| **Juarez v Roza 14W LLC** |
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| 2016 NY Slip Op 30398(U) |
| March 9, 2016 |
| Supreme Court, New York County |
| Docket Number: 151590/14 |
| Judge: Cynthia S. Kern |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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EDUARDO JUAREZ a/k/a EDUARDO LOPEZ,

Plaintiff,

Index No. 151590/14

-against-

**DECISION/ORDER**

ROZA 14W LLC and SKYLINE RESTORATION INC.,

Defendants.

----------x

ROZA 14W LLC and SKYLINE RESTORATION INC.,

Third-Party Plaintiffs,

-against-

ALL DAY RESTORATION, INC.,

Third-Party Defendant.

----------x

**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

| Papers | Numbered |
|---|---|
| Notice of Motion and Affidavits Annexed..... | 1,2 |
| Notice of Cross-Motion and Affidavits Annexed..... | 3 |
| Answering Affidavits ..... | 4,5,6 |
| Replying Affidavits..... | 7,8,9 |
| Exhibits..... | 10 |

Plaintiff Eduardo Juarez a/k/a Eduardo Lopez commenced the instant action against defendants/third-party plaintiffs Roza 14W LLC ("Roza") and Skyline Restoration, Inc. ("Skyline") seeking to recover for injuries he allegedly sustained while working at a construction site. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting him partial summary judgment on the issue of liability against defendants/third-party plaintiffs on his claim pursuant

to New York Labor Law § 240(1). Defendants/third-party plaintiffs Roza and Skyline cross-move for an Order pursuant to CPLR § 3212 for summary judgment dismissing plaintiff's complaint and any and all cross-claims and counterclaims asserted against them. Defendants/third-party plaintiffs Roza and Skyline also separately move for an Order pursuant to CPLR § 3212 granting them summary judgment on their third-party complaint against third-party defendant All Day Restoration, Inc. ("All Day") and directing that All Day defend and indemnify them. The motions are consolidated for disposition and are resolved as set forth below.

The relevant facts are as follows. In the fall of 2013, plaintiff, who was employed by third-party defendant All Day, was performing construction work at a construction project located at 14 Wall Street, New York, New York (the "Project"). The Project entailed various renovations to a thirty-three story building which was owned by defendant Roza. Defendant Skyline was hired by Roza as the general contractor to perform work on the Project, which included the caulking of all exterior windows, the removal of limestone panels from two corners of the roof, waterproofing of the columns and re-setting of the limestone panels. Skyline hired third-party defendant All Day to perform the façade work on the Project.

When plaintiff started work on the Project, he performed caulking work on the exterior windows from a suspended scaffold. Thereafter, he was assigned the task of moving limestone panels, which were each approximately ten inches deep, four feet wide, four feet long and weighed approximately 150 pounds, from one location of the roof to another. Plaintiff testified that in order to move the limestone panels, the workers would use a pair of pipe scaffolds. Specifically, the pipe scaffolds would be brought close to the panels and then the panel would be

tied via chain to an I-beam and pulley located in the center of the scaffold. Once tied, the panel would be hoisted and then the pipe scaffold was pushed to the location where the panel was to be relocated.

On or about December 7, 2013, plaintiff and his co-workers were directed by their supervisor, Jorge, to assemble the pipe scaffolding on the roof and to put the I-beam and pulley on the pipe scaffold in preparation to move the limestone panels. Prior to putting the limestone panels on the roof, however, insulation had to be placed on the roof on top of which each panel would rest. At the time of his accident, plaintiff was on his knees facing the pipe scaffold placing insulation down onto the previously placed panel so that the next limestone panel could be lowered. The limestone panel at issue was elevated directly above the insulation and the pipe scaffold was already in place. Plaintiff's co-workers had not yet begun to lower the limestone panel when the pipe scaffold tipped over and struck plaintiff in his head (the "accident"). Plaintiff testified that although the scaffold at issue was made up of two "cross-hatched" pipes the morning of the accident, at some point prior to the accident, the workers were instructed to remove one of the "cross-hatched" pipes leaving the scaffold at issue with just one. Further, Kevin Cahill, Skyline's Project Manager, testified, after being shown pictures of the scaffold at issue, that the scaffold was not safe for use, that it did not appear to be set up properly and that it did not contain a weight on it in order to balance it to prevent it from toppling over.

Thereafter, plaintiff commenced the instant action against Roza and Skyline asserting claims for common law negligence and violations of Labor Law §§200, 240(1) and 241(6). Subsequently, Roza and Skyline commenced a third-party action against All Day asserting claims for contribution, indemnification and breach of contract.

The court first turns to plaintiff's motion for partial summary judgment on the issue of liability pursuant to Labor Law § 240(1). Pursuant to Labor Law § 240(1),

> All contractors and owners and their agents . . . who contract for but do not control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

Labor Law §240(1) was enacted to protect workers from hazards related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of materials or load being hoisted or secured. *See Rocovich v. Consolidated Edison*, 78 N.Y.2d 509, 514 (1991). "[N]ot every object that falls on a worker[] gives rise to the extraordinary protections of Labor Law § 240(1)." *Narducci v. Manhasset Bay Associates*, 96 N.Y.2d 259, 267 (2001) Indeed, "[i]n order to prevail on summary judgment in a section 240(1) 'falling object' case, the injured worker must demonstrate the existence of a hazard contemplated under that statute 'and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein.'" *Fabrizi v. 1095 Ave. of Americas, LLC*, 22 N.Y.3d 658 (2014) (citing *Narducci*, 96 N.Y.2d at 267). "With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to 'a significant risk inherent in...the relative elevation...at which materials or loads must be positioned or secured.'" *Narducci*, 96 N.Y.2d at 268. "Thus, for section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell...*because of* the absence or inadequacy of a safety device of the

kind enumerated in the statute." *Id.* Owners and contractors are subject to absolute liability under Labor Law § 240(1), regardless of the injured worker's contributory negligence. *See Bland v. Manocherian*, 66 N.Y.2d 452 (1985). Only if the plaintiff was the sole proximate cause of his injuries would liability under this section not attach. *See Robinson v. East Medical Center, LP*, 6 N.Y.3d 550 (2006).

In the instant action, plaintiff has established his *prima facie* right to partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) as he has shown that his accident occurred due to defendants/third-party plaintiffs' failure to provide an adequate safety device to prevent the pipe scaffold from falling on plaintiff and injuring him, in violation of Labor Law §240(1). As an initial matter, plaintiff's accident clearly occurred due to a gravity-related hazard as the accident flowed directly from the application of the force of gravity onto the pipe scaffold itself when it toppled over from the weight of the hoisted limestone panel onto plaintiff. Further, the collapsing or falling over of a scaffold or hoisting device, which are two of the safety devices enumerated in the statute, injuring a worker, is the kind of foreseeable "elevation risk" within the contemplation of Labor Law § 240(1). *See Thompson v. St. Charles Condominiums*, 303 A.D.2d 152, 154 (1st Dept 2003)(finding that 240(1) "appl[ies] to the collapse of a scaffold, the purpose of which is to hold construction supplies and workers at a raised level," because "liability is based upon a defect in a protective device specifically listed in the statute"); *see also Jiron v. China Buddhist Assn.*, 266 A.D.2d 347, 349 (2d Dept 1999)("finding that 240(1) applies because "proper construction and placement of the hoist, which is one of the safety devices enumerated in the statute, could have prevented it"); *see also Smith v. Jesus People*, 113 A.D.2d 980, 983 (3d Dept 1985)(holding that "Labor Law § 240 (1)

be construed to cover the situation where a defective scaffold falls on a worker and injures him"); *see also McCallister v. 200 Park, L.P.*, 92 A.D.3d 927, 929 (2d Dept 2012)("[g]iven that two of the scaffold's wheels failed in the course of the [work], the scaffold with which the plaintiff was furnished was plainly inadequate for the work being performed...[and] that the accident was the direct consequence of the inadequate scaffold.") The fact that the pipe scaffold, which was hoisting a heavy limestone panel, did topple over injuring plaintiff is proof that there was a defect in a protective device specifically listed in the statute and thus, a failure to provide an adequate safety device to protect plaintiff pursuant to Labor Law § 240(1).

Indeed, in *Jiron*, a case similar to the instant action, the plaintiff was injured when the motor of a hoist which was being used to transport building materials from ground level to a higher level of the building structure broke apart from the platform and fell, striking plaintiff in the head. In holding that the plaintiff established his right to summary judgment pursuant to Labor Law § 240(1), the court explained as follows:

> If the accident occurred in the manner alleged by the plaintiff, proper construction and placement of the hoist, which is one of the safety devices enumerated in the statute, could have prevented it. The statutory requirement that workers be provided with proper protection extends not only to the hazards of building materials falling from the hoist as they are being conveyed to the top of the structure, but also to the hazard of a defective hoist, or portion of the hoist, falling from an elevated level to the ground.

*Jiron,* 266 A.D.2d at 349. Here, the toppling over of the pipe scaffold, which, like a hoist, is one of the safety devices enumerated in the statute, was the sole cause of plaintiff's injury. Thus, plaintiff has established its *prima facie* right to summary judgment on his claim pursuant to Labor Law § 240(1) against defendants as they were obligated to provide plaintiff with an adequate scaffold or some other adequate safety device to prevent the scaffold from falling and

they did not.

In response, defendants/third-party plaintiffs have failed to raise an issue of fact sufficient to defeat plaintiff's motion for summary judgment on his 240(1) claim. As an initial matter, to the extent defendants assert that Labor Law § 240(1) does not apply because plaintiff's injury was not the result of the kind of elevation-related risk contemplated by the statute, such assertion is without merit. Specifically, defendants assert that plaintiff and the pipe scaffold were both on the same level and the highest point of the pipe scaffold was seven feet eight inches while plaintiff is only five feet four inches, thus establishing that there was no physically significant elevation differential between plaintiff and the falling scaffold in order to fall under the protections of Labor Law §240(1). However, the Court of Appeals has held that a "plaintiff is not precluded from recovery under section 240(1) simply because he and the [object] that struck him were on the same level." *Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, 6-7 (2011). Rather, the court found that a defendant may still be liable under that section due to the amount of force generated by the object and whether the plaintiff suffered harm that "flow[ed] directly from the application of the force of gravity to the [object]." *Id.* (citing *Runner v. New York Stock Exch., Inc.* 13 N.Y.3d 599 (2009)); *see also McCallister*, 92 A.D.3d at 928-29 ("[a]lthough the base of the scaffold was at the same level as the plaintiff and the scaffold only fell a short distance, given the combined weight of the device and its load, and the force it was able to generate over its descent, this difference was not de minimus.") Here, it is irrelevant that the base of the pipe scaffold and plaintiff were located on the same level as the force generated by the limestone panel onto the pipe scaffold was immense considering its weight and size, which caused the scaffold to tip over onto plaintiff's head. Further, here, the elevation-related

risk was much greater than defendants contend as plaintiff was on his knees when his accident occurred, and thus, much further away from the top of the scaffold than if he was standing upright.

Third-party defendant All Day and defendants' assertion that Labor Law § 240(1) does not apply because the "pipe scaffold" was not actually a scaffold by definition but rather a gantry because it lacked a platform and thus, does not fall within the list of protective devices enumerated in the statute, is without merit. At the time of plaintiff's accident, the apparatus at issue, whether it is a "scaffold," a "gantry," or something else entirely, was being used to hoist a limestone panel, and thus its collapse and subsequent injury of plaintiff is most definitely a risk contemplated by 240(1) as a "hoist" is a safety device enumerated in the statute. The fact that it lacked a platform on which workers could stand is irrelevant for a determination of whether it constitutes a safety device of the kind enumerated in the statute.

