SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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JOSE QUEVEDO,

Plaintiff,

-against-

ACC CONSTRUCTION CORP. ET AL.,

Defendants.

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Index No.: 28403/09

Motion Dated: March 6, 2012

Cal. No.: 21,22,23,24

m# 2,4,5,3

The following papers numbered 1 to 57 read on these separate motions by defendant Planet Mechanical Corporation (Planet) for summary judgment in its favor dismissing plaintiffs' complaint and all cross claims against it; by defendants 101 Ludlow LLC (Ludlow) and CBJ Management LLC (CBJ) for summary judgment dismissing plaintiffs' complaint as against them; by plaintiffs pursuant to CPLR 3212, for summary judgment in their favor and against defendants ACC Construction Corporation (ACC), Planet, Unique Duct Design Corporation (Unique), Bank of America (BOA) and Deal Delancey LLC (Deal), or any of them on the causes of action under Labor Law §200 and at common-law negligence, under Labor Law §240 and under Labor Law §241(6) for failure to comply with the applicable Industrial Code Regulations 23-1.7(a)(1) and 1.8(c)(1); for violation of Industrial Code Regulations 23-1.7(a)(1) and 1.8(c)(1), which constituted negligence and a failure to use reasonable care under the circumstances; and for negligent violation of Industrial Code Regulations 23-1.7(a)(1) and 1.8(c)(1) which was a substantial factor in causing plaintiff Jose Quevedo's injuries and to deem that if any of the defendants obtain summary judgment and dismissal of plaintiffs' claims against it then any remaining defendant(s) should be precluded from obtaining, or should be deemed to have waived or forfeited, the limited liability benefits of CPLR Article 16 in relation to the acts or omissions of said defendant who is granted summary judgment and dismissal of plaintiffs' claims against it, and such should become the "law of the case" as to any remaining defendant(s) so as to preclude the application of CPLR Article 16 concerning the acts or omissions of said defendant who is granted summary judgment and dismissal of plaintiffs' claims against it; and by defendants ACC, BOA and Deal to dismiss plaintiffs' Labor Law §200 claims

against them as they did not exercise authority over the work, nor did they have notice of a defective condition; to dismiss plaintiffs' Labor Law §240(1) claim as plaintiff's accident did not involve the absence or inadequacy of a safety device; to dismiss plaintiffs' claims under Labor Law §241(6); and to the extent that all claims against defendants ACC, BOA and Deal are not dismissed, to grant their cross claims for common-law and contractual indemnification as against defendant Planet and common-law indemnification claims as against defendant Unique; and to grant their cross claim against defendant Planet for failure to procure insurance naming ACC, BOA and Deal as additional Insureds under its policy, and on this cross motion by defendant Unique pursuant to CPLR 3212 for summary judgment in its favor dismissing plaintiffs' complaint and all cross claims against it.

	Papers Numbered
Notices of Motion - Affidavits - Exhibits.....	1 - 16
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Upon the foregoing papers it is ordered that the motions and cross motion are consolidated and determined as follows:

Plaintiffs allege that plaintiff Jose Quevedo sustained injuries on May 5, 2009, in the course of his employment as an electrician with nonparty All State Electric (Allstate) while working at 92 Delancey Street, New York, New York, a 20-story tower with commercial retail space on the ground floor (retail space) and residential units on the upper floors. Defendant Ludlow initially owned the entire building. In 2008, defendant Ludlow sold the retail space to defendant Deal, which, in turn, leased the retail space to defendant BOA.

On the date of the accident, the retail space was being refit for commercial use by defendant BOA. A refit involves taking the shell of the building and making alterations to the interior to fit the specifications of the tenant. Defendant BOA hired defendant ACC as the general contractor for this construction project. Nonparty Allstate was hired by defendant ACC as the Electrical subcontractor on the project. Defendant Planet was hired by defendant ACC as the Heating, Ventilation and Air Conditioning (HVAC) subcontractor on the project. Defendant

Planet subcontracted the installation of the air-conditioning units and ducts to defendant Unique. Pursuant to the terms of the agreement between defendant Planet and defendant Unique, the scope of Unique's work is to provide and install ducts and duct accessories as per the specs and the drawings dated 10/28/08, and Unique must provide general liability and workers' compensation insurance.

