Smith v 121 Chambers St. LLC
2026 NY Slip Op 30444(U)
February 6, 2026
Supreme Court, New York County
Docket Number: Index No. 153399/2023
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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SHEA SMITH,

Plaintiff,

- v -

121 CHAMBERS STREET LLC, INTERSTATE INTERIORS INC., and CONDUCTOR ELECTRIC SERVICES,

Defendants.

----------X

INDEX NO. 153399/2023

MOTION DATE

MOTION SEQ. NO. 002 003 004

DECISION + ORDER ON MOTION

INTERSTATE INTERIORS INC.,

Third-Party Plaintiff,

-against-

FINISH WOOD INC. and CONDUCTOR ELECTRIC SERVICES,

Third-Party Defendants.

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Third-Party
Index No. 595876/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 164, 166, 168, 169, 170, 171, 172, 197, 200, 201, 203, 204, 205, 212

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 167, 198, 199, 202, 211, 213

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 206, 207, 208, 209, 210, 214, 215, 216

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

Motion sequence nos. 002, 003 and 004 are consolidated for disposition.

In this Labor Law action, plaintiff Shea Smith alleges that he received a shock from an exposed electrical wire while working at a building under construction on November 11, 2022.

In MS002, defendant 121 Chambers Street LLC ("Chambers") and defendant/third-party plaintiff Interstate Interiors Inc. ("Interior") (collectively, "Chambers/Interstate") move for summary judgment dismissing plaintiff's common-law negligence and Labor Law §§ 200 and 240 (1) claims, all cross-claims and counterclaims for contribution and contractual indemnification and any contract-based cross-claims and counterclaims, and for summary judgment in their favor on their claims for contractual indemnification against third-party defendant Finish Wood Inc. "(Finish") and defendant/third-party defendant Conductor Electric Services ("Conductor"). In MS003, plaintiff moves for partial summary judgment on liability against Chambers, Interstate and Conductor's on his Labor Law § 241 (6) claim. In MS004, Conductor moves for summary judgment to dismiss the complaint, the third-party complaint, and all cross-claims and counterclaims against it.

Background

Chambers, the owner of the subject building (the "Property"), hired Interstate as its general contractor to renovate the Property (the Project) (NYSCEF Doc No. 140). On May 24, 2021, Interstate executed a master subcontract agreement with Finish (NYSCEF Doc No. 138) and retained Finish as a carpentry subcontractor on the Project. On May 24, 2021, Interstate executed a master subcontractor agreement with Conductor (NYSCEF Doc No. 139) and retained Conductor as a subcontractor on the Project.

Plaintiff, a laborer employed by Finish, testified that on the day of the accident, he was helping his supervisor, Declan O'Reilly (O'Reilly), put up metal studs in the cellar or basement at the Property (NYSCEF Doc No. 133 at 15, 24, 28). O'Reilly directed plaintiff to move temporary lighting that had fallen, obstructing their work; the light was dangling from a wire near the ceiling (*id.* at 37, 136). Plaintiff explained that he was standing on the second rung of an A-frame ladder

when he touched the wire with the index finger on his right hand and received a shock (*id.* at 30-31, 42). Plaintiff stated, "I was putting it back up with a cable tie and that's when I got zapped" (*id.* at 37). He immediately felt numbness throughout his body and could not release his hold on the ladder (*id.* at 41, 43). After O'Reilly kicked the bottom of the ladder, plaintiff landed on his feet and sat down (*id.* at 42). Plaintiff did not know there was a cut in the wire's insulation (*id.* at 40) and saw no warning signs about the wire or lighting (*id.* at 132-133). Plaintiff carried a utility knife, but the knife remained in his pocket (*id.* at 114). Plaintiff did not complain about, and he was unaware of anyone complaining about, the working conditions before the accident (*id.* at 32). Plaintiff did not know who had installed the lighting and had never heard of Conductor (*id.* at 107-108).

O'Reilly, a supervisor and carpenter with Finish, testified that he and plaintiff were framing a wall in the subcellar when the accident occurred (NYSCEF Doc No. 136 at 11, 13, 20). O'Reilly directed plaintiff to "tie up a temp … live wire" hanging six inches above their heads that was obstructing their work (*id.* at 13, 15-16, 35). Plaintiff stood on the first or second rung of an A-frame ladder to complete this task (*id.* at 51). O'Reilly then heard plaintiff groan (*id.* at 52) and saw him on the ground (*id.* at 15). O'Reilly stated that he was aware plaintiff "might have gotten an electric shock" (*id.* at 15). O'Reilly, who had his back to plaintiff and did not witness the accident, testified, "I am not sure how Shea would have gotten the shock" since "[t]he wire was covered" (*id.* at 14, 16-17). O'Reilly claimed that plaintiff, who suffered a cut to his finger, "could have caught it in a wire or a steel girder, but it happened in the process of tying up that wire" (*id.* at 13). O'Reilly did not examine any part of the wire and did not know if had been stripped of its insulation (*id.* at 17). O'Reilly spoke to Mark Keenan (Keenan) a few days later and showed Keenan the wire, which Keenan then threw out (*id.* at 16). O'Reilly confirmed that he and plaintiff

would have used a box cutter for their work cutting insulation on the first floor, but plaintiff would have had no reason to use, and did not use, the box cutter while working in the subcellar (*id.* at 49-50).

