Davis v Gary Plastic Packaging Corp.
2025 NY Slip Op 34575(U)
October 3, 2025
Supreme Court, Bronx County
Docket Number: Index No. 20103-2020E
Judge: Myrna Socorro

E#003 & E#004

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Supreme Court of the State of New York
County of Bronx Part 9

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Donald J. Davis,
Plaintiff

-against-

Gary Plastic Packaging Corp., and Abel Womack, Inc.,
Defendants

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Abel Womack Inc.,
Third Party Plaintiff

-against-

Elsanoosy General Contracting Group Corp.,
Third Party Defendant

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Index No. 20103-2020E
Motion seq #3 and #4

DECISION & ORDER
Hon. Myrna Socorro, J.S.C.

The following papers were read on these motions for **SUMMARY JUDGMENT** [1]orally argued and marked submitted on September 9, 2024

Papers	NYSCEF Doc. #
Motion seq #3 Plaintiffs' Notice of Motion for Summary Judgment, Affirmation in Support, Affidavits, Memorandum of Law and Exhibits	#44-61
Abel Womack Inc's Notice of Cross-Motion, Affirmation in Support of Cross Motion and in Opposition to motion, Exhibits and Memorandum of Law	#109-127
Gary Plastic's Affirmation in Opposition to motion	#130-131
Plaintiff's Reply Affirmation	# 132-134
Gary Plastic's Affirmation in Opposition to Cross Motion	#156-157
Abel Womack Inc's Reply to Gary Plastic's Opposition to Cross-Motion (Seq 3)	#158-159
Plaintiff's Affirmation in Opposition to Cross Motion and Exhibits	#165-179
Abel Womack Inc's Reply Affirmation on cross motion	#181-182

[1] The Court notes that documents #165-179, plaintiff's affirmation in opposition to cross motion were identified as part of motion seq #4 when in fact they are part of motions seq #3.

Motion seq #4 Gary Plastic's Notice of Motion for Summary Judgment, Affirmation in Support, Exhibits	# 76-88
Plaintiff's Affirmation in Opposition and Exhibits	#135-148
Abel Womack Inc's Affirmation in Opposition	#154-155
Gary Plastic's Reply Affirmation	#160-161

According to Plaintiff, on the day of the accident on January 23, 2019, at the premises of 1340 Viele Avenue, Bronx, New York, Plaintiff Donald J. Davis ("Davis"), a foreman for Performance Construction, was transporting a long steel beam with an electric jack. Plaintiff stepped off the jack and gave it throttle while walking alongside it. As he was walking, Plaintiff's ankle tripped over a pallet which had a power jack underneath it. The electric jack Plaintiff was using kept moving, resulting in Plaintiff's ankle being hit two or three times, crushing his foot between it and the stationary pallet jack.

Defendant Gary Plastics Packaging Corp. ("Gary Plastics") was the owner of the subject premises. Defendant Abel Womack Inc. ("Abel") was contracted to perform mezzanine installation at the subject premises and subcontracted out the work to and Third-Party Defendant Elsanoosy General Contracting Group Corp. ("Elsanoosy"). Non-party Performance Construction was subcontracted to perform installation work.

Plaintiff now moves under motion seq #3 pursuant to CPLR §3212 for summary judgment against Defendants on the issue of liability pursuant to Labor Law §200. Defendant Abel cross-moves seeking the dismissal of plaintiff's complaint in its entirety and all crossclaims against them. Defendant Gary Plastic moves under motion seq #4 pursuant to §3212 for summary judgment on Plaintiff's Labor Law §200, §240(1) and §241(6) claims as well as on its indemnification claims against Abel.

Summary Judgment

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC,* 157 AD 3d 479; 699 NYS 3d 30 [1st Dept. 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD 3d 508; 894 NYS 2d 422 [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. *See CPLR*

§ 3212[b]; Friends of Thayer Lake LLC v. Brown, 27 NY3d 1039; 33 NYS 3d 853 [2016]; Vega *v Restani Constr. Corp.*, 18 NY3d 499 [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]. 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 N.Y. Univ. Med. Ctr*, 64 NY 2d 851; 487 NYS 2d 316 [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 which require a trial. *See Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.,* 68 NY 2d 320; 508 NYS 2d 923 [1986]; and *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]).

Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment. *See Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004].

Proper Labor Law Defendant

Defendant Abel contends that it should be dismissed from the action because it is not a proper Labor Law defendant. Proper defendants in Labor Law actions are limited to contractors and owners and their agents (*Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 235 NYS3d 55, 2025 NY Slip Op 04221 [1st Dept 2025], citing *Pimentel v DE Frgt. LLC*, 205 AD3d 591, 593 [1st Dept 2022]). Generally, a party will be held liable as an owner where it contracted for the construction work being performed at the time of the plaintiff's accident (*Tropea v Tishman Constr.*, 172 AD3d 450, 451 [1st Dept 2019]). Further, a party that is delegated the authority to supervise and control the injury-producing work renders it liable as a statutory agent of the owner or general contractor (*Otero v 635 Owner LLC*, 210 AD3d 435, 437 [1st Dept 2022]; *Santos v Condo 124 LLC*, 161 AD3d 650, 653 [1st Dept 2018]). Conversely, a party which is neither the owner, lessee, licensee, nor occupant of the accident premises, nor a party to the contract for the plaintiff's work, and which did not perform, supervise, or control any construction work, is not subject to liability under the Labor Law (*Gordon v City of New York*, 164 AD3d 1110, 1111 [1st Dept 2018]).

Defendant Abel contends that it is not a proper Labor Law Defendant. Plaintiff argues that Abel served as the general contractor for the project. Here, Ronald Coan, Abel Womack's national account manager, testified that Abel did design related work, prepared a quote and cost estimates for the mezzanine. Mr. Coan testified that Abel did not direct installation and did not provide the materials or equipment used at the site. However, Mr. Coan testified that Abel did provide services

on the "Raymond" equipment provided by Gary Plastics but did not know if that included the subject jacks. Richard Hellinger, president of Gary Plastics, testified that Gary Plastics had its own maintenance person, but it did contract for Abel to perform maintenance on some of the equipment. Mr. Hellinger did not indicate whether it was Gary Plastics own maintenance or Abel that was responsible for the jacks. Thus, there is an issue of fact as to whether Abel was responsible for the jacks involved in Plaintiff's accident. Accordingly, Defendant Abel's branch of the cross-motion seeking dismissal of the claims and crossclaims against them claiming it is not a proper labor law defendant is **denied.**

Labor Law §240(1)

Labor Law §240(1) provides in part: "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed." "The failure to provide safety devices constitutes a per se violation of the statute and subjects owners and contractors to absolute liability, as a matter of law, for any injuries that result from such failure since workers are scarcely in a position to protect themselves from accident." *Cherry v Time Warner, Inc.*, 66 AD3d 233, 235 [1st Dept 2009] [citations and quotations omitted].

The Court of Appeals has held that "[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). Rather, liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein." *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001], citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993].

Here both Abel and Gary Plastics assert that §240(1) is inapplicable because the accident did not involve an elevation-related hazard or risk. In opposition, Plaintiff argues that due to the substantial weight of the power jack, the height differential is not *de minimis*. However, the caselaw cited by Plaintiff involves falling objects of substantial weight. Here, Plaintiff testified that he tripped on a pallet jack and fell on his right side. The power jack Plaintiff was using was still running at the time and continued moving, the bottom of the jack hitting his ankle two or three times. There is no testimony or evidence that the power jack had any height differential, such as if it fell or was traveling at an incline. A trip and fall at ground level over a negligently placed object does not give

rise to liability under §240(1). *See, Ghany v BC Tile Contractors, Inc.* 95 Ad3d 768 [1st Dept 2012]; *In re 91st Crane Collapse Litigation,* 133 AD3d 478 [1st Dept 2015]; *Melber v 6333 Miant Street, Inc.* 91 NY2d 759 [1998]. Thus, there was no elevation-related hazard or risk which implicates §240(1). Accordingly, Defendant Abel's cross-motion for summary judgment on the Labor Law §240(1) claim is **granted**. For the same reason, Defendant Gary Plastics' motion for summary judgment on Labor Law §240(1) is also **granted.**

Labor Law §241(6)

Labor Law §241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety" to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed. *See Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]. The standard of liability under Labor Law §241(6), requires that a plaintiff allege that an owner or general contractor breached a specific rule or regulation containing a positive command. *See Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]. In addition, Labor Law §241(6) requires that a plaintiff establish that a violation of a safety regulation was the proximate cause of the accident. *See Gonzalez v Stern's Dep't Stores*, 211 AD2d 414 [1st Dept 1995].

Defendant Gary Plastics moves and Defendant Abel cross-moves for summary judgment on Plaintiff's §241(6) claim in its entirety. Plaintiff only contest the dismissal of its §241(6) claim predicated on Industrial Code provisions §23-1.5 and §23-1.7. All other predicates not raised in Plaintiffs' 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 §23-1.5

Industrial Code §23-1.5 provides the general responsibilities of employers. Industrial Code §23-1.5(a) relates to health and safety protection and provides:

> "All places where employees are suffered or permitted to perform work of any kind in construction, demolition or excavation operations shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection for the lives, health and safety of such persons as well as of persons lawfully frequenting the area of such activity. To this end, all employers, owners, contractors and their agents and other persons obligated by law to provide safe working conditions, personal protective equipment and

> safe places to work for persons employed in construction, demolition or excavation operations and to protect persons lawfully frequenting the areas of such activity shall provide or cause to be provided the working conditions, safety devices, types of construction, methods of demolition and of excavation and the materials, means, methods and procedures required by this Part (rule). No employer shall suffer or permit an employee to work under working conditions which are not in compliance with the provisions of this Part (rule), or to perform any act prohibited by any provision of this Part (rule)."

Industrial Code §23-1.5(b) relates to competency and provides "For the performance of work required by this Part (rule) to be done by or under the supervision of a designated person, an employer shall designate as such person only such an employee as a reasonable and prudent man experienced in construction, demolition or excavation work would consider competent to perform such work."

Industrial Code §23-1.5[c] Provides a general responsibility on employers regarding the condition of equipment, specifically that "(1) No employer shall suffer or permit an employee to use any machinery or equipment which is not in good repair and in safe working condition. (2) All load carrying equipment shall be designed, constructed and maintained throughout to safely support the loads intended to be imposed thereon. (3) All safety devices, safeguards and equipment in use shall be kept sound and operable and shall be immediately repaired or restored or immediately removed from the job site if damaged."

Here, Defendants assert that §23-1.5 is too generic to support a §241(6) claim. The First Department has held that §23-1.5 itself and §23-1.5(a) are insufficient predicates for §241(6). *See Marte v Tishman Construction Corporation,* 223 Ad3d 527, [1st Dept 2024]; *Castaldo v F.J. Sciame Construction Co Inc.,* 222 AD3d 579 [1st Dept 2023]. The 2nd Department has held that §23-1.5(b) only amplifies and does not serve as a predicate to §241(6). *See Guallapa v Canarsie Plaza, LLC,* 144 Ad3d 1088 [2nd Dept 2016]. The First Department has, however held that §23-1.5[c](3) is sufficiently specific to support a §241(6) claim. *Desprez v Untied Prime Broadway, LLC,* 225AD3d 518 [1st Dept 2024]. Here, Plaintiff does not plead or argue as to specific subsections of §23-1.5, instead only citing noncontrolling caselaw allowing §23-1.5 itself as a predicate to §241(6). This Court does note that with respect to §23-1.5[c](3), there is an open question of fact as to whether Abel, Gary Plastics, or someone else was responsible for maintenance of the jacks. Accordingly, that portion of Gary Plastics' motion seeking summary judgment on §241(6) predicated on Industrial Code §23-1.5 is **granted** except as to §23-1.5[c](3). For the same reason, that portion of Abel's cross-motion seeking the dismissal of §241(6) predicated on Industrial Code §23-1.5 is also **granted** except as to §23-1.5[c](3).

Industrial Code §23-1.7

Industrial Code §23-1.7 relates to protection form general hazards. Here, Plaintiff specifically predicates §241(6) on §23-1.7(b)(1)(I-iii); 23-1.7(d)(1)(iii)[c]; and §23-1.7(e)(1-2).

§23-1.7(b)(1) relates to falling hazards and provides for hazardous openings that "(iii) Where employees are required to work close to the edge of such an opening, such employees shall be protected as follows: (a) Two-inch planking, full size, or material of equivalent strength installed not more than one floor or 15 feet, whichever is less, beneath the opening; or (b) An approved life net installed not more than five feet beneath the opening; or [c] An approved safety belt with attached lifeline which is properly secured to a substantial fixed anchorage."

The statute does not provide a definition for what constitutes a "hazardous opening" however the First Department has repeatedly held that Industrial Code §23-1.7(b)(1) applies to openings large enough for a person to fall completely through. *Marte v Tishman Construction Corporation,* 223 AD3d 527 [1st Dept 2024]; *Favaloro v Port Authority of New York & New Jersey,* 191 Ad3d 524]; *Messina v City of New York,* 300 AD2d 121 [1st Dept 2002]. Here, there is no testimony or evidence about any such opening. Thus §23-1.7(b)(1) is inapplicable.

§23-1.7(d) relates to slipping hazards and provides "Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing." Here, there is no testimony or evidence that Plaintiff slipped on any substance thus §23-1.7(d) is inapplicable.

§23-1.7(e) relates to tripping hazards and provides "(1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered. (2) Working areas. The 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."

Here, Defendants argue that §23-1.7 is inapplicable because Plaintiff's accident occurred in an open area and not a passageway. In opposition, Plaintiff asserts that whether the accident location was a passageway is an issue of fact. Mr. Hellinger testified that the site was a 294,000 square foot warehouse, with a 30,000 square foot mezzanine and 26,000 square foot ground floor. Mr. Hellinger testified that Plaintiff's accident occurred at the freestanding metal mezzanine on the production floor which was being constructed. Plaintiff testified that the areas was clear other than pallets off

to the side. The testimony and evidence presented to the Court does not clarify whether the area where plaintiff fell was a designated walkway or pathway used for traversing, as opposed to an open area, creating an issue of fact as to §23-1.7(e)(1). As to §23-1.7(e)(2), it is undisputed that the area which Plaintiff fell was the mezzanine that was being constructed and was thus a working area. Accordingly, that portion of Gary Plastics' motion seeking summary judgment on §241(6) predicated on Industrial Code §23-1.7 is **granted** except as to §23-1.7(e)(1). For the same reason, that portion of Abel's cross-motion seeking the dismissal of §241(6) predicated on Industrial Code §23-1.28 is also **granted** except as to §23-1.7(e)(1).

Labor Law §200 and Common Law Negligence

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]).

As noted above, there is an issue of fact as to whether Abel was responsible for maintenance of the jacks and a proper Labor Law defendant, precluding summary judgment against it. Thus, Plaintiff's motion for summary judgment on §200 to the extent it is against Able is **denied.** For the same reason, that portion of Abel's cross-motion seeking dismissal of Plaintiff's §200 claim is **denied**.

As to defendant Gary Plastic, Plaintiff asserts that the work he was performing at the time of the accident was under the orders and supervision of a Gary Plastics employee. Specifically, Plaintiff testified that he spoke with a Gary Plastics employee on the day of the accident, but he did not discuss the work with them. Plaintiff also testified that Gary Plastics authorized him to use the power jack but did not recall who from Gary Plastics gave that authorization. By contrast Mr. Hellinger testified that if any Gary Plastics employee was giving others permission to use the jack it was not authorized by Gary Plastics. Thus, there is an issue of fact as to whether Gary Plastics controlled the means and methods of Plaintiff's work. Accordingly, Plaintiff's motion for summary judgment on his Labor Law §200 claim is **denied** as to Gary Plastic. For the same reason, that portion of Gary Plastic's motion for summary judgment on the §200 claim is **denied**.

Common Law Indemnification

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, Gary Plastics seeks common law indemnification from Abel. As noted above there is an issue of fact as to which party was responsible for control and maintenance of the jacks. Accordingly, that portion of Gary Plastics' motion seeking common law indemnification is **denied**.

Contractual Indemnification

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]).

Gary Plastics seeks contractual indemnification from Abel. The agreement between Gary Plastics and Abel provides:

> **INDEMNIFICATION**: To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold harmless the Owner and the parties listed at the end of this paragraph as additional indemnities, is any, their officers, directors agents, employees and partners (hereafter collectively "Indemnitees") from any and all claims, suits, damages, liabilities professional fees, including attorneys' fees, costs, expenses and disbursements related to death, personal injuries or property damage(including loss of use thereof) brought or assumed against any of the Indemnitees by any person or

> firm, arising out of or in connection with or as a result of or consequence of the performance of the Work of the Contractor under this agreement, as well as any additional work, extra work or add-on work, whether or not caused in whole or in part by the Contractor or any person or entity employed, either directly or indirectly, by the Contractor including any Contractors thereof and their employees.

Thus, based upon the foregoing contractual provision and pending the determination of negligence, if any, Gary Plastics is entitled to a conditional grant of judgment on its claim for contractual indemnification against Abel. *See Devlin v AECOM*, 224 AD3d 437 [1st Dept 2024]; *see also Quichimbo v Vornado 640 Fifth Ave., L.L.C.*, 30 AD3d 194 [1st Dept 2006].

Accordingly, it is hereby

ORDERED, that the motion seq #3 for summary judgment by Plaintiffs on their Labor Law §200 claim is **DENIED,** and it is further,

ORDERED, that the branch of cross motion in seq #3 by Abel, seeking dismissal of plaintiff's claims and cross-claims as to not being a proper labor law defendant is **DENIED**; and it is further

ORDERED, that the branch of cross motion in seq #3 by Abel, seeking dismissal of plaintiff's Labor Law §240(1) is **GRANTED**; and it is further

ORDERED, that the branch of cross motion in seq #3 by Abel seeking dismissal of Plaintiffs' Labor Law §241(6) claim against them is **GRANTED TO THE EXTENT** that the §241(6) claims that are **not** predicated on Industrial Codes §23-1.5[c](3) and §23-1.7(e)(1) are dismissed**,** and it is further,

ORDERED, that the branch of cross motion in seq #3 by Abel seeking dismissal of Plaintiff's Labor Law §200 claims is **DENIED**; and it is further

ORDERED that the branch of motion in seq #4 by Gary Plastics seeking dismissal of Plaintiffs' Labor Law §240(1) claim against them is **GRANTED,** and it is further,

ORDERED, that the branch of motion in seq #4 by Gary Plastics seeking dismissal of Plaintiffs' Labor Law §241(6) claim against them is **GRANTED TO THE EXTENT** that the §241(6) claims that are **not** predicated on Industrial Codes §23-1.5[c](3) and §23-1.7(e)(1) are dismissed**,** and it is further,

ORDERED, that the branch of motion seq #4 by Gary Plastics seeking dismissal of Plaintiffs' Labor Law §200 claims against them is **DENIED,** and it is further,

ORDERED, that the branch of motion seq #4 by Gary Plastics for contractual indemnification from Abel is **GRANTED TO AN EXTENT** in that Gary Plastics is awarded conditional judgment, and it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED, the counsel for Plaintiff shall serve a copy of this order with notice of entry upon all parties within thirty (30) days of the date of this Decision and Order.

This constitutes the decision and order of this court.

Dated: October 3, 2025

HON. MYRNA SOCORRO, J.S.C.