The terms of the Agreement of general contractor defendant ACC and defendant Planet provide that:

> "For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the work of this Subcontract by which the subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the contractor and Subcontractor have by virtue of the provisions of this Agreement."

In addition, pursuant to the Agreement, the Subcontractor shall supervise and direct the Subcontractor's work and provide supervision throughout the entire installation; the Subcontractor shall inspect all surfaces to which his work shall be installed upon or fastened to, to verify that these subsurfaces have been prepared properly, or are in an acceptable condition to receive this Subcontractor's work; and Subcontractor must provide weekly safety meeting reports to be signed by all employees currently working on site.

The terms of the Agreement of defendant ACC and defendant Planet also provide, in pertinent part, that:

> "To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner, Contractor, Architect, and consultants, agents, and employees of any of them (individually or collectively, "Indemnity") from and against all claims, damages, liabilities, losses, and expenses, including but not limited to attorneys' fees, arising out of or in any way connected with the performance or lack of performance of the work under the agreement and any change orders or additions to the work included in the

agreement, provided that any such claim, damage, liability, loss or expense is attributable to bodily injury, sickness, disease or death caused in whole or in part by any actual or alleged:

- Act or omission of the Subcontractor or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable; or

- Violation of any statutory duty, regulation, ordinance, rule or obligation by an Indemnitee provided that the violation arises out of or is in any way connected with the Subcontractor's performance or lack performance of the work under the agreement."

The terms of the Agreement further provide that:

"The Subcontractor shall cause the commercial liability coverage required by the Subcontract documents to include; (1) the contractor, Owner, the Architect and the architect's consultants as additional Insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations, in the form annexed hereto as Rider F (samples attached)."

The terms of Rider F provide that:

"The subcontractor shall not sublet any part of his work without assuming full responsibility for requiring similar insurance from his subcontractors and shall submit satisfactory evidence to that effect to the Contractor. Each such insurance policy, except the Worker's Compensation Policy, shall include the Owner and the Contractor as an additional insured."

The project engineer, nonparty Highland Associates, designed the air-conditioning system and prepared mechanical drawings, designated as M drawings, which were to be used in the installation of the units. The witness for defendant Unique, Chandra Ramlakan, one of its owners, testifies as follows: Prior to starting work, defendant Unique performed a walk through of

the premises taking measurements and thereafter rendered a set of shop drawings. These drawings provided an alternate configuration calling for the installation of additional steel to support the heavier units due to the distance between the beams. Highland returned these shop drawings with responsive markings and the marked copy was used by Unique in the field. When installing the smaller units, which included the subject fan coil unit, ACCU-3, a 300-pound air condenser unit, defendant Unique's workers did not follow the M drawings, which called for the hanging rods for the units to be attached to clip angles. Instead, defendant Unique's workers welded the hanging rods for the units directly into the concrete deck in the ceiling, which Ramlakan stated was their usual practice and involved "SMACNA[1] standards."

On the date of the subject accident, plaintiff Jose Quevedo and a co-worker Mauricio Ochoa were mounting electrical cables to the disconnect switch of the subject fan coil unit, ACCU-3. The disconnect switch was approximately 10 feet above the floor on the wall underneath ACCU-3, which was permanently affixed to the ceiling. Plaintiff Jose Quevedo and Ochoa were standing on an electrical cart/lift, which was elevated about eight feet off the ground to enable them to reach the unit and disconnect switch. Ochoa was wiring the unit itself and plaintiff Jose Quevedo was connecting wires to the disconnect switch. In order to reach the unit, Ochoa was standing on the railing of the lift. Plaintiff Jose Quevedo was standing on the platform of the lift approximately three feet below the unit and Ochoa. According to Ochoa, while he was using a pair of pliers in his right hand connecting the wires, and his left hand was resting on the unit for balance, the unit suddenly collapsed and fell striking plaintiff Jose Quevedo in the head. Two of the four double-expansion anchors supporting the unit had detached from the ceiling. At the time, plaintiff Jose Quevedo was not wearing a hard hat.

