

Garay v Jobco Inc.

2025 NY Slip Op 35357(U)

February 5, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 609388/2020

Judge: George Nolan

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SHORT FORM ORDER

INDEX No. 609388/2020

CAL. No. 202300965OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. GEORGE M. NOLAN
Justice of the Supreme Court

MOTION DATE 9/7/23 (004)
MOTION DATE 11/9/23 (005)
MOTION DATE 11/16/23 (006)
ADJ. DATE 11/16/23 (004)
ADJ. DATE 12/21/23 (005 & 006)
Mot. Seq. # 004 MotD
Mot. Seq. # 005 MotD
Mot. Seq. # 006 MotD

-----X
NESTOR RODRIGUEZ GARAY,

Plaintiff,

- against -

JOBCO INCORPORATED, SANDY AND
SPEONK HOUSING DEVELOPMENT FUND
COMPANY, INC., SOUTHAMPTON
WORKFORCE LLC, GEORGICA GREEN
VENTURES, LLC, and LOVE DRYWALL, INC.,

Defendants.

CHIRICO LAW PLLC
Attorney for Plaintiff
8804 4th Avenue
Brooklyn, New York 11209

HANNUM FERETIC PRENDERGAST &
MERLINO, LLC
Attorney for Defendants Jobco Inc. and
Sandy and Speonk Housing Development
Fund Company, Inc.
55 Broadway, Suite 202
New York, New York 10006

-----X
LOVE DRYWALL, INC.,

Third-Party Plaintiff,

- against -

MONTFORT, HEALY, MCGUIRE &
SALLEY LLP
Attorney for Defendant/Third-Party Plaintiff
Love Drywall, Inc.
840 Franklin Avenue
Garden City, New York 11530

BARUKU CONTRACTING CORP.,

Third-Party Defendant.
-----X

VIGORITO, BARKER, PATTERSON,
NICHOLS & PORTER, LLP
Attorney for Defendants Southampton
Workforce LLC and Georgica Green
300 Garden City Plaza, Suite 100
Garden City, New York 11530

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Upon the following papers read on the motions for summary judgment: (1) Notice of Motion and supporting papers by defendant Love Drywall, Inc., filed August 3, 2023; (2) Answering Affidavits and supporting papers by defendants Jobco Incorporated and Sandy and Speonk Housing Development Fund Company, Inc., filed October 5, 2023; (3) Answering Affidavits and supporting papers by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, filed October 6, 2023; (4) Notice of Motion and supporting papers by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, filed October 18, 2023; (5) Notice of Motion and supporting papers by plaintiff, filed October 26, 2023; (6) Replying Affidavits and supporting papers by defendant Love Drywall, Inc., filed November 13, 2023; (7) Replying Affidavits and supporting papers by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, filed December 5, 2023; (8) Answering Affidavits and supporting papers by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, filed December 5, 2023; (9) Answering Affidavits and supporting papers by defendants Jobco Incorporated and Sandy and Speonk Housing Development Fund Company, Inc., filed December 8, 2023; (10) Replying Affidavits and supporting papers by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, filed December 18, 2023; and (11) Replying Affidavits and supporting papers by plaintiff, filed December 20, 2023, it is

ORDERED that these motions are consolidated for the purpose of this determination; and it is further

ORDERED that the motion by defendant Love Drywall, Inc., for summary judgment dismissing the complaint against it and dismissing the cross claims against it by defendants Jobco Incorporated and Sandy and Speonk Housing Development Fund Company, Inc., is granted to the extent of dismissing the cross claims against it by defendants Jobco Incorporated and Sandy and Speonk Housing Development Fund Company, Inc., and is otherwise denied; and it is further

ORDERED that the motion by defendants Southampton Workforce LLC and Georgica Green Ventures, LLC, for summary judgment dismissing the complaint against them is granted to the extent of dismissing the complaint against Georgica Green Ventures, LLC, and is otherwise denied; and it is further

ORDERED that the motion by plaintiff for summary judgment on the issue of liability on his Labor Law § 240 claim against all defendants is granted to the extent of awarding plaintiff summary judgment on the issue of liability on his Labor Law § 240 claim against Love Drywall, Inc., Jobco Incorporated, Southampton Workforce LLC, and Sandy and Speonk Housing Development Fund Company, Inc., and is otherwise denied.

In this Labor Law action, plaintiff, Nestor Garay, alleges that as he was performing spackling work on a ceiling on September 4, 2019, at 41 North Phillips Avenue in Speonk, New York, the scaffold on which he was standing collapsed. The spackling work was part of a development project. Defendant Jobco Incorporated, the general contractor on the project, hired defendant Love Drywall, Inc., to perform certain work. Love Drywall, in turn, hired plaintiff's employer, Baraku Contracting Corp. (Baraku), to perform some of the work it was required to perform for Jobco. By his second amended complaint, plaintiff interposed claims against Jobco, Sandy and Speonk Housing Development Fund Company, Inc. (S&S), Southampton Workforce LLC, Georgica Green Ventures, LLC (Georgica), and Love Drywall for negligence and for violating Labor Law §§ 200, 240, and 241. Southampton Workforce and Georgica cross-claimed against Jobco and Love Drywall for common-law indemnification, contribution, contractual indemnification, and failure to procure insurance. Love Drywall cross-claimed against Jobco, S&S, Southampton Workforce, and Georgica for contribution and common-law indemnification. Jobco and S&S cross-claimed against Southampton Workforce, Georgica, and Love Drywall for common-law indemnification, contribution, contractual indemnification, and failure to procure insurance. Love Drywall also commenced a third-party action against Baraku for common-law indemnification, contribution, contractual indemnification, failure to procure insurance, and negligence. Baraku never answered the third-party complaint, and this court

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granted Love Drywall's motion for a default judgment against Baraku.¹

Love Drywall now seeks summary judgment dismissing the complaint against it and dismissing Jobco and S&S's cross claims against it. In support of its motion, Love Drywall submits, among other things, transcripts of the depositions of plaintiff, William Kopetz, Christopher Love, and David Gallo; emails; and an indemnity agreement. Southampton Workforce and Georgica seek summary judgment dismissing the complaint against them.² In support of their motion, they submit, among other things, the pleadings and transcripts of the depositions of plaintiff, Kopetz, and Gallo. Plaintiff moves for summary judgment in his favor against all defendants on the issue of liability on his Labor Law § 240 claim. In support of his motion, he submits, among other things, the pleadings and transcripts of the depositions of himself, Claudio Rojas, Kopetz, Gallo, and Love.

On a motion for summary judgment, the movant has the burden to show, through evidence in admissible form (*Bush v St. Clare's Hosp.*, 82 NY2d 738, 602 NYS2d 324 [1993]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]), that it is entitled to judgment as a matter of law and that there are no disputed issues of material fact (CPLR 3212; *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 99 NYS3d 734 [2019]). If the movant meets its burden, then the non-movant must show that there is a material issue of fact to be resolved at trial (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 105 NYS3d 353 [2019]). If the movant does not meet its burden, then the motion must be denied without consideration of any opposing papers (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]). On summary judgment, the court must view the evidence in the light most favorable to the non-moving party (*id.*).

Labor Law § 200 states that “[a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places.” Section 200 codifies “the common-law duty imposed upon an owner or general contractor to provide . . . workers with a safe place to work” (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877, 609 NYS2d 168, 169 [1993]; see *Alexandridis v Van Gogh Contr. Co.*, 180 AD3d 969, 120 NYS3d 347 [2d Dept 2020]). “Thus, liability under this statute is governed by common-law negligence principles” (*Grasso v New York State Thruway Auth.*, 159 AD3d 674, 678, 71 NYS3d 604, 611 [2d Dept 2018]; see *Schultz v Hi-Tech Constr. & Mgt. Servs., Inc.*, 69 AD3d 701, 893 NYS2d 225 [2d Dept 2010]). The application of section 200 is not limited to construction work (*Rocha v GRT Constr. of N.Y.*, 145 AD3d 926, 44 NYS3d 149 [2d Dept 2016]; *Foots v Consolidated Bldg. Contrs., Inc.*, 119 AD3d 1324, 989 NYS2d 723 [4th Dept 2014]; *Beadleston v American Tissue Corp.*, 41 AD3d 1074, 839 NYS2d 283 [3d Dept 2007]). There are two types of section 200 cases: “those where workers are injured as a result of dangerous or defective premises conditions at a

¹ Plaintiff initially included the Town of Southampton and the Town of Southampton Housing Authority as defendants. This court, by order dated May 18, 2021, granted the Town of Southampton's motion for summary judgment dismissing the complaint and cross claims against it. It appears that plaintiff has discontinued his claims against the Town of Southampton Housing Authority by removing it from the caption in an amended complaint.

² The court will not consider Southampton Workforce and Georgica's arguments related to summary judgment in their favor on their cross claims against Jobco for contractual indemnification and failure to procure insurance, as they did not request such relief in their notice of motion.

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worksite, and those involving the manner in which the work is performed” (*Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323, 329 [2d Dept 2008]; see *Robles v Taconic Mgt. Co., LLC*, 173 AD3d 1089, 103 NYS3d 571 [2d Dept 2019]). A defendant is not “required to blindly accept a plaintiff’s categorization of an accident as either a method and manner case or a dangerous condition case, or both,” and may demonstrate which category applies (*Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 673, 87 NYS3d 189, 195 [2d Dept 2018]; see *Rodriguez v HY 38 Owner, LLC*, 192 AD3d 839, 143 NYS3d 411 [2d Dept 2021]). When liability is based on an allegedly dangerous premises condition, an owner must have either created the condition or had actual or constructive notice thereof (e.g. *DeFelice v Seakco Constr. Co., LLC*, 150 AD3d 677, 54 NYS3d 55 [2d Dept 2017]). An owner need not control the worksite to be liable for a dangerous premises condition (*Griffin v New York City Tr. Auth.*, 16 AD3d 202, 791 NYS2d 98 [1st Dept 2005]). A general contractor, on the other hand, must have actual or constructive notice of the dangerous condition and control over the worksite to be liable (*Bessa v Anflo Indus., Inc.*, 148 AD3d 974, 51 NYS3d 102 [2d Dept 2017]; *Wynne v B. Anthony Constr. Corp.*, 53 AD3d 654, 862 NYS2d 379 [2d Dept 2009]).

When liability under Labor Law § 200 is premised on the manner in which the work is performed, “the party to be charged [must have] had the authority to supervise or control the performance of the work” (*Gasques v State of New York*, 59 AD3d 666, 667, 873 NYS2d 717, 720 [2d Dept 2009] [quotation marks and citations omitted], *affd* 15 NY3d 869, 910 NYS2d 415 [2010]; see e.g. *Paul v Village of Quogue*, 178 AD3d 942, 115 NYS3d 450 [2d Dept 2019]). There are also certain “rare hybrid case[s]” where both a dangerous premises condition and the means and methods of the work proximately cause the plaintiff’s injury (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 52, 919 NYS2d 44, 48 [2d Dept 2011] [the plaintiff’s injury was caused by both the lack of a shut-off mechanism on a lawnmower and a large hole in the ground]; see *Moscato v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 91 NYS3d 209 [2d Dept 2019]). “A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed” (*Ortega v Puccia*, 57 AD3d at 62, 866 NYS2d at 330; see *Lombardi v City of New York*, 175 AD3d 1521, 109 NYS3d 373 [2d Dept 2019]; *Gonzalez v Perkan Concrete Corp.*, 110 AD3d 955, 975 NYS2d 65 [2d Dept 2013]). Thus, general oversight over the work or safety conditions is insufficient to impose section 200 liability on a defendant (*Kauffman v Turner Constr. Co.*, 195 AD3d 1003, 150 NYS3d 321 [2d Dept 2021]; *Ciechorski v City of New York*, 154 AD3d 413, 62 NYS3d 60 [1st Dept 2017]; *Robinson v County of Nassau*, 84 AD3d 919, 923 NYS2d 135 [2d Dept 2011]).

Labor Law § 240 (1) states that “[a]ll 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 shall furnish or erect” suitable safety devices to guard against gravity-related hazards (see generally *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 727 NYS2d 37 [2001]). “To prevail on a Labor Law § 240 (1) cause of action, a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries” (*Gomez v Kitchen & Bath by Linda Burkhardt, Inc.*, 170 AD3d 967, 968, 96 NYS3d 609, 611 [2d Dept 2019]; see *Carrion v City of New York*, 111 AD3d 872, 976 NYS2d 126 [2d Dept 2013]). The plaintiff must establish that his or her injuries “were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603, 895 NYS2d 279, 281 [2009]; see *Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 7 NYS3d 263 [2015]). A defendant need not have exercised supervision or control over the work to be liable (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 601 NYS2d 49 [1993]). Nor is notice of a defect with safety equipment (*Lombardi v Stout*, 80 NY2d 290, 590 NYS2d 55 [1992]), or even the

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existence of such a defect in the first instance (*Martinez v ST-DIL LLC*, 192 AD3d 511, 144 NYS3d 687 [1st Dept 2021]), required for a defendant to be liable.

