SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M

Justice

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ANGEL LUNA SANTOS,

Plaintiff,

- v -

BRAM AUTOMOTIVE MANAGEMENT CORP., 677 ELEVENTH AVENUE REALTY, LLC., TF CORNERSTONE INC.,660 TWELFTH UNIT ONE L.L.C., 660 TWELFTH UNIT TWO L.L.C., THE BOARD OF MANAGERS OF THE 660 12TH AVENUE CONDOMINIUM, REDCOM CM INC.,REDCOM DESIGN & CONSTRUCTION LLC,

Defendant.

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INDEX NO. 151744/2019

MOTION DATE 03/28/2025, 03/28/2025

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

677 ELEVENTH AVENUE REALTY, LLC., TF CORNERSTONE INC., 660 TWELFTH UNIT ONE L.L.C., THE BOARD OF MANAGERS OF THE 660 12TH AVENUE CONDOMINIUM, REDCOM CM INC.

Plaintiff,

-against-

RVS CONSTRUCTION CORPORATION, GOTHAM DRYWALL INC.

Defendant.

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Third-Party
Index No. 595009/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 129, 130, 131, 132, 133, 134, 135

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 136, 137, 138

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

FACTUAL AND PROCEDURAL BACKGROUND

This action arises out of an alleged January 18, 2019 accident at a construction project located at 606 West 49th Street, New York, New York. Plaintiff, Angel Luna Santos, was employed by non-party US Spray Corp. performing insulation/fireproofing and cleanup work on the premises. Plaintiff alleges that he was working on the fourth floor of the premises when he slipped and/or tripped on plastic covering, insulation, water, and rebar that had been left on the floor surface, causing him to fall and sustain injuries. Daily logs for January 18, 2019 reflect Gotham performing framing work with ten workers on the fourth floor, the same area where Plaintiff allegedly fell.

Plaintiff commenced this action alleging violations of Labor Law §§ 200 and 241(6) and common-law negligence against the Defendant owners and construction managers.

The Defendants/third-party Plaintiffs thereafter commenced a third-party action against Gotham Drywall Inc. ("Gotham"), asserting claims for contractual and common-law indemnification, contribution, and breach of contract for failure to procure insurance.

In Motion Sequence 003, Gotham moves for summary judgment dismissing all third-party claims, contending that its drywall installation work had no connection to plaintiff's accident and that the contract imposed no indemnity or insurance-procurement obligations.

In Motion Sequence 004, Defendants seek dismissal of Plaintiff's Labor Law §§ 200, 241(6), and common-law negligence claims.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent

proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

For Plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross*, 81 NY2d 494) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). To prevail on a claim under Labor Law §241(6), Plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code provision (*See Ares v State*, 80 NY2d 959 (1992)). Here, Plaintiff's claim under Labor Law §241(6) is based on violation of Industrial Codes 23-1.7(d) and (e) as follows:

i) 23-1.7(d), (e)(1) & (2);

> (d) Slipping hazards. 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.
> (e) Tripping and other hazards.
> (1) Passageways. All passageways shall be kept free from … obstructions or conditions which could cause tripping…
> (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.

Finally, as to Gotham Drywall's motion to dismiss any contractual indemnification, common law, and contribution claims against it, it is well-established that a party cannot be

indemnified for their own negligence, and contractual indemnification clauses are to be enforced only when the "intention to indemnify can be clearly implied from the language and purpose of the entire agreement, and the surrounding facts and circumstances" (*See Masciotta v Morse Diesel Int'l, Inc.*, 303 A.D.2d 309 (1st Dept 2003). "In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Correia v. Pro. Data Mgmt., Inc.*, 259 A.D.2d 60 (1st Dept 1999)). As to common-law indemnification, the one seeking indemnity must prove "…not only that the proposed indemnitor's negligence contributed to the causation of the accident, but also that the party seeking indemnity was free from negligence" (*See Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 (1st Dept 2010). Similarly, contribution is only available where tortfeasors combine to cause an injury (*Godoy v Alabaster of Miami*, 302 AD2d 57 (2d Dept 2003).

DISCUSSION

Motion Sequence 003 – Gotham Drywall Inc.'s Motion for Summary Judgment

Gotham Drywall has failed to meet its prima facie burden for summary judgment. Gotham argues that its drywall installation operations bore no relationship to Plaintiff's accident and that it neither supervised Plaintiff's work nor created the allegedly dangerous condition. It further argues that the contract governing its work contained no enforceable indemnification or insurance-procurement provisions.

However, the record presents several factual disputes which preclude summary judgment. Of particular significance is the daily log for January 18, 2019, which documents ten Gotham Drywall workers performing framing work on the fourth floor, precisely where Plaintiff alleges he slipped or tripped on plastic, insulation, water, and rebar.

This contemporaneous evidence directly contradicts Gotham's contention that it had no presence or potential involvement in the immediate work area.

Additionally, the contract submitted in support of Gotham's motion is incomplete, referencing exhibits and provisions not included in the record.

Given the absence of a full contractual record, Gotham cannot establish as a matter of law that it owed no contractual indemnification or insurance-procurement obligations. The existence and scope of such obligations require analysis of the contract as a whole, which cannot be performed on the limited submissions provided given the omission of referenced exhibits and provisions.

Finally, Gotham's assertion that it neither placed nor used the plastic sheeting, insulation, or rebar rests largely on its affiant's statements lacking personal knowledge of the material staging on the floors. Defendants/third-party Plaintiffs, by contrast, identify deposition testimony and site records indicating that Gotham's materials may have been wrapped in plastic and staged on the same floor, raising a triable question of fact as to whether Gotham's work contributed to the condition in Plaintiff's work area.

Because Gotham has not eliminated all issues of fact relating to its potential negligence, contractual duties, or causal role, summary judgment must be denied.

Motion Sequence 004 — Labor Law § 200 and Common-Law Negligence

Plaintiff concedes dismissal of Plaintiff's Labor Law §200 and common-law negligence claims as against 677 Eleventh Avenue Realty, TF Cornerstone, 660 Twelfth Unit One, the Board of Managers, and Redcom CM. Accordingly, the branch of Defendants motion seeking dismissal of Plaintiff's Labor Law §200 and common-law negligence claims as against those Defendants is granted.

Motion Sequence 004 — Labor Law § 241(6)

Defendants also move for dismissal of Plaintiff's claim under Labor Law § 241(6). This claim is predicated upon Industrial Code §§ 23-1.7(d), 23-1.7(e)(1), and 23-1.7(e)(2), which govern slippery conditions, tripping hazards in passageways, and debris or obstructions in working areas. Plaintiff alleges that the fourth-floor surface contained plastic sheeting, water, insulation, and rebar, which caused him to slip and/or trip and fall.

Section 23-1.7(d) prohibits the use of walkways, floors, or platforms that are slippery from ice, snow, water, grease, or other substances. The Court of Appeals recently addressed this provision in *Bazdaric v Almah Partners LLC,* 41 NY3d 310, 312 [2024]. There, the plaintiff slipped on heavy-duty plastic covering placed on an escalator where he was painting. The Court held that the plastic sheeting, though not one of the enumerated substances, created a slippery condition of the same kind and was not integral to the work being performed. On that basis, the Court granted the Plaintiff summary judgment under Labor Law §241(6). The definition of a material that is "integral" is not confined narrowly to the specific task being performed but may extend to the broader work area. (*Krzyzanowski v City of New York*, 179 AD3d 479, 480 [1st Dept 2020]).

Section 23-1.7(e)(1) requires passageways to be kept free from obstructions. "[T]he Industrial Code does not provide a formal definition of 'passageway,' the practical function of the area where plaintiff fell is a question to be addressed by the trier of fact…'courts have interpreted the term to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area'" (*Prevost v One City Block LLC,* 155 AD3d 531, 535 [1st Dept 2017] *quoting Steiger v LPCiminelli, Inc.*, 104 AD3d 1246, 1250 [4th Dept 2013]).

Similarly, Section 23-1.7(e)(2) requires that working areas be free from obstructions. There is no material issue as to whether the location of the alleged accident was a "working area" for the purposes of the Industrial Code. The area at issue was on an active worksite, meaning it functioned as a "working area" under the regulation.

The wet plastic, insulation debris, and rebar left in a work area alleged fall squarely within the hazards contemplated by 12 NYCRR 23-1.7(d) (slipping hazards caused by foreign substances) and 23-1.7(e) (obstructions in passageways and accumulations of debris in working areas). On this record, the Court cannot conclude as a matter of law that the materials present on the fourth floor were "integral to the work" or "consistent with the work being performed," nor can the Court determine the exact nature, location, or duration of the hazardous condition.

Moreover, Defendants have not addressed the factual discrepancies concerning whether the plastic and rebar were improperly stored, discarded debris, or part of ongoing work activities. These factual disputes bear directly on whether a violation of the Industrial Code proximately caused Plaintiff's injuries, an inquiry unsuitable for resolution on summary judgment.

Accordingly, issues of fact remain as to whether the condition of the fourth-floor passageway and work area violated the applicable Industrial Code provisions and whether such violations caused Plaintiff's accident. Defendants motion for summary judgment dismissing the Labor Law § 241(6) claim is therefore denied.

The court has considered the remaining arguments of the parties and finds such unavailing. Accordingly; it is hereby

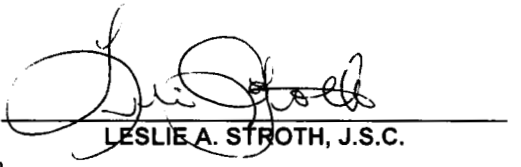
ORDERED that Gotham Drywall Inc.'s motion for summary judgment (Motion Sequence 003) is denied; and it is further

ORDERED that Motion Sequence 004 is granted in part to the extent that Plaintiff's claims under Labor Law § 200 and common-law negligence are dismissed; and it is further

ORDERED that the remainder of Defendants' motion for summary judgment (Motion Sequence 004) seeking dismissal of Plaintiff's claim under Labor Law § 241(6) is denied; and it is further

ORDERED that all remaining claims and third-party claims shall continue.

The foregoing constitutes the decision and order of the Court.



11/25/2025
DATE

LESLIE A. STROTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE