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

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Gustavo Hernandez,
Plaintiff

-against-

11 Park Place LLC, Williams Real Estate Co., Inc., M Group Management Corp., Parsons Construction Inc.,
Defendants

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Parsons Construction Inc.,
Third Party Plaintiff

-against-

LJ Installation Corp.,
Third Party Defendant

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E#008 & E#009

Index No. 33373-2019E
Motion seq #8 and #9

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

The following e-filed documents in motion seq #8, listed by NYSCEF Doc. #256-279; 311; 316; 318-323; 328-329; 339-350; 443, 445; 448-451; 478; 480-481; 484-494; 502-504; 512-515; 530; 538-550; and 573-579, and in motion seq #9, listed by NYSCEF Doc. #281-310; 312; 317; 330-338; 351-442; 444; 446-447; 452-462; 48-477; 479; 482-483; 495-501; 505-511; 516-22; 531; and 555-5752, which were read on these motions for **Summary Judgment**, which motions were orally argued and marked submitted on September 5, 2024.

Defendants 11 Park Place LLC (Park Place) and Williams Real Estate Co. Inc. (Williams) move pursuant to CPLR §3212 (Seq. #8) for summary judgment on their claim for contractual indemnification against defendant M Group Management Corp. (M Group). M Group cross-moves pursuant to CPLR §3212 for summary judgment on its claims for common-law indemnification and contribution against Park Place, Williams, defendant/third-party plaintiff Parsons Construction, Inc. (Parsons), and third-party defendant LJ Installation Corp. (LJ). Plaintiff Gustavo Hernandez (plaintiff) cross-moves pursuant to CPLR §305 and §3025 to amend the caption to include "doing business as" names for Williams.

Plaintiff moves pursuant to CPLR §3212 (Seq. #9) for summary judgment as to liability on his complaint. Parsons cross-moves pursuant to CPLR §3212 to dismiss the complaint and all cross-claims asserted against it, and for summary judgment on its third-party complaint against LJ. Park Place and Williams cross-move pursuant to CPLR §3212 to dismiss plaintiff's Labor Law § 200 and common-law negligence claims. LJ cross-moves pursuant to CPLR §3212 to dismiss the complaint,

cross-claims, and the third-party complaint.[1]

Background

This action arises out of a construction accident on September 16, 2019, at the building located at 11 Park Place, New York, New York. Park Place owns the building, and nonparty Colliers International NY LLC and/or Colliers Tri-State Management LLC (Colliers) serves as Park Place's managing agent. Colliers acquired Williams in 2008 (Iglesias EBT, NYSCEF Doc #293, TR:14-15). Colliers retained M Group for a project to comply with Local Law 11/98's façade inspection requirements. M Group accepted a proposal from Parsons to install and remove pipe scaffolding related to the work. Parsons supplied the materials for the scaffolding and subcontracted the installation to LJ.

On the day of the accident, plaintiff was working atop a pipe scaffold on the roof of the building, next to the parapet wall. The scaffold, according to plaintiff, was six feet tall, with two ten-foot by two-foot planks forming a work platform four feet above the roof. The parties refer to these planks as "OSHA planks," as they are constructed to specifications of the Occupational Safety and Health Administration (OSHA). A dispute exists among the defendants as to whether LJ installed the scaffold on which plaintiff was working.

Plaintiff and a coworker were installing coppice stones on the edge of the roof. They would lift the stones—each of which weighed approximately 100 pounds—up to the scaffold and then climb onto the scaffold and lift the stones onto the edge of the roof for installation. While lifting a stone to shoulder height, the OSHA plank nearest the parapet suddenly collapsed, causing plaintiff to fall two feet down to the other plank. As he fell, the coppice stone fell with him and struck him in the head and right shoulder.

