At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of December, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CRISTINO JIMENEZ FERNANDEZ,

Plaintiff,

-against-

3 BP PROPERTY OWNER, LLC,
3 BP PROPERTY MANAGEMENT, LLC,
ISAIAH ROGERS, and
CURTIS PARTITION CORPORATION,

Defendants.

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3 BP PROPERTY OWNER, LLC and
3 BP PROPERTY MANAGEMENT, LLC,

Third-Party Plaintiffs,

-against-

METROPOLITAN LIFE INSURANCE COMPANY,
SALESFORCE.COM, INC., and
QUALITY PROTECTION SERVICES, INC.,

Third-Party Defendants.

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SALESFORCE, INC., s/h/a SALESFORCE.COM INC.,

Second Third-Party Plaintiff,

-against-

TISHMAN INTERIORS CORPORATION, DBA
AECOM TISHMAN,

Second Third-Party Defendant.

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Index No. 527573/22
Mot. Seq. Nos. 4-7

DECISION AND ORDER

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Cross-Motion and Affidavits (Affirmations) Annexed	106-118; 119-129; 134-143; 144-165
Opposing Affidavits (Affirmations)	166-168; 169-172; 177-179; 180-181; 182-183; 186
Affidavits/Affirmations in Reply	185; 187; 188

Upon the foregoing papers in this action to recover damages for personal injuries, the following motions and cross-motion[1] have been consolidated for disposition:

[1] To maintain continuity of discussion, the motions and cross-motion are taken out of order.

In Seq. No. 7, defendant Curtis Partition Corporation (Curtis) moves, pursuant to CPLR 3212, for leave to move for summary judgment and, upon granting such leave, for summary judgment dismissing plaintiff's claims and co-defendants' cross-claims against it;

In Seq. No. 5, defendants/third-party defendants 3 BP Property Owner, LLC and 3 BP Property Management, LLC (collectively, BP Property) jointly move for an order, pursuant to CPLR 3212, granting them summary judgment dismissing plaintiff's claims against them;

In Seq. No. 4, third-party defendant/second third-party plaintiff Salesforce, Inc. (sued herein as Salesforce.com, Inc.) (Salesforce) and third-party co-defendant Metropolitan Life Insurance Company (MetLife) jointly move for an order, pursuant to CPLR 3212, granting them summary judgment dismissing the third-party complaint and all cross-claims against them, and, in addition, for summary judgment on Salesforce's second third-party claims against Tishman Interiors Corporation, d/b/a Aecom Tishman (Tishman); and

In Seq. No. 6, second third-party defendant Tishman cross-moves for summary judgment dismissing the second third-party complaint of Salesforce against it.

In this action sounding in, inter alia, common-law negligence, respondeat superior, negligent supervision, negligent hiring/retention, and inadequate security,[2] plaintiff Cristino Jimenez Fernandes (plaintiff), a truck driver with non-party Beacon Roofing Supply, alleges that on Friday, December 28, 2018, at approximately 6:30 a.m., he was assaulted by defendant Isaiah Rogers (Rogers), a union-affiliated apprentice employed by defendant Curtis, in the loading dock of the commercial building (the ramp) at 3 Bryant Park in Manhattan, owned and managed by defendant BP Property (the incident). At the time of the incident, plaintiff was 41 years old, with the height of 5 feet, 7 inches, and the weight of 210 pounds,[3] whereas Rogers, at the time, was approximately 33 years old, with the height of 6 feet, and the weight of between 200 and 220 pounds.[4]

Shortly before the incident, plaintiff delivered metal studs and other construction materials to the ramp of the loading dock to be used for construction/improvement of the 23rd floor and/or the 41st floor

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[2] Plaintiff's claims against direct defendants (BP Property, Curtis, and Isaiah Rogers) are an amalgamation of the claims which he asserted in two separate, later-consolidated actions (NYSCEF Doc No. 1 [action against BP Property] and No. 11 [action against Curtis and Isaiah Rogers]).

[3] Plaintiff's September 4, 2019 EBT transcript (first EBT session), page 11, lines 14-15; page 72, lines 18-22 (NYSCEF Doc No. 113).

[4] Michael Guardino's (Curtis's) EBT transcript, page 16, line 25 to page 17, line 4 (NYSCEF Doc No. 153) (testifying as to Rogers's height and weight). Rogers's age was calculated based on his prior imprisonment in a federal penitentiary from approximately March 2006 to approximately August 2012, as was posted on the United States Bureau of Prisons official web Site and as indicating "1985" as the year of his birth (*see* https://www.bop.gov/inmateloc/ [last accessed Dec. 1, 2025]); *United States v Isaiah Rogers*, 1:05CR0820-01 (JSR), Judgment in a Criminal Case, dated March 2, 2006 (NYSCEF Doc No. 178). It is undisputed that "material derived from official government websites may be the subject of judicial notice" (*Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 20 [2d Dept 2009]).

office building space which, among other office space, was subleased by third-party defendant/second third-party plaintiff Salesforce from third-party defendant and prime tenant MetLife. Second third-party defendant Tishman acted as the construction manager for Salesforce in connection with the renovation of the latter's office space in the building. Curtis was a unionized drywall and ceiling contractor hired by Tishman for the renovation of Salesforce's office space. Rogers, a fourth-year unionized apprentice with, and employed by, Curtis since approximately January 16, 2017,[5] was tasked with "[u]nloading [the] material from the [delivery] truck[s] to an A-frame [dolly] and putting the [delivered] materials into a freight car to bring [them] to the [requisite] floor."[6]

When evaluating a motion for summary judgment, "facts must be viewed in the light most favorable to the nonmoving party" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks omitted]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact" (*Sanchez v Ageless Chimney Inc.*, 219 AD3d 767, 768 [2d Dept 2023] [internal quotation marks omitted]). "If the moving party makes a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce admissible evidence to establish the existence of material issues of fact which require a trial of the action" (*Gesuale v Campanelli & Assoc. P.C.*, 126 AD3d 936, 937 [2d Dept 2015] [internal quotation marks omitted]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient," however, to defeat a motion for summary judgment (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "If the issue claimed to exist is not genuine, but feigned, and * * * there is in truth nothing to be tried[,] summary judgment is properly granted" (*Rubin v Irving Tr. Co.*, 305 NY 288, 306 [1953] [internal quotation marks omitted]).

The Court, in its discretion, grants Curtis leave to move for summary judgment.[7] As stated, the Central Compliance Part directed that plaintiff file a NOI by no later than December 27, 2024, despite the fact that the depositions of BP Property and Salesforce, among others, had yet to be taken. After

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[5] *See* "To Whom It May Concern" Letter, dated June 26, 2018, from the NYC District Council of Carpenters (the carpenters' union) stating that Rogers was registered as a fourth-year apprentice as of June 25, 2018 (or approximately six months before the incident); *see also* Rogers's employment application with Curtis, dated January 16, 2017, indicating when Rogers was first hired by Curtis. Both the letter and the employment application are part of NYSCEF Doc No. 149.

[6] Michael Guardino's EBT transcript, page 18, lines 2-4.

[7] Although Curtis moved for summary judgment on April 30, 2025, which was 124 days after the NOI filing date of December 27, 2024, its motion was filed only 66 days counting from the February 24, 2025 entry date of the Initial NOI Order. In Kings County Supreme Court, "motions for summary judgment may be made no later than sixty (60) days after the filing of a Note of Issue," subject to exten[sion] by the Court upon good cause shown" (Kings County Supreme Court Uniform Civil Term Rules, Part C ["Motions in IAS Parts"], Rule 6 ["Post Note of Issue Summary Judgment Motion"] [available at https://ww2.nycourts.gov/courts/2jd/kings/civil/KingsCivil SupremeRules.shtml [last accessed Dec. 1, 2025]).

plaintiff filed the NOI by the December 27th deadline, Salesforce and MetLife jointly moved to vacate it and to extend their time to move for summary judgment. Although plaintiff objected to the vacatur of the NOI, his counsel conceded in his contemporaneous email to Salesforce/MetLife's defense counsel that the pretrial deposition of BP Property and Salesforce could be taken post-NOI. Thereafter, the Central Compliance Part declined to disturb the previously filed NOI and left it up to "the IAS Judge" (*i.e.*, this Court) to pass on the timeliness of any ensuing summary-judgment motions. As reflected in the record, plaintiff made no attempt to re-schedule any of the post-NOI depositions of BP Property, Salesforce, MetLife, and/or Tishman. Under the circumstances, the Court, in its discretion, finds that Curtis demonstrated good cause for its minor six-day delay in making its motion (*see Panfilow v 66 E. 83rd St. Owners Corp.*, 217 AD3d 875, 878 [2d Dept 2023]; *Grochowski v Ben Rubins, LLC*, 81 AD3d 589, 591 [2d Dept 2011]; *Kung v Zheng*, 73 AD3d 862, 863 [2d Dept 2010]; *Smith v Nameth*, 25 AD3d 599, 600 [2d Dept 2006]).

The Court next finds that Curtis demonstrated, prima facie, its entitlement to judgment as a matter of law dismissing plaintiff's negligence/respondeat superior claims against it. The doctrine of respondeat superior renders an employer "vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer's business and within the scope of employment" (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]). "Among the factors to be weighed are . . . the connection between the time, place and occasion for the act; the history of the relationship between employer and employee as spelled out in actual practice; whether the act is one commonly done by such an employee; the extent of departure from normal methods of performance; and whether the specific act was one that the employer could reasonably have anticipated" (*Riviello v Waldron*, 47 NY2d 297, 303 [1979]).

Here, Curtis demonstrated, based on the record before the Court, that the incident[8] was sparked by an argument over whether plaintiff's truck forklift (known as a "spider")[9] could have been moved in the loading dock to be closer to certain materials to be *returned* to plaintiff's employer.[10] The ensuing

[8] As the video footage of the incident showed, plaintiff did not fall to the floor of the ramp at any time during the incident, and that, after the incident was over, he returned to the scene to retrieve his cellular phone from the ramp. Plaintiff's August 22, 2023 EBT transcript (second EBT session), page 23, lines 18-21 (NYSCEF Doc No. 114).

[9] Plaintiff's first EBT session, page 22, lines 16-25.

[10] Plaintiff's first EBT session, page 30, line 14 to page 35, line 22 ("When the [Curtis workers] were loading the material [to be returned] on the [Spider], [Rogers] asked [plaintiff] to put the [Spider] closer to him for him to be more comfortable. . . [Plaintiff] explained to [Rogers that he] didn't have enough space to go more closer to [Rogers]. . . . [Rogers] tried to convince [plaintiff] there was more space, and [plaintiff] told [Rogers], No, there wasn't. . . . When [plaintiff] was talking to the supervisor [about an unrelated issue], [he] saw . . . Rogers walking over to where [plaintiff] was. . . . [At the time, Rogers] was waiting in a ramp nearby . . . about 10 feet away and when [plaintiff] was walking back to the [Spider;] [Rogers] stopped [plaintiff] and asked [him], Why was [plaintiff] acting like that[?] . . . [T]hen [Rogers] started cursing at [plaintiff], yelling. . . . [Rogers] kept on yelling. He got into [plaintiff's] face. [Plaintiff] told him, [he] had no problem with [Rogers]. . . . [and] tried to get away, but [Rogers] got even closer, and that's when [Rogers] started hitting [plaintiff]. . . . [Plaintiff again] tried to

scuffle with plaintiff was purely for Rogers's personal motives and was an obvious departure from his normal duties, which was to *unload* the *deliver* materials from the truck onto an A-frame dolly on the ramp and to transport them upstairs to the work site, rather than to *load* any *returned* materials from the ramp onto the truck.[11] In sum, there can be no basis for Curtis's liability under the respondeat superior theory, inasmuch as Rogers's scuffle with plaintiff was not in furtherance of any of Curtis's contracting business, nor was it within the scope of Rogers's employment (*see Burlarley v Wal-Mart Stores, Inc.*, 75 AD3d 955, 955-956 [3d Dept 2010]; *White v Hampton Mgt. Co. L.L.C.*, 35 AD3d 243, 244 [1st Dept 2006]; *Carnegie v J.P. Phillips, Inc.*, 28 AD3d 599, 600 [2d Dept 2006]; *Vega v Northland Mktg. Corp.*, 289 AD2d 565, 566 [2d Dept 2001]; *Piniewski v Panepinto*, 267 AD2d 1087, 1088 [4th Dept 1999]). In addition, "the mere fact that the incident occurred at the job site does not compel the conclusion that the assault was within the scope of [Rogers's] duties" (*Zanghi v Laborers' Intern. Union of N. Am., AFL-CIO*, 8 AD3d 1033, 1034 [4th Dept 2004]), "or that his violent act was reasonably foreseeable" (*Troup v Bovis Lend Lease LMB, Inc.*, 45 Misc 3d 508, 519 [Sup Ct, Kings County 2014, Partnow, J.]).

