At an IAS Part 29 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11021 on the 17th day of December 2025

P R E S E N T:

HON. WAYNE SAITTA, Justice

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PETER MARLEY,

Plaintiff,

- AGAINST -

1294 PARK PLACE LLC, 1296 PARK PLACE PH LLC, MARLY INDUSTRIAL CORP., MARLY BUILDING SUPPLY CORP., TRIPLE C. BUILDERS LLC, TIGRE HOME IMPROVEMENT CORP., ARSENAL SCAFFOLD INC., MARLY BUILDING MATERIALS INC, and NEW STYLE DEVELOPMENT INC,

Defendants.

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DECISION & ORDER

Index No.: 517504/2018
Motion Sequence: 8 - 13

This action arises from injuries sustained by Plaintiff PETER MARLEY on October 17, 2017, during a construction project involving adjacent buildings located at 1294 and 1296 Park Place in Brooklyn, where MARLEY was employed as a laborer by Z&J Management LLC, the general contractor, and fell from a temporary plywood platform on the roof of 1294 Park Place when the platform collapsed as pallets of concrete masonry units ("CMUs") were being hoisted and unloaded onto the roof.

The buildings at 1294 and 1296 Park Place were owned by separate entities, 1294 PARK PLACE LLC ("1294 PARK"), the owner of 1294 Park Place, and 1296 PARK PLACE PH LLC ("1296 PARK"), the owner of 1296 Park Place. The buildings were being renovated simultaneously under contracts with the general contractor, Z&J Management LLC.

Plaintiff commenced this action asserting claims under Labor Law §§ 200, 240(1), and 241(6) against the two property owners (1294 PARK and 1296 PARK); the three related material-delivery companies whose crane delivered the CMU pallets (MARLY INDUSTRIAL CORP., MARLY BUILDING SUPPLY CORP., and MARLY BUILDING MATERIALS INC., collectively the "MARLY Defendants"); three subcontractors, TRIPLE C BUILDERS LLC, ("TRIPLE C"); TIGRE HOME IMPROVEMENT CORP., ("TIGRE,"); ARSENAL SCAFFOLD INC., ("ARSENAL"); and an alleged developer NEW STYLE DEVELOPMENT INC., ("NEW STYLE"). The complaint and all cross-claims against ARSENAL were later discontinued with prejudice pursuant to a July 24, 2020, stipulation.

Various Defendants also asserted multiple cross-claims against each other for indemnification and contribution.

There are six related motions for summary judgment. Plaintiff moves for partial summary judgment on his Labor Law §§ 240(1) and 241(6) claims against Defendants 1296 PARK, 1294 PARK and the MARLY Defendants.

Defendant 1296 PARK moves for summary judgment dismissing all of plaintiff's Labor Law §§ 200, 240(1), and 241(6) claims, and all cross-claims against it.

The MARLY Defendants move for summary judgment dismissing Plaintiff's Labor Law §§ 200, 240(1), and 241(6) and common-law negligence claims, as well as all cross-claims asserted against MARLY.

Defendant TRIPLE C cross-moves for summary judgment dismissing all claims and all cross-claims and counterclaims against it.

Defendant 1296 PARK

Labor Law §§ 240(1) and 241(6)

As the owner of the adjacent property, Defendant 1296 PARK moves for summary judgment and asserts that it had no control or involvement in the work at 1294 Park Place. Plaintiff MARLEY contends that the work at both properties was part of a single, unified project, commonly referred to as "1294/1296", and that materials, labor, and supervision were shared between the two sites. Plaintiff argues that, for that reason, Defendant 1296 PARK should be held liable as an owner under the Labor Law even though each property was separately owned and governed by distinct contracts and permits.

It is undisputed that Plaintiff MARLEY was working on a temporary platform constructed on the roof of 1294 Park Place, that the hoisting operation and staging of pallets took place entirely at 1294 Park Place, and that Defendant 1294 PARK, not Defendant 1296 PARK, held title to that parcel.

Although DOB inspectors issued violations to Defendant 1296 PARK for undermining the party-wall footing and for unbraced CMU walls on its side of the property line, those violations pertain to work on 1296 PARK's lot and none of the violations issued were related to the cause of the collapse at 1294 Park Place.

Labor Law §§ 240(1) and 241(6) impose absolute and vicarious liability on property owners for elevation-related accidents. This statutory liability is based on ownership of the property where the accident occurred, and not from any active role in the construction.

The cases interpreting the scope of "owner" liability under Labor Law § 240(1) do not support extending that definition to the owner of an adjacent property such as Defendant 1296 PARK. In *Berner v Town of Cheektowaga*, 151 AD3d 1636 (4th Dept

2017), the plaintiff brought a § 240(1) claim after falling from a ladder while repairing a vacant home. The Town had contracted with the plaintiff's employer to perform the work under its statutory authority, but the court held that "owner" includes only the titleholder of the accident site or a party with a property interest who "fulfilled the role of owner by contracting to have work performed for his or her benefit" (quoting *Farruggia v Town of Penfield*, 119 AD3d 1320, at 1321 [4th Dept 2014], lv denied 24 NY3d 906 [2014]). Because the Town held no title or property interest, it was not an owner under § 240(1).

The same reasoning applies here: Defendant 1296 PARK had no ownership interest in 1294 Park Place, the location of the collapse.

Plaintiff identifies no contract, easement, lease, or other property interest by which Defendant 1296 PARK "fulfilled the role of owner" for the work at 1294 Park Place, and no evidence that Defendant 1296 PARK retained or exercised authority to supervise or control the hoisting or loading activity on 1294 PARK's roof. See *Scaparo v Village of Ilion*, 13 NY3d 864 (2009); *Copertino v Ward*, 100 AD2d 565 (2d Dept 1984); *Farruggia v Town of Penfield*, 119 AD3d 1320 (4th Dept 2014); *Berner v Town of Cheektowaga*, 151 AD3d 1636 (4th Dept 2017).

Accordingly, Defendant 1296 PARK is entitled to dismissal of the § 240(1) and §241(6) claims against it.

Labor Law § 200 / Common-Law Negligence

Defendant 1296 PARK may not be held liable under Labor Law § 200 or common-law negligence for an accident that occurred entirely on the adjoining property at 1294 Park Place where it did not launch the force of harm. Labor Law § 200 codifies an owner's common-law duty to provide workers with a safe place to work.

However, Defendant 1296 PARK has no duty to maintain the adjoining building in a safe condition. The record contains no evidence that Defendant 1296 PARK owned, occupied, or controlled any portion of 1294 PARK's roof, or that it created the dangerous condition or controlled the work that caused the collapse.

Plaintiff's assertion that the properties functioned as a combined jobsite does not establish the ownership, control, or supervisory authority required under § 200. Without evidence that Defendant 1296 PARK controlled the premises at 1294 Park Place or directed the injury-producing work, liability cannot be imposed under either the premises-condition or means-and-methods theory (see *Ortega v Puccia*, 57 AD3d 54, at 61–62 [2d Dept 2008]; *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, at 877 [1993]).

Accordingly, the Labor Law § 200 and common-law negligence claims against Defendant 1296 PARK must be dismissed.

Defendant Triple C Builders

TRIPLE C moves for summary judgment dismissing all claims and cross-claims against it. The undisputed record shows that TRIPLE C performed no work on the project. Although TRIPLE C was originally contacted to file for permits for the project at 1294 Park Place, Defendant 1294 PARK subsequently decided to hire Z&J Management LLC as a general contractor in its place. Z & J oversaw all of the construction work at both buildings, including erecting the temporary plywood platform and directing the CMU deliveries.

TRIPLE C's principal, Yakov Geldzahler, states in his affidavit and deposition that the company never signed a contract, never sent workers or equipment to either property, and had no involvement in the work that preceded the collapse.

No evidence was offered in opposition showing that TRIPLE C participated or supervised any of the construction. The Labor Law imposes liability only on owners, contractors, and statutory agents who had the authority to supervise or control the injury-producing work (see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, at 500–502 [1993]; *Blake v Neighborhood Hous. Servs.*, 1 NY3d 280, at 293 [2003]). An entity that never owned the property, never contracted for the work, and never exercised authority at the site is not a proper Labor Law defendant (see *Kelarakos v Massapequa Water Dist.*, 38 AD3d 717, at 718 [2d Dept 2007]). Because Triple C was not involved in any of the work at the site, its motion should be granted.

PLAINTIFF's MOTION

Plaintiff moves for summary judgment against Defendant 1294 PARK, Defendant 1296 PARK, and the MARLY Defendants on his claims pursuant to §240(1) and §241(6).

Defendant 1296 PARK

As discussed in the Court's analysis of Defendant 1296 PARK's motion, Plaintiff's motion for summary judgment against Defendant 1296 PARK must be denied for the same reasons that warrant dismissal of the claims against Defendant 1296 PARK.

Defendant 1294 PARK

Labor Law § 240(1)

Labor Law § 240(1) imposes absolute, vicarious liability on owners for elevation-related injuries where a safety device fails to provide proper protection, regardless of the owner's supervision or control (*Gordon v Eastern Ry. Supply, Inc.*, 82 NY2d 555, at 559–560 [1993]). Courts impose liability whenever the elevation device collapses or fails, without requiring proof of negligence or notice (*Gomez v City of New York*, 63 AD3d 511, at 512 [1st Dept 2009]).

Plaintiff MARLEY was working as a laborer for Z&J Management on a temporary plywood platform built on the roof of 1294 Park Place to receive pallets of CMUs. Three pallets, each weighing roughly 1,800 to 2,000 pounds, had already been placed on the deck. As a fourth pallet was being lowered, several witnesses described the load as "coming down fast" and striking the platform, while others said the platform failed under the accumulated weight.

The accident occurred when the temporary plywood platform on the roof of 1294 Park Place collapsed.

The platform consisted of plywood sheets laid across joists and served as a landing surface for pallets of CMUs being hoisted by a truck-mounted crane operated by employees of the MARLY Defendants. Immediately afterward, the deck cracked and collapsed, which sent MARLEY through multiple floors to the cellar. A DOB inspector issued a violation that same day that noted excessive material loading on a partially constructed floor as one of the unsafe conditions observed at the site.

Whether the collapse resulted from a sudden impact of the fourth pallet being lowered too fast or from overloading is immaterial: under Labor Law § 240(1), liability attaches whenever an elevation device fails to provide proper protection.

Defendant 1294 PARK argues that the collapse was unforeseeable, but foreseeability is not an element of § 240(1). None of the cases cited by Defendant involved § 240(1) or support foreseeability as a defense: *Gomez v City of New York*, 63 AD3d 511 (1st Dept 2009), imposes liability for the collapse of an elevation device without regard to foreseeability; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 (1998), concerns §§ 241(6) and 200; and *Hughes v Tishman Constr. Corp.*, 40 AD3d 305 (1st Dept 2007), addresses

common-law negligence and means-and-methods supervision. None of these cases cited by Defendant limit the absolute liability imposed by § 240(1).

Because the temporary platform failed while being used as a safety device for elevated work, and because Defendant 1294 PARK was the owner of the property where the accident occurred, the statute applies, and Plaintiff MARLEY is entitled to summary judgment on his Labor Law § 240(1) claim against 1294 PARK.

Labor Law § 241(6)

Labor Law § 241(6) imposes a nondelegable duty on owners and contractors to comply with the Industrial Code's concrete, specific requirements, and a plaintiff must show both a violation of a particular rule and that the violation was a proximate cause of the accident (see *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494 [1993]; *Misicki v Caradonna*, 12 NY3d 511 [2009]). The sections invoked here, 12 NYCRR 23-2.1(a)(2), and 23-8.1(f)(2)(i), have been recognized as sufficiently specific to support a § 241(6) claim (see *Hayden v 845 UN Ltd. Partnership*, 304 AD2d 499 [1st Dept 2003]; *Wein v East Side 11th & 28th, LLC*, 186 AD3d 1579 [2d Dept 2020]; *Marrero v 2075 Holding Co.*, 106 AD3d 408 [1st Dept 2013]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, at 350 [1998]).

