[* 1] SCANNED ON 8/7/2013

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

JOSEPH BOTTCHER,

Plaintiff,

INDEX NO. 114832/09

-against-

MOTION SEQ. NO. 002

WEST 44TH STREET HOTEL LLC, TISHMAN CONSTRUCTION CORPORATION, and UNIVERSAL BUILDERS SUPPLY, INC.,

Defendants.

FILED

AUG 07 2013

COUNTY CLERK'S OFFICE
NEW YORK

WEST 44TH STREET HOTEL LLC, and TISHMAN CONSTRUCTION CORPORATION,

Third-Party Plaintiffs,

INDEX NO. 590064/11

-against-

FIVE STAR ELECTRIC, INC.,

Third-Party Defendant.

The following papers were read on this motion by plaintiff for summary judgment and cross-motion by third-party defendant for summary judgment dismissing the third-party complaint.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits (Memo)	
Replying Affidavits (Reply Memo)	

Cross-Motion: ■ Yes ☐ No

Motion sequence numbers 002 and 003 are hereby consolidated for purposes of disposition.

In this action, Joseph Bottcher (plaintiff) seeks to recover damages for personal injuries he allegedly sustained as a result of an accident that occurred in the course of his work at a construction site. Plaintiff now moves for summary judgment, in motion sequence 002, on his Labor Law §§ 200, 240(1) and 241(6) claims as against all defendants. Third-party defendant

Five Star Electric, Inc. (Five Star) cross-moves for summary judgment dismissing the third-party complaint in its entirety.

Also before the Court, in motion sequence 003, is a motion by defendants/third-party plaintiffs West 44th Street Hotel LLC (West 44th), Tishman Construction Corporation (Tishman) and defendant Universal Builders Supply, Inc. (Universal) (collectively, defendants) for summary judgment (1) dismissing plaintiff's complaint, and (2) West 44th and Tishman move for summary judgment on their third-party claim for contractual indemnification as against Five Star. Additionally, West 44th and Tishman seek to dismiss all of the counterclaims Five Star has asserted in the amended third-party answer.

For the reasons stated below, plaintiff's motion and Five Star's cross-motion are denied. Additionally, defendants' motion for summary judgment is granted, only to the extent of: (1) dismissing plaintiff's Labor Law §§ 240(1) and 241(6) claims against all defendants, (2) dismissing plaintiff's Labor Law § 200 claims against defendant Universal, and granting that portion of the motion that seeks dismissal of Five Star's counterclaim for contractual indemnification, and is otherwise denied.

BACKGROUND

Plaintiff, an electrician in the employ of Five Star, alleges that, on August 10, 2009, he was injured while he was traveling as a passenger in a personnel hoist in a building under construction at 306 West 44th Street, New York, New York (the premises). After working in the elevator machine rooms at the top of the premises on the day of his injury, plaintiff claims that he got onto the personnel hoist to descend to the lobby floor (*see* Examination Before Trial [EBT] of plaintiff, at 73). Plaintiff alleges that he was injured when a portion of the personnel hoist he was riding in struck a loading dock landing, causing the rear metal door of the hoist to unexpectedly open and strike plaintiff in the back. According to plaintiff, after he heard a bang, he felt one or both of the handles of the rear hoist door hit him, and then he fell forward on his

knees to the floor of the hoist (*id.* at 79-80, 84).

It is uncontested that the Owner of the premises, West 44th and Tishman entered into a contract dated July 18, 2007, wherein Tishman agreed to serve as construction manager at the premises, acting as agent of West 44th to "procure . . . all labor, materials and services for . . . construction" of a hotel (the project) (*see* Notice of Cross-Motion, exhibit F, Article 2). Under contracts that Universal and Five Star each signed with Tishman as "contractors", the "[c]onstruction [m]anager ... agreed to act in a capacity as agent for [West 44th] in connection with the construction and/or renovation of the Project."[1]

The May 1, 2008 contract between Tishman and Five Star (the Five Star Contract) provides that Five Star would be the underground electric trade on the project. The September 16, 2008 contract between Tishman and Universal (the Universal Contract) provided that Universal was the trade engaged for the purpose of "hoisting, sidewalk shed, fencing and ramps" (*see* Notice of Cross-Motion, exhibit G). The Universal Contract contained "Rider 'A'", which set out Universal's "Scope of Work" regarding hoisting (*id.*).

In his complaint plaintiff alleges that defendants were negligent under the common law, and violated Labor Law §§ 200, 240(1), and 241(6). To support his Labor Law § 241(6) claim, plaintiff alleges that defendants violated Industrial Code sections 23-1.7(f), 23-5.1(f), (h), 23-6.1(b), (c), (d), 23-7.1 (b), (c), and 23-7.2 (b)(3), as well as various OSHA regulations.

In their third-party complaint against Five Star, West 44th and Tishman seek common-law indemnification and contribution, contractual indemnification and breach of contract for the failure to procure insurance. Five Star asserted counterclaims for common-law and contractual indemnification.

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[1] "Project" is defined in these contracts as "[c]onstruction of an approximately 600 room hotel."

DISCUSSION

I. Summary Judgment

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212[b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Indus. Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212[b]).

When deciding a summary judgment motion, the Court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable issue, summary judgment should be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

II. Common-Law Negligence and Labor Law § 200 Claims

"To maintain a negligence cause of action, [a] plaintiff must be able to prove the existence of a duty, [a] breach and proximate cause" (*Kenney v City of New York*, 30 AD3d

261, 262 [1st Dept 2006]). Labor Law § 200 codifies the common-law duty of a landowner or general contractor to provide employees with a safe place to work (*see Jock v Fien*, 80 NY2d 965, 967 [1992]; *see also Cruz v Toscano*, 269 AD2d 122, 122 [1st Dept 2000]) "[I]t is tantamount to a common-law negligence claim in a workplace context" (*Mendoza v Highpoint Assocs., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]).

The statute applies to owners, contractors, and agents who either controlled or supervised the injured worker's means and methods, or who created or had actual or constructive notice of a dangerous or defective condition (*see Lombardi v Stout*, 80 NY2d 290 [1992]). Supervision and control of the injured worker's methods by an owner or general contractor, or the creation of or knowledge of a dangerous condition, are, therefore, prerequisites to such liability (*see Candela v City of New York*, 8 AD3d 45 [1st Dept 2004]; *see also Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]; *Mitchell v New York Univ.*, 12 AD3d 200 [1st Dept 2004]).

Here, supervision and control are not at issue as plaintiff admits that he had no supervisor on the job other than his foreman Danny Fiorello and subforeman Vinny Fiorello (*see* plaintiff's EBT at 31, 34). Thus, liability could only attach based on a dangerous condition (*see Urban v No. 5 Times Sq. Dev., LLC,* 62 AD3d 553 [1st Dept 2009]; *see also Murphy v Columbia Univ.*, 4 AD3d 200 [1st Dept 2004]). In such circumstances, "whether [a defendant] controlled or directed the manner of plaintiff's work is irrelevant to the Labor Law § 200 and common-law negligence claims" (*Seda v Epstein,* 72 AD3d 455, 455 [1st Dept 2010]). In the instant action, therefore, plaintiff must only show that the owner or general contractor created or had actual or constructive notice of a defective condition causing the alleged accident (*see Bayo v 626 Sutter Ave. Assocs., LLC*, __AD3d__, 2013 NY Slip Op 03801 [1st Dept 2013]; *see also LaRose v Resnick Eighth Ave. Assoc., LLC*, 26 AD3d 470 [2d Dept 2006]).

There is no proffered evidence that the owner, West 44th, had a presence at the project

or that it was actually or constructively aware of any defective condition regarding either the loading dock or the hoist. Therefore, that portion of defendants' motion that seeks dismissal of plaintiff's common-law negligence and Labor Law § 200 claims as against West 44th is granted, and those claims are dismissed.

Tishman was the construction manager on the project, and as such could be held liable for negligence under Labor Law § 200 (*see Minorczyk v Dormitory Auth. of the State of N.Y.*, 74 AD3d 675 [1st Dept 2010]). Plaintiff contends that Tishman is liable under common-law negligence and Labor Law § 200, because the operating engineer in the hoist at the time of his accident was an employee of the construction manager (*see* plaintiff's EBT at 56, 221-222). In fact, paragraph 31 in Rider "A" to the Universal Contract states that, "[t]he Construction Manager will accept and operate the hoists after testing and approvals are completed and received,"[2] and Tishman admits that all three operating engineers on the project were its employees (*see* EBT of Peter Hardecker (Hardecker), at 41).

Plaintiff additionally asserts that Tishman had actual notice of a defective condition in the hoist and/or the loading dock, in that at least one of the personnel hoists at the project had hit the loading dock only a few weeks before, a fact that Five Star had reported to Tishman (*see* plaintiff's EBT at 40; *see also* EBT of Danny Fiorello at 35, 37, 41-47). However, Tishman denies notice of any such previous issues either with the hoist or the loading dock (*see* Hardecker EBT at 29, 1260.

Since there are material issues of fact as to whether Tishman had notice of the alleged defective condition(s) or whether a Tishman employee who was operating the hoist caused the alleged accident, that portion of defendants' motion that seeks to dismiss plaintiff's common-law negligence and Labor Law § 200 claims as against Tishman is denied. Further, that portion of

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[2] Paragraph 35 additionally states that "[p]ersonnel to operate hoists are not included within the [Universal] Contract."

plaintiff's motion that seeks summary judgment on such claims is also denied.

Universal, a subcontractor, was responsible for the maintenance of the personnel hoists (*see* Rider "A" to Universal Contract; *see also* EBT of Glenn Johnston [Johnston] at 9, 53), and as maintenance mechanic for Universal, Johnston attested to the fact that prior to plaintiff's alleged accident, he was aware that the personnel hoists were striking the loading dock (*id.* at 46, 54).

Labor Law § 200 is limited to owners and general contractors. "[I]t will impose liability against a subcontractor only in the rare case where that party is in effect standing in the shoes of an owner or contractor through the conferral of authority upon it to supervise and control the activity that produced the plaintiff's injury" (*Ryder v Mount Loretto Nursing Home Inc.*, 290 AD2d 892, 894 [3d Dept 2002]; *see also Urban v No. 5 Times Square Development, LLC*, 62 AD3d 553 [1st Dept 2009]; *Kelarakos v Massapequa Water Dist.*, 38 AD3d 717 [2d Dept 2007]).

However, there are material questions of fact as to whether Universal was negligent in its maintenance of the personnel hoists, which may have caused plaintiff's alleged accident. Therefore, although plaintiff's Labor Law § 200 claims as against Universal are dismissed, plaintiff's common-law negligence claims as against that entity will survive summary judgment.

III. Labor Law § 240(1) Claims

Under Labor Law § 240(1), owners, general contractors, and their agents who fail to provide or erect the safety devices necessary to give proper protection to a worker involved in the erection, demolition, repair, alteration, painting, cleaning or pointing of a building or structure are absolutely liable when that worker sustains injuries proximately caused by that failure (*see Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]; *see also Rizzo v Hellman Elec. Corp.*, 281 AD2d 258 [1st Dept 2001]). The section of the Labor Law "applies to tasks that . . . involve a significant inherent risk 'because of the relative elevation ... at which materials or loads must be positioned or secured'" (*Cammon v City of New York*, 21 AD3d 196,

200 [1st Dept 2005], quoting *Rocovich v Consolidated Edison Co.*, 78 NY2d at 514]). The statute applies to cases where a plaintiff falls from a height; however, it does not apply to accidents where the plaintiff's injuries are only tangentially related to the effects of gravity (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]).

Plaintiff herein alleges that he was standing in the personnel hoist when he heard and then felt a bang, after which he fell forward onto his knees on the floor of the hoist (*see* plaintiff's EBT at 79-84). Clearly, this plaintiff cannot show that the statute was violated, as any gravity relation was only tangentially involved in his alleged accident. Therefore, that portion of plaintiff's complaint that alleges violations of Labor Law § 240(1) is dismissed.

IV. Labor Law § 241(6) Claims

Labor Law § 241(6) provides that "[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 section requires owners and contractors at a construction site to "'provide reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d *supra* at 501-502, quoting Labor Law § 241[6]). It is the regulations contained within the Industrial Code that form the basis of a Labor Law § 241(6) claim against owners and general contractors (*id.*). Furthermore, it has long been held that allegations of OSHA violations do not support a Labor Law § 241(6) claim, as any such violations do not concern the Industrial Code (*see Schiulaz v Arnell Constr. Corp.*, 261 AD2d 247 [1st Dept 1999]). Therefore, all of plaintiff's claims based upon alleged OSHA violations are dismissed.

Additionally, a subcontractor may be held liable under Labor Law § 241(6), "only if it ha[s] the authority to supervise and control the work giving rise to the obligations imposed by

these statutes, which would render it the general contractor's statutory agent" (*Nascimento v Bridgehampton Constr. Corp.*, 86 AD3d 189, 192-193 [1st Dept 2011]). Universal did not have such authority to supervise or control plaintiff's work. Therefore, all of plaintiffs' Labor Law § 241(6) claims as against it are dismissed.

As to plaintiff's Labor Law § 241(6) claims against West 44th and Tishman, plaintiff seeks to recover monetary damages for violations of Industrial Code sections 23-1.7(f), 23-5.1 (f), (h), 23-6.1(b), (c), (d), 23-7.1(b), (c), and 23-7.2(b)(3).