Further, Curtis demonstrated, prima facie, that it cannot be held liable under the theory of negligent hiring/retention/supervision, which requires a showing that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*KM v Fencers Club, Inc.*, 164 AD3d 891, 892 [2d Dept 2018] [internal quotation marks omitted], *lv denied* 32 NY3d 919 [2019]). In that regard, Curtis submitted undisputed proof that it had no knowledge of Rogers's propensity for the type of behavior that caused plaintiff's alleged injuries.[12]

In opposition, plaintiff failed to raise a triable issue of fact on any of his claims against Curtis. To the contrary, plaintiff testified that he had met Rogers "many times" without incident because

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walk away. . . . [Rogers hit plaintiff for] ten or 15 seconds. Then[,] since it was raining [and the loading dock was uncovered], [plaintiff] slipped [on the ramp], and that's when [Rogers] grabbed [plaintiff] by [the] neck. . . . [Rogers] had [plaintiff] there for a while [estimated by plaintiff at 'more or less than a minute'] on the [ramp] floor. . . [Rogers] had [plaintiff] by [the] neck squeezing, and then at a certain point when [plaintiff] lost strength in [his] body and [Rogers] realized that [and that is] . . . when [Rogers] let [plaintiff] go.").

[11] Michael Guardino's EBT transcript, page 17, line 12 to page 18, line 4 (clarifying that Rogers had no authority even to "accept [the] delivered materials"; rather, Rogers's duties, when working in the loading dock, were limited to unloading materials from the truck and transporting them to the work site).

[12] Michael Guardino's EBT transcript, page 19, line 15 to page 20, line 23 (testifying that during his daily supervision of Rogers in the loading dock in December 2018, and before the incident, Guardiano observed that "[Rogers] did not have an attitude, worked well with the other gentlemen on the job and got a lot of production done"); page 34, lines 5-7; page 40, line 25 to page 41, line 8 (further testifying that he had received no complaints about Rogers's conduct before the incident, that Rogers received no warnings nor underwent any disciplinary action, and that Guardino was unaware of any altercation between Rogers and any other Curtis employee). *See* Affidavit of Eve Biggers, an employee in Curtis's risk-management department, dated April 17, 2025, ¶ 8 (averring that Rogers's "employment file [at Curtis] did not reveal any complaints, reports of physical altercations/attacks, and disciplinary actions before the incident") (NYSCEF Doc No. 165).

plaintiff's employer "provided service to that [loading dock], and he [Rogers] was always there."[13] In fact, plaintiff and Rogers shook each other's hand in greeting earlier in the morning of the incident,[14] thus negating plaintiff's contention that the incident was reasonably foreseeable.

Contrary to plaintiff's contention, "[t]here is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee" (*Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801, 801-802 [2d Dept 2010] [internal quotation marks omitted]). Here, the record is undisputed that Curtis did not know, nor did it have any reason to know, of Rogers's previous conviction in March 2006 on one count of attempted armed robbery and one count of brandishing a firearm, and his ensuing incarceration on those counts until August 2012. As a union shop, Curtis was required to accept all skillful applicants which the carpenters' union sent over to Curtis, with no background checks performed by Curtis.[15] Like other apprentice carpenters at Curtis, Rogers was hired by Curtis from the carpenters' union hall.[16] Under the circumstances, dismissal of plaintiff's claims and co-defendants' cross-claims against Curtis is warranted.

As noted, BP Property, as the owner and manager of the underlying property, also moved for summary judgment dismissing plaintiff's claims against it. BP Property established, prima facie, that it cannot be held liable to plaintiff under the theories of negligent hiring/supervision/retention and inadequate security because Rogers did not work for BP Property, and the record does not raise any triable issue as to whether BP Property is vicariously liable for Rogers's actions. It is undisputed that Rogers worked for Curtis and that Curtis hired him and directed his work. Although BP Property exercised general supervisory authority over the loading dock, that type of general authority is not sufficient to confer liability on BP Property for the actions of Curtis's employee (see *Rodriguez v Manhattan Restoration LLC*, 233 AD3d 555 [1st Dept 2024]).

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[13] Plaintiff's first EBT session, page 25, line 9 to page 26, line 15; plaintiff's second EBT session, page 15, lines 14-19 (testifying that he had known Rogers "for more than a year" and that he never had "any problems" with Rogers before the incident).

[14] Plaintiff's second EBT session, page 59, lines 18-19 ("even in the morning [of the incident] when [plaintiff] got there, we [plaintiff and Rogers] shook hands, we said hello").

[15] Michael Guardino's EBT transcript, page 35, lines 2-11; page 36, lines 22-25; page 38, lines 20-22.

[16] Michael Guardino's EBT transcript, page 14, lines 4-25 (explaining that "[m]ost of the times [, the hiring for Curtis] goes through a hiring hall [of] . . . the [the carpenters' union], and that "[u]sually," Curtis "would just accept any and all of the men that were sent [to it] by the [union]"); page 39, line 24 to page 40, line 7 (reiterating that "the only way [to] get hired [at Curtis] is by the [carpenters'] union"); page 40, lines 13-19 (further explaining that because Rogers "was an apprentice . . . [,] apprentices never send [their] applications [directly to Curtis; rather,] they start at the [carpenters'] union hall[,] and they get sent down to [Curtis] as an apprentice to the job"); page 41, lines 12-20 (confirming that "all of Curtis regular level workers come from the [carpenters'] union," and that even "direct applicants" to Curtis must be still the members of the carpenters' union).

In opposition, plaintiff failed to raise a triable issue of fact for two reasons. First, "[s]ummary judgment *must* be granted where it appears that the party defending against the motion has made no reasonable attempt to ascertain the facts" (*LoBreglio v Marks*, 105 AD2d 621, 622 [1st Dept 1984] [emphasis in the original], *affd* 65 NY2d 620 [1985]). Here, plaintiff's deposition testimony that, at the time of the incident, a nearby security booth was staffed with one or two loading-dock security guards,[17] failed to identify their employer or the scope of their responsibilities. Put otherwise, nothing in the record indicated that the loading-dock security guards, who were apparently retained by or on behalf of BP Property,[18] were required to do anything more than to keep out the intruders from the loading dock.

Second and more fundamentally, proximate cause is lacking. Assuming arguendo that BP Property breached its duty of providing adequate security to plaintiff, the key question is whether such negligence was the proximate cause of his injuries. It is "not what defendant could have prevented [by providing adequate security] but what defendant proximately caused by *inducing reliance [on adequate security]*" (*Heard v City of New York*, 82 NY2d 66, 72 [1993] [emphasis added], *rearg denied* 82 NY2d 889 [1993]). Here, nothing in the record indicates that plaintiff relied on the loading-dock security guards in preventing or stopping the progress of the incident.[19] In addition, Rogers's attack on plaintiff "was extraordinary and not foreseeable or preventable in the normal course of events," thus breaking the "causal nexus" (*Maheshwari v City of New York*, 2 NY3d 288, 295 [2004]). Accordingly, dismissal of plaintiff's claims against BP Property is warranted.[20]

In light of the foregoing dismissal of the entirety of plaintiff's direct claims against Curtis and BP Property, all third-party claims by BP Property against Salesforce and MetLife in the third-party

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[17] Plaintiff's pretrial testimony describing the security guards was inconsistent. *Compare* Plaintiff's first EBT session, page 36, lines 23-24 (testifying that the security booth was staffed with two male guards and that neither guard came out of the booth during the incident); *with* page 37, lines 15-24 (testifying that the security booth was located ten feet away from the site of the incident, that one of the security guards was sitting inside the booth, while the other security guard was standing outside the booth). *Compare further* Plaintiff's first EBT session, page 36, lines 23-24 (testifying that the security booth was staffed with two male guards), *with* Plaintiff's second EBT session, page 20, lines 14-16 (testifying that one of the guards was a woman sitting inside the security booth, while the other security guard, a male, was standing outside the booth).

[18] The master lease with prime tenant MetLife used the term "Landlord's Actual Loading Dock Costs" to refer to "the cost to Landlord of any wages and benefits (if applicable) paid to a dedicated loading dock guard that are required in connection with the use of the loading dock" (Office Lease Agreement, dated as of December 19, 2006, as amended, page 40, § 7.01 [e]) (NYSCEF Doc No. 117) (bold-face type omitted).

[19] Plaintiff's first EBT session, page 38, lines 11-15 (testifying that he himself called the police and, separately, the ambulance in connection with the incident); Plaintiff's second EBT session, page 24, lines 7-22 (testifying that he himself called the police, whereas the police summoned the ambulance). At no time before or after his incident with Rogers, did plaintiff talk with the loading-docket security guards, nor asked for their help.

