Moran v Alba Carting & Demolition
2025 NY Slip Op 35308(U)
June 6, 2025
Supreme Court, Queens County
Docket Number: Index No. 702347/21
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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JONATHAN MORAN, ET AL., Index No. 702347/21

Plaintiffs, Motion
Date: September 23, 2024

-against-

M# 2

ALBA CARTING & DEMOLITION, ET AL.,

Defendants.

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The following papers numbered EF 83-147 read on this motion by plaintiff for partial summary judgment on the issue of liability pursuant against defendant/third-party plaintiff/second third-party plaintiff Coyle Contracting Corp. (Coyle), defendant Tishman Speyer Properties, L.L.C. (Tishman), defendant RCPI Landmark Properties, L.L.C. (RCPI), and defendant/second third-party defendant/third third-party defendant 1-800 Mr. Rubbish Inc. (Mr. Rubbish) under Labor Law §§ 200, 240 (1), 241 (6), and common-law negligence, and dismissing all affirmative defenses alleging plaintiff was the sole proximate cause of the accident or his injuries; cross-motion by Mr. Rubbish for summary judgment against plaintiff and, summary judgment against Coyle; and cross-motion by Coyle, Tishman, and RCPI for summary judgment dismissing plaintiff's claims brought under Labor Law §§ 200, 240(1), 241 6), and common-law negligence, and for summary judgment against Mr. Rubbish dismissing all cross-claims.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.....	EF 83-104
Notices of Cross Motion - Affidavits - Exhibits...	EF 114-117, 136-139
Answering Affidavits - Exhibits.....	EF 118, 123-125, 129-132,144
Reply Affidavits.....	EF 126-127, 140-141, 145-147

Upon the foregoing papers it is ordered that the motion and cross-motions are determined as follows:

This is an action to recover damages for personal injuries that plaintiff allegedly sustained on or about January 15, 2021, at the premises located at 45 Rockefeller Plaza, in the County of New York (the premises). Plaintiff commenced this action asserting causes of action for violations under Labor Law §§ 200, 240(1), 241(6), and common-law negligence against defendants Alba Carting & Demolition Inc. (Alba Carting), Alba Demo Inc. (Alba Demo), Coyle, Tishman, RCPI, and Mr. Rubbish. Plaintiff has alleged that while working at the premises, he was injured when a container filled over the top with debris tipped over onto him as he was pushing it down an uneven ramp. Plaintiff alleged that RCPI was the owner of the premises, who retained Tishman as the managing agent, and in turn, Tishman retained Coyle as the general contractor for the work at the premises. Plaintiff has alleged that he was an employee of third-party defendant/third third-party plaintiff Caledonia Carting Services Inc. (Caledonia), which Coyle hired to perform certain work at the premises. Plaintiff further alleged that Caledonia hired Mr. Rubbish for container services for the work at the premises.

Following commencement of this action, Coyle commenced a third-party action against Caledonia, which was discontinued by stipulation. Coyle also commenced a second third-party action against Mr. Rubbish. Caledonia commenced a third third-party action against Mr. Rubbish, which was also discontinued by stipulation. Plaintiff moved for a default judgment against Alba Demo and for consolidation of the separate related action against Mr. Rubbish, bearing Index No. 708479/2021, into this action. The court granted both motions.

Plaintiff has moved for partial summary judgment on liability for the causes of action brought under Labor Law §§ 200, 240(1), 241(6), and common-law negligence against Coyle, Tishman, RCPI, and Mr. Rubbish. Plaintiff has also moved to dismiss all affirmative defenses that allege he was the sole proximate cause of the accident or his injuries. Mr. Rubbish has cross-moved for summary judgment seeking to dismiss plaintiff's complaint in its entirety, and to dismiss Coyle's second third-party complaint in its entirety. Coyle, Tishman, and RCPI have cross-moved for summary judgment seeking to dismiss plaintiff's complaint in its entirety under Labor Law §§ 200, 240(1), 241(6), and common-law negligence, and for summary judgment against Mr. Rubbish, dismissing all cross-claims.

"'To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented.'" (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 23 [2019], quoting *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). "'Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable'" (*Id.*, at 23, quoting *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]). On summary judgment, "'facts must be viewed in the light most favorable to the non-moving party'" (*Id.*, at 23, quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 502 [2012]), and "'the 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 the absence of any material issues of fact'" (*Id.*, at 23, quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 322 [1986]). Once the moving party has met its burden, the opponent must produce competent evidence in admissible form to establish the existence of a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]).

As a preliminary matter, Mr. Rubbish has argued that it is not liable under Labor Law §§ 200, 240(1), and 241(6) because it is not a proper Labor Law defendant, inasmuch as it was not an owner, a general contractor, or a statutory agent. Labor Law §§ 200, 240 (1), and 241 (6) apply only to owners, general contractors, and agents (*see Bonkoski v Condos Bros. Constr. Corp.*, 216 AD3d 612, 614 [2d Dept 2023]; *Tomyuk v Junefield Assoc.*, 57 AD3d 518, 521 [2d Dept 2008]). The record in this matter contains, among other things, the deposition testimony of non-party Kerry McGinley (McGinley), an employee of Coyle. Based on McGinley's testimony that Mr. Rubbish had no employees at the premises and that Mr. Rubbish's involvement with the premises was limited to supplying containers, Mr. Rubbish has shown that they did not have an interest on the premises, they did not perform any work at the premises, and they were not onsite at the premises. Based on the evidence, Mr. Rubbish has sufficiently demonstrated that it was not an owner, general contractor, nor an agent. Therefore, Mr. Rubbish is entitled to dismissal of the causes of action under Labor Law §§ 200, 240(1), and 241(6). Since Mr. Rubbish is not a proper Labor Law defendant, the court's determination as to the causes of action under Labor Law §§ 200, 240(1), and 241(6) will be limited to Coyle, Tishman, and RCPI.

Next, the court will address the cause of action brought under Labor Law § 240(1). In support of his motion, plaintiff argued, among other things, that he is entitled to partial summary judgment since he was not provided with adequate safety devices to protect him from gravity related risks. In opposition and in support of

their cross-motion, Coyle, Tishman, and RCPI argued, among other things, that plaintiff's accident did not involve a gravity-related hazard, that no safety device was warranted, and that the alleged accident did not arise while someone was hoisting or securing an item.

Labor Law § 240(1) imposes upon owners and general contractors, and their agents, a non-delegable duty to provide adequate safety devices to protect workers from the risks inherent in elevated-related work (*see Healy v EST Downtown, LLC*, 38 NY3d 998, 999 [2022]). "'To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must show, prima facie, that the defendant violated the statute and that such violation was a proximate cause of his or her injuries'" (*Chiarella v New York State Thruway Auth.*, 230 AD3d 463, 465 [2d Dept 2024], quoting *Lochan v H & H Sons Home Improvement Inc.*, 216 AD3d 630, 632 [2d Dept 2023]). "The statute 'is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed,' and it, therefore imposes 'absolute liability for a breach which has proximately caused an injury. Negligence, if any, of the injured worker is of no consequence'" (*Mejia v 69 Mamaroneck Rd. Corp.*, 203 AD3d 815, 817 [2d Dept 2022], quoting *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 512-513 [1991]).

In falling object cases, in order for Labor Law § 240(1) to apply, "a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]). In other words, liability may be imposed where an object or material that fell, causing injury, was a load that required securing for the purposes of the undertaking at the time it fell (*see Narducci*, 96 NY2d at 268).

In addition to the above evidence, the record contains, plaintiff's deposition testimony, the deposition testimony of non-party Heidi Amar (Amar), an employee of Tishman, the deposition testimony of non-party Michael Cardinale (Cardinale), an employee of Mr. Rubbish. Plaintiff testified that on January 15, 2021, he sustained an injury while working at a renovation and demolition site at the premises. Plaintiff testified that he was working for Caledonia, and his responsibilities included removing debris using metal containers owned by Mr. Rubbish. Plaintiff testified that while pushing a heavy container filled over the top with debris down an uneven ramp, the front wheel broke, causing the container to tip over and fall on him. Plaintiff testified that he was caused to fall to the ground.