By the time the collapse occurred, three pallets, each weighing between 1,800 and 2,000 pounds, had already been placed on the deck. As the fourth pallet was being lowered, several witnesses, including the signalman, said the load "came down fast" and struck the surface with a "hard" landing, while others described the descent as normal.

Immediately after the fourth pallet reached the platform, the plywood cracked along the joists and the deck gave way, which caused MARLEY to fall through two levels to the cellar. A DOB inspector later issued a violation that identified excessive loading of

a partially constructed floor and a failure to shore or brace the temporary decking. No evidence identifies any other cause, such as wind, debris, or a hidden defect unrelated to the hoisting and loading activity.

Plaintiff cites two specific sections of the Industrial Code he asserts were violated: Section 23-2.1(a)(2) and Section 23-8.1(f)(2)(i).

Section 23-2.1(a)(2) prohibits storing materials on any floor or platform in an amount or weight that renders the structure unsafe.

Section 23-8.1(f)(2)(i) specifically bars any sudden acceleration or deceleration of the moving load during a hoisting operation. Here, the testimony described a hard landing moments before the platform failed, which aligns with the type of uncontrolled impact the section is intended to prevent.

The key point is that the platform failed while being used to receive and store multiple heavy pallets, and the record has established only two possible causes: either the platform was overloaded after the fourth pallet was added, or the fourth pallet landed with excessive force. Either cause constitutes a violation of one of the above Industrial Code rules. A collapse caused by a sudden, uncontrolled landing violates § 23-8.1(f)(2)(i). A collapse caused by cumulative weight violates § 23-2.1(a)(2).

Defendant 1294 PARK, as the owner of the accident site, is vicariously liable for violations of the Industrial Code, and because the record establishes that a violation of at least one of the cited provisions were a substantial factor in causing the temporary platform to collapse, Plaintiff MARLEY is entitled to summary judgment on his Labor Law § 241(6) claim against Defendant 1294 PARK.

The MARLY Defendants

Labor Law § 240(1)

Plaintiff moves for summary judgment on his claims pursuant to §240(1) against the Marly Defendants and the Marly Defendants move to dismiss Plaintiff's §240(1) claim against them.

The MARLY Defendants delivered the pallets of CMUs to the roof using a truck-mounted crane. Z&J Management LLC, the general contractor, told MARLY's crane operator where each pallet should be placed on the temporary plywood platform. Three pallets were on the deck when the fourth pallet was lowered. Witnesses disagreed on whether this last pallet came down fast, but the platform failed as soon as it landed. A DOB inspector later issued a violation for excessive loading on a partially built floor.

There are two possible causes of the collapse. The first is that the MARLY crane operator overloaded the platform beyond its capacity. The second is that the crane operator allowed the fourth pallet to descend too quickly.

If the cause of the collapse was overloading, that would not constitute a violation of §240(1) by the MARLY Defendants.

While the MARLY Defendants' employee hoisted the pallets onto the platform, they were not involved in constructing or maintaining the platform on the roof and therefore were not the owner's agent for purposes of § 240(1).

On the other hand, if the cause of the collapse was the rapid descent of the fourth pallet, that would constitute a violation of §240(1) by the MARLY Defendants.

The MARLY Defendants are liable for injury caused by their crane operators hoisting of the pallets. Labor Law §240(1) requires owners and contractors involved in hoisting operations to ensure that the safety devices used in hoisting "shall be so

constructed, placed and operated as to give proper protection to a person so employed" (Id).

The fact that the fourth pallet did not directly strike the Plaintiff is not a bar to the application of § 240(1), (see *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, at 603–604; *Andresky v Wenger Constr. Co., Inc.*, 95 AD3d 1247, at 1248-1249 [2d Dept 2012]; *Treile v Brooklyn Tillary, LLC*, 120 AD3d 1335, at 1337–1338 [2d Dept 2014]).

The Court of Appeals in *Runner* held, "Manifestly, the applicability of the statute in a falling object case such as the one before us does not under this essential formulation depend upon whether the object has hit the worker. The relevant inquiry, one which may be answered in the affirmative even in situations where the object does not fall on the worker, is rather whether the harm flows directly from the application of the force of gravity to the object" (*Runner* at 604).

If the crane operator did not properly control the descent of the fourth pallet and that was the cause of the collapse, then the operator's actions violated §240(1).

As it has not yet been determined whether the collapse was caused by overloading or the descent of the fourth pallet, both Plaintiff's motion for summary judgment on his claim pursuant to §240(1) and the MARLY Defendants' motion to dismiss the §240(1) claim against them must be denied.

Labor Law § 241(6)

Plaintiff moves for summary judgment on his claims pursuant to §241(6) against the Marly Defendants and the Marly Defendants move to dismiss Plaintiff's §241(6) claim against them.

Pursuant Labor Law § 241(6), the MARLY Defendants can be liable as a contractor if they violated any specific Industrial Code provision that was a proximate cause of the

platform's collapse (see *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, at 501–502 [1993]; *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, at 351–352 [1998]).

The record shows that the MARLY Defendants' crane operator alone controlled the hoist, the descent of the pallet, and the manner in which the load was landed. The record also indicates that MARLY's operators are responsible for inspecting the landing area before lowering materials. Z&J's role in sequencing deliveries and selecting landing locations does not negate MARLY Defendants' direct authority over the injury-producing phase of the hoisting operation. These facts establish that MARLY Defendants exercised the requisite control over the hoisting activity, and MARLY is therefore a statutory agent within the meaning of § 241(6) (see *Mejia v Unique Dev. Holding Corp.*, 188 AD3d 574 [1st Dept 2020]).

Plaintiff alleges violations of §§ 23-2.1(a)(2), and 23-8.1(f)(2)(i), each of which have been recognized as sufficiently specific to support a § 241(6) claim (*Wein v East Side 11th & 28th, LLC*, 186 AD3d 1579 [2d Dept 2020]; *Marrero v 2075 Holding Co.*, 106 AD3d 408 [1st Dept 2013]; *Hayden v 845 UN Ltd. Partnership*, 304 AD2d 499 [1st Dept 2003]).

It has not been determined whether the collapse was caused by overloading or the descent of the fourth pallet. There was no evidence presented of any other cause of the collapse.

However, as discussed above, either cause would constitute a violation of the Industrial Code.

Whether the cause of the collapse was overloading and or the rapid descent of the fourth pallet, either would constitute a violation of the Industrial Code on the part of the MARLY Defendants.

Therefore, Plaintiff is entitled to summary judgment on his claim pursuant to §241(6) against the MARLY Defendants, and the MARLY Defendants' motion for summary judgment dismissing the §241(6) claim against them must be denied.

Labor Law § 200 / Common-Law Negligence

The MARLY Defendants move to dismiss Plaintiff's Labor Law § 200 and common-law negligence claims against them.

Plaintiff's claims are that the MARLY Defendants' crane operator was negligent in not ensuring that the platform onto which he was loading the pallets was strong enough to handle the weight and that he negligently landed the last pallet onto the roof platform with too much force.

Labor Law § 200 imposes liability only where a defendant exercised authority over the manner of the work that led to the injury. Under *Ortega v Puccia*, 57 AD3d 54, at 61–62 (2d Dept 2008), premises liability requires proof that the defendant created the hazard or had actual or constructive notice of it.

Although Z&J's foreman directed the laborers and selected the landing locations, the MARLY Defendants' operator controlled the hoisting equipment, executed the landings and was responsible for inspecting the landing area before lowering materials.

It has not been established whether the collapse was caused by the MARLY Defendants' crane operator dropping the fourth pallet too forcefully or by overloading the platform.

If the cause was the descent of the fourth pallet, there is a question of fact as to whether MARLY's operator was negligent in not properly controlling the descent of the pallet.

If the cause was overloading the platform, whether the operator was negligent in failing to properly inspect the platform or recognize that the structure was being overloaded cannot be resolved as a matter of law.

