Espinoza v LS-14 Ave. LLC
2025 NY Slip Op 35312(U)
June 30, 2025
Supreme Court, Queens County
Docket Number: Index No. 712946/2020
Judge: Robert I. Caloras
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Robert I. Caloras **IA Part 36**
Justice

FREDDY ESPINOZA,
Plaintiff,

Index Number 712946/2020
Motion Seq. No. 4,5,6,7

LS-14 AVENUE LLC, ALBA SERVICES INC, LANDSEA HOMES INCORPORATED, ARCO CONSTRUCTION GROUP INC., REBAR KINGS INC., ARO CONSTRUCTION GROUP INC., DNA DEVELOPMENT LLC, and RYDER CONSTRUCTION INC.,
Defendants.

LS-14 AVENUE LLC and LANDSEA HOMES INCORPORATED,
Third-Party Plaintiffs,
-against-
GLENCO CONTRACTING GROUP, INC.,
Third-Party Defendant.

GLENCO CONTRACTING GROUP, INC.,
Second Third-Party Plaintiff,
-against-
CONSTRUCTION REALTY SAFETY GROUP, INC.,
Second Third-Party Defendant.

The following numbered papers read on these motions by the plaintiff Freddy Espinoza for summary judgment on certain claims against defendants LS-14 Avenue LLC (LS-14), Landsea Homes Incorporated (Landsea), and Ryder Construction Inc. (Ryder) (collectively project defendants); by project defendants and defendant DNA Development LLC (DNA) for summary judgment dismissing the complaint and on their third-party claims against the third-party defendant second third-party plaintiff Glenco Contracting Group, Inc. (Glenco); by defendants ARO Construction Group Inc. (ARO) and Rebar Kings, Inc. (Rebar) (ARO/Rebar) and Glenco for summary judgment dismissing the complaint and all claims against ARO/Rebar or on ARO/Rebar's cross-claims against project defendants, and for summary judgment dismissing the third-party complaint or on Glenco's second third-party claims against the second third-party

defendant Construction Realty Safety Group Inc. (CRSG); by CRSG for summary judgment dismissing all claims against it.

	Papers Numbered
Motion Seq. No. 4	
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Motion Seq. No. 5	
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Upon the foregoing papers it is ordered that the motions are determined as follows:

On August 13, 2020, plaintiff, a Glenco employee, commenced this action against LS-14, Landsea, Alba Services Inc. (Alba), Arco Construction Group Inc., and Rebar to recover damages for personal injuries sustained on July 29, 2020, while working on a construction project. Plaintiff commenced an action regarding the same accident against ARO, DNA, Ryder, and Alba on March 11, 2021. The complaints in both actions asserted causes of action for common-law negligence and violations of Labor Law §§ 200, 240 [1], and 241 [6]. On November 18, 2020, LS-14 and Landsea commenced a third-party action against Glenco for contractual and common-law indemnification, attorneys' fees, contribution, and breach of contract to procure insurance. In an order entered June 14, 2022, the court (Butler, J.) consolidated the two actions under the index number of the instant action and amended the caption to include the defendants in both actions. Glenco commenced a second third-party action against CRSG on April 26, 2023, which sought contribution, common-law and contractual indemnification, and breach of contract to procure insurance. Plaintiff now moves for summary judgment on its Labor Law §§ 200 and 241 [6] claims

against project defendants. Project defendants and DNA move for summary judgment dismissing the complaint and on LS-14 and Landsea's third-party claims for contractual indemnification and breach of contract to procure insurance against Glenco. ARO/Rebar and Glenco move for summary judgment dismissing all claims against ARO/Rebar or on their cross-claims for contribution and common-law indemnification against project defendants, and for summary judgment dismissing the third-party complaint or on Glenco's second third-party claims against CRSG. CRSG moves for summary judgment dismissing all claims against it.