Amar testified that she served as the general manager for Tishman, that renovation work was ongoing at the premises on January 15, 2021, and that Coyle was the general contractor for the renovation project. McGinley testified that Coyle served as the general contractor for the demolition project at the premises in January 2021. She testified that, at the time of the alleged accident, RCPI owned the property, Tishman managed the property, Tishman retained Coyle for the project, and that Coyle subcontracted the demolition work to Caledonia. She further testified that Caledonia hired Mr. Rubbish to provide containers for debris removal. Cardinale testified that Mr. Rubbish is a container service company and that Mr. Rubbish provided containers for the work at the premises and delivered approximately 100 containers to the site between six months to a year before the alleged accident.

Based on the evidence set forth above, plaintiff satisfied his burden of demonstrating that the accident occurred when he was pushing a container filled over the top with debris down a ramp, when the front wheel broke, causing the container to tip over and fall on him. The activity which plaintiff was conducting posed a significant risk to plaintiff's safety due to the container's heavy weight (*see Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009]). The container is an object that required securing for the purposes of the undertaking. Therefore, Labor Law § 240 (1) applies and was violated by Coyle, Tishman, and RCPI.

The court will now address plaintiff's contention that Coyle, Tishman, and RCPI's affirmative defense of proximate cause of the accident or his injuries should be dismissed. "To establish, prima facie, that a plaintiff was the sole proximate cause of an accident, a defendant has to establish that the plaintiff misused an otherwise proper safety devise, chose to use an inadequate safety device when proper devices were readily available, or failed to use any device when proper devises were available" (*Lochan v H & H Sons Home Improvement Inc.*, 216 AD3d 630, 633 [2d Dept 2023]). Based on plaintiff's testimony that he was not provided with adequate safety devices to protect against gravity related risks and the court's finding of a statutory violation of Labor Law § 240 (1), plaintiff has demonstrated that he was not the sole proximate cause of the accident. Once there is a statutory violation of Labor Law § 240(1), plaintiff could never be the sole proximate cause of his injuries (*see Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290 [2003]).

In opposition and in support of their cross-motion, Coyle, Tishman, and RCPI argued that the accident did not involve a gravity related hazard. However, they have failed to point to

sufficient admissible evidence to meet their burden. There is sufficient evidence that the heavy container fell from such a height as to tip over and hit plaintiff, and with such a force as to knock plaintiff to the ground. Furthermore, there is sufficient evidence that the container was filled over the top with debris. Additionally, Coyle, Tishman, and RCPI did not address the sole proximate cause issue, and, therefore, they did not raise an issue of fact as to whether plaintiff was the sole proximate cause. As such, Labor Law § 240(1) is applicable, and Coyle, Tishman, and RCPI have failed to demonstrate that the accident did not involve a gravity related hazard. Therefore, plaintiff is entitled to the dismissal of the affirmative defense that he was the sole proximate cause of the accident, and thus, entitled to partial summary judgment on his Labor Law § 240(1) claim. The cross-motion by Coyle, Tishman, and RCPI for summary judgment dismissing plaintiff's Labor Law § 240 (1) claim is denied.

Next, the court will address the branch of plaintiff's motion for partial summary judgment on the cause of action brought under Labor Law § 241(6), while Coyle, Tishman, and RCPI, have cross-moved for summary judgment on this cause of action. "Labor Law § 241 (6) imposes a nondelegable duty upon an owner and general contractor to provide reasonable and adequate protection and safety for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Cruz v 1142 Bedford Ave., LLC*, 192 AD3d 859, 862 [2d Dept 2021]). "'To establish liability under Labor Law § 241(6), a plaintiff or a claimant must demonstrate that his [or her] injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case'" (*Zaino v Rogers*, 153 AD3d 763, 764 [2d Dept 2017], quoting *Aragona v State of New York*, 147 AD3d 808, 809 [2d Dept 2017]). Critically, however, "the predicate Industrial Code provision must 'set forth specific safety standards' " (*Rodriguez v 250 Park Ave., LLC*, 161 AD3d 906, 909 [2d Dept 2018], quoting *Hricus v Aurora Contrs., Inc.*, 63 AD3d 1004, 1005 [2d Dept 2009]).

