

Galvez v City of New York
2026 NY Slip Op 30310(U)
January 22, 2026
Supreme Court, New York County
Docket Number: Index No. 150663/2016
Judge: Francis A. Kahn III
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

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INDEX NO. 150663/2016

RODRIGO GALVEZ,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 008 009 010

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY, CMC ENVIRONMENTAL CORPORATION, ROMA SCAFFOLDING INC.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 220

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 009) 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 219, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 241

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 010) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 221, 223, 224, 225, 226, 227, 228, 229, 240, 242

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, motions are determined as follows:

In this action Plaintiff seeks to recover for injuries allegedly sustained when he jumped from an extension ladder onto a sidewalk shed. At the time of this April 23, 2015, incident, Plaintiff was working as an asbestos removal laborer for non-party, Technico Construction Services, Inc. ("Technico"), at a premises known as the Carver Houses and King Towers, located at 21 West 112th Street, New York, New York. The premises was owned by Defendant, New York City Housing Authority ("NYCHA"). Defendant NYCHA contracted with Technico to be the general contractor to perform "Exterior Brickwork Restoration and Roofing Replacement & Related Work" at the location. Technico sub-contracted with Defendant CMC Environmental Corporation ("CMC"), who was retained to perform asbestos abatement work at the premises. Technico also sub-contracted with Roma Scaffolding Inc. ("Roma"), who was retained to provide scaffolding services at the premises (NYSCEF Doc. 161, 190).

Plaintiff's motion for partial summary judgment on his Labor Law §240 claims against Defendant NYCHA only (Seq. 007) was granted by Order of this Court, dated July 11, 2025. Now,

Defendants CMC and Roma now move for summary judgment pursuant to CPLR §3212, seeking a dismissal of the Complaint and all crossclaims (Seq. 008 and 010) and Defendant NYCHA seeks summary judgment on its claims for contractual and common-law indemnification against Roma (Seq. 009).

“[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” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993] *citing Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *see also Zapata v Buitriago*, 107 AD3d 977 [2d Dept 2013]). Failure to make such a showing requires the denial of the motion, regardless of the sufficiency of the papers in opposition (*Alvarez v Prospect Hospital*, *supra* at 324; *see also Smalls v AJI Industries, Inc.*, 10 NY3d 733, 735 [2008]). Only if a *prima facie* showing is made, does the burden then shift to the party opposing the motion to produce proof, in evidentiary form, sufficient to establish the existence of material issues of fact (*see eg Zuckerman v City of New York*, 49 NY2d 557 [1980]).

I. Defendant CMC’s Motion for Summary Judgment (Seq. 8)

Defendant CMC argues that it is entitled to summary judgment as to the Plaintiff’s Labor Law claims because CMC was not the Owner or General Contractor of the subject premises, did not control the means and methods of Plaintiff’s work, and did not have the authority to stop the work at the project. CMC seeks dismissal of Roma and NYCHA’s crossclaims for common-law indemnification asserting that CMC cannot be found negligent as CMC was longer performing work at the subject premises at the time of this incident.

It is uncontroverted that CMC did not own the subject premises and was not acting as the General Contractor for the project. Rather, the General Contractor for the project, Technico, had retained CMC, by contract dated June 30, 2014, for CMC to perform asbestos abatement work at the site. CMC relies upon the deposition testimony of Luis Martinez, CMC’s Manager and Co-Owner as to CMC’s role at the site (“Martinez”), as well as Plaintiff’s deposition testimony. CMC also submits an Affirmation from Martinez.

Martinez testified that CMC’s work at the site ended prior to this incident and prior to the anticipated term contemplated in the contract. Once the contract was cancelled, CMC had no workers at the project site. In his Affirmation, Mr. Martinez avers that following a verbal discussion, Technico’s cancellation of CMC’s subcontract was confirmed via email dated March 23, 2015, approximately one month before this incident. CMC’s permits were then cancelled (NYSCEF Doc. 198, 199). Martinez further avers that CMC did not perform any work at building #9, where Plaintiff’s accident occurred, did not direct, supervise or control the Plaintiff’s work at the site and did not provide any of the equipment that Plaintiff used at the site. CMC did not provide or erect any sidewalk sheds, scaffolding or ladders at the site, nor was CMC responsible for their removal. CMC did not enter any other contracts with any other entities concerning any work to be performed at the subject premises.

Generally, causes of action pursuant to Labor Law §§ 200, 240 and 241 are limited to those against an Owner or General Contractor. For any other entity to be found liable under these provisions of the Labor Law, it must be shown that such entity was acting as an “agent” of the Owner or General Contractor, that the entity had the authority to supervise and control the work performed at the time of

the incident at issue. (*See Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189 [1st Dept 2011]; *Wenk v Extell W. 57th St. LLC*, 188 AD3d 550 [1st Dept 2020]).

CMC has met its *prima facie* burden. It is uncontroverted that CMC was not the Owner of General Contractor of the subject premises. CMC has also established with admissible evidence, that it did not act as the “agent” of the Owner or General Contractor as CMC had no supervisory control over the subject project, or the Plaintiff’s work and that CMC had ceased its operations at the premises weeks prior to this incident. (*See Nascimento, Wenk, supra.*). It is also uncontroverted that CMC was not performing any work at the site on April 23, 2015. As CMC established that its contract had been cancelled weeks prior to this incident, and as it has shown that had no supervisory authority and did not provide any of the equipment involved in this incident, CMC has also demonstrated that it cannot be found negligent for causing this incident and thus neither Roma nor NYCHA could be held vicariously liable for CMC’s acts or omissions. (*See Nicholson v. Sabey Data Ctr. Props., LLC*, 205 AD3d 620 [1st Dept 2022]; *see also McCarthy v Turner Const., Inc.*, 17 NY3d 369 [2011]).

No party has opposed CMC’s motion and NYCHA executed a stipulation of discontinuance as to its cross claims against CMC. Accordingly, CMC’s motion for summary judgment is granted and Plaintiff’s Complaint and all crossclaims are dismissed as against CMC.

II. Defendant Roma’s Motion for Summary Judgment (Seq. 10)

Defendant Roma was hired by Technico to install and remove a sidewalk shed at the subject premises. Roma maintains that it is entitled to summary judgment as to Plaintiff’s Labor Law §§ 200, 240 and 241 claims as Roma was not an Owner or General Contractor nor did Roma act as an agent thereof as it did not have supervisory control over the work.

Roma relies upon the deposition testimony of its Project Manager, Imran Sajjad (“Sajjad”) and the purported Layout Plan for the subject sidewalk shed. Roma erected the sidewalk shed at the subject premises at the direction of Technico. Sajjad testified that Roma erects sidewalk sheds according to a plan prepared by a professional Engineer. The Engineer is typically retained by a project’s general contractor and approved by the Department of Buildings. Sajjad also testified that once Roma has finished setting up the sidewalk shed, its workers leave the site and take any of Roma ladders from the site. Roma does not provide ladders for any other workers at the site. Sidewalk sheds are not designed to have means of access to the shed. For access, a separate ladder would have to be used. Once Roma finishes its installation, the general contractor maintains the shed and Roma only returns to a site if requested by the general contractor.

“To be treated as a statutory agent, the subcontractor must have been ‘delegated the supervision and control either over the specific work area involved or the work which [gave] rise to the injury’” (*Nascimento* 86 AD3d at 193, *supra*, quoting *Headen v Progressive Painting Corp.*, 160 AD2d 319, 320 [1st Dept 1990]). “A subcontractor, that is only charged with providing sidewalk shed installation and removal services at a site, and who does not have supervisory control over the work site, is not an “agent” under Labor Law §§ 200, 240 and 241 (*See Nascimento, Wenk supra.; Morales v. Spring Scaffolding, Inc.*, 24 AD3d 42 [1st Dept 2005]). It is the burden of the sub-contractor on a motion for summary judgment to establish with admissible evidence that it was not an agent. Upon review, Roma has not met its *prima facie* burden. Although it is uncontroverted that Roma was not the Owner or General Contractor for the subject project, Roma has not shown as a matter of law that, at the time of this incident, it was not an agent of NYCHA or Technico.

Sajjad appears to have only been able to provide testimony regarding Roma's general standards and practices at project sites. Sajjad did not know any details from the subject project. Specifically, Sajjad could not provide testimony regarding who designed the sidewalk shed, when Roma's work began at the site, when Roma completed the installation of the subject sidewalk shed, when Roma left the site or whether Roma was called back to the site at any time. Additionally, Sajjad was not questioned about the Roma-Technico contract nor the Layout Plan and no affidavit by someone with such knowledge has been submitted in support of the within motion regarding these documents. As the Layout Plan is not authenticated and is not legible it is unclear to this Court what information it should consider. Thus, Roma has not shown with admissible evidence that at the time of the accident Roma employees and equipment were no longer at the site.

Contrary to Roma's argument, this matter is not analogous to *Morales*, as the sidewalk shed subcontractor in *Morales* submitted its structural designs, established when it completed the installation of the sidewalk shed and demonstrated that it was not contracted to maintain or repair the shed once installed. On a motion for summary judgment, it is not enough for a defendant to identify potential problems or issues with a plaintiff's ability to prove their claims at the time of trial. Rather, it is the defendant's burden to show that its alleged negligence was not the proximate cause of the plaintiff's accident. (See *Hairston v Liberty Behav. Mgmt. Corp.*, 157 AD3d 404, 405 [1st Dept 2018]; *Artalyan, Inc. v Kitridge Realty Co.*, 79 AD3d 546, 547 [1st Dept 2010]).

Accordingly, Roma has not met its *prima facie* burden as there remains unresolved material questions of fact as to when Roma left the site, when it removed its equipment and ladders, whether Roma was ever asked to return to the site and which entity designed the subject sidewalk shed. Thus, Roma's motion is denied. The opposition of Plaintiff and NYCHA is immaterial.

III. NYCHA's Motion for Summary Judgment on Its Crossclaims Against Roma (Seq. 9)

NYCHA seeks summary judgment on its crossclaims for contractual indemnification, common law indemnification and contribution against Roma.

NYCHA seeks contractual indemnification per the terms of the hold harmless agreement in the Roma – Technico subcontract, which states that Roma shall indemnify and hold harmless NYCHA, as the owner, where bodily injury "... is caused in whole or in part by any act or omission of the Subcontractor [Roma] or anyone directly or indirectly employed by it or anyone for whose acts it may be liable pursuant of the performance of the agreement." The provision continues and asserts that the "[s]ubcontractor's obligation to indemnify Owner... shall extend only to the percentage of negligence of Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable in connection to such claim, damage, loss and expense." (NYCSEF Doc. 190 [*emphasis added*]).

A claim for contractual indemnification is dependent upon the specific language of the contract (see *Ging v F.J. Sciame Constr. Co., Inc.*, 193 AD3d 415, 418 [1st Dept 2021]; *Anderson v United Parcel Service*, 194 AD3d 675, 678 [2d Dept 2021]). "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]; *Wai Cheung v 48 Tenants' Corp.*, 192 AD3d 503 [1st Dept 2021]). Where there is no legal duty to indemnify, an

agreement containing that obligation must be strictly construed so as not to create an unintended responsibility (*see eg Tonking v Port Auth.*, supra).

Generally, “[t]o obtain conditional relief on a claim for contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and [may be] held liable solely by virtue of . . . statutory [or vicarious] liability” (*see Spielmann v 170 Broadway NYC LP*, 187 AD3d 492, 494 [1st Dept 2020][internal quotation marks and citations omitted]). This is because “to the extent [a party’s] negligence contributed to the accident, it cannot be indemnified therefor” (*Cava Constr. Co., Inc., v Gealtec Remodeling Corp.*, 58 A.D3d 660, 662 [2d Dept 2009]; *see General Obligations Law* § 5–322.1).¹

Additionally, the proof necessary to establish a *prima facie* case on a claim for contractual indemnification depends on scope of the provision at issue. A broad indemnity clause which is limited to accidents arising out of, or in relation to, a contractor’s work is “triggered solely by virtue of an accident occurring in the course of the employee’s work” (*see Pimentel v DE Frgt. LLC*, 205 AD3d 591, 594 [1st Dept 2022]). Narrowly drawn indemnification provisions, for instance where negligence or some other act or omission by a contractor is compulsory, will require proof in the first instance of the indemnitor’s neglect or causal connection to the accident (*see Quiroz v New York Presbyt./Columbia Univ. Med. Ctr.*, 202 AD3d 555, 557 [1st Dept 2022]; *Francescon v Gucci Am., Inc.*, 71 AD3d 528, 529 [1st Dept 2010]).

