exists regarding the indemnitee’s negligence, a conditional order of summary judgment for contractual indemnification must be denied as premature” (*id.* [internal quotations and citation omitted]).

The indemnification provision in the rider to Chateau and JM3’s contract provides that JM3 shall indemnify Fountain and Chateau for damages “arising out of or resulting from the performance or non-performance” of JM3’s work (contract rider at 1-2 of 4). As set forth above, plaintiff’s injury did not arise out of JM3’s work, and Fountain and Chateau are not entitled to indemnification from JM3 under the contract.

Accordingly, that branch of JM3's motion (Seq. # 4) to dismiss Fountain and Chateau's claim for contractual indemnification is **granted**, and that branch of Fountain and Chateau's motion (Seq. #6) for summary judgment on this claim is **denied**.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by any movant was not addressed by the court, it is hereby **denied**.

Accordingly, it is hereby

ORDERED that defendant/second third-party defendant JM3 Contracting Inc.'s motion (Seq. # 4) to dismiss the plaintiff's complaint and the second third-party complaint is **DENIED only as to defendants/third-party plaintiffs/second third-party plaintiffs Fountain Seaview B3 Housing Development Fund Company and Chateau GC LLC's third-party claim for breach of contract for failure to procure insurance**, and the **motion is otherwise GRANTED**; and it is further

ORDERED that defendants/third-party plaintiffs/second third-party plaintiffs Fountain Seaview B3 Housing Development Fund Company and Chateau GC LLC's motion (Seq. #5) for summary judgment dismissing plaintiff's complaint is **GRANTED to the extent** that plaintiff's Labor Law §240 (1) claim is dismissed as against Fountain Seaview B3 Housing Development Fund Company and Chateau GC LLC, and plaintiff's Labor Law §200 and common-law negligence claims are dismissed as against Fountain Seaview B3 Housing Development Fund Company, and the motion is otherwise **DENIED**; and it is further

ORDERED that Fountain Seaview B3 Housing Development Fund Company and Chateau GC LLC's motion (Seq. #6) for summary judgment on the second third-party complaint is **GRANTED** to the extent that Fountain Seaview B3 Housing Development Fund Company and Chateau GC LLC's claim against JM3 for breach of contract for failure to procure insurance is **GRANTED** as to liability only, and the motion is otherwise **DENIED**; and it is further

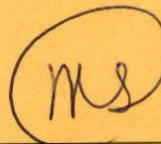
ORDERED that plaintiff Eduardo Chica's motion (Seq. #7) is **GRANTED** to the extent that plaintiff's Labor Law §241(6) claim is granted as to liability only against Fountain Seaview B3

Housing Development Fund Company and Chateau GC LLC, and the motion is otherwise **DENIED**; and it is further;

ORDERED that the movants of each motion shall serve a copy of this order with notice of entry upon all parties within thirty (30) days from the date of this decision and order.

This constitutes the decision and order of the court.

Dated: July 11, 2025



HON. MYRNA SOCORRO, J.S.C.