Initially, the court addresses the claim based on violation of Labor Law § 240 [1], which imposes on owners and general contractors a nondelegable duty to provide necessary safety devices for workers subjected to elevation-related hazards (*see Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]; *Soto v J. Crew Inc.*, 21 NY3d 562, 566 [2013]). Here, plaintiff abandoned the Labor Law § 240 [1] claim by failing to address it in opposition to the separate summary judgment motions of project defendants and DNA and ARO/Rebar and Glenco, so summary judgment dismissing it is warranted (*see Elam v Ryder Sys., Inc.*, 176 AD3d 675, 676 [2d Dept 2019]; *see also Delanerolle v St. Catherine of Sienna Med. Ctr.*, 231 AD3d 1013, 1015 [2d Dept 2024]; *Blackman v Metropolitan Tr. Auth.*, 206 AD3d 602, 605 [2d Dept 2022]; *Louie's Seafood Rest., LLC v Brown*, 199 AD3d 790, 793 [2d Dept 2021]). Similarly, in affirmations opposing the motions of project defendants and DNA and ARO/Rebar and Glenco, plaintiff expressly stated that he does not oppose them to the extent they pertain to ARO/Rebar and DNA (*see* NY St Cts Elec Filing [NYSCEF] Doc Nos. 327; 339 at 4 n 2). ARO/Rebar presents evidence that they were not involved in the construction project. Project defendants and DNA indicate that DNA was a consultant. Therefore, dismissal of the complaint insofar as asserted against ARO, Rebar, and DNA is appropriate (*see Elstein v Hammer*, 192 AD3d 1075, 1079–80 [2d Dept 2021]; *Spiegel v Beth Israel Med. Ctr.-Kings Hwy. Div.*, 149 AD3d 1127, 1130 [2d Dept 2017]; *Dooley v Peerless Importers, Inc.*, 42 AD3d 199, 205 [2d Dept 2007]). Since the claims against ARO and Rebar are dismissed, the court need not address the branch of the motion by ARO/Rebar and Glenco for alternative relief seeking summary judgment on ARO/Rebar's cross-claims.

The court next addresses the contention of project defendants and DNA that the Labor Law claims should be dismissed against Landsea and Ryder because they are not proper defendants. Labor Law § 241 [6] applies to contractors, owners and their agents (*see Sanatass v Consolidated Investing Co., Inc.*, 10 NY3d 333, 339 n 3 [2008]; *Albanese v City of New York*, 5 NY3d 217, 219 [2005]). Labor Law § 200 codifies the common-law duty of owners and general contractors to maintain a safe construction site (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]), and also applies to statutory agents (*see Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 434–35 [2015]; *Hill v Mid Is. Steel Corp.*, 164 AD3d 1425, 1426 [2d Dept 2018]). A party that is not an owner or general contractor may be liable as a statutory agent if it "had the ability to control the activity which brought about the injury" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863–64 [2005], *see Cando v Ajay Gen. Contr. Co. Inc.*, 200 AD3d 750, 754 [2d Dept 2021]; *Jin Gak Kim v Kirchoff-Consigli Constr. Mgt., LLC*, 197 AD3d 1289, 1290–91 [2d Dept 2021]). Plaintiff and project defendants and DNA differ as to whether Landsea was an owner of the premises. Although project defendants and DNA point to LS-14's admitted ownership of the premises, they present no evidence demonstrating that Landsea did not own or possess an ownership interest in the premises

(*see Ali v Richmond Indus. Corp.*, 59 AD3d 469, 470–71 [2d Dept 2009]; *see generally Alexandridis v Van Gogh Contr. Co.*, 180 AD3d 969, 974 [2d Dept 2020]).

Project defendants and DNA contend that Ryder is a construction manager, not a general contractor liable under the Labor Law. However, a construction manager may be liable when it serves as agent of the property owner or general contractor and has the ability to control the injury-causing activity (*see Walls*, 4 NY3d at 863–64; *Jin Gak Kim*, 197 AD3d at 1290–91; *Maurisaca v Bowery at Spring Partners, L.P.*, 168 AD3d 711, 712 [2d Dept 2019]). Here, LS-14 and Ryder entered into an agreement for construction management services. Section 3.1 provided that Ryder "shall perform and furnish or cause to be performed or furnished, and shall provide all services and supervision, necessary for or incidental to, the successful completion of the Work. . ." and "shall be solely responsible for all construction means, methods, techniques, sequences and procedures within the scope of the Work" (NYSCEF Doc No. 305 at 4). Section 13.4 provided that Ryder "expressly agrees and understands that it alone is responsible for the safety conditions of the work areas" (NYSCEF Doc No. 305 at 48). In addition, William Freeswick, Ryder's CFO and partner, testified that Ryder was authorized to make decisions on the owner's behalf, could enforce safety rules and procedures, and was responsible for ensuring that there were no tripping hazards. According to Freeswick and Thomas Parker, Landsea's director of construction, Ryder hired all the subcontractors, including CRSG, a site safety subcontractor. In addition, Freeswick testified that Ryder's project manager and superintendent were present on site every day, but that Ryder did not control the subcontractors' method and manner work and did not instruct Glenco workers how to perform their work. Freeswick and Kevin Reilly, Glenco's concrete safety manager, testified that Ryder could stop unsafe work and instruct Glenco workers to remove debris. Reilly and Freeswick also testified that a Ryder laborer removed debris at the work site. According to Reilly, Ryder supervised Glenco's workers on the date of the accident and monitored and coordinated the subcontractors' work. Reilly and Parker also testified that Ryder was the general contractor. Considering that plaintiff was injured from a failure to remove debris, the evidence of Ryder's ability to control the injury-causing work demonstrates its potential liability under the Labor Law as a construction manager (*see Walls*, 4 NY3d at 864; *Barrios v City of New York*, 75 AD3d 517, 519 [2d Dept 2010]; *Tomyuk v Junefield Assoc.*, 57 AD3d 518, 520 [2d Dept 2008]; *Pino v Irvington Union Free School Dist.*, 43 AD3d 1130, 1131–32 [2d Dept 2007]; *Lodato v Greyhawk N. Am., LLC*, 39 AD3d 491, 493 [2d Dept 2007]; *cf. Lamar v Hill Intl., Inc.*, 153 AD3d 685, 686–87 [2d Dept 2017]; *Vazquez v Humboldt Seigle Lofts, LLC*, 145 AD3d 709, 709–10 [2d Dept 2016]; *Domino v Professional Consulting, Inc.*, 57 AD3d 713, 715 [2d Dept 2008]). Since project defendants and DNA fail to demonstrate that Landsea and Ryder were not subject to liability under Labor Law § 241 [6] and 200, dismissal of those claims on that ground is inappropriate.

With respect to the Labor Law § 241 [6] claim, to establish liability for violating that statute, plaintiff must show that a violation of an applicable Industrial Code proximately caused his injuries (*see Ochoa v JEM Real Estate Co., LLC*, 223 AD3d 747, 749 [2d Dept 2024]; *Guoxing Song v CA Plaza, LLC*, 208 AD3d 760, 761 [2d Dept 2022]). To state a Labor Law § 241 [6] claim, plaintiff must allege defendants' violation of an Industrial Code regulation requiring a specific standard of conduct (*see Toussaint v Port Auth. of N.Y. & N.J.*, 38 NY3d 89, 94-95 [2022];

Kauffman v Turner Constr. Co., 195 AD3d 1003, 1005 [2d Dept 2021]). Here, plaintiff's bills of particulars alleged violations of 12 NYCRR §§ 23-1.7 [e] [1] and [2], 23-1.7 [f], 23-1.30, 23-2.1 [a] [1] and [2], 23-2.1 [b], 23-3.3 [c]; [e] [1], [2], [3]; [f]; [g]; [k] [1] [i] and [ii]; [l]. Regarding the Industrial Code provisions, project defendants and DNA generally argue that they lack specific standards or are inapplicable. Since plaintiff does not address the Industrial Code sections alleged in his bills of particulars other than 12 NYCRR §§ 23-1.7 [e] [1], [2] and 23-1.30 in opposition to the summary judgment motions, he abandons reliance on them (*see Debennedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021]; *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]). Thus, the court discusses the Labor Law § 241 [6] claim insofar as it is based on 12 NYCRR §§ 23-1.7 [e] [1], [2] and 23-1.30.

"All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered" (12 NYCRR § 23-1.7 [e] [1]). "The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed" (12 NYCRR § 23-1.7 [e] [2]). Plaintiff testified that he was injured while carrying bracers between floors after he tripped on debris to the side of a ramp one to two feet from its edge which he was going to use to ascend to the floor above. Plaintiff described the debris as including cut rebar, paper, and tools. This testimony shows a 12 NYCRR § 23-1.7 [e] violation (*see Lourenco v City of New York*, 228 AD3d 577, 578–79 [1st Dept 2024]; *Tompkins v Turner Constr. Co.*, 221 AD3d 745, 746 [2d Dept 2023]; *Lopez v New York City Dept. of Envtl. Protection*, 123 AD3d 982, 984–85 [2d Dept 2014]).

In opposition, project defendants and DNA contend that 12 NYCRR § 23-1.7 [e] does not apply because plaintiff injured himself by turning the wrong way, not due to debris. Project defendants and DNA base this contention on Reilly's testimony that he prepared a report memorializing plaintiff's account that he was injured after turning the wrong way and that the entire work area was clear of debris. However, Reilly testified that he does not speak Spanish. Plaintiff testified that he did not understand English and that foremen would translate work instructions to him in Spanish. Reilly testified he could not recall whether plaintiff spoke to him in English or in Spanish or whether a translator was present at the time he prepared the report. Since project defendants and DNA fail to show that plaintiff was the source of the information in the report or that it was accurately translated to him, they fail to establish an exception to hearsay necessary for the report's admissibility (*see Lourenco*, 228 AD3d at 581–82; *Nava-Juarez v Mosholu Fieldston Realty, LLC*, 167 AD3d 511, 512 [1st Dept 2018]). Reilly could not recall if he saw debris on the third floor when he did a walkthrough the date of the accident or if he saw the area where plaintiff was injured after the accident and testified that he did not perform any investigation regarding the accident's cause. Inadmissible hearsay is insufficient to raise fact issues (*see Casasola v State of New York*, 129 AD3d 758, 759–60 [2d Dept 2015]; *Ernest v Pleasantville Union Free School Dist.*, 28 AD3d 419, 419–20 [2d Dept 2006]; *Segarra v All Boroughs Demolition & Removal*, 284 AD2d 321, 322 [2d Dept 2001]). Therefore, plaintiff is entitled to summary judgment on the Labor Law § 241 [6] claim (*see Lourenco*, 228 AD3d at 578–79; *Tompkins*, 221 AD3d at 746; *Lopez*, 123 AD3d at 984–85). However, since plaintiff fails to

demonstrate that Landsea is an owner liable under the Labor Law, plaintiff is entitled to summary judgment on this claim as against only LS-14 and Ryder. Contrary to plaintiff's assertion, Thomas Parker, Landsea's director of construction, did not establish that Landsea owned the premises. Rather, he testified that Landsea owned the *project* (emphasis added). Plaintiff presents no other evidence establishing that Landsea was an owner. Although plaintiff cites *Sperber v Penn Cent. Corp.* (150 AD2d 356 [2d Dept 1989]), it is inapposite as he presents no evidence that LS-14 was a subsidiary of Landsea.

Under the circumstances, denial of the motion by project defendants and DNA for summary judgment dismissal of the Labor Law § 241 [6] claim as based on 12 NYCRR 23-1.7 [e] is appropriate (*see Lopez*, 123 AD3d at 984–85). Plaintiff also bases the Labor Law § 241 [6] claim on 12 NYCRR § 23-1.30, which provides that "[i]llumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10 foot candles in any area where persons are required to work nor less than five foot candles in any passageway, stairway, landing or similar area where persons are required to pass." Here, plaintiff testified that the area near the ramp was dark, but that he had not measured the light intensity there. He also testified that the third floor did not have lighting, but that the sun could be seen from outside. He denied having trouble seeing what he was doing on the third floor and stated that it was darker but he could see. This conclusory testimony is insufficient to establish a 12 NYCRR § 23-1.30 violation (*see Cahill v Triborough Bridge & Tunnel Auth.*, 31 AD3d 347, 349 [1st Dept 2006]; *Herman v St. John's Episcopal Hosp.*, 242 AD2d 316, 317 [2d Dept 1997]). Contrary to plaintiff's contention, expert testimony or light measurement was necessary to establish that the regulation was violated because he did not testify that light was completely absent where he was injured (*see Murphy v Columbia Univ.*, 4 AD3d 200, 202 [1st Dept 2004]). Thus, plaintiff is not entitled so summary judgment on the Labor Law § 241 [6] claim to the extent based on 12 NYCRR 23-1.30. Project defendants and DNA also fail to demonstrate that the light intensity complied with the regulation to demonstrate its inapplicability (*see Murphy v 80 Pine, LLC*, 208 AD3d 492, 497–98 [2d Dept 2022]; *Fritz v Sports Auth.*, 91 AD3d 712, 713 [2d Dept 2012]; *Lucas v KD Dev. Constr. Corp.*, 300 AD2d 634, 635 [2d Dept 2002]). Therefore, dismissal of the Labor Law 241 [6] claim based on 12 NYCRR § 23-1.30 is also inappropriate (*see Fritz*, 91 AD3d at 713; *Lucas*, 300 AD2d at 635).

Turning to the Labor Law § 200 claim, if plaintiff's injuries arose from the manner of the work performed, owners and general contractors are liable for a Labor Law § 200 violation and common-law negligence upon a showing that they had authority to supervise and control that work (*see Hamm v Review Assoc., LLC*, 202 AD3d 934, 938 [2d Dept 2022]; *Eliassian v G.F. Constr., Inc.*, 190 AD3d 947, 950 [2d Dept 2021]). To demonstrate entitlement to summary judgment dismissing the Labor Law § 200 and common-law negligence claims arising from an alleged defective condition, a defendant must prove "that it neither created the dangerous condition nor had actual or constructive notice of it" (*Alexandridis*, 180 AD3d at 972; *see Tomlinson v Demco Props. NY, LLC*, 189 AD3d 1294, 1295 [2d Dept 2020]). Here, plaintiff's bills of particulars alleged liability for a defective condition. Plaintiff contends that project defendants are liable under Labor Law § 200 because they had constructive notice of the debris. A defendant has constructive

notice of a dangerous condition when it is visible, apparent and existed for a sufficient time for defendant to discover and remedy it (*see Bonkoski v Condos Bros. Constr. Corp.*, 216 AD3d 612, 616 [2d Dept 2023]; *Mowla v Wu*, 195 AD3d 706, 707–08 [2d Dept 2021]). Plaintiff contends that the instruction by Salvatore Gioia, CRSG's site safety coordinator, that Glenco remove debris on the third floor established project defendants' constructive notice. However, the evidence plaintiff presents does not support this contention. A photograph in a site safety log for the date of plaintiff's injury which Gioia authenticated indicated that he advised Glenco's carpenter foreperson to cut threaded rods on the third floor which were a tripping hazard. The photograph depicted that installed rods protruded from the floor, not debris. Since plaintiff's evidence fails to establish project defendants' constructive notice of the debris, plaintiff is not entitled to summary judgment on the Labor Law § 200 claim (*see Mushkudiani v Racanelli Constr. Group, Inc.*, 219 AD3d 613, 616–17 [2d Dept 2023]; *Sapione v Board of Educ., Mamaroneck UFSD*, 259 AD2d 479, 479 [2d Dept 1999]).

To support summary judgment dismissing the Labor Law § 200 and common-law negligence claims, project defendants and DNA contend that they did not supervise and control plaintiff's work, which is only relevant where plaintiff's injury arises from the manner in which the work was performed (*see Martinez v City of New York*, 73 AD3d 993, 997–98 [2d Dept 2010]). Regarding the premises condition, project defendants and DNA only argue that no evidence exists that they created or had notice of any dangerous condition. However, a defendant seeking summary judgment dismissing a complaint cannot meet its burden by pointing to gaps in plaintiff's evidence (*see Maharaj v Kreidenweis*, 214 AD3d 717, 719–20 [2d Dept 2023]; *Padel v Nisanov*, 203 AD3d 1058, 1058–59 [2d Dept 2022]; *St. Paul Travelers Cos, Inc. v Joseph Mauro & Son, Inc.*, 93 AD3d 658, 661 [2d Dept 2012]). Thus, project defendants and DNA fail to meet their initial burden of demonstrating entitlement to summary judgment dismissing the Labor Law § 200 and common-law negligence claims (*see Chuqui v Amna, LLC*, 203 AD3d 1018, 1022–23 [2d Dept 2022]; *Toalongo v Almarwa Ctr., Inc.*, 202 AD3d 1128, 1131 [2d Dept 2022]; *White v Village of Port Chester*, 92 AD3d 872, 876 [2d Dept 2012]; *Martinez*, 73 AD3d at 997–98).

Turning to the branch of the motion by project defendants and DNA for summary judgment on third-party claims of LS-14 and Landsea for contractual indemnification and breach of contract to procure insurance against Glenco, the party seeking contractual indemnification must also demonstrate its freedom from negligence (*see Chuqui*, 203 AD3d at 1023; *Crutch v 421 Kent Dev., LLC*, 192 AD3d 977, 981 [2d Dept 2021]). Thus, project defendants and DNA's failure to demonstrate entitlement to dismissal of the common law negligence and Labor Law § 200 claim against LS-14 and Landsea constitutes a failure to show entitlement to contractual indemnification as well (*see Chuqui*, 203 AD3d at 1022-23; *Zukowski v Powell Cove Estates Home Owners Assn., Inc.*, 187 AD3d 1099, 1102 [2d Dept 2020]). To recover damages on their breach of contract to procure insurance claim, project defendants and DNA must show Glenco's noncompliance with a contract provision requiring it to procure insurance naming LS-14 and Landsea as additional insureds (*see Titov v V&M Chelsea Prop., LLC*, 230 AD3d 614, 619 [2d Dept 2024]; *Meadowbrook Pointe Dev. Corp. v F&G Concrete & Brick Indus., Inc.*, 214 AD3d 965, 969 [2d Dept 2023]; *Breland-Marrow v RXR Realty, LLC*, 208 AD3d 627, 629 [2d Dept 2022]; *Marquez v L & M Dev. Partners, Inc.*, 141 AD3d 694, 701 [2d Dept 2016]; *Ginter v Flushing Terrace, LLC*,

121 AD3d 840, 844 [2d Dept 2014]). Here, project defendants and DNA raise only conclusory arguments that Glenco did not comply with requirements to procure insurance. Although project defendants and DNA present Ryder's contract with Glenco, which contained an insurance procurement provision, they do not present evidence of the insurance Glenco obtained to demonstrate its non-compliance with that provision. Since project defendants and DNA do not present evidence of noncompliance by Glenco, denial of summary judgment on LS-14's and Landsea's third-party claim for breach of contract to procure insurance against it is appropriate (*see Breland-Marrow*, 208 AD3d at 629; *Marquez*, 141 AD3d at 701; *Ginter*, 121 AD3d at 844).

Regarding the branch of ARO/Rebar and Glenco's motion for summary judgment dismissing the third-party action and on its alternative relief, Glenco correctly argues that common law indemnification and contribution claims may only be asserted against plaintiff's employer when plaintiff sustains a grave injury (*see Fleming v Graham*, 10 NY3d 296, 299 [2008]; *Maxwell v Rockland County Community Coll.*, 78 AD3d 793, 794 [2d Dept 2010]). Grave injury is defined as "death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability" (Workers' Compensation Law § 11 [1]; *see Spiegler v Gerken Bldg. Corp.*, 35 AD3d 715, 717 [2d Dept 2006]). "Grave injuries are those injuries that are listed in the statute and are determined to be permanent" (*Grech v HRC Corp.*, 150 AD3d 829, 830 [2d Dept 2017] *quoting Persaud v Bovis Lend Lease, Inc.*, 93 AD3d 831, 832 [2d Dept 2012]). Since Glenco presents plaintiff's bills of particulars and deposition testimony which do not demonstrate that he sustained a grave injury, and project defendants and DNA do not address plaintiff's injuries in opposition, summary judgment dismissing the third-party claims for contribution and common-law indemnification is warranted (*see Skrok v Grand Loft Corp.*, 218 AD3d 702, 705 [2d Dept 2023]; *Lombardo v Tag Ct. Sq., LLC*, 126 AD3d 949, 951 [2d Dept 2015]).

