SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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NESTOR L. MEDERO JR. and ANNETTE MEDERO,

Index No.: 155407/2014

Plaintiffs,

-against-

570 FORT WASHINGTON AVENUE INCORPORATED and GRENFELL REALTY CO., LLC.,

Defendants.

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570 FORT WASHINGTON AVENUE INCORPORATED,

Third-Party Index No.: 595652/2015

Third-Party Plaintiff,

-against-

VEBICON CONSTRUCTION CORP.,

Third-Party Defendant.

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Schecter, J.

Motion sequence numbers 004 and 005 are consolidated for disposition.

This is an action to recover damages for personal injuries allegedly sustained by a plumber in two accidents. The first accident occurred on July 9, 2012 (the First Accident), when plaintiff fell after he braced himself on a wall strut that broke while working at a construction site located at 570 Fort Washington Avenue, apartment 36-A, New York, New York (the Fort Washington Premises). The second accident occurred on July 26, 2012 (the Second Accident), when he slipped and fell on a mixture of flux and water while working at a construction site located at 80-15 Grenfell Street, Queens, New York (the Grenfell Premises).

In motion sequence number 004, plaintiffs Nestor L. Medero Jr. (plaintiff) and Annette Medero move, pursuant to CPLR 3212, for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim as against defendant/third-party plaintiff 570 Fort Washington Avenue Incorporated (570 Fort Washington). 570 Fort Washington cross moves,

pursuant to CPLR 3212, for summary judgment dismissing the Labor Law § 240 (1) claim against it.

In motion sequence number 005, third-party defendant Vebicon Construction Corp. (Vebicon) moves, pursuant to CPLR 3212, for summary judgment dismissing the third-party complaint, which relates solely to the First Accident.[1] 570 Fort Washington, in turn, cross moves for summary judgment on its third-party claims for contribution and common-law indemnification against Vebicon.

Defendant Grenfell Realty Co., LLC. (Grenfell) cross moves--in motion sequence number 004--for summary judgment dismissing the complaint against it, which pertains solely to the Second Accident.[2]

BACKGROUND

570 Fort Washington was the owner of the Fort Washington Premises, where the First Accident occurred. It hired nonparty Danton Plumbing and Heating Corp. (Danton) to perform plumbing work there as part of a bathroom-renovation project. 570 Fort Washington also hired Vebicon to perform carpentry work at the Fort Washington Premises.

Grenfell was the owner of the Grenfell Premises, where the Second Accident occurred. Grenfell also hired Danton to perform plumbing work in connection with renovation of a bathroom.

Plaintiff performed plumbing work for Danton at both locations.

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[1] A review of the record reveals that there are no cross claims against Vebicon so Vebicon's motion to dismiss them is moot.

[2] Due to a clerical error in plaintiffs' complaint and bill of particulars, plaintiffs alleged a Labor Law § 240 (1) claim against Grenfell. In their opposition to Grenfell's cross motion, plaintiffs withdrew the claim.

The First Accident

Plaintiff's Deposition Testimony

Plaintiff testified that he was employed by Danton as a plumber on the day of the First Accident. Danton's work at the 570 Fort Washington Premises included the gut renovation of the apartment's bathrooms, including the installation of shower stalls (the Fort Washington Project). On the day of the First Accident, plaintiff was installing a waste pipe that ran beneath the floor beams in the shower stall. Plaintiff asserted that he received all his direction from Danton employees.

Plaintiff testified that Danton supplied his safety equipment, including harnesses and lanyards. He explained that "it's not normal for [Danton employees] to use that type of equipment in shower stalls" (plaintiff's tr at 143).

Plaintiff also testified that, prior to the day of the First Accident, he had demolished the tiles and the shower floor in the apartment's master bathroom and had removed the shower pan, leaving only the structural floor beams. He explained that the floor beams, as well as some of the wall struts, had water damage and needed to be replaced. Therefore, plaintiff stopped work in the bathroom until 570 Fort Washington hired carpenters to replace the beams.

At the time of the First Accident, the carpenters had replaced the floor beams, but not the wall struts. The carpenters had also put down a sheet of plywood over the floor beams as part of their work, but they removed it in order to give plaintiff access to his work area.

Plaintiff testified that, just before the First Accident, he entered the shower stall, straddled a beam and began installing the waste pipe. He had worked in this manner on previous occasions at other job sites. At some point, plaintiff needed to stand up. In order to steady himself as he was standing, plaintiff put his hand on a vertical wooden wall strut (the Strut). The Strut did not appear to have any water damage. As he began lifting himself up, the Strut broke,

causing him to fall on top of the floor beams, and pin his right leg between two of the them. As a result, plaintiff injured his knee.

Deposition Testimony of Kenneth Rotner (570 Fort Washington)

Kenneth Rotner testified that, on the day of the First Accident, he was an owner and the managing agent of the Fort Washington Premises. Rotner testified that, on behalf of 570 Fort Washington, he hired two contractors to renovate the apartment where the First Accident occurred: Danton for the plumbing and Vebicon for carpentry, tile and flooring.

Rotner further testified that, while 570 Fort Washington employed a superintendent, the superintendent did not direct, control or monitor any of the contractors on the Fort Washington Project.

Deposition Testimony of Vojciech Czarnik (Vebicon)

Vojciech Czarnik testified that, on the day of the First Accident, he was the owner of Vebicon, a construction company specializing in apartment repair and renovation, including painting, tiling and floor work. Vebicon was not a general contractor for the Fort Washington Project, and it did not hire or supervise any other contractor. Czarnik explained that Rotner hired Vebicon to renovate the subject apartment at the Fort Washington Premises. Notably, aside from invoices, there was no written agreement between Vebicon and 570 Fort Washington.

Czarnik testified that, with respect to bathroom renovations, normally, Vebicon would not begin its work until after the plumbers had finished their work. Only then would Vebicon begin installing plywood sheets to patch the holes in the floors created by the plumbers. Thereafter, Vebicon would finish its work by pouring cement and laying tile.

Czarnik testified that, prior to the day of the First Accident, Danton had demolished the floor in the subject bathroom. He also testified that Vebicon did not replace any wood in the walls at the Fort Washington Premises.

Expert Affidavit of Herbert Heller, Jr. P.E.

570 Fort Washington submits the affidavit of Herbert Heller, Jr., P.E., an engineering expert, who stated, in relevant part, as follows:

> "Plaintiff's actions of sitting or kneeling on a beam is the usual and customary method to install the waste piping under the beams. Furthermore . . . the spaces between the floor beams in the shower stall were open to facilitate the normal and customary access to properly install the waste piping below the floor beams"

(570 Fort Washington's notice of motion, exhibit J, Heller aff, at 17).

The Second Accident

Plaintiff's Deposition Testimony

Plaintiff testified that, two weeks after the First Accident, although he was still hurt, he began working for Danton at the Grenfell Premises, a residential building. His work included the removal and replacement of a bathtub drain pipe.

Prior to plaintiff's arrival at the Grenfell Premises, Grenfell's superintendent had shut off the water to the bathroom sink and removed the sink. On the day of the Second Accident, plaintiff and his coworker demolished portions of the bathroom floor, in order to access the drain pipes. Prior to starting their work, plaintiff and his coworker did not notice any water on the bathroom floor. However, after they began demolition, they noticed that the bathroom sink's pipe was leaking water in a "little stream" (*id.* at 286).

As the valve that shut off the water to the bathroom sink did not close completely, plaintiff and his coworker could not stop the flow of water from the sink's pipe. Instead, they put rags and other materials on the floor to create a barrier around the leak and direct it to the back of the bathroom, away from their work area. Neither plaintiff, nor his coworker, informed anyone about the leak prior to plaintiff's accident. After redirecting the water, they returned to their work, which included soldering copper pipes together. To do so, plaintiff first cleaned the

pipe ends by applying, and then heating, a paste called "flux" (*id.* at 185). Plaintiff explained that, when heated, flux bubbles and " sprays and the sprays tend to fly on the floor and the walls" (*id.* at 186). Plaintiff also explained that, while flux is not slippery when it is dry, flux can become very slippery when it becomes wet, as "it turns the water and itself into like an oily substance" (*id.* at 323).

After plaintiff and his coworker had worked in the bathroom for approximately an hour, and after heating some flux and soldering some pipes together, plaintiff stood up to get an additional piece of pipe. Plaintiff did not observe any water on the floor. Plaintiff "thought the barrier was going to keep the water away" from where he was walking (*id.* at 190). However, when plaintiff took a few steps, he slipped and fell on the same knee that he had injured in the First Accident. After his fall, plaintiff noticed that he had slipped on a mixture of flux and water.

Deposition Testimony of Thomas Rodriguez (Grenfell)

Thomas Rodriguez testified that, on the day of the Second Accident, he was employed by Grenfell as the superintendent at the Grenfell Premises. His duties included maintenance of the building and of the individual apartments. He testified that although he was present at the Grenfell Premises he did not witness the Second Accident. Rodriguez did not find out about the Second Accident until the following day. He never learned what caused the Second Accident.

Rodriguez testified that, the day before Danton was scheduled to work at the Grenfell Premises, he removed the sink in the bathroom. Approximately 20 minutes later, after he finished cleaning up, Rodriguez gathered his tools and left the apartment. Rodriguez asserted that, at that time, "[n]othing was leaking" (Rodriguez tr at 31). Rodriguez did not return to the apartment that day. Rodriguez maintained that he did not receive any complaints about any unsafe conditions in the bathroom prior to, or on the day of, the Second Accident.

DISCUSSION

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once prima facie entitlement has been established, in order to defeat the motion, the opposing party must "'assemble, lay bare, and reveal his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial . . . and it is insufficient to merely set forth averments of factual or legal conclusions'" (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014], quoting *Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

The First Accident

Labor Law § 240 (1) Claim Against 570 Fort Washington

As to the First Accident (wherein plaintiff was injured when the strut that he was leaning on broke), plaintiffs move for summary judgment in their favor as to liability on the Labor Law § 240 (1) claim against 570 Fort Washington. 570 Fort Washington cross moves for summary judgment dismissing the claim against it.

Labor Law § 240 (1), also known as the Scaffold Law, provides, as relevant:

> "All contractors and 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) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person'" (*John v Baharestani*, 281 AD2d 114, 118 [1st Dept 2001], quoting *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Section 240 (1) "is designed to protect workers from gravity-related hazards . . . and must be liberally construed to accomplish the purpose for which it was framed" (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006] [internal citations omitted]). However, not every worker who falls at a construction site is afforded the protections of Labor Law § 240 (1), and "a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace" (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]).

Importantly, Labor Law § 240 (1) "relates only to 'special hazards' presenting 'elevation-related risk[s]'" (*Nicometi v Vineyards of Fredonia, LLC*, 25 NY3d 90, 97 [2015], quoting *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 514 [1991]), and liability may be imposed under the statute only where 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 Exch., Inc.*, 13 NY3d 599, 603 [2009]; *see also Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001] [liability "is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein"]).

Therefore, to prevail on a section 240 (1) claim, a plaintiff must show that the statute was violated and that the violation was a proximate cause of the plaintiff's injuries (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

As to the First Accident, plaintiffs argue that they are entitled to summary judgment in their favor on the Labor Law § 240 (1) claim, because the injuries that plaintiff sustained

resulted from the type of elevation-related hazard that section 240 (1) protects against. Plaintiffs argue that plaintiff was subject to an elevation risk, because the floor beams that plaintiff was working on were located approximately four feet above the ceiling of the apartment below.

Although plaintiff may have been working at a height at the time of the accident, he fell to the same level as his work site. Importantly, where a "worker's fall occurred at the same level as his work site, the injury cannot be said to have resulted from the type of elevation-related risk contemplated by [section 240 (1)]" (*Cundy v. New York State Elec. & Gas Corp.*, 273 AD2d 743, 744 [3d Dept 2000], *lv denied* 95 NY2d 766 [2000]).

Thus, plaintiffs' motion for summary judgment on their Labor Law § 240 (1) claim as against 570 Fort Washington is denied and 570 Fort Washington's cross motion for judgment on that claim is granted.

570 Fort Washington's Third-Party Claims Against Vebicon

In the third-party complaint, which pertains solely to the First Accident, 570 Fort Washington asserts causes of action against Vebicon for contribution, common-law and contractual indemnification and breach of contract for the failure to procure insurance. Vebicon moves for summary judgment dismissing the entire third-party complaint. 570 Fort Washington cross moves for summary judgment in its favor on its third-party claim for common-law indemnification as against Vebicon.

Contractual Indemnification and Breach of Contract

A review of the record establishes that there was no contract between 570 Fort Washington and Vebicon that contained an indemnification provision. Accordingly, Vebicon is entitled to the dismissal of the third-party claims for contractual indemnification and breach of contract for the failure to procure insurance.

Contribution and Common-Law Indemnification Claims

"Contribution is available where two or more tortfeasors combine to cause an injury and is determined in accordance with the relative culpability of each such person" (*Godoy v Abamaster of Miami*, 302 AD2d 57, 61 [2d Dept 2003]).

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], quoting *Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]).

Vebicon argues that it is entitled to dismissal of the contribution and common-law indemnification claims against it, because it was not guilty of any negligence in connection with the First Accident. Specifically, Vebicon argues that it did not install or replace the Strut that ultimately broke, causing plaintiff to fall and become injured.

In opposition and in support of its own cross motion, 570 Fort Washington argues that Vebicon negligently created the subject dangerous condition when it removed the plywood in the shower stall, thereby forcing plaintiff to work from atop the beams.

Here, there is no evidence establishing that any act of negligence by Vebicon contributed to plaintiff's accident. Vebicon did not install or replace the Strut. In addition, the removal of the plywood in the shower stall did not cause plaintiff's accident and, in fact, the plywood was removed so that plaintiff could access his work area.

Thus, Vebicon's motion for summary judgment dismissing the third-party claims is granted and 570 Fort Washington's cross motion is denied.

The Second Accident

The Labor Law 240 (1) Claim Against Grenfell

Plaintiffs formally withdrew the Labor Law § 240 (1) claim as against Grenfell. Thus, Grenfell is entitled to dismissal of the Labor Law § 240 (1) claim against it.

The Labor Law 241 (6) Claim Against Grenfell

With respect to the Second Accident, wherein plaintiff slipped on a mixture of flux and water, Grenfell cross moves for summary judgment dismissing the Labor Law § 241 (6) claim as against it. Labor Law § 241 (6) provides, in pertinent part, as follows:

> "All contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
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> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

Labor Law § 241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "'to provide reasonable and adequate protection and safety' to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *see also Ross,* 81 NY2d at 501–502). Importantly, to sustain a Labor Law § 241 (6) claim, it must be shown that the defendant violated a specific, "concrete" implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*Ross,* 81 NY2d at 505). Such violation must be a proximate cause of the plaintiff's injuries (*Annicaro v Corporate Suites, Inc.*, 98 AD3d 542, 544 [2d Dept 2012]).

While plaintiffs have alleged multiple Industrial Code violations in their bill of particulars, plaintiffs only oppose that part of Grenfell's cross motion which seeks dismissal of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of Industrial Code section 23-1.7 (d). Accordingly, the unaddressed Industrial Code provisions are deemed abandoned, and Grenfell is entitled to summary judgment dismissing those abandoned provisions (*Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section"]).

Initially, Industrial Code 12 NYCRR 23-1.7 (d) is sufficiently specific to sustain a cause of action under Labor Law § 241 (6) (*see Velasquez v 795 Columbus LLC*, 103 AD3d 541, 541 [1st Dept 2013]).

Section 12 NYCRR 23-1.7 (d) provides the following:

> "(d) Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

A substance that "naturally results from the work being performed . . . is not generally considered a 'foreign substance' under [section 23-1.7 (d)]" (*Kowalik v Lipschutz*, 81 AD3d 782, 784 [2d Dept 2011]). Conversely, a substance which is "not integral to the work being performed" may be a foreign substance for the purposes of section 23-1.7 (d) (*Pereira v New Sch.*, 148 AD3d 410, 412 [1st Dept 2017]).

In the Second Accident, plaintiff was injured when he slipped on a mixture of flux and water. While the flux that plaintiff used was integral to his work, and, therefore, was not a foreign substance as contemplated by section 23-1.7 (d), the water, which leaked onto the floor

of the work site and subsequently mixed with the flux, was a foreign substance and should have been removed.

Thus, Grenfell is not entitled to summary judgment dismissing that part of the Labor Law § 241 (6) claim predicated upon a violation of Industrial Code 12 NYCRR 23-1.7 (d).

The Common-Law Negligence and Labor Law § 200 Claims Against Grenfell

Grenfell also cross moves for summary judgment dismissing the common-law negligence and Labor Law § 200 claims as against it. 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" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Labor Law § 200 (1) states, in pertinent part, as follows:

> "All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

There are two distinct standards applicable to section 200 cases, depending on whether the accident is the result of the means and methods used by a contractor to do its work or whether the accident is the result of a dangerous condition that is inherent in the premises (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]; *see also Griffin v New York City Tr. Auth.*, 16 AD3d 202, 202 [1st Dept 2005]).

"Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work" (*LaRosa v Internap Network Servs. Corp.*, 83 AD3d

905, 909 [2d Dept 2011]). Specifically, "liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]).

Where an injury stems from a dangerous condition on the premises, however, an owner may be liable in common-law negligence and under Labor Law § 200 when it "'created the dangerous condition causing an injury or when [it] failed to remedy a dangerous or defective condition of which [it] had actual or constructive notice'" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

Here, the Second Accident was caused due to both the means and methods of the work (plaintiff's spraying flux onto the floor) and an unsafe condition inherent in the premises (the defective sink pipe that caused water to spill onto the floor).

Grenfell cannot be liable for plaintiff's injuries under a means and methods analysis, because there is no evidence establishing that it supervised or controlled the injury producing work (the use of flux for the installation of drain pipes). Specifically, plaintiff testified that only Danton supervised his work. Moreover, there is no testimony or documentary evidence establishing that Grenfell, or any of its employees, instructed or supervised plaintiff with respect to this work.

Grenfell could, however, be liable for plaintiff's injuries under an unsafe condition analysis. Initially, a review of the record reveals that Grenfell did not have actual or constructive notice of the subject dangerous condition--the defective leaking sink pipe. Rodriguez, Grenfell's employee, testified that when he left the apartment after removing the sink, he did not observe any water leaking from the sink pipe. In addition, plaintiff testified that, after he and his coworker first noticed the leak, they did not inform anyone about it.

Nevertheless, as it is unclear when the leak began and what caused it, there remains a question of fact as to whether Grenfell created the leak when Rodriguez removed the sink. To that end, plaintiff testified that neither he, nor his coworker, noticed any leak until after they began their demolition work in the bathroom, indicating that their own work may have led to the leak. In addition, plaintiff testified that when he tried to stop the leak, the shut-off valve would not properly close, creating a question of fact as to whether the sink pipe had a defect that was unrelated to, and not caused by, Rodriguez's removal of the sink.

Thus, Grenfell is not entitled to summary judgment dismissing the common-law negligence and Labor Law § 200 causes of action as against it.[3]

The court has considered the parties remaining arguments and finds them to be without merit.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiffs Nestor L. Medero and Annette Medero's motion (motion sequence number 004), pursuant to CPLR 3212, for partial summary judgment in their favor as to liability on the Labor Law § 240 (1) claim as against defendant/third-party plaintiff 570 Fort Washington Avenue Incorporated (570 Fort Washington) is denied; and it is further

ORDERED that 570 Fort Washington's cross motion for summary judgment dismissing the Labor Law § 240 (1) claim as against it is granted, and the Labor Law § 240 (1) claim is dismissed as against 570 Fort Washington; and it is further

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[3] There are serious questions as to whether Grenfell's untimely cross motion should have been considered. The completely unrelated cross motion was made more than 60 days after the note of issue was filed notwithstanding the deadline imposed in the preliminary conference order (*Waxman v The Hallen Constr. Co., Inc.*, 139 AD3d 597, 598 [1st Dept 2016]). The parties' stipulation that purported to extend the deadline was executed after the 60 days had already passed, was not so-ordered and there was never any showing of "good cause" for the delay in moving. In any event, the only relief awarded to Grenfell in this decision and order was granted based on plaintiffs' consent (withdrawal of the 240[1] claim) or lack of substantive opposition.

ORDERED that the part of defendant Grenfell Realty Co., LLC.'s (Grenfell) cross motion, pursuant to CPLR 3212, for summary judgment dismissing the Labor Law § 240 (1) claim against it is granted, as plaintiffs have withdrawn this claim; and it is further

ORDERED that the parts of Grenfell's cross motion, pursuant to CPLR 3212, for summary judgment dismissing those parts of the Labor Law § 241 (6) claim predicated on all Industrial Code provisions other than 12 NYCRR 23-1.7 (d) is granted and those provisions are dismissed as against Grenfell and the cross motion is otherwise denied; and it is further

ORDERED that third-party defendant Vebicon Construction Corp.'s (Vebicon) motion (motion sequence 005), pursuant to CPLR 3212, for summary judgment dismissing the third-party complaint against it is granted, and the third-party complaint is dismissed as against Vebicon, with costs and disbursements as taxed by the Clerk of the Court upon submission of an appropriate bill of costs, and the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that 570 Fort Washington's cross motion, pursuant to CPLR 3212, for summary judgment in its favor on its third-party claims for contribution and common-law indemnification against Vebicon is denied; and it is further

ORDERED that the remainder of the action shall continue.

This is the decision and order of the court.

Dated: December 21, 2017

ENTER:

Jennifer Schecter, JSC