

Hughes v Redwood Capital Mgt. GP, LLC

2025 NY Slip Op 34605(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 159804/2021

Judge: Mary V. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X INDEX NO. 159804/2021

WALCOTT HUGHES,

Plaintiff,

- v -

REDWOOD CAPITAL MANAGEMENT GP, LLC, GLADDEN
PROPERTIES LLC, SOROS FUND MANAGEMENT LLC, ICON
INTERIORS, INC.,

Defendant.

MOTION DATE 06/25/2025, 06/25/2025, 06/30/2025, 06/27/2025

MOTION SEQ. NO. 001 002 003 004

DECISION + ORDER ON MOTION

-----X

ICON INTERIORS, INC.

Plaintiff,

-against-

DANMAR INTERIORS INC.

Defendant.

Third-Party
Index No. 595305/2024

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 250, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 253, 254, 255, 256, 257, 258, 274, 275, 276, 295, 313

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 252, 288, 289, 290, 291, 292, 293, 294, 318

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 251, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 287, 296, 314, 315, 316, 317

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of September 23, 2025, motion sequences 001 through 004 are consolidated for disposition and decided as follows:

- A. Third-Party Defendant Danmar Interiors Inc.'s ("Danmar") motion for summary judgment ("Mot. Seq. 001") dismissing the Third-Party Complaint and all cross claims asserted against it is granted.
- B. Plaintiff Walcott Hughes' ("Plaintiff") motion for summary judgment ("Mot. Seq. 002") on his Labor Law § 240(1) claim against Defendants Redwood Capital Management, LLC ("Redwood"), Gladden Properties LLC ("Gladden") and Defendant/Third-Party Plaintiff Icon Interiors, Inc. ("Icon") is granted.
- C. Redwood, Gladden, and Soros Fund Management LLC's ("Soros Fund") motion for summary judgment ("Mot. Seq. 003") dismissing Plaintiff's Labor Law 200 and common law negligence claims against Redwood, and Gladden, dismissing all crossclaims against Soros Fund, and granting Redwood, Gladden, and Soros Fund summary judgment on their contractual indemnification claim against Icon is granted in part and denied in part.
- D. Icon's motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it and granting it summary judgment on its third-party claims asserted against Danmar is granted in part and denied in part.

I. Background

On May 11 2021, Danmar employed Plaintiff as a carpenter on the 26th floor of 250 West 55th Street (the "Premises") when a piece of sheetrock fell from above and hit him (NYSCEF Doc. 172 at 15-16; 23-26; 37). The sheet rock slipped out of Plaintiff's coworker, Dennis Clarke's ("Mr. Clarke") hands and hit Plaintiff (NYSCEF Doc. 177 at 25). The Premises were under construction to renovate Redwood's office space (NYSCEF Doc. 173 at 13-14). Redwood subleased the office

space from Soros Fund (*id.*). The Premises were owned by Gladden (*id.*). Icon was retained by Redwood to serve as general contractor (*id.* at 18-19). Danmar was Icon's subcontractor (*id.* at 20). Russel Catanzaro, Icon's superintendent at the Premises, admitted it would have been safer for Mr. Clarke to use a baker scaffold instead of a ladder to install the sheetrock (NYSCEF Doc. 174 at 40-41). Mr. Clarke testified the ladders were provided by Danmar and although a baker scaffold was available, he decided to use a ladder to complete his work (NYSCEF Doc. 177 at 20-22). Each of the parties now moves for summary judgment. The parties' motions for summary judgment are consolidated and decided as follows.

II. Discussion

A. Danmar's Motion (Mot. Seq. 001)

Danmar's motion for summary judgment is granted. Redwood, Gladden, and Soros Fund do not oppose dismissal of their crossclaims, so they are dismissed as abandoned. Danmar met its *prima facie* entitlement to dismissal of Icon's Third-Party claims for contribution and common law indemnification pursuant to Workers' Compensation Law § 11, as Plaintiff's verified bill of particulars and deposition transcript establish that he has not suffered a grave injury (*see, e.g. Anton v West Manor Const. Corp.*, 100 AD3d 523, 524 [1st Dept 2012]). There is no evidence that Plaintiff suffered a traumatic brain injury resulting in "permanent total disability" (*see, e.g. Lopez v 18-20 Park 84 Corp.*, 235 AD3d 591, 592-93 [1st Dept 2025]). In opposition, Icon fails to raise a triable issue of fact as to whether Plaintiff suffered a grave injury pursuant to Workers' Compensation Law § 11. Thus, the contribution and common law indemnification claims are dismissed.

Icon's claim for contractual indemnification is dismissed. There was no enforceable agreement to indemnify in effect between Icon and Danmar at the time of Plaintiff's accident, and

the indemnification agreement eventually entered after Plaintiff's accident does not expressly state it applies retroactively (*see DeJesus v Sweet Construction Corp.*, 192 AD3d 416, 416 [1st Dept 2021] citing *Temmel v 1515 Broadway Associates, L.P.*, 18 AD3d 364, 365 [1st Dept 2005]). Nor does the indemnification agreement state it was made "as of" a date prior to Plaintiff's accident (*see* NYSCEF Doc. 210). While a purchase order dated April 15, 2021, vaguely references the terms of a master contract and a subcontractor/vendor agreement, there is no explanation as to what specific contracts the "master contract" and "subcontractor/vendor agreement" are referring. In any event, to the extent it references a contract entered between Redwood and Icon, "[u]nder New York law, incorporation clauses in a construction subcontract, incorporating prime contract clauses by reference into a subcontract, bind a subcontractor only as to prime contract provisions relating to scope, quality, character and manner of the work to be performed by the subcontract" (*see Waitkus v Metropolitan Housing Partners*, 50 AD3d 260, 261 [1st Dept 2008] quoting *Bussanich v 310 E. 55th St. Tenants*, 282 AD2d 243, 244 [2001]). Therefore, the third-party claim for contractual indemnification is dismissed (*see also Kolakowski v 10839 Associates*, 185 AD3d 427, 428 [1st Dept 2020]).

Finally, Icon's breach of contract for failure to procure insurance claim against Danmar is dismissed. Danmar has produced documentary and testimonial evidence, including insurance policies, indicating it complied with its obligation to procure insurance for Icon (NYSCEF Docs. 127, 129, and 131-132). Icon argues that because the insurers have not responded to its demands for a defense and indemnification, that means Danmar breached its contractual obligations. This is not so, as there is no contractual obligation for Danmar to force its insurer to respond to Icon. The insurer's duties to Icon are separate and independent from Danmar's contractual obligations

to procure insurance, which the undisputed evidence shows was met here (*see, e.g. Perez v Morse Diesel Intl., Inc.*, 10 AD3d 497, 497-98 [1st Dept 2004]).

B. Plaintiff's Motion (Mot. Seq. 002)

Plaintiff's motion for summary judgment on his Labor Law § 240(1) claim is granted. Plaintiff met his *prima facie* burden of showing a Labor Law 240(1) violation through the undisputed testimony that Plaintiff was injured after a piece of sheetrock struck him from a height of eight to nine feet after it slipped out of his coworker's hands (*Vines v Judlau Contracting, Inc.*, 238 AD3d 557 [1st Dept 2025] citing *Mayorquin v Carriage House Owner's Corp.*, 202 AD3d 541, 541-42 [1st Dept 2022]; *see also Harsanyi v Extell 4110 LLC*, 220 AD3d 528, 529 [1st Dept 2023]). The sheetrock was an object that "required securing for the purposes of the undertaking" and Mr. Clarke's attempt to install the sheetrock by himself with a ladder, as opposed to a baker scaffold and the help of a coworker, was insufficient to secure the sheetrock from falling.

In opposition, Defendants fail to raise a triable issue of fact. The argument that the height from which the sheet rock fell was *de minimis* is without merit (*see Palumbo v Citigroup Technology, Inc.*, 240 AD3d 455, 456 [1st Dept 2025]). Likewise, the argument that the danger of the sheetrock falling was not foreseeable is unavailing. All witnesses knew of the risks posed by falling construction materials and there were attempts to mitigate this risk by requiring the use of certain ladders and baker scaffolds at the Premises. Finally, the argument that Plaintiff failed to show the absence of an adequate safety device is contrary to the undisputed testimony that the use of a baker scaffold would have been safer, and it also fails to take into account the undisputed testimony that it would have been safer if the carpenters worked as a pair as opposed to one person installing sheetrock alone. Thus, Plaintiff's motion is granted (*see also Torres-Quito v 1711 LLC*,

227 AD3d 113, 116 [1st Dept 2024]; *Garcia v SMJ 210 W. 18 LLC*, 178 AD3d 473, 473 [1st Dept 2019]; *Rzymiski v Metropolitan Tower Life Ins. Co.*, 94 AD3d 629, 629 [1st Dept 2012]).

C. Redwood, Gladden, and Soros Fund's Motion (Mot. Seq. 003)

Redwood, Gladden, and Soros Fund's motion for summary judgment is granted in part and denied in part. Plaintiff does not oppose dismissal of his Labor Law §§ 241(6), 200 and common law negligence claims, so these claims are dismissed as abandoned. Because there is no evidence that these defendants were actively negligent, and their liability is only vicarious pursuant to Labor Law § 240(1), Icon's crossclaims against Redwood, Gladden, and Soros Fund for contribution, contractual indemnification, common law indemnification, and breach of contract for failure to procure insurance must be dismissed. There is no negligence for which these defendants would owe Icon contribution or indemnification.

Contrary to Icon's contention that there was no agreement to indemnify, Icon's principal admitted that the "Building Alteration: Rules and Regulations" (NYSCEF Doc. 238) was a part of the bid, and Icon was aware of its obligations under those rules and regulations and purportedly obtained insurance pursuant to those rules and regulations (*see* NYSCEF Doc. 228 at 62-65). The fact that the bid solicitation and the bid proposal were not signed does not negate their enforceability since all witnesses testified that the construction work was carried out in performance of that agreement (*see Flores v Lower East Side Service Center, Inc.*, 4 NY3d 363, 370-71 [2005]). The indemnification agreement found in the "Building Alteration: Rules and Regulations" which was incorporated into the bid reads:

"CONTRACTOR shall indemnify, defend and hold harmless the Owner Entities from any claims, demands, debts, suits, losses, damages, fines, penalties, liabilities, costs and expenses, including attorneys' fees, expenses, court costs, or causes of action whatsoever of every name and nature, both in law and in equity, (i) arising from or claimed to have arisen from the omission, fault, act, negligence, or misconduct of CONTRACTOR or CONTRACTOR'S subcontractors of any tier,

licensees, invitees, agents, servants or employees, or (ii) resulting from the failure of CONTRACTOR to perform and discharge its covenants and obligations under this Agreement. CONTRACTOR agrees that the obligations assumed herein shall survive the expiration of this Agreement. CONTRACTOR shall require all subcontractors of any tier to provide a similar indemnity to the OWNER Entities.” (NYSCEF Doc. 238 at 30).

The “Owner Entities” referred to in the indemnification clause are defined as “OWNER and the entities listed on Schedule C, and their respective subsidiaries, officers, agents, employees, affiliates, successors, and assigns, and any other entity specified by OWNER” (*id.* at 28). The only entity who is a named defendant that is listed is Gladden Properties, but the request for proposals also lists Redwood as the “Owner” (NYSCEF Doc. 229). Thus, there is an agreement from Icon to indemnify Redwood and Gladden, and the indemnification clause was triggered based on the undisputed facts that Plaintiff was injured due to the negligence of Icon and/or its subcontractor. Therefore, Redwood and Gladden’s motion for summary judgment on their contractual indemnification claim against Icon is granted.

However, the motion for contractual indemnification is denied as to Soros Fund who is not mentioned in the bid or the incorporated rules and regulations. The only potential mention of Soros fund here is just a vague reference to “Soros” as “Landlord Team” in the request for proposal. Indemnification provisions must be strictly construed, and the failure to incorporate Soros as an Owner or Owner entity on any of the documents precludes summary judgment on Soros’ contractual indemnification claim (*see Tavarez v LIC Dev. Owner, L.P.*, 205 AD3d 565, 567 [1st Dept 2022] citing *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]).

D. Icon’s Motion (Mot. Seq. 004)

Icon’s motion for summary judgment is granted in part and denied in part. Icon’s motion for summary judgment dismissing Plaintiff’s Labor Law § 240(1) claim is denied in light of Plaintiff obtaining summary judgment against Icon on his Labor Law § 240(1) cause of action.

Icon's motion for summary judgment dismissing Plaintiff's Labor Law §§ 241(6), 200, and common law negligence claims is granted without opposition (*see* NYSCEF Doc. 287).

Icon's motion for summary judgment dismissing Redwood and Gladden's crossclaims for contractual indemnification is denied in light of Redwood and Gladden being granted summary judgment on their contractual indemnification crossclaims against Icon. As Redwood and Gladden have obtained summary judgment on their contractual indemnification crossclaim against Icon, the motion for summary judgment which seeks dismissal of Redwood and Gladden's crossclaims for contribution and common law indemnification against Icon is denied as academic. The motion for summary judgment dismissing Redwood and Gladden's breach of contract for failure to procure insurance crossclaim is denied as there is no insurance policy annexed to the motion papers, let alone any documents indicating the requisite insurance was procured (*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]).

Given the absence of any active negligence on behalf of Soros Fund, the motion for summary judgment dismissing Soros Fund's contribution and common law indemnification claims against Icon is denied. Moreover, as explained in Mot. Seq. 003, there remains an issue of fact as to whether there was a contractual agreement to indemnify Soros Fund which precludes summary dismissal of Soros Fund's contractual indemnification crossclaim. However, there is no evidence of any agreement where Icon was obligated to name Soros Fund as an additional insured, therefore Soros Fund's crossclaim for breach of contract for failure to procure insurance is dismissed. Icon's motion for summary judgment on its third-party claims against Danmar are denied as the third-party claims were dismissed in Mot. Seq. 001.

Accordingly, it is hereby,

ORDERED that Danmar’s motion for summary judgment (Mot. Seq. 001) dismissing the Third-Party Complaint and all crossclaims asserted against it is granted; and it is further

ORDERED that Plaintiff’s motion for summary judgment (Mot. Seq. 002) on his Labor Law § 240(1) claim against Defendants Icon, Redwood, Soros Fund, and Gladden is granted; and it is further

ORDERED that Defendants Redwood, Soros Fund, and Gladden’s motion (Mot. Seq. 003) for summary judgment is granted to the extent that Plaintiff’s Labor Law §§ 241(6), 200, and common law negligence claims and Icon’s crossclaims asserted against them are dismissed, and Redwood and Gladden’s motion for summary judgment on their contractual indemnification claim against Icon is granted, and the remainder of the motion is denied; and it is further

ORDERED that Icon’s motion for summary judgment (Mot. Seq. 004) is granted to the extent that Plaintiff’s Labor Law §§ 241(6), 200, and common law negligence claims and Soros Fund’s breach of contract for failure to procure insurance claims are dismissed, and the remainder of Icon’s motion 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.

12/1/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE