Rengifo v Safon Owner LLC
2026 NY Slip Op 30280(U)
January 22, 2026
Supreme Court, New York County
Docket Number: Index No. 159143/2021
Judge: David B. Cohen

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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INDEX NO. 159143/2021

EDWIN RENGIFO,

Plaintiff,

MOTION DATE 09/24/2024, 11/21/2024

- v -

MOTION SEQ. NO. 001 002

SAFON OWNER LLC, OCEAN PRIME LLC, NYACK 2 WASHINGTON LLC, BATTERY COMMERCIAL ASSOCIATES LLC,17 BATTERY PLACE CONDOMINIUM BOARD,

DECISION + ORDER ON MOTION

Defendant.

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SAFON OWNER LLC, OCEAN PRIME LLC, NYACK 2 WASHINGTON LLC, BATTERY COMMERCIAL ASSOCIATES LLC, 17 BATTERY PLACE CONDOMINIUM BOARD

Third-Party
Index No. 595009/2022

Plaintiff,

-against-

CENTENNIAL ELEVATOR INDUSTRIES INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 94, 95, 98, 103, 105, 106, 107, 108, 109, 110, 111, 112, 115, 117, 118

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 96, 97, 99, 100, 101, 102, 104, 113, 114, 116, 119, 120, 121, 122

were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 001 and 002 are hereby consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff elevator mechanic on December 8, 2020, when, while working at a renovation site located at 1

West Street, New York, New York (the Premises), he was struck in the hand by a falling elevator counterweight.

In motion sequence number 001, defendants/third-party plaintiffs Safon Owner LLC (Safon), Ocean Prime LLC (Ocean), Nyack 2 Washington LLC (Nyack), Battery Commercial Associates LLC (Battery) and 17 Battery Place Condominium Board (the 17 Battery Board) (collectively, defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint against them, and for summary judgment in their favor on their third-party complaint against third-party defendant Centennial Elevator Industries, Inc. (Centennial).[1]

In motion sequence number 002, plaintiff moves, pursuant to CPLR 3212, for partial summary judgment as to liability on the Labor Law §§ 240 (1) and 241 (6) claims against defendants.

BACKGROUND

At the time of the accident, the Premises was a mixed-use condominium, with one unit owned by Ocean and another owned by Battery. Ocean retained Centennial to provide elevator modernization services at the Premises, and plaintiff was employed by Centennial.[2]

[1] Defendants' notice of motion (NYSCEF Doc. No. 56) errantly indicates that it is seeking relief on behalf of two entities that are not related to the action. That said, it is signed by counsel on behalf of defendants, and the motion papers otherwise reference the proper parties. While Centennial objects to this error and seeks dismissal of the motion as against it on that ground, it expresses no confusion or prejudice, and it otherwise fully opposes the motion. Accordingly, the error in the notice of motion is deemed non-prejudicial and the motion will be considered (CPLR 2001).

[2] The papers do not explicitly address Safon, Nyack or 17 Battery or how they relate to the subject action.

Plaintiff's Deposition Testimony (NYSCEF Doc. No. 90)

Plaintiff testified that on the day of the accident, he was a "mechanic helper" for Centennial, an elevator repair company (plaintiff's tr at 11). He worked in Centennial's "modernization department" (*id.* at 17), which was responsible for replacing "everything from old to new" (*id.* at 18). His job entailed assisting an elevator mechanic in his work.

At the time of the accident, plaintiff was working at the Premises with Wendell Presinal (Presinal), a Centennial mechanic (*id.* at 18). Their supervisor was a Centennial employee named "Sasha" (*id.* at 23-24). Plaintiff testified that he received his instructions and directions from Presinal (*id.* at 30) and no one else (*id.* at 31).

The work at the Premises entailed removing and replacing the entirety of the elevator car, including "cables, walls, floors" (*id.* at 20). On the day of the accident, they were working on removing one of the six elevators on the Premises.

Plaintiff testified that he would "always wait" for instructions from Presinal (*id.* at 30), and his job included assisting Presinal with whatever was needed. On the day of the accident, plaintiff and Presinal were removing the elevator's counterweight – a stack of heavy rectangular weights that balance the elevator as it travels. Each individual weight is called a "subweight" (*id.* at 44). Because the elevator was parked on the top floor, the counterweight was at the bottom of the elevator's shaft, in the elevator pit (*id.* at 38).

To perform their work, plaintiff and Presinal set up a platform approximately 12 feet above the elevator pit bottom. Presinal then set an A-frame ladder on the platform to reach the counterweight. Separately, plaintiff set up a 16-foot extension ladder to one side of the platform (*id.* at 43), and planned to use the ladder to reach the platform to assist Presinal (*id.* at 49). At

the time of the accident, plaintiff stood on the ladder with his right hand resting on the platform and his left hand holding a button that controlled a lifting device (*id.* at 70).

Plaintiff testified that, to remove a subweight, Presinal would connect it to the lift via straps (*id.* at 56). Once attached, plaintiff would press a button to lift the weight up. Presinal would then move the subweight clear of the platform and plaintiff would lower it to the ground (*id.* at 57). The process would be repeated for each subweight. Presinal explained this to plaintiff and directed him to stand on the ladder during the process (*id.* at 61-62). Presinal was aware that plaintiff was standing on the ladder (*id.* at 62). Presinal never told plaintiff that he should not be in the pit during the removal procedure (*id.* at 62-63).

Immediately before the accident, plaintiff and Presinal had successfully removed one subweight (*id.* at 60). When they began removing the second subweight, Presinal "pulled the counterweight to himself" (*id.* at 65) in order to attach it to a "bullnose ring" (*id.* at 129). Before he could do so, Presinal lost his balance and fell from his ladder onto the platform (*id.* at 66). The subweight fell as well (*id.* at 66 [the subweight "slipped and went down"]), struck the platform and then "bounced," hitting plaintiff on his right index finger (*id.* at 70).

Deposition Transcript of Wendell Presinal (Centennial's Mechanic) (NYSCEF Doc. No. 92)

Presinal testified that on the day of the accident, he was an elevator mechanic employed by Centennial (Presinal tr. at 7). His supervisor was a Centennial employee (*id.* at 27), and he received his instructions and all his tools and materials from his Centennial supervisors (*id.* at 33-34). Plaintiff was Presinal's assistant (*id.* at 23).

On the day of the accident, Presinal and plaintiff were removing elevator counterweights (*id.* at 43). At the time of the accident, the counterweight was "between the lobby and the [elevator] pit (*id.* at 52). There was a plank platform across the elevator shaft, under the

counterweight (*id.* at 53), which was accessible via a ladder at the bottom of the elevator shaft. Presinal would stand on the platform to reach the counterweight. He would then hook the subweights to a "chainfall" to lift, remove, and lower the subweights to the elevator pit floor (*id.* at 62-63).

According to Presinal, plaintiff never used the ladder (*id.* at 77). During the removal procedure, no one else was supposed to be in the pit with Presinal (*id.* at 67), and he would direct his assistant to stand "[o]utside the pit" (*id.* at 67) for safety purposes (*id.* at 78).

Immediately before the accident, plaintiff handed Presinal the chainfall (*id.* at 73). Presinal then told plaintiff to leave the pit (*id.* at 74), and he saw plaintiff leave the pit (*id.* at 78). Presinal began removing a subweight when the "counterweight under it . . . slipped out, hit the ladder that [Presinal] was on [and] hit [his] foot" (*id.* at 79). It was then that Presinal saw that "[plaintiff] was there . . . . He had his hand on the plank, and the counterweight bounced on his hand" before falling to the pit floor (*id.* at 79). The subweight slipped because it was covered in grease (*id.* at 149).

Presinal reiterated that plaintiff "was not supposed to be there" and that he "didn't know that he was there" (*id.* at 80). He was also unaware that plaintiff had his hand on the platform until after the accident (*id.* at 85). Presinal testified that plaintiff explained to him that he stayed in the pit because "he wanted to learn" how to do Presinal's job (*id.* at 89).

Deposition Testimony of Mario Fenko (Defendants' Witness) (NYSCEF Doc. No. 91)

Mario Fenko testified that on the day of the accident, he was employed by non-party Columbus Property Group as a resident manager (Fenko tr at 21). Fenko's duties included "taking care of the building" including "maintenance" and "cleaning" (*id.* at 23). He would also

put up warning signs or make sure contractors did the same if needed for their work (*id.* at 45-46).

Fenko testified that the Premises was separated into two segments – commercial and residential. The Premises is a 36-story building with the first 19 floors being commercial and the rest residential (*id.* at 26). Each was owned and operated by a different entity. Fenko oversaw Ocean's property – the residential section – at the Premises (*id.* at 24).

The elevators that serviced the residential floors of the Premises was a "[c]ompletely separate system" from those that serviced the commercial floors (*id.* at 74). Centennial was the elevator maintenance company for the residential floors of the Premises (*id.* at 75). Centennial would do their work on their own (*id.* at 61-62); Fenko did not supervise Centennial (*id.* at 63).

Centennial also had a modernization contract for the residential elevators (*id.* at 78). That contract entailed the removal of the old elevator cabs and machinery, replacing them with "[b]rand new cabs, ropes, machines" (*id.* at 78). Fenko was not involved in the modernization project (*id.* at 81). Fenko was shown a copy of an AIA standard contract and confirmed that it was between Ocean and Centennial (*id.* at 103).

Affirmation of Harry Dreizen (Executive Vice President of Safon, Ocean and Battery) (NYSCEF Doc. No. 58)

Harry Dreizen affirms that he is the executive vice president and general counsel to Safon, Ocean and Battery. He affirms that Ocean was the owner of the residential portion of the Premises while Battery was the owner of the commercial portion of the Premises (Dreizen aff, ¶ 4-5). He further affirms that Safon, Nyack and the 17 Battery Board were not owners and had no involvement with the Premises or the Project (*id.*, ¶¶ 9-11), and that the Project was performed pursuant to a contract between Centennial and Ocean (*id.*, ¶ 12).

DISCUSSION

"[T]he 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. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must "'assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions'" (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Preliminary Procedural Issues

As a part of his motion, plaintiff provides the expert affirmation of William Warr, a licensed elevator inspector (NYSCEF Doc. No. 79). Defendants object to the introduction of Warr's affirmation on the ground that he was not disclosed pursuant to CPLR 3101(d) prior to the filing of plaintiff's motion. This argument is unavailing.

"Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit" (CPLR 3212 [b]; *see e.g. Kimberlee M. v. Jaffe*, 139 AD3d 508, 509

[1st Dept 2016]). Accordingly, the court will not disregard Warr's affirmation on this ground.

The Labor Law § 240 (1) Claim (Motion Sequence Number 001 and 002)

Defendants move for summary judgment dismissing the Labor Law § 240 (1) claim as against them. Plaintiff moves for summary judgment in his favor on the same claim as against defendants.

Labor Law § 240 (1) requires "[a]ll contractors and owners and their agents" to "furnish or erect, or cause to be furnished or erected" scaffolds, hoists, ladders and "other devices which shall be so constructed, placed and operated as to give proper protection to a person" employed in construction work (Labor Law § 240 [1]). The statute "imposes a nondelegable duty on owners and contractors to provide devices which shall be so constructed, placed and operated as to give proper protection to those individuals performing the work" (*Quiroz v Memorial Hosp. for Cancer & Allied Diseases*, 202 AD3d 601, 604 [1st Dept 2022] [internal quotation marks and citations omitted]). It "was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

> The statute is violated when the plaintiff is exposed to an elevation-related risk while engaged in an activity covered by the statute and the defendant fails to provide a safety device adequate to protect the plaintiff against the elevation-related risk entailed in the activity or provides an inadequate one.

(*Jones v 414 Equities LLC*, 57 AD3d 65, 69 [1st Dept 2008]; *O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 33 [2017] [section 240 liability "is contingent upon the existence of a hazard

contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein").

That said, not all workers injured at a construction site fall within the scope of protections of section 240 (1), and "a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace" (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 2007] [section 240 (1) "does not cover the type of ordinary and usual peril to which a worker is commonly exposed at a construction site"). Instead, liability is "contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]).

Therefore, to prevail on a Labor Law § 240 (1) claim, a plaintiff must establish that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]).

Initially, while plaintiff moves as against all defendants, it makes no reference as to whether Safon, Nyack or the 17 Battery Board are owners, contractors or agents as contemplated by section 240 (1). Accordingly, plaintiff is not entitled to summary judgment in his favor as against these defendants (Labor Law § 240 [1]; *see e.g. Quiroz*, 202 AD3d at 604).

Similarly, while plaintiff notes that Battery owns the commercial portion of the Premises, he does not explain Battery's relationship to the Project – which took place in the residential portion of the Premises – or otherwise explain Battery's ownership interest in that portion of the Premises. Accordingly, plaintiff has not established whether Battery is a proper defendant under

the Labor Law and is, therefore, not entitled to summary judgment in his favor as against Battery (*id.*). Therefore, plaintiff's motion remains only with respect to Ocean, the owner of the residential portion of the Premises.

As to defendants, while they provide evidence Safon, Nyack, Battery and 17 Battery Board had no relationship with the Project or the residential portion of the Premises where the accident occurred (Dreizen Aff, ¶ 9-11), they do not seek dismissal of these entities on that ground.

Turning to the facts of the case, plaintiff's accident was caused by a falling object – the counterweight – that fell from a height onto his hand. In a falling object case, "the plaintiff must demonstrate that at the time the object fell, it was either being hoisted or secured or required securing for the purpose of the undertaking (*Fabrizi v 1095 Ave. of Americas, L.L.C.*, 22 NY3d 658, 662 [2014] [internal citations and quotation marks omitted]).

Here, it is undisputed that the counterweight's subweights, which hung from a height, were in the process of being removed and needed to be secured for the purpose of that undertaking. Plaintiff testified that Presinal lost his balance and then lost control of the subweight, causing it to fall. Presinal confirmed that it fell and further testified that it slipped from its secured location due to accumulated grease. There is no dispute that the subweight struck plaintiff.

Accordingly, plaintiff has established prima facie entitlement to summary judgment on his section 240 (1) claim (*see e.g. Goncalves v New 56th & Park (NY) Owner, LLC*, 177 AD3d 468, 468 [1st Dept 2019] [unrebutted testimony that a chain hoist system allowed an object to fall from above and strike the plaintiff was sufficient to establish prima facie entitlement to summary judgment on the section 240 (1) claim]).

In support of their motion and in opposition to plaintiff's, defendants argue that at least a question of fact exists as to the nature of the accident. Specifically, whether the accident was caused by Presinal's accidental dropping/mishandling of a slippery object, or because the counterweight was inadequately secured to prevent it from falling from a height. However, a defendant would be liable under section 240 (1) for a falling object "whether the plaintiff's coworker accidentally dropped the [object] while preparing to use the [safety device]" or whether the object "fell because it was inadequately secured" (*Barrios v 19-19 24th Ave. Co., LLC*, 169 AD3d 747, 749 [2d Dept 2019]).

Defendants also rely on *Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263 (1st Dept 2007) for the proposition that a falling counterweight is an ordinary peril at a construction site. However, in *Buckley*, all work on the counterweights had been completed and they were not being hoisted or secured at the time of the accident (*id.* at 266). As such, the counterweight, which came free due to an unforeseen defect, did not need securing at the time of the accident. The court explained that "[w]hat is essential to a conclusion that an object requires securing is that it presents a foreseeable elevation risk in light of the work being undertaken (*id.* at 269).

Next, Centennial argues that a question of fact exists as to whether plaintiff was a recalcitrant worker because he failed to heed Presinal's warning to leave the pit. The recalcitrant worker defense "requires a showing that plaintiff refused to use a safety device that was provided to him" (*Peralta v Hunter Roberts Construction Group LLC*, 242 AD3d 646, 646 [1st Dept 2025]; *see also Vasquez v Cohen Bros. Realty Corp.*, 105 AD3d 595, 598 [1st Dept 2013]).

Here, plaintiff did not refuse to use a safety device and his failure to follow instructions did not establish that he was recalcitrant (*Peralta*, 105 AD3d at 598 [the plaintiff's failure to

follow instructions on how to properly build a scaffold did not make the plaintiff recalcitrant]). Similarly, even if plaintiff "was in an area of the worksite where he was not supposed to be at the time of his accident, this would at most constitute comparative negligence which is not a defense to a Labor Law § 240 (1) claim" (*Hewitt v NY 70th St. LLC*, 187 AD3d 574, 575 [1st Dept 2020]).

Given the foregoing, defendants have failed to raise a question of fact that would defeat plaintiff's prima facie entitlement to summary judgment in his favor on his Labor Law § 240 (1) claim against Ocean. Defendants have also failed to establish their prima facie entitlement to summary judgment dismissing the Labor Law § 240 (1) claim as against any other defendant.

Thus, plaintiff is entitled to summary judgment in his favor as to liability on his Labor Law § 240 (1) claim as against Ocean only.

The Labor Law § 241 (6) Claims (Motion Sequence Number 001 and 002)

Defendants move for summary judgment dismissing the Labor Law § 241 (6) claim as against them. Plaintiff moves for summary judgment in his favor on the same claim as against defendants.

Labor Law § 241 (6) provides, in pertinent part, as follows:

> All contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "'to provide reasonable and adequate protection and safety' to persons employed in,

or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *see also Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d at 501–502).

To sustain a Labor Law § 241 (6) claim, it must be established that the defendant violated a specific, "concrete specification" of the Industrial Code, rather than a provision that considers only general worker safety requirements (*Messina v City of New York*, 300 AD2d 121, 122 [1st Dept 2002]). Such violation must be a proximate cause of the plaintiff's injuries (*Yaucan v Hawthorne Vil., LLC*, 155 AD3d 924, 926 [2d Dept 2017] ["a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the circumstances of the accident"]; *see also Sutherland v Tutor Perini Bldg. Corp.*, 207 AD3d 159, 161 [1st Dept 2022]). "Whether a regulation applies to a particular condition or circumstance is a question of law for the court" (*Harrison v State of New York*, 88 AD3d 951, 953 [2d Dept 2011]).

As an initial matter, plaintiff lists multiple violations of the Industrial code in his complaint and bill of particulars. Except for 12 NYCRR 23-2.5 (b) (3) and (4), plaintiff does not contest their dismissal. The uncontested provisions are thus deemed abandoned (*Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section"]).

Industrial Code 12 NYCRR 23-2.5 (b) (3)

Industrial Code section 23-2.5(b) governs the protection of persons in elevator shafts, and subsection (b) (3) provides the following:

> Where any elevator is being installed, repaired or replaced and persons are working in the shaft, a solid or wire mesh partition shall be provided where necessary to prevent such persons from contacting any adjacent operable elevator or counterweight

and is sufficiently specific to support a section 241 (6) claim (*Brownrigg v New York City Hous. Auth.*, 119 AD3d 504, 507-508 [2d Dept 2014]).

Here, the accident did not involve an adjacent operable elevator or counterweight. The counterweight was not in an adjacent shaft. In addition, the subject counterweight was inoperable, as it was being dismantled. Accordingly, this provision is inapplicable to plaintiff's accident (*see Moldaver v Pref 34 E. 51st St., LLC*, 194 AD3d 419, 420 [1st Dept 2021] [section (b) (3) inapplicable where "the counterweight that plaintiff was installing was not operable"]).

Accordingly, defendants are entitled to summary judgment dismissing that part of the Labor Law § 241 (6) claim premised on a violation of Industrial Code 12 NYCRR 23-2.5 (b) (3).

Industrial Code 12 NYCRR 23-2.5 (b) (4)

Industrial Code 12 NYCRR 23-2.5 (b) (4) provides the following:

> Where persons are required to perform any work at intermediate levels between stories in elevator shafts, such persons shall be provided with overhead protection from falling objects or material. Such protection shall be at least 27 inches in width and shall cover the area where the persons are working.

Subsection (b) (4) is sufficiently specific to support a section 241 (6) claim (*see e.g. Nevins v Essex Owners Corp.*, 276 AD2d 315, 317 [1st Dept 2000]).

Here, placing overhead planking between plaintiff and Presinal would have made it impossible to lower the counterweights once they were removed. As such, overhead planking placed at such a height that it would have prevented the counterweight's fall was not required (*see Bazdaric v Almah Partners, LLC*, 41 NY3d 310, 321 [2024] ["the particular commands of the Industrial Code may not apply if they would make it impossible to conduct the work"]).

Accordingly, defendants are entitled to summary judgment dismissing that part of the Labor Law § 241 (6) claim premised on a violation of Industrial Code 12 NYCRR 23-2.5 (b) (4). For the same reasons, plaintiff is not entitled to summary judgment in his favor as to the same claims.

The Common-law Negligence and Labor Law § 200 Claims (Motion Sequence Number 001)

Defendants move for summary judgment dismissing plaintiff's common-law negligence and Labor Law § 200 claims.