Ochoa testified that previously while drilling holes at a different location in the bank, he noticed the concrete was very soft and the drill was just going right through it. Ochoa also testified that about two or three days before the subject accident, he saw a metal rod which supported an air-conditioning duct fall off out of the concrete ceiling. He further testified that he notified his foreman about the rod falling off and the foreman, in turn, notified the tin knockers, the workers placing the ducts, who were employees of defendant Unique.

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[1]Sheet Metal and Air Conditioning Contractors' National Association, Incorporated.

Plaintiffs Jose Quevedo and Maritza Quevedo[2], in their complaint, interpose claims for negligence and violations of Labor Law §§ 200, 240(1) and § 241(6).

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing an entitlement to judgment as a matter of law. (*See Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Ayotte v Gervasio*, 81 NY2d 1062 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].) Once the requisite showing has been made, the burden shifts to the opposing party to produce admissible evidence sufficient to establish the existence of a triable issue of fact. (*See Giuffrida v Citibank Corp.*, *supra*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, *supra*.)

A subcontractor may be held liable under sections 200, 240(1) and 241(6) of the Labor Law where the subcontractor is an agent of the owner or general contractor (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]), and defendant Planet failed to meet its initial burden of establishing as a matter of law that it was not an agent of the general contractor, defendant ACC. Indeed, defendant Planet's submissions, including its agreement with defendant ACC and the parties' examinations before trial testimony raise triable issues of fact concerning whether defendant Planet had the authority to supervise or control the alleged injury-producing work of defendant Unique. (*See Millard v Hueber-Breuer Constr. Co.*, 4 AD3d 817 [2004]; *see also Walls v Turner Constr. Co.*, 4 NY3d 861 [2005]; *Tomyuk v Junefield Assoc.*, 57 AD3d 518 [2008].)

The branches of the cross motion of defendant Unique for summary judgment in its favor dismissing plaintiffs' Labor Law §§ 200, 240(1) and §241(6) causes of action and related cross claims as against it are granted inasmuch as defendant Unique established as a matter of law that it was not an agent of the owner or general contractor (*see Russin v Louis N. Picciano & Son*, *supra*), and did not have the authority to supervise and control the work being performed by plaintiff Jose Quevedo at the time of his accident. (*See Kelarakos v Massapequa Water District*, 38 AD3d 717 [2007]; *see also Zervos v City of New York*,

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[2]Plaintiff Maritza Quevedo, the wife of plaintiff Jose Quevedo, has a derivative cause of action.

8 AD3d 477 [2004]; *Lopes v Interstate Concrete, Inc.*, 293 AD2d 579 [2002].)

The branch of the cross motion of defendant Unique for summary judgment in its favor dismissing plaintiffs' common-law negligence cause of action and related cross claims as against it, however, is denied.

Triable issues of fact exist concerning whether defendant Unique negligently installed the subject air condenser unit deviating from the plans and specs of the architect and/or deviating from industry custom & practice, and whether defendant Unique created a dangerous or defective condition so as to launch a force or instrument of harm. (*See Ragone v Spring Scaffolding, Inc.*, 46 AD3d 652 [2007]; *see also Grant v Caprice Management Corp.*, 43 AD3d 708, [2007]; *Bienaime v Reyer*, 41 AD3d 400 [2007].) These issues of fact are based on the parties' conflicting testimony, as well as, the conflicting affidavits of their experts.

Labor Law § 240 (1) requires owners and contractors to provide workers with appropriate safety devices to protect against "such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured." (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993].) However, not every object that falls on a worker gives rise to the extraordinary protections of Labor Law § 240 (1). (*See Narducci v Manhasset Bay Assoc.*, 96 NY2d 259 [2001].) Thus, in order to recover damages for violation of the statute, the plaintiff must show more than simply that an object fell causing injury to a worker. The plaintiff must show that, at the time the object fell, it was "being hoisted or secured" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]), or "required securing for the purposes of the undertaking." (*Outar v City of New York*, 5 NY3d 731, 732 [2005]; *see Quattrocchi v F.J. Sciame Constr. Corp.*, 11 NY3d 757 [2008].) The statute generally does not apply to objects that are part of a building's permanent structure. (*See Narducci v Manhasset Bay Assoc.*, *supra*; *see also Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263 [2007]; *Xidias v Morris Park Contr. Corp.*, 35 AD3d 850 [2006].) Moreover, the plaintiff must show that the object fell "because of the absence or inadequacy of a safety device of the kind enumerated in the statute." (*See Narducci v Manhasset Bay Assoc.*, *supra*.)

In this case, the air-conditioning unit that struck plaintiff Jose Quevedo had been installed prior to his accident,

and thus became part of the building's permanent structure. In addition, the accident did not occur under circumstances in which a hoisting or securing device of the kind enumerated in the statute would have been necessary or even expected. Thus, defendants Planet, ACC, BOA and Deal made a prima facie showing that Labor Law § 240 (1) is not applicable under the circumstances of this case, and plaintiffs, in opposition, failed to raise any triable issues of fact.

Accordingly, the branches of the motions of defendants Planet, ACC, BOA and Deal seeking summary judgment dismissing the cause of action alleging a violation of Labor Law § 240 (1) and all related cross claims are granted and plaintiffs' motion for summary judgment on the issue of liability under Labor Law § 240(1) is denied.

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners, contractors and their agents, regardless of their control or supervision of the work site, to provide reasonable and adequate protection and safety to all persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed. (*See Rizzuto v L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998]; *see also Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]; *Miranda v City of New York*, 281 AD2d 403 [2001].) In order to support a Labor Law § 241(6) cause of action, a plaintiff must allege a New York Industrial Code violation (12 NYCRR 23-1.1 et seq.) that is both concrete and applicable given the circumstances surrounding the accident. (*See Rizzuto v L.A. Wenger Contracting Co., Inc., supra*.)

In their pleadings and motion papers, plaintiffs allege violations of Industrial Code sections 23-1.7(a)(1) and 23-1.8(c)(l).

12 NYCRR 23-1.7(a)(1) requires protection against falling material in areas normally exposed to such hazards. Here, plaintiff Jose Quevedo was not injured in an area normally exposed to falling material. (*See Quinlan v City of New York*, 293 AD2d 262 [2002]). Indeed, the falling down of the air-conditioner was an unexpected occurrence. The fact that a single metal rod supporting duct work fell from the ceiling prior to the subject accident is not a sufficient basis for a finding that plaintiff Jose Quevedo's workspace was normally exposed to falling objects. However, to the extent that plaintiffs rely upon 12 NYCRR 23-1.8(c)(l), plaintiffs have a viable Labor Law § 241 (6) cause of action. This provision, unlike section 23-1.7(a)(1), does not require that the site of the accident be

"normally exposed" to falling material, but instead provides that "[e]very person required to work or pass within any area where there is a danger of being struck by falling objects or materials . . . shall be provided with and shall be required to wear an approved safety hat." This provision is sufficiently specific to support a Labor Law § 241(6) claim. Furthermore, this provision is applicable inasmuch as plaintiff Jose Quevedo was not wearing head protection at the time of the accident, and plaintiffs' evidence that a metal rod previously had fallen raises triable issues of fact as to whether there was a "danger" that plaintiff Jose Quevedo would be struck by a falling object or material while in the area he was assigned to work, which would trigger the protection of Industrial Code section 23-1.8(c)(l), and whether a hard hat would have prevented any or all of his injuries. (*See Marin v AP-Amsterdam 1661 Park LLC*, 60 AD3d 824 [2009]; *see also Prince v Merit Oil of N.Y., Inc.*, 238 AD2d 561[1997].)

Under the circumstances, to the extent that plaintiffs' Labor Law § 241(6) cause of action is based upon alleged violations of 23-1.8(c)(l), those branches of the motions of defendants ACC, BOA, Deal and Planet which seek to dismiss this cause of action and all related cross claims, and plaintiffs' motion for summary judgment on the issue of liability under Labor Law § 241(6) are denied.

Labor Law § 200 is a "codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work." (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993].) It follows that the party charged with responsibility must have the authority to control the activity that caused the injury, or have actual or constructive notice of the alleged unsafe condition to be liable under common-law negligence and/or Labor Law § 200. *(See Comes v New York State Elec. & Gas Corp., supra; see also Duarte v State of New York*, 57 AD3d 715 [2008]; *Dennis v City of New York*, 304 AD2d 611 [2003].)

On this issue, defendants ACC, BOA and Deal have established entitlement to judgment as a matter of law by demonstrating that they did not supervise plaintiff Jose Quevedo's work, or control the manner or method in which he performed his duties, and that they neither created, nor were aware of the alleged dangerous condition on the premises. (*See Seepersaud v City of New York*, 38 AD3d 753 [2007]; *see also Lopez v Port Auth. of New York & New Jersey*, 28 AD3d 430 [2006]; *Parisi v Loewen Development of Wappinger Falls, LP*, 5 AD3d 648 [2004].) Contrary to plaintiffs' contention, the fact that the general contractor, defendant ACC,

exercised general duties to oversee work and to ensure compliance with safety regulations does not raise a triable issue of fact as to whether it owed a duty to protect the contractors' employees. (*See McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints*, 41 AD3d 796 [2007]; *see also Peay v New York City School Constr. Auth.*, 35 AD3d 566 [2006]; *Warnitz v Liro Group, Ltd.*, 254 AD2d 411 [1998].) In addition, plaintiffs' claim regarding low-strength concrete at the subject site is speculative and in any event, there is no evidence that defendants ACC, BOA and Deal had actual or constructive notice thereof.

Accordingly, the branches of the motion of defendants ACC, BOA and Deal seeking summary judgment dismissing plaintiffs' Labor Law § 200 and common-law negligence causes of action as against them are granted.

The branches of the motion of defendant Planet seeking summary judgment in its favor dismissing plaintiffs' Labor Law § 200 and common-law negligence causes of action as against it are denied.

Although defendant Planet subcontracted out the underlying work to defendant Unique, defendant Planet's project manager, George Koutsivitis, testified that as project manager he looked at the site where the air-conditioning units were to be installed prior to defendant Unique's installation of them, and that after the installation, if upon inspection he saw something wrong with a unit, he would contact Unique to come down to the site to investigate to see if the unit was installed properly as per SMACNA standards. In addition, pursuant to the terms of its agreement with defendant ACC, defendant Planet was to provide supervision over its subcontractors.

Given this evidence, defendant Planet failed to make a prima facie showing that it had no authority to control the activity that brought about the plaintiff Jose Quevedo's injuries, to enable it to avoid or correct the unsafe condition. (*See Bornschein v Shuman*, 7 AD3d 476 [2004]; *see also Singleton v Citnalta Constr. Corp.*, 291 AD2d 393 [2002]; *Braun v Fischbach & Moore, Inc.*, 280 AD2d 506 [2001].) Thus, defendant Planet is not entitled to dismissal of plaintiffs' common-law negligence and Labor Law § 200 causes of action as against it.

