Moncion v Court St. Bldrs. LLC
2025 NY Slip Op 35132(U)
May 9, 2025
Supreme Court, Bronx County
Docket Number: Index No. 21589/2020E
Judge: Myrna Socorro

#5,6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART IA-9

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Domingo Moncion,

Plaintiff,

against-

Court Street Builders LLC, Morilla Consulting, New York Certified Interior Corp, Prospect Living LLC and Mt Ironworks Inc.,

Defendants,

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Court Street Builders Llc and Prospect Living LLC,

Third-Party Plaintiffs,

-against-

MT Ironworks Inc. and L&T 17 Corp.

Third-Party Defendants,

----------X

New York Certified Interior Corp.,

Second-Third Party Plaintiff,

-against-

MT Ironworks Inc. and L&T 17 Corp.

Second-Third Party Defendants,

----------X

MT Ironworks Inc.

Third-Third Party Plaintiff,

-against-

L&T 17 Corp.,

Third-Third Party Defendants.

----------X

Index №. 21589/2020E
Motion seqs. 5 and 6

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

The following papers were read on the motion by New York Certified Interior Corp. (hereinafter referred to as NYCI) (Seq. No. 5) for **Summary Judgment**; on the cross-motion by MT Ironworks Inc. (hereinafter referred to as MT Ironworks) for **Summary Judgment**; and on the motion by Court Street Builders, LLC (hereinafter referred to as Court Street Builders) and Prospect Living, LLC (hereinafter referred to as Prospect Living) (Seq. No. 6) for **Summary Judgment**, all orally argued and marked submitted on June 20, 2024.

Papers	NYSCEF Doc No(s).
Motion Seq. No. 5 Notice of Motion by NYCI, Affirmation and Exhibits Annexed	166-185
Affirmation in Opposition by Plaintiff	199-202
Affirmation in Opposition by MT Ironworks	244-251
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Notice of Cross-Motion by MT Ironworks, Affirmation and Exhibits Annexed	208-241
Affirmation in Opposition to Cross-Motion by Plaintiff	258-260
Affirmation in Reply and in Further Support of Cross-Motion	262
Motion Seq. No. 6 Notice of Motion by Court Street Builders and Prospect Living, Affirmation and Exhibits Annexed	134-165
Affirmation in Opposition by Plaintiff	203-206
Affirmation in Opposition by MT Ironworks	242-248
Affirmation in Reply	253-255

NYCI moves pursuant to CPLR §3212 (Seq. No. 5) to dismiss Plaintiff's Labor Law §240(1), §241(6), §200, and common law negligence claims, dismiss all claims and cross-claims against NYCI, and for indemnification from MT Ironworks. MT Ironworks cross-moves pursuant to CPLR §3212 to dismiss Plaintiff's complaint. Court Street Builders and Prospect Living move pursuant to CPLR §3212 to dismiss Plaintiff's common law negligence and Labor Law §240(1), §241(6), and §200 claims, and for indemnification from MT Ironworks. These motions are consolidated for disposition and decided as follows:

This action stems from a November 13, 2019 construction accident at 671 Prospect Avenue, Bronx, New York (NYSCEF Doc #172, Plaintiff TR:16, 29). Plaintiff testified at his deposition that he was employed by L&T 17 Corp. (hereinafter referred to as L&T) (Plaintiff TR-16-17). He reported to Marco Quizphi, who was also employed by L&T (Plaintiff TR:19, 28-29; NYSCEF Doc #180, Quizphi TR:12). At the time of the accident, Plaintiff was wearing his own personal hardhat (Plaintiff TR:55-56). Quizphi instructed Plaintiff to remove a window and told him how to do it (Plaintiff TR:41; Quizphi TR:26). Quizphi instructed Plaintiff to first cut the silicone seal between the glass and frame and then remove the glass (Quizphi tr 27). Quizphi testified that a hammer is an appropriate tool to remove the window frame (Quizphi TR:33). The bottom of the window was three to four feet above the floor, and the window was ten feet tall (Plaintiff TR:43-44). Plaintiff was standing on the floor with a hammer in his right hand, using the back of the hammer to loosen nails in the window frame, when the entire window assembly, including the frame, unexpectedly fell and

struck him, causing injuries (Plaintiff TR:58-59, 61-62). The window glass broke when it struck the floor.

