

McIntyre v NewYork-Presbyterian Global Servs.

2025 NY Slip Op 34727(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 152854/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

BRIAN MCINTYRE,

Plaintiff,

- v -

NEWYORK-PRESBYTERIAN GLOBAL SERVICES,
LLC,TURNER CONSTRUCTION COMPANY,

Defendant.

-----X

NEWYORK-PRESBYTERIAN GLOBAL SERVICES, LLC,
TURNER CONSTRUCTION COMPANY

Plaintiff,

-against-

CARDOZA PLUMBING CORP.

Defendant.

-----X

INDEX NO. 152854/2021

MOTION DATE 06/27/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party
Index No. 595210/2023

The following e-filed documents, listed by NYSCEF document number (Motion 004) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 133, 134, 135, 136, 137, 144, 145, 146, 147, 148, 149, 150, 151, 153, 154, 155, 156, 157, 158

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of September 29, 2025, Defendants/Third-Party Plaintiffs NewYork Presbyterian Global Services LLC ("NewYork Presbyterian") and Turner Construction Company's ("Turner") (collectively "Defendants") motion for summary judgment dismissing Plaintiff Brian McIntyre's ("Plaintiff") Complaint, dismissing Third-Party Defendant Cardoza Plumbing Corp.'s ("Cardoza") counterclaims for contribution and common law indemnification, and seeking summary judgment on their third-party claims asserted against Cardoza for contractual and common law indemnification,

contribution, and breach of contract for failure to procure insurance is granted in part and denied in part. Cardoza's cross motion for summary judgment dismissing Defendants third-party claims asserted against it is granted. Plaintiff's cross motion for summary judgment on his Labor Law §§ 241(6) and 200 claims asserted against Defendants is denied.

I. Background

On March 3, 2020, Cardoza employed Plaintiff as a plumbing foreman at a construction project at the NewYork Presbyterian Allen Hospital (the "Hospital") (NYSCEF Doc. 119 at 28-30). Turner was the general contractor (NYSCEF Doc. 124 at 15). Turner contracted Cardoza to install new pipes for gas at the Hospital (NYSCEF Doc. 123 at 27-28). Plaintiff was inspecting newly installed piping on the roof when he tripped over wires (NYSCEF Doc. 119 at 31; 43; 58-59). Plaintiff testified prior to his accident he complained to Turner's safety inspector about wires sticking above the surface of the roof (NYSCEF Doc. 119 at 67). Turner's project manager, Mark Meranda, testified prior to Plaintiff's fall, Turner and its subcontractor, non-party Nelson Air Device, installed an HVAC system on the Hospital's roof, and Turner's electrical subcontractor connected the HVAC system to the Hospital's power supply (NYSCEF Doc. 125 at 23-24; 31). Each party now moves or cross moves for summary judgment, which are decided in accordance with the reasons that follow.

II. Discussion

A. Plaintiff's Cross Motion for Summary Judgment

Plaintiff's cross motion for summary judgment on his Labor Law § 241(6) claim predicated on a violation of Industrial Code §§ 23-1.7(e)(1) and (e)(2) is denied. Industrial Code § 23-1.7(e)(1), which prohibits tripping hazards in a passageway, refers to an interior or internal passageway, and not the outdoor roof where Plaintiff was walking (*see Quigley v Port Auth. of*

N.Y., 168 AD3d 65, 67-68 [1st Dept 2018]). Industrial Code § 23-1.7(e)(2), which mandates that the floors of working areas be “kept free from accumulations of dirt and debris and from scattered tools and materials” does not apply because Plaintiff does not claim he tripped due to dirt, debris, or from “scattered tools and materials” but rather from a piece of wire installed on the roof (*see, e.g. Savlas v City of New York*, 167 AD3d 546, 547 [1st Dept 2018]; *Thomas v Goldman Sachs Headquarters, LLC*, 109 AD3d 421, 422 [1st Dept 2013] [purposefully installed material cannot be construed as scattered materials]).

Plaintiff’s cross motion for summary judgment on his Labor Law § 200 claim is denied. There remain triable issues of fact as to whether Defendants had notice of the wires, or whether the wires constituted a hazardous condition. Although Plaintiff testified he complained about the wires to Turner’s site safety manager, Chris Wade, prior to his accident, he could not recall how long before his accident he complained about the wires on the roof and he was unaware if Mr. Wade did anything about the condition (NYSCEF Doc. 119 at 68-69, 134; 137). Mr. Meranda, Turner’s project manager, testified he was unaware of any complaints regarding the wiring (NYSCEF Doc. 125 at 50). Plaintiff’s boss, Peter Carofano testified that the wiring that Plaintiff tripped over was usually around the perimeter of the roof affixed to rods and not laid in the location where Plaintiff fell (NYSCEF Doc. 123 at 54; 57; 69).

Given Plaintiff’s burden on summary judgment, and viewing the facts in the light most favorable to the non-movants, there remain issues of fact as to notice of the wire which caused Plaintiff’s accident which preclude summary judgment on Plaintiff’s Labor Law § 200 claim (*see, e.g. DeMercurio v 605 West 42nd Owner LLC*, 172 AD3d 467, 467 [1st Dept 2019]; *Aramburu v Midtown West B, LLC*, 126 AD3d 498, 500 [1st Dept 2015]).

B. Cardoza's Cross Motion for Summary Judgment

Cardoza's cross motion for summary judgment dismissing Defendants' Third-Party Complaint is granted. There is no evidence that Cardoza caused Plaintiff's accident. There is no evidence that Cardoza was responsible for maintaining the premises, nor did it have any involvement with wiring on the roof. Cardoza's only involvement in the events giving rise to this accident was employing Plaintiff at the Hospital, which is insufficient to raise an issue of fact as to Cardoza's negligence (*see, e.g. Lopez v NG 645 Madison Ave LLC*, 239 AD3d 417, 419 [1st Dept 2025] [where cause of plaintiff's injuries were remote from the work subcontractor performed, subcontract's indemnification language was not triggered and third-party claims against subcontractor was properly dismissed]).

C. Defendants' Motion for Summary Judgment

Defendants' motion for summary judgment is granted in part and denied in part. Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 241(6) claim is granted. As explained in the preceding section, the undisputed facts of this case do not give rise to an actionable violation of Industrial Code §§ 23-1.7(e)(1) and (e)(2). Moreover, Defendants' motion for summary judgment dismissing Plaintiff's Labor Law § 200 based on a means and method theory of recovery is granted as it is undisputed Defendants did not exercise the requisite supervision and control over Plaintiff's work.

However, as explained in the preceding section, there remain issues of fact as to whether Defendants had actual or constructive notice of a trip hazard posed by wires on the roof which precludes summary judgment dismissing Plaintiff's Labor Law § 200 claim premised on a dangerous condition theory and Plaintiff's common law negligence claims. Specifically, there is no evidence as to when the roof was inspected for trip hazards, nor is there any testimony from

Mr. Ward explaining what he did in response to Plaintiff's complaint about the wiring (*see, e.g. Henriquez v Appula Mgt. Corp.*, 234 AD3d 592, 593 [1st Dept 2025]). Although Defendants argue Plaintiff sued the incorrect NewYork Presbyterian entity, Defendants proffer no explanation as to what the sued NewYork Presbyterian entity's relationship and role is to the owner of the Hospital, including whether it exercised any control or maintenance of the Hospital on behalf of the owner. Absent this information, Defendants fail to establish NewYork Presbyterian's entitlement to dismissal of Plaintiff's Labor Law § 200 and common law negligence claims.

Because the Third-Party Complaint against Cardoza has been dismissed, the branch of Defendants' motion for summary judgment on its third-party claims is denied as academic. Likewise, because the Third-Party Complaint is dismissed against Cardoza, Defendants' motion for summary judgment to dismiss Cardoza's counterclaims against Defendants for common law indemnification and contribution is granted as there is no liability which may be imposed against Cardoza for which indemnification for contribution may be sought.

Accordingly, it is hereby,

ORDERED that Defendants' motion for summary judgment is granted to the extent that Plaintiff's Labor Law § 241(6) claim and Labor Law § 200 claim premised on a means and methods theory of recovery are dismissed, and the remainder of Defendants' motion for summary judgment is denied; and it is further

ORDERED that Cardoza's cross motion for summary judgment dismissing Defendants' Third-Party Complaint is granted, and the Third-Party Complaint asserted against Cardoza is hereby dismissed, and Cardoza's counterclaims against Defendants for common law indemnification and contribution are dismissed as academic; and it is further

ORDERED that Plaintiff's cross motion for summary judgment on his Labor Law §§ 241(6) and 200 claims is denied; and it is further

ORDRED that within ten days of entry, counsel for Cardoza 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.

12/9/2025
DATE

Mary V Rosado J.S.C.
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"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE