Miranda v Ordella, LLC
2026 NY Slip Op 30423(U)
January 22, 2026
Supreme Court, Kings County
Docket Number: Index No. 510458/20
Judge: Saul Stein
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At an IAS Term, Part 17 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of January, 2026.

P R E S E N T:

HON. SAUL STEIN, J.S.C.

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EDWIN MAURICIO MIRANDA,

Plaintiff,

-against-

Index No.: 510458/20

ORDELLA, LLC, TOWNHOUSE BUILDERS INC., PROMONT BUILDERS, TOWNHOUSE BUILDERS INC. d/b/a PROMONT BUILDERS, SA-FE WINDOWS, INC., NET POWER ELECTRIC CORP and HELM EQUITIES LLC,

Defendants.

--X

ORDELLA, LLC, TOWNHOUSE BUILDERS INC., PROMONT BUILDERS, TOWNHOUSE BUILDERS INC. d/b/a PROMONT BUILDERS,

Third-Party Plaintiffs,

-against-

SA-FE WINDOWS, INC. and BEST SUPER CLEANING LLC,

Third-Party Defendants,

--X

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SA-FE WINDOWS, INC.,

Second Third-Party Plaintiff,

-against-

NET POWER ELECTRIC CORP,

Second Third-Party Defendant.

---X

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	328-365,411-452,453-458, 485-526
Opposing Affidavits (Affirmations)	385-403,404-406,410, 528-559,560-591, 592-623, 624-663,665-705, 706-707, 708-710 720-729, 730-739
Affidavits/ Affirmations in Reply	711-719,747-750, 751-754

Upon the foregoing papers, plaintiff Edwin Mauricio Miranda (plaintiff) moves, in motion (mot.) sequence (seq.) 10, for an order pursuant to CPLR 3212 awarding him partial summary judgment against defendants/third-party plaintiffs Ordella, LLC (Ordella), Townhouse Builders Inc., Promont Builders and Townhouse Builders Inc. d/b/a Promont Builders (Townhouse) under his Labor Law § 240 (1) cause of action.

Defendant, second third-party defendant Net Power Electric Corp. (NPE) moves, in mot. seq. 11, for an order awarding it summary judgment dismissing plaintiff's complaint and all third-party claims against it. Alternatively, NPE moves for summary judgment under its cross-claims/counterclaims for contribution and common-law indemnification

against Ordella, defendant Helm Equities LLC (Helm), defendant/third-party defendant/second third-party plaintiff Sa-Fe Windows, Inc. (Sa-Fe), and Best Super Cleaning LLC (Best).

Ordella, Townhouse and Helm move, in mot. seq. 12, for an order dismissing plaintiff's complaint and all cross-claims/counterclaims against them. Ordella, Townhouse and Helm further move for summary judgment under their third-party claims for contribution, common-law and contractual indemnification against Sa-Fe and NPE. In addition, Ordella and Townhouse move for summary judgment under their claim against NPE seeking a defense in this action.

Sa-Fe moves, in mot. seq. 13, for summary judgment dismissing plaintiff's complaint and all cross-claims against it. Sa-Fe also moves for summary judgment dismissing Ordella and Townhouse's third-party complaint against it.

Background Facts and Procedural History

The instant action arises out of personal injuries sustained by plaintiff on December 20, 2019 during the course of his employment with Best while performing construction work at the premises located at 86 Delancy Street in Manhattan (the building or the premises). Prior to the accident, in a written agreement executed on or about January 17, 2017, Ordella, which owned the premises, hired Townhouse to serve as the general contractor on a project involving the construction of a thirteen-story residential apartment building with commercial space on the ground floor (the project). Thereafter, Townhouse hired various subcontractors to perform work on the project. Among these subcontractors

was NPE, which was hired to perform electrical work and Sa-Fe, which was hired to fabricate and install windows and doors on the project.[1] In addition to these subcontractors, plaintiff's employer, Best, was hired to perform general labor and cleaning services.[2]

On the day of the accident, plaintiff and a co-worker were assigned, by their supervisor, the task of replacing paper on the finished wood floor of apartment unit 7C. The paper was placed on the floor to prevent it from being scratched or marred during construction work in the apartment. When asked at his deposition, plaintiff could not remember the name of his supervisor or co-worker. However, at his deposition, Mr. Grunbaum testified that Best's foreman on the project was an individual by the name of Jean Brach. According to plaintiff's deposition testimony, he began working in the apartment unit at 8:10 a.m. Plaintiff also testified that while he was working, two individuals from another trade entered the apartment and performed work on the unit's exterior balcony. Plaintiff did not know who these individuals were, who they worked for, or the nature of the work that they performed on the balcony. The balcony in question was accessed by a door in the living room of unit 7C that was comprised of an aluminum frame housing a sheet of double-paned glass measuring 83" in height by 29.5" in width and weighing approximately 85 pounds.

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[1] Sa-Fe hired a non-party subcontractor to perform some of this installation work but several Sa-Fe workers were present on the jobsite on a daily basis.

[2] Presumably, Best was hired by the general contractor Townhouse. In this regard, Townhouse's "Site Super" on the project, Yehuda Grunbaum testified that Townhouse used Best on other construction projects. However, no contract between Best and Townhouse or any other party has been filed on NYSCEF. Further, Best has not appeared in this action. In any event, there is no dispute that Best was hired to perform work on the project and that plaintiff was injured while performing this work.

The glass pane in question was secured to the frame using four small wooden blocks that were screwed into the door frame. In this regard, Sa-Fe's owner, Ferid Brkic testified that Sa-Fe's workers and its subcontractors used these blocks to temporarily secure the pane in the door frame while awaiting delivery of "glass tops" which would snap into the door frame and permanently hold the glass in place. Mr. Brkic further testified that when the wooden blocks were in place, the glass pane "cannot fall out even if you have [a] hurricane outside." In addition, Mr. Brkic testified that if the securing blocks were removed, there was nothing holding the glass in place and any amount of wind or movement would cause the pane to fall out of the doorframe.

Plaintiff testified that the accident occurred between 9:30 a.m. and 10:00 a.m., approximately 15 to 30 minutes after the workers on the balcony had left the apartment. In particular, while standing up with his back to the balcony door, the sheet of glass in the door fell out of its frame and struck plaintiff in the right shoulder and arm, head, and neck. According to plaintiff, he was standing approximately two feet away from the door at the time of the accident and the force of the falling glass caused him to fall to the floor. However, the glass did not land on top of him as its momentum was stopped by the kitchen oven. Further, although the glass sustained some damage, it did not shatter or cause any cut injuries to plaintiff. Plaintiff sustained various injuries as a result of being struck by the glass and falling to the floor. Plaintiff testified that he did not notice anything wrong with the balcony door prior to the accident and did not know what caused the glass to fall out of the door frame.

Shortly after the accident, plaintiff's supervisor (Mr. Brach) brought him to Mr. Grunbaum's office at the jobsite to report the accident. After the accident was reported to him, Mr. Grunbaum proceeded to apartment 7C in order to investigate what occurred so that he could prepare an accident report. When asked at his deposition what he found out about the accident when he went to the apartment. Mr. Grunbaum testified that two workers employed by NPE were on the balcony when he went to the apartment. When asked how he knew who they worked for, Mr. Grunbaum testified that he could tell by the tools they were using as well as by the fact that they were wearing NPE hard hats. In addition, Mr. Grunbaum testified that he spoke to one of these electricians who told him that he removed the wooden blocks from the balcony door frame that temporarily held the door's glass in place.

During the course of his deposition, Mr. Grunbaum was shown a copy of the accident report for the underlying incident and testified that he filled out and signed the report. Mr. Grunbaum further testified that in the section of the report titled "why did the incident happen," he wrote the words "balcony door didn't have correct gasket and trim." During his deposition, Mr. Grunbaum was also shown a copy of the typed daily work log for the project from the day of the accident and testified that he generated this log. Among other things, this log stated that an accident had occurred that day and in his description of the accident, Mr. Grunbaum wrote:

> "[Best] employee had a glass pane fall on him in Apt 7C. While covering floors with paper. He was wearing proper PPE. He felt dizzy went home for day to rest. He refused

> medical attention. Electrician went out to the balcony to snake a wire thru the new framing for panels. He removed wood blocking from the balcony door that was holding the glass from falling out. Once removed laborer was behind the door wind blew glass on him."

When asked at his deposition what the source was for drawing this conclusion regarding the cause of the accident, Mr. Grunbaum testified, "[i]t may have been from speaking to the electrician or from my own investigation that I found on-site, I don't recall."

During his deposition, Mr. Brkic also testified that one of NPE's employees was responsible for removing the blocks securing the glass pane in the balcony door. In particular, Mr. Brkic testified that:

> "Electrician needed to have access to balcony. He could not find the keys, he took screw gun. It is a screwdriver but electric. However, he released this wood blocking. He did go to balcony, remove glass. He did his work, came back out. He just pushed the glass back in without securing properly the wood blocking then he did not ask me or anybody on my crew to do that for him."

When asked how he learned about the electrician removing the wood blocks, Mr. Brkic testified, "I know about it but I really don't know who was the, who told me that, who was the person to tell me that."

By summons and complaint filed on June 18, 2020, plaintiff commenced the instant action against Ordella and Townhouse alleging that the injuries he sustained in the accident were caused by their violation of Labor Law §§ 241(6), 200, as well as common-law negligence. Thereafter, Ordella and Townhouse filed an answer in which they generally denied the allegations in the complaint. Ordella and Townhouse also commenced a third-

party action against Sa-Fe and Best seeking contractual indemnification and damages for breach of contract to procure liability insurance. Ordella and Townhouse also sought common-law indemnification against Sa-Fe. Thereafter, Sa-Fe filed an answer to the third-party complaint which contained various cross-claims/counter-claims against Best, Ordella and Townhouse.

On January 22, 2021, plaintiff filed an amended complaint in which he added Sa-Fe as a first-party defendant to the action. In their answer to the amended complaint, Ordella and Townhouse asserted a cross-claim against Sa-Fe and Best seeking common-law indemnification. On August 25, 2021, Sa-Fe commenced a second third-party action against NPE seeking common-law contribution and indemnification. On September 15, 2021, plaintiff filed a second amended complaint in which he added NPE as a first-party defendant. On or about January 31, 2023, plaintiff moved for leave to file a third amended complaint to add Helm as a first-party defendant and to add a cause of action based upon the alleged violation of Labor Law § 240 (1). In an order dated June 22, 2023, Hon. Sharon A. Bourne-Clarke of this court granted this motion. On or about December 2, 2024, plaintiff filed a supplemental verified bill of particulars in which he alleged that the defendants violated 12 NYCRR 23-21(a)(1).

In his opposition papers to Sa-Fe and NPE's respective motions for summary judgment, plaintiff conceded that these defendants are not subject to liability under Labor §§ 240 (1) or 241 (6) as they were not owners, contractors or agents withing the meaning of these statutes and did not control or supervise plaintiff's work. In addition, plaintiff has

not submitted any opposition to that branch of Sa-Fe's motion which seeks summary judgment dismissing his Labor Law § 200 and common-law negligence against it as plaintiff concedes that Sa-Fe did not control or supervise the injury producing work. Further, in his opposition papers to Ordella, Townhouse, and Helms' motion for summary judgment, plaintiff states that he does not oppose those branches of the motion which sought summary judgment dismissing his Labor Law §§ 200, 241 (6) and common-law negligence claims against Ordella, Townhouse and Helm. Thus, plaintiff's only remaining claims are his Labor Law § 240 (1) claim against Ordella, Townhouse and Helm and his Labor Law § 200 and common-law negligence claims against NPE.[3]

Claims Against Helm

Ordella, Townhouse and Helm move for summary judgment dismissing plaintiff's complaint as well as all third-party claims asserted against Helm. In support of this branch of their motion, the moving defendants submit an affidavit by Ayal Horovits, who was a member of Helm and Ordella at the time of the accident. In his affidavit, Mr. Horovits states that Helm currently manages the building pursuant to a contract Dated June 1, 2020. Mr. Horovits further states that there was no contract between Helm and Ordella at the time the accident occurred. Ordella, Townhouse and Helm further submit a copy of Mr. Horovits' deposition transcript in which he testified that Helm did not have any

[3] Although he conceded that he does not have a viable Labor Law § 240 (1) claim against Sa-Fe and NPE as they were not owners, contractors, or agents under the statute, plaintiff does contest their alternative argument that the statute is inapplicable in this case based upon the *de minimus* amount of force exerted by the falling glass pane.

involvement with the underlying project or the management of the building at the time the accident occurred.

Here, the moving defendants have made a *prima facie* showing that Helm is entitled to summary judgment dismissing all first-party and third-party claims by submitting Mr. Horovits' sworn affidavit and deposition testimony, both of which indicated that Helm did not have any involvement with the building or the construction work until over five months after the underlying accident occurred. Accordingly, the burden shifts to plaintiff, Sa-Fe, and/or NPE to submit sufficient to raise a triable issue of fact regarding either plaintiff's claims or the third-party claims asserted against Helm. However, these parties have not met this burden. Specifically, plaintiff and Sa-Fe have not submitted any opposition to the motion. Further, NPE's claim that Helm was responsible for coordinating the subcontractors' work and ensuring the safety of the workers at the job site is insufficient to raise a triable issue of fact as NPE has failed to refute the movants' showing that Helm did not have any involvement with the building or construction project until after the accident occurred. Accordingly, this branch of the moving defendants' motion is granted and all first-party and third-party claims against Helm are dismissed.

Labor Law § 200 and Common-Law Negligence Claims Against NPE

NPE moves for summary judgment dismissing plaintiff's Labor Law § 200 and common-law negligence claims against it. In support of this branch of its motion, NPE maintains that, as a subcontractor which did not hire plaintiff's employer or exercise any

control over plaintiff's work, it is not subject to liability under Labor Law § 200. Further, NPE maintains that there is no basis for plaintiff's negligence claim against it as it did not supervise or control plaintiff's work. In addition, NPE contends that there is no admissible evidence that its workers unscrewed and failed to replace the wooden blocks holding the glass pane in place. In this regard, NPE points to the deposition testimony of its foreman on the project, Eliezer Izrailev. In particular, Mr. Izrailev testified that NPE did not perform work on the balcony of unit 7C on the date of the accident as it was performing interior work at that time. NPE also notes that the daily work log for the accident date indicates that NPE's work consisted of "installing outlets on 2C, 11th & 12th Fl. Roof heater, ac risers, installing lighting on 11&12" and makes no mention of NPE performing any work in unit 7C. Finally, NPE argues that it did not owe plaintiff a duty of care. In particular, NPE notes that under New York law, a contracting party generally assumes no liability to a person who is not a party to the contract unless one of the three exceptions set forth in *Espinal v Melville Snow Contractors* (98 NY2d 136, 140 [2002]). According to NPE, none of these exceptions apply in the instant case.

In opposition to this branch of NPE's motion, plaintiff argues that he has a viable Labor Law § 200 and common-law negligence claim against NPE inasmuch as there is evidence that its workers caused the accident by removing the wooden blocks holding the glass pane in place in order to gain access to the apartment balcony and failing to screw the blocks back in place when they left the balcony shortly before the accident. In support of this contention, plaintiff points to Mr. Grunbaum's deposition testimony, wherein he

stated that shortly after the accident, he proceeded to apartment unit 7C and spoke to an NPE employee who admitted that he had removed the blocks holding the glass pane in the door. Plaintiff further points to the daily work log prepared by Mr. Grunbaum which specifically stated that the accident was caused by the removal of the wooden blocks from the balcony door by one of NPE's employees. In addition, plaintiff notes that Mr. Brkic also testified that the accident was caused by an electrician who removed the blocks holding the glass pane in the doorframe. As a final matter, plaintiff maintains that NPE has not met its *prima facie* burden of demonstrating through admissible evidence that it did not remove the blocks from the patio door.

Labor Law § 200 is merely a codification of the common-law duty placed upon owners and contractors to provide employees with a safe place to work (*Chowdhury v Rodriguez*, 57 AD3d 121, 127-128 [2d Dept 2008]). Liability for causes of action sounding in common-law negligence and for violations of Labor Law § 200 are limited to those who exercise control or supervision over the plaintiff's work or who have actual or constructive notice or otherwise created the unsafe condition that caused the underlying accident (*Bradley* v *Morgan Stanley & Co., Inc.*, 21 AD3d 866, 868 [2d Dept 2005]; *Aranda v Park East Constr.*, 4 AD3d 315 [2004]; *Akins v Baker*, 247 AD2d 562, 563 [2d Dept 1998]). Specifically, "[w]here a premises condition is at issue, property owners [and contractors] may be held liable for a violation of Labor Law § 200 if the owner [or contractor] either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident" (*Ortega v Puccia*, 57 AD3d 54,

61 [2d Dept 2008]). However, "[w]hen a defect is latent and would not be discoverable upon a reasonable inspection, constructive notice may not be imputed" (*Schnell v Fitzgerald*, 95 AD3d 1295, 1295 [2d Dept 2011]).

"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. "A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed" (*Ortega*, 57 AD3d at 62). General supervisory authority to oversee the progress of the work is insufficient to impose liability. If the challenged means and methods of the work are those of a subcontractor, and the owner or contractor exercises no supervisory control over the work, no liability attaches under Labor Law § 200 or the common law" (*LaRosa v Internap Network Serv. Corp.*, 83 AD3d 905 [2d Dept 2011]).

"A subcontractor may not be held liable under Labor Law § 200, and may not be held liable, as an agent of the owner or general contractor under Labor Law §§ 240 (1) or 241 (6) where it does not have authority to supervise or control the work that cause the plaintiff's injury" (*Tomyuk v Junefield Ass'n*, 57 AD3d 518, 521 [2d Dept 2008], citing *Torres v LPE Laned Devel. & Constr., Inc.*, 54 AD3d 668, 669 [2d Dept 2008]). This is true even if the subcontractor's negligence contributed to the accident (*Tomyyuk,* 57 AD3d at 521).

Here, it is undisputed that plaintiff's employer Best and NPE were two separate and unrelated contractors who were responsible for performing completely different work on the project. It is also undisputed that NPE had no authority or control over the work performed by plaintiff on the project. Indeed, plaintiff conceded this point when he agreed not to oppose that branch of NPE's motion which sought summary judgment dismissing his Labor Law §§ 240 (1) and 241 (6) claims against NPE. Accordingly, that branch of NPE's motion which seeks summary judgment dismissing plaintiff's Labor Law § 200 claim against it is granted.

Turning to plaintiff's common-law negligence claim against NPE, "a subcontractor … may be held liable for negligence where the work it performed created the condition that caused the plaintiff's injury even if it did not possess any authority to supervise and control the plaintiff's work or work area" (*Tabickman v Batchelder St. Condominiums By Bay, LLC*, 52 AD3d 593, 594 [2d Dept 2008]; see *Poracki v St.. Mary's Roman Catholic Church*, 82 AD3d 1192, 1195 [2d Dept 2011]). This is true even where the subcontractor is not subject to liability under Labor Law § 200 (*Delaluz v Walsh*, 228 AD3d 619, 621-623 [2d Dept 2024]).

Here, NPE has failed to meet its *prima facie* burden of demonstrating that its employees did not cause the accident by removing and failing to replace the wooden blocks that held the glass pane in the balcony door. In this regard, the only evidence that NPE points to in support of its contention that it did not remove the blocks from the door is Mr. Izrailev's testimony that NPE did not perform work on the balcony of unit 7C on the

accident date as well as the daily work log for the accident date, which does not list NPE as performing any work in unit 7C. However, this evidence is contradicted by Mr. Grunbaum's deposition testimony, wherein he stated that he proceeded to unit 7C shortly after the accident and observed and spoke to two NPE electricians who had been performing work on the balcony. Further, although one section of the daily work log indicates that NPE did not work in unit 7C on the date of the accident, another section of the log indicates that NPE did electrical work on the balcony of unit 7C on the day in question.

As a final matter, although Mr. Grunbaum's testimony that one of NPE's employees told him that he removed the blocks from the door may constitute hearsay evidence, it may also fall within the declaration against interest exception to the hearsay rule (*see Basile v Huntington Utilities Fuel.*, 60 AD2d 616, 617 [AD2d 1977]). In any event, even if this testimony is deemed to be inadmissible, pointing "out gaps in the plaintiff's proof [is] insufficient to meet the defendant's burden as the party moving for summary judgment" (*Iannucci v Kucker & Bruh, LLP*, 161 AD3d 959, 960 [2d Dept 2018], citing *Quantum Corporate Funding, Ltd. V Ellis*, 126 AD3d 866, 871 [2d Dept 2015]; *Bivona v Danna & Assoc., P.C.*, 123 AD3d 959, 960 [2d Dept 2014]). Accordingly, that branch of NPE's motion which seeks summary judgment dismissing plaintiff's common-law negligence claim against it is denied.

Plaintiff's Labor Law § 240(1) Claim Against Ordella and Townhouse

Plaintiff moves for summary judgment against Ordella and Townhouse under his Labor Law § 240(1) cause of action. At the same time, Ordella and Townhouse move for summary judgment dismissing this claim. In support of this branch of his motion, plaintiff notes that the wooden blocks that were intended to keep the glass pane secure in the door frame had been removed prior to the accident. Plaintiff also points to the deposition testimony of Mr. Brkic, wherein he stated that the glass pane that fell and struck plaintiff was one inch thick, 83 inches high, 29.5 inches wide, and weighed approximately 85 pounds. Given the weight and dimensions of the glass pane, plaintiff contends it was capable of generating a tremendous amount of force even when falling a relatively short distance. Thus, plaintiff contends that his injuries were caused by a violation of Labor Law § 240(1) inasmuch as the glass pane that struck him was a load that required securing but was not secured given the removal of the wooden blocks. Plaintiff further argues that as the respective owner and general contractor on the construction project, Ordella and Townhouse are liable under the statute as a matter of law.

In opposition to this branch of plaintiff's motion, and in support of their own motion for summary judgment dismissing plaintiff's Labor Law § 240 (1) cause of action, Ordella and Townhouse argue that the accident was not caused by a missing or inadequate safety device. In particular, Ordella and Townhouse contend that the blocks holding the glass pane in place were a permanent part of the structure of the balcony door. As such, Ordella

and Townhouse maintain that the missing blocks were not safety devices intended to protect workers from the force of gravity.

In further opposition to plaintiff's motion, and in support of their own motion for summary judgment dismissing his Labor Law § 240 (1) claim, Ordella and Townhouse argue that plaintiff's accident is not covered under the statute because it did not involve a significant elevation-related risk which Labor Law § 240 (1) was intended to protect against. In support of this argument, Ordella and Townhouse cite to several appellate court cases which stand for the proposition that accidents involving objects tipping over and striking workers are not covered under the statute because they did not involve the type of significant elevation-related risk that require protecting against under Labor Law § 240 (1).

In addition to Ordella and Townhouse, NPE also opposes plaintiff's motion for summary judgment under his Labor Law § 240 (1) cause of action and moves for summary judgment dismissing this claim.[4] In this regard, NPE argues that the forces generated by the falling glass pane were *de minimus*, and therefore, the gravity-related hazards which Labor Law § 240(1) was enacted to protect against were not implicated. In support of this contention, NPE submits and expert affidavit by Ernest J. Gailor, P.E, a professional engineer licensed in New York. Based upon plaintiff's testimony that he is approximately 5"7" tall and was standing approximately 2 feet away from the pane of glass that struck

[4] Plaintiff has conceded that NPE is not subject to liability under Labor Law § 240(1) as it was not an owner, contractor or agent under the statute. However, NPE still has standing to seek dismissal of this cause of action and to oppose plaintiff's motion for summary judgment against Ordella and Townhouse as Ordella and Townhouse have third-party claims pending against NPE seeking indemnification.

him, as well as Mr. Brkic's testimony that the pane measured approximately 83" in height by 29.5" in width and weighed approximately 85 pounds, and further taking into account the fact that the pane of glass was resting upon the door frame when it tipped over and fell (as opposed to free falling) Mr. Gailor calculates that the kinetic energy involved at the time the pane struck plaintiff was approximately 153.5 joules. Given the amount of kinetic energy involved in this accident, NPE maintains that it is not covered under the statute. In support of this contention, NPE points to the Appellate Division Third Department's decision in *Wright v Ellsworth Partners*, (173 AD32d 1409 [3rd Dept 2019]). Specifically, in *Wright*, the plaintiff was struck by a row of scaffold frames stacked at ground level that tipped over and struck plaintiff with a force at impact of 154.83 joules. Based upon this evidence, the Third Department held that Labor Law §240(1) did not apply as the height differentials involved were *de minimus*. Under the circumstances, NPE maintains that plaintiff's Labor Law §240(1) claim must be dismissed.

In opposition to Ordella, Townhouse, and NPE's motions to dismiss his Labor Law § 240(1) claim, and in reply to their opposition to his motion for summary judgment under this cause of action, plaintiff maintains that there is no merit to the argument that the statute is inapplicable because the balcony door was a permanent part of the building's structure. In this regard, plaintiff notes that the glass pane that struck him had not been permanently secured to the door when it fell and struck him. In particular, plaintiff points out that the glass was temporarily secured with wooden blocks and it fell on him after these blocks

were removed. In any event, plaintiff contends that it was entirely foreseeable that the glass pane would fall when the wooden blocks securing this pane were removed.

In further opposition and reply, plaintiff argues that there is no merit to the defendants' argument that Labor Law § 240(1) does not apply because the distance that the pane fell was *de minimus*. Specifically, plaintiff points out that the force generated by the falling pane of glass was sufficient to knock him to the floor and cause him to sustain injuries. Plaintiff also submits an expert affirmation by James Pugh, a professional engineer with a Ph.D in Biomedical Engineering from the Massachusetts Institute of Technology. Among other things, Mr. Pugh calculates that the force of 153.50 joules involved in the instant action translates to 113.3 foot-pounds of force, which is the equivalent of a 113.3-pound weight held one foot above a horizontal surface. According to Mr. Pugh, this is more than enough potential energy to cause injuries as evidenced by the fact that ANSI Standard Z89.1 for Industrial Hardhat protection mandates that ANSI-certified hardhats must be able to manage an energy input of 40 foot-pounds (i.e., a blow to the hardhat of 40 foot-pounds or less will not produce an injury). In further support of this contention, Mr. Pugh cites the case of *Tropea v Tishman Constr. Corp.*, (WL 6731869, Supreme Court Bronx County [November 1, 2017 Nos. 301679/14, 84082/14], *affd* 172 AD3d 450 [1st Dept 2019]). In *Tropea*, the court found that an accident involving a 15 to 20-pound cable tray that fell a distance of three feet before striking the plaintiff in the head was covered under Labor Law § 240 (1) as the distance the object fell was not *de minimus*. According to Mr. Pugh, the amount of force exerted by the falling object in Tropea was

between 45-60 foot-pounds, which is less than the amount of force exerted by the glass pane that struck plaintiff in the instant case.

Labor Law § 240(1) provides, in pertinent part, that:

> "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, [or] altering . . . of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 240(1) was enacted to "prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield an injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). In order to accomplish this goal, the statute places the responsibility for safety practices and safety devices on owners, general contractors, and their agents who "are best situated to bear that responsibility" (*id.* at 500; *see also Zimmer v Chemung County Perf. Arts*, 65 NY2d 513, 520 [1985]). Further, "[t]he duty imposed by Labor Law § 240(1) is nondelegable and . . . an owner or contractor who breaches that duty may be held liable for damages regardless of whether it has actually exercised supervision or control over the work" (*Ross,* 81 NY2d at 500).

Given the exceptional protection offered by Labor Law § 240(1), the statute does not cover accidents merely tangentially related to the effects of gravity. Rather, gravity

must be a direct factor in the accident as when a worker falls from a height or is struck by a falling object (*Ross*, 81 NY2d at 501; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]). "With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to risk inherent in ... the relative elevation ... at which materials or loads must be positioned or secured" (*Parrino v Rauert*, 208 AD3d 672, 673 [2d Dept 2022] [internal quotation marks omitted], quoting *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001]). "Therefore, a plaintiff must show more than simply that an object fell, thereby causing injury to a worker. A plaintiff must show that, at the time the object fell, it was being hoisted or secured, or that the falling object required securing for the purposes of the undertaking'" (*Parrino*, 208 AD3d at 674, quoting *Simmons v City of New York*, 165 AD3d 725, 727 [2d Dept 2018]).

As an initial matter, there is no merit to Ordella and Townhouse's argument that the underlying accident is not covered under Labor Law § 240(1) since the glass pane that fell on plaintiff was a permanent part of the structure of the balcony. In particular, it is true that, as a general rule, accidents involving falling objects that are part of the permanent structure of a building are not covered under the statue (*see Flossos v Waterside Redevelopment Co., LP*, 108 AD3d 647, 650 [2d Dept 2013]). However, in the instant case, the glass pane that fell on plaintiff was not yet a permanent part of the balcony's structure as it had been temporarily secured to the door frame using wooden blocks while the installers awaited delivery of the glass tops that would permanently secure the glass to the doorframe (*Carlton v City of New York*, 161 AD3d 930, 933 [2d Dept 2018]).

Turning to the issues of whether or not the glass pane that fell on plaintiff was an object or load that required securing under the statute, and whether the distance the pane fell before striking plaintiff was *de minimus*, the court finds that neither plaintiff nor defendants are entitled to summary judgment with respect to plaintiff's Labor Law § 240 (1) cause of action. In this regard, the court notes that courts generally hold that upright standing objects such as panels of sheetrock, metal or glass that tip over and strike a worker are not loads that required securing under the statute (*Merlo v 49 Grove Realty, LLC*, 239 AD3d 727, 729 [2d Dept 2025]; *Parrino v Rauert*, 208 AD3d 672, 674 [2d Dept 2022]; *Wiley v Marjam Supply Co., Inc.*, 166 AD3d 1106, 1108-1109[3d Dept 2018]; *Miles v Buffalo State Alumni Assn., Inc.*, 121 AD3d 1573, 1574 [4th Dept 2014]). However, the accident in the instant case is distinguishable from these cases in that the glass pane that fell on plaintiff was in fact secured prior to the accident with the wooden blocks, and it was only after the blocks were removed that the glass fell over and struck plaintiff. Under the circumstances, it cannot be said, as a matter of law, that the glass pane was not an object that required securing (*Laliashivili v Kadmia Tenth Ave. SPE*, LLC, 221 AD3d 988, 991 [2d Dept 2023] [evidence that unsecured glass panels that fell over while resting on a dolly were typically secured utilizing belts created triable issue of fact as to whether the panels were a load that required securing]; *see also Cruz v PMG Construction Group*, 236 AD3d 402, 402-403 [1st Dept 2025]). Finally, with respect to the issue of whether the elevation risk involved in the instant accident was *de minimus*, the competing expert affidavits relied upon by defendants and plaintiff create triable issues of fact regarding whether "the glass

window, when toppled, created a significant, harmful force, even over the course of a relatively short descent, that warranted securing for the purpose of the undertaking" (*Cruz*, 236 AD3d at 403).

Accordingly, that branch of plaintiff's motion which seeks summary judgment against Ordella and Townhouse under his Labor Law § 240 (1) cause of action is denied. Those branches of Ordella and Townhouse, NPE, and Sa-Fe's respective motions which seek summary judgment dismissing plaintiff's Labor Law § 240 (1) claim against Ordella and Townhouse are also denied.

Common-Law Indemnification Claims Against Sa-Fe

NPE moves for summary judgment on its common-law indemnification crossclaims and counterclaims against Sa-Fe. Ordella and Townhouse also move for summary judgment on their common-law indemnification claims against Sa-Fe. At the same time Sa-Fe, moves for summary judgment dismissing all common-law indemnification claims asserted against it.

In support of this branch of its motion, NPE argues that any liability that could potentially be assigned to it in this case should properly be passed through to Sa-Fe. In particular, NPE notes that Sa-Fe was the only subcontractor actively engaged in the performance of work involving the fabrication and installation of the subject balcony door. Further, NPE maintains that there is no evidence that its workers did anything to cause the accident. In support of this branch of their motion, Ordella and Townhouse also point to

the fact that Sa-Fe was responsible for fabricating and installing the balcony door. In addition, Ordella and Townhouse argue that they did not control or supervise plaintiff's work and did not have notice of any defects in the door, including the absence of the blocks used to secure the glass pane.

In opposition to these branches of NPE's motion and Ordella/Townhouse's respective motions, and in support of its own motion for summary judgment dismissing all common-law indemnification claims against it, Sa-Fe maintains that the accident was caused by NPE's active negligence inasmuch as its employees removed the wooden blocks from the balcony door, which is what caused the glass pane to fall out of the door and strike plaintiff. In addition, Sa-Fe argues that the accident was not caused by any negligence on its part since the blocks held the glass securely in the door and its workers did not remove these blocks. Further, Sa-Fe notes that it did not control or supervise plaintiff's work. In opposition to this branch of Sa-Fe's motion, NPE, Ordella and Townhouse argue that there are issues of fact as to whether Sa-Fe was responsible for the accident since it fabricated and installed the balcony door. In support of this claim NPE, Ordella and Townhouse note that the accident report stated that the cause of the accident was that the "balcony door didn't have correct gasket and trim." In addition, Ordella and Townhouse argue that Sa-Fe has failed to point to any first-hand testimony that Sa-Fe properly secured the glass pane in the door.

"A party can establish its *prima facie* entitlement to judgment as a matter of law dismissing a cause of action for common-law indemnification, arising out of a workplace

injury asserted against it by establishing that it was not negligent, and that it did not have the [ability] to direct, supervise, or control the work giving rise to the injury" (*Council on Foreign Relations, Inc. v ABC Interiors Unlimited, Inc.*, 189 AD3d 1168, 1168 [2020]). Further, a party moving for summary judgment under a common-law indemnification claim must establish that any liability it faces is vicarious in nature and that the party against whom it is seeking indemnity was responsible for causing the underlying accident (*De Rivera v 3051 Fulton L.L.C.*, 215 AD3d 596 [1st Dept 2023]).

Here, the court has already determined that NPE has failed to meet its prima facia burden of demonstrating that its workers did not remove the blocks holding the glass pane in place. Further, Sa-Fe has made a *prima facie* showing that the accident was not caused by any negligence on its part. In particular, while it is true that Sa-Fe (and its subcontractors) fabricated and installed the balcony door holding the glass pane, Mr. Brkic testified that the pane was held securely in place by the wood blocks while awaiting delivery of the glass tops which would complete the installation process. Further, neither NPE, Ordella, or Townhouse have submitted any evidence contradicting this testimony or otherwise indicating that the blocks were inadequate securing devices. Finally, the statement in the accident report prepared by Mr. Grunbaum stating that the door "didn't have correct gasket and trim" is inadmissible hearsay since Mr. Grunbaum did not witness the accident and was unable to identify the source of this information (*Rivera*, 229 AD3d at 402-403; *Madalinski*, 47 AD3d at 688; *Capasso*, 43 AD3d at 1348).

Accordingly, those branches of NPE and Ordella and Townhouse's respective motions which seek summary judgment under their common-law indemnity claims against Sa-Fe are denied. That branch of Sa-Fe's motion which seeks summary judgment dismissing all common-law indemnification claims against it is granted.

Common-Law Indemnification Claims Against Helm and Best

NPE also moves for summary judgment under its common-law indemnification claims against Helm and Best. However, the court has already determined that Helm played no role in the underlying accident as it did not begin to manage the building until after the accident occurred. Further, while it is undisputed that plaintiff was employed by Best, NPE has failed to demonstrate that Best's negligence played a role in the accident as it was not responsible for securing the window in the doorframe and there is no allegation that its employees removed the blocks that secured this glass in the door. Accordingly, this branch of NPE's motion is denied.

Common-Law Indemnification Claims Against NPE

Ordella and Townhouse move for summary judgment under their common-law indemnification claims against NPE. At the same time NPE moves for summary judgment dismissing all common-law indemnification claims against it. In support of this branch of their motion, Ordella and Townhouse maintain that the accident was not caused by any negligence on their part since they did not control or supervise plaintiff's work and they had no notice of any unsafe condition involving the glass pane in the balcony door. Thus,

Ordella and Townhouse argue that any liability it faces in this case is strictly vicarious in nature. In addition, Ordella and Townhouse argue that the evidence in this case clearly shows that NPE's negligence contributed to the accident. In this regard, Ordella and Townhouse point to the accident report set forth in the daily log, as well as the testimony of Mr. Grunbaum and Mr. Brkic, all of which indicate that NPE's workers removed the wood blocks from the door shortly before the accident.

In opposition to this branch of Ordella and Townhouse's motion for summary judgment under their common-law indemnification claim against NPE, and in support of its own motion for summary judgment dismissing this claim, NPE maintains that there is no admissible evidence demonstrating that its workers removed the wooden blocks from the balcony door. In particular, NPE contends that neither Mr. Grunbaum nor Mr. Brkic had first-hand knowledge regarding who removed the wooden blocks and neither of these individuals could identify who informed them that NPE workers removed the blocks. In addition, NPE notes that the daily work log indicates that NPE did not work in unit 7C on the day of the accident and the accident report prepared by Mr. Grunbaum states that the accident was caused by the lack of the correct gasket and trim on the door, which Sa-Fe was responsible for installing. Finally, NPE maintains that Ordella and Townhouse have failed to demonstrate that they were free from negligence with respect to the accident since they exercised control and supervision over plaintiff's work.

As an initial matter, Ordella and Townhouse have demonstrated that the accident was not caused by any negligence on their part. Specifically, the testimony of plaintiff and

Mr. Grunbaum demonstrate that Ordella and Townhouse did not exercise supervision or control over plaintiff's work. Furthermore, to the extent that removal of the wooden blocks from the balcony door constituted a dangerous condition, the evidence before the court demonstrates that this condition did not exist long enough to charge Ordella and Townhouse with constructive notice of the condition. In particular, Mr. Brkic testified that once the blocks were removed, any amount of wind or movement would have caused the glass pane to fall out of the door and that the glass "could not stay even five minutes in place without wood stops." In addition, plaintiff testified that the workers in unit 7C left the balcony approximately 15 to 30 minutes before the accident. Thus, it is clear that the blocks were removed shortly before the accident.

However, although the court has already determined that NPE has failed to demonstrate that its workers did not remove the blocks from the door, in seeking summary judgment under their common-law indemnification claim against NPE, it is Ordella and Townhouse's burden to affirmatively establish that NPE's workers removed the blocks and they have failed to meet this burden. In this regard, as previously noted, Mr. Brkic and Mr. Grunbaum's testimony that NPE workers removed the blocks may have been hearsay (subject to potential exceptions) as neither of these individuals witnessed the accident, had first-hand knowledge of who removed the blocks, or could specifically identify who informed them that NPE workers removed the blocks. Similarly, the statement written by Mr. Grunbaum in the daily log attributing the accident to NPE workers removing the blocks from the door may potentially be inadmissible evidence as Mr. Grunbaum had no first-

hand knowledge regarding who removed the blocks from the door and was unable to identify the source of this information in the daily log.

Accordingly, Ordella and Townhouse's motion for summary judgment under their common-law indemnity claim against NPE as well as NPE's motion for summary judgment dismissing this claim are denied.

Indemnification Claims
Against Ordella and Townhouse

Ordella and Townhouse move for summary judgment dismissing all common-law and contractual indemnification cross claims asserted against them. In support of this branch of their motion, Ordella and Townhouse maintain that the accident was not caused by any negligence on its part since they did not control or supervise plaintiff's work or have actual or constructive notice of the dangerous condition that caused the accident. Further, Ordella and Townhouse note that it did not enter into any contracts in which it agreed to indemnify Sa-Fe or NPE.

In opposition to this branch of Ordella and Townhouse's motion, NPE argues that it has a viable common-law indemnification claim against Ordella and Townhouse NPE maintains that there are issues of fact regarding whether Ordella and Townhouse's negligence contributed to the accident since they were responsible for coordinating the work of the subcontractors on the project and ensuring the safety of the workers on the jobsite.

As an initial matter, it is undisputed that Ordella and Townhouse did not enter into any contracts in which they agreed to indemnify NPE or Sa-Fe. Accordingly, that branch of Ordella and Townhouse's motion which seeks summary judgment dismissing all contractual indemnification claims asserted against them is granted. Moreover, contrary to NPE's argument, the evidence before the court, including plaintiff's testimony as well as the testimony of Mr. Grunbaum, demonstrate that they did not exercise control and supervision over the work performed by plaintiff or the workers employed by Sa-Fe or NPE. Further, the court has already determined that Ordella and Townhouse did not have constructive notice of that the blocks had been removed from the balcony door. Accordingly, there is no basis for Sa-Fe and NPE's common-law indemnification claims against Ordella and Townhouse and all such claims are dismissed.

Contractual Indemnification Claims
Against Sa-Fe and NPE

Ordella and Townhouse move for summary judgment on their contractual indemnification claims against Sa-Fe and NPE. At the same time, Sa-Fe and NPE separately move for summary judgment dismissing this claim against them. In support of this branch of their motion, Ordella and Townhouse point to the indemnification provisions in the contracts between Townhouse and its subcontractors Sa-Fe and NPE. In particular, both subcontracts contained an identical indemnification clause which stated:

> "To the fullest extent permitted by law, the Subcontractor [i.e., Sa-Fe and NPE] shall defend, indemnify and hold harmless Owner and/or Contractor … from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting

> from performance of the Subcontractor's Work, provided that such claim … is attributable to bodily injury … cause[d] in whole or in part by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder."

Here, Ordella and Townhouse maintain that this indemnification provision is fully enforceable since the accident was not caused by any negligence on their part. In addition, Ordella and Townhouse argue that Sa-Fe and NPE's obligation to indemnify was triggered since their negligence played a role in the accident. In particular, Ordella and Townhouse point to the evidence indicating that NPE's workers removed the blocks that secured the windowpane in the balcony door, including the daily log, and the testimony of Mr. Grunbaum and Mr. Brkic. Further, with respect to Sa-Fe, Ordella and Townhouse point to the statement in the accident report indicating that the glass plane was not properly installed.

In opposition to this branch of Ordella and Townhouse's motion, and in support of their own respective motions for summary judgment dismissing Ordella and Townhouse's contractual indemnification claims against them, both NPE and Sa-Fe note that under the clear terms of the indemnification clauses in the subcontract agreements, their obligation to indemnify Ordella and Townhouse would only be triggered if the underlying accident was caused by their negligence or the negligence of a party that they hired. Here, both NPE and Sa-Fe contend that the accident was not caused by their negligence or the negligence of a party that they hired to perform work on the project.

The right to contractual indemnification is dependent upon the specific language in the contract (*Reisman v Bay Shore Union Free School Dist.*, 74 AD3d 772, 773 [2010]). In this regard, the obligation to indemnify should only be found where it is clearly indicated in the language in the contract (*George v Marshalls of MA., Inc.*, 61 AD3de 925, 930 [2009]). Finally, a party seeking contractual indemnification must demonstrate that it was free of negligence since a party may not be indemnified for its own negligent conduct (*Cava Constr. Co., Inc. v Gaeltec Remodeling Corp.*, 58 AD3d 660, 662 [2009]; General Obligations Law § 5-322.1).

Here, the clear language of the subject indemnification clauses requires that NPE and Sa-Fe indemnify Ordella and Townhouse, but only to the extent that the underlying accident was caused by their negligence. Further, the court has already determined that the accident was not caused by any negligence on Sa-Fe's part. Accordingly, that branch of Sa-Fe's motion which seeks summary judgment dismissing Ordella and Townhouse's contractual indemnification claim against it is granted and that branch of Ordella and Townhouse's motion which seeks summary judgment on their contractual indemnification claim against Sa-Fe is denied.

With respect to NPE, the court has already determined that NPE has failed to establish that the accident was not caused by its negligence while Ordella and Townhouse have failed to establish that the accident was caused by NPE's negligence. However, as stated above, Ordella and Townhouse have demonstrated that the accident was not caused by any negligence on their part. Accordingly, NPE's motion for summary judgment

dismissing Ordella and Townhouse's contractual indemnification claim is denied. Ordella and Townhouse's motion for summary judgment on their contractual indemnification claim against NPE's is conditionally granted pending a determination of negligence, if any, on NPE's part. Similarly, Ordella and Townhouse's motion for an order directing that NPE defend them in this action is granted pending a determination of negligence, if any, on NPE's part (*see Pillco v 160 Dikeman St., LLC*, 232 AD3d 918, 920 [2d Dept 2024], citing *Bellefleur v Newark Beth Israel Me. Ctr.*, 66 AD3d 807, 809 [2d Dept 2009]; *see also Colson v AO Petroleum, Inc.*, 2026 NY Slip Op 00238 [2d Dept Jan. 21, 2026] *citing Jamindar v Uniondale Union Free School Dist.*, 90 AD3d 612 [2d Dept 2011]).

Summary

In summary, the court rules as follows:

(1) Plaintiff's motion, in mot. seq. 10, for summary judgment under his Labor Law § 240 (1) claim against Ordella and Townhouse is denied.

(2) That branch of NPE's motion, in mot. seq. 11, which seeks summary judgment dismissing plaintiff's Labor Law §§ 240(1), 241(6), and 200 claims against it is granted.

a. That branch of NPE's motion which seeks summary judgment dismissing plaintiff's common-law negligence claim against it is denied;

b. That branch of NPE's motion which seeks summary judgment on its contribution and common-law indemnification claims against Ordella, Townhouse, Helm, Sa-Fe, and Best is denied;

c. That branch of NPE's motion which seeks summary judgment dismissing Ordella, Townhouse, and Sa-Fe's common-law indemnification claims against it is denied;

d. That branch of NPE's motion which seeks summary judgment dismissing Ordella and Townhouse's contractual indemnification claim against it is denied.

(3) That branch of Ordella, Townhouse, and Helm's motion, in mot. seq. 12, which seeks summary judgment dismissing plaintiff's claims and all third-party claims against Helm is granted. That branch of Ordella and Townhouse's motion which seeks summary judgment dismissing plaintiff's Labor Law §§ 241(6), 200, and common-law negligence claims against them is granted.

a. That branch of Ordella and Townhouse's motion which seeks summary judgment dismissing plaintiff's Labor Law § 240(1) claim against them is denied;

b. That branch of Ordella and Townhouse's motion which seeks summary judgment dismissing all common-law and contractual indemnification claims against them is granted;

c. That branch of Ordella and Townhouse's motion which seeks summary judgment on their common-law indemnification claims against NPE and Sa-Fe are denied;

d. That branch of Ordella and Townhouse's motion which seeks summary judgment under their contractual indemnification claims against Sa-Fe and NPE is denied with respect to Sa-Fe and conditionally granted with respect to NPE. That branch of Ordella and Townhouse's motion which seeks an order directing that NPE defend it in this action is conditionally granted.

(4) That branch of Sa-Fe's motion, in mot. seq. 13, which seeks an order dismissing plaintiff's Labor Law §§ 240(1), 241(6), 200, and common-law negligence claims against it is granted;

a. That branch of Sa-Fe's motion which seeks summary judgment dismissing all common-law and contractual indemnification claims against it is granted.

This constitutes the decision and order of the court.

ENTER:

HON. SAUL STEIN, J.S.C.