

Ormeno v DRK Prospect Place LLC
2026 NY Slip Op 30388(U)
January 16, 2026
Supreme Court, Kings County
Docket Number: Index No. 511047/2019
Judge: Rupert V. Barry
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At an I.A.S. Part 13, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at, 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 16th day of January 2026.

P R E S E N T:

HON. RUPERT V. BARRY, J.S.C.

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RICHARD ALFREDO YRAOLA ORMENO,

Plaintiff,

against-

DRK PROSPECT PLACE LLC, EMPIRE STATE CONTRACTOR GROUP CORP., EXOTIC DESIGN & WIRE LLC., d/b/a EMPIRE STATE CONTRACTORS GROUP, AND HILINE CONSTRUCTION INC,

Defendants.

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HILINE CONSTRUCTION LLC,

Third-Party Plaintiff,

-against-

PCC CLEANING SOLUTIONS, INC. and SCL SERVICES CORP.,

Third-Party Defendants.

-----x

PCC CLEANING SOLUTIONS, INC.,

Second Third-Party Plaintiff,

-against-

HKS CONSTRUCTION CORP.,

Second Third-Party Defendant

-----x

DRK PROSPECT PLACE LLC and EXOTIC DESIGN & WIRE LLC D/B/A EMPIRE STATE CONTRACTORS GROUP,

Third Third-Party Plaintiffs,

8/12/2025 Calendar:

Cal. No.: 25 (MSQ No.: 13)

Cal. No.: 27 (MSQ No.: 15)

3/04/2025 Calendar:

Cal. No.: 26 (MSQ No.: 9)

Cal. No.: 27 (MSQ No.: 10)

Cal. No.: 28 (MSQ No.: 11)

Cal. No.: 29 (MSQ No.: 12)

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DECISION & ORDER

(Amended and corrected Decision & Order)

-against-

PCC CLEANING SOLUTIONS, INC.,

Third Third-Party Defendant.

-----X

DRK PROSPECT PLACE LLC and
EXOTIC DESIGN & WIRE LLC D/B/A
EMPIRE STATE CONTRACTORS GROUP,

Fourth Third-Party Plaintiffs,

-against-

SCL SERVICES CORP.,

Fourth Third-Party Defendant.

-----X

PCC CLEANING SOLUTIONS, INC.,

Fifth Third-Party Plaintiff,

-against-

SCL SERVICES CORP.,

Fifth Third-Party Defendant.

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the following:

- (a) **Defendants/Third Third-Party Plaintiffs/ Fourth Third-Party Plaintiffs** DRK PROSPECT PLACE, LLC’s (hereafter “DRK”) and EXOTIC DESIGN & WIRE LLC d/b/a EMPIRE STATE CONTRACTORS GROUP’s (hereafter “Exotic” or “Empire”) motion for leave, pursuant to CPLR 2221(d), to reargue this Court’s May 27, 2025, Decision and Order, entered June 5, 2025 (MSQ No.: 13): NYSCEF Doc. Nos.: 444 – 450.
- (b) **Third-Party Defendant/Second Third-Party Plaintiff/Third Third-Party Defendant/Fifth Third-Party Plaintiff** PCC CLEANING SOLUTIONS LLC’s (hereafter “PCC”) cross-motion for leave, pursuant to CPLR 2221(d), to reargue this Court’s May 27, 2025, Decision and Order, entered June 5, 2025 (MSQ No.: 15): NYSCEF Doc. Nos.: 454 – 460

Upon due consideration of the paper filed in this matter and after oral argument this Court finds as

Follows:

The moving parties are correct to the extent that this Court’s factual findings were inconsistent with this Court’s “ORDERED” paragraphs. Accordingly, it is

ORDERED that, DRK's (MSQ No.:13), Exotic's (MSQ No.: 13), and PCC's cross-motion (MSQ No.: 15) for leave, pursuant to CPLR 2221(d), to reargue this Court's May 27, 2025, Decision and Order, entered June 5, 2025, are all GRANTED to the extent as is reflected in the Amended/Corrected Order that follows below:

AMENDED/CORRECTED ORDER re MSQ Nos.: 9, 10, 11, and 12:

(i) Plaintiff's motion for summary judgment pursuant to CPLR 3212, as to Labor Law §§ 240 (1); and 241(6) (MSQ No.: 10) : NYSCEF Doc. Nos.: 341-368; 426-429.

(ii) (a) Defendants DRK's and Exotic's motion for summary judgment pursuant to CPLR 3212 seeking dismissal of Plaintiff's Labor Law § 241(6) and § 200 claims and Plaintiff's common law negligence claim and all crossclaims. (b) Defendants DRK's and Empire's motion for summary judgment seeking a finding of contractual indemnification and breach of contract against HILINE CONSTRUCTION, INC., and (c) DRK's third-party claim seeking contractual indemnification against PCC and SCL (MSQ No.: 9): NYSCEF Doc. Nos.: 308-340, 401-402, 412, 422-432.

(iii) PCC's motion for summary judgment seeking dismissal of the third-party complaint, dismiss all crossclaims, and for summary judgment on its third-party complaint for contractual indemnity (MSQ No.: 11): NYSCEF Doc. Nos.: 369-399, 423-425.

(iv) SCL's motion for summary judgment, pursuant to CPLR 3212, seeking dismissal of : (a) the third-party action brought by Hiline Construction Inc. (hereafter "Hiline"); (b) the Fourth Third-Party action brought by DRK and Exotic, and (c) the Fifth Third-Party action to the extent it seeks common law indemnity against SCL (MSQ No.: 12): NYSCEF Doc. Nos.: 406-408, 413-421, 431.

Upon due consideration of the papers filed, and after oral arguments, this Court finds as follows:

This action arises from a construction site accident occurring on July 19, 2018, at 906 Prospect Street, Brooklyn, New York (hereinafter "premises"). Plaintiff, employed to provide cleaning services and assist in other tasks, asserts that he was injured when while moving planks on a scaffold from the fourth floor to the fifth floor. As he was removing planks, Plaintiff alleges that he fell backwards through a hole in the scaffold and fell from the fourth to the first level. DRK was the owner of the premises on the date of the accident and hired Exotic as a general contractor to oversee the construction project. Exotic, in turn, retained defaulting party Hiline to perform the masonry work in connection with the project. Hiline subsequently contracted with PCC to provide laborers for the project. Thereafter, PCC subcontracted and hired Plaintiff's employer, SCL to provide cleaning and other services.

Contractual Indemnification

Before granting a motion seeking contractual indemnification, a court looks to see if the promise to indemnify “can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstance” (*Bellefleur v Newark Beth Israel Med. Ctr.*, 66 AD3d 807, 808 [2d Dept 2009] [internal citations omitted]). Additionally, “[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 thereof” (*Id.* at 808 [citing *Cava Constr. Co., Inc. v Gealtec Remodeling Corp.*, 58 AD3d 660]). Thus, where a question of fact exists regarding the movant’s negligence, summary judgment for contractual indemnification must be denied as premature (*Id.*).

Common-Law Indemnification

Common law indemnification “permits one who has been required to pay for the wrong of another to recover from the wrongdoer the damages it paid to the injured party” (*Id.* at 808). Success for one claiming common law indemnification requires that the moving party to show that they were not negligent, and “that the proposed indemnitor was responsible for the negligence that contributed to the accident or, in the absence of any negligence, had the authority to direct, supervise, and control the work giving rise to the injury” (*Id.* at 80 [citing *Benedetto v Carrera Realty Corp.*, 32 AD3d 874, 875 [2d Dept 2006]).

Labor Law § 200

“Labor Law § 200 is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work” (*Ortega v Puccia*, 57 AD3d 54, 60 [2008]). An action brought under Labor Law § 200 is done so due to an alleged injury caused by alleged dangerous or defective premises or “the manner in which the work is performed” (*Id.* at 61). To be successful in an action under Labor Law § 200 based on the manner in which the work was performed, a plaintiff must prove that a

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defendant had some control over the work (*Poulin v Ultimate Homes, Inc.*, 166 AD3d 667, 670 [2d Dept 2018]). When bringing an action due to a premise condition, a plaintiff must prove that defendant created the dangerous condition or that defendant had actual or constructive notice of the dangerous condition (*Ortega v Puccia*, 57 AD3d 54, 61 [2008]).

Labor Law § 240(1)

Labor Law § 240(1) “imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites” (*Mejia v 69 Mamaroneck Rd. Corp.*, 232 AD3d 886, 887 [2d Dept 2024]). To successfully bring an action under Labor Law § 240(1), a plaintiff must prove that a violation of the statute was a proximate cause of his injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 287 [2003]).

Labor Law § 241(6)

“Labor Law § 241(6) imposes a nondelegable duty on owners and contractors to " 'provide reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" ’ (*Toussaint v Port Auth. of N.Y.*, 38 NY3d 89 [2022]).

DRK’s & EXOTIC’s MOTION TO DISMISS (Motion Seq. No.:9)**DRK & Exotic’s Motion to Dismiss Labor Law 200 & Common Law Negligence :**

Defendants DRK and Exotic move for summary judgment dismissing Plaintiff’s Labor Law § 200(1) claim. Defendants DRK and Exotic assert that Plaintiff’s alleged injuries arose due to the means and methods of the work performed under the control and supervision of Defendant Hiline, and not as a result of a dangerous or defective premises. Thus, Defendants argue, since the scaffold from where Plaintiff fell and suffered his alleged injuries was erected by HKS Construction Corp. and utilized by Hiline and SCL, Defendants motion should be granted. Defendants further argue that if Plaintiff is asserting that his

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injury was due to an alleged dangerous or defective work premises, Defendants summary judgment motion seeking to dismiss Labor Law § 200(1) must be granted because Defendants did not have any notice, whether actual or constructive, as required by the statute of any of such alleged dangerous or defective work premises.

Plaintiff fails to address and oppose Defendants DRK's and Exotic's motion for summary judgment seeking to dismiss Labor Law § 200(1) and his common law negligence claim. **This Court therefore deems that Plaintiff has abandoned his Labor Law § 200(1) and common law negligence claim. Thus, this branch of Defendants DRK and Exotic's motion to dismiss is granted.**

DRK & Exotic's Motion to Dismiss Plaintiff's Labor Law § 241(6) Claim:

Plaintiff asserts that Defendants DRK and Exotic violated Labor Law § 241(6). To establish liability under Labor Law § 241(6), Plaintiff must demonstrate that his injuries were proximately caused by a violation of an applicable Industrial Code (*Chuqui v Amna, LLC*, 203 AD3d 1018 [2d Dept 2022]). Here, Plaintiff asserts in his bill of particulars that his injuries were a violation of 12 NYCRR §§ 23-1.15, 23-1.16 (b), and 23-5.1(f)(h)(j). Defendants DRK and Exotic move to dismiss all Industrial Codes under Plaintiff's Labor Law § 241(6) claim on the basis that 12 NYCRR § 23-1.15 is inapplicable as it applies to safety railings and Plaintiff was not provided with a safety railing. Moving Defendants further assert that 12 NYCRR § 23-1.16(b) is also inapplicable as it applies to safety devices such as safety belts, harnesses, tail lines, and lifelines. Moving Defendants assert that they did not and were not required to provide to Plaintiff with such safety devices. Additionally, moving Defendants argue that 12 NYCRR § 5.1(f), which requires that scaffolds be properly maintained is not sufficient to support this claim. 12 NYCRR § 5.1(h), which requires the erection and removal of scaffolds to be done by a designated person, is not applicable because the accident is unrelated to the scaffold's erection or removal; and that 12 NYCRR § 23-5.1(j), which requires safety railings on all open sides of scaffold platforms, is also inapplicable as Plaintiff testified in his deposition that he fell backwards as a result of a raised plank through a hole in the scaffold.

In response, Plaintiff only addressed and opposed 12 NYCRR § 23-1.16 (b). This Court therefore

finds that Plaintiff has abandoned Industrial codes 12 NYCRR §§ 23-1.15 and 23-5.1(f)(h)(j). This leaves this Court to analyze moving Defendants' motion to dismiss the remaining Industrial Code: 12 NYCRR § 23-1.16(b).

Labor Law § 241(6) requires all contractors, owners, and their agents, to comply with the safety requirements enumerated in the statute. Although moving Defendants assert that summary judgment to dismiss should be granted as they were not the parties who provide Plaintiff with the devices that pertain to the statute, this statute imposes a non-delegable duty. Thus, this branch of Defendants motion seeking dismissal of Industrial Code under 12 NYCRR § 23-1.16(b) is **denied**.

DRK's and Exotic's motion for Contractual Indemnification & Breach of Contract

Defendants DRK and Exotic seek summary judgment on their crossclaims for contractual indemnification and breach of contract against Hiline. Furthermore, DRK also seeks summary judgment for contractual indemnification from PCC and SCL.

A. Breach of Contract against Hiline.

DRK and Exotic assert that Hiline breached the subcontractor agreement between Hiline and Exotic and which listed DRK as an additionally insured party, by failing to procure the necessary insurance. Section 11 of the Empire-Hiline contract required Hiline to "*procure and maintain insurance to protect the Contractor and Owner for claims arising out of or resulting from Subcontractor's Work under this Contract Agreement, whether performed by the Subcontractor, or by anyone directly or indirectly employed by Subcontractor, or by anyone for whose acts Subcontractor may be liable*".

In that Hiline has defaulted in this action, this Court **grants** that part of DRK's and Exotic's motion which seeks summary judgment finding Hiline in breach of the subcontractor agreement between Hiline and Exotic and which listed DRK as an additionally insured party.

B. DRK'S motion for Contractual Indemnification against PCC

DRK asserts that the subcontract contract between Hiline and PCC included provisions entitling them to indemnification from PCC. In opposition, PCC asserts that the subcontract does not identify 906 Prospect Place as the project address, does not identify DRK as the property owner, nor does the contract identify the general contractor. PCC therefore asserts that since the subcontract is ambiguous, DRK is not entitled to contractual indemnification.

"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]). Here, the contract states in pertinent part that: "the Subcontractor agrees to indemnify, defend and hold harmless the Owner and the Contractor, as well as all parties listed below, if any, their officers, directors, agents, employees, members and partners from any and all claims, suits, damages," etc. (NYSCEF Doc. No.: 338). This Court finds that this contract, signed by PCC's officer on July 9, 2018, clearly implies that DRK, who is owner of the premises where the alleged incident occurred, is entitled to indemnification from PCC. Thus, this branch of DRK's motion seeking contractual **indemnification from PCC is granted.**

C. DRK's motion for contractual indemnification against SCL

DRK further moves this Court for contractual indemnification from SCL. The subcontractor agreement through which DRK seeks indemnification is between PCC and SCL. Pursuant to the agreement, SCL agreed to indemnify not only PCC, but the owner of the site as well. This agreement was signed by the CEO of SCL.

"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]). Here, the contract states in pertinent part that: "the Subcontractor agrees to indemnify, defend and hold harmless the Owner and the Contractor, as well as all parties listed below, if any, their officers, directors, agents,

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employees, members and partners from any and all claims, suits, damages,” etc. (NYSCEF Doc. No.: 338). This Court finds that this contract, signed by **SCL’s officer on July 9, 2018**, clearly implies that DRK, who is owner of the premises where the alleged incident occurred, is entitled to indemnification from SCL. Thus, this branch of DRK’s motion seeking contractual **indemnification from SCL is granted**.