Section 240 is a strict-liability statute, and principles of comparative fault do not apply (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 771 NYS2d 484 [2003]). “[T]he purpose of the statute is to protect workers by placing ultimate responsibility for safety practices on owners and contractors instead of on workers themselves” (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 124, 8 NYS3d 229, 233 [2015] [quotation marks and citations omitted]). Nevertheless, there is no liability when a plaintiff’s actions were the sole proximate cause of his or her injuries (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 13 NYS3d 305 [2015]). The duty imposed by section 240 is nondelegable (*Gordon v Eastern Ry. Supply*, 82 NY2d 555, 606 NYS2d 127 [1993]; *Caracciolo v SHS Ralph, LLC*, 226 AD3d 859, 209 NYS3d 151 [2d Dept 2024]). “Plaintiff[s] d[o] not have an obligation to affirmatively request an adequate safety device” under section 240 (*McEachern v Extell Dev. Co.*, 199 AD3d 464, 465, 154 NYS3d 222, 222 [1st Dept 2021]).

Labor Law § 241 (6) makes owners and contractors (except owners of one and two-family dwellings who do not direct or control the work) liable for violations of the Industrial Code during the course of “constructing or demolishing buildings or doing any excavating in connection therewith” (see *Mugavero v Windows by Hart, Inc.*, 69 AD3d 694, 894 NYS2d 448 [2d Dept 2010]). “[C]ourts have generally held that the scope of Labor Law § 241 (6) is governed by 12 NYCRR 23-1.4 (b) (13), which defines construction work expansively” and “consists of all work of the types performed in the construction, erection, alteration, repair, maintenance, painting[,] or moving of buildings or other structures” (*De Jesus v Metro-North Commuter R.R.*, 159 AD3d 951, 953, 73 NYS3d 581, 584 [2d Dept 2018] [quotation marks, citations, and alterations omitted]; see *Wass v County of Nassau*, 173 AD3d 933, 103 NYS3d 478 [2d Dept 2019]; *Pittman v S.P. Lenox Realty, LLC*, 91 AD3d 738, 937 NYS2d 101 [2d Dept 2012]). Unlike section 240, comparative negligence is a defense to a claim under section 241 (*St. Louis v Town of N. Elba*, 16 NY3d 411, 923 NYS2d 391 [2011]). The duties imposed by section 241 (6) are nondelegable (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816 [1998]; *Chuqui v Cong. Ahavas Tzookah V’Chesed, Inc.*, 226 AD3d 960, 208 NYS3d 310 [2d Dept 2024]). An owner or general contractor’s lack of actual or constructive notice of a dangerous condition is irrelevant under section 241 (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816; *Reynoso v Bovis Lend Lease LMB, Inc.*, 125 AD3d 740, 4 NYS3d 55 [2d Dept 2015]; *Wrighten v ZHN Contr. Corp.*, 32 AD3d 1019, 822 NYS2d 115 [2d Dept 2006]).

The court will first address plaintiff’s motion. Plaintiff has shown that his accident falls within the protections of section 240, as he was spackling a ceiling while standing on a scaffold when the scaffold collapsed (*Pirozzo v Laight St. Fee Owner LLC*, 209 AD3d 596, 177 NYS3d 32 [1st Dept 2022]; *Debenedetto v Chetrit*, 190 AD3d 933, 140 NYS3d 569 [2d Dept 2021]; *Saavedra v 111 John Realty Corp.*, 179 AD3d 442, 115 NYS3d 303 [1st Dept 2020]). Regarding the defendants who may be liable under section 240, testimony from David Gallo, an owner of Southampton Workforce, showed that Southampton Workforce and S&S were the property owners and, therefore, are liable (e.g. Labor Law § 240). As for Jobco, William Kopetz, one of its site supervisors, admitted that Jobco was the general contractor on the project (see *Guanopatin v Flushing Acquisition Holdings, LLC*, 127 AD3d 812, 7 NYS3d 322 [2d Dept 2015]; *Henningham v Highbridge Community Hous. Dev. Fund Corp.*, 91 AD3d 521, 938 NYS2d 1 [1st Dept 2012]). Moreover, the contract between Jobco and Southampton Workforce gave Jobco the authority to control the means and methods of the work, the responsibility to provide labor and materials, and the responsibility of worksite safety. Thus, plaintiff has shown that Jobco is liable as a contractor under section 240 (see *Nucci v County of Suffolk*, 204 AD3d 817, 166 NYS3d 672 [2d Dept 2022]; *Badzio v East 68th*