Prospect Living, the premises' owner, also acted as the project's general contractor under the name Court Street Builders (NYSCEF Doc #174, Ostroy TR:26, 28; NYSCEF Doc #173, Rothenberg TR) 21). Prospect Living and Court Street Builders share the same address and owners (Rothenberg TR:6, 25, 31-32; NYSCEF Doc #179, Schechter TR:16). Prospect Living retained NYCI as construction manager (Schechter TR:24). NYCI's role was to report the conditions and progress of the work to the owner (Ostroy TR:25). Prospect Living subcontracted MT Ironworks (NYSCEF Doc #183, MT Ironworks contract). MT Ironworks solely performs ironworking (NYSCEF Doc #175, Ng TR:31). The record shows, however, that MT Ironworks was contracted for work beyond ironworking, including masonry work (NYSCEF Doc #176, Ng continued TR:20). MT Ironworks subcontracted the masonry work to L&T, Plaintiff's employer (Ng continued TR:47).

Defendants argue that Plaintiff's Labor Law §240(1) claim should be dismissed because Plaintiff's injury arose from the normal risks of construction, rather than from a gravity-related hazard. Defendants further argue that Plaintiff's Labor Law §241 (6) claim should be dismissed because it is predicated upon Industrial Code provisions which are insufficiently specific or inapplicable, or which Defendants did not violate. Finally, Defendants argue that Plaintiff's Labor Law §200 claim should be dismissed because Defendants did not supervise the means and methods of the injury-producing work.

MT Ironworks additionally requests dismissal from the action, contending that it is not a proper Labor Law defendant because it did not have supervisory authority over Plaintiff's employer, L&T. NYCI, Court Street Builders, and Prospect Living request indemnification from MT Ironworks, contending that Plaintiff's injury arose from MT Ironworks' work without any negligence on the part of the movants.

Plaintiff does not oppose the dismissal of his Labor Law §241(6) claim except as predicated on violations of Industrial Codes 12 NYCRR §23-3.2(a) (1) and §23-3.3[c]. Plaintiff, however, did not allege a violation of Industrial Code 12 NYCRR §23-3.2(a)(1) in his first verified bill of particulars. Plaintiff alleged a violation of 12 NYCRR §23-3.2(a)(1) for the first time in his second supplemental bill of particulars (NYSCEF Doc #198), which he filed in conjunction with his opposition papers to the instant motions, after filing the Note of Issue, and without leave of court. Defendants reject

Plaintiff's second supplemental bill of particulars on the grounds that it is untimely, that it is not a proper supplemental bill of particulars, but rather an amended pleading that alleges new theories of liability, and that it was filed after the Note of Issue (NYSCEF Doc #207, 252, 254). Plaintiff argues that he properly supplemented his bill of particulars and that defendants were not prejudiced. In the alternative, Plaintiff seeks permission to amend the bill of particulars to conform to the proof adduced pursuant to CPLR §3042(b) and §3025[c] (NYSCEF Doc #258 at 13-17).

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]).

Proper Labor Law Defendant

MT Ironworks moves for dismissal on the ground that it not a proper Labor Law defendant. Proper defendants in Labor Law actions are limited to contractors and owners and their agents (*Rodriguez v Riverside Ctr. Site 5 Owner LLC*, 234 AD3d 623, 625 [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]).

This court finds that MT Ironworks is a proper Labor Law defendant. MT Ironworks contracted Plaintiff's employer, L&T, to perform the masonry work, and thereby had the authority to supervise and control the injury-inducing work (*see Tejada-Rodriguez v 76 Eleventh Ave. Prop. Owner LLC.*, 231 AD3d 419, 419 [1st Dept 2024] [holding that defendant company was a proper labor law defendant because it hired plaintiff's employer, regardless of whether it exercised control over plaintiff's work]). Whether MT Ironworks actually exercised supervision and control over the work is irrelevant (*see id.*, citing *Burke v Hilton Resorts Corp.*, 85 AD3d 419, 420 [1st Dept 2011]). Finally, the contract between MT Ironworks and L&T contains no provision relinquishing MT Ironworks' control or supervision over L&T's work. Even if the contract did contain such a provision, it could not prevent the imposition of strict liability under Labor Law §240(1) and §241(6) (*see Badzio v East 68th St. Tenants Corp.*, 200 AD3d 591, 592 [1st Dept 2021] ["That Sagewood [Contractor] delegated its responsibility to Sienia [Subcontractor] . . . does not free Sagewood [Contractor] from liability"]). Accordingly, MT Ironworks' motion for dismissal on the ground that it is not a proper Labor Law defendant is **denied**.

Plaintiff's Labor Law §240(1) Claim

NYCI, MT Ironworks, Court Street Builders, and Prospect Living (hereinafter collectively referred to as Defendants) move to dismiss Plaintiff's Labor Law §240(1) claim. 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] [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]). Liability may only be imposed were 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]).

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.*).

This court finds that Defendants fail to demonstrate prima facie that Plaintiff's work was not a protected activity under Labor Law §240(1). Contrary to Defendants' contentions, this case is distinct from *Narducci v Manhasset Bay Assoc.* because the falling glass in *Narducci* was not part the work being performed (96 NY2d at 268). The court in *Narducci* found no liability under Labor Law §240(1). Although the plaintiff in *Narducci* was struck by falling window glass while removing a window frame, the glass fell from a different window than the one plaintiff was working on, the window was not part of the subject work, and no one worked on the window from which the glass fell (*id*). Here, by contrast, the window glass was part of the work being performed because Plaintiff was tasked with removing the specific window that caused his injury and was doing so at the time of the accident. As such, issues of fact remain about whether Defendants were required to provide a safety device to protect Plaintiff from any gravity-related injuries and, if so, whether such failure to provide the safety device resulted in Plaintiff's injuries.

Since Defendants do not rule out the possibility that a statutory violation was a proximate cause of the accident, Defendants necessarily fail to prove that Plaintiff was the sole proximate cause of the accident (*see Blake*, 1 NY3d at 290 [2003]; *see Hoffman v SJP TS, LLC*, 111 AD3d 467, 467 [1st Dept 2013]).

To the extent that Defendants contend Plaintiff's conduct renders him a recalcitrant worker, the argument is unavailing. The recalcitrant worker defense requires a showing that the injured worker was specifically instructed to use a particular safety device and explicitly refused to do so (*see White v 31-01 Steinway, LLC*, 165 AD3d 449, 451-452 [1st Dept 2018]; *see Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288-289 [1st Dept 2008]). Here, no evidence was presented that Plaintiff refused to use a particular safety device. Accordingly, Defendants' motions for summary judgment on Plaintiff's claims under Labor Law §240(1) are **denied.**

Plaintiff's Labor Law § 241(6) Claim

Defendants move to dismiss Plaintiff's Labor Law §241(6) claim. 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," and "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 Industrial Codes 12 NYCRR §23-3.2(a)(1) and §23-3.3[c]. 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 2006]; *see 87 Chambers, LLC v 77 Reade, LLC*, 122 AD3d 540, 542 [1st Dept 2014]).

Preliminarily, the court must address Defendants' rejection of Plaintiff's second supplemental bill of particulars, which alleges a violation of 12 NYCRR §23-3.2(a)(1). Leave of court is not required to file a supplemental bill of particulars that does not allege a new theory of liability (*Maisonet v New York City Hous. Auth.*, 276 AD2d 260, 260 [1st Dept 2000] [rejecting defendant's claim that plaintiff's "supplemental" bills of particulars were actually "amended" bills of particulars, which required court leave, because it was more likely than not that plaintiff's newly-pleaded injury was causally related to the originally-pleaded injury]). Supplemental bills of particulars are subject to the same standard as motions to amend a pleading: in the absence of prejudice or unfair surprise, leave should be freely granted (*Moore v New York City Transit Auth.*, 161 AD2d 505, 506 [1st Dept 1990]). Here, the theory that the accident would not have occurred had the glass been properly removed prior to demolition is consistent with Plaintiff's testimony and the allegations in the bill of particulars (*see Ortega v Everest Realty LLC*, 84 AD3d 542, 545 [1st Dept 2011]). Therefore, Defendants are not prejudiced by Plaintiff's delay in alleging a violation of Industrial Code 12 NYCRR §23-3.2(a) (1). Accordingly, Plaintiff's branch of motion to amend his bill of particulars alleging a violation of 12 NYCRR §23-3.2(a)(1) is **Granted.**

Industrial Code 12 NYCRR §23-3.2(a)(1) provides that "[b]efore demolition is started, all glass in the exterior openings of the building or other structure to be demolished shall be removed." Demolition, as it pertains to Industrial Code Section 23, is defined as "work incidental to or associated with the total or partial dismantling or razing of a building or other structure including

the removing or dismantling of machinery or other equipment" (12 NYCRR §23-1.4[b][16]). No dispute exists that the window glass had not been removed at the time of the accident. NYCI's project manager testified that the accident happened "after like the original demolition was done and before the sequential interior demolition, the structural demolition" (Ostroy TR:65). Therefore, Defendants do not establish that demolition had not yet begun when Plaintiff was directed to remove the windows. Because Defendants fail to show that they complied with the regulation, or that their noncompliance did not cause Plaintiff's accident, Plaintiff's Labor Law §241(6) claim predicated on this section survives (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 12-13 [2011]).

Industrial Code 12 NYCRR §23-3.3[c] provides in relevant part that "[d]uring hand demolition operations, continuing inspections shall be made by designated persons as the work progresses to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material. Persons shall not be suffered or permitted to work where such hazards exist until protection has been provided by shoring, bracing or other effective means." Because window glass must be removed before demolition begins, it follows that window glass removal itself cannot constitute demolition, else compliance would be impossible. Here, Plaintiff was instructed to remove the window frame as well as the glass (Quizphi TR:26-27). An issue of fact exists about whether Plaintiff's removal of the window frame constitutes demolition under section §23-3.3[c].

To the extent that Plaintiff's work constitutes demolition, Defendants do not demonstrate that proper inspections were made. Prospect Living's safety inspector, Niurka Morilla, did not inspect the window that Plaintiff was removing (NYSCEF Doc #164, Morilla TR:41-42, 111; Schechter TR:68). Because Defendants fail to show that they complied with the regulation, or that their noncompliance did not cause Plaintiff's accident, Defendants' motion to dismiss Plaintiff's Labor Law §241(6) claim predicated on Industrial Code 12 NYCRR §23-3.3[c] is **denied** (*see Wilinski*, 18 NY3d at 12-13).

Accordingly, Defendants' motions to dismiss Plaintiff's Labor Law §241(6) claim are **denied** to the extent that Plaintiff's claim is predicated on violations of Industrial Codes 12 NYCRR §23-3.2(a)(1) and 12 NYCRR §23-3.3[c]. All other industrial codes claimed are hereby **dismissed.**

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

Defendants move to dismiss Plaintiff's Labor Law §200 and common law negligence claims. Labor Law §200 codifies landowners' and general contractors' common-law duty to maintain a safe workplace. Claims under Labor Law §200 and the common law 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]).

Issues of fact exist about whether the window frame constituted a dangerous condition, and if so, whether Defendants had constructive notice. Even if the window frame did not constitute a dangerous condition, and the accident arose from the means and methods of Plaintiff's work, issues of fact exist about whether NYCI or MT Ironworks supervised the injury-producing work. NYCI's project manager instructed L&T employees including Plaintiff (Quizphi TR:22-23; Ostroy TR:8). MT Ironworks was onsite every day, had the authority to stop L&T's work, and would do so if the work was unsafe (Ng continued TR:54, 58, 61-63). Yakov Rothenberg, a part owner of Court Street Builders and Prospect Living, testified that he was onsite weekly at some times, and monthly at other times (Rotherberg TR:52). NYCI's project manager was onsite for thirty hours a week (Ostroy TR:23). MT Ironworks' foreman was onsite every day (Ng continued TR:54, 58).

This Court finds that Defendants fail to demonstrate that they did not have constructive notice of the condition. Defendants' employees were on site regularly and had ample opportunity to observe the condition (*see Jackson v Hunter Roberts Construction, L.L.C.*, 205 AD3d 542, 544 [1st Dept 2022] [finding an issue of fact whether owner or general contractor had constructive notice of defective plywood ramp, where owner and general contractor had physical presence on the worksite]). Accordingly, Defendants' motions to dismiss Plaintiff's Labor Law §200 and common-law negligence claims is **denied.**

NYCI, Court Street Builders, and Prospect Living's Third-Party Claims for Contractual Indemnification Against MT Ironworks

NYCI moves for contractual indemnification from MT Ironworks. Court Street Builders and Prospect Living move separately for contractual indemnification from MT Ironworks. 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]).

The construction contract between Court Street Builders, Prospect Living, NYCI, and MT Ironworks contains the following indemnification provision:

> "In consideration of the Contract Agreement, and to the fullest extent permitted by law, the Subcontractor shall defend and shall indemnify, and hold harmless, at Subcontractor's sole expense, the Contractor, all entities the Contractor is required to indemnify and hold harmless, the Owner of the property, and the officers, directors, agents, employees, successors and assigns of each of them, all entities the Owner is required to indemnify and hold harmless from and against all liability or claimed liability for bodily injury or death to any person(s), and for any and all property damage or economic damage, including all attorney fees, disbursements and related costs, arising out of or resulting from the Work covered by this Contract Agreement to the extent such Work was performed by or contracted through the Subcontractor or by anyone for whose acts the Subcontractor may be held liable, excluding only liability created by the sole and exclusive negligence of the Indemnified Parties. This indemnity agreement shall survive the completion of the Work specified in the Contract Agreement" (NYSCEF Doc #183 at 29).

NYCI, Court Street Builders, and Prospect Living are listed as indemnified parties (NYSCEF Doc #183 at 30). However, the contract provides that these parties are not to be indemnified for liability arising from their sole negligence. Because questions of fact exist as to the extent of Defendants' negligence, the question of indemnity is premature (*see Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021]). Accordingly, Defendants' motions on the issue of indemnification are **denied.**

NYCI's Third-Party Claim for Common Law Indemnification Against MT Ironworks

NYCI moves for common-law indemnification from MT Ironworks. 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*, 194 AD3d at 578 [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]). Because there remain questions of fact as to the extent of Defendants' negligence, the question of indemnity is premature (*see Pena*, 194 AD3d at 578) and that branch of motion seeking common law indemnification is **denied.**

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**.

Accordingly, it is hereby

ORDERED that New York Certified Interior Corp.'s summary judgment motion (Seq. No. 5) is **GRANTED TO AN EXTENT** in that Plaintiff's Labor Law §241(6) claims predicated on all violations claimed, except for 12 NYCRR §23-3.2(a)(1) and 12 NYCRR §23-3.3[c], are hereby **Dismissed;** and it is further

ORDERED, that all other branches of New York Certified Interior Corp's motion seq #5 are **Denied;** and it is further

ORDERED that MT Ironworks Inc. is a proper Labor Law defendant; and it is further

ORDERED, that MT Ironworks Inc.'s summary judgment cross-motion is **GRANTED TO AN EXTENT**, in that Plaintiff's Labor Law §241(6) claims predicated on all violations claimed, except for 12 NYCRR §23-3.2(a)(1) and 12 NYCRR §23-3.3[c], are hereby **Dismissed;** and it is further

ORDERED, that all other remaining branches of MT Ironwork Inc.'s cross motion is **Denied;** and it is further

ORDERED, that Court Street Builders, LLC and Prospect Living, LLC's summary judgment motion (Seq. No. 6) is **GRANTED TO AN EXTENT**, in that Plaintiff's Labor Law §241(6) claims predicated on all violations claimed, except for 12 NYCRR §23-3.2(a)(1) and 12 NYCRR §23-3.3[c], are hereby **Dismissed;** and it is further

ORDERED, that all other branches of Court Street Builders LLC and Prospect Living LLC's motion seq # are **Denied;** and it is further

ORDERED that the movants of each motion shall serve a copy of this order with notice of entry upon all parties within twenty (20) days from the date of this Decision and Order.

This constitutes the decision and order of this court.

Dated: May 9, 2025

HON. MYRNA SOCORRO, J.S.C.