De La Cruz v 510 E. 86th St. Owners, Inc.
2026 NY Slip Op 31553(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 159020/2020
Judge: Leslie A. Stroth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

---X

INDEX NO. 159020/2020

MOTION DATE 01/13/2025

MOTION SEQ. NO. 003

REYNA CASTILLO DE LA CRUZ,

Plaintiff,

\- v -

510 EAST 86TH STREET OWNERS, INC. AND NOVA CONSTRUCTION SERVICES, LLC,

Defendants.

---X

DECISION + ORDER ON MOTION

510 EAST 86TH STREET OWNERS, INC.

Third-Party Plaintiff,

-against-

NOVA CONSTRUCTION SERVICES, LLC,

Third-Party Defendant.

---X

Third-Party
Index No. 595066/2021

NOVA CONSTRUCTION SERVICES, LLC,

Second Third-Party Plaintiff,

-against-

KOSTAN, INC.,

Second Third-Party Defendant.

---X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121

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

Upon the foregoing documents, it is

Defendant/ third party plaintiff 510 East 86th Street Owners, Inc. (defendant or 510 East) moves pursuant to CPLR 3212 for an order, granting it summary judgment (i) dismissing all claims and counterclaims against it, and (ii) compelling third-party defendant NOVA to indemnify and defend it in accordance with the terms of their written contract.

Pertinent Facts[1]

This action arises out of a construction accident on October 26, 2020, at the building located at 510 East 86th Street, New York, New York (the premises). 510 East 86th Street Owners, Inc. owns the premises and hired third-party defendant NOVA Construction Services, LLC (NOVA), as the general contractor for the job site. The contract between NOVA and 510 East included an indemnity provision which provided that "To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work,...but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable..." NOVA hired second third-party defendant KOSTAN, INC. (KOSTAN) as a subcontractor to perform renovation work at the premises. Plaintiff Reyna Castillo De La Cruz, worked for KOSTAN as a construction helper. Plaintiff was working with Viviana Quille Fernanda Quintona (Fernanda) on the date of the accident.

Plaintiff testified that on October 26, 2020, after working as a helper for 2 ½ weeks, she was assigned by Gustavo Perdomo to move concrete bars atop a bridge over the sidewalk located along the entire length of the premises (NY St Cts Elec Filing [NYSCEF] Doc No. 89, Plaintiff's

[1] The action commenced against NOVA, under Index No. 154468/2021, was consolidated with this action by So-Ordered Stipulation on April 11, 2022 (NYSCEF Doc No. 39).

EBT tr at 12, 21-25, 29, 72). Plaintiff further testified that she tripped and fell while she was moving a concrete bar from one area of the bridge to another (NYSCEF Doc No. 89, Plaintiff's EBT tr at 27, 35). Plaintiff was standing on a stack of concrete bars, about 12-centimeters-high, containing two layers of bars, when it shifted, causing her to lose her balance and she tripped and fell forward onto the floor of the sidewalk bridge (NYSCEF Doc No. 89, Plaintiff's EBT tr at 35-36, 38-39, 41, 62).

Defendant 510 East argues that it is entitled to summary judgment on plaintiff's common-law negligence or Labor Law § 200 claims because it did not control or authorize plaintiff's work; there was no special elevation risk that would bring the plaintiff under the protection of Labor Law § 240 (1); and none of the Industrial Code provisions cited by plaintiff are applicable to her accident sufficient to sustain a claim under Labor Law § 241 (6). Third-party defendant NOVA opposes that portion of the motion seeking contractual indemnification. Plaintiff opposes the motion, arguing that the motion should be denied in its entirety as issues of fact exist as to the circumstances of plaintiff's accident that preclude summary judgment; there are questions of fact with regard to whether defendants violated any of the Industrial Codes cited in plaintiff's bill of particulars, but especially Industrial Code § 23-1.7 (d) and (e).

Standard of Law

"On a motion for summary judgment, the moving party 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" (*Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 73-74 [2020] [internal quotation marks and citation omitted]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853

[1985] [citations omitted]). If the moving party meets its burden, the burden shifts to the non-moving party "to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "On a motion for summary judgment, facts must be viewed 'in the light most favorable to the non-moving party'" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Discussion

Labor Law § 200 and Common-law Negligence

Defendant 510 East argues that dismissal of plaintiff's common-law negligence and Labor Law § 200 claims is warranted because she alleges that the accident arose from the methods or means of the work at the construction site, and 510 East did not control or supervise her work (NYSCEF Doc No. 79 at ¶ 49).

Labor Law § 200, is "a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). "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'" (*Winkler v Halmar Intl., Inc.*, 206 AD3d 458, 459 [1st Dept 2022], quoting *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]).

Where the injury arises from a dangerous or defective condition, "'"a property owner is liable under Labor Law § 200 when the owner created the dangerous condition causing an injury

or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice'" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2008]). "In order to prove liability [under the manner and means category,] a plaintiff must show that the owner or agent have the authority to control the activity bringing about the injury to enable it to avoid or correct any unsafe condition'" (*Winkler*, 206 AD3d at 459, quoting *Lemache v MIP One Wall St. Acquisition, LLC*, 190 AD3d 422, 423 [1st Dept 2021]; *accord Cappabianca*, 99 AD3d at 144 ["Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work"]).

Defendant 510 East has demonstrated, prima facie, that it did not exercise supervisory control over plaintiff's work and thus, it is entitled to dismissal of plaintiff's common-law negligence and Labor Law § 200 causes of action to the extent it is premised on the means and methods of the work theory of liability (*D'Angelo v Legacy Yards Tenant LLC*, 237 AD3d 607, 608 [1st Dept 2025]; *Gilliqan v CJS Bldrs.*, 178 AD3d 566, 566 [1st Dept 2019]; *Castellon v Reinsberg*, 82 AD3d 635, 636 [1st Dept 2011]). In support of its summary judgment motion, 510 East submitted plaintiff's deposition transcript, the deposition transcript of Laura Rogan (Rogan), the acting property manager for the premises, the deposition transcript of Piotr "Peter" Muzyk (Muzyk), the Field Operations Director for third party defendant NOVA, and the deposition transcript of plaintiff's co-worker Fernanda from third-party defendant KOSTAN (NYSCEF Doc Nos. 89, 91, 92, 93 respectively). In opposition, plaintiff fails to raise a question of fact as to whether 510 East controlled the means and manner of the work being performed.

Plaintiff testified that Gustavo Perdomo (Gustavo) was the only person who instructed her with respect to her work (NYSCEF Doc No. 89, Plaintiff's EBT tr at 29, 72). Gustavo is employed by Kostan (NYSCEF Doc No. 92, Muzyk EBT tr at 39, 106). Although plaintiff occasionally saw the superintendent of the premises, her only conversation with him involved him allowing the workers inside the premises to use the bathroom (NYSCEF Doc No. 89, Plaintiff's EBT tr at 27-29). The building superintendent did not provide plaintiff with any instructions or directions, tools or supplies to do her work (NYSCEF Doc No. 89, Plaintiff's EBT tr at 28-29). Muzyk testified that, pursuant to the contract between NOVA and 510 East, NOVA undertook all responsibility for safety at the work site from the building owner (NYSCEF Doc No. 92, Muzyk EBT tr at 28). Muzyk further testified that while a representative from the management would attend weekly progress meetings, he did not see anyone employed by the building owners or managers at the job site (NYSCEF Doc No. 92, Muzyk EBT tr at 40-41). Rogan confirmed that no one from 510 East supervised or directed the work, and that 510 East did not supply any materials for the work or have any workers on the site for the purpose of doing any work (NYSCEF Doc No. 91, Rogan EBT tr at 14). Fernanda, plaintiff's co-worker, corroborated that all instructions and directions of what tasks to perform on the job site came from Gustavo, and he provided the workers with the materials for the work (NYSCEF Doc No. 93, Fernanda EBT tr at 48-49, 52-53, 118-119).

Contrary to plaintiff's contentions, plaintiff's claims concern the means and manner of the work, rather than a dangerous condition inherent in the property. Plaintiff fails to raise an issue of fact based on Fernanda's deposition testimony that she believed plaintiff slipped because the floor of the bridge was a little wet from an earlier rainfall (NYSCEF Doc No. 109 at ¶¶ 23, 26-28). Plaintiff's own testimony makes clear that this accident arose out of the means and

manner of her work. To create a triable issue of fact regarding plaintiff's claim, evidence controverting plaintiff's version of how the accident happened is necessary (*Bradley v IBEX Constr., LLC*, 54 AD3d 626, 627 [1st Dept 2008]). Fernanda testified that she did not see plaintiff slip or fall (NYSCEF Doc No. 93, Fernanda EBT tr at 24-25). Plaintiff herself testified that she was not sure whether Fernanda witnessed her accident (NYSCEF Doc No. 89, Plaintiff's EBT tr at 33). Thus, Fernanda's testimony as to the cause of plaintiff's fall constitutes speculation and is insufficient to provide a basis for denying defendant's summary judgment motion (*see e.g., Estrella v GIT Indus., Inc.*, 105 AD3d 555, 556 [1st Dept 2013] [testimony by defendant's agent contradicting plaintiff's testimony on who supervised or controlled plaintiff's work was insufficient to raise a triable issue of fact]; *Angamarca v New York City Partnership Hous. Dev. Fund Co., Inc.*, 56 AD3d 264 [1st Dept 2008] [defendants' unsupported speculation as to an alternative explanation for plaintiff's injury insufficient to create a triable issue of fact]; *Washington v. G & L Auto Corp.,* 20 AD3d 332, 332–333 [1st Dept 2005] [non-eyewitness statement from defendant's principal regarding the circumstances of accident was "rank speculation" and insufficient to defeat summary judgment motion]).

As the evidence submitted by the defendant establishes, prima facie, that it did not have the authority to supervise or control the work being performed, plaintiff's claims pursuant to common-law negligence and Labor Law § 200 are dismissed (*see D'Angelo*, 237 AD3d at 608 [dismissing common-law negligence and Labor Law 200 claims against property owner, general contractor, and construction manager as injured worker did not receive instructions or directions from anyone other than his own company]).

Labor Law § 240 (1)

Defendant 510 East argues that plaintiff's Labor Law § 240 (1) claim fails because her fall did not occur because of an elevation risk that would require a harness or other protective device (NYSCEF Doc No. 79 at ¶¶ 55-59). Defendant 510 East contends that plaintiff's fall from a 12 centimeter (or about 6-inch) high stack of "windowsills" does not involve an elevation risk in that plaintiff did not fall from or through the sidewalk bridge (NYSCEF Doc No. 79 at ¶¶ 58-59). In opposition, plaintiff contends that the cement bar was serving as the functional equivalent of a safety device such as a ladder or scaffolding (NYSCEF Doc No. 109 at ¶¶ 26, 31, 35). Plaintiff further contends that the movement of the bar indicates that plaintiff was not provided with adequate safety equipment (*id.* at ¶ 31).

Labor Law § 240 (1) provides as follows:

> All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, 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 applies to both "falling worker" and "falling object" cases (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). To establish liability, the injured worker "must demonstrate the existence of an elevation-related hazard contemplated by the statute and a failure to provide the worker with an adequate safety device" (*Berg v Albany Ladder Co., Inc.*, 10 NY3d 902, 904, [2008]; *see also Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 681 [2007]). The kind of accident triggering section 240 (1) coverage is one that will sustain the allegation that an adequate "scaffold, hoist, stay, ladder or other protective device" would have "shield[ed] the injured worker from harm directly flowing from the application of the force of gravity to an

object or person" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009] [emphasis removed], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]).

Plaintiff's injuries must be a direct consequence of defendant's "failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009] [internal quotations omitted]). "The fact that a worker is injured while working above ground does not ipso facto mean that the injury resulted from an elevation-related risk contemplated by section 240 (1) of the Labor Law" (*Streigel v Hillcrest Heights Development Corp.*, 100 NY2d 974, 977 [2003]).

Here, plaintiff fell while working at a job involving an elevation-related risk. Plaintiff was working on a sidewalk bridge at the time of the accident. Plaintiff testified she fell when the 12-centimeter-high stack of windowsills she was standing on moved as she was attempting to push a concrete bar behind that stack (NYSCEF Doc No. 89, Plaintiff's EBT tr at 38, 45-47, 58, 62). Plaintiff testified that she tripped because of the "gap between the stones, the movement and the weight" (NYSCEF Doc No. 89, Plaintiff's EBT tr at 59), which indicates that the 12-centimeter-high stack of windowsills she was standing on was unstable, causing her to fall. Under these circumstances, defendants fail to demonstrate, prima facie, that Labor Law § 240 (1) was not violated. Defendant's arguments are not persuasive; plaintiff did not need to fall off the scaffolding for the protections of Labor Law § 240 (1) to apply (see *Interiano v Silverstein Galaxy Prop. Owner, LLC*, 234 AD3d 488, 489–490 [1st Dept 2025] [Labor Law § 240 (1) still applied even though plaintiff did not fall off the scaffold entirely, but fell to the scaffold floor]; *LaGrippo v 95th & Third LLC*, 237 AD3d 578, 579 [1st Dept 2025] [holding that "plaintiff's claim is not defeated by the fact that he did not actually fall, Labor Law § 240 (1) applies even

where worker is injured in the process of "preventing himself from falling"]). There is no set rule as to the minimum elevation differential necessary to invoke Labor Law § 240 (1); the statute applies where harm flows from the application of force of gravity to an individual (*Braganca-Ferreira v SREP 10th Ave. Venture LLC*, 238 AD3d 656, 656-657 [1st Dept 2025] [Labor Law § 240 (1) applicable to accident where the three-foot-high pile of unsecured wooden beams worker was walking across suddenly moved under his feet, causing him to lose his balance and fall on top of the pile]).

Whether plaintiff's fall was the result of an elevation-related risk or a danger arising as an ordinary and usual incident of construction, raises triable issues of fact that cannot be resolved via summary judgment (*Figueroa v Center Assoc.*, 268 AD2d 279, 279 [1st Dept 2000] [affirming denial of plaintiff's Labor Law § 240 [1] claim as issues of facts exists on "whether plaintiff's fall was the result of an extraordinary gravity-related risk within the protective ambit of Labor Law Section § 240 (1) or was the result of some other peril arising as an ordinary and usual incident of construction"], citing *Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914 [19999]; *Papapietro v Rock-Time,* 265 AD2d 174 [1st Dept 1999]). In any event, plaintiff's testimony as to the way her accident occurred should be subject to cross-examination to have her credibility determined by a trier of fact (see *Vargas v City of New York*, 59 AD3d 261, 261 [1st Dept 2009]). Accordingly, defendant 510 East is not entitled to summary judgment dismissing plaintiff's Labor Law § 240 (1) claim.

Labor Law § 241 (6)

Defendant 510 East contends that, based on plaintiff's testimony, plaintiff's Labor Law § 241 (6) fails because she cannot show that she was injured during an enumerated activity in an

area in which construction work was being performed, and the injury was the result of a specific violation of the Industrial Code (NYSCEF Doc No. 79 at ¶¶ 61-62). Defendant contends that the only section that would be applicable is 23-1.5 (a), which is not specific enough to support a § 241 (6) claim and there is no evidence that plaintiff's accident was caused by a failure of machinery, equipment, load carrying devices, or safety devices or equipment (NYSCEF Doc No. 79 at ¶¶ 63-64). Defendant also argues that an alleged violation of an Occupational Safety and Health Administration (OSHA) regulation cannot form the basis of a Labor Law § 241 (6) claim (NYSCEF Doc No. 79 at ¶ 65).

In opposition, plaintiff argues that "there are still myriad Industrial Code sections that may or may not be applicable depending on the version or events accepted" (NYSCEF Doc No. 109 at ¶ 36). Plaintiff asserts that defendant failed to meet its burden to affirmatively show that it complied with the applicable Industrial Codes (NYSCEF Doc No. 109 at ¶¶ 39-41). Plaintiff contends that Industrial Code 23-1.7 (d) and (e) potentially apply depending on the circumstances of the accident (NYSCEF Doc No. 109 at ¶¶ 42-47). Plaintiff argues that questions of fact exist based on the testimony of plaintiff's co-worker, Fernanda, that plaintiff slipped and fell due to the possible rainwater on the sidewalk bridge and that the bridge was being used as a passageway (NYSCEF Doc No. 109 at ¶ 44, 46).

Labor Law § 241 (6) provides as follows:

> "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing an excavating in connection therewith, shall comply with the following requirements:
>
> "6. All 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, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith."

Labor Law § 241 (6) "imposes a *nondelegable* duty of reasonable care upon owners and contractors 'to provide reasonable and adequate protection and safety' to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998], quoting Labor Law § 241 [6]). To recover under Labor Law § 241 (6), the plaintiff must plead and prove the violation of an Industrial Code "'that sets forth a specific standard of conduct and [is] not simply a recitation of common-law safety principles' " (*Toussaint v Port Auth. of N.Y. & N.J.*, 38 NY3d 89, 94 [2022], quoting *St. Louis v Town of N. Elba*, 16 NY3d 411, 414 [2011]; *see also Ross*, 81 NY2d at 501-502). The plaintiff must also establish that the Industrial Code violation proximately caused the accident (*Cappabianca*, 99 AD3d at 146). "Since section 241 (6) imposes a nondelegable duty on property owners, plaintiff need not show that defendants exercised supervision or control over the work site in order to establish a right of recovery under section 241(6)" (*St. Louis*, 16 NY3d at 413). The "plaintiff [is] not required to demonstrate freedom from comparative fault in order to be awarded summary judgment on [Labor Law § 241 (6)]" (*Bucci v City of New York*, 223 AD3d 453, 455 [1st Dept 2024], citing *Rodriguez v City of New York*, 31 NY3d 312, 323 [2018]; *see also Keegan v Swissotel N.Y.*, 262 AD2d 111, 114 [1st Dept 1999], *lv denied* 94 NY2d 858 [1999] ["whether or not plaintiff was himself negligent may require an apportionment of liability but does not absolve defendants of their own liability under § 241 (6)"] [citation omitted]).

Plaintiff, in her bill of particulars, alleged violations of Industrial Code (12 NYCRR) §§ 23-1.5; 23-1.7 (d) and (f); 23-1.15; 23-1.16 (a) and (b); 23-1.17; 23-1.21; 23-1.24; 23-3.2; 23-3.3(c), (g) and (j); 23-5.1; 23-5.3; 23-5.9; and 23-9.6 as well as violations of various OSHA

regulations. Plaintiff further alleges violations of the code of ordinances of the City of Newburgh. In moving, 510 East demonstrates that the industrial codes plaintiff relies on are insufficiently specific, inapplicable to the facts of the case, or were not violated (NYSCEF Doc No. 79 at ¶¶ 12, 62-64; NYSCEF Doc No. 121 at ¶¶ 20-27). Plaintiff's vague assertion, in opposition, that "there are still myriad Industrial Code sections that may or may not be applicable depending on the version or events accepted" (NYSCEF Doc No. 109 at ¶ 36), fails to rebut defendant's prima facie showing. Additionally, OSHA violations may not be relied upon as a basis for a Labor Law § 241 (6) cause of action (*see Alberto v DiSano Demolition Co., Inc.*, 194 AD3d 607, 608 [1st Dept 2021]), the City of Newburgh code violation is irrelevant.

Indeed, plaintiff abandoned her Labor Law § 241 (6) claim insofar as based on Industrial Code (12 NYCRR) §§ 23-1.5; 23–1.15; 23–1.17; 23–1.24; 23-5.1; 23-5.3; 23-5.9; and 23–9.6, as these provisions contain multiple subsections, and plaintiff fails to identify any specific subsections and subdivisions as required to sustain a Labor Law § 241(6) cause of action (*see Caminiti v Extell West 57th Street LLC*, 166 AD3d 440, 441 [1st Dept 2018] ["The court should have dismissed the Labor Law § 241 (6) claim insofar as predicated on Industrial Code §§ 23-1.2, -1.5, -1.16, -1.17, -1.30, -1.31, -2.1, and -2.4, which were abandoned since plaintiff failed to specify any particular subsection(s) and subdivision(s) of these provisions"] [internal quotation marks omitted]; *McLean v Tishman Constr. Corp.*, 144 AD3d 534, 535 [1st Dept 2016] ["The motion court properly deemed the Labor Law § 241(6) claims predicated on Industrial Code (12 NYCRR) §§ 23-1.16, 23-2.3, 23-6.1 and 23-8.1 abandoned, since plaintiff failed to specify any particular subsection(s) and subdivision(s) of these provisions"] [citations omitted]). The remaining provisions on which plaintiff relies, Industrial Code (12 NYCRR) §§ 23.1.7 (d) and (f); 23–1.16 (a) and (b); 23-1.21 23-1.21(b)(1); 23-1.21(b)(3)(i); 23-1.21(b)(4)(ii); 23-

1.21(b)(4)(iv); 23-1.21(e); and 23–3.3 (c), (g) and (j) are inapplicable to the facts of this case. Based on plaintiff's deposition testimony, the alleged incident did not involve a fall down an opening or hole or off a roof, nor did it involve a defective ladder or a height of five feet necessitating safety belts or harnesses with attachments to lifelines, and plaintiff does not claim that the sidewalk bridge collapsed or that its railing failed. There is also no evidence that plaintiff's accident was caused by a structural instability due to the progress of demolition. She testified that her job involved moving concrete bars from one section of the sidewalk bridge to another.

Plaintiff's contention that 12 NYCRR § 23–1.7 [d] and [e] are applicable Industrial Code provisions, depending on whose version of how the accident occurred is accepted, is without merit. Industrial Code (12 NYCRR) § 23-1.7 (d), which addresses slipping hazards caused by "ice, snow, water, grease and any other foreign substance which may cause slippery footing" may not be relied upon here. Plaintiff's attempt to create an issue of fact by pointing to the testimony by plaintiff's co-worker of earlier rain fall causing the sidewalk bridge to be wet is unavailing (NYSCEF Doc No. 109 at ¶44). Plaintiff consistently testified that she was injured when a stack of concrete bars shifted as she walked over them (NYSCEF Doc No. 89, Plaintiff's EBT tr at 39-36, 38-39, 41), not that she fell due to a slippery condition. Fernanda does not directly contradict plaintiff's testimony as to the cause of the accident. Fernanda testified that she did not observe plaintiff slip or fall (NYSCEF Doc No. 93, Fernanda EBT tr at 24-25). Additionally, plaintiff disputes the accuracy of Fernanda's version of what caused plaintiff's fall (NYSCEF Doc No. 116, Response to Statement of Material Facts at ¶¶ 121, 127-128). Moreover, in moving, defendant does not dispute plaintiff's account of the accident or call her credibility into question. As there has been no showing that plaintiff's testimony of the circumstances

surrounding the accident is demonstrably false, no triable issue of fact exists (*Ortiz v Burke Ave. Realty, Inc.*, 126 AD3d 577, 578 [1st Dept 2015]).

Plaintiff's belated addition to her papers in opposition to the pending summary judgment motion for dismissal, that her accident was proximately caused by defendant's failure to abide by (12 NYCRR) § 23-1.7 (e) (1) and (2), which applies to tripping hazards, is also without merit.

Industrial Code 12 NYCRR § 23-1.7 (e) states:

> Tripping and other hazards
>
> (1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.
>
> (2) Working areas. 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 materials and from sharp projections insofar as may be consistent with the work being performed.

In support of this branch of its motion, defendant demonstrates, based on plaintiff's deposition testimony, that this regulation was not violated (NYSCEF Doc No. 121 at ¶¶ 23-26). The sidewalk bridge was not a passageway but an open working area so 12 NYCRR § 23-1.7 (e) (1) does not apply (*Isola v JWP Forest Elec. Corp.*, 262 AD2d 95, 95-96 [1st Dept 1999] [reversing denial of defendant's summary judgment motion where injured iron worker tripped over section of electrical conduit lying on the corrugated metal decking of a building under construction as plaintiff was working in an open area not in a passageway]). 12 NYCRR § 23-1.7 (e) (2) is also inapplicable as the concrete bars that plaintiff tripped over were an integral part of the work she was performing (*see Burkoski v Structure Tone, Inc.*, 40 AD3d 378, 383 [1st Dept 2007] [reversing denial of summary judgment to construction manager and owner finding that four-foot high stack of tiles which was in the process of being installed at the time of plaintiff's accident were consistent with the work being done in room where plaintiff fell and therefore

were not a basis for liability under 12 NYCRR § 23-1.7 (e); *Bond v York Hunter Constr.*, 270 AD2d 112, 113 [1st Dept 2000], *affd* 95 NY2d 883 [2000] ["the accumulation of debris was an unavoidable and inherent result of work at an on-going demolition project, and therefore provides no basis for imposing liability"]). Accordingly, plaintiff's Labor Law § 241(6) claim is dismissed.

Contractual Indemnification

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co., Inc.*, 70 NY2d 774, 777 [1987] [citation omitted]). "The right to contractual indemnification depends upon the specific language of the contract" (*DiBrino v Rockefeller Ctr. N., Inc.*, 230 AD3d 127, 136 [1st Dept 2024] [citation omitted]). "Indemnification provisions are strictly construed and a promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances" (*Madison Hospitality Mgt. LLC v Acacia Network Hous., Inc.*, 230 AD3d 1063 [1st Dept 2024] [internal quotation marks and citation omitted]). "However, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Cava Const. Co. v Gealtec Remodeling Corp.*, 58 A.D.3d 660, 662 [2d Dept 2009] [citations omitted]).

Here, defendant 510 East's motion for contractual indemnification is granted. Based on the terms outlined in the contract between NOVA and 510 East, NOVA is required to indemnify 510 East from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work on the premises.

Defendant 510 East established its entitlement to summary judgment on plaintiff's Labor Law 200 and common law negligence claims. 510 East demonstrated that it had no role in directing plaintiff's work and was free from negligence in the happening of the accident, therefore, 510 East is entitled to indemnification (*Solarte v Brearley Sch.*, 238 AD3d 541, 542-543 [1st Dept 2025]; *Uluturk v City of New York*, 298 AD2d 233, 234 [1st Dept 2002]). Any liability against 510 East would be on statutory grounds.

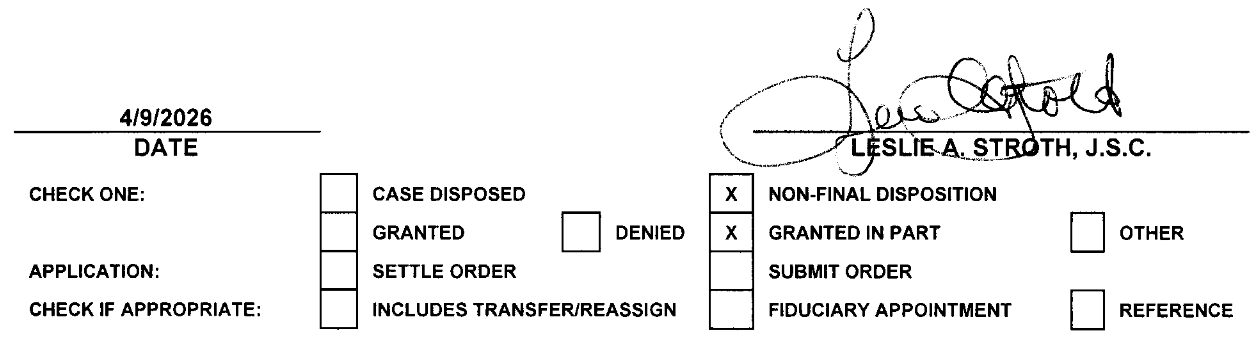
Accordingly, it is

ORDERED that the branch of Defendant's motion seeking summary judgment dismissing plaintiff's negligence and violation of Labor Law §§ 200 and 241 (6) claims is GRANTED, and it is further

ORDERED that the branch of Defendant 510 East's motion seeking summary judgment dismissing plaintiff's Labor Law 240 (1) is DENIED, and it is further

ORDERED that the branch seeking summary judgment awarding it contractual indemnification against NOVA is GRANTED.

This constitutes the decision and order of the Court.



4/9/2026
DATE

LESLIE A. STROTH, 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