Third-party defendant All Day's assertion that defendants may not be held liable under Labor Law § 240(1) because plaintiff was a recalcitrant worker because defendants supplied the workers with pallet jacks and other scaffolds to use for the work they were performing and that they instead decided to use a "pipe scaffold" which was not suitable for the task is without merit. To support a "recalcitrant worker" defense, a defendant must show "that the safety device in question was both available and visibly in place at the immediate worksite of the injured employee" and that the employee "deliberately refused to use it." *Powers v. Lino Del Zotto and Son Builders Inc.*, 266 A.D.2d 668 (3d Dept 1999). *See also Gallagher v. New York Post*, 14 N.Y.3d 83 (2010)(granting plaintiff's motion for summary judgment on his 240(1) claim on the ground that "[t]here is no evidence...that [plaintiff] knew where to find the safety devices that

[defendant] argues were readily available or that he was expected to use them" and there was no evidence "that [plaintiff] had been told to use such safety devices.") Indeed, it is well-settled that "[t]he mere presence of [safety devices] somewhere at the worksite does not establish 'proper protection.'" *Zimmer v. Chemung County Performing Arts, Inc.*, 65 N.Y.2d 513, 524 (1985). *See also Hall v. Cornell Univ.*, 205 A.D.2d 872, 874 (3d Dept 1994)("the mere presence of safety devices at the worksite does not diminish [a] defendant's liability.")

Here, All Day fails to raise an issue of fact as it has failed to provide any evidence that plaintiff saw the pallet jacks or other scaffolds on the date of his accident; that any employee of defendants advised plaintiff of the existence of the pallet jacks or other scaffolds at the worksite on the date of his accident; or that plaintiff was instructed or directed to use the pallet jacks or other available scaffolds on the date of his accident and refused to do so. To the contrary, plaintiff testified that on the date of his accident, he and his coworkers were directed by their supervisor to put together the pipe scaffold with an I-beam and pulley in order to move the limestone panels. Thus, as there is no evidence that defendants "provided" plaintiff with the pallet jacks and other scaffolds on the date of the accident and that plaintiff deliberately refused to use said devices, the mere fact that said devices had previously been available to plaintiff and his co-workers is insufficient to raise an issue of fact to defeat plaintiff's motion.

Additionally, to the extent All Day asserts that defendants may not be held liable under Labor Law § 240(1) because plaintiff was the sole proximate cause of his accident based on his failure to use other available devices, such assertion is without merit. Even if plaintiff was a proximate cause of the accident in using a "pipe scaffold" to transport the limestone panels, this court finds that defendants' failure to provide plaintiff with a sturdy scaffold or safety device to

prevent the accident from occurring was also a proximate cause of the accident and it is well-settled that there can be multiple proximate causes for a workplace accident. *See Pardo v. Bialystoker Ctr. & Bikur Cholim*, 308 A.D.2d 384 (1st Dept 2003).

To the extent plaintiff seeks an immediate trial on the issue of damages on his 240(1) claim, said trial will be held in the normal course of litigation after the parties go through mediation and the action is referred to a trial judge.

The court next turns to defendants/third-party plaintiffs Roza and Skyline's cross-motion for summary judgment dismissing plaintiff's complaint. As an initial matter, that portion of defendants/third-party plaintiffs' motion for summary judgment dismissing plaintiff's claim pursuant to Labor Law § 240(1) is denied as this court has granted plaintiff's motion for summary judgment on that issue. However, that portion of defendants/third-party plaintiffs' motion for summary judgment dismissing plaintiff's claim pursuant to Labor Law § 241(6) is granted without opposition. Additionally, defendant/third-party plaintiff Roza's motion for summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims against it is granted without opposition.