Park Place and Williams now move for summary judgment (Seq. #8) on Park Place's cross-claim for contractual indemnification against M Group, arguing that the broad language of the indemnification provision in M Group's contract with Colliers, as agent for Park Place, requires M Group to indemnify Park Place. They also seek to dismiss the complaint against Williams on the grounds that it is not a proper Labor Law defendant and has no connection to the case.

Plaintiff opposes the motion, and cross-moves to amend the caption to add the names of the Colliers

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[1] LJ was added as a direct party defendant by prior order of the court (NYSCEF Doc. #40), but the caption was not amended to reflect that.

parties as "doing business as" names for Williams. He argues that Williams and Colliers are the same entity, and thus it is a proper Labor Law defendant, as the party who contracted for the work. Park Place and Williams oppose the cross-motion, arguing that the Colliers entities are separate from Williams and not merely "doing business as" names.

M Group opposes the motion, arguing that there are issues of fact as to Park Place's potential negligence. M Group also cross-moves[2] for summary judgment on its cross-claims for common-law indemnification and contribution against Park Place, Williams, and Parsons, and on its third-party claims for the same relief against LJ. M Group argues that it was not negligent in conducting its work, and any fault for the accident lies either with plaintiff or one of the other defendants. Parsons and LJ argue in opposition that they did not supply the materials for or install, respectively, the scaffold that broke under plaintiff. Park Place and Williams argue that they were not negligent.

Plaintiff (Seq. #9) seeks summary judgment on its complaint, arguing that he suffered both a falling worker and falling object injury in violation of Labor Law §240 (1). Moreover, the fact that the plank broke is a violation of the Industrial Code, as was the length of plaintiff's tail line. Finally, plaintiff argues that defendants failed to remedy a dangerous condition on the premises, namely the plank which broke, in violation of Labor Law §200 and giving rise to a common-law negligence claim. The court notes that plaintiff only seeks this last relief against Parsons.

Parsons opposes the motion, and on its own cross-motion moves to dismiss the complaint and all cross-claims asserted against it, as well as for summary judgment on the third-party complaint against LJ. Parsons argues, as it does in opposition to M Group's cross-motion above, that it did not supply or install the broken plank and is therefore not a proper Labor Law defendant. Plaintiff concedes that issues of fact as to whether Parsons supplied materials for the scaffold, including the OSHA planks, preclude summary judgment in both his and Parsons' favor.

Park Place and Williams oppose the motion, and on their cross-motion seek dismissal of plaintiffs Labor Law §200 and common-law negligence against them. They argue that they did not supervise or control plaintiff's work and did not create or have notice of any dangerous condition on the property. Moreover, they argue that plaintiff misused the scaffold and is the sole proximate cause of the accident. Plaintiff opposes the cross-motion, arguing that Park Place and Williams cannot establish lack of notice based solely on M Group's inspections of the scaffold.

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[2] M Group also seeks leave to conduct depositions of Parsons and LJ and resubmit the motion. This branch of the motion has been resolved by prior order of this court (interim order and briefing schedule, NYSCEF Doc. #530).

LJ opposes the motion, and cross-moves to dismiss the complaint, cross-claims, and third-party complaint, arguing that it did not assemble plaintiff's scaffold and had no duty to plaintiff, and is not a proper Labor Law defendant. As with Parsons, plaintiff concedes that issues of fact as to whether LJ installed the scaffold preclude summary judgment in both his and LJ's favor. The court notes that plaintiff does not have any direct claims against LJ.

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]).

Amending the Caption

As a procedural matter, the court will first address plaintiff's cross-motion to amend the caption toadd the Colliers entities as "doing business as" names for Williams. Park Place and Williams oppose the motion.

The court may, at any time and in the absence of prejudice to the substantial rights of any party, "allow any summons or proof of service of a summons to be amended" (CPLR 305 [c]). In order to correct an alleged misnomer of a party, the movant must show that "(1) there is evidence that the correct defendant (misnamed in the original process) has in fact been properly served, and (2) the correct defendant would not be prejudiced by granting the amendment sought" (*Chambers v Prug*, 162 AD3d 974, 974 [2d Dept 2018]). A motion under CPLR 305[c] may not be used to substitute an entirely different party for the one named in the caption (*Perez v Garden Prop. Assoc., LLC*, 199 AD3d 475 [1st Dept 2021]; *Smith v Garo Enterprises, Inc.*, 60 AD3d 751, 752 [2d Dept 2009]).

Here, plaintiff fails to establish that Colliers is a "doing business as" name for Williams, and that they are in fact one and the same. The agreement with M Group lists Colliers as the agent for Park Place, not Williams (M Group, NYSCEF Doc. #274). Colliers' managing director, Luis Iglesias, testified that he had previously been employed by Williams until 2008, when Colliers bought Williams (Iglesias EBT, NYSCEF Doc. #293 at TR:14-15). The court also takes judicial notice of the fact that all three of Williams and both Colliers entities are separately listed in the New York State Department of State, Division of Corporations entity registry (*see Brandes Meat Corp. v Cromer*, 146 AD2d 666, 667 [2d Dept 1989] [holding that court may take judicial notice of matters of public record, such as records of Division of Corporations]). Nor has plaintiff established that Colliers was properly served. As Colliers is a separate entity rather than merely an assumed name, plaintiff cannot obtain the relief he seeks (*see Perez*, 199 AD3d at 475 [denying motion under CPLR 305[c] where plaintiff used existing person's name and information as alias]; *Smith*, 60 AD3d at 752 [denying motion under CPLR 305[c] where plaintiff attempted to add separate entity rather than correct misnomer]).

The cases plaintiff cites are distinguishable. In *Rodriguez v Dixie NYC, Inc.*, both corporations were properly served, and the complaint identified the separate defendant's assumed name as belonging to the premises where the accident took place (26 AD3d 199, 200 [1st Dept 2006]). Here, by contrast, plaintiff continues to insist that Colliers is merely an assumed name rather than a separate entity that must have been properly served at the outset. Plaintiff's other cases are similarly distinguishable (*Rivera v Beer Garden, Inc.*, 51 AD3d 479 [1st Dept 2008] [holding that proposed amendment related to entity properly served and aware it was intended defendant]; *Suarez v Shorehaven Homeowners Ass'n, Inc.*, 202 AD2d 229, 230-231 [1st Dept 1994] [holding that intended defendant had consistently held itself out as using name of sued defendant]).

Accordingly, plaintiffs' cross-motion pursuant to CPLR 305[c] to amend the caption is **denied**.

Proper Labor Law Defendants

Williams, Parsons, and LJ all contend that they should be dismissed from the action because they are not proper Labor Law defendants. Proper defendants in Labor Law actions are limited to contractors and owners and their agents (*Rodriguez v Riverside Ctr. Site 5 Owner LLC*, – AD3d –, 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]).

Williams has established prima facie entitlement to dismissal as an improper Labor Law defendant. It is undisputed that Colliers was the managing agent for Park Place, as set forth in both the contract with M Group and on the entry sheets. The record does not reflect any connection between Williams and this case. Plaintiff cites the testimony of Luis Iglesias, Colliers' managing director, who stated that he worked for Williams Equities, an entity within Colliers' "portfolio" (Iglesias EBT tr at 14-15). Plaintiff argues that Williams Equities and Williams Real Estate are the same entity, but the record contains no evidence of that. Accordingly, that branch of Park Place and Williams' motion to dismiss the complaint against Williams is **granted**.

Parsons has established prima facie entitlement to dismissal. The construction permit for the project and Parsons' proposal indicate that they were to provide scaffolding from the second to the seventeenth floors of the building on the side of the building facing Church Street (Parsons proposal, NYSCEF Doc. #302; Department of Buildings permit, NYSCEF Doc. #382). It is undisputed that Parsons provided the materials for the scaffolds and subcontracted the installation to LJ (Singh EBT, NYSCEF Doc. #558 at TR:31-33; LJ invoice, NYSCEF Doc. #384). According to LJ's invoice, LJ finished installing the scaffolds on August 12, 2019 (*id.*), approximately one month before plaintiff's accident. Moreover, plaintiff stated at his deposition that he worked on a scaffold on a different part of the roof than the scaffolds LJ claims it put up (plaintiff EBT at TR:103-104, 120; DOB permit at 5; photograph, NYSCEF Doc. #386).

