Voulgarakis v Mazet Realty Corp.
2026 NY Slip Op 31394(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 154669/2019
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM, *Justice* — PART 04

---X

ANTONIOS VOULGARAKIS,

Plaintiff,

- v -

MAZET REALTY CORP., ENG SUEY SUN FAMILY REALTY CORPORATION OF NEW YORK

Defendant.

---X

INDEX NO. 154669/2019

MOTION DATE 06/23/2022, 07/21/2022

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 144
were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 132, 137, 138, 139, 140, 141, 142, 145
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff's motion for summary judgment on his Labor Law §§240(1) and 241(6) claims is granted in part, Mazet Realty Corp.'s cross-motion for summary judgment dismissing the complaint and all cross-claims against it is denied, and Eng Suey Sun Family Realty Corporation of New York's motion for summary judgment is granted in part.

FACTUAL BACKGROUND

Mazet Realty Corp. ("Mazet") owns the building located at 7-9 Mott Street, New York, New York 10013 (NYSCEF Doc No. 71, Gee tr at 14). Mazet hired plaintiff Antonios Voulgarakis to paint the sides of its building (*id.* at 20, 42). In order to paint 7-9 Mott's south-facing wall, plaintiff needed access to the roof of the building next door, 5 Mott Street, which is approximately

three floors shorter than 7-9 Mott (*id.* at 41-42). The owner of 5 Mott, defendant Eng Suey Sun Family Realty Corporation of New York ("Eng Suey"), granted Mazet access to its roof for Voulgarakis to perform this work (NYSCEF Doc Nos. 71 [Gee tr at 33, 42, 45] and 72 [Ng. tr at 40, 45]).

5 Mott's roof has an air shaft on its north side, adjacent to the south wall of 7-9 Mott, that is approximately 23 feet long, seven feet wide, and 23 feet deep (NYSCEF Doc No. 114, Peden aff at 9). That air shaft is surrounded by a parapet that is between two and four feet high (*id.* at 11).

On December 12, 2018, plaintiff was nearly finished with his work on the project and needed only to "seal the part of the flashing that folded into the air shaft" (NYSCEF Doc No. 70, Voulgarakis tr at 84). He stepped onto the top of the air shaft's parapet to walk toward the wall—which was otherwise inaccessible because of pipes and wires and air condition units on the roof—when he tripped over wire crossing the top of the parapet and fell into the air shaft (*id.* at 65, 84-86, 129-30), sustaining injuries. Plaintiff was aware of the wires crossing the parapet but, at the time of the accident, was looking at 7-9 Mott's wall (*id.* at 70-71). Plaintiff had used a safety harness (his own) during an earlier segment of the project, while working on scaffolding to paint the top half of 7-9 Mott's wall, but was not wearing one at the time of the accident because there was "nowhere to tie onto" (*id.* at 86-89, 131-135).

Plaintiff billed Mazet for his work (*id.* at 31, 52-53, 56). Mazet's trustee and manager, Robert Gee, reviewed plaintiff's work approximately twice a week and instructed him to "be safe" and "be careful" and not to work after dark (NYSCEF Doc No. 71, Gee tr at 43-44, 52). Jimmy Ng, Eng Suey's treasurer and the building manager for Eng Suey, did not go up to 5 Mott's roof during the period that plaintiff was working (NYSCEF Doc No. 72, Ng. tr at 46-47). Ng testified

that the wire that plaintiff tripped on provided 5 Mott residents with cable television (NYSCEF Doc No. 72, Ng tr at 39).

PROCEDURAL HISTORY

Plaintiff's complaint asserted Labor Law §§240(1), 241(6), 200, and common law negligence claims against all defendants (NYSCEF Doc No. 4, plaintiff's amended complaint at 2-8). Mazet answered and asserted cross-claims against Eng Suey for common law indemnification, contribution, and negligence (NYSCEF Doc No. 5, Mazet answer at 8-10). Eng Suey also answered and asserted cross-claims against Mazet for common law indemnification, contribution, contractual indemnification, and breach of contract for failure to procure insurance (NYSCEF Doc No. 49, Eng Suey answer at 7-8).

The Instant Motions

In motion sequence 003, plaintiff moves for summary judgment against Mazet and Eng Suey on his Labor Law §§240(1) and 241(6) claims. Eng Suey opposes the motion, arguing that: (1) it is not a proper Labor Law defendant because it did not hire or supervise plaintiff but merely granted him access to its roof; and (2) plaintiff was the sole proximate cause of his injuries because he was aware of the cables on the parapet, yet chose to walk on it without using any fall protection.

Mazet also opposes plaintiff's motion and cross-moves for summary judgment dismissing plaintiff's complaint and Eng Suey's cross-claims, on the grounds that: (1) it is not a proper Labor Law defendant because it did not control plaintiff's work; (2) plaintiff's fall was not a "gravity-related accident" implicating Labor Law §240(1); and (3) plaintiff was the sole proximate cause of his fall. In support of its motion, Mazet submits the affidavit of Professional Engineer Peter Chen, in which he states:

> On December 9, 2021, I traveled to 5 Mott Street, New York, New York, and inspected the area where the plaintiff Antonios Voulgarakis, fell. I also inspected 5

> Mott Street from the roof of 7 Mott Street. The condition on the roof of 5 Mott Street was in substantially the same condition at the location of the alleged incident as it was at the time of the incident […] It is my opinion as demonstrated during the site inspection, that the plaintiff did not have to walk on top of the wall and guard to get to the location in which he was intending to go. There was adequate space between the wall and guard and the adjacent HVAC unit to simply walk on the roof.

(NYSCEF Doc No. 87, Chen aff at 4-5, 7).

In reply, plaintiff argues that both defendants are liable under the Labor Law because Mazet hired plaintiff to perform the work at issue while Eng Suey owned the premises where plaintiff was working, derived a benefit from the waterproofing work plaintiff performed, and provided him access to the roof each day. He further argues that the evidence establishes defendants' violation of the Labor Law and he therefore could not have been the sole proximate cause of his injuries. Finally, plaintiff argues that Peter Chen's affidavit should be disregarded because his assertion that the roof had not changed between the date of the accident and his inspection, years later, is conclusory.

In motion sequence 004, Eng Suey moves for summary judgment dismissing plaintiff's claims and Mazet's cross-claims, largely repeating the arguments raised in its opposition to plaintiff's motion. Eng Suey further argues that no Labor Law §200 or common law negligence claim lies against it because it did not have authority to supervise plaintiff's work and because the cables on which plaintiff tripped and the air shaft into which he fell were open and obvious and not inherently dangerous. In opposition, plaintiff argues that Eng Suey may be liable because it owned the premises and failed to establish that it maintained the premises in a reasonably safe condition or lacked notice of the hazardous condition.

DISCUSSION

A party moving for summary judgment "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" (*Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once that showing has been made, the burden shifts to the parties opposing the motion to produce proof, in admissible form to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Eng Suey's Motion for Summary Judgment

Eng Suey's motion for summary judgment dismissing the complaint is granted in part, as to plaintiff's Labor Law §§240 and 241 claims and denied as to plaintiff's Labor Law §200 and common law negligence claims.

Labor Law §§240 and 241 impose a nondelegable duty on owners to provide "reasonable and adequate protection and safety" to individuals engaged in construction (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494, 500-501 [1993]). Under these statutes, "[t]he term owner […] encompasses a person who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for his benefit" (*Zaher v Shopwell, Inc.*, 18 AD3d 339 [1st Dept 2005] [internal citations and quotations omitted]). "[O]wnership of the premises where the accident occurred—standing alone—is not enough to impose liability under Labor Law § 241(6) where the property owner did not contract for the work resulting in the plaintiff's injuries; that is, ownership is a necessary condition, but not a sufficient one" (*Morton v State*, 15 NY3d 50, 56 [2010]). Rather, "[t]he significant factor is the right to insist that proper safety practices were followed; that is, the right to control the work (*Berrios v TEG Mgt. Corp.*, 7 AD3d 555, 556 [2d Dept 2004] [internal citations and quotations omitted]). As Eng Suey did not hire plaintiff, pay

him, or direct his work but only allowed him the use of its roof to perform work on Mazet Realty's building, it is not an "owner" as contemplated in these statutes (*see id.* at 555-56 [affirming summary judgment dismissing plaintiff's Labor Law claims against owner of building on which plaintiff placed ladder to repair roof of adjacent building, because building owner was not an "owner" within meaning of Labor Law §§240(1) and 241(6)]; *see also Penza v Quoohs*, 169 AD3d 505 [1st Dept 2019] [defendant homeowners who granted plaintiff tree trimmer limited access to their property for plaintiff to remove tress between properties and did not otherwise direct or supervise work were not owners under the Labor Law]). Plaintiff's assertion, in opposition, that Eng Suey is an owner because it benefited from his waterproofing work is unavailing and, in any event, is contradicted by the affidavit of architect Douglas W. Peden, (NYSCEF Doc No. 114, Peden aff), the only evidence in the record on this point. Accordingly, plaintiff's Labor Law §§240(1) and 241(6) claims are dismissed as against Eng Suey.

However, the branch of Eng Suey's motion for summary judgment dismissing plaintiff's Labor Law §200 and negligence claims is denied. Labor Law §200 codifies "the common law duty imposed upon a [property] owner or general contractor to provide construction site [workers] with a safe place to work" (*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 316-17 [1981], citing *Allen v Cloutier Const. Corp.*, 44 NY2d 290, 299 [1978]). "Claims under the statute and common-law fall into two general categories: 'those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed'" (*Lemache v MIP One Wall St. Acquisition, LLC*, 190 AD3d 422, 423 [1st Dept 2021] quoting *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). "Where, as here, the allegations involve a dangerous or defective condition on the premises where the work was performed, a property owner will be held liable if it either created a dangerous or defective

condition, or had actual or constructive notice of it" (*Lupo v. Caruso,* 237 AD3d 923, 923 [2d Dept 2025] [internal citations and quotations omitted]). However, "[w]here the condition at issue is both open and obvious and not inherently dangerous, a defendant is not liable under either a theory of common law negligence or Labor Law § 200" (*Mitchell v City of New York*, 244 AD3d 716, 717-18 [2d Dept 2025] [internal citations and quotations omitted]).

Eng Suey argues that these claims should be dismissed because the air shaft and cable wires on its roof were open and obvious and not inherently dangerous. "A condition is open and obvious if it is readily observable by those employing the reasonable use of their senses, given the conditions at the time of the accident"' (*Robbins v 237 Ave. X, LLC,* 177 AD3d 799, 799 [2d Dept 2019] [internal citations and quotations omitted]). "While the issue of whether a hazard is latent or open and obvious is generally fact-specific and thus usually a jury question, a court may determine that a risk was open and obvious as a matter of law when the established facts compel that conclusion" (*Tagle v Jakob*, 97 NY2d 165, 169 [2001] [internal citations and quotations omitted]). Here, plaintiff's testimony that he was aware of the parapet wall, air shaft, and cable wires on the roof establish that these conditions were open and obvious (*see Wendell v Sylvan Lawrence Co.*, 279 AD2d 383 [1st Dept 2001] ["any danger posed by these pipes was open and obvious to plaintiff, who had traversed them many times during his 27–year period of employment and did so shortly before this incident"]; *Barbu v Doyle*, ---- NYS3d ---- ; 2026 NY Slip Op 00487, at *2 [2d Dept 2026] [pallet rack in warehouse was readily observable where "evidence demonstrated that the injured plaintiff was familiar with the warehouse, having been there on more than 20 occasions, and with pallet racking systems, which he had previously installed"]).

However, issues of fact remain as to whether this condition, as a whole, was inherently dangerous. Whether a condition is inherently dangerous must be assessed based "on the totality of

the specific facts of each case" (*Powers v 31 E 31 LLC*, 123 AD3d 421, 422 [1st Dept 2014], citing *Russo v Home Goods, Inc.*, 119 AD3d 924, 925-926 [2d Dept 2014]). In this case, the question of whether the cable wires crossing the parapet wall over a twenty-foot drop was an inherently dangerous condition must be left to the trier of fact (*see Graziano v Source Builders & Consultants, LLC*, 175 AD3d 1253, 1260 [2d Dept 2019] [finding an issue of fact as to whether wires lying on top of walls on which plaintiff tripped while installing sprinklers constituted an inherently dangerous condition]). Accordingly, Eng Suey's motion for summary judgment dismissing plaintiff's Labor Law §200 and common law negligence claims is denied.