[20] In rendering its determination, the Court declined to consider plaintiff's post-deposition affirmation, dated April 11, 2025 (separately filed under NYSCEF Doc Nos. 167 and 171). Although plaintiff testified at both of his deposition sessions through a sworn Spanish-speaking interpreter, his post-deposition affidavit, which was drafted in English by his counsel, is not accompanied by an affidavit from a translator and, therefore, may not be considered (*see* CPLR 2101 [b]; *Rui Qin Chen Juan v 213 W. 28 LLC*, 149 AD3d 539 [1st Dept 2017]; *Peralta-Santos v 350 W. 49th St. Corp.*, 139 AD3d 536, 537 [1st Dept 2016]; *Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 54 [2d Dept 2011]).

action, and by Salesforce against Tishman in the second third-party action, together with the related cross-claims and counterclaims, must necessarily fail (*see Marquez v L&M Dev. Partners, Inc.*, 141 AD3d 694, 699 [2d Dept 2016]; *Marrero v City of New York*, 102 AD3d 409, 410 [1st Dept 2013]; *Doodnath v Morgan Contr. Corp.*, 101 AD3d 477, 478 [1st Dept 2012]; *Ayala v Lockheed Martin Corp.*, 22 AD3d 394 [1st Dept 2005]; *cf. Di Perna v American Broadcasting Cos., Inc.*, 200 AD2d 267, 270 [1st Dept 1994]).[21] There is no dispute that Salesforce, MetLife, and/or Tishman (a) had no notice of Rogers's propensity to engage in a non-work-related scuffle with plaintiff or (b) supervised or controlled the work of either Rogers or plaintiff.[22]

The parties' remaining contentions have been considered and found to be either without merit or academic in light of the court's determination.

Accordingly, it is hereby

ORDERED that in Seq. No. 7, Curtis's motion, pursuant to CPLR 3212, for leave to move for summary judgment and, upon granting such leave, for summary judgment dismissing plaintiff's claims and co-defendants' cross-claims against it is granted, and all such claims and cross-claims are dismissed against Curtis with prejudice and without costs/disbursements; and it is further

ORDERED that in Seq. No. 5, BP Property's motion for an order, pursuant to CPLR 3212, granting it summary judgment dismissing plaintiff's claims against 3 BP Property Owner, LLC and 3 BP Property Management, LLC is granted, and plaintiff's claims against such entities are dismissed with prejudice and without costs/disbursements; and it is further

ORDERED that in Seq. No. 4, the initial branch of Salesforce/MetLife's joint motion for an order, pursuant to CPLR 3212, granting them summary judgment dismissing the third-party complaint and all cross-claims against them is granted, and the third-party complaint and all cross-claims against them are dismissed with prejudice and without costs/disbursements; and it is further

ORDERED that in Seq. No. 4, the remaining branch of Salesforce/MetLife's joint motion for an order, pursuant to CPLR 3212, granting Salesforce summary judgment on its second third-party claims against Tishman is denied as academic; and it is further

ORDERED that in Seq. No. 6, Tishman's cross-motion for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the second third-party complaint against it is granted, and the

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[21] Salesforce/MetLife's Affirmation in Reply to BP Property's Partial Opposition, dated July 25, 2025, ¶ 3 ("[Salesforce and MetLife] completely agree that there is no cause of action [by plaintiff] against [BP Property]" (NYSCEF Doc No. 188). Further, nothing in the record raises an issue of fact as to whether Tishman breached its contractual obligation to obtain insurance (*cf. Cardozo v Mayflower Ctr., Inc.*, 16 AD3d 536, 539 [2d Dept 2005]).

[22] Plaintiff's and Tishman's separate (but identical) contention that Salesforce failed to comply with 22 NYCRR 202.8-g is non-substantive and immaterial (*see Taveras v Incorporated Vil. of Freeport*, 225 AD3d 822, 823 [2d Dept 2024]).

second third-party complaint is dismissed with prejudice and without costs/disbursements; and it is further

ORDERED that, in light of the aforementioned dismissal of the direct, third-party, and second third-party defendants from this action, as well as the prior stipulated dismissal of the third-party defendant Quality Protection Services, Inc., the caption of this action is amended to read in its entirety as follows:

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CRISTINO JIMENEZ FERNANDEZ,

Plaintiff,

-against- Index No. 527573/22

ISAIAH ROGERS,

Defendant.
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; and it is further

ORDERED that because the remaining defendant Isaiah Rogers has not appeared in this action to date, the parties' next scheduled, in-person appearance for a settlement conference in JCP-1 on January 7, 2026, at 10 a.m., is canceled; and it is further

ORDERED that BP Property's counsel is directed to electronically serve a copy of this decision and order with notice of entry on the other parties and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the court.

E N T E R,

Hon. Ingrid Joseph, J.S.C.
Hon. Ingrid Joseph
Supreme Court Justice