D. DRK & Exotic’s motion to dismiss all Cross Claims

Lastly, this portion of DRK & Empire’s motion which seeks to dismiss all crossclaims against DRK and Exotix **is denied in part**, as Movants were not granted summary judgment to dismiss Labor Law § 241(6).

Plaintiff’s motion for Summary Judgment (Motion Seq. No.: 10)

Plaintiff moves this Court for summary judgment against Defendants DRK and Exotic on Labor Law §§ 240(1) and 241(6).

Labor Law § 240(1)

Here, Plaintiff alleges that his injuries occurred when he was transferring wooden planks from forth to the fifth floor on a scaffold. Plaintiff further alleges that his injuries were a result of Defendants negligence by not equipping him with a lifeline, which could have prevented his fall. In response, Defendants DRK and Exotic assert that Plaintiff did not meet his burden of summary judgment as a material issue of fact remains. According to Defendants DRK and Exotic, Plaintiff’s injuries were a result of his own negligence. While Defendants DRK and Exotic cite the deposition testimony of Exotic’s owner, Salvatore Nicchitta, that the scaffold was fully planked at all levels and planks were not removed from level to level during the project (Nicchitta Dep. Tr. at 41-42), Defendants DRK and Exotic failed to address the critical point that Plaintiff was not provided with a lifeline for his harness.

This Court finds that Defendants DRK and Exotic violated their nondelegable duty by not ensuring that Plaintiff’s harness was equipped with a lifeline. Therefore, this branch of Plaintiff’s motion for

summary judgment is **granted**.

Labor Law § 241(6)

As previously mentioned, to be awarded summary judgment under Labor Law 241(6), Plaintiff must have a cause of action arising under one of the applicable Industrial Codes enumerated in the statute. This Court has previously deemed 12 NYCRR §§ 23-1.15 and 23-5.1(f)(h)(j) abandoned by Plaintiff and will therefore only discuss 12 NYCRR § 23-1.16 (b).

Here, Plaintiff was provided with a harness that was not equipped with a securely anchored tail line, hanging lifeline or to a tail line attached to a securely anchored hanging lifeline as required by the statute. Therefore, this branch of Plaintiff's motion for summary judgment is **granted as to Labor Law § 241(6) but only as to** 12 NYCRR § 23-1.16 (b).

PCC'S motion for Summary Judgment (Motion Seq. No.: 11)

PCC moves this Court for summary judgment to dismiss Hiline's third-party complaint, to dismiss all crossclaims against them, and for summary judgment on their Second-Third-party complaint for contractual indemnity against HKS Construction, Corp.

Summary Judgment to dismiss DRK and Exotic's Third-Third-Party Complaint

PCC's motion to dismiss DRK's and Exotic's Third-Third-Party complaint against them re contractual indemnification and the procurement of insurance is **denied**.

Dismiss Crossclaims of Contractual Indemnification

As previously mentioned, this Court finds that Defendant DRK is entitled to indemnification from PCC. Therefore, PCC's motion to dismiss the crossclaim for contractual indemnification as against DRK is **denied**.

Summary Judgment for Contractual Indemnification against SCL

PCC subcontracted with SCL on December 13, 2017, to provide debris removal services at the job site. In the agreement, SCL agreed to indemnify and hold harmless PCC in the event an action would occur as a result of the work performed. Additionally, SCL further agreed to maintain insurance policies and provide PCC with written compliance. PCC moves this Court for contractual indemnification against SCL. PCC asserts that they are not negligent, and therefore, are entitled to full and unconditional indemnification.

As PCC did not direct Plaintiff to perform the work nor did they provide Plaintiff with the harness without a lifeline, this Court finds that PCC is entitled to contractual indemnification from SCL. Therefore, this branch of PCC's motion is **granted**.

SCL's motion for Summary Judgment (Motion Seq. No.: 12)

SCL also moves this Court for summary judgment dismissing the following: (1) the third-party action brought by Hiline, (2) the fourth third-party action brought by DRK and Exotic; and (3) the fifth third-party action for common law indemnification against them. This Court grants SCL's motion for summary judgment dismissing Hiline third-party action brought against SCL and denies the remainder of SCL's motion.

Accordingly, it is

ORDERED that, Defendants DRK PROSPECT PLACE LLC, and EMPIRE STATE CONTRACTOR GROUP CORP., EXOTIC DESIGN & WIRE LLC., d/b/a EMPIRE STATE CONTRACTORS GROUP, motion (**MSQ No.: 9**) is **granted in-part and denied-in part as follows**:

- (i) Defendants DRK's and Exotic's summary judgment motion for dismissal of Plaintiff's Labor Law § 200(1) claim and Common Law Negligence claim is **GRANTED**.
- (ii) Defendants DRK's and Exotic's summary judgment motion for dismissal of Plaintiff's Labor Law § 241(6) is **GRANTED, as abandoned, only** as to 12 NYCRR §§23-1.15, 23-1.16 (b), and 23-5.1(f)(h)(j) and **DENIED** as to 12 NYCRR § 23-1.16 (b).
- (iii) Defendants DRK's and Exotic's summary judgment motion seeking contractual

indemnification and breach of contract against Defendant HILINE CONSTRUCTION LLC is **GRANTED on default**.

- (iv) Defendants DRK's summary judgment motion seeking contractual indemnification against PCC CLEANING SOLUTIONS, INC., is **GRANTED**.
- (v) Defendants DRK's summary judgment motion for contractual indemnification against SCL SERVICES CORP., is **GRANTED**.
- (vi) Defendants DRK's and Exotic's motion for summary judgment seeking dismissal of all crossclaims is **DENIED in part** as Movants were not granted summary judgment to dismiss Labor Law § 241(6) as to 12 NYCRR § 23-1.16 (b). It is further

ORDERED that, Plaintiff RICHARD ALFREDO YRAOLA ORMENO, motion (**MSQ. No.: 10**) is **granted in-part and denied in-part** as follows:

Plaintiff's motion for summary judgment against DRK PROSPECT PLACE LLC, and EMPIRE STATE CONTRACTOR GROUP CORP., EXOTIC DESIGN & WIRE LLC., d/b/a EMPIRE STATE CONTRACTORS GROUP as to Labor Law § 240(1) is **GRANTED**.

- (i) Plaintiff's motion for summary judgment against DRK PROSPECT PLACE LLC, and EMPIRE STATE CONTRACTOR GROUP CORP., EXOTIC DESIGN & WIRE LLC., d/b/a EMPIRE STATE CONTRACTORS GROUP, as to Labor Law § 241(6) is **DENIED** as to 12 NYCRR §§23-1.15, 23-1.16 (b), and 23-5.1(f)(h)(j) and **GRANTED** as to 12 NYCRR § 23-1.16 (b). It is further

ORDERED that, PCC CLEANING SOLUTIONS, INC. motion for Summary Judgment (**MSQ No.: 11**) is **denied in-part and granted in-part** as follows:

- (i) PCC's motion for summary judgment motion seeking to dismiss the third-party

complaint against it for contractual indemnification is **DENIED**.

- (ii) PCC's motion for summary Judgment for Contractual Indemnification against **SCL SERVICES CORP.**, is **GRANTED**. It is further

ORDERED that, SCL SERVICES CORP. motion for summary judgment (**MSQ No.: 12**) dismissing Hiline's Third-Party complaint against SCL is **GRANTED**. It is further

ORDERED that, SCL SERVICES CORP.'s motion for summary judgment seeking dismissal of the Fourth Third-Party action brought by DRK and Exotic; and the Fifth Third-Party action for common law indemnification against SCL is **DENIED**. It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

R V BARRY

HON. RUPERT V. BARRY, J.S.C.