A party seeking summary judgment dismissing a contractual indemnification claim must demonstrate that it had no contractual obligation to indemnify the party seeking indemnification against it (*see Dow v Consolidated Edison Co. of N.Y., Inc.*, 226 AD3d 648, 649 [2d Dept 2024]; *Meadowbrook Pointe Dev. Corp. v F&G Concrete & Brick Indus., Inc.*, 214 AD3d 965, 970 [2d Dept 2023]). This may be established by evidence that the indemnification provision upon which the claim is based has not been triggered or is unenforceable (*see English v Wainco Goshen 1031, LLC*, 218 AD3d 444, 445 [2d Dept 2023]). Glenco contends it performed its work and was not negligent so does not owe contractual indemnification. In relevant part, section 12.2 [b] of the trade contract between Ryder and Glenco provided that "[t]o the fullest extent permitted by law," Glenco agreed to indemnify, among other persons, project defendants, for claims including injuries to its employees arising out of or connected to the work or any act or omission of Glenco (*see* NYSCEF Doc No. 273 at 44-45). Since the injury to plaintiff arose from Glenco's work, under the terms of the trade contract, Glenco owed a duty to indemnify project defendants (*see Castro v Wythe Gardens, LLC*, 217 AD3d 822, 826 [2d Dept 2023]; *Keller v Rippowam Cisqua Sch.*, 208 AD3d 654, 654–55 [2d Dept 2022]). The court rejects Glenco's contention that the contractual

indemnification provision is unenforceable because it may require indemnification for project defendants' own negligence (*see* General Obligations Law § 5-322.1 [1]). Project defendants and DNA correctly maintain that it requires indemnification to the fullest extent permitted by law, which does not violate General Obligations Law § 5-322.1 and renders it enforceable (*see Feliz v Citnalta Constr. Corp.*, 217 AD3d 750, 752 [2d Dept 2023]; *Caballero v Benjamin Beechwood, LLC*, 67 AD3d 849, 852 [2d Dept 2009]). Therefore, dismissal of the third-party claim for contractual indemnification in unwarranted (*see Castro*, 217 AD3d at 826; *Keller*, 208 AD3d at 654–55).

A party seeking to dismiss a breach of contract to procure insurance claim may satisfy its burden by demonstrating that no contract required it to procure insurance (*see Crutch*, 192 AD3d at 984–85; *Desena v North Shore Hebrew Academy*, 119 AD3d 631, 636 [2d Dept 2014]) or that it procured the required insurance (*see Titov*, 230 AD3d at 619; *Meadowbrook Pointe Dev. Corp.*, 214 AD3d at 969). As project defendants and DNA correctly point out, Glenco does not raise any arguments supporting dismissal of the breach of contract to procure insurance third-party claim against it. Therefore, dismissal of that third-party claim is unwarranted (*see generally Smith v City of New York*, 288 AD2d 369, 370 [2d Dept 2001]).

Finally, since the third-party complaint is not dismissed in its entirety, the court now turns to the branch of the motion by ARO/Rebar and Glenco seeking the alternative relief of summary judgment on Glenco's third-party claims against CRSG and CRSG's summary judgment motion seeking, in effect, dismissal of the second third-party complaint. With respect to the second third-party claims for contractual indemnification and breach of contract to procure insurance, CRSG points to Reilly's testimony that Glenco did not hire CRSG. In addition, CRSG correctly contends that although its subcontract with Ryder dated December 11, 2019, contained insurance procurement and indemnification provisions, those provisions did not require CRSG to indemnify or procure insurance covering Glenco (*see* NYSCEF Doc No. 230 at 2, 11-13). ARO/Rebar and Glenco raise no arguments opposing dismissal of these claims. Therefore, dismissal of these claims is appropriate (*see Rivera v 203 Chestnut Realty Corp.*, 173 AD3d 1085, 1087 [2d Dept 2019]; *Pantaleo v Bellerose Senior Hous. Dev. Fund Co., Inc.*, 147 AD3d 777, 778-79 [2d Dept 2017]). Under the circumstances, denial of the branch of the motion of ARO/Rebar and Glenco for summary judgment on those claims is warranted.

Regarding the contribution and common-law indemnification claims, to demonstrate entitlement to summary judgment dismissing a contribution claim, a defendant must show that its work did not cause or contribute to plaintiff's injury or that it did not owe a duty of reasonable care independent of a contractual obligation or such duty to plaintiff at all (*see Flood v Ahern Painting Contrs., Inc.*, 219 AD3d 1408, 1409–10 [2d Dept 2023]; *Calle v 16th Ave. Grocery, Inc.*, 219 AD3d 450, 452 [2d Dept 2023]; *English*, 218 AD3d at 445; *Keller*, 208 AD3d at 655–56. A party may establish entitlement to summary judgment dismissing a common-law indemnification claim with proof it was not negligent and did not have authority to supervise, direct, or control the injury-causing work (*see Flood*, 219 AD3d at 1409; *Calle*, 219 AD3d at 452; *Keller*, 208 AD3d at 655). ARO/Rebar and Glenco argue that Glenco is entitled to summary judgment on those claims because any negligence by Glenco could pass through to CRSG given that it was the site safety

contractor responsible for ensuring safe work. CRSG contends it is not liable for either claim because it was not negligent. General supervision of the work and the authority to stop a subcontractor's unsafe work practice and ensure compliance with safety regulations are insufficient to establish liability for negligence (*see Guallpa v Canarsie Plaza, LLC*, 144 AD3d 1088, 1092 [2d Dept 2016]; *Opalinski v City of New York*, 110 AD3d 694, 695 [2d Dept 2013]). Here, Freeswick testified that Ryder and CRSG were responsible for ensuring that there were no tripping hazards at the work site (*see* NYSCEF Doc No. 264 at 33) and that subcontractors complied with written site safety rules (*see id.* at 34, 78). Although Gioia testified that CRSG did not have authority to stop unsafely performed work, Freeswick testified that he understood that CRSG had the authority to stop unsafe work, but that he did not know if that authority arose from the subcontract between Ryder and CRSG. Parker, Reilly, and Gioia testified that Ryder had the authority to stop work. Even accepting that CRSG had the authority to stop work, considering Reilly's testimony that CRSG's representative did not control the means and methods of Glenco's work and Gioia's testimony that CRSG's role was to observe and advise on site safety matters, CRSG demonstrates that no act or omission by it contributed to plaintiff's injury (*see Guallpa*, 144 AD3d at 1092; *Opalinski*, 110 AD3d at 695–96). ARO/Rebar and Glenco raise no fact issues in opposition. Therefore, dismissal of the contribution and common-law indemnification claims against CRSG, a site safety subcontractor, is also appropriate (*see Marquez*, 141 AD3d at 697–98; *cf. Silva v FC Beekman Assoc., LLC*, 92 AD3d 754, 756–57 [2d Dept 2012]). For the same reason, denial of the branch of the motion by ARO/Rebar and Glenco for summary judgment on Glenco's contribution and common-law indemnification claims is appropriate (*see Guaman-Sanango v 57 E. 72nd Corp.*, 227 AD3d 680, 682-83 [2d Dept 2024]; *Troia v City of New York*, 162 AD3d 1089, 1093 [2d Dept 2018]).

Accordingly, the branches of the motions by project defendants and DNA and ARO/Rebar and Glenco for summary judgment dismissing the Labor Law § 240 [1] claim are granted. The branch of project defendants' and DNA's motion for summary judgment dismissing the complaint against DNA is granted. The branches of the motion by ARO/Rebar and Glenco for summary judgment dismissing all claims against ARO/Rebar and the third-party claims for contribution and common-law indemnification against Glenco are granted. Plaintiff's motion for summary judgment on the Labor Law § 241 [6] claim is granted as against only LS-14 and Ryder. CRSG's motion for summary judgment dismissing the second third-party complaint is granted. The branch of the motion of ARO/Rebar and Glenco for summary judgment on ARO/Rebar's cross-claims against project defendants is denied as academic. The remaining branches of the motions by plaintiff, project defendants and DNA, and ARO/Rebar and Glenco are denied.

Dated: June 30, 2025

Robert I. Caloras, J.S.C.