Further, defendant/third-party plaintiff Skyline's motion for summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims is granted. "Section 200 of the Labor Law 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 N.Y.2d 876, 877 (1993). "An implicit precondition to this duty 'is that the party charged with that responsibility have the authority to control the activity bringing about the injury.'" *Id.*, citing *Russin v. Picciano & Son*, 54 N.Y.2d 311, 317 (1981). "[W]here such a claim arises out of alleged defects or dangers arising from a

subcontractor's methods or materials, recovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation." *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 504 (1993). "This rule is an outgrowth of the basic common-law principle that 'an owner or general contractor [sh]ould not be held responsible for the negligent acts of others over whom [the owner or general contractor] had no direction or control.'" *Id.*, citing *Allen v. Cloutier Constr. Corp.*, 44 N.Y.2d 290, 299 (1978).

In the instant action, defendant/third-party plaintiff Skyline has established its *prima facie* right to summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims on the grounds that it did not supervise, direct or control plaintiff's activities. As an initial matter, plaintiff testified that on the date of his accident, he did not receive any instruction or supervision from an employee of Skyline. Indeed, plaintiff testified that on the date of his accident, he only received instructions from his direct supervisor, Jorge, and not from any employee of Skyline.

In response, neither plaintiff nor All Day have put forth any evidence to raise an issue of fact sufficient to defeat defendant/third-party plaintiff Skyline's motion for summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims. Although plaintiff and All Day assert that Skyline's employees did indeed supervise, direct and control plaintiff's activities, such assertion is belied by the evidence in this case. Specifically, they point to the testimony of Skyline's Project Manager, Kevin Cahill, which references Teddy Psionos, Skyline's "job super," and James Trimgas, the "safety guy." However, Mr. Cahill did not testify that said individuals supervised, directed or controlled plaintiff's activities on the date of the accident. With regard to the "job super," Mr. Psionos, Mr. Cahill testified that he was

responsible for "supervision" but that "[h]e would stop by [the Project site] for an hour or two a day." Additionally, with regard to the "safety guy," Mr. Trimgas, Mr. Cahill testified that he "would go by [the Project site] once a week or sometimes twice a week, just to check on the site and talk to the men" and give safety talks. Neither plaintiff nor All Day have provided any testimony from Mr. Cahill that either Mr. Psionos or Mr. Trimgas supervised, directed or controlled plaintiff's activities, either on the date of the accident or at other times. Indeed, Mr. Cahill only testified that Mr. Psionos and Mr. Trimgas were at the Project during limited amounts of time performing, at most, general supervision. However, it is well-settled that evidence of general supervisory control, presence at the worksite or authority to enforce general safety standards is insufficient to establish the necessary control over the work activity that caused the injury. *See Alonzo v. Safe Harbors of the Hudson Housing Dev. Fund Co., Inc.*, 104 A.D.3d 446 (1st Dept 2013). Further, to the extent All Day points to other individuals referenced during Mr. Cahill's deposition, such references fail to raise an issue of fact as Mr. Cahill did not know whether said individuals were even employed by Skyline let alone whether they supervised or controlled plaintiff's activities.

Finally, the court turns to defendants/third-party plaintiffs' motion for summary judgment on their third-party complaint against All Day and an Order directing All Day to defend and indemnify them in the instant action. As an initial matter, the contention by All Day that third-party plaintiffs may not proceed with the third-party action on the ground that they have failed to comply with a condition precedent of the contract that the parties mediate before commencing an action is without merit. It is well-settled that a contractual right to mediation prior to commencing arbitration or a lawsuit may be waived by the party asserting the defense based on said party's degree of participation in the litigation. *See Stark v. Molod Spitz DeSantis & Stark,*

*P.C.*, 9 N.Y.3d 59 (2007). Specifically, when the party asserting the defense answered the complaint, which included affirmative defenses but not the defense of failure to comply with a condition precedent, as well as participated in discovery during the litigation, courts have found that said party waived its right to mediation under the agreement. *See Gaetano Development Corp. v. Lee*, 121 A.D.3d 838, 839 (2d Dept 2014)("[t]he Supreme Court properly denied that branch of defendants' motion which was to dismiss the entire complaint in Action No. 2 on the ground that the mediation and arbitration provisions of the subject contract barred Action No. 2. The litigation conduct of [said defendants]...in answering the complaint, asserting five affirmative defenses and a counterclaim, participating in discovery...were clearly inconsistent with the defendants' contention that the parties were obligated to settle their differences by arbitration or mediation. Therefore, such conduct constituted a waiver of these rights.") In the present case, All Day has waived any defense based on failure to mediate based on its participation in this action without objection.