In light of plaintiff's extant negligence claims against Eng Suey, that branch of Eng Suey's motion for summary judgment dismissing Mazet's cross-claims for indemnification and contribution is denied (*see Sandoval-Morales v 164-20 N. Blvd., LLC*, 231 AD3d 501, 504 [1st Dept 2024]).

Plaintiff's Motion for Summary Judgment

Plaintiff's motion for summary judgment on his Labor Law §§240(1) and 241(6) claims is denied as to Eng Suey, for the reasons stated above. However, plaintiff's motion for summary judgment on these claims is granted as against Mazet Realty.

Labor Law §240 mandates that building owners and contractors

> in the erection, demolition, repairing, altering, painting, cleaning or pointing 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]).

A plaintiff "may recover under § 240(1) if he was engaged in an activity covered by the statute and exposed to an elevation-related hazard for which no safety device was provided or the device provided was inadequate" (*Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 9 [1st Dept 2011] [internal citations omitted]). "In order for a plaintiff to demonstrate entitlement to summary judgment on an alleged violation of Labor Law §240(1), he must establish that there was a violation of the statute, which was the proximate cause of the worker's injuries" (*Cherry v Time Warner, Inc.*, 66 AD3d 233, 236 [1st Dept 2009] [internal citations omitted]). "[W]here a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability" (*Cahill v Triborough Bridge & Tunnel Auth*., 4 NY3d 35, 39 [2004]).

These elements are satisfied here. First, there is no dispute that plaintiff was engaged in activity contemplated by the statue in painting Mazet's building. Second, and contrary to Mazet's argument, plaintiff's fall down a two-story air shaft was an "elevation-related hazard." While "[t]here is no bright-line minimum height differential that determines whether an elevation hazard exists […] the relevant inquiry is whether the hazard is one directly flowing from the application of the force of gravity to an object or person" (*Auriemma*, 82 AD3d at 9 [internal citations and quotations omitted]). An elevation-related hazard exists where a risk of injury is created "because of a difference between the elevation level of the required work and a lower level" (*Carpio v Tishman Const. Corp. of New York*, 240 AD2d 234, 235 [1st Dept 1997]; *Auriemma*, 82 AD3d at 9 ["The possibility of injury from a fall from that height constituted exposure to an elevation-related risk"]). The two-story difference between the roof and bottom of the airshaft presented such a risk (*see Gonzalez v Broadway 371, LLC*, 209 AD3d 526 [1st Dept 2022] ["Plaintiff's fall from a plank devoid of rails or netting, three or four feet above a second story balcony, triggered the protections of Labor Law § 240(1)"]). Finally, Mazet did not provide protective devices to

address this elevation-related hazard, and this failure was a proximate cause of plaintiff's injury (*see Vetrano v J. Kokolakis Contr., Inc.*, 100 AD3d 984, 985-86 [2d Dept 2012]). Accordingly, plaintiff has established Mazet's violation of Labor Law §240(1).

Mazet's assertion, in opposition, that it cannot be liable because plaintiff provided his own safety equipment, which he elected not to use, amounts to a "meritless" argument that plaintiff "was not under the supervision and control of defendant and therefore bears sole responsibility for providing himself with a safe workplace" (*Karnes v Saratoga Pine Ridge Inc.*, 241 AD2d 810, 811 [3d Dept 1997]; *see also Barnhardt v Richard G. Rosetti, LLC*, 216 AD3d 1295 [3d Dept 2023] ["there is no dispute that plaintiff used his own equipment, which does not preclude liability under Labor Law § 240(1)"]).