Although plaintiffs have a viable Labor Law § 200/common-law negligence claim against Planet, plaintiffs are not entitled to summary judgment against Planet under these causes of action. The question of whether Planet breached its duty toward plaintiff

Jose Quevedo under Labor Law § 200 or otherwise contributed to the accident is for the trier of fact to determine.

While owners and general contractors owe nondelegable duties under the Labor Law to plaintiffs who are employed at their work sites, these defendants can recover in indemnity, either contractual or common law, from those considered responsible for the accident. (*See Brown v Two Exch. Plaza Partners*, 76 NY2d 172 [1990].) 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. (*See Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774 [1987].) General Obligations Law § 5-322.1, however, voids any indemnification clause to the extent that a party seeks indemnity for its own acts of negligence. (*See Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 786 [1997]; *see also Brown v Two Exch. Plaza Partners*, *supra*; *McGlynn v Brooklyn Hospital-Caledonian Hosp.*, 209 AD2d 486 [1994].)

Here, the indemnification provision in defendant ACC's agreement with defendant Planet is valid and enforceable as it contains coverage "to the fullest extent permitted by law." (*See Brooks v Judlau Contr., Inc.*, 11 NY3d 204 [2008]; *see also Giangarra v Pav-Lak Contr., Inc.*, 55 AD3d 869 [2008]; *Balladares v Southgate Owners Corp.*, 40 AD3d 667 [2007].) Under this provision, even a promisee that is partially at fault can seek indemnification against the promisor for that portion of damages attributable to the negligence of the promisor. (*See Brooks v Judlau Contracting, Inc.*, *supra*.) Thus, the indemnification provision is enforceable and defendants ACC, BOA and Deal are entitled to conditional indemnification from defendant Planet to the extent that they are found liable for damages to plaintiff arising out of the performance of the subcontracted work of defendant Planet and its sub-sub contractor, defendant Unique.

Accordingly, the branch of the motion of defendants ACC, BOA and Deal seeking contractual indemnification is granted to the extent that defendant Planet must indemnify defendants ACC, BOA and Deal in the event they are held liable to plaintiffs for injuries arising out of the HVAC work of defendant Planet and its sub-subcontractor, defendant Unique.

The branches of the motion of defendants ACC, BOA and Deal for summary judgment in their favor and against defendants Planet and Unique on their cross claims for common law indemnification are denied as premature.

Summary judgment on a claim for common-law indemnification is appropriate only where there are no triable issues of fact concerning the degree of fault attributable to each party involved. (*See Kwang Ho Kim v D & W Shin Realty Corp.*, 47 AD3d 616 [2008]; *see also Coque v Wildflower Estates Developers, Inc.*, 31 AD3d 484 [2006]; *La Lima v Epstein*, 143 AD2d 886 [1988].)

In light of the foregoing, the branches of the motion of defendant Planet and the cross motion of defendant Unique for summary judgment dismissing the cross claims of defendants ACC, BOA and Deal as against them are denied.

The branch of the motion of defendants ACC, BOA and Deal seeking summary judgment in their favor and against defendant Planet on their cause of action for breach of contract for failure to procure insurance naming them as additional Insureds is granted. (*See Kinney v G. W. Lisk Co.*, 76 NY2d 215 [1990]; *see also Kennelty v Darlind Constr., Inc.*, 260 AD2d 443 [1999].) It is undisputed that defendant Planet failed to obtain such insurance.

The motion by defendants Ludlow and CBJ for summary judgment is granted and plaintiffs' complaint and all cross claims against these defendants are dismissed.

The admissible evidence submitted herein establishes that defendant Ludlow, which owned the residential units on the upper floors and defendant CBJ, its property manager, did not own, lease, occupy or control the retail space on the ground floor where the subject accident occurred. Further, the admissible evidence also establishes that defendants Ludlow and CBJ did not hire any of the contractors involved in the work relating to the accident.

Date: May 21, 2012

AUGUSTUS C. AGATE, J.S.C.