Bermejo v New York City Health and Hosps. Corp.
2012 NY Slip Op 33824(U)
June 11, 2012
Supreme Court, Queens County
Docket Number: 23985 2009
Judge: Peter J. O'Donoghue

ORIGINAL OS

Bermejo v NYC HHC (May 17, 2012)
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PETER J. O'DONOGHUE IA Part MD
Justice

X

Manuel Bermejo,

Plaintiff

-against-

New York City Health and Hospitals Corporation, Darwin Chen, M.D., David Joseph, M.D., Richard J. Wong, M.D., Louis Hogarth, P.A., Amsterdam & 76th Associates, LLC., Monadnock Construction, Inc., and Ibex Construction, LLC x

Ibex Construction, L.L.C.

Third-Party Plaintiff

-against-

Marble Techniques, Inc.,

Third-Party Defendant

X

Index Number 23985 2009

Motion Date February 29, 2012

Motion Cal. Numbers 3 and 5

Motion Seq. Nos. 9 and 14

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The following papers numbered 1 to 40 read on this motion by plaintiff Manuel Bermejo for an order granting summary judgment against defendants Amsterdam & 76th Associates LLC and Ibex Construction LLC, on the issue of liability on his claim for a violation of Labor Law § 240(1). Amsterdam & 76th Associates LLC and Monadnock Construction Inc. cross-move for an order granting summary judgment dismissing the complaint, and seek an award of sanctions and/or costs. Defendant and third-party plaintiff Ibex Construction LLC separately cross-moves for summary judgment against third-party defendant Marble

Techniques Inc. on its claims for contractual indemnification, common law indemnification and breach of contract.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits (1-18)	1-4
Opposing Affirmation-Exhibits (A-D)	5-7
Opposing Affirmation	8-9
Reply Affirmation-Exhibits (A-B)	10-12
Notice of Cross Motion-Affirmation-Affidavits-Exhibits (A-K)	13-18
Supporting Affidavit	19
Supporting Affidavit	20
Opposing Affirmation-Exhibits (A-F)	21-23
Opposing Affirmation-Exhibits (A-B)	24-26
Reply Affirmation-Exhibit (A)	27-29
Memorandum of Law	
Notice of Motion-Affirmation-Exhibits (A-R)	30-33
Opposing Affirmation-Exhibits (A-C)	34-37
Reply Affirmation-Exhibits (A-B)	38-40

Upon the foregoing papers these motions and cross motion are consolidated for the purpose of a single decision and order and are determined as follows

Plaintiff Manuel Bermejo alleges that he sustained personal injuries on December 18, 2008 during the course of his employment with J.P. Marble & Tile, Co. Plaintiff, a helper, was placing grout on an upper part of a wall, and had been standing on a baker's scaffold for approximately a half hour when the wooden platform he was standing on collapsed, causing him to fall approximately five feet to the ground. Plaintiff alleges that he sustained injuries to his right foot, ankle, leg and right shoulder as a result of this accident; that he sustained permanent injuries and cannot walk without the assistance of crutches; and that he has been unable to work since this accident.

Plaintiff was working in the basement level of a building known as 344 Amsterdam Avenue a/k/a 205 West 76th Street, New York. On December 18, 2008, said building was owned by Amsterdam & 76th Associates, LLC (Amsterdam). Amsterdam had hired Monadnock Construction Inc. (Monadnock), as the general contractor in connection with the construction of the "core and shell" of the building, as well as residential condominium units in said building. Said building contains both residential and commercial space. In June 2008, Amsterdam entered into a commercial lease agreement with Equinox 76th Street Inc.,

d/b/a Equinox (Equinox), whereby it agreed to lease to Equinox a multilevel space consisting of approximately 34,367 gross square feet. This leased space included space in the building's second cellar level (the basement), the ground floor, and the second floor. Equinox was responsible for constructing the gym facilities in the leased premises. Said lease was guaranteed by Equinox Holdings, Inc., a Delaware corporation with a business address in New York.

Eclipse Development Corp., on behalf of the tenant Equinox, entered into an agreement with Ibex Construction LLC (Ibex), whereby Ibex would act as the general contractor for the construction, or "build out" of the space leased to Equinox in the subject building. Ibex contracted with Marble Techniques Inc. (Marble) to install tiles in certain portions of the leased premises. Marble, in turn, subcontracted out the work to plaintiff's employer, J.P. Marble & Tile, Co. (J.P. Marble).

Plaintiff Manuel Bermejo commenced this action on January 8, 2009 in Supreme Court, Kings County, against Amsterdam and Monadnock, and asserted three causes of action for negligence, and violations of Labor Law §§ 200, 240 and 241(6). Defendants Amsterdam and Monadnock served a verified answer, and asserted nine affirmative defenses.

Plaintiff thereafter served a supplemental summons and amended complaint, adding Ibex as a defendant, and repeated the claims as to all defendants. Ibex served an answer and interposed ten affirmative defenses and cross claims against Amsterdam and Monadnock for common law indemnification and contribution.

Plaintiff commenced a medical malpractice action on September 3, 2009, in Supreme Court, Queens County, against the New York City Health and Hospital Corp. (HHC), Darwin Chen, M.D., David Joseph, M.D., Richard J. Wong, M.D. and Louis Hogarth, P.A., in which it is alleged that these defendants from December 22, 2008 to December 29, 2008, failed to provide the plaintiff with proper care and treatment of the injuries he sustained as a result of the December 18, 2008 accident. Plaintiff also alleges a claim based upon lack of informed consent. Defendant HHC served an answer and interposed four affirmative defenses, and defendants Chen, Joseph and Wong each served an answer and each defendant interposed four affirmative defenses.

On April 13, 2010, the Kings County action was consolidated with medical malpractice action in Queens County under Index Number 23985/2009, pursuant to an order in the Kings County action. Defendants Amsterdam and Monadnock thereafter served a verified answer to the amended complaint and interposed nine affirmative defenses and four cross claims against Ibex for common-law indemnification, contractual indemnification, for breach of a duty to procure insurance or to tender a defense, and for common-law

contribution, and a cross claim against HHC, and Drs. Chen, Wong and Joseph.

Defendant Ibex commenced a third-party action against Marble. for common-law indemnification and contribution, for breach of contract based upon the failure to procure insurance or tender a defense, and for contractual indemnification based upon a contractual provision requiring that Ibex be named as an additional insured. Marble served an answer and interposed nine affirmative defenses. Amsterdam and Monadnock have asserted seven cross claims against third-party defendant Marble based upon common-law indemnification, breach of contract, common-law contribution, and contractual indemnification.

Plaintiff's Deposition:

Plaintiff Manuel Bermejo was deposed via a Spanish interpreter. He stated that he was from Ecuador, that he was uneducated, and could not read Spanish and did not know English. He stated that he was a union member and was employed by J.P. Marble, as a helper, and was working at the site for approximately two weeks prior to the accident. His work entailed placing grout on ceramic tiles that had been installed by the tile mechanics.

On December 18, 2008, plaintiff was working in a room in the basement, where ceramic tile had previously been installed on the floor and on the walls. Mr. Bermejo stated that the ceiling in the room was not finished and that there were metal fittings in the ceiling. There was one Bakers scaffold in the room, which he had used earlier that day. Mr. Bermejo stated that this scaffold did not have wheels and that he and a co-worker, Juan Lasso, lifted the scaffold and moved it near another area of the tile wall where he needed to perform his work. Plaintiff stated that he reached up to about the level of his eyebrows and placed a pail three-quarters full of water onto the scaffold 's wooden platform and a pail about one-quarter full of grout onto the platform. He stated that he did not know his height, as he had never been measured, although some one had listed his height as 120 centimeters on an ID card he had obtained in Ecuador.

Mr. Bermejo stated that prior to getting onto the scaffold he placed his hand on the platform and that it felt secure. He used the stairs on the side of the scaffold to access the platform, which he stated was approximately five feet high. He stated that neither the scaffold nor the platform were new. Mr. Bermejo stated that he stood in the center of the platform, with the pails on opposite sides and used a lightweight tool to apply the grout. He stated that he had been working for approximately a half hour, when the left side of the wooden platform fell, causing him to fell through the frame of scaffold to the ground. He stated that immediately after he fell he had severe pain in his right foot, and could not stand up on his own. He also felt pain in his shoulder. He stated that other co-workers came to his assistance and later that afternoon he was driven to a doctor's office and then to his home.

Marble 's Deposition:

Dyonysios Frangakis the president of Marble testified at his deposition that Marble had entered into a written agreement with Ibex dated September 26, 2008, whereby Marble would supply and install tile at the premises leased by Equinox. Mr. Frangakis stated that Marble was required to obtain liability insurance naming Ibex as an additional insured; that he sent the contractual documents to his broker and that certificates of insurance were provided to Marble and to Ibex. Mr. Frangakis stated that after the contract was signed, Marble was contractually required to hire union laborers, and that in November 2008 Marble entered into a subcontract with J.P. Marble to install the tiles.

Mr. Frangakis stated that he went to the job site on a regular basis, every few days, to ensure that the materials were delivered and properly stored, and that he attended meetings every Thursday at the site, if it concerned the tile work. He stated that John Pando of J.P. Marble was present at the job site on a daily basis from November 2008 to December 18, 2008; that Frank Alfani, was employed by J.P. Marble; and that Frank Alfani and Mr. Pando, as well as Ibex's super, would instruct J.P. Marble's workers. He stated that after a union delegate visited the site, J.P. Marble was required to hire additional laborers to perform the work. Mr. Frangakis stated that Mr. Bermejo and Mr. Lasso were sent by the union to perform work, and were paid by J.P. Marble, except for three occasions when Mr. Bermejo worked extra hours and was paid "off the books" by Marble.

Mr. Frangakis did not witness the accident. He stated that he received a telephone call from Ibex's super Peter Ouellette and that he went to the job site. When he arrived Mr. Bermejo was sitting in an office on the first floor, with ice on his foot. He drove Mr. Bermejo and Mr. Lasso to a doctor's office where Bermejo was examined and then drove Bermejo to his home.

Mr. Frangakis did not examine the scaffold on the day of the accident. He stated that the following day he went to the basement of the premises where he observed the scaffold but did not test it in any manner. Mr. Frangakis stated that when Marble commenced the work, it had a fairly new Bakers scaffold, with wheels, and that it was stolen or disappeared before Mr. Bermejo's accident. He stated that he made complaints to Ibex about the disappearance of the scaffold and that he told Mr. Pando and Frank Alfani to use "whatever you find" (Tr 64). Mr. Frangakis stated that after the accident Mr. Bermejo did not tell him who owned the scaffold in question; that it did not belong to Marble; and that Frangakis "believed it was the site's, Ibex, if they had any equipment" (Tr 63); and that Ibex was the general contractor, and had equipment.

Ibex's Deposition:

Anthony Pace, was Ibex's project superintendent on the Equinox job. He testified at his deposition that he was responsible for interpreting various writings, communicating the construction drawings, specification sketches, conceptual and engineering agenda, coordinating and directing the various trades, interpreting certain drawings, daily reports, and overall supervising the pace of the work. He held safety meetings with the trades, and as well as individual trade "toolbox" safety meetings. He did not witness the accident. He stated that he knew that the tile workers were working in the basement work, and that they used a scaffold. He stated that the scaffold did not belong to Ibex and that he did not know who it belonged to. He stated that he never saw Mr. Bermejo performing his work.

Mr. Pace stated that Mr. Bermejo's co-worker informed him that Bermejo had fallen and was injured, and that they went downstairs to the basement. He observed Mr. Bermejo on the floor holding his ankle, and that part of the plywood platform on the Baker scaffold was on one of the rungs and another part of the platform was on the floor, on a diagonal. He stated that the wooden platform measured approximately 4 feet long by 24 inches wide and a half inch thick; that it was not broken. He stated that the scaffold was about set at about 4 feet high the day before the accident, and that at the time of the accident was set higher. He stated that Mr. Bermejo spoke to him in broken English and with hand gestures and told him that the platform failed and that he fell through. He observed after the accident that the subject scaffold did not have four metal spring clamps that secure the plywood to the frame, and he did not see these clamps on the scaffold the day before the accident. He stated that the frame has a metal lip around it that holds the plywood.

Mr. Pace also stated that Monadnock did not coordinate with the various trades in the Equinox space, and that it was not within Monadnock's scope to direct the subcontractors working in the areas leased to Equinox.

J.P. Marble's Deposition:

Jani Pando, the president of J.P. Marble, testified at his deposition that he entered into a contract with Marble to install tile at the Equinox project. He stated that he had four employees, two mechanics and two helpers, who he identified as Frank Alfani, Juan Lasso, and Manuel Bermejo, and Lazaro Calchortis. He stated that Frank and Lazaro were his first crew and that he called the union office and they sent Mr. Lasso, a mechanic (tile installer), and his helper, Mr. Bermejo. He stated that Mr. Lasso and Mr. Bermejo began working at the site on the second week of the project.

Mr. Pando stated that Mr. Alfani was the foreman for this job, and that his employees

performed work in the basement locker room, shower room and sauna room, which they accessed by a staircase. He stated that he saw Mr. Bermejo in the basement area of the subject building on the morning of December 18, 2008, and that on that day it was Bermejo's job to grout the tiles in the shower room. Mr. Pando stated that Mr. Bermejo was about five feet five inches, and that he used a scaffold to perform the grouting work on the upper part of the walls. He stated that there was a scaffold on the job site but did not know who provided the scaffold.

Mr. Pando was on the first floor of the subject building on December 18, 2008, and did not witness plaintiff's accident. He stated that when he went to the basement, he saw someone helping Mr. Bermejo sit down on a tool box in an area between the locker room and shower room. Mr. Pando stated that Mr. Bermejo told him he fell off the scaffold and that his foot hurt, and Bermejo took off one of his construction boots. Mr. Pando did not remember any other details pertaining to the accident. He stated that he did not speak Spanish and he spoke with Mr. Alfani who was present. Mr. Pando returned to the first floor about five minutes later and did not inspect the scaffold that day.

Mr. Pando stated that J.P. Marble did not own a scaffold on December 18, 2008. He described the scaffold as having a plywood platform with a metal frame with platform "clips" that are set in place and holds the platform. He provided a general description of a scaffold, and stated that he did not know the height of the scaffold that Mr. Bermejo was working on at the time of his accident, and had no knowledge with respect to this particular scaffold.

Non-Party Depositions
Juan Lasso:

Juan Lasso, a non-party witness, was deposed via a Spanish interpreter. Mr. Lasso stated that he is a union member and that he worked for J.P. Marble for approximately two weeks, setting tile in the basement and on the second floor of the building. He stated that the room where the accident occurred was a shower or sauna room; that there were four shower stalls; that ceramic tiles had been installed on the floor and that tiles has also been installed on the walls. He stated that the tiled walls in this area were approximately 12 feet high, and that the ceiling was about 8 to 12 feet from the floor.

Mr. Lasso stated that there was one scaffold in said room; that it did not have wheels; and that neither the scaffold nor the wooden platform were new. He stated that there was no writing on the scaffold and that he did not know who it belonged to. Mr. Lasso stated he brought his own tools to work, and that his employer did not supply any of his equipment. He stated that he had used the same scaffold about a week prior to the accident and did not experience any problems.

Mr. Lasso stated that on the morning of the accident, Mr. Bermejo had installed grout on one area of the tiled wall and had used the scaffold to perform this work. After lunch, around 12:30 P.M., Mr. Bermejo asked him to help move the scaffold to another section of the tiled wall. They lifted the scaffold and carried it approximately ten to fifteen feet to the area indicated by Mr. Bermejo. He stated that the platform remained intact when they moved the scaffold. Mr. Lasso was working in another room and did not witness Mr. Bermejo's accident. He stated that he was installing tile for about a half hour, when he heard a very loud noise coming from the room where Mr. Bermejo was working. Upon entering the room, he saw Mr. Bermejo lying on the ground inside the frame of the scaffold, and that one part of the scaffold's wooden platform was touching the floor, while another part was touching the frame. The wooden platform was not broken. The pails were on the floor and water had spilled onto the floor. Mr. Lasso and his boss, Jani Pando, helped Mr. Bermejo up, as he was unable to walk. Mr. Lasso later accompanied Mr. Bermejo when he went to a doctor's office.

Peter Ouellette :

Peter Ouellette, a former employee of Ibex, testified at his deposition that he was a superintendent for Ibex on the subject construction project and that Ibex was the general contractor for the "tenant fit-out," Equinox Fitness. He stated that another contractor (Monadnock) was putting up the core of the building. Mr. Ouellette's duties included overseeing the construction site from beginning to end, and ensuring that the subtrades were working in accordance with the drawings provided by the architects and owner. He stated that he began working at the subject premises on November 1, 2008 and that another superintendent had worked at the site in October 2008. He did not witness plaintiff's accident, and did not learn about the accident until the next morning. He stated that Ibex did not provide scaffolds for the "subs" on the job, and that he did not know who supplied the scaffold used by the plaintiff. He stated that the "subs" were responsible for their own safety meetings, and that he did not observe any safety problems with respect to the work performed by the tile workers. Mr. Ouellette also stated that prior to plaintiff's accident, he neither received, nor made any, complaints, with respect to the scaffold used by the tiles workers.

Frank Alfani:

Frank Alfani, a non-party witness, testified at his deposition that he worked for J.P. Marble and was Mr. Bermejo's supervisor for approximately two weeks at the subject job site. Mr. Alfani stated that he was the day-to-day supervisor for J.P. Marble at said site; that his boss "John P" was at the site two or three times a week; and that he spoke with Ibex's superintendent, Peter, at the site on a daily basis. He stated that J.P. Marble's employees

reported to him on the morning of December 18, 2008.

Mr. Alfani described the dimensions of the shower stall as three and half feet wide, six feet long, and that the height from the floor to the ceiling was either eight foot six inches or nine feet. He stated that the light fixtures in the ceiling were not hooked up, and that Mr. Bermejo was using a stand-up light off to the side that belonged to J.P. Marble. He stated that the Baker scaffold was placed inside the shower stall.

Mr. Alfani stated that the scaffold was approximately six feet long, two and half feet wide, and stands six feet wide, with different rungs that can be used to move the wooden platform to different height levels. He stated that the wooden platform is encased in a metal bracket that sits on the scaffold. He believed that the subject scaffold had wheels, and that it was in the basement when he began the job. Mr. Alfani stated that he did not know who it belonged to. He stated that on the morning of the accident he observed Mr. Bermejo wheeling the scaffold through the hall in the basement , and prepare for work, by mixing the grout. He stated that the scaffold's platform appeared to be fine, but that he did not inspect it. He stated that the wooden platform was two feet wide, six feet long, and three quarters of an inch thick and was set at about 30 inches off the ground. He stated that he instructed Juan (Lasso) as to the work Bermejo was to perform that day.

Mr. Alfani did not witness plaintiff's accident. He stated that he became aware of the accident around 9:15 A.M.; that he was approximately 50 feet away in the sauna room when he heard a crashing sound and heard Mr. Bermejo scream. Mr. Alfani stated that after he heard the crash and scream he ran over to see what happened and observed that Mr. Bermejo was on the floor of the shower stall; the metal scaffold was inside the shower stall, six inches from the wall; and that the wooden platform had collapsed, with one end on the floor at a 45 degree angle and the other end was touching the legs of the metal frame. Mr. Bermejo was pointing towards his right ankle. Juan Lasso then moved Bermejo out of the shower stall.

Mr. Alfani stated that the wooden platform was not broken; that the metal pieces that hold the platform in place were intact; and that he did not notice the pins that locked the wood in place. He stated that the Bakers scaffold did not have railings. About an hour later, Mr. Alfani stated he placed the wooden platform back into the frame, tightened the locks, and tested it with his hand. He did not stand on the platform. Mr. Alfani stated that prior to the accident, he had previously used this scaffold at the job site 10 to 15 times without incident. He stated that the day after the accident, the scaffold was moved to the back corner of the locker room, and that he did not observe anyone using it the week following the accident.

Documentary Evidence : Accident Report:

Plaintiff has submitted a copy of an Ibex accident report dated December 18, 2008, which states that the accident occurred on December 18, 2008 at 12:50 P.M.; that Manuel Bermejo a tile installer employed by Marble Techniques injured his right foot; that the equipment causing the injury was a Baker scaffold, and describes the accident as follows: "Installer standing on baker approx 5' high when plywood top failed causing his foot to go through." The report states that Bermejo was taken to Queens Clinic on December 18, 2008 at approximately 3:00 P.M. The report states that the person doing the investigation was Peter Ouellette.

Plaintiff's Affidavit:

Plaintiff has submitted an affidavit in English in support of his motion for summary judgment. Mr. Bermejo testified at his deposition via a Spanish interpreter that he does not speak English, that he did not go to school in Ecuador and cannot read Spanish. Plaintiff has not established that he is able to read and understand English. Plaintiff has not submitted an affidavit in Spanish with an accompanying affidavit of translation. Under these circumstances the court will not consider plaintiff's affidavit.

Applicable Legal Standards:
Summary Judgment:

It is well settled that a party seeking summary judgment "must make a prima facie showing of entitlement as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993]; *see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A prima facie showing shifts the burden to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material question of fact (*see Alvarez v Prospect Hosp., supra*)

Negligence and Labor Law § 200:

In order to establish liability for common-law negligence or a violation of Labor Law § 200, the plaintiff must establish that the defendant in issue had "authority to control the activity bringing about the injury to enable it to avoid or correct an unsafeondition" (*Russin v Picciano & Son*, 54 NY2d 311, 317 [1981]; *see Rizzuto v Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]; *Singleton v Citnalta Constr. Corp.*, 291 AD2d 393, 394 [2002]), or had actual or constructive notice of the defective condition causing the accident (*see LaRose v Resinick Eighth Ave. Assoc., LLC* , 26 AD3d 470 [2006]; *Gatto v Turano*, 6 AD3d 390, 391 [2004]; *Abayev v Jaypson Jewelry Manufacturing Corp.*, 2 AD3d 548 [2003]; *Duncan v Perry*, 307 AD2d 249 [2003]; *Giambalvo v Chemical Bank*, 260 AD2d 432 [1999]; *Cuartas v Kourkoumelis*, 265 AD2d 293 [1999]; *Sprague v*

Peckham Materials Corp., 240 AD2d 392 [1997]). "General supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability for common-law negligence and under Labor Law 200" (*Dos Santos v STV Engrs., Inc.*, 8 AD3d 223, 224 [2004], *lv denied* 4 NY3d 702 [2004]). Further, the authority to review safety at the site is insufficient if there is no evidence that the defendant actually controlled the manner in which the work was performed (*see Loiacono v Lehrer McGovern Bovis*, 270 AD2d 464, 465 [2000]).

Labor Law § 240(1):

Labor Law § 240(1) creates a duty that is nondelegable and an owner or general contractor who breaches that duty may be held liable in damages regardless of whether either had actually exercised supervision or control over the work (*see Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]). The "exceptional protection" provided for workers by section 240(1) is aimed at "special hazards" and is limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured (*see Ross v Curtis-Palmer Hydro-Electric Co., supra* at 501; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]; *Zimmer v Chemung County Performing Arts*, 65 NY2d 513 [1985]). The legislative purpose behind section 240(1) is to protect workers by placing the ultimate responsibility for safety practices where such responsibility belongs on the owner and general contractor instead of on workers who are "scarcely in a position to protect themselves from accident" (*see Rocovich v Consolidated Edison, supra* at 501). Although the "special hazards" contemplated "do not encompass any and all perils that may be connected in some tangential way with the effects of gravity" (*see Ross v Curtis-Palmer Hydro-Electric Co., supra*; *Rodriguez v Tietz Center for Nursing Care*, 84 NY2d 841 [1994]), the statute's purpose of protecting workers "is to be liberally construed" (*Ross v Curtis-Palmer Hydro-Electric Co., supra* at 500).

In order to prevail upon a claim pursuant to Labor Law § 240(1), a plaintiff must establish that the statute was violated and that this violation was a proximate cause of his or her injuries (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550, 553-555 [2006]; *Weininger v Hagedorn & Co.*, 91 NY2d 958, 960, 695 [1998]; *see also Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35 [2004]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280 [2003]; *Marin v Levin Props., LP*, 28 AD3d 525 [2006]). The statute applies when an employee is engaged "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" (Labor Law § 240[1]; see *Esposito v New York City Indus. Dev. Agency*, 1 NY3d 526, 528 [2003]).

Labor Law § 241(6):

Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 878 [1993]). In order to establish his Labor Law § 241(6) claim, plaintiff must demonstrate that his injuries were proximately caused by a violation of an Industrial Code regulation that is applicable given the circumstances of the accident, and which sets forth a concrete or "specific" standard of conduct, rather than a provision which merely incorporates common-law standards of care (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d at 503-505; *Ares v State*, 80 NY2d 959, 960 [1992]; *Fair v 431 Fifth Avenue Assocs.*, 249 AD2d 262, 263 [1998]; *Vernieri v Empire Realty Co.*, 219 AD2d 593, 597 [1995]; *Adams v Glass Fab*, Inc., 212 AD2d 972, 973 [1995]). Plaintiff must also present some factual basis from which a court may conclude that the regulation was in fact violated (*Herman v St. John's Episcopal Hospital*, 242 AD2d 316, 317 [1997]; *Creamer v Amsterdam H.S.*, 241 AD2d 589, 591 [1997]).

Plaintiff's motion for summary judgment against defendants Amsterdam and Ibex on his Labor Law § 240 claim, and defendants Amsterdam and Monadnock's cross motion for summary judgment dismissing the complaint and all cross claims:

Labor Law § 240(1) requires owners and contractors to construct, place and operate elevation-related safety devices to afford the worker proper protection from the risks inherent in working at an elevated work site (*see Panek v County of Albany*, 99 NY2d 452, 456-457 [2003]). Where, as here, the worker has been provided with a safety device, whether the device afforded proper protection is ordinarily a question of fact to be resolved at trial (*see Canino v Electronic Tech. Co.*, 28 AD3d 932, 931 [2006]; *Smith v Pergament Enters. of S.I.*, 271 AD2d 870, 871 [2000]). However, where, the uncontroverted evidence establishes that the safety device collapsed, slipped or otherwise failed to support him or her, the plaintiff demonstrates a prima facie entitlement to partial summary judgment under Labor Law § 240(1) and the burden shifts to the defendant (*see Danton v Van Valkenburg*, 13 AD3d 931, 931-932 [2004]; *Morin v Machnick Bldrs.*, 4 AD3d 668, 670 [2004]).

Here, it is undisputed that plaintiff Bermejo was required to use a scaffold in order to perform his work, and that the wooden platform he was standing on collapsed, causing him to fall to the ground. Although there were no witnesses to the accident, Mr. Lasso, Mr. Pace and Mr. Alfani all testified that immediately following the accident they observed Mr. Bermejo lying on the floor beneath some portion of the scaffold frame, and that the wooden platform had come out of the frame and was at a 45 degree angle with one portion, touching the floor and another portion touching the legs of the scaffold. These individuals', deposition testimony is consistent with that of the plaintiff. Contrary to defendants' assertions, plaintiff sufficiently established that his accident was caused by the collapse of the plywood platform. Defendants' assertion that the scaffold was structurally sound is not

relevant on the issue of whether the platform provided proper protection. Defendants' claims regarding the height of the scaffold platform, the height of the ceiling, and plaintiff's height, are irrelevant, and do not raise any triable issues of fact, as there is no evidence that the height of the scaffold caused the platform to collapse.

With respect to plaintiff's Labor Law §§ 240 and 241(6) claims, Amsterdam asserts that it was an owner out of possession, and that it did not contract for, control, supervise, direct, inspect, or need to approve the work performed in the space leased to Equinox. It is well settled that an owner who did not contract for the construction that resulted in a worker's injury may be held vicariously liable under the Labor Law where there is "some nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest" (*see Morton v State,* 15 NY3d 50, 56 [2010], quoting *Abbatiello v Lancaster Studio Assocs.*, 3 NY3d 46, 51 [2004]; *Sanatass v Consolidated Investing Co. Inc.*, 10 NY3d 333 [2008]; *see also Ferreira v Village of Kings Point*, 68 AD3d 1048, 1050 [2009]). Amsterdam's reliance on *Guryev v Tomchinsky* (87 AD3d 612 [2011]) is misplaced. Amsterdam, as the landlord, clearly has an interest in the leased property. Furthermore, Amsterdam leased the subject portion of the premises to Equinox, with the knowledge that Equinox would "build-out" the leased area, and Eclipse Development, Corp. on behalf of Equinox contracted with Ibex. Ibex in turn contracted with Marble Techniques, Inc., who subcontracted the labor portion of the contract to J.P. Marble, plaintiff's employer. Under these circumstances a sufficient nexus exists between Amsterdam and plaintiff to find that Amsterdam is an owner for the purposes of Labor Law §§ 240(1) and 241(6).

Monadnock was Amsterdam's general contractor in connection with the construction of the building's shell and residential units, and there is no evidence that it controlled, directed or supervised any work that was performed in the space leased to Equinox. Rather, the evidence presented establishes that Eclipse Development Corp., on behalf of Equinox independently contracted with Ibex to act as the general contractor for the "build-out" of the gym. There is no evidence that Monadnock and Ibex had any overlapping duties with respect to said construction within the Equinox space. The court therefore finds that for the purposes of the Labor Law, Ibex was the general contractor for the work performed in the space leased to Equinox, and that no nexus exists between Monadnock and plaintiff.

With respect to Amsterdam and Ibex, plaintiff has established his prima facie entitlement to judgment as a matter of law on the cause of action alleging a violation of Labor Law § 240(1) insofar as asserted against Amsterdam and Ibex. The fact that the scaffold's plywood platform collapsed for no apparent reason, causing him to fall and sustain injuries, is sufficient to establish that the scaffold failed to afford him proper protection for the work being performed, and that this failure was a proximate cause of his injuries (*see*

Campbell v 111 Chelsea Commerce, L.P., 80 AD3d 721, 721-722 [2011]; *Zhu Wei Shi v Jun Lan Zhang*, 76 AD3d 558 [2010]; *Tapia v Mario Genovesi & Sons, Inc.*, 72 AD3d 800, 801 [2010]; *Inga v EBS N. Hills, LLC*, 69 AD3d 568, 569 [2010]; *Kok Choy Yeen v NWE Corp.*, 37 AD3d 547, 549 [2007]; *Dos Santos v State of New York*, 300 AD2d 434 [2002]; *Pineda v Kechek Realty Corp.*, 285 AD2d 496, 497 [2001]). The fact that the plaintiff may have been the sole witness to the accident does not preclude the award of summary judgment in his favor (*see Campbell v 111 Chelsea Commerce, L.P., supra*; *Tapia v Mario Genovesi & Sons, Inc.*, 72 AD3d at 802; *McCaffery v Wright & Co., Constr. Inc.*, 71 AD3d 842, 843 [2010]; *Inga v EBS N. Hills, LLC*, 69 AD3d at 569; *Yin Min Zhu v Triple L. Group, LLC*, 64 AD3d 590 [2009]; *Rivera v Dafna Constr. Co., Ltd.*, 27 AD3d 545 [2006]).

In opposition to the plaintiff's prima facie showing, Amsterdam and Ibex have failed to raise a triable issue of fact. They have not offered any evidence, other than mere speculation, to refute the plaintiff's showing or to raise a bona fide issue as to how the accident occurred (*see Campbell v 111 Chelsea Commerce, L.P., supra*; *Pineda v Kechek Realty Corp.*, 285 AD2d at 497; *see Florestal v City of New York*, 74 AD3d 875 [2010]; *McCaffery v Wright & Co. Constr., Inc.*, 71 AD3d at 843; *Inga v EBS N. Hills, LLC*, 69 AD3d at 569; *Rivera v Dafna Constr. Co., Ltd.*, 27 AD3d at 545-546). Notably, Mr. Lasso, Mr. Pace and Mr. Alfani all testified that immediately after the accident, they observed that the scaffold platform had collapsed and that Mr. Bermejo was lying on the floor, within the frame of the scaffold. Defendants have also failed to raise a triable issue of fact whether plaintiff's "own conduct, rather than any violation of Labor Law § 240(1), was the sole proximate cause of his accident" (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 40 [2004]). There is no plausible view of the evidence by which Manuel Bermejo may be said to have been the sole proximate cause of his accident (*see Bland v Manocherian*, 66 NY2d 452, 460 [1985]). Although there is conflicting testimony as to the height of the scaffold, there is no evidence that Mr. Bermejo erected the scaffold, adjusted the height of the platform, or other engaged in any conduct that caused it to collapse.

Plaintiff's motion for partial summary judgment against Amsterdam and Ibex, therefore, is granted. That branch of the cross motion which seeks to dismiss the Labor Law §§ 240 and 241(6) claims against Amsterdam on the grounds that it is not an owner within the meaning of the Labor Law, is denied.

That branch of defendants Amsterdam and Monadnock's cross motion which seeks summary judgment dismissing plaintiff's claims against them for negligence and a violation of Labor Law § 200, is granted. The evidence presented establishes that these defendants neither directed nor controlled the method or manner in which the work was conducted and neither created nor had actual or constructive notice of a defective condition which caused the accident. That branch of the cross motion which seeks to dismiss plaintiff's Labor Law §§ 240 and 241 claims against Monadnock, is granted, as there is no nexus between

Monandock and the plaintiff. That branch of defendants' cross motion which seeks an award of sanctions and/or costs, is denied.

Defendants Amsterdam and Monadnock's request to dismiss all cross claims:

Ibex has asserted a cross claim against Amsterdam and Monadnock for common-law contribution and common-law indemnification. As there is no evidence that Amsterdam or Monadnock exercised any supervision and/or direction of the work performed by the injured plaintiff, these defendants' motions to dismiss the cross claim for common law indemnification is granted.

With respect to Ibex's claim for common law contribution, a party whose liability is solely vicarious, such as Ibex, is not entitled to contribution (*Glaser v M. Fortunoff of Westbury Corp.*, 71 NY2d 643, 646-647 [1988]). A party whose liability is solely vicarious, such as Amsterdam, is not liable to pay contribution (*Id.*, *see also Conigliaro v Premier Poultry, Inc.* 67 AD3d 954, 955 [2009]). Therefore, Amsterdam's request to dismiss Ibex's cross claim against for common law contribution is granted.

Amsterdam and Monadnock's request, in the alternative, for a defense and indemnity from Ibex and Marble based upon common law indemnification and contractual indemnification:

It is well settled that "when interpreting a contract, the court should arrive at a construction which will give fair meaning to all of the language employed by the parties . . . so that their reasonable expectations will be realized" (*Matter of John E. Andrus Mem. Home v DeBuono*, 260 AD2d 635, 636 [1999]; *see also Johs v P.G.S. Carting Co., Inc.*, 40 AD3d 929, 933 [2007]; *Singh v Atakhanian*, 31 AD3d 425 [2006]; *Joseph v Creek & Pines*, 217 AD2d 534, 535 [1995]).

Amsterdam and Monadnock's cross claim against Ibex for contractual indemnification is based upon the contract between Ibex and Eclipse Development. In support of this claim, defendants have submitted an unexecuted copy of a standard AIA Document A111-1997 form, dated October 21, 2008, which names Eclipse Development as the "owner" and Ibex as the "contractor." Article 2.1 of said contract provides as follows: "The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. . . The term 'Owner' means the Owner or the Owner 's representative."

Amsterdam and Monadnock's cross claim against Marble for contractual

indemnification is based upon the subcontract between Ibex and Marble. Said subcontract refers to the contract between "Equinox Fitness as Owner" and Ibex as Contractor, as the Prime Contract. Paragraph M of said agreement provides, in pertinent part, as follows: "To the fullest extent permitted by law, Subcontractor will defend, indemnify, and hold harmless Ibex Construction and Owner, owner's mortgagee and/or lender, their officers, directors, agents and employees from and against any and all claims, liens, judgments, damages, reasonable attorneys fees and legal costs, arising in whole or in part and in any manner from the act, omission, breach or default by Subcontractor and/or its offices, directors, agents, employees, sub-subcontractors and suppliers in connection with the performance of this Agreement or any work."

Indemnity contracts are to be strictly construed to avoid reading into them duties which the parties did not intend to be assumed (*see Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412, 417 [2006]; *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]; *Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491 [1989]; *Mikulski v Adam R. West, Inc.*, 78 AD3d 910, 911 [2010]; *Quality King Distribs., Inc. v E & M ESR, Inc.*, 36 AD3d 780 [2007]). Where "the language of the parties is not clear enough to enforce an obligation to indemnify, [the courts] are unwilling to rewrite the contract and supply a specific obligation the parties themselves did not spell out" (*Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d at, 490; *Hooper Assoc. v AGS Computers,* 74 NY2d at 491; *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1 [1986]; *Adesso Café Bar & Grill, Inc. v Burton*, 74 AD3d 1253, 1254 [2010]).

Here, although Amsterdam is the owner of the property for the purposes of Labor Law §§ 240 and 241, neither the contract between Ibex and Eclipse Development nor the subcontract between Ibex and Marble, identify Amsterdam as the owner. Rather, the contract between Ibex and Eclipse Development clearly and unambiguously define the term "Owner" and only identify Eclipse Development as the "Owner." It is undisputed that Eclipse Development was acting on behalf of the tenant, Equinox. Said contract does not name Amsterdam as a party, makes no reference to the lease agreement between Amsterdam and Equinox, nor does it make any reference to a landlord. Said agreement clearly defines the contractor as Ibex, and makes no reference to any other contractor, including Monadnock. Similarly, the subcontract between Ibex and Marble refers to the prime contract between Ibex and the tenant Equinox, although that contract was actually entered into with Eclipse Development. The subcontract clearly identifies "owner" as Equinox, and makes no reference to the lease agreement, to the landlord Amsterdam, or the landlord's contractor Monadnock. Neither Amsterdam nor Monadnock is a party to said subcontract.

Said contract and subcontract do not clearly contemplate an obligation on the part of either Ibex or Marble to indemnify Amsterdam or Monadnock. Furthermore, neither

Amsterdam nor Monadnock can establish that it is a third-party beneficiary of said contract and subcontract. In order for these defendants to succeed on a claim as a third-party beneficiary, they must establish that they were regarded by the contracting parties as a beneficiary. The contracts, by their terms, as well as the evidence presented, fails to establish that either Ibex or Marble intended to provide contractual indemnification to the property owner Amsterdam, or its contractor Monadnock. Finally, neither Amsterdam nor Monadnock entered into any agreement entitling them to the right to seek contractual indemnification from either Ibex or Marble (*see Araujo v City of New York*, 84 AD3d 993 [2011]; *Jamindar v Uniondale Union Free Sch. Dist.*, 90 AD3d 610 [2011]). Therefore, that branch of the cross motion which seeks relief in defendants' favor on the cross claims for contractual indemnification against Ibex and Marble, is denied.

As plaintiff's claims against Monadnock have been dismissed, this defendant's cross claim against Ibex and Marble for common law indemnification are now moot. With respect to Amsterdam's cross claim for common law indemnification, a party's right to common law or implied indemnification is "based upon the law's notion of what is fair and proper as between the parties" (*Mas v Two Bridges Assocs.*, 75 NY2d 680, 690 [1990]). "Implied [,or common law,] indemnity is a restitution concept which permits shifting the loss because to fail to do so would result in the unjust enrichment of one party at the expense of the other" (*id.*, citing *McDermott v City of New York*, 50 NY2d 211 [1980]; *see also Rosado v Proctor & Schwartz, Inc.*, 66 NY2d 21, 24 [1985]). Common-law indemnification is generally available "in favor of one who is held responsible solely by operation of law because of his relation to the actual wrongdoer" (*Mas*, 75 NY2d at 690; *see D'Ambrosio v City of New York*, 55 NY2d 454, 460 [1982]).

"A party cannot obtain common law indemnification unless it has been held to be vicariously liable without proof of any negligence or actual supervision on their own part. But a party's (e.g., a general contractor's) authority to supervise the work and implement safety procedures is not alone a sufficient basis for requiring common law indemnification. Liability for indemnification may only be imposed against those parties (i.e., indemnitors) who exercise actual supervision (*see Felker* [*v Corning Inc.*], 90 NY2d [219] at 226; *see also Colyer v K Mart Corp.*, 273 AD2d 809, 810 [4th Dept 2000] [for standard]). Thus, if a party with contractual authority to direct and supervise the work at a job site never exercises that authority because it subcontracted its contractual duties to an entity that actually directed and supervised the work, a common law indemnification claim will not lie against that party on the basis of its contractual authority alone." (*McCarthy v Turner Constr., Inc.*, 17 NY3d at 374-378).

Here, Ibex entered into an agreement with the tenant's representative, Eclipse Development under which Ibex was the general contractor with respect to the build out of

the space leased to Equinox space. Ibex in turn engaged a subcontractor, Marble, which in turn engaged a subcontractor, J.P. Marble, which employed plaintiff. Although the agreement, inter alia, required Ibex to supervise and direct the work at the premises owned by the property owners, this fact alone is insufficient to establish that Ibex actually supervised or directed the injured plaintiff's work, especially in light of the fact that Ibex contracted the workout the work that resulted in plaintiff's injury. The evidence presented establishes that Ibex exercised no supervisory authority over J.P. Marble's work; that it would not have directed plaintiff as to how to perform his work, and did not provide the scaffold in question, and did not provide scaffolds used by the subcontractors. Ibex's demonstrated lack of actual supervision and/or direction over the work is sufficient to establish that Ibex is not required to indemnify Amsterdam for bringing about plaintiff's injury. Further, the property owners' vicarious liability (under Labor Law § 240[1]) may not be passed through to Ibex, the non-negligent, vicariously liable general contractor with whom it did not contract (*see McCarthy v Turner Constr., Inc., supra*).

With respect to Marble, the evidence presented establishes that this subcontractor did not exercise supervisory authority over the work performed by J.P. Marble, and that the only scaffold it provided disappeared from the job site prior to plaintiff's accident. Marble demonstrated lack of supervision and/or direction over the work is sufficient to establish that it is not required to indemnify Amsterdam.

Therefore, as Amsterdam has failed to establish a prima facie entitlement to judgment, as a matter of law, on its cross claims for common-law indemnification against Ibex and Marble, that branch of its cross motion seeking summary judgment on the cross claims against Ibex and Marble for common-law indemnification, is denied.

Defendant and third-party plaintiff Ibex's separate cross motion for summary judgment against third-party defendant Marble Techniques Inc. on its claims for contractual indemnification, common-law indemnification, and breach of contract:

To be entitled to common-law indemnification, a party must show (1) that it has been held vicariously liable without proof of any negligence or actual supervision on its part; and (2) that the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work (*see McCarthy v Turner Constr., Inc.*, 17 NY3d at 377-378; *Reilly v DiGiacomo & Son*, 261 AD2d 318, 690 NYS2d 424 [1999]). Ibex has satisfied the first prong of the test, as there is no showing that it was negligent and its liability is purely vicarious. Contrary to Marble's assertion, there is no evidence that the scaffold used by the plaintiff was supplied by Ibex. Ibex's witnesses, Mr. Pace testified that Ibex did not own a scaffold, and Mr. Ouellette testified that Ibex did not supply scaffolds to the "subs." However, there is also no evidence that Marble was actually negligent or that it

actually supervised or controlled the plaintiff's work. It is undisputed that although Marble supplied the materials, it did not perform the installation of the tiles; that work was subcontracted out to J.P. Marble, plaintiff's employer. On the day of the accident, J.P. Marble's president Jani Pando, and its foreman Frank Alfani were present on the site, either Pando or Alfani instructed the plaintiff and his co-workers. No other persons from any other entity gave instructions to J.P. Marble's employees. Although Mr. Frangakis, Marble's president was on the site that day, Ibex points to no evidence showing that he was present when plaintiff's accident occurred. More importantly, there is no proof that he, or any other Marble's employee, actually supervised or controlled plaintiff's work. Indeed, Mr. Frangakis testified that he was on site to coordinate the delivery and storage of the tiles, and Mr. Pando testified that the general contractor would approve the work performed by J.P. Marble.

Ibex argues that common-law indemnification is warranted because it did not supervise or control plaintiff's work and is was not actively negligent, and Marble was contractually required to visit the job site, provide scaffolding, and provide and enforce a safety program. However, in *McCarthy*, the Court of Appeals made clear that "a party's . . . [contractual] authority to supervise the work and implement safety procedures is not alone a sufficient basis for requiring common-law indemnification" (17 NY3d at 378). Rather, liability can only be imposed against a party who exercises actual supervision of the injury-producing work (*id.* at 376, 378). Here there is no evidence that Marble actually supervised or controlled plaintiff's work, or was otherwise negligent. Therefore, that branch of Ibex 's motion which seeks summary judgment in its common-law indemnification claim, is denied.

With respect to Ibex's claim for contractual indemnification against Marble, the contract between the parties requires Marble to indemnify Ibex for claims arising out the performance of Marble's work, but only to the extent caused by the negligent acts or omissions of Marble or, its sub-subcontractors (i.e., J.P. Marble), or anyone directly or indirectly employed by them. Thus, the indemnification provision is triggered only if the accident was caused by the negligence of either Marble or J.P. Marble, or their employees.

Contrary to Ibex's assertions, there is no evidence that either Marble or J.P. Marble owed the defective scaffold. Indeed, Ibex in its reply papers submits an affidavit from Mr. Frangakis in which he states that the subject scaffold was provided by Ibex. Therefore, as Ibex has not established that plaintiff's accident was caused by the negligence of Marble or J.P. Marble, or their employees, that branch of Ibex's motion which seeks summary judgment on its claim for contractual indemnification, is denied.

That branch of Ibex's motion which seeks summary judgment on its cause of action for breach of contract based upon the failure to procure insurance, is denied. A party moving for summary judgment has the burden of making a prima facie showing of entitlement to

judgment as a matter of law, offering sufficient evidence demonstrating the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*., 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Merely pointing to gaps in the opposing party's proof is insufficient (*Healy v Damus*, 88 AD3d 848 [2011]). Once a prima facie showing has been made by the movant, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial (*see, Zayas v Half Hollow Hills Cent. School Dist.*, 226 AD2d 713 [1996]). Ibex, in support of its claim for breach of contract merely relies upon the affirmation of its counsel and has failed to submit any documentary evidence which establishes that Marble failed to procure insurance naming it as an additional insured. Ibex, thus has not established, prima facie, its claim for breach of contract.

To the extent that Marble asserts that it procured insurance naming Ibex as an additional insured and provided Ibex with a certificate of insurance, said certificate recites that: "[t]his certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below." Said certificate of insurance, therefore, is insufficient to establish that Ibex is an additional insured under a general liability policy issued to Marble (*see Home Depot U.S.A., Inc. v National Fire & Mar. Ins. Co.*, 55 AD3d 671 [2008]; *Cendant Car Rental Group v Liberty Mut. Ins. Co.*, 48 AD3d 397, 398 [2008]; *Metropolitan Heat & Power Co., Inc. v AIG Claims Servs., Inc.*, 47 AD3d 621, 623 [2008]).

Conclusion:

Plaintiff's motion for partial summary judgment on the issue of liability on its Labor Law § 240(1) claim against Amsterdam and Ibex, is granted.

Amsterdam and Monadnock's cross motion is granted to the extent that plaintiff's common-law negligence and Labor Law § 200 claims are dismissed, and plaintiff's Labor Law §§ 240(1) and 241(6) claim's against Monadnock are dismissed. The cross motion is further granted to the extent that Ibex's cross claims against these defendants for common-law indemnification and common-law contribution are dismissed. The remainder of the cross motion is denied in all other respects.

Ibex's separate motion for summary judgment on its third-party claims against Marble Techniques for common law indemnification , contractual indemnification and breach of contract is denied in it entirety.

Dated: June 11, 2012

Peter J. O'Donoghue, J.S.C.