Plaintiff has predicated his cause of action brought under Labor Law § 241 (6) upon alleged violations of various section of the Industrial Code, including 12 NYCRR § 23-1.5 (a), 23-1.5 (c) (1), 23-1.5 (c) (2), 23-1.5 (c) (3), 23-1.28 (d), 23-1.30, 23-1.31, 23- 1.32, 23-2.1 (b), 23-1.28 (a), 23-1.28 (b), 23-1.7 (f); 23-3.3 (b) (2); 23-3.3 (c); 23-3.3 (e) (1); 23- 3.3 (e) (2); 23-3.3 (e) (3); and 23-3.3 (f).

With the exception of 12 NYCRR 23-1.28 (a), 23-1.28 (b), and 23-1.5 (c)(3), Coyle, Tishman, and RCPI have moved to dismiss all the above sections of the Industrial Code and have sufficiently

demonstrated that they are either too general or inapplicable to this matter. In opposition, plaintiff abandoned his reliance on the above Industrial Code sections, other than 12 NYCRR 23-1.28 (a), 23-1.28 (b), and 23-1.5 (c) (3), by failing to address them (*see Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 737 [2d Dept 2023]). As such Coyle, Tishman, and RCPI are entitled to the dismissal of all the above sections of the Industrial Code except for 12 NYCRR 23-1.28 (a), 23-1.28 (b), and 23-1.5 (c) (3). Therefore, the court will limit its determination to 12 NYCRR 23-1.28 (a), 23-1.28 (b), and 23-1.5 (c)(3).

Plaintiff argues that Coyle, Tishman, and RCPI violated Industrial Code section 12 NYCRR 23-1.28 (a) and (b) since he was injured when the front wheel of the container broke. In opposition and in support of their cross-motion, Coyle, Tishman, and RCPI argues that Industrial Code 12 NYCRR 23-1.28 (a) and (b) do not apply inasmuch as the container functioned properly. Industrial Code section 12 NYCRR 23-1.28, provides, in pertinent part, the following: "Hand-propelled vehicles. (a) Maintenance. Hand-propelled vehicles shall be maintained in good repair. Hand-propelled vehicles having damaged handles, or any loose parts shall not be used. (b) Wheels and handles. Wheels of hand-propelled vehicles shall be maintained free-running and well secured to the frames of the vehicles." Contrary to Coyle, Tishman, and RCPI's contention, 12 NYCRR 23-1.28 (a) and (b) are sufficiently specific to support a cause of action under Labor Law § 241 (6) (*see Brasch v Yonkers Constr. Co.*, 306 AD2d 508, 509 [2d Dept 2003]).

Plaintiff alleges that the container that he was pushing was filled over the top with debris and became stuck on an uneven ramp surface, causing him to sustain personal injuries. Plaintiff also alleges that the front wheel on the container was defective and did not want to roll. Here, there remain triable issues of fact as to whether the container that fell on plaintiff was caused to stop suddenly due to a wheel that was not maintained in a "free running" manner or was caused to stop due to the uneven ramp surface (see *Laliashvili v. Kadmia Tenth Ave. SPE, LLC*, 221 AD3d 988, 992 [2d Dept 2023]). As such, there are issues of fact as to both, whether 12 NYCRR 23-1.28 (a) and (b) are applicable and whether they were violated. Therefore, the branch of plaintiff's motion seeking partial summary judgment on liability pursuant to the Labor Law § 241 (6) claim predicated on a violation of Industrial Code section 12 NYCRR 23-1.28 (a) and (b) is denied. Therefore, Coyle, Tishman, and RCPI's branch of the cross-motion seeking summary judgment under Labor Law § 241 (6) to dismiss plaintiff's claim predicated on a violation of Industrial Code section 12 NYCRR 23-1.28 (a) and (b) is also denied.

Plaintiff also argues that Coyle, Tishman, and RCPI violated Industrial Code section 12 NYCRR 23-1.5 (c)(3) since he maintains that the container was damaged and specifically that the front wheel was damaged and did not want to roll. In opposition and in support of their cross-motion, Coyle, Tishman, and RCPI argued that Industrial Code 12 NYCRR 23-1.5 (c)(3) does not apply in that plaintiff's claims that the container was broken are false. Industrial Code section 12 NYCRR 23-1.5 (c)(3), provides, in pertinent part, the following: "Condition of equipment and safeguards. (3) All safety devices, safeguards and equipment in use shall be kept sound and operable and shall be immediately repaired or restored or immediately removed from the job site if damaged." Contrary to Coyle, Tishman, and RCPI's contention, 12 NYCRR 23-1.5 (c) is sufficiently specific to support a cause of action under Labor Law § 241 (6) (*see Tuapante v LG-39, LLC*, 151 AD3d 999, 1000 [2d Dept 2017]).

Here, given plaintiff's testimony, there are issues of fact as to whether the accident was caused by the alleged damaged wheel that broke or by the uneven surface of the ramp. As such, there are issues of fact as to both, whether 12 NYCRR 23-1.5 (c)(3) is applicable and whether it was violated. Therefore, the branch of plaintiff's motion seeking partial summary judgment on liability pursuant to the Labor Law § 241 (6) claim predicated on a violation of Industrial Code section 12 NYCRR 23-1.5 (c)(3) is denied. The branch of Coyle, Tishman, and RCPI's cross-motion for summary judgment dismissing plaintiff's Labor Law § 241 (6) cause of action predicated upon Industrial Code section 12 NYCRR 23-1.5 (c) (3) is also denied.

The court will next address the branch of the motion on the causes of action brought under Labor Law § 200 and for common-law negligence. Plaintiff has moved for partial summary judgment on the causes of action brought under Labor Law § 200 and for common-law negligence against Coyle, Tishman, RCPI and Mr. Rubbish. With regards to this branch of the motion, given the court's dismissal of Labor Law § 200 claim against Mr. Rubbish, the court's determination on Mr. Rubbish will only be on common-law negligence. Coyle, Tishman, RCPI have cross-moved for summary judgment dismissing the causes of action brought under Labor Law § 200 and for common-law negligence, while Mr. Rubbish has cross-moved for summary judgment dismissing plaintiff's cause of action brought for common-law negligence.

In support of this branch of its motion, plaintiff argued, among other things, that Coyle, Tishman, and RCPI failed to provide reasonable and adequate protection, failed to supply larger tiered

containers or cover the cobbling to level the surface, and failed to stop work given the lack of adequate protection. Plaintiff also argued that Mr. Rubbish was negligent in supplying a defective container and for failing to inspect the containers upon delivery or at any time while they were at the job site. In opposition and in support of their cross-motion, Coyle, Tishman, and RCPI argued that they did not control the means and methods of the work, that plaintiff made no complaints about the ramp surface, and that no dangerous condition existed. In opposition and in support of its own cross-motion, Mr. Rubbish argued that it did not perform any work at the premises, did not create the alleged condition, and that it did not have actual or constructive notice of the alleged condition.

"'Labor Law § 200 is a codification of the common-law duty to provide workers with a safe work environment'" (*Robles v Taconic Mgt. Co., LLC*, 173 AD3d 1089, 1092 [2d Dept 2019], quoting *Azad v 270 5th Realty Corp.*, 46 AD3d 728, 730 [2007]; *see Ortega v Puccia*, 57 AD3d 54, 60 [2d Dept 2008]). "'Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed'" (*Robles v Taconic Mgt. Co., LLC*, 173 AD3d at 1092, quoting *Ortega v Puccia*, 57 AD3d at 61).

In the instant action, plaintiff's claim appears to have been based on both the means and methods used to complete the work and dangerous condition on the premises against Coyle, Tishman, and RCPI, and only a dangerous condition on the premises against Mr. Rubbish. "To be held liable under Labor Law § 200 for injuries arising from the manner in which work is performed, a defendant must have the authority to exercise supervision and control over the work" (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]). "'Where a claim is based on an alleged dangerous condition on the premises, an owner or contractor is liable where it created the dangerous condition or had actual or constructive notice of its existence'" (*Gargan v Palatella Saros Bldrs. Group, Inc.*, 162 AD3d 988, 989 [2d Dept 2018], quoting *Niewojt v Nikko Constr. Corp.*, 139 AD3d 1024, 1025 [2d Dept 2016]). "'A defendant has constructive notice of a defect when it is visible and apparent and has existed for a sufficient length of time before the accident such that it could have been discovered and corrected'" (*Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d at 617, quoting *Nicoletti v Iracane*, 122 AD3d 811, 812 [2d Dept 2014]).

Based upon plaintiff's testimony, there are issues of fact in the record about how the accident happened, in that, issues of fact exist about whether the accident was caused by the alleged damaged

wheel that broke or by the uneven surface of the ramp. Thus, the court cannot make a determination as to the parties' liability under Labor Law § 200 and common-law negligence. Therefore, plaintiff is not entitled to partial summary judgment relief as against Coyle, Tishman, and RCPI on the Labor Law § 200 and common-law causes of action. Coyle, Tishman, and RCPI are also not entitled to summary judgment dismissing plaintiff's causes of action brought under Labor Law § 200, and for common-law negligence.

With regards to Mr. Rubbish and their contentions in their cross-motion that they did not create the condition or have notice of the defective condition of the wheel or ramp, similarly, given the issues of fact in the record about how the accident happened of whether the accident was caused by the alleged damaged wheel that broke or by the uneven surface of the ramp, the court also cannot determine Mr. Rubbish's liability under common-law negligence. Therefore, given these determinations, Mr. Rubbish is not entitled to summary judgment dismissing the cause of action brought under common-law negligence. Plaintiff is not entitled to partial summary judgment relief as against Mr. Rubbish on the common-law cause of action.

Following commencement of this action, Coyle commenced a second third-party action against Mr. Rubbish for common-law indemnification and contribution, and contractual indemnification. In its answer, Mr. Rubbish has alleged counterclaims against Coyle for common-law indemnification and contribution, and contractual indemnification. Mr. Rubbish also alleged cross-claims against Tishman and RCPI for common-law indemnification and contribution, and contractual indemnification. Mr. Rubbish has moved for summary judgment dismissing the second third-party action brought by Coyle. Coyle, Tishman, and RCPI have moved to dismiss Mr. Rubbish's cross-claims.

With regards to the second third-party causes of action asserted by Coyle for common-law indemnification and contribution, and contractual indemnification, Mr. Rubbish has argued that it owed no duty to plaintiff or to Coyle, did not proximately cause the alleged accident, had no notice of the alleged condition, and was not engaged in an activity that brought about the alleged injury, which requires the dismissal of any causes of action for common-law indemnification and contribution, and contractual indemnification. The court notes that although Coyle, Tishman, and RCPI have also moved for summary judgment against Mr. Rubbish dismissing all cross-claims, they have failed to adequately address the cross-claims asserted against them and are not entitled to the relief sought.

In light of the court's determinations that issues of fact remain as to respective liability of Mr. Rubbish and Coyle in this matter, any determination on these second third-party claims at this juncture is premature. Therefore, Mr. Rubbish is not entitled to summary judgment on Coyle's second third-party causes of action for common-law indemnification and contribution. Mr. Rubbish has also moved for summary judgment dismissing Coyle's second third-party causes of action for contractual indemnification. Similarly, in light of the court's determinations that issues of fact remain as to the respective liability of Mr. Rubbish and Coyle in this matter, any determination on these third-party claims at this juncture is premature. Therefore, Mr. Rubbish is not entitled to summary judgment on Coyle's second third-party causes of action for contractual indemnification.

Accordingly, the branch of plaintiff's motion dismissing the affirmative defense that plaintiff was the sole proximate cause of the accident and the branch of plaintiff's motion for partial summary judgment against defendants Coyle, Tishman, RCPI under Labor Law § 240(1) are granted.

An assessment of damages on plaintiff's claim pursuant to Labor Law § 240(1) against defendants Coyle, Tishman, RCPI shall be held immediately following the trial of the remaining causes of action.

Plaintiff's motion is denied in all other respects.

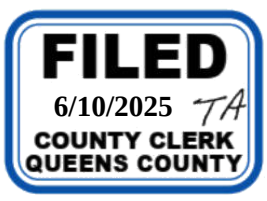
The branches of the cross motion by defendant Mr. Rubbish for summary judgment dismissing plaintiff's causes of action under Labor Law §§ 200, 240(1), and 241(6) are granted.

The cross motion by defendant Mr. Rubbish is denied in all other respects.

The branches of Coyle, Tishman, and RCPI's cross-motion for summary judgment and to dismiss all cross-claims is denied in its entirety.

Dated: June 6, 2025

CARMEN R. VELASQUEZ, J.S.C.



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