Neither did plaintiff's failure to use a safety harness make him the sole proximate cause of his injuries. "A plaintiff may be the sole proximate cause of his or her own injuries when, acting as a recalcitrant worker, he or she (1) had adequate safety devices available, (2) knew both that the safety devices were available and that [he or she was] expected to use them, (3) chose for no good reason not to do so, and (4) would not have been injured had [he or she] not made that choice" (*Guaman-Sanango v 57 E. 72nd Corp.*, 227 AD3d 677, 679 [2d Dept 2024] [internal citations and quotations omitted]). As it is undisputed that Mazet did not instruct plaintiff to use a safety harness, his failure to do so does not make him the sole proximate cause of his injuries (*see Dwyer v Central Park Studios, Inc.,* 98 AD3d 882, 884 [1st Dept 2012]). Gee's instruction to plaintiff to "be safe" and "be careful" does not support a contrary conclusion (*see Saavedra v 111 John Realty Corp.*, 179 AD3d 442 [1st Dept 2020] ["an instruction to avoid an unsafe practice is not a sufficient substitute for providing a worker with a safety device to allow him to complete his work safely"]).Finally, even setting the foregoing aside, Mazet "[has] not sufficiently refuted plaintiff's

testimony that there was no place for him to tie off the harness" such that his failure to do so rendered him the sole proximate cause of his injuries (*Anderson v MSG Holdings, L.P.*, 146 AD3d 401, 403 [1st Dept 2017] [internal citations and quotations omitted]).

Mazet also fails to raise a triable issue of fact as to whether plaintiff's decision to walk on the parapet was the sole proximate cause of his injuries. Plaintiff testified that walking on the parapet was the only way to get to the section of 7-9 Mott's wall he needed to work on (*see Kittelstad v Losco Group, Inc.*, 92 AD3d 612, 613 [1st Dept 2012] [plaintiff's testimony that only way to reach pipes was over planks rendered defendants' argument that plaintiff was a recalcitrant worker or the sole proximate cause of his own accident meritless]) and Peter Chen's affidavit is insufficient to create an issue of fact on this point. Chen's assertion that 5 Mott's roof did not change in the three years between the accident and his inspection is unsupported by any evidence (*see Garcia v Jesuits of Fordham, Inc.*, 6 AD3d 163, 166 [1st Dept 2004] ["The affidavit of plaintiff's forensic engineer was based upon an inspection made years after plaintiff's accident and there was no evidence that the conditions he observed were the same as those that existed at the time plaintiff was injured"]). Moreover, "[t]here is no indication that plaintiff was instructed to avoid the area where the accident occurred and that he walked there in contravention of such a warning" (*Turk v CPS 1 Realty LP*, 2010 NY Slip Op 30975[U] [Sup Ct, NY County 2010] [internal citations omitted]). Accordingly, plaintiff's alleged errors in judgment in failing to use a harness or in walking on the parapet do not present a defense to Mazet's Labor Law §240(1) violation but raise, at most, issues of comparative negligence (*see Wilson v AC 320 Hotel Partners LLC*, 238 AD3d 581, 582 [1st Dept 2025]). Accordingly, plaintiff's motion for summary judgment on his Labor Law §240(1) claim against Mazet is granted.

Plaintiff's motion for summary judgment on his Labor Law §241(6) claim is also granted. Labor Law §241(6) imposes a non-delegable duty on all contractors and owners to ensure 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.

To prevail on a Labor Law §241(6) claim, "a plaintiff must establish a violation of a specific safety regulation promulgated by the Commissioner of the Department of Labor" (*Lenard v 1251 Americas Assoc.*, 241 AD2d 391, 392 [1st Dept 1997], citing *Ross*, 81 NY2d at 505). Plaintiff argues that Mazet has violated Industrial Codes §§23–1.7(e)(2) and 23-1.7(b)(1).

Industrial Code §23–1.7(e)(2) provides that

> The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.

Plaintiff has not established that the wire stretching across the parapet was an accumulation of "debris" within the meaning of this provision, as the wire here had no connection to the work being performed on the roof but served to provide 5 Mott residents with cable television (*cf. Canning v Barney's New York*, 289 AD2d 32, 35 [1st Dept 2001] ["piece of tie wire entangled on the wheel of the dumpster" constituted "debris"]; *Rossi v. 140 W. JV Mgr. LLC,* 171 AD3d 668, 668 [1st Dept 2019] ["cables from elevator shaft demolition … constituted an accumulation of debris from which Vanquish was required to keep work areas free"]).

