Alibasic v Port Auth. of N.Y. & N.J.
2026 NY Slip Op 31397(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 156991/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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SULJO ALIBASIC,

Plaintiff,

- v -

PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ADVANCE MAGAZINE PUBLISHERS INC.,D/B/A CONDE NAST, WTC TOWER 1 LLC,TOWER 1 HOLDINGS, LLC,TOWER 1 JOINT VENTURE, LLC,THE DURST ORGANIZATION, INC.,DURST WTC HOLDING, LLC,THE DURST MANAGER, LLC,SRDA MANAGER, LLC,

Defendant.

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INDEX NO. 156991/2021

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON MOTION

ADVANCE MAGAZINE PUBLISHERS INC., D/B/A CONDE NAST

Plaintiff,

-against-

WARREN KROTZ ENTERPRISES, INC., JWK SERVICES, INC.

Defendant.

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Third-Party
Index No. 595527/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 171, 177

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 145, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 178, 179, 180

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 143, 144, 172, 173, 174, 175, 176

were read on this motion for SUMMARY JUDGMENT.

With the instant motion, Plaintiff Suljo Alibasic ("plaintiff") seeks partial summary judgment under CPLR § 3212, declaring that defendant Port Authority of New York and New Jersey ("PA") is liable as a matter of law on plaintiff's Labor Law § 240(1) claim for injuries sustained on November 6, 2020 at One World Trade Center. Specifically, plaintiff contends that PA owed a nondelegable duty to provide proper safety devices in the performance of the work, that a heavy glass panel fell and struck him, and that no adequate protective devices were provided.

Defendants PA, Advance Magazine Publishers, Inc. (d/b/a Condé Nast), and WTC Tower 1 LLC (collectively "defendants") move pursuant to CPLR § 3212 for summary judgment dismissing plaintiff's complaint in its entirety. They argue that plaintiff's accident did not involve a gravity-related hazard protected by Labor Law, that he was not working in a position of elevation, and that none of these defendants owed him any relevant duty. Defendants also seek summary judgment in favor of Condé Nast on its contract indemnification claims against third-party defendants WKE Services Corp. and JWK Services, Inc., and dismissal of any claims by WKE and JWK for indemnity or contribution.

Third-party defendant JWK Services, Inc. moves for summary judgment dismissing plaintiff's claims against it (including Labor Law §§ 200, 240(1) and 241(6)), and seeks dismissal of any third-party claims against it. JWK argues that it owed no duty to plaintiff beyond what it satisfied, that plaintiff's claims are unsubstantiated, and that it is entitled to contractual indemnity from other parties.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff was employed as a laborer by WKE Services Corp. ("WKE") and/or JWK Services, Inc. ("JWK") at One World Trade Center on November 6, 2020. On that date, plaintiff was assisting a supervisor, identified as Joseph Caracciolo (of JWK), in the removal of large glass panels from a wall. The panels were heavy (estimated 255–364 pounds) tempered glass units. Caracciolo and plaintiff lifted one such panel slightly out of its silicone setting; at that time the panel shattered and fell. Shards and pieces fell onto the floor and onto plaintiff's head and body. Plaintiff testified he and Caracciolo "raised it a little bit" and it "broke completely and fell on the floor and [his] head and body." He denied slipping or losing control – the panel "exploded" under the lifting effort. Plaintiff sustained injuries (neck, back, etc.) and commenced this action, alleging Labor Law §§ 200, 240(1) and 241(6) claims against PA, Condé Nast, WTC Tower 1 and its affiliates (collectively "Owner Defendants"), and possibly other parties. The complaints allege that plaintiff's injury resulted from defendants' failure to provide necessary safety devices or otherwise safeguard against falling objects and other site hazards.

The Owner Defendants filed answers, and Condé Nast (Advance) filed third-party complaints against WKE and JWK seeking contractual indemnity and insurance. WKE and JWK answered and asserted cross-claims. A note of issue was filed on February 20, 2025 (making the case trial-ready). The parties thereafter submitted cross-motions for summary judgment. Plaintiff moved for partial judgment on Labor Law § 240(1) liability against PA. Defendants (PA, Condé Nast, WTC Tower 1 LLC) moved to dismiss the complaint and related claims, including seeking summary judgment in favor of Condé Nast on indemnity and dismissing WKE's and JWK's indemnity claims. JWK Services separately moved to dismiss plaintiff's claims against it and for

any relief as a third-party defendant (including its indemnity demands). These motions have been fully briefed and argued.

ARGUMENTS

Plaintiff argues that Port Authority (as owner and the landlord of 1WTC) had a nondelegable duty under Labor Law § 240(1) to furnish proper safety devices (such as rigging, scaffolds, slings, or blocking) for the removal of heavy glass panels. He asserts that this incident was a classic "falling object" case: the heavy panel was not part of the structure and plaintiff was injured by pieces falling from it, creating a gravity-related hazard. Plaintiff contends he is entitled to judgment as a matter of law because the panel's weight and its fall demonstrate the absence or failure of any required protective device, and there is no evidence he was contributorily negligent. He notes that his testimony is undisputed: he lifted the panel a short distance and it shattered. Moreover, plaintiff emphasizes that PA had the duty (as owner) to ensure safety, and that duty cannot be delegated to others. Finally, plaintiff contends that no genuine issue of material fact exists to defeat his showing: the facts are undisputed and he should prevail on liability.

Defendants respond that plaintiff's evidence does not establish a recognized §240(1) hazard. They argue that plaintiff was not working at an elevated position and was never exposed to an "elevation-related risk." The glass panel was at floor level (only about a foot out of its setting) when it shattered; this was not a falling object in the ordinary sense of §240(1). They cite controlling cases requiring that an object be either being hoisted or be of a nature requiring securing. Defendants assert that lifting a small distance from the floor does not create a gravity fall hazard protected by Labor Law. Furthermore, they contend that PA did not supervise or control the work; plaintiff and Caracciolo were employees of WKE/JWK, hired by Condé Nast (the tenant), and PA's only role was that of a passive landowner. Thus, PA did not owe the duties plaintiff alleges.

Defendants also note that plaintiff's Labor Law §§200 and 241(6) causes cannot survive summary judgment. Plaintiff failed to identify any specific violated Industrial Code provision for a §241(6) claim (which alone requires such predicate). Any broad assertions of OSHA or building-code violations without specification do not create liability under §241(6). Likewise, under §200, none of these defendants had any responsibility or notice of a dangerous condition – the work was performed under a contract to which PA and the Owner Defendants were not parties.

Condé Nast, as a third-party plaintiff, argues that it is entitled to summary judgment on its contract indemnity claims against WKE and JWK. The contracts between Condé Nast (and related entities) and those subcontractors contain hold-harmless and insurance clauses obligating them to indemnify Condé Nast for any claims arising out of their work. Condé Nast insists WKE and JWK breached those obligations.

Finally, defendants seek to dismiss any claims by WKE or JWK for indemnity or contribution. They contend that neither WKE nor JWK can obtain indemnity from PA or the Owner Defendants: under Workers' Compensation Law §11 and precedent, an employer cannot shift liability absent a "grave injury," and plaintiff's injuries here do not qualify. Similarly, no

common-law or contractual indemnity exists in WKE's or JWK's favor. Thus all claims against PA, Condé Nast and the Owner Defendants should be dismissed.

JWK Services, in its cross motion, likewise contends that plaintiff's claims against it should be dismissed. It argues that plaintiff's own evidence establishes that no ladder, scaffold or other device failed, and the work was done at ground level, so §§240(1) and 241(6) do not apply. Moreover, JWK points out that plaintiff does not even specify a code violation. JWK also says it has no duty under §200: the evidence shows JWK was simply hired to remove the glass panels and had no notice of any dangerous structural condition. In addition, JWK seeks summary judgment on contractual grounds: it asserts it is entitled to indemnity from the Owner Defendants or Condé Nast by the express terms of their contracts, and it denies any personal liability.

DISCUSSION

A motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the [c]ourt as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon a proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

I. Labor Law §240(1) "Falling Object" Claim

Plaintiff's claims rest on Labor Law §240 (1), which imposes a nondelegable duty on owners and contractors to provide adequate protection against gravity-related risks in construction work (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]). By statute and precedent, §240 (1) covers two broad categories of hazards: elevation-related risks to a worker and falling-object hazards, where an object falls on a worker (*see Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). The statute, however, is strictly limited to hazards where a safety device is required to guard against gravity's force (*see Ross*, 81 NY2d at 501). It is not a general workplace safety statute. As the Court of Appeals has emphasized, §240 (1) was designed to prevent those accidents in which the scaffold, hoist, stay, ladder, or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person (*Runner*, 13 NY3d at 603, quoting *Ross*, 81 NY2d at 501). Thus, the critical inquiry is whether the harm flows directly from the application of the force of gravity to the object (*see Runner*, 13 NY3d at 604). If not, §240 (1) does not apply, even if an

object fell by gravity and injured the worker (*see Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 916 [1999]).

In falling-object cases, a plaintiff must show that he was struck by an object that fell, that the object required securing or was being hoisted, and that the absence or failure of a safety device caused the object to fall (*see Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]; *Fabrizi v 1095 Ave. of the Americas, L.L.C.*, 22 NY3d 658, 663 [2014]). In other words, the object must have been subject to a gravity hazard that a statutory device was meant to prevent. Otherwise, a collapse or break at ground level does not qualify (*see Toefer v Long Is. R.R.*, 4 NY3d 399, 408 [2005]; *Narducci*, 96 NY2d at 268). As the Court of Appeals explained, to prevail on a falling-object theory, a plaintiff must demonstrate that at the time the object fell, it was being hoisted or secured, or required securing for the purposes of the undertaking (*Narducci*, 96 NY2d at 268). Likewise, the Court of Appeals and the Appellate Division, First Department, have reiterated that a Labor Law §240 (1) falling-object claim requires proof that the object required securing for the purposes of the undertaking (*see O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 33 to 34 [2017]; *Torres-Quito v 1711 LLC*, 227 AD3d 113, 115 [1st Dept 2024]). If the object was simply dislodged by ordinary force without an enumerated device's failure, § 240 (1) does not apply (*see Fabrizi*, 22 NY3d at 663).

The Court pauses to emphasize that this statutory framework reflects a disciplined and limited conception of liability grounded in the force of gravity itself. The Court of Appeals has repeatedly cautioned that Labor Law §240 (1) protects against a narrow class of special hazards, not every workplace accident involving weight or movement (*see Nieves*, 93 NY2d at 916; *Misseritti v Mark IV Constr. Co.*, 86 NY2d 487, 490 [1995]). The decisive inquiry is therefore not whether the object possessed weight or whether gravity was present in a general physical sense. Rather, the decisive inquiry is whether the accident was the direct consequence of a failure to provide a protective device necessary to control the effects of gravity under the circumstances presented (*see Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 287 [2003]). Here, plaintiff's own evidence establishes that the glass panel shattered at essentially floor level while he and Caracciolo were manually lifting it a short distance. Plaintiff testified that he and his coworker lifted the panel up a little bit, approximately one foot from its setting, when it broke completely and fell. The panel had already been cut free of its setting by a saw, so that when raised even slightly it shattered. Critically, it was not suspended or being hoisted above the worker when it fell, nor was it swinging or dropping from any height. It was being held at the same level as the workers performing the task. This scenario is manifestly not the kind of elevation risk §240 (1) was intended to cover (*see Toefer*, 4 NY3d at 408). The panel's fall was, in substance, a breakage while level, not a descent from above.

Equally significant is the statutory requirement that the object at issue must have required securing for the purposes of the undertaking. A plaintiff cannot establish liability merely by demonstrating that an object fell. Rather, he must show that the absence or inadequacy of a statutory safety device caused the object to fall in circumstances where securing was necessary (*see Narducci*, 96 NY2d at 268; *Fabrizi*, 22 NY3d at 663). Where, as here, the object was itself the item being moved and the work consisted of manually removing it from its setting, courts have consistently held that the statute does not apply because the object did not require securing within the meaning of the statute.

The factual record developed in this case illustrates that principle with particular clarity. The evidence shows that the task being performed, namely the removal of interior glass panels, was carried out manually at ground level and did not involve hoisting equipment, scaffolding, rigging, or any device designed to control vertical movement. Indeed, the record confirms that the panel at issue was the very object intended to be moved, not an object positioned above the worker that required securing to prevent it from falling. As defendants correctly observe, securing the panel in place would have defeated the very purpose of the task, which was to remove and relocate it. In this respect, the circumstances presented here are analogous to moving a heavy piece of furniture across a floor. One does not secure the furniture to prevent movement. Rather, one lifts and carries it as part of the work itself.

