Gileno v Stalco Constr. Inc.
2026 NY Slip Op 31815(U)
April 28, 2026
Supreme Court, New York County
Docket Number: Index No. 160956/2018
Judge: Sabrina Kraus
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. SABRINA KRAUS** **PART** **57M**

Justice

----------X

INDEX NO. 160956/2018

STEVEN GILENO,

Plaintiff,

- v -

MOTION DATE 01/14/2026, 01/14/2026, 01/14/2026, 01/15/2026

STALCO CONSTRUCTION INC., AIM BUILDERS CORPORATION, NORBERTO CONSTRUCTION, INC.,

MOTION SEQ. NO. 003 004 005 006

Defendants.

DECISION + ORDER ON MOTION

----------X

STALCO CONSTRUCTION INC.

Plaintiff,

-against-

BAYBRENT CONSTRUCTION CORP.

Defendant.

Third-Party
Index No. 595564/2019

----------X

STALCO CONSTRUCTION INC.

Plaintiff,

-against-

MP ENGINEERS PC, GENEYSIS ENGINEERING PC, COUNSILMAN HUNSAKER, NORBERTO CONSTRUCTION, INC., AIM BUILDERS CORPORATION

Defendants.

Second Third-Party
Index No. 595669/2021

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 152, 175, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 274, 278, 281, 286, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 318, 319, 320

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 152, 175, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211,

212, 213, 214, 215, 216, 217, 218, 219, 220, 271, 272, 273, 277, 282, 285, 290, 292, 293, 312, 315, 316, 317

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 152, 175, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 275, 279, 283, 287, 321

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 152, 175, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 276, 280, 284, 288, 291, 294, 307, 308, 309, 310, 311, 313, 314

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

BACKGROUND

Plaintiff commenced this Labor Law action for damages stemming from personal injuries arising out of an October 20, 2017, workplace accident.

FACTS

The following information derives from the documentary submissions of the parties.

On March 25, 2015, Stalco Construction Inc. ("Stalco") entered into an agreement with the Dormitory Authority of the State of New York ("DASNY") for Stalco to serve as the general contractor on a pool deck restoration and abatement project (the "Project") (NYSCEF Doc No. 261, at 2). DASNY owned the premises located at 199 Chambers Street, New York NY 10007 (the "Premises") as part of the Borough of Manhattan Community College ("BMCC").

On April 29, 2015, Stalco subcontracted Norberto Construction, Inc. ("Norberto") to perform various construction services on the Project, including demolition of the previous area, pool deck grading, plumbing, and audiovisual services (*id.* at 2, 31–34). Within a large surge water tank on the Premises (the "Tank"), Norberto was responsible for the installation of permanent ladder rungs (the "Ladder") and a hatch door (*see* NYSCEF Doc No. 255, at 38, 40 [Norberto's testimony]).

The Ladder and the Tank were designed by CH National Engineering s/h/a Counsilman Husaker ("CH") (NYSCEF Doc No. 225, at 3). CH was subcontracted by MP Engineers PC ("MP"), who was an architectural consultant on the Project subcontracted by Stalco (NYSCEF Doc No. 233). While the design called for the Ladder to contain 12 rungs, Norberto only installed 11 rungs.

Stalco also subcontracted Baybrent Construction Corp., Plaintiff's employer, to install tile within the Tank and to waterproof it (NYSCEF Doc No. 309 ¶2).

The following information derives from Plaintiff's testimony (NYSCEF Doc No. 253).

Plaintiff was employed by Baybrent Construction Corp. ("Baybrent") as a tile layer on the Project. Plaintiff was responsible both for tiling and waterproofing the tank. On October 20, 2017, Plaintiff attempted to enter the Tank and climb down the Ladder. To enter the Tank, which was situated within the ground, workers had to open the hatch door at the top of the Tank, sit down at the Tank's edge, and slowly "shimmy" their body over the edge until their foot hit the highest rung of the Tank's Ladder (*id.* at 148). There were no grab bars at the top of the Tank such that workers could brace themselves as they swung their foot down to land it on the highest rung of the Ladder (*id.*). The rungs of the Ladder were also on the same side of the Tank with the hinge for the hatch door.

Plaintiff sat down at the edge of the Tank and he attempted to shimmy forward to swing his foot onto the highest rung of the Ladder. Plaintiff's body then suddenly slipped off the edge of the Tank and he fell down feet first, hitting the bottom. Plaintiff fell approximately twelve feet. His foot likely never made contact with the first rung of the Ladder.

Plaintiff and his coworker had both issued complaints to Stalco that the first rung of the ladder was too low over the edge of the Tank (*id.* at 149). Plaintiff even asked Stalco for a harness and he was not given one (*id.* at 137).

Plaintiff also testified that there was usually a foreman from Baybrent present on the worksite at other projects that he worked on, but there was no foreman present on this Project (*id.* at 50).

RELEVANT PROCEDURAL HISTORY

On April 2, 2024, MP Engineers and Counsilman Hunsaker discontinued their cross-claims as against one another with prejudice (NYSCEF Doc No. 152).

On June 26, 2025, the parties stipulated that all claims and cross-claims as against Aim Builders Corp. were discontinued without prejudice (NYSCEF Doc No. 175).

PENDING MOTIONS

On February 11, 2026, MP and CH moved for summary judgment dismissing Stalco's third-party complaint and all cross-claims as against them (NYSCEF Doc No. 223 [mot. seq. 003]).

On February 18, 2026, Stalco moved for an order seeking contractual indemnification as against Baybrent Construction Corp. ("Baybrent") and Norberto Construction, Inc. ("Norberto") (NYSCEF Doc No. 189 [mot. seq. 004]).

On February 18, 2026, Baybrent moved for summary judgment dismissing the third-party complaint as against it and also dismissing any counter- and cross-claims (NYSCEF Doc No. 238 [mot. seq. 005]).

On February 18, 2026, Plaintiff moved for summary judgment against Stalco and Norberto Construction, Inc. for liability on his Labor Law §§ 240(1), 241(6), and also Labor Law § 200 and common-law negligence claims (NYSCEF Doc No. 248 [mot. seq. 006]).

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's initial burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing why" the plaintiff's claim fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When a movant meets this burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [alteration in original]). Courts view the evidence in a light most favorable to the nonmovant, according the nonmovant with "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

Plaintiff Establishes a Prima Facie Case that the Ladder's Inadequacy Proximately Caused Him to Fall

Labor Law § 240(1) provides:

> All contractors and owners and their agents . . . 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) imposes "absolute liability" on owners, general contractors and their statutory agents when a breach of the statutory duty proximately causes injury to a worker engaged in the enumerated activities (*Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 338 [2008]). The parties do not dispute that Plaintiff was engaged in an enumerated activity as he was working on the alteration of the Premises.

While it is undisputed from the record that Stalco was the general contractor on the Project, Plaintiff also argues that Norberto may be liable under Labor Law §§ 240(1) or 241(6) or Labor Law § 200 and common-law negligence because it was a statutory agent that had control over Plaintiff's work area.

A subcontractor may be liable as a statutory agent under sections 200, 240(1) or 241(6) when the subcontractor "obtains the concomitant authority to supervise *and* control the activity which brough about the injury" (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863–64 [2005] [emphasis added]). The supervision and control must involve the specific working area involved in the accident or the work that gave rise to plaintiff's injury (*Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 193 [1st Dept 2011]). Plaintiff argues that Norberto had control over Plaintiff's area of work because it was responsible for constructing the permanent Ladder in the Tank. Although Norberto's construction of the Ladder certainly dictated the manner of Plaintiff's descent into the Tank, Norberto must have also had a duty to *supervise* Plaintiff during this task (*see Britez v Madison Park Owner, LLC*, 106 AD3d 531, 532 [1st Dept 2013]; *see also Iveson v Sweet Assoc. Inc.*, 203 AD2d 741, 742 [3d Dept 1994] [*subcontractor's construction of*

scaffolding insufficient to render subcontractor a statutory agent when it lacked supervision and control]). Plaintiff's work was supervised by his employer Baybrent (NYSCEF Doc No. 258, at 49) and also by Stalco (NYSCEF Doc No. 253, at 39). Norberto's witness testified that Norberto only had supervisory authority over Norberto's work (NYSCEF Doc No. 255, at 13, 69). The Court thus denies Plaintiff's motion as to Labor Law §§ 200, 240(1), 241(6) and common-law negligence against Norberto because Plaintiff fails to make a *prima facie* case that Norberto supervised and controlled his work.

The duty to protect workers under Labor Law § 240(1) encompasses hazards from both "falling worker" and "falling object" cases (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). The Court of Appeals explains that the hazards Labor Law § 240(1) was designed to prevent are:

> those types of 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.* (*Ross v Curtis-Palmer Hydro Elec. Co.*, 81 NY2d 494, 501 [1993] [emphasis in original]).

The parties do not dispute that Plaintiff was exposed to an elevation-related hazard as he was situated at a significant height at the top of the Tank when he fell.

A breach of the statutory duty occurs either when a worker exposed to an elevated risk is either not provided with any safety device (*see Ortiz v SFDS Dev.*, 274 AD2d 341, 342 [1st Dept 2000]) or, when the worker was provided with a device, the device proves to be inadequate to protect them from such harm (*see Gordon v Eastern Ry. Supply*, 82 NY2d 555, 561–62 [1993]).

Plaintiff establishes that the Ladder was an inadequate safety device to protect him from the elevation-related harm. First, a permanently affixed ladder that is the only means by which a worker can reach their destination is a safety device under Labor Law § 240(1) (*e.g. Paris v State of New York*, 245 AD3d 603, 604 [1st Dept 2026]; *Esquivel v 2707 Creston Realty, LLC*, 149

AD3d 1040, 1041 [2d Dept 2017]). The Ladder consisted of permanently affixed rungs on the inside of the Tank and thus was a safety device under the statute as it was the only means by which Plaintiff could descend the Tank. Plaintiff was also not provided with an alternative extension ladder that could have given him an alternative method to descend the Tank (NYSCEF Doc No. 253, at 157).

The Ladder was also inadequate to protect Plaintiff because uppermost rung was installed too low over the edge of the Tank which required workers to unsafely shimmy their body toward the edge and swing their feet toward the Ladder, risking a fall (NYSCEF Doc No. 260 [*Tank photographs*]; NYSCEF Doc No. 262 [*Ladder design plan with twelve rungs*]; NYSCEF Doc No. 255, at 56 [*Ladder contained only eleven rungs*]).

Plaintiff has thus established a *prima facie* case that the failure to provide him with an adequate safety device proximately caused his fall into the Tank.

In opposition, Stalco argues that a triable issue of fact exists because an accident report that Plaintiff signed stated that he "slipped off ladder" (NYSCEF Doc No. 311) while Plaintiff testified that his foot likely did not make contact with the first rung of the Ladder. The accident report does not meaningfully controvert Plaintiff's account of the accident. Whether or not Plaintiff's foot made contact with the Ladder is a "minor, immaterial inconsistenc[y] in [his] testimony" that does not bear upon whether the Ladder adequately protected Plaintiff from the elevated risk (*see Robinson v NAB Constr. Corp.*, 210 AD2d 86, 87 [1st Dept 1994] [*reversing denial of summary judgment on Labor Law § 240(1) on the basis that minor inconsistencies existed in plaintiff's testimony*]). The operative risk associated with the Ladder stemmed from the uppermost rung being situated too low from the top of the Tank. Whether his foot made contact

with that rung as he fell is immaterial as the fall could have occurred regardless of whether his foot touched that rung or not.

Moreover, Stalco argues that Plaintiff's choice to awkwardly shimmy along the edge of the Tank to reach the uppermost rung of the Ladder, rather than ask for safer equipment such as an extension ladder, renders him the sole proximate cause of the accident. Notwithstanding the fact that Plaintiff did ask for a harness and was refused one (NYSCEF Doc No. 253, at 136–37), "[t]he fact that plaintiff did not ask for a specific safety device prior to the accident is not dispositive and is not a prerequisite for recovery" (*Myiow v City of New York*, 143 AD3d 433, 436 [1st Dept 2016]).

Further, the sole proximate cause defense requires that a defendant demonstrate that (1) an adequate safety device was available to the plaintiff and (2) plaintiff's own conduct in failing to use or misusing the device was the "sole proximate cause" of the accident (*Blake v Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280, 290 [2003]). Stalco provides no admissible evidence tending to show that Plaintiff had another ladder or safety device available to him or that the subject Ladder was adequate. Even assuming *arguendo* Plaintiff was negligent in shimmying along the edge of the Tank, "comparative fault . . . is not a defense to . . . Labor Law § 240(1)" (*DaSilva v Toll First Ave., LLC*, 199 AD3d 511, 513 [1st Dept 2021]).

Norberto also filed opposition to Plaintiff's motion, citing the testimony of George Vicini, Baybrent's representative, who stated that a Stalco worker named "Malcolm" had extension ladders available to Baybrent workers that day (NYSCEF Doc No. 258, at 105). However, Vicini could not recall Malcolm's last name (*id.* at 100) and Stalco's own witness testified that he was not familiar with anyone by the name of "Malcolm" employed by Stalco (NYSCEF Doc No. 257, at 192). Stalco's witness also testified that Stalco did not bring any of

its own tools or equipment, including an extension ladder, to the worksite (*id.* at 98). Vicini's testimony is thus an unsubstantiated allegation or assertion that is insufficient to defeat Plaintiff's *prima facie* case (*see Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016]).

Accordingly, the Court grants Plaintiff's Labor Law § 240(1) claim as against Stalco as Plaintiff demonstrates that the failure to provide him with an adequate safety device proximately caused his elevation-related injury.

The Court need not reach Plaintiff's arguments for liability on Labor Law § 241(6) as they are academic.

The Court Grants Stalco's Motion for Contractual Indemnification

Courts will enforce indemnification obligations in contracts as long as the intent to assume such a role is "sufficiently clear and unambiguous" (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007]). Indemnification contracts are strictly interpreted "to avoid reading into it a duty which the parties did not intend to be assumed" (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]).

Article 17 of the subcontractor agreement between Stalco and Norberto provides:

> To the fullest extent permitted by law, Subcontractor [Norberto] specifically obligates itself to Stalco, Stalco's surety, Owner and any other party required to be indemnified under the Prime Contract, jointly and severally, as follows:
>
> * * *
>
> (b) To defend and indemnify them against and save them harmless from any and all claims, suits or liability for damages to persons or property including loss of use, injuries to persons including death, and from any other claims, suit or liability ("Occurrence") arising from [Norberto's] operations, regardless of fault. [Norberto's] obligation extends to any occurrence, whether or not caused in part by the active or passive negligence or other fault of a party to be indemnified, other than the sole negligence or willful misconduct of the party to be indemnified. [Norberto's] obligation extends to the acts or omissions of its subcontractors, suppliers, officers, agents, employees, or servants.

(NYSCEF Doc No. 195, at 17).

This provision is sufficiently clear and unambiguous for Norberto to assume an obligation to indemnify Stalco against liability arising from Plaintiff's action as Plaintiff's injury arose, at least in part, due to Norberto's installation of the Ladder's rungs in the Tank.

Article 17 of the subcontractor agreement between Stalco and Baybrent also provides:

> To the fullest extent permitted by law, Subcontractor [Baybrent] specifically obligates itself to Stalco, Stalco's surety, Owner and any other party required to be indemnified under the Prime Contract, jointly and severally, as follows:
>
> * * *
>
> (b) To defend and indemnify them against and save them harmless from any and all claims, suits or liability for damages to persons or property including loss of use, injuries to persons including death, and from any other claims, suit or liability ("Occurrence") arising from [Baybridge's] operations, regardless of fault. [Baybrent's] obligation extends to any occurrence, whether or not caused in part by the active or passive negligence or other fault of a party to be indemnified, other than the sole negligence or willful misconduct of the party to be indemnified. [Baybrent's] obligation extends to the acts or omissions of its subcontractors, suppliers, officers, agents, employees, or servants.
>
> (NYSCEF Doc No. 192, at 16).

This provision is also sufficiently clear and unambiguous for Baybrent to assume an obligation to indemnify Stalco against liability from Plaintiff's action as Baybrent exercised supervision and control over Plaintiff so Plaintiff's injury also arose out of Baybrent's operations.

In opposition, Norberto and Baybrent argue that Stalco is not entitled to summary judgment as Stalco could have also been negligent in failing to provide Plaintiff with a harness or extension ladder. However, an indemnitee's partial negligence does not defeat their entitlement to summary judgment on contractual indemnification (*Ramirez v Almah LLC*, 169 AD3d 508, 509 [1st Dept 2019]). Only "where an issue of fact exists as to whether the owner or general contractor's negligence was the sole proximate cause of the underlying claim" will summary judgment be denied (*Cackett v Gladden Props., LLC*, 183 AD3d 419, 422 [1st Dept 2020], citing *Callan v Structure Tone, Inc.*, 52 AD3d 334, 335–36 [1st Dept 2008]). There is no issue of fact

as to whether Stalco was the sole proximate cause of Plaintiff's injury as the inadequacy of the Ladder, which Norberto installed, was also a cause of the accident.

However, there are issues of fact regarding whether Stalco was partially negligent by failing to provide Plaintiff with a safety device as Plaintiff testified that he was not provided with anything after he reported the hazardous condition of the Tank to Stalco. Accordingly, the "extent of [Stalco's] indemnification will depend on the extent to which defendant's negligence is found to have proximately caused the accident" (*Ramirez*, 169 AD3d 508, 509).

The Court Grants Baybrent's Motion Seeking Dismissal of the Cross-Claims for Common-Law Indemnification and Contribution as Against It

Workers' Compensation Law § 11 provides:

> An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

Baybrent establishes a *prima facie* case that Baybrent employed Plaintiff and that Plaintiff did not suffer any of the enumerated grave injuries under Workers' Compensation Law § 11 (*see* NYSCEF Doc No. 245). Accordingly, the Court grants Baybrent's motion dismissing all cross-claims for common-law indemnification and contribution as Baybrent's motion was unopposed.[1]

The Court Denies MP and CH's Motion

MP and CH argue that Stalco's third-party claims and Noberto's cross-claims should be

[1] Baybrent is still liable to Stalco for contractual indemnification as "Workers' Compensation Law § 11 . . . [was] clearly intended to limit the number of indemnification claims against employers by requiring that indemnification agreements be memorialized in a 'written contract'" (*Flores v Lower E. Side Serv. Ctr.*, 4 NY3d 363, 369 [2005]).

dismissed as against them. Stalco asserts third-party claims against MP and CH for common-law indemnification due to the negligent design of the Tank (NYSCEF Doc No. 52). Norberto asserts cross-claims against MP and CH for indemnification and contribution (NYSCEF Doc No. 73).

The Court first grants MP and CH's motion dismissing Norberto's cross-claims as against them because Norberto is liable to Stalco for contractual indemnification and not because of any negligence on the part of MP or CH. Norberto did not oppose MP and CH's motion.

The Court further grants MP and CH's motion dismissing Stalco's third-party claim for common-law indemnification because Stalco "participated to some degree in the wrongdoing" and "cannot receive the benefit of the doctrine" (*Trustees of Columbia Univ. v Mitchell/Giurgola Assoc.*, 109 AD2d 449, 453 [1st Dept 1985]).

Regarding Stalco's common-law contribution claim, MP and CH argue that they owed no independent duty to Plaintiff and also were not negligent. A claim of common-law contribution apportions liability among joint tortfeasors who both owed a duty to the injured plaintiff (*Aiello v Burns Intl. Sec. Servs. Corp.*, 110 AD3d 234, 248 [1st Dept 2013]). A joint tortfeasor may seek common-law contribution against another joint tortfeasor even where the latter tortfeasor did not owe a duty to the injured plaintiff (*id.*, citing *Guzman v Haven Plaza Hous. Dev. Fund Co.*, 69 NY2d 559, 568 n 5 [1987]). If a concurrent wrongdoer's had an independent obligation to prevent foreseeable harm to the plaintiff, that party should be held responsible for the portion of the damage attributable to its negligence, "despite the fact that the duty violated was not one owing directly to the injured person" (*Garret v Holiday Inns, Inc.*, 58 NY2d 253, 261 [1983]).

MP and CH argue that the Tank was hazardous due to Norberto's installation of 11 rungs in the Tank, which deviated from CH's design calling for 12 rungs. Additionally, MP and CH's design also called for the hinge of the hatch door to be installed on the opposite side of the

Ladder, which would allow entrants to mount the Ladder on the same side of the wall to which the rungs were affixed (*see* NYSCEF Doc No. 300). While this evidence is sufficient to establish that Norberto's *deviations* from CH's design of the Tank could be a proximate cause of Plaintiff's injury, it is insufficient to establish that CH's design was nonnegligent as MP and CH do not submit an expert affidavit testifying to the adequacy of the Tank (*see Alonzo v 215 Audubon Ave. Hous. Dev. Fund*, 188 AD3d 448, 448 [1st Dept 2020] [*defendant entitled to summary judgment on design defect upon expert affirmation unrebutted by the plaintiff*]).

Finally, MP and CH argue that MP cannot be liable to Stalco contribution because CH, and not MP, designed the Tank and the Ladder. However, MP's witness testified that MP did not review CH's design plan for compliance with relevant rules and regulations and he also stated that he did not know whose responsibility it was to have done so (NYSCEF Doc No. 236, at 59–60). MP and CH also did not submit their subcontract in support of the motion and thus fail to make a *prima facie* case that MP was not negligent in its review of CH's design.

The Court thus denies MP and CH's motion as to common-law contribution as MP and CH fail to eliminate triable issues of fact as to whether they were negligent.

CONCLUSION

Accordingly, it is hereby:

ORDERED that MP and CH's motion for summary judgment (mot. seq. 003) is granted to the extent that Norberto's cross-claims for indemnification and contribution are dismissed, and Stalco's third-party claim for common-law indemnification is dismissed, and the motion is otherwise denied; and it is further

ORDERED that Stalco's motion for summary judgment (mot. seq. 004) is granted to the extent that it is entitled to contractual indemnification as against Norberto and Baybrent, and the motion otherwise denied; and it is further

ORDERED that Baybrent's motion for summary judgment (mot. seq. 005) is granted to the extent that all counter- and cross-claims for common-law indemnification and contribution are dismissed as against Baybrent, and it is otherwise denied; and it is further

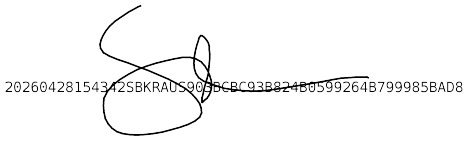
ORDERED that Plaintiff's motion for summary judgment (mot. seq. 006) seeking liability on his Labor Law § 240(1) claim as against Stalco is granted; and it is further

ORDERED that all other requests for relief are denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such 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 at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



4/28/2026							
DATE					SABRINA KRAUS, 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