Interstate's director of operations, Mathew, testified that Interstate likely began work on the Project at least one year prior to May 14, 2018 (NYSCEF Doc No. 134 at 26-27). Conductor furnished temporary lighting for the Project (*id.* at 50). Mathew was not aware of any complaints about the temporary lighting (*id.* at 71) or any stripped electrical wires (*id.* at 51). If there had been a complaint, Mathew expected the contractor to contact Downs, Interstate's superintendent, or the electrical contractor directly (*id.* at 16, 52). Mathew was not aware of any instance where Conductor came back to the Project for the sole purpose of changing the temporary lighting (*id.* at 71). Mathew was not aware of any procedure for inspecting the temporary lighting system, and he was not aware of Conductor having been asked to conduct an inspection (*id.* at 73-74, 83). Mathew also testified that Conductor was obligated to periodically inspect and maintain the temporary lighting "to ensure safety at all times" (*id.* at 73, 84, 86). Downs was responsible for overall safety of the jobsite (*id.* at 55-56), and depending on the condition, Downs had the authority to correct an unsafe condition that he observed at the site (*id.* at 42-43).

Downs testified that he learned of the accident from Lachlan Rosato (Rosato), Interstate's assistant superintendent, though Rosato did not witness the accident (NYSCEF Doc No. 135 at 17-18, 32-33, 36, 47). Downs could not recall if Rosato told him that a carpenter had received an electric shock (*id.* at 34). Downs spoke to Martin Moran (Moran) from Finish, who told him that an employee had been electrocuted and suffered a cut to his hand (*id.* at 33, 35). Downs understood that the stripped wire involved in the accident formed part of the temporary lighting system (*id.* at 48). Conductor installed the system, which consisted of lightbulbs encased in plastic cages strung

from wires (*id.* at 26, 49), and would relocate the lighting as needed at Interstate's request (*id.* at 28-29). Downs was unaware of any prior complaints about the lighting in the basement or cellar (*id.* at 40). Downs was unaware if Conductor performed daily inspections of the lighting system (*id.* at 31) and could not recall contacting Conductor to request an inspection (*id.* at 55). Although he did not expect Conductor to perform daily inspections (*id.*), Downs stated that Conductor was responsible for installing and maintaining the wires that formed part of that system (*id.* at 51). Downs confirmed that Interstate's responsibilities included performing site safety (*id.* at 42).

According to Keenan, Conductor's project manager on the Project, the temporary lighting consisted of yellow Romex cable tied to the floor joists near the ceiling and yellow string lights with lightbulbs located every 10 feet (NYSCEF Doc No. 137 at 27-28, 35, 40). Conductor installed the system sometime between 2018 and 2020, though Keenan did not know who performed that work (*id.* at 33). Keenan stated that "Lacklin Rosario" told him plaintiff received a shock after grabbing a "stripped" wire that formed part of the system (*id.* at 18 and 26-28). Keenan immediately sent an electrician, Segundo Gonzales (Gonzales), to the site (*id.* at 23, 26-27). Keenan testified that Gonzales inspected the wire and told Keenan that part of the wire had been stripped of its insulation (*id.* at 29, 39). Keenan did not know why the insulation had been stripped from the wire (*id.* at 29). Keenan testified that the accident occurred on a Friday, and when he arrived at the site the following Monday (*id.* at 38), he saw that "a section of the cable … was stripped. We removed it. And I got my guys to … toss it in the trash" (*id.* at 31). Keenan did know who installed that part of the system, when the wire was last inspected, or if anyone knew the insulation had been removed (*id.* at 33, 43). Keenan admitted that Conductor was not on the site every day, but "[w]hen we were on site, we would inspect, as part of a duty" (*id.* at 34). Keenan

estimated that Conductor was present at the site once a week leading up to the date of the accident (*id.* at 36-37).

Plaintiff commenced this action asserting claims for common-law negligence and for violations of Labor Law §§ 200, 240 (1) and 241 (6) against Chambers and Interstate later adding Conductor as a defendant. Chambers interposed a single cross-claim for common-law indemnification, contractual indemnification, contribution and breach of contract against Interstate and Conductor. Conductor pleaded three cross-claims for contribution and common-law and contractual indemnity against Chambers and Interstate.

Interstate brought a third-party action against Finish and Conductor for contribution, common-law and contractual indemnification and breach of contract for failure to procure insurance. Finish asserted cross-claims against Chambers, Interstate and Conductor for contribution, common-law and contractual indemnity and breach of contract for failure to procure insurance. Conductor interposed cross-claims for contribution and indemnification against Finish and two counterclaims for contribution and indemnification against Chambers and Interstate.

Plaintiff, Chambers/Interstate, and Conductor now move for summary judgment.

Discussion

"To succeed on a motion for summary judgment, the proponent of the 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'" (*Golobe v Mielnicki*, 44 NY3d 86, 92 [2025], *rearg denied* 43 NY3d 1013 [2025] [citation omitted]). The "facts must be viewed 'in the light most favorable to the non-moving party'" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [citation omitted]). If the moving party fails to meet its prima facie burden, the motion must be denied without regard to the sufficiency of the opposing papers (*id.*). If the moving party

meets its burden, the non-moving party must furnish evidence in admissible form sufficient to raise a triable issue (*Alvarez v Prospect Hosp*., 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Plaintiff concedes that Labor Law § 240 (1) does not apply to the facts (NYSCEF Doc No. 143, Soverow affirmation, ¶ 2). Accordingly, the Labor Law § 240 (1) claim is dismissed.

Labor Law § 241 (6)

Plaintiff moves for partial summary judgment on his Labor Law § 241 (6) claim, arguing that defendants violated Industrial Code (12 NYCRR) § 23-1.13 (b) (3), (4) and (8) and 23-1.13 (c) (1) (i) and (ii). Chambers/Interstate dispute whether this section applies, whether there was a violation, and whether a violation proximately caused plaintiff's injury. Conductor argues that it is not a proper Labor Law defendant, plaintiff failed to identify specific subsections of the Industrial Code, and none of the provisions on which plaintiff relies are applicable.

Labor Law § 241 (6) provides that:

> "[a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work … shall comply therewith."

"Labor Law § 241 (6) is a 'hybrid' statute, as the first sentence 'reiterates the general common-law standard of care,' while the second sentence imposes a nondelegable duty with respect to compliance with rules of the Commissioner which contain 'specific, positive command[s]'" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 317 [2024], quoting *Ross v Curtis-Palmer Hydro-Elec. Co*., 81 NY2d 494, 503-504 [1993]), as opposed to rules "simply declar[ing]

general safety standards or … common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). Thus, to prevail on a Labor Law § 241 (6) claim, the plaintiff must establish that there was a violation of rule or regulation setting forth a specific standard of conduct, and that the violation was a proximate cause of the injury (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007], *lv denied* 10 NY3d 710 [2008]).

In his bill of particulars, plaintiff cites Industrial Code (12 NYCRR) §§ 23-1.5, 23-1.13, 23-1.15, 23-1.16, including 23-1.16 (a) and (b), 23-1.17, and 23-1.29 (a) and (b) and Occupational Safety & Health Administration (OSHA) regulation 29 CFR 1926/1910 as predicates (NYSCEF Doc No. 129). Plaintiff has since identified 12 NYCRR 23-1.13 (b) (3), (4) and (8) and 23-1.13 (c) (1) (i) and (ii) as predicates (NYSCEF Doc No. 148, ¶ 57). The delay is not fatal to his claim (*see Walker v Metro-North Commuter R.R.*, 11 AD3d 339, 340-341 [1st Dept 2004]). That said, by failing to address those other Industrial Code sections, they are deemed abandoned and dismissed (*see Romano v New York City Tr. Auth.*, 213 AD3d 506, 508 [1st Dept 2023]). In addition, OSHA regulations are not proper predicates (*see Alberto v DiSano Demolition Co., Inc.*, 194 AD3d 607, 608 [1st Dept 2021]).

Industrial Code (12 NYCRR) § 23-1.13 (Electrical hazards) states, in relevant part:

"(b) General.

…

(3) Investigation and warning. Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool or machine into physical or electrical contact therewith. The employer shall post and maintain proper warning signs where such a circuit exists. He shall advise his employees of the locations of such lines, the hazards involved and the protective measures to be taken.

(4) Protection of employees. No employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such

> circuit by effective insulation or other means. In work areas where the exact locations of underground electric power lines are unknown, persons using jack hammers, bars or other hand tools which may contact such power lines shall be provided with insulated protective gloves, body aprons and footwear.
>
> …
>
> (8) Defective insulation. Any wiring found to have cracked insulation or insulation deteriorated in any other way shall be immediately removed from service and discarded.
>
> (c) Temporary electric power circuits at construction, demolition or excavation job sites.
> (1) Temporary electric wiring.
> (i) All temporary wiring shall be supported on proper insulators and not looped over nails or brackets. No bare wires or other unprotected current-carrying parts shall be located within eight feet above any surface where persons may work or pass unless completely guarded by a fence or other barrier.
> Exception: Where qualified persons must make adjustments or measurements on an electrical device or circuit.
> (ii) Electrical systems and current-carrying equipment shall be properly grounded except as provided for blasting circuits in this Part (rule). Where it is necessary to lay electrical wiring on the ground, such wiring shall be of the weather-proof type and heavy enough to withstand the wear and abuse to which it may be subjected. No conductor shall be used to carry a higher voltage than the manufacturer's rating."

Section 23-1.13 is sufficiently specific to support a Labor Law § 241 (6) claim (*Hernandez v Ten Ten Co*., 31 AD3d 333, 333-334 [1st Dept 2006]), and applies to owners and employers (*see Henry v Split Rock Rehabilitation & Health Care Ctr., LLC*, 205 AD3d 540, 540 [1st Dept 2022], citing *Rubino v 330 Madison Co., LLC*, 150 AD3d 603, 604 [1st Dept 2017]).

Plaintiff has established that 12 NYCRR 23-1.13 (b) (3), (4) and (8) and (c) (i) and (ii) have been violated, and that the violations were a proximate cause of the accident (*see Lopez v NG 645 Madison Ave LLC*, 239 AD3d 417, 418 [1st Dept 2025]; *Britt v Levgar Equities Corp.*, 227 AD3d 437, 438 [1st Dept 2024]; *O'Leary v S&A Elec. Contr. Corp*., 149 AD3d 500, 502 [1st Dept 2017]). Section 23-1.13 (b) (3) requires an investigation into whether any part of an electric power circuit is exposed take place before any work is performed and requires the posting of warning signs where an exposed electrical power circuit exists (*DelRosario v United Nations Fed. Credit*

Union, 104 AD3d 515, 515-516 [1st Dept 2013]). Plaintiff testified that he did not see any warning signs and was not aware of the "small cut" in the wire (NYSCEF Doc No. 133 at 34, 132-133). Under Section 23-1.13 (b) (4), an electrical circuit must be guarded "by effective insulation or other means," and under Section 23-1.13 (b) (8), any wiring with cracked or deteriorated insulation must be removed. Conductor's witness confirmed that part of the wire had been stripped of its insulation (NYSCEF Doc No. 137 at 28-29). Section 23-1.13 (c) (i) provides that bare wires shall not be located eight feet above where a person works or passes, and O'Reilly testified the wire was hanging roughly six inches above their heads (NYSCEF Doc No. 136 at 35). Lastly, Section 23-1.13 (c) (ii) states that electrical or current-carrying equipment must be properly grounded, and plaintiff testified that he received an electric shock (NYSCEF Doc No. 133 at 37).

Because Labor Law § 241 (6) imposes a nondelegable duty upon owners and general contractors (*Toussaint v Port Auth. of N.Y. & N.J.*, 38 NY3d 89, 93 [2022]), plaintiff is entitled to partial summary judgment against Chambers, the owner, and Interstate, the general contractor (*see Rubino*, 150 AD3d at 604). A subcontractor may also be liable for a Labor Law violation as a statutory agent of the owner or general contractor (*see Bacova v Paramount Leasehold, L.P.*, 223 AD3d 428, 430 [1st Dept 2024]; *see generally Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]). A subcontract granting a subcontractor supervisory authority over the injury-producing work or a subcontractor exercising actual supervision is sufficient to establish that the subcontractor is a statutory agent for purposes of liability under the Labor Law (*Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 192 [1st Dept 2011]). Here, Conductor supervised and controlled the electrical work that gave rise to plaintiff's injury. As such, Conductor is liable to plaintiff as a statutory agent (*see Higgins v TST 375 Hudson, L.L.C.*, 179 AD3d 508, 510 [1st Dept 2020] [electrical subcontractor deemed a statutory agent for Labor Law § 241 (6)]).

Chambers/Interstate and Conductor fail to raise a triable issue of fact. Conductor's project manager and one of its electricians inspected the wire after the accident and saw that the insulation had been stripped, leaving the wire exposed. The discrepancy in the testimony as to whether O'Reilly kicked the ladder on which plaintiff was standing is insufficient to rebut plaintiff's description of how the accident occurred, specifically that he received an electric shock (*see Yagual v Hudson Canal LLC*, — AD3d —, 2025 NY Slip Op 06676, *1 [1st Dept 2025]). Accordingly, plaintiff is entitled to partial summary judgment on his Labor Law § 241 (6) claim premised on 12 NYCRR 23-1.13 (b) (3), (4) and (8) and (c) (1) (i) and (ii).

Labor Law § 200 and Common-Law Negligence

Chambers/Interstate argue they are entitled to dismissal of these claims because they did not control the means and methods of the work and did not have actual or constructive notice of the exposed wire. Conductor asserts that it is not a statutory agent of either Chambers or Interstate and did not own the Property or supervise plaintiff's work. As to the common-law negligence claim, Conductor asserts that as a contractor, it did not owe plaintiff a duty of care.

Plaintiff concedes that Chambers is not liable on a means and methods theory but failed to protect him from a dangerous premises condition (NYSCEF Doc No. 143, ¶ 2). As against Interstate and Conductor, plaintiff maintains that they, too, failed to protect him from a dangerous premises condition and that both exercised control over the injury-producing work.

Labor Law § 200, which "codifies the common-law duty to maintain a safe workplace" (*Toussaint*, 38 NY3d at 94), and common-law negligence claims may arise from the means and methods of the work or a dangerous condition on the premises (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 149-150 [1st Dept 2012]), or both (*Moore v URS Corp.*, 209 AD3d 438, 440 [1st Dept 2022]). If an accident arises out of a dangerous premises condition, liability may be

imposed if the defendant created the condition or failed to remedy a condition of which it had actual or constructive notice (*Coon v WFP Tower B Co., L.P.*, 220 AD3d 407, 408 [1st Dept 2023]). In that case, proof of the defendant's supervision and control over the plaintiff's work is unnecessary (*Licata v AB Green Gansevoort, LLC*, 158 AD3d 487, 489 [1st Dept 2018]). If the accident arises from the means and methods of the work, liability may be imposed if the defendant supervised or controlled the injury-producing work (*Estevez v SLG 100 Park LLC*, 215 AD3d 566, 568-569 [1st Dept 2023]). "The distinction between the two is nuanced, and a triable issue of fact can exist as to which standard applies, or whether both standards apply" (*Sandoval-Morales v 164-20 N. Blvd., LLC*, 231 AD3d 501, 503 [1st Dept 2024]).

Plaintiff's accident appears to implicate both a dangerous premises condition and the means and methods of the work (*see Haynes v Boricua Vil. Hous. Dev. Fund Co., Inc*., 170 AD3d 509, 511 [1st Dept 2019] [analyzing whether the exposed electrical wire the plaintiff was exposed to under both theories]; *but see Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 406 [1st Dept 2018] ["[w]here a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises"]).

Here, there is no evidence that Chambers or Interstate created the condition, namely the faulty exposed or stripped electrical wire. In the absence of any specific complaints concerning the temporary lighting system or the subject wire, Chambers/Interstate have demonstrated their lack of actual notice (*see Aberger v Camp Loyaltown, Inc*., 193 AD3d 195, 198 [1st Dept 2021]). Chambers/Interstate, however, have failed to demonstrate their lack of constructive notice. "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and

remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). A defendant demonstrates its lack of constructive notice by showing that "the dangerous condition did not exist when the area was last inspected or cleaned before [the accident]" (*Ross v Betty G. Reader Revocable Trust*, 86 AD3d 419, 421 [1st Dept 2011]). Chambers/Interstate have not produced any evidence of when they last inspected the temporary lighting system or the electrical wire prior to the accident (*see Bacova*, 223 AD3d at 429-430).

Conductor, likewise, failed to carry its prima burden under a dangerous premises condition theory. A statutory agent may be liable under Labor Law § 200 if it "'actually created the dangerous condition or had actual or constructive notice of it'" (*Cackett v Gladden Props., LLC*, 183 AD3d 419, 421 [1st Dept 2020], quoting *DeMaria v RBNB 20 Owner, LLC*, 129 AD3d 623, 625 [1st Dept 2015]). It is undisputed that Conductor furnished temporary lighting and was responsible for inspecting the system after its installation. Thus, a triable issue exists as to whether Conductor created the condition or had constructive notice of it (*see Bacova*, 223 AD3d at 430).

Interstate and Conductor, though, have demonstrated that neither controlled the means and methods of plaintiff's work (*see Peralta v Hunter Roberts Constr. Group LLC*, 242 AD3d 646, 647 [1st Dept 2025]). Plaintiff testified that he received all his instructions from O'Reilly, his supervisor (NYSCEF Doc No. 133 at 37). Furthermore, Interstate's responsibility for maintaining site safety is insufficient to establish that it exercised control over plaintiff's work (*see Llerena v 975 Park Ave., Corp.*, — AD3d —, 2025 NY Slip Op 06907, *1 [1st Dept 2025]). And, as noted above, plaintiff concedes that he is not pursuing Chambers on a means and methods theory.

Conductor moves to dismiss the common-law negligence claim on the ground that it did not owe a duty to plaintiff. It is well settled that "[l]iability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises"

(*Gibbs v Port Auth. of N.Y.*, 17 AD3d 252, 254 [1st Dept 2005]), and here, Conductor did not own, occupy or control the Property (*see Lopez v Allied Amusement Shows, Inc.*, 83 AD3d 519, 519 [1st Dept 2011]). Nevertheless, a contractor may be liable to a third party in tort in three circumstances:

> "(1) where the contracting party, in failing to exercise reasonable care in the performance of [its] duties, 'launche[s] a force or instrument of harm'; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely" (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 140 [2002] [citations omitted]).

Plaintiff, in opposition, does not address the second and third *Espinal* exceptions, electing to focus solely on the first exception. The record, in any event, does not support application of the second and third exceptions (*see DiBrino v Rockefeller Ctr. N., Inc.*, 230 AD3d 127, 133 [1st Dept 2024], *affd* — NY3d —, 2025 NY Slip Op 07077 [2025]).

A contractor launches a force or instrument of harm when it "undertakes to render services and then negligently creates or exacerbates a dangerous condition" (*Espinal*, 98 NY2d at 141-142). The "court[ ] must determine whether the contracting party's performance has risen from the level of 'mere negligent omission, unaccompanied by malice or other aggravating elements' up to the more severe threshold of active 'commission of a wrong'" (*DiBrino v Rockefeller Ctr. N., Inc.*, — NY3d —, 2025 NY Slip Op 07077, *4-5 [2025] [citation omitted]). "That analysis necessarily hinges on the action of the contracting party: 'What we need to know is not so much the conduct to be avoided when the relation and its attendant duty are established as existing. What we need to know is the conduct that engenders the relation'" (*id.*, *5 [citation omitted]). Here, Conductor installed the temporary lighting system, and according to its project manager, Conductor was responsible for inspecting and maintaining it. Conductor thus has failed to dispel all triable issues of fact whether it created a dangerous condition (*see Ghodbane v 111 John Realty Corp.*, 210 AD3d 498, 498-499 [1st Dept 2022]).

Contribution and Common-Law Indemnification

"[A] claim for common-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]). Common-law indemnification is predicated upon vicarious liability without actual fault (*J.H. v 1288 LLC*, 171 AD3d 549, 549 [1st Dept 2019]). A party is entitled to common-law indemnification if: "(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]). Because Chambers/Interstate and Conductor have not demonstrated their freedom from fault, dismissal of the contribution and common-law indemnification cross-claims or counterclaims against them is denied (*see Hangan v Edgewater Park Owners Coop., Inc.*, 233 AD3d 510, 511 [1st Dept 2024]).