The court further notes that the record contains an additional factual detail of particular importance, namely that two similar glass panels of the same size and nature were successfully removed earlier that same morning without incident. The evidence establishes that plaintiff and his coworker had already removed the first two panels before the accident occurred. This undisputed sequence of events is highly probative. It demonstrates that the method being used, manual removal at floor level, was not inherently unsafe or dependent upon the use of specialized hoisting or securing equipment. Rather, it indicates that the task was routinely performed using ordinary manual handling techniques.

That factual circumstance, underscored during oral argument on April 7, 2026, bears directly on the statutory inquiry. The successful removal of two identical panels immediately before the accident strongly suggests that the hazard did not arise from an elevation-related risk requiring protective devices, but from the particular condition of the panel that ultimately fractured. Put differently, the evidence supports the inference that the panel failed due to internal stress or material weakness, not because it was inadequately secured against gravity.

The deposition testimony of third-party defendant Warren Krotz further reinforces this conclusion. The testimony reflects that the work at issue consisted of ordinary interior renovation activities involving painting and the removal of glass wall panels, and that the removal process involved cutting the silicone seal surrounding the panel and lifting the panel manually from its setting. Nothing in that testimony suggests that the panels were ever intended to be hoisted, suspended, or secured at an elevated height, nor does it indicate that specialized safety devices were required to control vertical movement. To the contrary, the testimony confirms that the work was performed at floor level and involved manual handling of the panels once the adhesive seal had been removed.

Defendants correctly note that under New York law, mere manual lifting of an object that then breaks at ground level does not transform into a §240 (1) falling-object case (*see Melber v 6333 Main St., Inc.*, 91 NY2d 759, 763 [1998]; *Fabrizi*, 22 NY3d at 663; compare *Wiski v Verizon N.Y., Inc.*, 186 AD3d 1590, 1590-1591 [2d Dept 2020]). In *Guacho v DLV Empire, LLC*, 244 AD3d 959, 959 to 963 (2d Dept 2025), the court reiterated that absent a hoist or securing requirement, the object's gravity-caused fall does not invoke Labor Law §240 (1). Here too, plaintiff's own testimony confirms that no ladder, crane, or other device was involved at the time

of the break. There was simply no device to fail, and thus no elevation hazard within the statute's scope (see *Narducci*, 96 NY2d at 268).

Indeed, the record affirmatively demonstrates that gravity was not the proximate cause of the injury within the meaning of the statute. The panel did not fall from a height, nor did it descend due to the absence of a safety device designed to counteract gravitational forces. Rather, the panel broke while being held at essentially the same elevation as the workers. Under controlling precedent, such a scenario does not constitute a falling-object hazard under Labor Law §240 (1) (*see Narducci*, 96 NY2d at 268).

Nor has plaintiff raised a triable issue of fact sufficient to defeat summary judgment. A plaintiff opposing summary judgment must produce evidence in admissible form demonstrating the existence of a material issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Here, plaintiff has failed to identify any specific safety device that should have been provided or to explain how the absence of such a device caused the accident. Speculation that additional safety measures might have prevented the injury is insufficient to impose liability under Labor Law §240 (1) (*see Fabrizi*, 22 NY3d at 663).

Plaintiff's argument, distilled to its essence, is that once the glass panel was detached from its frame, its substantial weight rendered it inherently susceptible to the force of gravity, thereby creating a foreseeable risk of injury during the removal process. From that premise, plaintiff contends that the panel's sudden shattering while being lifted should be treated as the functional equivalent of a falling-object event, even though the panel was being manually handled at the time. In this view, the gravamen of the hazard was not the fragility of the material itself, but the uncontrolled gravitational forces acting upon a heavy object during a lifting operation undertaken without mechanical stabilization or protective devices.

While that formulation has surface appeal, it ultimately misapprehends both the structure and the limits of Labor Law §240 (1) as defined by controlling precedent. The Court of Appeals has consistently rejected attempts to equate the mere presence of weight and gravity with the kind of elevation-related hazard contemplated by the statute. Rather, the statutory inquiry is narrowly focused on whether the injury was the direct consequence of a failure to provide a safety device necessary to protect against a gravity-related risk arising from a physically significant elevation differential or from an object that required securing for the purposes of the undertaking (*see Narducci*, 96 NY2d at 267-268 [2001]; *Fabrizi*, 22 NY3d at 663). The statute was not intended to impose absolute liability whenever a heavy object is being moved, nor does it convert ordinary material-handling tasks into statutory violations simply because gravity is an ever-present physical force (*see Ross*, 81 NY2d at 501).