12 NYCRR 23-1.7(f) reads as follows:

> Vertical passage. Stairways, ramps or runways shall be provided as the means of access to working levels above or below ground except where the nature or the progress of the work prevents their installation in which case ladders or other safe means of access shall be provided.

Although sufficiently specific to support a Labor Law § 241(6) claim (*see Murphy v American Airlines*, 277 AD2d 25 [1st Dept 2000]), no stairways, ramps or runways as means of access are applicable to plaintiff's alleged accident. Therefore, section 23-1.7(f) of the Industrial Code cannot be used to support plaintiff's Labor Law § 241(6) claims, and as such it is dismissed.

Plaintiff additionally seeks to support his Labor Law § 241(6) claims with 12 NYCRR 23-5.1 (f) and (h),[3] which regulate scaffolds. These subsections are not only insufficiently specific to support a Labor Law § 241(6) claim (*see Schiulaz v Arnell Constr. Corp.*, 261 AD2d 247, *supra*), they are inapplicable to the facts of the instant action. Similarly, 12 NYCRR 23-6.1(b),

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[3] 12 NYCRR 23-5.1 (f) and (h) reads:

* * *

(f) Scaffold maintenance and repair. Every scaffold shall be maintained in good repair and every defect, unsafe condition or noncompliance with this Part (rule) shall be immediately corrected before further use of such scaffold.

* * *

(h) Scaffold erection and removal. Every scaffold shall be erected and removed under the supervision of a designated person.

(c), and (d), entitled "General Requirements" for Material Hoisting,[4] are neither specific enough to support a Labor Law § 241(6) claim (*see Gonzalez v Glenwood Mason Supply Co., Inc.*, 41 AD3d 338 [1st Dept 2007]), nor applicable to plaintiff's allegations.

Although the regulations contained within 12 NYCRR 23-7.1(b) and (c), entitled "General requirements" for personnel hoists,[5] may be applicable to the facts that plaintiff alleges in the instant action, this subsection of the Industrial Code is insufficiently specific to support a Labor Law § 241(6) claim (*see Wade v Bovis Lend Lease LMB, Inc.*, 102 AD3d 476 [1st Dept 2013]).

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[4] 12 NYCRR 23-6.1 (b), (c), (d) read:

* * *

(b) Maintenance. Material hoisting equipment shall at all times be maintained in good repair and proper operating condition with sufficient inspections to insure such maintenance. All defects affecting safety shall be immediately corrected either by necessary repairs or replacement of parts, or such defective equipment shall be immediately removed from the job site.

(c) Operation.

(1) Only trained, designated persons shall operate hoisting equipment and such equipment shall be operated in a safe manner at all times.
(2) Operators of material hoisting equipment shall remain at the controls while any load is suspended.

(d) Loading. Material hoisting equipment shall not be loaded in excess of the live load for which it was designed as specified by the manufacturer. Where there is any hazard to persons, all loads shall be properly trimmed to prevent dislodgment of any portions of such loads during transit. Suspended loads shall be securely slung and properly balanced before they are set in motion.

[5] 12 NYCRR 23-7.1 (b) and (c) states:

(b) Maintenance. Personnel hoisting equipment shall be maintained in good repair and in proper operating condition at all times. Inspections of such equipment shall be made with such frequency as to insure such maintenance and operation.

(c) Operation. Only trained, designated persons shall operate personnel hoists and such hoists shall be operated in a safe manner at all times.

12 NYCRR 23-7.2(b)(3),[6] which plaintiff also cites to, concerns regulations regarding the erection and dismantling of hoist towers. Because plaintiff does not allege that the hoist towers were either being erected or dismantled at the time of his alleged accident, this subsection may not be used to support plaintiff's Labor Law § 241(6) claims. Accordingly, plaintiff's claims pursuant to Labor Law § 241(6) as against West 44th and Tishman, are dismissed.

V. Common-Law Indemnification/Contribution

In their third-party complaint against Five Star, West 44th and Tishman seek common-law indemnification and contribution, contractual indemnification and breach of contract for the failure to procure insurance. Five Star asserts counterclaims for common-law and contractual indemnification.

"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" (*Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012]).

It is generally premature for a court to determine whether or not an owner or contractor is entitled to common-law indemnification and/or contribution prior to trial. Because there are material questions of fact as to whether Tishman, Universal and/or Five Star were negligent in plaintiff's alleged accident, any determination of entitlement to common-law indemnification or contribution as against those entities is premature (*see Bovis Lend Lease LMB Inc. v Garito Contr., Inc.*, 65 AD3d 872 [1st Dept 2009]), and as such is denied without prejudice.

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[6] 12 NYCRR 23-7.2 (b)(3) states:

(3) Hoist towers shall be erected and dismantled only under the direct supervision of qualified, designated persons.

VI. Contractual Indemnification

"The right to contractual indemnification depends upon the specific language of the contract" (*Canela v TLH 140 Perry St., LLC*, 47 AD3d 743, 744 [2d Dept 2008]). West 44th and Tishman seek contractual indemnification against Five Star and Five Star counterclaims for the same. The Five Star Contract contains paragraph 7, entitled Indemnity Violation of Law, which requires Five Star,

> [t]o the fullest extent permitted by law, ... indemnify, defend, and hold harmless the Owner, Construction Manager, such other indemnitees as may be defined herein ... from and against all claims or causes of action, damages, losses and expenses ... arising out of or resulting from the acts or omissions of [Five Star], or anyone that [Five Star] may be liable, in connection with ... the performance of, or the failure to perform, the Work, or the Contractor's operations, including the performance of the obligations set forth in this clause. To the fullest extent permitted by law, [Five Star's] duty to indemnify the indemnitees shall arise whether caused in part by the active or passive negligence or other fault of any of the indemnitees, provided, however, that [Five Star's] duty hereunder shall not arise to the extent that any such claim, damages, loss or expense was caused by the sole negligence of the indemnitees or an indemnitee. [Five Star] acknowledges that specific consideration has been received by it for this indemnification and that same shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for [Five Star] or any subcontractor and/or delegates under Workers' Compensation acts or other employee benefits acts.

Where the party seeking contractual indemnification is free from fault, a conditional judgment that it is entitled to indemnity is appropriate; however, where there are factual questions as to whether the indemnitee was negligent, or whether or not the alleged accident arose out of the acts or omissions of the indemnitor, such a finding is premature (*see Narvaez v 2914 Third Ave. Bronx, LLC*, 88 AD3d 500 [1st Dept 2011]).

Here, there are material questions of fact as to the extent of Tishman's fault, if any, in plaintiff's alleged accident or whether or not plaintiff's alleged accident arose out of Five Star's acts or omissions, and, therefore, an order of entitlement to contractual indemnification is denied without prejudice as premature. Regarding Five Star's counterclaim for contractual indemnification, because Five Star has not proffered any contract language that would entitle it

to such relief, that counterclaim is dismissed.

VII. Breach of Contract for Failure to Procure Insurance

West 44th and Tishman seek summary judgment on their claim that Five Star breached the Five Star Contract by failing to procure insurance. The Five Star Contract contains an insurance paragraph, paragraph 8, which requires Five Star to carry $5,000,000 per occurrence in commercial general liability (CGL) insurance. In addition to coverage for the named insured, the Five Star Contract also requires that the CGL policy include "protection for the Owner, Owner's Lender, Construction Manager and all other indemnitees... hereinafter 'Additional Insureds.'"

Five Star has proffered a copy of a CGL policy (number A-2CG-933708-00) issued by Old Republic Insurance Corporation for the policy term October 27, 2008 through October 27, 2009. The proffered policy has a $1,000,000 per occurrence and a $2,000,000 aggregate limit. With respect to additional insureds, included were those entities "as required by written contract."

Since the proffered GCL policy only contains $1,000,000 per occurrence and $2,000,000 aggregate coverage, and it is not clear from the additional insured endorsement language that West 44th and Tishman were additional insureds, there are material questions of fact as to whether or not Five Star breached the Five Star contract. Therefore, those portions of both the defendants' motion and Five Star's cross-motion that seek dismissal of and summary judgment on that portion of the third-party complaint are denied.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment, motion sequence 002, is denied; and it is further,

ORDERED that third-party defendant Five Star Electric, Inc.'s cross-motion for summary

judgment, motion sequence 002, is denied; and it is further,

ORDERED that defendants/third-party plaintiffs' motion for summary judgment, motion sequence 003, is granted, only to the extent of: (1) dismissing plaintiff's Labor Law §§ 240(1) and 241(6) claims against all defendants, (2) dismissing plaintiff's Labor Law § 200 claims against defendant Universal Building Supply, Inc.; and granting dismissal of third-party defendant's counterclaim for contractual indemnification, and is otherwise denied; and it is further,

ORDERED that defendant Universal Building Supply, Inc. is directed to serve a copy of this order with Notice of Entry upon all parties and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 8-5-13 **Enter:**

PAUL WOOTEN J.S.C.

Check one: ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**

Check if appropriate: : ☐ **DO NOT POST** ☐ **REFERENCE**