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St. Tenants Corp., 200 AD3d 591, 161 NYS3d 32 [1st Dept 2021]). No party raised a material issue of fact in opposition. “The fact that the injured plaintiff may have been the sole witness to the accident does not preclude an award of summary judgment in favor of the plaintiff[]” (*Cruz v 1142 Bedford Ave., LLC*, 192 AD3d 859, 863, 145 NYS3d 77, 81 [2d Dept 2021]; see *Cardenas v 111-127 Cabrini Apts. Corp.*, 145 AD3d 955, 44 NYS3d 197 [2d Dept 2016]).

Plaintiff has also shown that Love Drywall, as an agent of Jobco, is liable under section 240. In the Labor Law context, an entity is an agent of the owner or general contractor when it “had the ability to control the activity which brought about the injury” (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864, 798 NYS2d 351, 353 [2005]; see *Moran v Trustees of Columbia Univ. in the City of N.Y.*, 224 AD3d 830, 206 NYS3d 136 [2d Dept 2024]; *Woodruff v Islandwide Carpentry Contrs., Inc.*, 222 AD3d 920, 202 NYS3d 272 [2d Dept 2023]), even if it did not actually exercise that ability (*Johnsen v City of New York*, 149 AD3d 822, 49 NYS3d 898 [2d Dept 2017]; *Marquez v L & M Dev. Partners, Inc.*, 141 AD3d 694, 35 NYS3d 700 [2d Dept 2016]). “To impose such liability, the defendant must have [had] the authority to control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition” (*Kavouras v Steel-More Contr. Corp.*, 192 AD3d 782, 784, 144 NYS3d 84, 87 [2d Dept 2021] [quotation marks and citations omitted]; see *Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 82 NYS3d 444 [2d Dept 2018]). Love Drywall selected Baraku as its subcontractor to perform work that it was required to perform for Jobco (see *Guanopatin v Flushing Acquisition Holdings, LLC*, 127 AD3d 812, 7 NYS3d 322 [“Since HSD Construction had the authority to choose the subcontractors who did the work, and entered into contracts with them, it had the authority to exercise control over the work, even if it did not actually do so.”]; *Tuccillo v Bovis Lend Lease, Inc.*, 101 AD3d 625, 958 NYS2d 86 [1st Dept 2012] [a contractor “demonstrated this authority” to supervise and control the plaintiff’s work “by subcontracting a portion of the (work) to (the plaintiff’s) employer”]; *Naughton v City of New York*, 94 AD3d 1, 940 NYS2d 21 [1st Dept 2012] [same]; *Williams v Dover Home Improvement*, 276 AD2d 626, 714 NYS2d 318 [2d Dept 2000]). In addition, when asked if William Kopetz, a Jobco representative, had “the authority to stop your work or your subcontractors’ work and demand that it be corrected if he observed something that he believed to be unsafe,” Christopher Love, Love Drywall’s principal, replied “I’m sure he did, so would I.” He expounded that he “would have gone to whoever the subcontractor was, the boss and I would have made sure they rectified it” (see *Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 82 NYS3d 444 [a party was a statutory agent when it “had the authority to enforce safety standards and choose the subcontractor who did the asbestos work”]; see also *Santos v Condo 124 LLC*, 161 AD3d 650, 78 NYS3d 113 [1st Dept 2018]). In opposition, Love Drywall failed to raise a material issue of fact.

Plaintiff, however, has not shown that Georgica is liable under Labor Law § 240. Plaintiff alleges that Georgica was an agent of the owner. But he has not shown that Georgica had the authority to control the work or correct any unsafe conditions (see *Hossain v Condominium Bd. of Grand Professional Bldg.*, 221 AD3d 981, 200 NYS3d 437 [2d Dept 2023]; *Lamar v Hill Intl., Inc.*, 153 AD3d 685, 59 NYS3d 756 [2d Dept 2017]). The submitted contract between “Southampton Workforce LLC c/o Georgica Green Ventures, LLC,” as owner, and Jobco, as contractor, states that Jobco is responsible for all of the work and safety standards. None of the submitted deposition testimony or other evidence indicates that Georgica had the authority to control the work or enforce safety standards. Accordingly, plaintiff’s motion is granted to the extent of granting him summary judgment on the issue of liability on his Labor Law § 240 claim against Jobco, Southampton Workforce, S&S, and Love Drywall, and is otherwise denied.

So much of Love Drywall’s motion as seeks summary judgment dismissing the Labor Law § 240 cause of action against it is denied for the reasons stated above, and so much of its motion as seeks dismissal

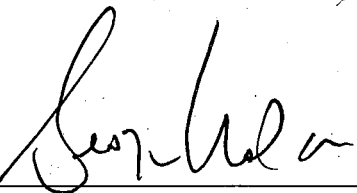
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of plaintiff's other claims is denied as academic (*Mata v 371 1st St., LLC*, 226 AD3d 569, 208 NYS3d 604 [1st Dept 2024]; *Miller v Rerob, LLC*, 197 AD3d 979, 153 NYS3d 357 [4th Dept 2021]). Love Drywall also seeks summary judgment dismissing Jobco and S&S's cross claims against it, which are for common-law indemnification, contribution, contractual indemnification, and failure to procure insurance. Love Drywall has shown that it did not enter into a contract with Jobco or S&S, defeating the cross claims for contractual indemnification and failure to procure insurance (*Pantaleo v Bellerose Senior Hous. Dev. Fund Co., Inc.*, 147 AD3d 777, 46 NYS3d 189 [2d Dept 2017]). In the Labor Law context, a party may obtain common-law indemnification or contribution against a party who actually exercised supervision over the work (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 929 NYS2d 556 [2011]; *Agurto v One Boerum Dev. Partners LLC*, 221 AD3d 442, 198 NYS3d 66 [1st Dept 2023]). Here, although Love Drywall had the authority to supervise plaintiff's work, it showed that it did not actually do so. Thus, it cannot be liable in common-law indemnification or contribution (*Safier v Wakefern Food Corp.*, 220 AD3d 956, 199 NYS3d 130 [2d Dept 2023]). In opposition, no party raised a material issue of fact. Although plaintiff testified that "Chris Louie," apparently a misidentification of Christopher Love, told him what he had to do, plaintiff also said that he never spoke with Chris Louie, but that Mario Velazquez, Baraku's owner, did. In any event, such general oversight is not supervisory control (see *Gjeka v Iron Horse Transp., Inc.*, 151 AD3d 463, 56 NYS3d 304 [1st Dept 2017]). Thus, Love Drywall's motion is granted to the extent of dismissing Jobco and S&S's cross claims against it, and is otherwise denied.

Finally, Southampton Workforce and Georgica seek summary judgment dismissing the complaint against them. For the reasons explained above, so much of the motion as seeks summary judgment dismissing the Labor Law § 240 cause of action against Southampton Workforce is denied, and so much of the motion as seeks dismissal of plaintiff's other claims against Southampton Workforce is denied as academic (*Mata v 371 1st St., LLC*, 226 AD3d 569, 208 NYS3d 604; *Miller v Rerob, LLC*, 197 AD3d 979, 153 NYS3d 357).

Georgica, on the other hand, has shown that it had no authority to supervise the work or correct any unsafe conditions, so it cannot be liable under section 240 (see *Hossain v Condominium Bd. of Grand Professional Bldg.*, 221 AD3d 981, 200 NYS3d 437; *Lamar v Hill Intl., Inc.*, 153 AD3d 685, 59 NYS3d 756). For the same reasons, it cannot be liable under section 241 (see *Lamar v Hill Intl., Inc.*, 153 AD3d 685, 59 NYS3d 756; *Delgado v All-Safe, Inc.*, 119 AD3d 515, 987 NYS2d 913 [2d Dept 2014]). And because plaintiff's incident arose from the means and methods of the work (see *Bautista v Archdiocese of N.Y.*, 164 AD3d 450, 84 NYS3d 47 [1st Dept 2018]), Georgica cannot be liable under section 200 or in common-law negligence in the absence of any supervisory authority (see *Olarte v Morgan*, 148 AD3d 918, 49 NYS3d 532 [2d Dept 2017]; *Rodriguez v Trades Constr. Servs. Corp.*, 121 AD3d 962, 997 NYS2d 78 [2d Dept 2014]). In opposition, no party raised a material issue of fact. Thus, Southampton Workforce and Georgica's motion is granted to the extent of dismissing the complaint against Georgica, and is otherwise denied.

Dated: February 5, 2025



HON. GEORGE NOLAN, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION