

Fares v RCB3 Nominee LLC
2026 NY Slip Op 30290(U)
January 15, 2026
Supreme Court, Kings County
Docket Number: Index No. 512675/2022
Judge: Devin P. Cohen
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**Supreme Court of the State of New York
County of Kings**

Index Number 512675/2022
Seq. 004

Part LLIM

DECISION/ORDER

HUSSEIN FARES,

Plaintiff,

against

RCB3 NOMINEE LLC, TISHMAN
CONSTRUCTION CORPORATION, AND
SOLAR ELECTRIC SYSTEMS, INC.,

Defendants.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this motion, by reference to the New York State Courts Electronic Filing System docket numbers: NYSCEF Dkt. ##80–101 (support), 102–108 (opposition), and 110 (reply).

Upon review of the foregoing papers, defendant Solar Electric Systems, Inc. (Solar)'s motion for summary judgment on plaintiff's complaint and dismissal of cross-claims (Seq. 004) is decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced the instant action to recover damages for personal injuries he claims to have sustained on May 9, 2019, while working on the roof of 675 West 59th Street, New York, New York a/k/a 10 Riverside Boulevard, New York, New York (the premises). Defendant Solar moves for summary judgment to dismiss plaintiff's claims (CPLR § 3212). Plaintiff and co-defendants RCB3 Nominee LLC (RCB3) and Tishman Construction Corporation (Tishman) oppose the motion. The following facts are undisputed: the premises was owned by RCB3, and Tishman was the general contractor (Gary Lovesky, RCB3 Director of Construction, EBT at 10, 14–15). Solar was sub-contracted to perform electrical work (Alexander Yurevitch, Tishman

vice president, EBT at 44–45). Plaintiff was a laborer employed by non-party Calvin Maintenance (Fares EBT at 12–13). Solar installed pipes and/or conduits on the roof. At some time thereafter ironworkers installed a temporary staircase on the roof, but did not secure it to the roof floor (Yurevitch EBT at 79, 82–85). Plaintiff was moving safety barricades immediately prior to the accident (Fares EBT at 28). The metal stairway was the only direct way to access that area of the roof, which was otherwise separated by two large black pipes running along the floor (Fares EBT at 102; Yurevitch EBT at 55–56). Plaintiff walked over the temporary staircase to collect barricades on the other side of the roof, and as he descended the last step, he tripped on a set of metal pipes running along the base of the staircase (Fares EBT at 33, 35).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Solar's Status as a Statutory Defendant

As an initial matter, Solar contends that it is not a proper statutory defendant under the Labor Law. Given that Solar was not the owner or general contractor, the question of its liability turns on whether it acted as an agent of the owner or general contractor with authority to supervise or control plaintiff's work (*Van Blerkom v America Painting, LLC*, 120 AD3d 660, 661 [2d Dept 2014]).

Solar contends that as an electrical sub-contractor on the premises, it had no authority to control plaintiff's work. It also contends that it never exercised any control or direction over

plaintiff's work. Solar argues that plaintiff admitted this, testifying that "[Solar has] no jurisdiction over the laborers" (Fares EBT at 98). Solar underscores that Tishman was responsible for site safety, and there was a safety manager on site who issued daily reports. Further, Mr. Yurevitch testified that the conduit/pipes on the roof were installed prior to the placement of the temporary staircase, and the decision to install the staircase would have been made by Tishman and the design team hired by RCB3 (Yurevitch EBT at 79, 84–85). Thus, Solar has met its prima facie burden.

Plaintiff objects to Solar's use of unsigned deposition transcripts (CPLR § 3116 (a)). However, it is undisputed that the transcripts were timely exchanged, and plaintiff does not now object to their accuracy (*Gironza v Macedonio*, 230 AD3d 742, 743 [2d Dept 2024]; see also *Yerry v Whole Food Market Group, Inc.*, 208 AD3d 733, 734 [2d Dept 2022]). Co-defendants RCB3 and Tishman argue that Solar's motion is premature given the outstanding deposition of Solar's project manager Giacomo Marchese. However, plaintiff filed a Note of Issue on February 20, 2025; RCB3 and Tishman moved to vacate the Note of Issue, which was denied without prejudice on April 1, 2025 by Hon. Leon Ruchelsman. No further attempt was made to vacate. Neither plaintiff, nor RCB3 and Tishman has raised a triable issue of fact as to Solar's entitlement to summary judgment on Labor Law §§ 240 (1) and 241 (6). Accordingly Solar's motion is granted as to these claims.

Labor Law § 200

"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" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]), and claims are evaluated using a negligence analysis (*Ortega v*

Puccia, 57 AD3d 54, 61 [2d Dept 2008]).¹ “[A]n implicit precondition to this duty is that the party to be charged with that obligation have the authority to control the activity bringing about the injury to enable it to avoid or correct the dangerous condition” (*Rizzuto v L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343, 352 [1998], quoting *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317 [1981]).

Solar did not direct or control plaintiff’s work and did not have authority to do so. Solar contends that when it installed conduits/pipes on the roof, there was no temporary staircase present, and that the conduits/pipes alone were not a dangerous condition. Rather, it argues that the dangerous condition arose only later, when the temporary staircase was placed close to the conduit/pipes. Solar contends that their work on the roof was already completed by that time.

In opposition, plaintiff only notes that Gary Lovesky testified that sub-contractors were directly responsible for safety devices (Lovesky EBT at 19). RCB3 and Tishman argue that because plaintiff tripped over the conduit, and the conduit was installed by Solar, Solar has failed to eliminate all questions of fact whether its work on the roof contributed to and/or caused plaintiff’s accident. Solar concedes that it installed conduits/pipes on the roof. Still, there remain questions of fact as to which contractor or entity installed the specific conduit/pipes that plaintiff tripped on, and whether the Solar conduits/pipes constituted a dangerous condition even before the installation of the staircase/bridge. These material issues of fact as to whether Solar caused, created, or contributed to the dangerous condition that caused plaintiff’s accident preclude summary judgment for Solar as to Labor Law § 200.

¹ Solar states it cannot be liable to plaintiff for negligence because it did not owe a duty of care to plaintiff, citing *Espinal* and noting that plaintiff did not allege any *Espinal* exception in his pleadings. However, Solar’s motion will be analyzed under the appropriate Labor Law § 200 jurisprudence.

Indemnity and Contribution

The right to contractual indemnification is established by the “specific language of the contract” (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). “In addition, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor” (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]).

Since Solar has failed to prove its freedom from negligence, as determined above, its motion for summary judgment on the cross-claims against it are denied.

Failure to Procure Insurance

Solar conceded during oral argument on the instant motion that it had a \$2,000,000 shortfall in its contractually required \$5,000,000 insurance coverage. Accordingly, Solar’s motion with respect to this claim is denied.


Conclusion

Solar’s motion for summary judgment (Seq. 004) is granted to the extent that plaintiff’s §§ 240 (1) and 241 (6) claims are dismissed against Solar only; the motion is otherwise denied.

This constitutes the decision and order of the court.

January 15, 2026

DATE



DEVIN P. COHEN
Justice of the Supreme Court