Contractual Indemnification

Chambers/Interstate move for unconditional contractual indemnity from Conductor and Finish and for dismissal of the contract-based claims against them. Finish opposes. Conductor opposes and moves for dismissal of the contractual indemnity claims and cross-claims against it.

"When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491 [1989]). "[T]he 'intention to indemnify [must] 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]). In

addition, a party seeking contractual indemnity must demonstrate that it was not negligent or that it has been "held liable solely by virtue of the statutory liability" (*Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]).

Section 7 in the Conductor and Finish Contracts are identical and reads as follows:

> "To the fullest extent permitted by law, Indemnitor agrees to indemnify, defend and hold harmless each Owner and **Interstate Interiors, Inc.** from any and all claims, suits, damages, liabilities, professional fees including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the Work, its agents, servants, subcontractors or employees, at the Premises owned by such Owner. This agreement to indemnify specifically contemplates (1) full indemnity in the event of liability imposed against the Owner and **Interstate Interiors, Inc.** without negligence and solely by reason of statute, operation of law, or otherwise, and (2) partial indemnity in the event of any actual negligence on the part of Owner and **Interstate Interiors, Inc.** causing or contributing to the underlying claim, in which event, indemnification will be limited to any liability imposed over and above that percentage attributed to actual fault, whether by statute, by operation of law, or otherwise" (NYSCEF Doc No. 138 at 6; NYSCEF Doc No. 139 at 6).

Interstate's Third-Party Claim against Finish

Finish argues the indemnity provision violates General Obligations Law § 5-322.1 and is unenforceable. Finish further argues that it would be premature to grant contractual indemnity as neither Chambers nor Interstate have demonstrated their freedom from negligence.

General Obligations Law § 5-322.1 renders an indemnification provision "requiring subcontractors to assume liability by contract for the negligence of others" unenforceable (*Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 786, 794 [1997], *rearg denied* 90 NY2d 1008 [1997]), unless the provision contains language limiting indemnity to the damages caused by the subcontractor's own negligence (*Brooks v Judlau Contr., Inc.*, 11 NY3d 204, 210 [2008]). Finish's argument that the indemnification provision violates the statute is unpersuasive

as the provision contains the requisite savings clause "to the fullest extent permitted by law" (*see Ichapanta v East Side Home Stead LLC*, 243 AD3d 410, 411 [1st Dept 2025]).

Moreover, based on a plain reading of the Section 7, Finish's obligation to indemnify has been triggered because Finish employed plaintiff, and the accident arose out of Finish's work (*id.*). Granting contractual indemnity is not premature as the provision may be enforced without regard to whether Finish was negligent (*see Torres-Quito v 1711 LLC*, 227 AD3d 113, 119 [1st Dept 2024]). Given that the common-law negligence and Labor Law § 200 claims have not been dismissed, Interstate is entitled to conditional, not unconditional, contractual indemnification (*see Hernandez v Port Auth. of N.Y. & N.J.*, 241 AD3d 1069, 1073 [1st Dept 2025]; *Devlin v AECOM*, 224 AD3d 437, 439 [1st Dept 2024]). Although Chambers moves for contractual indemnity from Finish in its favor, Chambers did not plead a claim or a cross-claim for contractual indemnification against Finish (NYSCEF Doc No. 180).

Chambers' Cross-Claim and Interstate's Third-Party Claim against Conductor

Conductor argues the contractual indemnity claims must be dismissed because the Conductor Contract pre-dates the date of the accident and does not apply to work invoiced or performed before the effective date of the agreement. Conductor adds that even if the Conductor Contract controls, the indemnification provision was not triggered because the accident arose out of Finish's work for which Conductor should not be obligated to indemnify. Conductor maintains that it was not negligent as it did not own or occupy the Property, and that none of the *Espinal* exceptions apply. Conductor also submits that granting indemnity would be premature since Chambers/Interstate have not shown they are free from fault.

Chambers/Interstate contend the Conductor Contract controls all projects for which Interstate engages Conductor, with the term commencing on the execution date. They submit that under section 1.2 (3), Conductor accepted the Conductor Contract's terms for work in which a purchase order has been issued and where Conductor has started its work. Chambers/Conductor also maintain that under section 1.3, all contract documents are incorporated into any purchase order whether they came into existence before or after the agreement has been executed.

Interstate, as "contractor," and Conductor, as "subcontractor," executed the Conductor Contract on May 24, 2021, which is also the "Effective Date" of the agreement (NYSCEF Doc No. 139 at 1). Section 1.1 provides that the Conductor Contract:

> "will serve as a master agreement for all projects for which CONTRACTOR engages SUBCONTRACTOR. For each project on which CONTRACTOR engages SUBCONTRACTOR, a PURCHASE ORDER will be executed by both parties that will incorporate this AGREEMENT by reference. The parties agree that this AGREEMENT, without further acknowledgement, signature, or agreement, will govern all projects for which a PURCHASE ORDER is issued. The term of this agreement shall commence as of the date it is executed by both parties and shall continue from year to year unless canceled by either party by notice in writing to the other" (*id.* at 1).

The signature page recites that "the parties hereto have executed this AGREEMENT as of the Effective Date stated above" (*id.* at 10). Under Section 3.2, the "SUBCONTRACTOR shall execute a PURCHASE ORDER prior to the scheduled start date for its Work" (*id.* at 2). Section 1.2 provides that Conductor is:

> "deemed to have accepted a PURCHASE ORDER incorporating the terms and conditions in this AGREEMENT in the following situations: (1) CONTRACTOR and SUBCONTRACTOR sign a WORK AUTHORIZATION for the work described m SUBCONTRACTOR's proposal; or (2) following SUBCONTRACTOR's submittal of a proposal for work to CONTRACTOR, CONTRACTOR communicates its acceptance of the proposal in writing during the term in which this Agreement is

> in operation and SUBCONTRACTOR's proposal does not contain any inclusions or exclusions that amend the terms and conditions contained in this AGREEMENT, or (3) following the acceptance of SUBCONTRACTOR's proposal by CONTRACTOR, SUBCONTRACTOR commences performance of the WORK (defined below) at the project to which SUBCONTRACTOR's proposal relates without a signed WORK AUTHORIZATION" (*id.*).

"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms (*Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]). "[A]n indemnity contract will not be held to have retroactive effect 'unless by its express words or necessary implication it clearly appears to be the parties' intention to include past obligations'" (*Cacanoski v 35 Cedar Place Assoc., LLC*, 147 AD3d 810, 813 [2d Dept 2017] [citation omitted]).

Applying these principles, the Conductor Contract plainly states that its term commences on the date the agreement is executed, which was May 24, 2021, and designates that date as the Effective Date (NYSCEF Doc No. 139 at 1, 10). The Conductor Contract does not contain any language expressly or explicitly stating that it applied retroactively or that it came into effect before May 24, 2021 (*see Perez Juarez v Rye Depot Plaza, LLC*, 140 AD3d 464, 465 [1st Dept 2016]; *Regno v City of New York*, 88 AD3d 610, 610 [1st Dept 2011]). The Conductor Contract is also silent as to whether it applied to work Conductor submitted a proposal for or completed prior to May 24, 2021 (*compare Mendez v Bank of Am., N.A.*, 181 AD3d 419, 420 [1st Dept 2020] ["[t]he clause in the terms and conditions stating that partial or complete performance constitutes agreement does not express an intent that the terms will be applied retroactively"] with *Novita, LLC v M&R Hotel Times Sq., LLC*, 2013 NY Slip Op 32597[U], *20-21 [Sup Ct, NY County 2013] [contract's reference to "work that has been 'completed or partially completed', as of the date the contract was executed … [made] clear that the parties intended the indemnity provision to apply

to those items of work … that were already finished, as well as to the work that remained to be done"]).

Nonetheless, "[i]ndemnity contracts must be viewed with reference to the purpose of the entire agreement and the surrounding facts and circumstances" (*Podhaskie v Seventh Chelsea Assoc.*, 3 AD3d 361, 362 [1st Dept 2004]). In this case, the testimony fails to demonstrate any intent on the issue of retroactivity (*compare Carpentieri v 1438 S. Park Ave. Co., LLC*, 215 AD3d 1236, 1238 [4th Dept 2018] [contract did not state it was retroactive and witnesses did not testify "unequivocally" about intent]). Neither Mathew nor Downs were questioned about the Conductor Contract, and Keenan testified that he had never seen the master subcontract (NYSCEF Doc No. 137 at 48). Chambers/Interstate have not furnished an affidavit or affirmation from anyone with personal knowledge explaining the circumstances surrounding the Conductor Contract's execution (*see Regno v City of New York*, 2010 NY Slip Op 32724[U], *11 [Sup Ct, NY County 2010], *affd* 88 AD3d 610 [1st Dept 2011]).

Mathew admitted having signed a prior master subcontract with Conductor dated June 1, 2016 (NYSCEF Doc No. 134 at 79), but there was no testimony whether that agreement contained an indemnification provision or if it applied to this Project. Notably, Mathew testified that amendments or supplements to that agreement would have been made via "job specific purchase orders" (*id.*). The Conductor Contract also states that it "supersedes and integrates all prior or contemporaneous written or oral communications … regarding the subject matter herein" (NYSCEF Doc No. 139 at 10 [§15.7]), and Chambers/Interstate have not relied on a prior course of dealing to establish that Interstate and Conductor intended to give the Conductor Contract retroactive effect (*see e.g. Nephew v Klewin Bldg. Co., Inc.*, 21 AD3d 1419, 1421 [4th Dept 2005] [prior course of dealing established a meeting of minds that an agreement applied retroactively]).

Chambers/Interstate's argument that section 1.2 (3) has been satisfied is unpersuasive. Chambers/Interstate have not furnished a copy of a purchase order countersigned by Interstate and Conductor for this Project nor have they identified a "proposal" submitted by Conductor for the temporary lighting work. Assuming the April 2019 estimate/invoice constitutes a proposal, the document predates the Conductor Contract's Effective Date, and Chambers/Interstate have not challenged Conductor's proof that the temporary lighting system was installed before the Effective Date. The "PAID" stamp on the 2019 estimate/invoice, likewise, is insufficient to evince an intent that the Conductor Contract applied to work completed before May 24, 2021 (*see e.g. Dejesus v BSD 80 Broad St., LLC*, 2020 NY Slip Op 31820[U], *24 [Sup Ct, NY County 2020], *affd* 192 AD3d 416 [1st Dept 2021] [commencement of work prior to executing an indemnity agreement "does not, in and of itself, establish that [the indemnitor] agreed to contractually indemnify [the indemnitee]"]).

Chamber/Interstate's reliance on section 1.3 is misplaced. That section reads, in part, that "[t]he CONTRACT DOCUMENTS for any project for which a PURCHASE ORDER relates are incorporated by reference in any PURCHASE ORDER governed by this Agreement …, and SUBCONTRACTOR acknowledges and agrees that the work performed by it will be performed in accordance with such CONTRACT DOCUMENTS" (NYSCEF Doc No. 139 at 1). The term "contract documents" is defined as "the specifications, plans and other relevant documents for the project, including the contract between OWNER and CONTRACTOR (the 'PRIME CONTRACT') and any other documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, manuals, supplements, schedules, addenda, bulletins, RFI responses, and modifications issued subsequent to the execution of the PRIME CONTRACT, whether before or after the execution of this AGREEMENT" (*id.*).

This language does not support the contention that the Conductor Contract applies retroactively. Chambers' cross-claim and Interstate's third-party claim against Conductor for contractual indemnification are dismissed.

Finish's Cross-Claim and Conductor's Cross-Claim and Counterclaim

No party has produced any contract requiring any party to indemnify Finish or Conductor. As such, in the absence of such a contract, the cross-claim pleaded by Finish and the cross-claim and counterclaim pleaded by Conductor for contractual indemnification from any other party are dismissed (*see Simon v 4 World Trade Ctr. LLC*, 242 AD3d 530, 533 [1st Dept 2025]; *Higgins*, 179 AD3d at 511).

Breach of Contract for Failure to Procure Insurance

A cause of action for breach of contract requires the plaintiff to establish the existence of a valid contract, the plaintiff's performance, the defendant's breach and damages (*Noto v Planck, LLC*, 228 AD3d 516, 516 [1st Dept 2024]).

Chambers' Cross-Claim and Interstate's Claim against Conductor

Conductor, admittedly, purchased a commercial general liability policy for the period from September 29, 2022 through December 29, 2023 (NYSCEF Doc No. 195, Cosentino affirmation, exhibit U). Chambers/Interstate, though, have not shown that Conductor was obligated to purchase insurance pursuant to the Conductor Contract *(see Regno*, 88 AD3d at 610) in the absence of a job-specific purchase order or other proof sufficient to satisfy sections 1.1 and 1.2 (3) in that

agreement. Chambers' cross-claim and Interstate's claim against Conductor for breach of contract for failure to procure insurance are dismissed.

Finish's Cross-Claim against Chambers/Interstate and Conductor

In the absence of a contract requiring Chambers/Interstate or Conductor to procure insurance on behalf of Finish, the cross-claim pleaded by Finish for breach of contract for failure to procure insurance against them is dismissed (*see Simon*, 242 AD3d at 533).

Accordingly, it is

ORDERED that the motion of defendant 121 Chambers Street LLC and defendant/third-party plaintiff Interstate Interiors Inc. for summary judgment (MS002) is granted to the extent of dismissing the Labor Law § 240 (1) claim in its entirety; dismissing the Labor Law § 241 (6) claim except as to Industrial Code (12 NYCRR) § 23-1.13 (b) (3), (4) and (8) and (c) (1) (i) and (ii); dismissing so much of the Labor Law § 200 claim based on a means and methods theory; dismissing the cross-claims by third-party defendant Finish Wood Inc. for contractual indemnification and for breach of contract for failure to procure insurance; granting conditional contractual indemnity in favor of defendant/third-party plaintiff Interstate Interiors Inc. against third-party defendant Finish Wood Inc.; and the balance of the motion is otherwise denied; and it is further

ORDERED that the motion of plaintiff Shea Smith for partial summary judgment on his Labor Law § 241 (6) claim against defendant 121 Chambers Street LLC, defendant/third-party plaintiff Interstate Interiors Inc., and defendant/third-party plaintiff Conductor Electric Services (MS003) is granted insofar as it predicated upon Industrial Code (12 NYCRR) § 23-1.13 (b) (3), (4) and (8) and (c) (1) (i) and (ii); and it is further

ORDERED that the motion of defendant/third-party defendant Conductor Electric Services for summary judgment (MS004) is granted to the extent of dismissing the Labor Law § 240 (1) claim in its entirety; dismissing the Labor Law § 241 (6) claim except as to Industrial Code (12 NYCRR) § 23-1.13 (b) (3), (4) and (8) and (c) (1) (i) and (ii); dismissing so much of the Labor Law § 200 claim based on a means and methods theory; dismissing the cross-claims by third-party defendant Finish Wood Inc. for contractual indemnification and for breach of contract for failure to procure insurance; dismissing the cross-claims by defendant 121 Chambers Street LLC for contractual indemnification and breach of contract for failure to procure insurance; dismissing the third-party claims of defendant/third-party plaintiff Interstate Interiors Inc. for contractual indemnification and for breach of contract for failure to procure insurance; and the balance of the motion is otherwise denied.

2/6/2026
DATE

ARLENE P. BLUTH, J.S.C.

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