However, plaintiff has established Mazet's failure to comply with Industrial Code section 1.7(b)(1)(iii). This provision mandates that "[w]here employees are required to work close to the edge of [a hazardous opening into which a person may step or fall], such employees shall be protected by" the following:

> (a) Two-inch planking, full size, or material equivalent strength installed not more than one floor below or 15 feet, whichever is less, beneath the opening; or
>
> (b) An approved life net installed not more than five feet beneath the opening; or
>
> (c) An approved safety belt with attached lifeline which is properly secured to a substantial fixed anchorage.

(Industrial Code §1.7[b][1][iii]).

As discussed above, plaintiff's testimony that it was necessary to work near the airshaft's edge has not been challenged by anything other than the conclusory affidavit of Peter Chen. Moreover, the uncovered airshaft qualifies as a hazardous opening, i.e., an opening "large enough for a person to fall completely through" (*Marte v Tishman Constr. Corp.*, 223 AD3d 527, 529 [1st Dept 2024]). It is also undisputed that none of the protections set out in Industrial Code §1.7(b)(1)(iii) were provided. Accordingly, plaintiff's motion for summary judgment on his Labor Law §241(6) claim against Mazet is granted.

Mazet Realty's Cross-Motion for Summary Judgment

The branch of Mazet's cross-motion for summary judgment dismissing plaintiff's Labor Law §§240(1) and 241(6) claims is denied for reasons set forth above. The remainder of Mazet Realty's motion, for summary judgment dismissing plaintiff's Labor Law §200 and common law negligence claims, is denied for the reasons set forth below.

Labor Law §200 codifies property owners' and general contractors' "common-law duty of care to provide construction site workers with a safe place to work" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143 [1st Dept 2012] [internal citations omitted]). Where, as here, "an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*Cappabianca v Skanska*

USA Bldg. Inc., 99 AD3d at 143-44). Such notice "must call attention to the specific defect or hazardous condition, and its specific location" (*Cahill*, 31 AD3d at 351 citing *Mitchell v. New York Univ.*, 12 AD3d 200, 201 [2004]). Gee's testimony that he observed the airshaft was uncovered two days before plaintiff's fall raises an issue of fact as to Mazet's notice of the hazardous condition that caused plaintiff's injury. Finally, as discussed above, plaintiff's decisions to walk on the parapet wall and his failure to wear a safety harness raise, at most, an issue of comparative negligence. Accordingly, Mazet's motion for summary judgment dismissing plaintiff's complaint is denied. In light of the foregoing, the branch of Mazet's motion for summary judgment dismissing Eng Suey's cross-claims for indemnification and contribution is also denied (*see Sandoval-Morales v 164-20 N. Blvd., LLC*, 231 AD3d 501, 504 [1st Dept 2024]).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on his Labor Law §§240(1) and 241(6) claims is granted as to Mazet Realty Corp. and otherwise denied; and it is further

ORDERED that Eng Suey Sun Family Realty Corporation of New York's motion for summary judgment dismissing the complaint is granted as to plaintiff's Labor Law §§240(1) and 241(6) claims and denied as to plaintiff's Labor Law §200 and common law negligence claim; and it is further

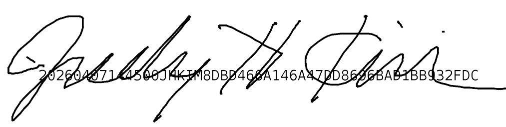
ORDERED that Eng Suey Sun Family Realty Corporation of New York's motion for summary judgment on its cross-claims for indemnification and contribution and dismissing Mazet Realty's cross-claims is denied; and it is further

ORDERED that Mazet Realty Corp.'s motion for summary judgment is denied; and it is further

ORDERED that plaintiff shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry on defendants and the Clerk of the Court; and it is further

ORDERED that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

This constitutes the decision and order of the Court.



4/7/2026
DATE

HON. JUDY H. KIM, J.S.C.

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