Rizzo v St. George Outlet Dev., LLC
2025 NY Slip Op 35214(U)
December 17, 2025
Supreme Court, Kings County
Docket Number: Index No. 507997/2016
Judge: Lisa S. Ottley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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THOMAS RIZZO and ALEXANDRA RIZZO,

Plaintiff,

-against-

ST. GEORGE OUTLET DEVELOPMENT LLC, BFC PARTNERS DEVELOPMENT LLC and BFC PARTNERS, LP.,

Defendants.

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ST. GEORGE OUTLET DEVELOPMENT LLC, BFC PARTNERS DEVELOPMENT LLC and BFC PARTNERS, LP.,

Third-Party Plaintiffs,

-against-

THE LAQUILLA GROUP, INC.,

Third-Party Defendant.

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ST. GEORGE OUTLET DEVELOPMENT LLC, BFC PARTNERS DEVELOPMENT LLC and BFC PARTNERS, LP.,

Second-Party Plaintiffs,

-against-

OLYMPIC PLUMBING & HEATING SERVICES, INC.,

Second-Party Defendant.

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THE LAQUILLA GROUP, INC.,

Third-Third-Party Plaintiff,

-against-

OLYMPIC PLUMBING & HEATING SERVICES, INC.,

Third-Third Party Defendant.

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Index # 507997/2016

Decision and Order

Motion Seq. #'s 11, 12, 13 & 14

ST. GEORGE OUTLET DEVELOPMENT LLC,
BFC PARTNERS DEVELOPMENT LLC and BFC
PARTNERS, LP.,

Fourth Fourth-Party Plaintiffs,

-against-

LP CIMINELLI, INC.,

Fourth Fourth-Party Defendant.

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HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motions for Summary Judgment submitted on April 28, 2025.

Papers	Numbered
Mot. Seq. #11	
Notice of Motion and Affirmation	1 &2 [Exh. 1-12]
Affirmation/Affidavit in Opposition	4[Exh. 1-10]; 5 and 6
Memoranda of Law	3
Reply Affirmations	7; 8
Mot. Seq. #12	
Notice of Motion and Affirmation	1 &2 [Exh. A-J]
Affirmation/Affidavit in Opposition	4
Memoranda of Law	3; 5
Reply Affirmation	6
Mot. Seq. #13	
Notice of Motion and Affirmation	1 &2 [Exh. A]
Affirmation/Affidavit in Opposition	4 and 5
Memoranda of Law	3
Reply Affirmation	6
Mot. Seq. #14	
Notice of Motion and Affirmation	1 &2 [Exh. 1-11]
Affirmation/Affidavit in Opposition	3, 4 and 6
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Plaintiffs, Thomas and Alexandra Rizzo commenced this action against the defendants because of an accident that occurred while Thomas Rizzo was employed as a union worker for The Laquila Group, Inc., third-party defendant/third-third party plaintiff, when a plank that served as a passageway over a trench broke, causing plaintiff Thomas Rizzo to fall into the trench. Plaintiffs move for an order (Mot. Seq. #11) pursuant to CPLR

3212 granting plaintiffs' partial summary judgment on the issue of liability pursuant to Labor Law 240(1) and 241(6) against defendants, St. George Outlet Development, BFC Partners Development LLC and BFC Partners, LP., who move for an order pursuant to CPLR 3212 (Mot. Seq. #12) granting summary judgment against third-party defendant, The Laquila Group, Inc., and granting dismissal of plaintiffs' Labor Law 200 and common law negligence causes of action. Defendant, St. George Development LLC, owned the land and buildings under construction and third-party defendant, LP Ciminelli, served as the general contractor.

Plaintiff's Summary Judgment Mot. Seq. #11

It is well settled that in order to grant summary judgment, it must clearly appear that no material issue of fact has been presented. *See, Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996), "where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action or tender an acceptable excuse for his failure and submission of a hearsay affirmation by counsel alone does not satisfy this requirement." *See, Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). A motion for summary judgment cannot be defeated by a "shadowy semblance of an issue." *See, Chaplin Associates v. Globe Manufacturing*, 34 N.Y.2d 338, 357 N.Y.S.2d 478 (1974).

Labor Law §§240(1)

Plaintiff alleges that the defendants are liable pursuant to Labor Law §240(1), which, in pertinent part reads as follows:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed. Whether the device provides proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his or her materials. *See, Melchor v. Singh*, 90 A.D.3d 866, 935 N.Y.S.3d 106 (2nd Dept., 2011), *citing Duran v. Kijak Family Partners, L.P.*, 63 A.D.3d, 992, 883 N.Y.S.2d 226; *Tranchina v. Sisters of Charity Health Care Sys. Nursing Home*, 294 A.D.2d 491, 742 N.Y.S.2d 655; *Garieri v. Broadway Plaza*, 271 A.D.2d 569, 707 N.Y.S.2d 333; *Nelson v. Ciba-Geigy*, 268 A.D.2d 570, 702 N.Y.S.2d 373.