Upon review, NYCHA has not established with admissible evidence that it is free of negligence. No testimony, affirmation or affidavit by someone with knowledge as to NYCHA’s role and responsibilities at the project site at the time of this incident has been submitted. NYCHA’s deposition witness, Dolor Shiba (“Shiba”), who only began working for NYCHA in 2021, had no direct knowledge of the subject project, was never at the site, did not know the state of progress of the project in April 2015 and did not know if NYCHA had any employees at the project site in April 2015. Thus, NYCHA has not made a *prima facie* showing that it cannot be found negligent for this incident. (*Alvarez, supra* at 324).

Nor has NYCHA shown that any act or omission of Roma caused the subject accident. NYCHA argues that the sidewalk shed was defective because Roma failed to install and/or design the shed with sufficient access. However, NYCHA has not shown with admissible evidence that Roma was the entity charged with designing the sidewalk shed, let alone that it was designed improperly. No testimony, affidavit or affirmation by someone with knowledge, expert analysis or other evidence as to who designed the shed or whether the shed was erected in accordance with the design plan has been submitted. Nor has NYCHA shown with admissible evidence that Roma was obligated to provide a ladder, step or “tie-off points” on the shed. NYCHA does not rely upon any expert analysis or other evidence showing that the sidewalk shed was required to include such access or that it ran afoul of any rule, code or provision. NYCHA has not even shown what Roma’s role at the subject project site at the time of this accident as Shiba did not know when Roma’s work began, or whether Roma had any workers at the project site in April 2015. (NYSCEF Doc. 186, 213). Accordingly, NYCHA’s motion for summary judgment as to contractual indemnification is denied as it has not met its *prima facie* burden, nor is conditional contractual indemnification appropriate as NYCHA has not shown it was free of negligence (*See Spielmann, supra.*).

¹ However, if contemplated by the indemnity provision, partial indemnification may be available (*see Frank v 1100 Avenue of Americas Associates*, 159 AD3d 537, 538 [1st Dept 2018]).

NYCHA’s summary judgment for common-law indemnification and contribution is also denied. “[C]ommon-law contribution involves the apportionment of liability amongst joint tortfeasors, both of whom owed a duty to an injured plaintiff” (*Aiello v Burns Intl. Sec. Servs. Corp.*, 110 AD3d 234, 247-248 [1st Dept 2013]; *see also* CPLR §1401). Common-law indemnification is predicated upon vicarious liability without actual fault (*J.H. v 1288 LLC*, 171 AD3d 549, 549 [1st Dept 2019]). “To be entitled to common-law indemnification, a party must show (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2) that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work” (*Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012]).

NYCHA has not made a showing that it was free of negligence as it cannot offer any evidence by someone with knowledge as to their role at the project site at the time of this incident. Shiba had no personal knowledge of this site and no affidavit or affirmation of someone with knowledge as to NYHCA’s role during this project has been submitted. Nor has NYCHA shown that Roma was negligent or exercised actual supervision or control over Plaintiff’s work at the time of this incident. Therefore, NYCHA’s motion for summary judgment seeking common law indemnification is denied. NYCHA’s motion for contribution is likewise denied as there is no admissible evidence establishing Roma’s liability, if any.

Accordingly, it is

ORDERED that Defendant, CMC Environmental Corporation’s motion for summary judgment (Motion Seq. 008), is granted and the complaint and all crossclaims are dismissed against Defendant CMC Environmental Corporation; and it is further

ORDERED that the caption be amended to reflect the dismissal against CMC Environmental Corporation and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that Defendant, Roma Scaffolding Inc.’s motion for summary judgment, to dismiss the complaint and all crossclaims (Motion Seq. 010), is denied; and it is further

ORDERED that Defendant, New York City Housing Authority’s motion seeking summary judgment on its crossclaims for contractual and common-law indemnification against Defendant Roma Scaffolding Inc. (Motion Seq. 009) is denied.

1/22/2026
DATE


FRANCIS KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN III
J.S.C.

CHECK ONE:

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APPLICATION:

CHECK IF APPROPRIATE: