Murudumbay v Amsterdam Ave. Redevelopment Assoc., LLC
2026 NY Slip Op 31968(U)
May 6, 2026
Supreme Court, New York County
Docket Number: Index No. 151897/2019
Judge: Dana M. Catanzaro
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DANA M. CATANZARO** **PART** **37**

Justice

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MANUEL MURUDUMBAY,

Plaintiff,

- v -

AMSTERDAM AVENUE REDEVELOPMENT ASSOC., LLC, PAVARINI MCGOVERN, LLC, and STRUCTURE TONE, LLC,

Defendants.

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INDEX NO. 151897/2019

MOTION DATE 03/27/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

AMSTERDAM AVENUE REDEVELOPMENT ASSOC., LLC, PAVARINI MCGOVERN, LLC, and STRUCTURE TONE, LLC,

Third-Party Plaintiffs,

-against-

ECD NY, INC.,

Third-Party Defendant.

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Third-Party
Index No. 595643/2019

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 121, 122, 123

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

Plaintiff Manuel Murudumbay brings this action to recover damages for personal injuries sustained on August 10, 2018, when he fell from a height while working on a new building under construction. Defendants/third-party plaintiffs AMSTERDAM AVENUE REDEVELOPMENT ASSOC., LLC ("Amsterdam Redevelopment") and PAVARINI MCGOVERN, LLC ("PMG") (collectively "defendants") move, pursuant to CPLR 3211 and/or 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200, 240 and 241(6) claims; and for summary judgment in their favor and against third-party defendant ECD NY, INC. ("ECD") on

their third-party claims for contractual defense and indemnification and for breach of contract for failing procure insurance. Plaintiff cross-moves, pursuant to CPLR 3212, for summary judgment on his Labor Law §§ 240(1) and 241(6) claims.

BACKGROUND

Amsterdam Redevelopment, the owner of real property located at 200 Amsterdam Avenue, New York County ("the premises"), hired PMG as its construction manager to develop a high-rise residential condominium building ("the project") consisting of 112 units (NYSCEF Doc. No. 67). PMG retained ECD to perform the excavation and foundation work on the project pursuant to a trade contract dated December 16, 2016 ("the ECD Contract") (NYSCEF Doc. No. 68). ECD employed plaintiff as a carpenter (NYSCEF Doc. No. 65-66, Voronin affirmation, exhibits A-B, ¶ 15).

Plaintiff testified that on the day of the accident, he had been performing carpentry work until approximately 12 p.m., when his foreman at ECD, Carlos Castillo ("Castillo"), instructed him and others to assist the employees installing rebar (NYSCEF Doc. No. 78; Plaintiff Tr. at 43). The work involved climbing a vertical wall or cage of rebar and tying off the ends of 20 feet tall beams of rebar beginning at the bottom of the wall and finishing at the top (*id.* at 43-44). Plaintiff had performed this type of work previously, though he did not know if he had been clipped in with his safety harness on those prior occasions (*id.* at 46). Plaintiff testified that he wore his personal harness that day (*id.* at 37) and was "always clipped in" (*id.* at 46). The accident occurred after plaintiff "finished the wall tying everything down…[A]t that moment, I took off both ties, the one that goes up to the top and the other one, to be able to climb down" (*id.* at 47). A coworker 9 - 10 feet above the ground and directly to plaintiff's right asked for metal wire (*id.* at 45, 47, 49). Plaintiff testified that he had been holding on to the wall with both hands but "[a]t that moment, I

don't know what happened but I forgot that I had untied myself around and when I went to give him the wire, that's when I let go and I fell backwards" (*id.* at 47). Plaintiff landed on the ground on this back (*id.* at 79). Plaintiff claims there were no ladders or scaffolds available for the work (*id.* at 56-57). Plaintiff acknowledged he was taught to wear a harness while working at a height above six feet (*id.* at 28). Plaintiff testified that "[o]n a few other sites … they had this other type of safety line that runs across. Usually when you are coming down, you're tied to that safety line but on this job, that safety line was not provided; it was not there; that is why I fell" (*id.* at 56-57). He later added that the project "did not have that proper safety line where you tie yourself off when you are coming down, that's why I had to untie myself to be able to come down, and I had the accident" (*id.* at 76).

Gary Smith ("Smith"), ECD's project manager, testified that he supervised two superintendents, a concrete safety manager and foremen at the site (NYSCEF Doc. No. 81, Smith Tr. at 8, 22-23). Smith believed plaintiff had been employed as a latherer tasked with installing rebar enforcement (*id.* at 24). The health and safety plan ECD submitted to PMG for the project specifically mentioned that ECD would furnish additional fall protection training to workers and select an appropriate fall protection system or plan (NYSCEF Doc. No. 76 at 25, 127). Smith testified that he could not recall the specifics on whether the additional training had been provided, but believed it was (NYSCEF Doc. No. 81 at 32). Smith could not recall ECD's procedure in 2018 for providing fall protection equipment and could not recall if ECD supplied a lanyard, lifeline or tie-off of any sort (*id.* at 38).

Smith stated that at the time of his deposition in 2024, ECD supplied its latherers with lanyards, climbing chains, yo-yos, guardrails and scissor lifts (*id.* at 29-30, 37-38), and described how latherers used climbing chains to climb the rebar walls (*id.* at 44). To ascend, Smith stated

that the latherers "hold onto the wall, they would hook off the chain and move it up and hook it back onto a higher elevation" (*id.* at 45). There were "[t]wo sets of chains to hook one on, hook on off" with one chain attached to the worker and the other "they move it to put the other one and unhook the other one" (*id.* at 48). There were also three hooks on each chain – two connected to the worker and one connected to the rebar cage (*id.* at 47, 49). Smith explained that latherers "hook them on and they lay back on the chains to keep them hooked on the wall" and, with their feet resting on horizontal rebar, the workers tie the horizontal rebars to the vertical rebars with wire to form a wall (*id.* at 44-45). Smith could not recall any issues or having received any complaints about the tie-off procedures (*id.*). Smith was unsure whether ECD instructed its workers on how to use climbing chains before they began their work, but it was generally ECD's custom and practice to do so (*id.* at 46).

Jamison LiBuono ("LiBuono"), a project manager employed by PMG, testified that PMG was responsible for coordinating the work and providing site safety oversight on the project (NYSCEF Doc. No. 80, LiBuono Tr. at 16). LiBuono testified that he could not recall when he first learned of plaintiff's accident and that he learned of the accident from an ECD accident report (*id.* at 26). LiBuono also testified that he had the authority to stop work to ensure that workers had proper personal protective equipment (*id.* at 21).

Plaintiff commenced this action against defendants by filing a summons and complaint pleading claims for common law negligence and for violations of Labor Law §§ 200, 240 and 241(6) (NYSCEF Doc. No. 1).[1] Defendants interposed numerous defenses in their answer, including a fourth affirmative defense asserting that plaintiff was the sole proximate cause of the accident (NYSCEF Doc. No. 9).

[1] This action was also commenced against Structure Tone, Inc., who was subsequently discontinued from the case (NYSCEF Doc. No. 30).

Defendants commenced a third-party action against ECD for: (1) contractual defense and indemnification; (2) contribution or common-law indemnification; (3) attorneys' fees incurred in the defense of this action; and (4) breach of contract for failure to procure insurance (NYSCEF Doc. No. 10). ECD asserted 13 affirmative defenses and one counterclaim for indemnification or contribution in its answer to the third-party complaint (NYSCEF Doc. No. 14).

Defendants now move for summary judgment dismissing the complaint and for summary judgment on their third-party claims against ECD. Plaintiff opposes and cross-moves for partial summary judgment on liability on his Labor Law § 240(1) and 241(6) claims against defendants. ECD opposes both applications.

ANALYSIS

A movant seeking summary judgment pursuant to CPLR 3212 "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]. The evidentiary proof tendered must be in admissible form (*see Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d 1065, 1067 [1979]). "This burden is a heavy one 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 N.Y.3d 470, 475 [2013] [citation omitted]), "and every available inference must be drawn in the [non-moving party's] favor" (*De Lourdes Torres v. Jones*, 26 NY3d 742, 763 [2016]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]).

As an initial matter, defendants allege plaintiff's cross-motion for summary judgment is untimely. The deadline to move for summary judgment was March 28, 2025 (NYSCEF Doc. Nos. 60-61). Plaintiff served the cross-motion on September 26, 2025 (NYSCEF Doc. No. 95). Although the cross-motion is untimely, plaintiff seeks nearly identical relief on the Labor Law §§ 240(1) and 241(6) claims as that sought in defendants' timely motion. Consequently, the court will consider the cross-motion (*see Connor v. AMA Consulting Engrs. PC*, 213 A.D.3d 483, 484 [1st Dept 2023], *lv denied, lv dismissed* 40 N.Y.3d 1088 [2024]).

Common Law Negligence and Labor Law § 200

Defendants move for summary judgment in their favor on the common law negligence and Labor Law § 200 claims against them. Claims under Labor Law § 200 and for common-law negligence may arise from the means and methods of the work or a dangerous condition on the premises. *Cappabianca v. Skanska USA Bldg. Inc*., 99 AD3d 139, 149-150 (1st Dept 2012).

The record demonstrates that plaintiff's accident arose from the means and methods of the work at the premises. Under the means and methods analysis, "liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work" (*Naugton v. City of New York,* 94 A.D.3d 1, 11 (1st Dept. 2012). Here, defendants demonstrated that they did not supervise or control the injury-producing work. Moreover, plaintiff "takes no position on the motion … insofar as it pertains to the Labor Law § 200 cause of action" (NYSCEF Doc No. 96, Moran affirmation, ¶ 4). Thus, the Labor Law § 200 and common-law negligence claims are dismissed.

Labor Law § 240(1)

Defendants also move for summary judgment seeking dismissal of the Labor Law § 240(1) claim, alleging that plaintiff was the sole proximate cause of the accident. Plaintiff opposes and

cross-moves for summary judgment in his favor as to liability on his Labor Law § 240(1) claim, contending that defendants failed to equip him with an adequate safety device to arrest his fall as there was no safety line to which he could have remained attached as he descended the cage. Plaintiff also rejects the assertion that he was the sole proximate cause of his injuries. There is no dispute that defendants are proper Labor Law defendants.

Labor Law § 240 (1) provides as follows:

> "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 a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks in circumstances specified by the statute" (*Soto v. J. Crew Inc*., 21 N.Y.3d 562, 566 [2013]). The statute "was designed to prevent 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 N.Y.2d 494, 501 [1993]). Liability under section 240 "is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Narducci v. Manhasset Bay Assoc.,* 96 N.Y.2d 259, 267 [2001]). Therefore, to recover on a Labor Law § 240 (1) claim, the plaintiff must demonstrate that the statute has been violated, and that the violation proximately caused the injuries (*Barreto v. Metropolitan Transp. Auth.*, 25 N.Y.3d 426, 433 [2015], *rearg denied* 25 NY3d 1211 [2015]). While contributory negligence is not a defense (*Blake v. Neighborhood Hous. Servs.*

of City of N.Y. City, 1 N.Y.3d 280, 286 [2003]), a defendant cannot be held liable where the plaintiff's actions are the sole proximate cause of the accident (*Biaca-Neto v. Boston Rd. II Hous. Dev. Fund Corp*., 34 N.Y.3d 1166, 1167-1168 [2020]).

Here, plaintiff testified that he was injured when he unclipped his harness from the rebar cage, let go of the cage while handing a coworker a piece of metal wire, and fell to the ground below. Plaintiff argues the incident occurred because of defendants' failure to provide an appropriate safety device to allow him to descend the rebar cage. While plaintiff was provided a harness, he claims there was no safety line so that he could remain attached while descending the cage, nor was there a ladder or scaffold to safely descend to the floor.

Defendants argue that plaintiff's Labor Law § 240(1) claim should be dismissed because plaintiff was the sole proximate cause of the alleged incident by unclipping his harness from the rebar cage and letting go of the cage. Defendants rely heavily on the case *Pena v. 227 E. 45 LLC*, 215 N.Y.S.3d 761 (Sup. Ct. Kings Cty. 2024), wherein the court found that plaintiff was the sole proximate cause of his accident because he knew a harness was available to him, knew from training he was expected to use the harness, inexplicably disconnected the harness, and would not have been injured had he not detached. Here, unlike in *Pena*, plaintiff testified that he could not descend the rebar cage unless he unclipped his harness, and that he was not provided with a safety line, scaffold or ladder to safely descend.

Based on plaintiff's testimony, the "failure to supply adequate protection, namely a safety line or an appropriate place to attach his harness," constitutes a violation of Labor Law 240(1), and this violation proximately caused the accident" *(Badzio v. East 68th St. Tenants Corp., 200 A.D.3d 591, 592).*

Defendants fail to raise an issue of fact, as defendants failed to furnish an adequate safety device to plaintiff in the first place *(see Hernandez v. Argo*, 95 A.D.3d 782, 783 [1st Dept 2012] [concluding that even though the plaintiff detached himself from the safety line, the defendants "failed to rebut the evidence that they provided an inadequate safety device in violation of Labor Law § 240 (1)"]). Moreover, the fact that plaintiff let go of the cage because he "forgot" he was no longer tied in constitutes comparative negligence (*see Loaiza v. Museum of Arts & Design*, 228 A.D.3d 511, 512 [1st Dept 2024] ["plaintiff's admission that he forgot to tie a figure eight knot at the end of the safety line … was at most comparative negligence, which is not a defense to a Labor Law § 240 (1) violation"]; *Kouros v. State of New York*, 288 A.D.2d 566, 567 [3d Dept 2002] [failure to attach and re-attach lanyards to a safety line did not render the plaintiff a recalcitrant worker and raised only his comparative negligence].

In addition, defendants' expert opinion evidence that plaintiff was the sole proximate cause of the accident is not supported by the evidence. "Opinion evidence must be based on facts in the record" (*Zhong v. Matranga*, 208 A.D.3d 439, 443 [1st Dept 2022]). Here, Tracey's opinion that plaintiff was the sole proximate cause of the accident is based on Gary Smith's description of a fall arrest system that he admittedly did not know whether or not existed at the time of the alleged incident (NYSCEF Doc No. 77, ¶ 4). At his deposition, Smith was asked to describe the equipment ECD supplied to latherers, and responded, "[b]ack then I am not sure" (NYSCEF Doc. No. 81 at 28). There are insufficient facts, on this record, to determine that plaintiff was the sole proximate cause of the alleged incident. Thus, the plaintiff's cross-motion for summary judgment on the Labor Law § 240(1) claim is granted, and defendants' motion dismissing this claim is denied.

Labor Law §§ 240(2) and (3)

Defendants also seek dismissal of plaintiff's Labor Law §§ 240(2) and 240(3) claims on the grounds that they pertain to scaffolds only, and that the record unequivocally shows that scaffolding requirements and specifications was not the proximate cause of the alleged incident. Plaintiff does not address these claims in its cross-motion or opposition. Thus, the claims are dismissed as abandoned.

Labor Law § 241(6)

Defendants move for summary judgment dismissing plaintiff's Labor Law § 241(6) claim, and plaintiff cross-moves for summary judgment in his favor. Defendants argue this claim must be dismissed because the Industrial Code sections and the Occupational Safety & Health Administration (OSHA) regulation relied on by plaintiff have not been violated, are inapplicable or are not sufficient predicates to liability pursuant to § 241(6).

Plaintiff contends that partial summary judgment in his favor is warranted based on a violation of 12 NYCRR 23-1.16(b). As plaintiff does not oppose dismissal of any alleged violations other than 23-1.16(b), all other alleged Industrial Code and OSHA violations are deemed abandoned and dismissed (*see Romano v. New York City Tr. Auth*., 213 AD3d 506, 508 [1st Dept 2023]). Thus, the only remaining claim before this court is the alleged violation of section 23-1.16(b).

Labor Law § 241 (6) provides:

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

The non-delegable duty is absolute and "imposes liability upon a general contractor for the negligence of a subcontractor, even in the absence of control or supervision of the worksite" (*Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 348- 349 [1998], citing *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 502 [1993] [emphasis omitted]). To prevail on a Labor Law § 241(6) claim, the plaintiff must establish that there was a violation of rule or regulation setting forth a specific standard of conduct, and that the violation was a proximate cause of the injury (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007], *lv denied* 10 NY3d 710 [2008]).

Section 23-1.16 (b), which is a sufficiently specific predicate for liability, provides:

> "Attachment required. Every approved safety belt or harness provided or furnished to an employee for his personal safety shall be used by such employee in the performance of his work whenever required by this Part (rule) and whenever so directed by his employer. At all times during use such approved safety belt or harness shall be properly attached either to a securely anchored tail line, directly to a securely anchored hanging lifeline or to a tail line attached to a securely anchored hanging lifeline. Such attachments shall be so arranged that if the user should fall such fall shall not exceed five feet."

Plaintiff contends this section was violated because he was not provided with a place to tie his harness (i.e. a safety line) as he descended the rebar wall. Plaintiff met his burden as plaintiff explicitly testified that he had to disconnect his harness while descending the rebar wall. There is no evidence that plaintiff was provided with any device to *descend* the wall and remain tied in.

In opposition to the cross-motion, defendants claim plaintiff had a harness but intentionally disconnected it. Defendants' argument wholly ignores the testimony that plaintiff had to disconnect this harness to descend the wall. Moreover, defendants' expert engineer summarily states that proper fall protection was provided but fails to specifically address section 23-1.16(b) or identify a device that allowed plaintiff to safely descend the wall. Accordingly, plaintiff is

granted summary judgment pursuant to Labor Law § 241(6) as predicated on section 23-1.16(b) *only*.

Contractual Indemnification

Defendants seek full contractual indemnity from ECD under the broad indemnity provision in the ECD Contract, claiming the accident arose out of ECD's work and defendants were not actively negligent. ECD opposes, arguing that triable issues of fact exist as to PMG's negligence because it provided site safety oversight on the Project.

"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.,* 70 N.Y.2d 774, 777 [1987], *quoting Margolin v. New York Life Ins. Co.*, 32 N.Y.2d 149, 153 [1973]).

Here, Article 9 in the General Conditions section of ECD Contract provides as follows:

> 9.A. To the fullest extent permitted by law, each Trade Contractor shall indemnify, defend by counsel reasonably acceptable to Construction Manager, save and hold Owner, Owner lender(s), Construction Manager, all parties listed as additional insured in this Trade Contract including but not limited to those listed as additional insureds in Exhibit F attached to the Trade Contract (which list shall be subject to change) … (herein collectively called 'Indemnitees') harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever, including attorney's fees, which arise out of or are connected with, or are claimed to arise out of or be connected with:
>
> 9.A.1. The performance of work by the Trade Contractor, or any act or omission of Trade Contractor;
>
> 9.A.2. Any accident or occurrence which happens, or is alleged to have happened, in or about the place where such work is being performed or in the vicinity thereof (a) while the Trade Contractor is performing the work, either directly or indirectly through a second tier trade contractor or material agreement, or (b) while any of the Trade Contractor's property, equipment or personnel are in or about

> such place or the vicinity thereof by reason of or as a result of the performance of the work" (NYSCEF Doc. No. 68 at 83-84).

The provision at issue broadly provides for indemnity "from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever" arising out of ECD's work. The provision does not require a finding that ECD was negligent before it is triggered. In the instant matter, it is undisputed that plaintiff's accident arose out of ECD's work, as plaintiff was employed by ECD, performing work for ECD at the time of the alleged incident.

The provision also complies with General Obligations Law 5-322.1 as it contains the savings language "to the fullest permitted by law" (NYSCEF Doc. No. 68 at 83). Finally, there has been no finding that defendants were actively negligent in the cause of the alleged incident, and "'general oversight over the performance of the work and site safety conditions' is insufficient to establish negligence" (*Izquierdo v. Amsterdam Ave. Redevelopment Assoc., LLC*, 245 A.D.3d 468 [1st Dept. 2026] [citation omitted]). Accordingly, the part of defendants' motion for summary judgment on their third-party claim for contractual indemnification from ECD is granted.

Breach of Contract for Failure to Procure Insurance

Defendants submit they are entitled to summary judgment against ECD for breach of contract for failure to procure insurance, claiming that ECD has not furnished any proof that it secured the insurance required under the ECD Contract. Section 10.1 of the ECD Contract provides, in relevant part:

> "Trade Contractor, at its own expense, shall obtain insurance which shall be primary to all other insurance and submit to Construction Manager, before undertaking any part of the Work, policies and certificates with receipts for the payment of premiums from Trade Contractor's insurance carriers indicating coverage from companies, in amounts and on such other terms as provided for hereinafter and in the 'Insurance Requirements' attached to this Agreement as Exhibit F.…In addition, all policies of insurance must be endorsed to provide Additional Insured status to Owner, Owner's

> Lender, Construction Manager, and those entities Owner designates" (NYSCEF Doc. No. 68 at 12).

A party moving for summary judgment on its claim for breach of contract for failure to procure insurance must "'establish[ ] that a contract provision requiring the procurement of insurance was not complied with'" (*Dorset v. 285 Madison Owner LLC*, 214 A.D.3d 402, 404 [1st Dept 2023], quoting *Benedetto v Hyatt Corp*., 203 AD3d 505, 506 [1st Dept 2022]). "A moving party may make that showing by submitting, for example, copies of the contract requiring the procurement of insurance and of correspondence from the insurer of the party against whom summary judgment is sought indicating that the moving party was not named as an insured on any policies issued" (*id.*, citing *DiBuono v. Abbey, LLC*, 83 AD3d 650, 652 [2d Dept 2011]).

Defendants failed to meet their prima facie burden. Although defendants established that ECD was obligated under the ECD to procure certain insurance naming defendants as additional insureds, defendants failed to furnish any "testimonial or documentary evidence from [ECD's] insurer that they were not named as insureds on any policy issued" (*see Lucas v. City of New York*, 236 A.D.3d 523, 526 [1st Dept 2025]). As such, this branch of defendants' motion is denied without regard to the sufficiency of ECD's opposition.

Accordingly, it is hereby:

ORDERED that defendants/third-party plaintiffs' motion for summary judgment is granted to the extent that plaintiffs' common law negligence, Labor Law §§ 200, 240(2) and 240(3) claims are dismissed; and plaintiff's Labor Law § 241 (6) claim is dismissed except as to Industrial Code section 23-1.16 (b); and defendants are granted summary judgment on their third-party claim for contractual indemnification against third-party defendant ECD NY, Inc. and the balance of the motion is denied; and it is further

ORDERED that plaintiff's cross-motion for partial summary judgment on liability is granted against defendants/third-party plaintiffs AMSTERDAM AVENUE REDEVELOPMENT ASSOC., LLC and PAVARINI MCGOVERN, LLC on the Labor Law § 240(1) claim and the Labor Law § 241(6) claim predicated on Industrial Code 23-1.16(b).

This constitutes the decision and order of the court.

5/6/2026
DATE

DANA M. CATANZARO, 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