Again, here, the undisputed record demonstrates that the panel was not being hoisted, suspended, or positioned at a height requiring securing, but was instead being manually lifted only slightly from its setting at essentially floor level when it fractured. The injury therefore did not result from an uncontrolled descent from elevation, but from the panel's structural failure during ordinary handling. That distinction is dispositive under governing case law, which makes clear that the statute does not apply where an object breaks or collapses while being handled at ground

level and no protective device of the type enumerated in the statute was required (*see Toefer*, *4* NY3d at 408; *Melber*, 91 NY2d at 763).

Moreover, the record contains affirmative evidence undermining the premise that the task itself presented an inherent gravity-related hazard requiring mechanical stabilization. The evidence establishes that two similar panels had been successfully removed earlier that same morning using the same manual method without incident, demonstrating that the work could be performed safely without specialized hoisting or securing equipment. That sequence of events strongly supports the conclusion that the accident arose from the particular condition of the panel that shattered, rather than from any systemic failure to provide protection against gravitational forces. To accept plaintiff's theory would effectively collapse the statutory distinction between gravity-related hazards and ordinary workplace risks, thereby transforming Labor Law §240 (1) into a general workplace safety statute, a result the Court of Appeals has repeatedly and emphatically rejected (*see Ross*, 81 NY2d at 501).

In sum, defendants have established, prima facie, that the accident did not involve an elevation-related risk requiring the use of a safety device within the meaning of Labor Law §240 (1), and plaintiff has failed to raise a triable issue of fact in opposition. The undisputed facts demonstrate that the glass panel shattered during manual handling at ground level and not because of the failure of a protective device designed to guard against gravity-related hazards.

Accordingly, defendants are entitled to summary judgment dismissing plaintiff's Labor Law §240 (1) falling-object claim as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

II. Labor Law § 241 (6)

Plaintiff also asserts a cause of action under Labor Law §241 (6), which imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to workers performing construction, excavation, or demolition work. However, unlike Labor Law §240 (1), liability under §241 (6) is not automatic. Rather, a plaintiff must establish that the defendant violated a specific, applicable provision of the Industrial Code that sets forth a concrete, nondelegable duty (*see Ross*, 81 NY2d at 503–505). General allegations of unsafe conditions or failure to provide a safe workplace are insufficient to sustain a §241 (6) claim (*see Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007]).

Moreover, to withstand summary judgment, the plaintiff must demonstrate not only the existence of a specific Industrial Code violation, but also that the alleged violation was a proximate cause of the injury (*see Rizzuto v L.A. Wenger Contr. Co*., 91 NY2d 343, 350 [1998]). Where the plaintiff fails to identify a specific Industrial Code provision applicable to the work at issue, dismissal of the §241 (6) claim is required as a matter of law (*see Misicki v Caradonna*, 12 NY3d 511, 515 [2009]).

Here, plaintiff has failed to identify any specific, applicable Industrial Code provision governing the removal of interior glass panels under the circumstances presented. The record contains no competent evidence demonstrating the violation of a concrete regulatory standard.

Instead, plaintiff relies upon generalized assertions of unsafe working conditions, which are insufficient to sustain liability under Labor Law §241 (6) (*see Ross*, 81 NY2d at 505**;** *Buckley*, 44 AD3d at 271).

Accordingly, defendants have established their entitlement to judgment as a matter of law dismissing plaintiff's Labor Law §241 (6) claim, and plaintiff has failed to raise a triable issue of fact in opposition (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

III. Labor Law 200 and Common-law Negligence

Labor Law § 200 codifies the common-law duty of an owner or contractor to provide workers with a reasonably safe place to work (*see Comes v New York State Elec. & Gas Corp*., 82 NY2d 876, 877 [1993]). Liability under Labor Law §200 and common-law negligence arises under two distinct factual predicates:

(1) where the injury is caused by a dangerous or defective condition on the premises, or (2) where the injury arises from the manner in which the work was performed (*see Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]; *Cappabianca v Skanska USA Bldg. Inc*., 99 AD3d 139, 143 [1st Dept 2012]).

Where, as here, the accident arises from the manner in which the work was performed, liability may be imposed only if the defendant exercised supervisory control over the means and methods of the work (*see Hughes v Tishman Constr. Corp*., 40 AD3d 305, 306 [1st Dept 2007]). Mere general supervisory authority, or the right to monitor work progress, is insufficient to impose liability under Labor Law § 200 (*see Dalanna v City of New York*, 308 AD2d 400, 400 [1st Dept 2003]).

Additionally, where the claim is predicated on a dangerous condition, a plaintiff must establish that the defendant either created the condition or had actual or constructive notice of it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]).

Here, the undisputed evidence demonstrates that plaintiff's work was directed and supervised by his employer and immediate supervisor, and that none of the Owner Defendants exercised control over the manner in which the glass panel removal was performed. The record contains no evidence that the Port Authority, Condé Nast, or any related entity directed the method of the work, supplied equipment, or instructed plaintiff regarding the removal of the glass panels. Nor is there any evidence that these defendants created or had notice of a dangerous condition in the glass panel itself. Indeed, plaintiff's counsel conceded at oral argument before the court on April 7, 2026 that plaintiff does not have a viable claim under Labor Law §200 and common-law negligence.

Under these circumstances, and in light of plaintiff's counsel's concession, the absence of supervisory control or notice is fatal to plaintiff's Labor Law § 200 and common-law negligence claims (*see Comes*, 82 NY2d at 877; *Hughes*, 40 AD3d at 306; *Torres-Quito v 1711 LLC*, 227 AD3d at 115).

Accordingly, defendants are entitled to summary judgment dismissing plaintiff's claims under Labor Law § 200 and common-law negligence.

IV. Workers' Compensation Law § 11

To the extent that third-party claims for indemnification and contribution have been asserted against plaintiff's employer, such claims are governed by Workers' Compensation Law § 11, which provides that an employer's liability for workplace injuries is generally exclusive, and third-party claims against the employer are barred unless the employee sustained a statutorily defined "grave injury" (*see Castro v United Container Mach. Group*, 96 NY2d 398, 401–402 [2001]).

The statute defines "grave injury" narrowly and exclusively, and the Court of Appeals has repeatedly emphasized that the definition must be strictly construed (*see Rubeis v Aqua Club, Inc*., 3 NY3d 408, 413 [2004]). Injuries falling outside the enumerated categories — such as death, amputation, paraplegia, or permanent and total loss of use of a body part — do not satisfy the statutory threshold (*see Castro*, 96 NY2d at 401).

Here, the record contains no evidence that plaintiff sustained a grave injury within the meaning of Workers' Compensation Law § 11. Accordingly, third-party claims for common-law indemnification and contribution against the employer are barred as a matter of law (*see Castro*, 96 NY2d at 402).

Moreover, where contractual indemnification is sought, the right to indemnity must be clearly expressed in a written agreement (*see Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491–492 [1989]). Where the scope or applicability of the indemnification agreement is disputed, summary judgment is inappropriate (*see Fernandez v Stockbridge Homes, LLC*, 99 AD3d 550, 524 [1st Dept 2012]).

Here, the record reflects that the indemnification agreement was executed after the accident giving rise to this action. Under controlling precedent, a contract executed after an accident may be applied retroactively only where the parties clearly intended the agreement to cover prior work (*see Rodrigues v N & S Bldg. Contrs., Inc*., 5 NY3d 427, 433 [2005]). The question of intent is generally one of fact (*see Fernandez*, 99 AD3d at 524).

Accordingly, triable issues of fact exist regarding the scope and retroactive application of the indemnification agreement, precluding summary judgment on that claim.

Notwithstanding the foregoing, the court's determination granting summary judgment dismissing plaintiff's complaint in its entirety renders the remaining indemnification and contribution claims academic. It is well settled that claims for contractual or common-law indemnification are contingent upon the existence of liability, and where no liability remains, there is no basis upon which indemnification may be imposed (*see McCarthy v Turner Constr., Inc*., 17 NY3d 369, 377–378 [2011]; *Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 178 [1990]). Because the court has concluded, as a matter of law, that defendants bear no liability to plaintiff under Labor Law §§ 200, 240 (1), or 241 (6), there is no underlying obligation to indemnify.

Accordingly, while factual questions may otherwise exist concerning the scope or retroactive application of the indemnification agreement, those questions need not be resolved in light of the dismissal of the underlying claims, and all cross-claims and third-party claims for indemnification and contribution are denied as academic (*see Alvarez*., 68 NY2d at 324).

CONCLUSION

For the reasons set forth above, the court resolves the pending motions as follows. Plaintiff's motion for summary judgment on liability under Labor Law §240 (1) against the Port Authority is denied, as plaintiff has failed to establish a prima facie entitlement to relief. The motion by defendants Port Authority, Condé Nast, and WTC Tower 1 LLC for summary judgment dismissing the complaint is granted in its entirety, and plaintiff's claims under Labor Law §§240 (1), 241 (6), and 200 are dismissed as a matter of law. The court concludes that Labor Law §240 (1) is inapplicable under the facts presented, that the §241 (6) claim is unsupported by proof of a specific Industrial Code violation, and that the §200 claim fails in the absence of any evidence establishing a duty, supervision, or notice on the part of these defendants.

Considering the dismissal of plaintiff's complaint in its entirety, the remaining claims among the defendants for contractual indemnification, common-law indemnification, contribution, and related relief are rendered academic. It is well settled that indemnification and contribution claims are contingent upon the existence of liability, and where no liability remains, there is no basis upon which such claims may proceed (*see McCarthy v Turner Constr., Inc*., 17 NY3d 369, 377–378 [2011]; *Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 178 [1990]). Accordingly, the branches of Condé Nast's motion seeking summary judgment on its indemnification claims, as well as its motion to dismiss the indemnification and contribution claims asserted by WKE and JWK, are denied as academic.

Finally, the motion of third-party defendant JWK is granted to the extent that plaintiff's claims against JWK under Labor Law §§ 200, 240 (1), and 241 (6) are dismissed on the same grounds set forth above. Any cross-claims or third-party claims for contractual indemnification or contribution asserted by or against JWK, the Port Authority, Condé Nast, or any other party are likewise denied as academic in light of the dismissal of the underlying claims.

The court is mindful that this conclusion may, on its face, appear unfair in light of the circumstances presented. There is no dispute that plaintiff sustained tragic injuries as a result of the incident underlying this action. That event is, in every human sense, consequential and deeply unfortunate, and the court does not diminish the significance of what occurred or the hardship that followed. Nevertheless, the role of the court is to apply the law faithfully and impartially, without passion or prejudice, and not to reach a result based on sympathy alone. While compassion for plaintiff's injuries is both natural and warranted, it cannot supplant the governing legal standards or expand statutory protections beyond their intended scope. The court's obligation, therefore, is to decide the matter according to the law as written and interpreted by controlling precedent, even where the outcome may not align with the equities that the facts might otherwise evoke.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on liability under Labor Law §240 (1) is denied; and it is further

ORDERED that the motion of defendants Port Authority of New York and New Jersey, Advance Magazine Publishers, Inc. d/b/a Condé Nast, and WTC Tower 1 LLC for summary judgment dismissing the complaint is granted, and the complaint is dismissed in its entirety as against said defendants; and it is further

ORDERED that the motion of third-party defendant JWK Services, Inc. for summary judgment dismissing plaintiff's claims under Labor Law §§200, 240 (1), and 241 (6) is granted, and all claims asserted by plaintiff against JWK Services, Inc. are dismissed; and it is further

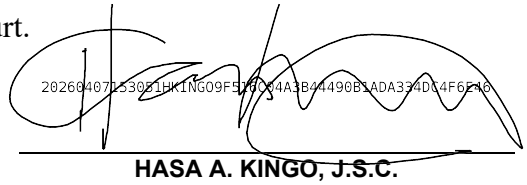
ORDERED that, in light of the dismissal of all claims asserted by plaintiff against the defendants, all cross-claims and third-party claims for contractual indemnification, common-law indemnification, contribution, and failure to procure insurance are denied as academic and are hereby dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendants dismissing the complaint in its entirety; and it is further

ORDERED that the Clerk is directed to dispose of Index No. 595527/2022 as academic in light of the dismissal of Index No. 156991/2021 in its entirety; and it is further

ORDERED that any remaining relief requested but not expressly addressed herein is denied.

This constitutes the decision and order of the court.



4/7/2026
DATE

HASA A. KINGO, J.S.C.

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