In opposition, plaintiff and M Group raise triable issues of fact. M Group's witnesses testified that Parsons assembled the scaffold plaintiff used (Martinez EBT, NYSCEF Doc. #294 at TR:82, 115;

Marino EBT, NYSCEF Doc. #295 at TR:119-120; Paz EBT, NYSCEF Doc. #296 at TR:43, 63-64, 119). Moreover, after the plank broke, they testified that it was Parsons who came and replaced the broken plank one or two days later (Marino EBT at TR:104, 105; Paz EBT at TR:128-129). Thus, assuming arguendo that someone other than LJ or Parsons assembled the scaffold, there is an issue of fact as to whether Parsons supplied the broken plank. Accordingly, that branch of Parsons' cross-motion to dismiss the complaint on the grounds that it is an improper Labor Law defendant is **denied**.

The same issues of fact that preclude summary judgment for Parsons on this point also preclude summary judgment for LJ. LJ's witness testified as to LJ's usual invoicing practices but had no personal knowledge of when LJ finished its work at the building (Garcia EBT, NYSCEF Doc.#563 at TR:7, 17-18, 21, 33). As Parsons testified that all the scaffolds were assembled by LJ, an issue of fact exists as to whether LJ workers assembled the scaffold given M Group's witnesses' testimony that Parsons put up the scaffold. Accordingly, that branch of Parsons' cross-motion to dismiss the complaint on the grounds that it is an improper Labor Law defendant is **denied.**

Plaintiff's Labor Law § 240 (1) Claim

Plaintiff moves (Seq. #9) for summary judgment on the issue of liability under Labor Law §240(1). Defendants oppose the motion, and Parsons and LJ cross-move for dismissal.

Labor Law §240(1) applies to workers employed in the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" (*Stoneham v Joseph Barsuk, Inc.*, 41 NY3d 217, 220 [2023], citing *Dahar v Holland Ladder & Mfg. Co.*, 18 NY3d 521 [2012]). If an employee is engaged in an activity covered by section 240(1), "contractors and owners" must "furnish or erect" enumerated safety devices "to give proper protection" to the employee. 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] [internal citations and quotations omitted]).

However, "[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]). While Labor Law § 240(1) applies to both "falling worker" and "falling object" cases, the

hazard from one type of case cannot be transferred to give rise to liability for the other, because the different risks arise from different construction practices (*Narducci*, 96 NY2d at 268). The hazard posed by working at an elevation is that, without adequate safety devices such as ladders and scaffolds, a worker could be injured in a fall (*id.*). By contrast, falling objects are associated with the failure to use a different type of safety device, such as a rope or pulley, to secure the object (*id.*).

Therefore, to prevail in a "falling worker" case, "a plaintiff must establish that there is a safety device of the kind enumerated in section 240(1) that could have prevented his fall" (*Cutaia v Bd. of Managers of 160/170 Varick Street Condominium*, 38 NY3d 1037, 1038 [2022], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 340 [2011] [internal quotations omitted]). Liability may only be imposed where the "plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [internal quotations omitted]).

On the other hand, to prevail in a "falling object" case, "the plaintiff must demonstrate that at the time the object fell, it either was being "hoisted or secured" (*Narducci*, 96 NY2d at 268) or "required securing for the purposes of the undertaking" (*Outar v City of New York*, 5 NY3d 731, 732 [2005]). A plaintiff must also show that a lack of overhead protection failed to shield the plaintiff against the falling object, and therefore proximately caused an injury (*Torres Quito v 1711 LLC*, 227 AD3d 113, 116 [1st Dept 2024]).

There can be no liability under section 240(1) when the worker's actions are the sole proximate cause of the accident (*Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280, 290 [2003]). It is "conceptually impossible for a statutory violation (which serves as a proximate cause for a plaintiff's injury) to occupy the same ground as a plaintiff's sole proximate cause for the injury. Thus, if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation" (*id.*).

Here, it is undisputed that plaintiff suffered both a falling worker injury, in that the OSHA plank nearest to the parapet wall on the scaffold broke underneath him (*Gutierrez v Turner Towers Tenants Corp.*, 202 AD3d 437 [1st Dept 2022]), and a falling object injury, in that the coppice stone struck him when he fell (*Taopanta v 1211 6th Ave. Prop. Owner, LLC.*, 212 AD3d 566 [1st Dept 2023]). Plaintiff's testimony that the plank broke beneath him is sufficient to satisfy his prima facie burden (*Garcia v 122-130 E. 23rd St. LLC*, 220 AD3d 463, 464 [1st Dept 2023] [holding that "testimony establishing that a safety device collapsed is sufficient for a prima facie showing on

liability"]).

Defendants do not contest that the plank broke or that plaintiff was struck by the coppice stone as he fell. Rather, defendants argue that plaintiff was the sole proximate cause of the accident. A plaintiff is the sole proximate cause of an accident where "an appropriate safety device was available, but that plaintiff chose not to use the device" (*Collins v W. 13th St. Owners Corp.*, 63 AD3d 621, 622 [1st Dept 2009]).

Plaintiff testified that while he was lifting the coppice stone, he and his work partner were standing with one foot on each of the planks making up the scaffold (plaintiff EBT at TR:119-122). Jose Marino, M Group's foreman, testified that five minutes prior to the accident he observed plaintiff standing with both feet—and thus, all his weight—on a single plank (Marino EBT, at TRP147-148). Marino stated that told plaintiff not to do this, as the full weight of both workers and the coppice stone would have, he believed, exceeded the maximum weight bearable by the plank (*id.* at 57, 148-149). He did not witness the accident (*id.* at 46) but examined the plank afterwards and determined that the plank must have broken because plaintiff must have stood on it with both feet while lifting the coppice stone. Marino testified that the plank could hold a maximum of 400 pounds (*id.* at 126), but plaintiff's and his coworker's weights are not a part of the record. Moreover, Marino stated that if M Group believed that a scaffold was insufficient for the job, then M Group workers would install additional planks on the scaffold (*id.* at 144-146). However, M Group did not install additional planks on plaintiff's scaffold (*id.* at 147). As a lay witness, Marino is not qualified to speculate as to what caused the plank to break (*e.g. Arce v 1133 Bldg. Corp.*, 257 AD2d 515, 515 [1st Dept 1999]). Thus, Marino's testimony does not create an issue of fact. Finally, the court also notes that, while no party has sought spoliation sanctions, M Group failed to preserve the broken plank following the accident.

Finally, Park Place's reliance on *Silva v Bow Tie Partner, LLC* is unavailing. There, plaintiff was ordered not to use a broken piece of scaffold planking and replied that "he did not care" (77 AD3d 1143, 1146 [3d Dept 2010]). No such testimony exists here. Moreover, "an instruction to avoid an unsafe practice is not a sufficient substitute for providing a worker with a safety device to allow him to complete his work safely" (*Saavedra v 111 John Realty Corp.*, 179 AD3d 442 [1st Dept 2020] [finding for plaintiff where scaffold collapsed beneath him after instruction not to use certain scaffolds]).

In the absence of a triable issue of fact, plaintiff is entitled to summary judgment as to liability against Park Place and M Group, as owner and general contractor, respectively. As noted above, and as plaintiff concedes, issues of fact exist as to Parsons and LJ's potential involvement with

plaintiff's scaffold, precluding summary judgment in plaintiff's favor against them, but also precluding summary judgment in their favor dismissing this claim.

Accordingly, that branch of plaintiff's motion for summary judgment as to liability on his Labor Law § 240 (1) claim is **granted as to Park Place and Williams and otherwise denied**. Those branches of Parsons' and LJ's cross-motions to dismiss this claim are **denied.**

Plaintiff's Labor Law §241(6) claim

Plaintiff moves for summary judgment (Seq. #9) on his Labor Law §241(6) claim. Defendants oppose the motion, and Parsons and LJ cross-move for dismissal.

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 §23-1.5 [c](3) and 12 NYCRR §23-1.16(d). 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 12 NYCRR §23-1.5[c](3) provides that "[a]ll 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, plaintiff alleges that the OSHA plank was not kept in sound and operable condition because it broke under him for no discernable reason. Park Place argues that plaintiff cannot rely on section 23-1.5 [c](3) because he cited it in an untimely supplemental bill of particulars. However, plaintiff's allegation "involve[s] no new factual allegations, raise[s] no new theories of liability, and cause[s] no prejudice to the defendants" (*Ross*

v DD 11th Ave., LLC, 109 AD3d 604, 606 [2d Dept 2013]). Indeed, Park Place makes no effort to show prejudice. Accordingly, the court will consider the argument.

Plaintiff fails to meet his burden to establish prima facie entitlement to summary judgment as to section 23-1.5 [c](3). The record indicates that, up until plaintiff's accident, the OSHA planks on the scaffold were "sound and operable." Marino testified that M Group workers had used the scaffold for four or five days prior to the accident to install coppice stones on the parapet, without incident (Marino EBT, at TR:102). Moreover, M Group inspected the scaffold at various times, including on the morning of plaintiff's accident, and saw no indication that the plank was defective (*id.* at 102-103, 125-126; Paz EBT at TR:131-132, 146). The record does not indicate that defendants could have discovered any defect in the plank prior to the accident, as repeated inspections did not reveal any defect. Plaintiff's reliance on *Surko v 56 Leonard LLC* is unavailing, as there the record contained issues of facts as to whether the scaffold was properly constructed in the first instance (2021 NY Slip Op 32123[U], 16, 2021 WL 4991388 [Sup Ct, NY County 2021]). Thus, plaintiff cannot establish a Labor Law § 241(6) claim based on section §23-1.5[c](3).

Industrial Code 12 NYCRR §23-1.16(d) provides that "[t]he length of any tail line shall be the minimum required in order for an employee to perform his work, but in no case shall be longer than four feet." Here, plaintiff testified that he was given a six-foot tail line rather than a four-foot tail line. However, as set forth above, plaintiff must allege that the Industrial Code provision allegedly violated was also the proximate cause of the accident (*Toussaint*, 38 NY3d at 94). The record indicates that the proximate cause of plaintiff's accident was the plank breaking under him. No evidence exists that the allegedly improper tail line contributed to plaintiff's accident in any way. Plaintiff's reliance on *Macedo v J.D. Posillico, Inc.* is unavailing, as there plaintiff's overlong tail line contributed to his injuries (68 AD3d 508, 510 [1st Dept 2009]). Thus, the length of plaintiff's tail line does not give rise to a Labor Law §241(6) claim.

Accordingly, that branch of plaintiff's motion for summary judgment on his Labor Law §241(6) claim is **denied**. Those branches of Parsons and LJ's cross-motions to dismiss the claim are **granted**.

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

Plaintiff moves for partial summary judgment on his Labor Law §200 and common-law negligence claims. Defendants oppose the motion and Parsons, LJ, and Park Place cross-move to dismiss these claims.

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, it is undisputed that plaintiff's accident was caused by the plank breaking beneath him. The presence of a potentially defective scaffold on a job site "constitutes a dangerous condition" (*Herrero v 2146 Nostrand Ave. Assoc., LLC*, 193 AD3d 421 [1st Dept 2021]). Accordingly, plaintiff must establish that defendants caused or created the condition or had actual or constructive notice that the plank was defective.

Plaintiff concedes in his supplemental submissions that issues of fact preclude summary judgment on this cause of action against Parsons and LJ, which the court has discussed above. Those same issues preclude summary judgment in Parsons and LJ's favor as well.

Regarding Park Place and M Group, plaintiff fails to establish prima facie entitlement to summary judgment against either defendant. As to Park Place, the record does not indicate that any Park Place employees were involved with plaintiff's work. To the extent plaintiff asserts that Park Place participated in meetings or oversaw the progress of the work, such general oversight and supervision is insufficient to establish notice (*e.g. Torres-Quito v 1711 LLC*, 227 AD3d 113, 118-119 [1st Dept 2024]).

Turning to M Group, as set forth above, M Group employees repeatedly inspected the scaffold after it was installed, including the day of the accident (Marino EBT at TR:102-103, 125-126; Paz EBT at TR:131-132, 146). Moreover, the scaffold was in use for four or five days prior to the accident without incident (Marino EBT, at TR:102). Thus, no evidence exists that M Group had actual or constructive notice of any defect in the plank. Further, as the planks were supplied by Parsons, as set forth above, M Group also did not cause or create any defect in the plank.

Accordingly, that branch of plaintiff's motion for summary judgment on his Labor Law §200 and

common-law negligence claims is **denied**. Those branches of Parsons and LJ's cross-motions to dismiss the claims are **denied**. That branch of Park Place's motion to dismiss this cause of action is **granted.**

Third-Party Claims

Contractual Indemnification

Park Place moves (Seq. #8) for summary judgment on its cross-claim for contractual indemnification against M Group. Parsons and LJ separately cross-move (Seq. #9) to dismiss this cross-claim as asserted by any of defendants. Parsons also cross-moves for summary judgment on its third-party claim for contractual indemnification against LJ. The motion and cross-motions are opposed.

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]).

By decision and order dated December 13, 2021, this court (Doris M. Gonzalez, J.) denied Park Place's prior cross-motion for summary judgment on its claim against M Group for contractual indemnification as premature (NYSCEF Doc. #153). However, the court also held that M Group's contract with Park Place satisfies the requirements of General Obligations Law § 5-322.1, does not include a negligence trigger, and covers claims arising out of M Group's "acts, omissions, negligence or willful misconduct" (*id.* at 5-6). These findings are law of the case (*Matter of Part 60 RMBS Put-Back Litig.*, 195 AD3d 40, 47 [1st Dept 2021] [holding that "once an issue is judicially determined, further litigation of that issue should be precluded in a particular case"]).

Thus, it remains only to determine whether plaintiff's claims arise from M Group's acts or omissions. As set forth above, an issue of fact exists as to which party installed plaintiff's scaffold. The parties dispute whether Parsons and/or LJ installed the scaffold. The record does not indicate any other workers on the roof other than M Group's employees, therefore the only other entity who might have installed the scaffold is M Group. However, if M Group did not install the scaffold, then plaintiff's accident did not arise out of M Group's acts or omissions, precluding any obligation to

indemnify Park Place under the contract. Accordingly, any finding of conditional indemnification against M Group remains premature.

Turning to Parsons and LJ, the record does not indicate any contracts between Parsons or LJ and any other party requiring indemnification. Parsons' proposal to M Group does not contain such a provision, and no written agreement between Parsons and LJ exists in the record. LJ's invoice to Parsons does not contain any such obligations (LJ invoice, NYSCEF Doc. #384).

Accordingly, that branch of Park Place and Williams' motion (Seq. #8) for summary judgment on their cross-claim for contractual indemnification against M Group is **denied**. That branch of Parsons' cross-motion (Seq. #9) to dismiss all cross-claims for contractual indemnification is **granted**, and that branch of the cross-motion for summary judgment on its third-party claim for contractual indemnification against LJ is **denied**. That branch of LJ's motion to dismiss all cross-claims and third-party claims for contractual indemnification is **granted.**

Common-Law Indemnification and Contribution

M Group cross-moves (Seq. #8) for summary judgment on its claims for common-law indemnification and contribution against Parsons, LJ, Park Place, and Williams. Parsons and LJ separately cross-move (Seq. #9) to dismiss these cross-claims as asserted by any of defendants. Parsons also cross-moves for summary judgment on its third-party claims for common-law indemnification and contribution against LJ. The cross-motions are opposed.

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]).

As set forth above, issues of fact exist in the record regarding M Group, Parsons, and LJ's potential negligence regarding the construction and installation of the scaffold. As such, any finding of indemnification or contribution is precluded as premature.

Accordingly, those branches of M Group's (Seq. #8), Parsons' (Seq. #9), and LJ's (Seq. #9) cross-motions to dismiss all cross-claims and third-party claims for common-law indemnification and contribution are **denied**. That branch of Parsons' cross-motion for summary judgment on these claims against LJ is **denied.**

Breach of Contract for Failure to Procure Insurance

Parsons and LJ separately cross-move (Seq. #9) to dismiss claims for failure to procure insurance as asserted by any of defendants. Parsons also cross-moves for summary judgment on its third-party claim for the same relief against LJ.

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]). Here, as with the cross-claims and third-party claims regarding contractual indemnification, no documents in the record oblige Parsons or LJ to procure insurance of any kind. Parsons cites a certificate of insurance attached to LJ's invoice, but this document is not attached to the exhibit Parsons cites.

Accordingly, that branch of Parsons' cross-motion (Seq. #9) to dismiss all cross-claims for failure to procure insurance is **granted**, and that branch of the cross-motion for summary judgment on its third-party claim for failure to procure insurance against LJ is **denied**. That branch of LJ's motion to dismiss all cross-claims and third-party claims for failure to procure insurance is **granted**.

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**.

ORDERED that defendants 11 Park Place LLC and Williams Real Estate Co., Inc.'s motion (Seq. #8) for summary judgment is **GRANTED** to the extent that the complaint is dismissed against Williams Real Estate Co., Inc, and the motion is otherwise **DENIED**; and it is further

ORDERED that plaintiff's cross-motion in seq #8 to amend the caption is **DENIED**; and it is further

ORDERED that defendant M Group Management Corp.'s cross-motion in seq #8 for summary judgment and other reliefs is **DENIED**; and it is further

ORDERED that plaintiff's motion (Seq. #9) for summary judgment as to liability is **GRANTED** with respect to plaintiff's Labor Law §240(1) claim against defendants 11 Park Place LLC and M Group Management Corp., and the motion is otherwise **DENIED**; and it is further

ORDERED that defendant Parsons Construction, Inc.'s cross-motion in seq #9 for summary judgment is **GRANTED** to the extent that plaintiff's Labor Law §241(6) claim, and all claims for contractual indemnification and failure to procure insurance are dismissed against said defendant, and the motion is otherwise **DENIED**; and it is further

ORDERED that defendants 11 Park Place LLC and Williams Real Estate Co., Inc.'s cross-motion in seq #9 for partial summary judgment dismissing plaintiff's Labor Law §200 and common-law negligence claims is **GRANTED**; and it is further

ORDERED that defendant/third-party defendant LJ Installation Corp.'s cross-motion in seq #9 for summary judgment is **GRANTED** that plaintiff's Labor Law §241(6) claim, and all claims for contractual indemnification and failure to procure insurance are dismissed against said defendant, and the motion is otherwise **DENIED**; and it is further

ORDERED that the movants of each motion shall serve and file a copy of this Decision and Order with Notice of Entry on all parties within thirty (30) days from the date of this Decision and Order.

This constitutes the decision and order of the Court.

Dated: November 3, 2025

HON. MYRNA SOCORRO, J.S.C.