Turning to the merits of the summary judgment motion, this court denies defendants/third-party plaintiffs' motion for summary judgment on their claim for contractual indemnification. A party is entitled to contractual indemnification when the intention to indemnify is "clearly implied from the language and purposes of the entire agreement and the surrounding circumstances." *Torres v. LPE Land Dev. & Constr., Inc.*, 54 A.D.3d 668 (2d Dept 2008). A party seeking contractual indemnification "must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor." *Cava Constr. Co., Inc. v. Gealtex Remodeling Corp.*, 58 A.D.3d 660, 662 (2d Dept 2009).

Here, defendants/third-party plaintiffs have failed to establish their *prima facie* right to

summary judgment on their claim for contractual indemnification against All Day, including indemnification for attorney's fees. Pursuant to Section 4.6.1 of the Contract,

> To the fullest extent permitted by law, [All Day] shall indemnify and hold harmless [Roza], [Skyline],...from and against claims, damages, losses and expenses, including, but not limited to reasonable attorney's fees...arising out of or resulting from performance of [All Day's] Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury...*but only to the extent caused by the negligent acts or omissions of [All Day], [All Day's] Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable*, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder....

(emphasis added). Based on this contractual provision, this court finds that defendants/third-party plaintiffs have failed to establish their right to summary judgment on their claim for contractual indemnification against All Day as it has not been determined that plaintiff's bodily injury claims were caused by the negligent acts or omissions of All Day, anyone employed by All Day or by plaintiff himself. Defendants/third-party plaintiffs' request that if this court finds that it is premature to grant them summary judgment on their claim for contractual indemnification, then it issue a conditional grant of summary judgment on that issue is denied as it is improper to grant summary judgment, even conditionally, where there are issues as to whose negligence caused the plaintiff's accident. *See Bellefleur v. Newark Beth Israel Med. Ctr.*, 66 A.D.3d 807, 809 (2d Dept 2009)("the Supreme Court should not have conditionally granted that branch of the third-party plaintiffs' motion for summary judgment on their cause of action for contractual indemnification, as there are triable issues of fact as to whose negligence, if any, caused the plaintiff's accident.")

Additionally, defendants/third-party plaintiffs' motion for summary judgment on their third-party complaint's claim for breach of contract against All Day for failure to procure

insurance is denied. Defendants/third-party plaintiffs assert that All Day has breached the portion of the Contract that requires All Day to name Skyline and Roza as additional insureds on its liability insurance policy. Specifically, defendants/third-party plaintiffs assert a claim for breach of contract against All Day based solely on All Day's insurer's refusal to accept Skyline and Roza's tender of their defense in the action. Indeed, they do not allege that All Day failed to name them as additional insureds on its policy. However, this court finds that defendants/third-party plaintiffs have failed to establish their *prima facie* right to summary judgment on said claim as All Day's insurer's failure to defend Skyline and Roza is not evidence that All Day breached their agreement as a matter of law.

To the extent defendants/third-party plaintiffs move for summary judgment on the remainder of their third-party complaint, which includes claims for common law indemnification and contribution, their motion is denied as they have failed to brief said arguments in their motion papers.

Finally, that portion of defendants/third-party plaintiffs' motion papers which seek summary judgment dismissing All Day's counterclaims for indemnification, contribution and breach of contract is denied as defendants/third-party plaintiffs failed to move for such relief in their Notice of Motion.

Accordingly, the motions are resolved as set forth herein. This constitutes the decision and order of the court.

Date: 3/9/16

Enter: _____
J.S.C.
CYNTHIA S. KERN J.S.C.