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

SALADIN DEEN,

Plaintiff,

-against-

CAVA CONSTRUCTION & DEVELOPMENT, INC., CAVA CONSTRUCTION CO., INC. and MCSAM DOWNTOWN LLC,

Defendants.

Index No.: 152345/2014

DECISION/ORDER

Motion Sequences 002 and 003

CAVA CONSTRUCTION & DEVELOPMENT, INC., CAVA CONSTRUCTION CO., INC. and MCSAM DOWNTOWN LLC,

Third-Party Plaintiff,

-against-

NEW YORK HOIST LLC.,

Third-Party Defendant.

NEW YORK HOIST LLC.,

Second Third-Party Plaintiff,

-against-

NYC CRANE HOIST & RIGGING, LLC.

Second Third-Party Defendant.

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

Papers	Numbered
Notice of Motion/Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed	1-3
Opposition Affidavits/Affirmations and Memo of Law annexed	4-8

Reply Affidavits/Affirmations/Memos of Law annexed 9-11

ERIKA M. EDWARDS, J.S.C.:

Plaintiff Saladin Deen ("Plaintiff") brought this action against Defendants Cava Construction & Development, Inc., Cava Construction Co., Inc. (collectively "Cava") and McSam Downtown LLC. ("McSam") for injuries he sustained while working on a hotel construction site. Cava brought a third-party action against New York Hoist, LLC. ("NY Hoist") and NY Hoist brought a second third-party action against NYC Crane Hoist & Rigging, LLC. ("NYC Crane"), which was subsequently discontinued by Stipulation. Cava was the general contractor and McSam was the owner of the site. Cava subcontracted with NY Hoist for NY Hoist to install a hoist, including delivery, assembly, dismantling and removal. NY Hoist subcontracted the work to NYC Crane. NY Hoist was not present at the site, but it is alleged to have supplied the equipment for the site. Plaintiff and two others who were working with him at the time of the accident were employed by NYC Crane.

Plaintiff's complaint includes claims against Cava and McSam based on common law negligence and Labor Law §§ 200, 241(6) and 240(1). Plaintiff did not add NY Hoist or NYC Crane as direct defendants, so Plaintiff has no direct claims against them under the Labor Law provisions or based on common law negligence. Cava's and McSam's third-party action against NY Hoist includes breach of contract claims for contractual and common law indemnification, defense and contribution, failure to name Cava and McSam as additional insureds on its insurance policies and breach of contract for performing work in a negligent manner. Although NY Hoist's second third-party claims against NYC Crane were discontinued, Cava's and McSam's cross-claims against NYC Crane remain.

Plaintiff moves for partial summary judgment in his favor on liability as to his Labor Law § 240(1) claim against Defendants Cava and McSam under motion sequence number 002. Defendants Cava and McSam cross-move for summary judgment dismissal of Plaintiff's complaint and all cross-claims against them and for summary judgment in their favor as to their third-party claims against NY Hoist and claims against NYC Crane for contractual defense and indemnification. NY Hoist and NYC Crane move for summary judgment dismissal of Plaintiff's complaint and for dismissal of all of Cava's and McSam's claims against them under motion sequence 003. These three motions are consolidated for the purposes of this decision.

Plaintiff does not oppose Cava's, McSam's, NY Hoist's and NYC Crane's arguments in favor of dismissal of Plaintiff's Labor Law §§ 200 and 241(6) claims. Cava, McSam, NY Hoist and NYC Crane oppose Plaintiff's partial summary judgment motion and Cava, McSam, NY Hoist and NYC Crane oppose each other's summary judgment motions pertaining to Cava and McSam's cross-claims against NY Hoist and NYC Crane.

For the foregoing reasons, the court 1) denies Plaintiff's motion for partial summary judgment in its favor as to liability on his Labor Law § 240(1) claim against Defendants Cava and McSam; 2) denies Cava's, McSam's, NY Hoist's and NYC Crane's motions for summary judgment dismissal of Plaintiff's Labor Law § 240(1) claim against them; 3) grants Cava's, McSam's, NY Hoist's and NYC Crane's motions for summary judgment dismissal of Plaintiff's

common law negligence and Labor Law §§ 200 and 241(6) claims against Cava and McSam; 4) grants in part and denies in part Cava's and McSam's motion for summary judgment in their favor as to their third-party claims for contractual defense and indemnification as against NY Hoist and NYC Crane by granting summary judgment in favor of both Cava and McSam as against NYC Crane, granting summary judgment in favor of Cava as against NY Hoist, but denying summary judgment in favor of McSam as against NY Hoist; and 5) denies in part and grants in part NY Hoist's and NYC Crane's motion for summary judgment dismissal of Cava's and McSam's claims against them by (a) denying dismissal of Cava's and McSam's claims for contractual defense and indemnification against NYC Crane, (b) denying dismissal of Cava's claims for contractual defense and indemnification against NY Hoist, and (c) granting dismissal of McSam's claims for contractual defense and indemnification against NY Hoist, (d) granting dismissal of Cava's and McSam's claims for common law defense and indemnification against NY Hoist and NYC Crane, and (e) granting dismissal of Cava's and NYC Crane's claims against NY Hoist for failure to name them as additional insureds and breach of contract for performing work in a negligent manner.

Depositions of Plaintiff, his two co-workers and all parties were completed. Plaintiff alleged that the accident occurred on November 19, 2013, at a construction site for a new 50-story high-rise hotel located at 99 Washington Street, New York, New York. Plaintiff alleged that he was injured when a motor weighing several hundred pounds dropped onto his left hand, causing severe injuries. The accident occurred when Plaintiff and his co-workers were attempting to hoist the motor, which was encased in a yellow frame, from the ground to the roof using a gin pole (mini crane) which was attached to the roof of a hoist cab and a tag line (cable). There was a three-foot parapet wall on top of the roof and Plaintiff and his co-workers had to lift the motor over the wall to place it down on top of the roof. Plaintiffs co-workers developed the plan and they rode the hoist to the top of the roof. One of the co-workers directed Plaintiff to push the motor, while one operated the gin pole and the other pulled the tag line so they could swing the motor over the wall. While Plaintiff was standing on a metal platform which protruded from the roof, he leaned over the wall with his hands on the frame. The motor was about two feet above the roof, eight to ten inches above the wall and about level with Plaintiff's chest. One of Plaintiff's co-workers announced that he was lowering the motor and proceeded to do so. As the co-worker lowered the motor, it dropped onto Plaintiff's hand and crushed his thumb between the motor and the top of the roof wall.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York*

Univ. Med. Center, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]). Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

A. Plaintiff's Labor Law § 240(1) Claims

Labor Law § 240(1) states that all contractors, owners and their agents "in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed" (Labor Law § 240[1]). Labor Law § 240(1) imposes absolute liability upon owners and contractors who fail to provide or erect safety devices necessary to give proper protection to a worker who sustains injuries proximately caused by that failure (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]). The purpose of the statute is to protect workers from elevation-related risks by placing the ultimate responsibility for construction safety practices on the owner and contractor and it is to be construed as liberally as necessary to accomplish that purpose (*id.*; *Gordon v Eastern Ry. Supply, Inc.*, 82 NY2d 555, 559 [1993]).

To succeed under Labor Law § 240(1), a plaintiff must demonstrate that the statute was violated and that the violation was the proximate cause of his injury (*Cahill v Triborough Bridge and Tunnel Authority*, 4 NY3d 35, 39 [2004]). A plaintiff must also demonstrate that the injury sustained is the type of elevation-related hazard to which the statute applies, that there was a failure to use, or an inadequacy of, a safety device of a kind set forth in the statute and that the fall or the application of an external force was a foreseeable risk of the task being performed (*see Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [1st Dept 2001]; *Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 267 [1st Dept 2007]).

An injured employee's comparative negligence does not prevent him from prevailing under the statute, however, an employer is not liable if the employee's own negligence was the sole proximate cause of his injuries, or if the employer made adequate safety devices available and instructed the employee on how to use them, but the recalcitrant employee failed to use the safety device as instructed (*Cahill,* 4 NY3d at 39-40; *Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 286-287 [2003]).

Furthermore, defendants are liable for all normal and foreseeable consequences of their acts and to establish a prima facie case, a plaintiff is not required to demonstrate the precise way the accident occurred or that the injuries were foreseeable (*Gordon v Eastern Ry. Supply, Inc.*, 82 NY2d 555, 562 [1993]). A plaintiff need only demonstrate that the risk of some injury from defendants' conduct was foreseeable (*id.*). Additionally, the determination of the type of protective safety device required for a particular job depends on the foreseeable risks of harm presented by the nature of the work being performed (*Buckley*, 44 AD3d at 268). Proper protection means that the device must be appropriately placed or erected so that it would have

safeguarded the employee and must itself be adequate to protect against the hazards entailed in the task assigned (*Felker v Corning Inc.*, 90 NY2d 219, 224 [1997]).

Courts must consider whether a plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential (*Runner v New York Stock Exchange, Inc.*, 13 NY3d 599, 603 [2009]; *Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015]). However, liability under the statute is contingent upon the existence of a hazard contemplated in § 240(1) and the absence or inadequacy of a safety device of the kind enumerated therein (*Narducci v Manhasset Bay Associates*, 96 NY2d 259, 267 [2001]). The contemplated hazards are those 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 the difference between the elevation level where the worker is positioned and a higher level of the materials or load being hoisted or secured (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]).

A plaintiff has the burden of showing that an elevation-related risk existed, that adequate safety devices of the kind enumerated in Labor Law § 240(1), which could have prevented the accident, were not provided, and that plaintiff was obligated to work at a height to complete the task (*Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 681 [2007]; *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011].

Plaintiff argues in substance that he is entitled to summary judgment in his favor because his injury was caused by an elevated-related risk. According to Plaintiff, the accident occurred when the motor that was being hoisted up to the roof fell onto Plaintiff's hand because of an inadequate safety device contemplated by Labor Law § 240(1). Plaintiff argues that the gin pole boom was not long enough, so they could not raise the motor over the wall and place it onto the roof. Therefore, Plaintiff and his co-workers had to manually swing the motor over the top of the wall while it was suspended in the air.

Although some of the arguments raised in Cava's and McSam's papers differ from those raised in NY Hoist's and NYC Crane's papers, the general principles relied upon are substantially similar. Even though Plaintiff does not have any direct claims against NY Hoist and NYC Crane, they oppose Plaintiff's summary judgment motion as to Plaintiff's claims against Cava and McSam and they submitted an expert affidavit in support of their motion and in opposition to Plaintiff's motion.

Cava, McSam, NY Hoist and NYC Crane all dispute Plaintiff's version of how the accident occurred. They argue that they were not negligent and that they cannot be held liable for Plaintiff's injuries under any of Plaintiff's causes of action. They also argue in substance that Plaintiff's Labor Law § 240(1) claims do not apply because Plaintiff's injury was not caused by an elevated-related risk, there was no significant elevation differential and it was not caused by inadequate protection or an inadequate safety device. They further argue that Plaintiff testified that he did not see the motor drop. Additionally, they assert that the motor could not have fallen on Plaintiff's thumb from an elevated height because Plaintiff was next to the frame on one side of the roof parapet wall, leaning over towards the motor that was suspended on the other side of the wall, holding his hand on the side of the frame in the zone of danger directly in the path of

the motor. Thus, Plaintiff's thumb was crushed when they swung the motor to the side and not while it was being dropped.

They also argue that Plaintiff's negligence was the sole proximate cause of the accident because Plaintiff failed to follow orders to push the motor and he held it by placing his hand inside of the frame, between the frame and the motor, with his thumb on the outside of the frame. Plaintiff crushed his thumb between the frame and the wall because he negligently left his hand in the zone of danger and failed to move it when his co-worker told him that he was lowering the motor. In contradiction to Plaintiff's description of the accident, one of Plaintiff's co-workers testified in substance that the motor fell onto Plaintiff's hand while it was on top of the wall when Plaintiff pulled on the frame which caused the motor to shift.

NY Hoist's and NYC Crane's expert stated in his affidavit that Plaintiff's Labor Law § 240(1) claim should not apply since there was no safety device that would have prevented Plaintiff from having his left hand caught between the suspended motor and the roof parapet wall, the gin pole was the standard size and the gin pole and tag line constituted a reasonably safe and adequate means and method to accomplish the task of transporting the motor from the top of the hoist car to the roof.

In applying these legal principles to the facts of this case, the court determines that Plaintiff, Cava, McSam, NY Hoist and NYC Crane all failed to meet their initial burdens of establishing their entitlement to summary judgment in their favor as a matter of law as to Plaintiff's Labor Law § 240(1) claim against Cava and McSam. Additionally, even if they had met their burdens, then all parties raised material issues of disputed facts which preclude summary judgment on this claim. Some of these issues of material fact in dispute, include, but are not necessarily limited to, whether Plaintiff's injury occurred from the motor falling onto his thumb and crushing it between the frame and the roof wall, whether it occurred from the motor swinging to the side and crushing Plaintiff's thumb between the frame and the roof wall, or whether Plaintiff caused the motor to fall by pulling on the frame; whether Plaintiff's injury was caused by an elevated-related hazard contemplated by Labor Law § 240(1); whether the height differential was significant enough to trigger the application of Labor Law § 240(1); whether Plaintiff's negligent conduct was the sole proximate cause of Plaintiff's injuries; and whether the gin pole used was an inadequate safety device because it was too short or that another type of hoist should have been used for Plaintiff to safely complete the assigned task. Therefore, the court denies all motions for summary judgment regarding Plaintiff's Labor Law § 240(1) claims against Cava and McSam.

B. Plaintiff's Remaining Claims

Additionally, Cava, McSam, NY Hoist and NYC Crane set forth extensive legal and factual arguments in favor of dismissal of Plaintiff's common law negligence and Labor Law §§ 200 and 241(6) claims against Cava and McSam and Plaintiff failed to dispute their claims. Therefore, the court grants dismissal of Plaintiff's common law negligence and Labor Law §§ 200 and 241(6) claims against Cava and McSam. Additionally, even if Plaintiff had opposed dismissal of these claims, based on the evidence and relevant case law, the court still would have dismissed them against Cava and McSam.

C. Cava's and McSam's Claims Against NY Hoist and NYC Crane

A party's right to indemnification may arise from a contract or may be implied based upon common law principles of what is fair and proper between the parties (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374-375 [2011]). A party is entitled to full contractual indemnification when "the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances" (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987] [internal quotation marks and citations omitted]). According to basic contract principles, when parties agree "in a clear, complete document, their writing should . . . be enforced according to its terms" (*TAG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507, 512-513 [2008] [internal quotation marks and citations omitted]).

Generally, a defendant "whose liability to an injured plaintiff is merely secondary or vicarious is entitled to common-law indemnification from the actual wrongdoer who by actual misconduct caused the plaintiff's injuries, and whose liability to the plaintiff is therefore primary" (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 366 [1st Dept 2006] [internal quotation marks and citations omitted]). It is premised on "vicarious liability without actual fault," which requires that "a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine" (*id.* at 367 [internal quotation marks and citations omitted]). The shifting of loss under common law indemnification may be implied to prevent the unjust enrichment of one party at the expense of another (*id.* at 375). However, 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 its own part" (*id.* at 377-378).

Cava and McSam argue that the court should grant their cross-motions for summary judgment on their claims for defense, indemnification and contribution as against NY Hoist and NYC Crane pursuant to the terms of the purchase order between Cava and NY Hoist and the subcontract between NY Hoist and NYC Crane. NY Hoist and NYC Crane oppose this portion of the cross-motion and argue in substance that they do not owe Cava or McSam defense, indemnification or contribution. They argue that there is no allegation that any negligence on the part of New York Hoist proximately caused or contributed to Plaintiff's injuries, the indemnification clause in the agreement between Cava and NY Hoist only protects Cava as the general contractor and not McSam as the owner of the site, and NY Hoist only contracted the work to NYC Crane, but did not direct, supervise, or control NYC Crane's employees. Additionally, they allege that the indemnification clauses in both agreements violate General Obligation Law 5-322.1 because they seek to indemnify Cava for its own negligence, they are broad, unlimited in scope, and neither contains a savings clause limiting it "to the fullest extent permitted by law." Furthermore, there is no provision in the agreement requiring NY Hoist to provide additional insured coverage to Cava or McSam. They also argue that NYC Crane is immune from being held liable for Plaintiff's injuries as his employer based on worker's compensation provisions, so they cannot be held responsible for common law indemnification or contribution claims. Also, their subcontract listed Cava Construction as the owner and failed to mention McSam, so the court must enforce the contract as written.

Based on the indemnification provisions in the agreements between Cava and NY Hoist and between NY Hoist and NYC Crane, the court grants the portions of Cava's and McSam's

cross-motion for summary judgment in their favor as to their claims for contractual defense and indemnification against NYC Crane, grants summary judgment in Cava's favor for contractual defense and indemnification against NY Hoist, and denies summary judgment in McSam's favor for contractual defense and indemnification against NY Hoist. Although there is a discrepancy regarding the name of the owner in the NYC Crane contract, it is clear from the facts that there was an error in the contract and there is no dispute that McSam was the owner of the premises at all relevant times.

As to NY Hoist's and NYC Crane's motion for summary judgment dismissal of Cava's and McSam's third-party claims against NY Hoist and indemnification claims against NYC Crane, the court finds that NY Hoist and NYC Crane established their entitlement to summary judgment dismissal of all claims against them except for Cava's and McSam's claims for contractual defense, indemnification and contribution against NYC Crane and Cava's claims for contractual defense, indemnification and contribution against NY Hoist. Cava and McSam failed to raise any material issues of fact to challenge dismissal of their common law defense and indemnification claims or their remaining third-party claims against NY Hoist so these claims are dismissed.

Therefore, as set forth above, the court denies all summary judgment motions to dismiss Plaintiff's Labor Law § 240(1) claim against Cava and McSam, grants all motions for summary judgment dismissal of Plaintiffs claims under common law negligence and Labor Law §§ 200 and 241(6) against Cava and McSam; grants Cava's and McSam's cross-motion for summary judgment in their favor as to their contractual defense and indemnification claims against NYC Crane; grants Cava's cross-motion for summary judgment in its favor as to its contractual defense and indemnification claim against NY Hoist; grants NY Hoist and NYC Crane's motion to dismiss Cava's and McSam's claims against them for common law indemnification, failure to name them as additional insureds and breach of contract for its negligent work performance.

As such, Plaintiff's Labor Law 240(1) claim is Plaintiff's only remaining claim against Cava and McSam, NY Hoist owes Cava contractual defense and indemnity and NYC Crane owes Cava and McSam contractual defense and indemnity.

Therefore, it is hereby

ORDERED that as to motion sequence number 002, the court denies Plaintiff Saladin Deen's motion for partial summary judgment in his favor on liability as to his Labor Law § 240(1) claim against Defendants Cava Construction & Development, Inc., Cava Construction Co., Inc. and McSam Downtown LLC.; and it is hereby

ORDERED that as to the cross-motion for summary judgment in favor of Defendants Cava Construction & Development, Inc., Cava Construction Co., Inc. and McSam Downtown LLC. under motion sequence number 002, the court denies the cross-motion in part and grants it in part by 1) denying dismissal of Plaintiff Saladin Deen's Labor Law § 240(1) claim as against all Defendants; 2) granting dismissal of Plaintiff's claims based on common law negligence and Labor Law §§ 200 and 241(6) as against all Defendants; 3) granting summary judgment in favor of Defendants Cava Construction & Development, Inc. and Cava Construction Co., Inc. as to their claims for contractual defense and indemnification from Third-Party Defendant/Second

Third-Party Plaintiff New York Hoist, LLC. and Second Third-Party Defendant New York City Crane Hoist & Rigging, LLC.; 4) granting summary judgment in favor of Defendant McSam Downtown LLC. as to its claims for contractual defense and indemnification as against New York City Crane Hoist & Rigging, LLC.; and 5) denying summary judgment in favor of Defendant McSam Downtown LLC. as to its claims for contractual defense and indemnification against New York Hoist, LLC.; and it is hereby

ORDERED that as to motion sequence number 003, the court denies in part and grants in part Third-Party Defendant/Second Third-Party Plaintiff New York Hoist, LLC.'s and Second Third-Party Defendant New York City Crane Hoist & Rigging, LLC.'s motion for summary judgment dismissal of Plaintiff's complaint and all claims and cross-claims against them and the court 1) denies dismissal of Plaintiff Saladin Deen's Labor Law § 240(1) claim; 2) grants dismissal of Plaintiff's claims based on common law negligence, Labor Law and Labor Law §§ 200 and 241(6); 3) denies dismissal of Defendants Cava Construction & Development, Inc.'s and Cava Construction Co., Inc.'s claims for contractual defense and indemnification against New York Hoist, LLC. and New York City Crane Hoist & Rigging, LLC.; 4) denies dismissal of Defendant McSam Downtown LLC.'s claims for contractual defense and indemnification against New York City Crane Hoist & Rigging, LLC.; 5) grants dismissal of Defendant McSam Downtown LLC.'s claims for contractual defense and indemnification against New York Hoist, LLC.; 6) grants dismissal of Defendants Cava Construction & Development, Inc.'s, Cava Construction Co., Inc.'s and McSam Downtown LLC.'s claims for common law defense and indemnification against New York Hoist, LLC. and New York City Crane Hoist & Rigging, LLC.; and 7) grants dismissal of Defendants Cava Construction & Development, Inc.'s, Cava Construction Co., Inc.'s and McSam Downtown LLC.'s third-party claims against New York Hoist, LLC. for its failure to name them as additional insureds and breach of contract for performing work in a negligent manner; and it is hereby

ORDERED that the court denies all requested relief not expressly granted herein.

Date: September 8, 2017

HON. ERIKA M. EDWARDS