Labor Law 240(1) imposes upon owners, contractors, and their agents a nondelegable duty to provide workers proper protection from elevation-related hazards. *See, Zoto v. 259 W.10th LLC*, 189 A.D.3d 1523, 134 N.Y.S.3d 728 (2nd Dept., 2020). In the case at bar, the defendants argue that plaintiff's own choice to carry the rebar and walk over the planks was the sole and proximate cause of his accident, since he could have walked on either side of the trench to carry the heavy rebar. This court finds that the planking which collapsed

constitutes a prima facie case under Labor Law 240(1), since the collapse would not have occurred if a safety device had been properly constructed to give adequate protection. See, *Birbillis v. Rapp*, 205 A.D.2d 569, 613 N.Y.S.2d 414 (2nd Dept., 1994). It is not a defense to a recovery under Labor Law 240(1) that plaintiff did not have to choose to walk over the planks covering the trench to carry the rebar. See, *Birbilis v. Rapp*, *supra*, where the court held that "it is no defense to a recovery under Labor Law 240(1) that it was not necessary for the plaintiff to be on the sidewalk bridge at the time of the accident in order to speak to his co-worker." Here, the plaintiff made a prima facie showing of his entitlement to judgment as a matter of law on the Labor Law 240(1) cause of action by demonstrating that his injuries were caused by collapse of the planking.

In addition, the short distance, as defendants argue in opposition to plaintiff's motion for partial summary judgment, does not necessarily deem Labor Law 240(1) inapplicable. See, *Gonzalez v. Madison Sixty, LLC*, 216 A.D.3d 1141, 189 NY.S.3d 727 (2nd Dept., 2023), where the court held "although the compressor fell a short distance, given the weight of the compressor and the amount of force it was capable of generating, the height differential was not de minimis, citing *Runner v. New York Stock Exchange, Inc.*, 13 N.Y.3d 599, 895 N.Y.S.2d 279 (2009). As to the argument of the plaintiff being a recalcitrant worker, the court finds that the defense is not applicable here, where there has been no evidence of instruction provided to the plaintiff not to use the plank, as well as the fact that there is evidence establishing that other workers crossed the planks on the same day as plaintiff's accident, to carry the rebar. While any comparative negligence on the part of the plaintiff may require an apportionment of liability, it is not a defense to the strict liability of the statute, but where the plaintiff is the sole proximate cause of his or her own injuries, there can be no liability under Labor Law §240(1). See, *Garcia v. Fed LI, LLC*, 239 A.D.3d 942, 238 N.Y.S.3d 431 (2nd Dept., 2025. A plaintiff is the sole proximate cause of his or her own injuries when, acting as a recalcitrant worker, he or she misuses an otherwise proper safety device, chooses to use an inadequate safety device when proper devices were readily available, or fails to use any device when proper devices were available. See, *Garcia v. Fed LI, LLC*, *supra*; *Amaro v. New York City School Construction Authority*, 229 A.D.3d 746, 216 N.Y.S.3d 194 (2nd Dept., 2024).

Based upon the foregoing, the court finds that partial summary judgment on the issue of liability should be granted in favor of the plaintiff as to Labor Law 240(1).

Labor Law § 241(6)

Plaintiff argues that defendants are liable under Labor Law § 241(6) due to defendant's violation of 12 NYCRR 23-1.17 and 23-1.22(b)(2). Labor Law § 241(6) imposes on owners, general contractors, and their agents a nondelegable duty to provide "reasonable and adequate protection" to workers engaged in construction, demolition, and excavation activities by complying with Industrial Code regulations that specify concrete safety directives, regardless of whether they exercised supervision or control over the work. See, *St. Louis v Town of N. Elba*, 16 N.Y.3d 411, 923 N.Y.S.2d 391 (2011). As a predicate to a section 241(6) cause of action, a plaintiff must allege a violation of a concrete specification promulgated by the Commissioner of the Department of Labor in the Industrial Code. *See, Misicki v. Caradonna*, 12 N.Y.3d 511, 515, 882 N.Y.S.2d 375 (2009). Section 241(6) imposes

liability upon a general contractor for the negligence of a subcontractor, even in the absence of control or supervision of the worksite. See, *Ross v. Curtis-Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993).

Section 23-1.7. Protection from general hazards

(b) Falling hazards.
(1) Hazardous openings.
(i) Every hazardous opening into which a person may step, or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part (rule).

Section 23-1.22(b)(2). Structural runways, ramps and platforms.
(b) Runways and ramps.
(2) Runways and ramps constructed for the use of persons only shall be at least 18 inches in width and shall be constructed of planking at least two inches thick full size or metal of equivalent strength. Such surface shall be substantially supported and braced to prevent excessive spring or deflection. Where planking is used it shall be laid close, butt jointed and securely nailed.

The court finds that both Industrial Codes cited by the plaintiffs herein are applicable to the facts of this case, and the defendants have failed to meet their burden of establishing that the regulations were not violated, or that their violation was not a proximate cause of the plaintiff's accident. The trench was a hazardous opening which was frequented by workers at the site. See, *Tornabee v. City of New York*, 40 Misc.3d 992, 970 N.YS.2d 394 (Sup. Ct. Kings Co., 2013).

St. George's Motion for Summary Judgment against Laquila Group (Mot. Seq. #12)

Defendants/Third-Party Plaintiffs, St. George Outlet Development, LLC, BFC Partners Development, LLC and BFC Partners, LP, hereinafter "St. George" move for summary judgment against The Laquila Group, on the issue of contractual indemnification and breach of contract for failing to procure insurance against and dismissal of plaintiff's 200 and common law negligence claims.

"The right to contractual indemnification depends upon the specific language of the contract" (*George v. Marshalls of MA, Inc.*, 61 A.D.3d 925 (2nd Dept., 2009). In addition, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefore." *See, Cava Constr. Co., Inc. v. Gealtec Remodeling Corp.*, 58 A.D.3d 660 (2nd Dept., 2009). St. George relies upon the contract between Empire and Laquila, which includes St. George as an Additional Insured. Article 5 - Paragraph 5.1 of the Contract entitled "Indemnity" and Paragraph 5.3 provides as follows:

5.I FOR TEN ($IO.OO) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATTON, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE GENERAL CONTRAC'I'OR. THE OWNER. THE ARCHITECT/ENGINEER, AND ALL OF THEIR AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR FAILURE IN PERF'ORMANCE OF THE SUBCONTRACTOR'S WORK UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE (1) IS ATTRITBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF LIFE RESULTING THEREFROM, (2) TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR, OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE, REGARDLESS OF WHETHER CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER SUCH OBLIGATIONS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PART OR PERSON DESCRIBED IN THIS PARAGRAPH. IN ANY AND ALL CLAIMS AGAINST THE GENERAL CONTRACTOR, OR ANY OF ITS AGENTS OR EMPLOYEES, BY ANY EMPLOYEE OF THE SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR, OR ANYONE FOR WHOSE ACTS HE MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH 5.I SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUBCONTRACTOR UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

5.3 FOR TEN ($IO.OO) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE GENERAL CONTRACTOR, THE OWNER, THE ARCHITECT/ENGINEER, AND ALL OF THEIR AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES ARISING OUT OF OR RESULTING FROM ANY OF THE FOLLOWING:

ANY ACT OR OMISSION OF THE SUBCONTRACTOR OR ANY OF ITS TRADES-CONTRACTORS, OF ANY THEIR AGENTS OR ANY PERSON OR ENTITY TOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE...

The court finds that St. George has established its entitlement to summary judgment against The Laquila Group on the issue of contractual indemnification and dismissal of plaintiff's 200 and common law negligence claims. St. George has demonstrated that they had no authority to supervise or control the plaintiff's work, which was controlled by the Laquila Group. There is no evidence establishing that St. George was negligent. In addition, the court finds that St. George did not exercise any control or supervision over Laquila's work,

nor has an issue been raised as to St. George creating or having actual or constructive notice of the alleged defect by the plaintiff, Thomas Rizzo.

Laquila's Motion for Partial Summary Judgment (Mot. Seq. #13)

Third-Party Defendant/Third Third-Party Plaintiff, The Laquila Group, Inc., (hereinafter "Laquila") moves for partial summary judgment dismissing plaintiff's claims 240(1) and 241(6) to the extent it is predicated on a violation of NYCRR 23-1.22(b)(2). Laquila argues that falling of elevated pathways does not constitute a Labor Law 240 violation, the differential of five feet or less, standing alone is outside the ambit of Labor 240 and NYCR 23.1.22(b)(2) relied upon by plaintiffs is inapplicable to the circumstances of this case.

St. George does not oppose that portion of Laquila's motion to the extent that Laquila seeks summary judgment dismissal of plaintiff's Labor Law 240(1) and 241(6) claims against the defendants, which St. George argues should be granted.

This court finds that partial summary judgment should be denied. The distinction here is that the defendants in cases cited by Laquila established that the plank from which the injured plaintiff's fell was being used as a passageway for laborers to enter and exist a building under construction, i.e., it was not being utilized as a ladder, scaffold, hoist or other safety device for the benefit of the injured plaintiff in his work, and thus, the accident did not come within the purview of Labor Law 240(1). Here, as stated above in reference to liability being granted in favor of plaintiff, as to Labor Law 240(1) and 241(6), this court holds that the plaintiff is entitled to summary judgment. The plank was placed over a trench that was dug on the site and frequented by workers. There is no evidence as to safety measures, precautions and instructions given to the plaintiff, Thomas Rizzo.

As to Laquila's request for summary judgment on the Labor Law 241(6), the court finds that there is a triable issue of fact as to whether the plank which was placed over the trench was insufficient or insufficiently supported and braced, and if so whether the insufficiency was a proximate cause of the accident.

Olympic's Motion for Summary Judgment (Mot. Seq. #14)

Second third-party defendant/third third-party defendant, Olympic, moves for summary judgment pursuant to CPLR 3212 dismissing any and all claims against it for contractual indemnification, common law indemnification/contribution and negligence. Olympic argues that it only entered into contract with St. George for pipe installation and to indemnify St. George for claims arising out of Olympic's negligence. In addition, Olympic argues defendants BFC Partners Development LLC and BFC Partners, LP are not named entities in the agreement between St. George and Olympic.

Regarding common law indemnification, Olympic argues that it was only contracted for pipe installation, which was not a cause of plaintiff, Thomas Rizzo's accident, nor did plaintiff come in contact with any pipes installed by Olympic when the plank that plaintiff

walked across snapped. Olympic further argues that claims for breach of contract due to failure to procure insurance fail because Olympic procured insurance that was required for the project. Olympic argues that it did not own, operate, or control the worksite but was rather a subcontractor assigned to specific work which was the installation of pipes. Olympic argues that it has provided proof that it did procure insurance pursuant to the agreement with St. George and the relevant parties were named as additional insureds.

In opposition to Olympic's motion, Laquila argues that the defendant, St. George, who is the owner of the subject premises contracted with Empire Outlets, who in turn contracted with Laquila, LP Ciminelli, Inc. and Olympic to do specific work at the worksite. Laquila argues that there is no evidence that the plank was installed by Laquila and points to plaintiff's testimony that he had no knowledge of the plank's ownership or who placed it across the trench. Laquila also argues that Olympic relies on circumstantial evidence, to wit, the deposition testimony of Marco Auteri of St. George and Mr. Cisca of Laquila which states that Laquila had placed planking on the job site. However, there is testimony from Mr. Cisca that Laquila was not working in the area of the plaintiff's accident, and the area was ceded to Olympic for the installation of piping, nor did Laquila provide planks for other trades to use. Laquila also argues that Olympic's summary judgment motion is untimely.

Defendants, Third-Party Plaintiffs, Second-Third-Party Plaintiffs, and Fourth Third-Party Plaintiffs, St. George Outlet Development, LLC, BFC Partners Development LLC and BFC Partner, LP, hereinafter (St. George), in opposition to Olympic's motion for summary judgment argue that Olympic's motion must be denied because there are issues of fact as to Olympic's obligations under the terms of the subcontract agreement. Specifically, St. George's opposition points to the clauses in the contract which state that Olympic's work includes work that requires it to furnish and install all floor, trench and deck drains; (Art. 2 of the Olympic Subcontract); day-to-day supervision of the work at the project site (Art. 3); legally dispose of all temporary structures, pertaining to or affected by its work (Art. 3); provide all temporary enclosures as required for the work of both Olympic's plumbing and Laquila's reinforced concrete (Exh. B, Section 11.13 of the Subcontract); and to provide maintain and remove barricades and excavation protection (Exh. B, Section 11.17). St. George points to various sections of Olympic's subcontract which requires Olympic to indemnify the indemnitee "from and against any and all claims, suits...arising in whole or in part and in any manner from the acts, omissions, breach or default of the subcontractor...". St. George argues that the indemnification provision does not, by its terms, limit indemnification only to claims arising out of Olympic's negligence in the performance of its work. St. George also argues that Olympic's motion for summary judgment is untimely.

In partial opposition to Olympic's motion for summary judgment, plaintiff does not take a position as to the various defendants' cross claims sounding in contractual indemnification, common law indemnification/contribution and negligence. Plaintiff opposes Olympic's mischaracterization of his use of the plank as reckless and puts forth his arguments as to the evidence he presented in regard to having observed approximately 15 workers from various trades walk over the plank to access his work area; his unawareness

of any other passage to access his work area; the fact that workers were permitted to walk over the planks placed over the trenches; the confirmation by the Vice President of Operations for Laquila, Angelo Sica, that the planks were placed over the trenches to permit workers to traverse the trenches and the lack of instruction given to plaintiff to use a different path.

In reply, Olympic argues that the arguments in opposition fail to raise issues of fact because they are hearsay and speculative as to Olympic having placed the planks over the trench which it did not dig, nor always maintain control over, including at the time of the accident. In addition, Olympic argues that indemnification only arises if the claim arose out of Olympic's negligence which was not triggered by negligence, acts, errors or omissions of Olympic.

First, this court will address the issue of whether Olympic's motion for summary judgment is timely. The Uniform Civil Term Rules of Kings County Supreme Court require the parties to move for summary judgment no later than 60 days after filing of the Note of Issue. (*See, Kings Co. Supreme Court Uniform Civil Court Term Rule, Part C, Rule 6, citing* CPLR 3212[a]). Good cause in this context "requires a showing of good cause for the delay in making the motion." See, *Brill v. City of New York*, 2 N.Y.3d 648, 781 N.Y.S.2d 261. Significant outstanding discovery may, in certain circumstances, constitute good cause for delay in making a summary judgment motion. See, *Panfilow v. 66 East 83rd Street Owners Corp.*, 217 A.D.3d 875, 191 N.Y.S.3d 360 (2nd Dept., 2023), where the court held that good cause established. In the case at bar, the court finds that good cause has been established for the delay in making the summary judgment motion.

However, the court finds that issues of fact have been raised which preclude summary judgment dismissing all claims in favor of Olympic. The parties have raised questions as to the requirements and obligations Olympic had as a subcontractor while performing work at the subject worksite under the terms of the agreement.

Labor Law § 200 is a codification of the common-law duty of an owner or general contractor to provide employees with a safe place to work. *See, Cooper v State of New York*,72 A.D.3d 633, 899 N.Y.S.2d 275 (2nd Dept., 2016). Cases involving Labor Law § 200 generally fall into two categories: those where workers were injured because of dangerous or defective conditions at a work site and those involving the manner in which the work was performed. See, *LaGiudice v Sleepy's Inc.*, 67 A.D.3d 969, 890 N.Y.S.2d 564 (2nd Dept., 2009). Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it. *See, Ortega v. Puccia*, 57 A.D.3d 54, 866 N.Y.S.2d 323 (2nd Dept., 2008). Alternatively, where the injury arises out of defects or dangers in the methods or materials of the work, the property owner's potential liability hinges on his or her authority to supervise the work. See, *Chowdry v. Rodriquez*, 57 A.D.3d 121, 867 N.Y.S.2d 123 (2nd Dept., 2008). To meet the initial burden on the issue of lack of constructive notice, the defendants must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell. See, *Gray v Lifetitz*, 83 A.D.3d 780, 920 N.Y.S.2d 693 (2nd Dept., 2011).

The opposition has raised issues of fact as to whether Olympic possessed the authority to supervise or control the means and methods of the work, and allegations which involve dangerous or defective conditions on the premises where the work was performed as it relates to the whether Olympic created the dangerous or defective condition in regard to placing the plank(s) over the trench.

In addition, as to the breach of contract claim for failure to procure insurance, the court finds that the annexations do not establish that insurance was procured.

Accordingly, plaintiffs' motion for summary judgment on the issue of liability (Mot. Seq. #11) is **GRANTED**, and

IT IS HEREBY ORDERED that the defendants, St. George's motion for summary judgment against The Laquila Group (Mot. Seq. #12) for contractual indemnification, and dismissing plaintiffs' Labor Law 200 and common law negligence claims is **GRANTED**, and it is further,

ORDERED, that third-party defendant/third third-party plaintiff, The Laquila Group's motion for partial summary judgment dismissing plaintiffs' Labor Law 240(1) and 241(6) claims to the extent it is predicated on a violation of NYCRR 23-1.22(b)(2) (Mot. Seq. #13), is hereby **DENIED**, and it is further,

ORDERED, that third-party defendant/third third-party defendant, Olympic's, motion for summary judgment (Mot. Seq. #14) dismissing any and all claims against it for contractual indemnification, common law indemnification/contribution and negligence, is **DENIED**.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
December 17, 2025

HON. LISA S. OTTLEY, J.S.C.
HON. LISA S. OTTLEY

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KINGS COUNTY CLERK
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