Therefore, the MARLY Defendants' motion to dismiss the §200/common law negligence claims against it must be denied.

Cross-Claims

Several Defendants asserted cross-claims for common-law indemnification, contractual indemnification, contribution, and failure to procure insurance.

Defendants 1296 PARK, TRIPLE C, and the MARLY Defendants move to dismiss all the cross-claims against them.

Defendant 1296 PARK asserted common-law indemnification and contribution cross-claims against all other defendants.

Defendant, 1294 PARK asserted common-law indemnification, and contribution cross-claims against the MARLY Defendants, TIGRE, and ARSENAL.

The MARLY Defendants asserted common-law indemnification, contractual indemnification, contribution, and failure-to-procure-insurance cross-claims against Defendants 1294 PARK, 1296 PARK, TRIPLE C, TIGRE, and ARSENAL.

TRIPLE C asserted common-law indemnification and contribution cross-claims against the MARLY Defendants, TIGRE, and ARSENAL.

ARSENAL asserted cross-claims for common-law indemnification, contribution and contractual indemnification against Defendants 1294 PARK, 1296 PARK, the MARLY Defendants, TRIPLE C, and TIGRE.

As a preliminary matter, since Defendants 1296 PARK and TRIPLE C are being dismissed from the action because they are not liable for the collapse, the cross-claims asserted by them, and asserted against them, should be dismissed.

Defendant 1294 PARK asserted a cross-claim against the MARLY Defendants for common law indemnification and contribution, arguing that if it is found liable to the Plaintiff it would only be held vicariously liable as an owner for the negligence of contractors at the site including the MARLY Defendants. Since as discussed above there is an open factual question regarding whether the crane operator was negligent, dismissal of 1294 PARK's indemnification cross-claim is not warranted.

The MARLY Defendants move to dismiss ARSENAL's third-party claims against them for common-law and contractual indemnification and contribution. As ARSENAL did not oppose the MARLY Defendants' motion, ARSENAL's third-party claims against the MARLY Defendants should be dismissed.

WHEREFORE, it is hereby ORDERED that Plaintiff MARLEY's as against Defendant 1294 PARK, is Granted; and is it further

ORDERED that Plaintiff MARLEY's motion for partial summary judgment under Labor Law § 240(1) as against Defendants 1296 PARK, is Denied; and it is further,

ORDERED that Plaintiff MARLEY's motion for partial summary judgment under Labor Law § 240(1) as against the MARLY Defendants is Denied; and it is further,

ORDERED that Plaintiff MARLEY's motion for partial summary judgment on its claims pursuant Labor Law § 241(6) against Defendant 1294 PARK, is Granted: and it is further,

ORDERED that Plaintiff MARLEY's motion for partial summary judgment on its claims pursuant Labor Law § 241(6) against Defendants 1296 PARK is Denied; and it is further,

ORDERED that Plaintiff MARLEY's motion for partial summary judgment on its claims pursuant Labor Law § 241(6) against the MARLY Defendants, is Granted: and it is further,

ORDERED that Defendant 1296 PARK's motion for summary judgment is Granted, and all claims and cross-claims against 1296 PARK are dismissed; and it is further,

ORDERED that Defendant TRIPLE C's cross-motion for summary judgment is Granted, and all claims and cross-claims asserted against TRIPLE C are dismissed; and it is further,

ORDERED that the MARLY Defendants' motion for summary judgment to dismiss Plaintiff's claims against them pursuant to Labor Law § 240(1) § 241(6) and Labor Law § 200/common-law negligence is Denied; and it is further,

ORDERED that the MARLY Defendants' motion to dismiss the cross-claims of Defendant 1294 PARK asserted against them for common-law indemnification is Denied; and it is further,

ORDERED that the MARLY Defendants' motion to dismiss the cross-claims of Defendant ARSENAL asserted against them for common-law indemnification is Denied; and it is further,

ORDERED that all cross-claims by Defendants 1296 PARK and TRIPLE C against the MARLY Defendants are dismissed.

This constitutes the Decision and Order of the Court.

ENTER:

JSC

HON. WAYNE SAITTA
J.S.C.