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Rodriguez v Metro. Transportation Auth.*, 191 AD3d 1026 [2d Dept 2021] citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Labor Law § 200 (1) states, in pertinent part, as follows:

> All 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. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons.

There are two distinct standards applicable to section 200 cases, depending on the situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the premises (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]; *see also Griffin v New York City Tr. Auth.*, 16 AD3d 202, 202 [1st Dept 2005]).

Here, the accident occurred when an under-construction counterweight fell on plaintiff. Therefore, the accident implicates the means and methods of the work (*see e.g. Villanueva v 114*

Fifth Ave Assoc. LLC., 162 AD3d 404, 406 1st Dept 2018 ["[w]here a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises"]).

Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work" (*Andino v Wizards Studios N. Inc.*, 223 AD3d 508, 509 [1st Dept 2024]; *DaSilva v Toll First Ave., LLC,* 199 AD3d 511, 513 [1st Dept 2021]). Specifically, "liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]).

The record is devoid of any evidence supporting the assertion that defendants actually supervised or controlled the injury-producing work – i.e. removing elevator counterweights. Specifically, plaintiff and Presinal both testified that they received their work directions from Centennial. Accordingly, defendants have established their prima facie entitlement to summary judgment on these claims (*see Andino,* 223 AD3d at 509 [dismissing common-law negligence and section 200 claims where "there is no evidence that (the moving defendants) actually exercised control over the means and methods of (the injury-producing) work"]).

Plaintiff's argument that the owner of the Premises attended weekly progress meetings, at best, establishes a general supervisory control over the Project, which is insufficient to impute liability under section 200, as even where an entity "had the authority to review onsite safety, . . . [such] responsibilities do not rise to the level of supervision or control necessary to hold the [entity] liable for plaintiff's injuries under Labor Law § 200" (*Bisram v Long Is. Jewish Hosp.*, 116 AD3d 475, 476 [1st Dept 2014]).

Plaintiff's argument that a question of fact exists as to whether the building superintendent supervised and controlled Presinal's work is also unavailing, as neither Presinal nor the premises' resident manager testified that Centennial supervised Presinal's work.

Given the foregoing, as plaintiff has failed to raise a triable issue of fact on this issue, defendants are entitled to summary judgment dismissing the common-law negligence and Labor Law § 200 claims as against them.

Defendants' Contractual Indemnification Claims Against Centennial (Motion Sequence Number 001)

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; *see also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]).

In contractual indemnification, "the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021], quoting *Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]). Unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, "[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (*Correia*, 259 AD2d at 65).

Additional facts relevant to this claim

Ocean and Centennial entered into an AIA standard form contract for the "modernization and maintenance of six (6) elevators" (defendants notice of motion, exhibit J; NYSCEF Doc. No. 68) (the Contract). Though signed by both Ocean and Centennial, it is undated, and it does not contain an indemnification provision.

Defendants also provide a copy of a document, dated September 23, 2019, entitled "Insurance Agreement" that is signed by Centennial (*id.* exhibit K; NYSCEF Doc. No. 69). The insurance agreement contains an indemnification provision that provides the following:

> [Centennial], as a condition of entrance, and in consideration of the opportunity to provides goods and/or service to [Battery] and [Safon] . . . acknowledges that [it] will not seek to hold [Battery and Safon], its employees or officers liable by claim, lawsuit or otherwise, for loss, liability, claim, injury, damage or expense which arises out of or relates to [Centennial's] activities on or about the premises of Battery Commercial Associates LLC and Safon Owner, LLC.

Defendants argue that the Contract and the insurance agreement must be read together as a single document. However, they have failed to establish that these two documents are related, as the insurance agreement does not reference the Contract or otherwise indicate that it is a part thereof. It also makes no reference to the Project, and it does not mention Ocean – the only entity (other than Centennial) that is a party to the Contract.

Moreover, the Contract has an integration clause, and a list of all documents merged into the contract (*id.*, exhibit J, art 1, art 9). The insurance agreement is not one of the enumerated documents. Accordingly, the record does establish that the insurance agreement is a part of the Contract, such that the indemnification provision applies to Centennial's work under the Contract.

In any event, it is uncontested that Centennial's work was performed on Ocean's behalf, on Ocean's portion of the Premises. That work involved elevators that only serviced Ocean's floors. Meanwhile, the indemnification provision is limited, and requires Centennial to indemnify Battery and Safon for work done "on or about the premises of [Battery and Safon]." There is no evidence in the record that the portion of the Premises owned by Ocean is also considered "the premises of [Battery and Safon]." Rather, the evidence indicates the opposite.

Given the foregoing, defendants have not met their prima facie burden on their claim for contractual indemnification against Centennial and, accordingly, are not entitled to summary judgment in their favor on that claim.

Defendants' Common-law Indemnification and Contribution Claims Against Centennial (Motion Sequence Number 001)

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], quoting *Correia*, 259 AD2d at 65). In other words, a claim for common-law indemnification is actionable only where a party has been found to be "vicariously liable without proof of any negligence . . . on its own part" (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377-378 [2011]).

As an initial matter, Centennial argues that Worker's Compensation § 11 should prevent defendants from seeking liability under these theories.

Under section 11, "[a]n employer's liability for an on-the-job injury is generally limited to workers' compensation benefits, [except] when an employee suffers a 'grave injury' the employer also may be liable to third parties for indemnification or contribution" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 412-413 [2004]). A grave injury is defined as

> [D]eath, 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.

(Worker's Compensation Law § 11). Here, plaintiff's injuries include the loss of an index finger. Accordingly, section 11 does not bar liability for common-law indemnification or contribution as against Centennial.

With that said, defendants interpose a conclusory argument in support of their motion. That plaintiff suffered a grave injury does not, in and of itself, establish defendants' entitlement to common-law indemnification or contribution from Centennial. Accordingly, defendants have failed to demonstrate their prima facie entitlement to summary judgment on these claims.

Centennial's Third-Party Counterclaims Against Defendants (Motion Sequence Number 001)

Defendants move for summary judgment dismissing the contractual and common-law indemnification and contribution counterclaims asserted against them by Centennial.

Initially, defendants are correct that no contract requires defendants to indemnify Centennial, and they are thus entitled to summary judgment dismissing this counterclaim.

As to common-law indemnification and contribution, as discussed above, defendants were not negligent with respect to the subject accident, as a violation of Labor Law 240(1) is vicarious liability instead of active negligence (*see e.g. Shelton v Chelsea Piers, L.P.*, 214 AD3d 490 [1st Dept 2023] [as defendant only vicariously liable under Labor Law 240(1), it could seek common-law indemnity from party who was actively negligent]; *Winkler v Halmar Intl., LLC*, 206 AD3d 508 [1st Dept 2022] [as defendants were only found passively negligent pursuant to Labor Law 240(1) and 241(6), cross-claims for common-law indemnity and contribution properly dismissed]). Therefore, defendants cannot be found "guilty of some negligence that contributed to the causation of the accident" (*Perri*, 14 AD3d at 684-685). Accordingly, defendants are entitled to summary judgment dismissing these counterclaims.

The parties' remaining arguments have been considered and were found unavailing.

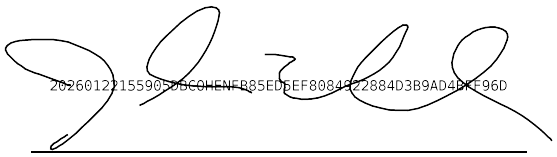
CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the part of motion of defendants/third-party plaintiffs (motion sequence number 001), pursuant to CPLR 3212, for summary judgment dismissing the complaint and for summary judgment in their favor on their third-party complaint against third-party defendant Centennial Elevator Industries, Inc. is granted to the extent that the common-law negligence and Labor Law §§ 200 and 241 (6) claims, and all third-party counterclaims, are severed and dismissed as against them; and the motion is otherwise denied, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff**'s** motion (motion sequence number 002), pursuant to CPLR 3212, for summary judgment in his favor on his Labor Law §§ 240 and 241 (6) claims is granted as to the Labor Law § 240 (1) claim, and the motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear for the previously-scheduled settlement conference on January 29, 2026 at 10:30 am, at 80 Centre Street, Room 106, New York, New York.



1/22/2026
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:		**CASE DISPOSED**			[X]	**NON-FINAL DISPOSITION**	
	[ ]	**GRANTED**	[ ]	**DENIED**	[X]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**			[ ]	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**			[ ]	**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**