KELLY O'NEILL LEVY
JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

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JONATHAN NEGRIN,

Plaintiff,

- v -

MP FREEDOM, LLC, MP LIBERTY, LLC, THE LIRO GROUP, STALCO CONSTRUCTION, INC., BATTERY PARK CITY AUTHORITY,

Defendants.

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INDEX NO. 153821/2012

MOTION DATE 05/30/2018

MOTION SEQ. NO. 004, 005, 006

DECISION AND ORDER

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BATTERY PARK CITY AUTHORITY, MP FREEDOM LLC and MP LIBERTY LLC,

Third-Party Plaintiffs,

- v -

OLYMPIC PLUMBING & HEATING SERVICES, INC.,

Third-Party Defendant.

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LIRO PROGRAM AND CONSTRUCTION MANAGEMENT, PE P.C. s/h/i/a THE LIRO GROUP,

Second Third-Party Plaintiff,

- v -

OLYMPIC PLUMBING & HEATING SERVICES, INC.,

Second Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 317, 362, 366, 367, 370, 371, 372, 373, 374, 375

were read on this motion to/for Summary Judgment.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 365, 368, 376

were read on this motion to/for Summary Judgment.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 338, 339, 356, 357, 358, 359, 360, 361, 369, 377

were read on this motion to/for Summary Judgment.

HON. KELLY O'NEILL LEVY:

This is an action to recover damages for personal injuries allegedly sustained by a plumber's apprentice on May 30, 2012, when, while working at a construction site located at the Battery Park Community Center at 200-212 North End Avenue, Manhattan, New York (the Premises), the unsecured ladder that he was descending slipped out from underneath him, causing him to fall into a water storage tank.

In motion sequence number 004, defendant/second third-party plaintiff Liro Program and Construction Management, PE, P.C. s/h/i/a The Liro Group (Liro) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims and counterclaims against it, as well as for summary judgment in its favor on its second third-party claims for contractual indemnification and breach of contract for failure to procure insurance as against third-party/second third-party defendant Olympic Plumbing & Heating Services, Inc. (Olympic) and its cross claim for the same as against defendant Stalco Construction Inc. (Stalco).

In motion sequence number 005, Stalco moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it.

In motion sequence number 006, plaintiff Jonathan Negrin moves, pursuant to CPLR 3212, for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against defendant/third-party plaintiff Battery Park City Authority (BPCA), Liro and Stalco.

Defendants/third-party plaintiffs MP Freedom, LLC and MP Liberty, LLC (the MP defendants) and BPCA (collectively, the BPCA defendants) cross-move, pursuant to CPLR

3212, for summary judgment dismissing the complaint and all cross claims against them, as well as for summary judgment in their favor on their cross claims for common-law and contractual indemnification claims and breach of contract for failure to procure insurance claims against Liro and Stalco.

BACKGROUND

On the day of the accident, BPCA owned the Premises where the accident took place. BPCA hired Liro to serve as the construction manager for a project underway at the Premises, which entailed the construction of a community center (the Project). The Project was a "Wick's Law" project, and, as such, the various trades on the Project all contracted directly with the BPCA. To that effect, BPCA contracted with four different prime contractors, including Olympic as the plumbing contractor and Stalco as the prime contractor responsible for general construction.

Plaintiff's Deposition Testimony

Plaintiff testified that he was employed by Olympic as a plumber's helper on the day of the accident. That day, his duties on the Project included assisting Olympic's mechanics as part of a team to install pumps for an irrigation system. Specifically, plaintiff and his Olympic foreman, Demetrios Velentzas, intended to install plugs in the water storage tank (the Tank) that fed into a pump, in order to prevent water from flowing out of the tank. Plaintiff maintained that he received all of his work instructions from Velentzas, and that Dwayne Belish, his Olympic supervisor, also supervised, directed and controlled the performance of his work. Plaintiff reiterated that he only took direct orders from Olympic supervisors.

Plaintiff's accident occurred while he and Velentzas were performing work within the Tank. Plaintiff explained that, just prior to the accident, he was told by Velentzas that they needed to access the bottom of the Tank via a 30-foot-long extension ladder, which they would lower down through the Tank's opened hatch. Plaintiff believed that they used the same ladder that they had found on the ground floor of the building and used the day before. Plaintiff noted that the ladder did not contain any identifying markings, and that he did not know who it belonged to.

Plaintiff testified that the two men lowered the fully extended ladder into the Tank. "Once the ladder was fed in and positioned . . . [Velentzas] said let's go and [plaintiff descended] into the [T]ank" (plaintiff's September 9, 2014 tr at 126). Plaintiff explained that even though the ladder had rubber feet, when plaintiff stepped onto the third rung of the ladder with his left foot, the bottom of the ladder slipped out from beneath him, causing him to fall with the ladder into the Tank.

Plaintiff testified that Velentzas never told him that he was going to get a rope to tie off the ladder, or to not climb down into the Tank before he obtained one. In fact, plaintiff believed that just prior to the accident, Velentzas was on his way to get gripper plugs. Plaintiff also testified that he never saw Velentzas tie off the ladder, nor did Velentzas ever hold the ladder while plaintiff descended it. Plaintiff conceded that during a 10 hour OSHA course he had taken previously, he knew that he should have someone with him "to keep an eye out, to spot you and how to safely enter and exit and move around when you're inside [a small space]" (plaintiff's 50-H tr at 23-24).

Deposition Testimony of Anthony Buquicchio (Liro's Inspector)

Anthony Buquicchio testified that he was Liro's inspector on the day of the accident. He testified that BPCA contracted with Liro directly to serve as the construction manager for the Project, also noting that BPCA contracted directly with all of the trades. As part of a "Wick's Law" project, BPCA hired four different project managers, including Olympic as the plumbing contractor and Stalco as the contractor responsible for general construction.

Buquicchio asserted that Liro's duties on the Project were limited to inspecting the quality of the work, processing various paperwork, such as change orders and invoices, and conducting walk-throughs of the Premises. Liro was not responsible for site safety or for the means and methods of the work performed on the Project by the trades. Further, Liro did not provide any of the equipment used on the Project, including the subject ladder. Buquicchio testified that Stalco ran safety meetings for all of the trades, as well as coordinated the work among them, and that the individual trades were responsible for their own safety and providing their own equipment.

Buquicchio explained that nonparty Plaza Construction (Plaza), a general contractor for a different phase of the Project, installed the Tank. Olympic, as the plumbing prime contractor, put in the change order for the cleaning of the tank, which was the work that Olympic was performing at the time of the accident.

Buquicchio testified that when he spoke to Velentzas after the accident, he told him that after he and plaintiff had placed the ladder into the tank, he told plaintiff to "[w]ait here. I'm going to get a rope to tie this off" (Buquicchio tr at 30). After hearing a crash, he turned toward the ladder's access hatch and observed that both plaintiff and the ladder were gone.

Deposition Testimony of Demetrios Velentzas (Olympic's Foreman Mechanic)

Velentzas testified that he was Olympic's foreman mechanic on the day of the accident. Olympic was hired by BPCA to serve as the plumbing contractor on the Project, and plaintiff was hired to help him. Valentzas maintained that he alone instructed plaintiff in regard to what work to perform and how to perform it. Liro never instructed Olympic's employees, nor did it ever provide any equipment to them. In fact, Olympic supplied its employees with the equipment necessary to complete their duties.

Velentzas explained that the accident occurred as he and plaintiff were attempting to place plugs in the Tank. In order to access the bottom of the Tank, the men had to utilize a 13-foot long extension ladder, which they lowered down through an access hatch. Velentzas found the ladder in the same room where the Tank was located. He did not know who owned the ladder, and he never asked permission to use it. The Tank was 13 feet deep, and the ladder extended to 16 feet. Velentzas testified that he told plaintiff that he needed to find a rope to tie off the ladder. Before the rope was obtained, plaintiff climbed onto the ladder, at which point the ladder and plaintiff fell into the tank. Notably, Velentzas conceded that he had never instructed plaintiff to not go down the ladder until it was tied off.

Deposition Testimony of Alan Nahamias (Stalco's President)

Alan Nahamias testified that he was Stalco's president on the day of the accident, and that Stalco was one of four prime contractors hired directly by BPCA for the Project. He explained that Liro served as the construction manager for the Project, and, as such, Liro oversaw and coordinated the prime contractors on the job. Liro also had the authority to stop work in the event that it observed an unsafe practice at the site, whereby it would notify the

responsible trade in writing about the unsafe condition. He also explained that he and Stalco's supervisors, Joe Masciello and Joseph Fitzpatrick, supervised the performance of Stalco's work, maintained daily logs, ran safety meetings and corrected Stalco's unsafe work practices. In the event that they saw another prime contractor performing work in an unsafe manner, they would alert that contractor about it.

Nahamias also testified that Liro's involvement in the Project was primarily focused on coordination, change orders and scheduling tasks, rather than safety issues. He also maintained that Liro never told Olympic's workers how to perform their work, nor did they instruct them how to access the Tank. He asserted that the means and methods of the work at the Project were determined by each individual prime contractor. Therefore, Olympic was responsible for the safety of its own employees and the means and methods that its employees used to perform its work. In addition, Olympic was responsible for providing its employees with the equipment and safety devices needed to perform said work. Further, all work associated with the water retention tanks located at the Premises fell within the purview of Olympic's contract.

The Affidavit of Joseph Masciello (Stalco's Project Superintendent)

In his affidavit, Joseph Masciello stated that he was Stalco's project superintendent on the day of the accident. He explained that Stalco was the prime contractor for general construction on the job, and that there were also prime contractors for electrical work, plumbing work and HVAC work. Liro served as the construction manager for the Project.

Masciello maintained that Stalco did not perform any physical work on the Project, and that it did not have any equipment at the Premises. In addition, Stalco was not responsible for

any of the work being done in the vicinity of the water tank room, nor did it direct or supervise any of Olympic's employees.

DISCUSSION

"'The 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 eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). 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]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

Whether the BPCA Defendants' Cross Motion is Timely

The BPCA defendants cross-move for summary judgment dismissing the complaint and all cross claims against it, as well as for summary judgment in their favor on their common-law and contractual indemnification and breach of contract for failure to procure insurance claims against Liro and Stalco. Liro argues that the BPCA defendants' cross motion is untimely, as, pursuant to a preliminary conference order dated June 19, 2013, dispositive motions were due within 60 days of the filing of the note of issue. The note of issue in this case was filed on

December 22, 2016, and the BPCA defendants did not file their cross motion until March 28, 2017, which was 36 days after the court's deadline.

However,

> "[a] cross motion for summary judgment made after the expiration of the [60-day] period may be considered by the court, even in the absence of good cause, where a timely motion for summary judgment was made seeking relief 'nearly identical' to that sought by the cross motion. An otherwise untimely cross motion may be made and adjudicated because a court, in the course of deciding the timely motion, may search the record and grant summary judgment to any party without the necessity of a cross motion (CPLR 3212 [b]). The court's search of the record, however, is limited to those causes of action or issues that are the subject of the timely motion"

(*Filannino v Triborough Bridge & Tunnel Auth.*, 34 AD3d 280, 281 [1st Dept 2006] [internal citations omitted]; *see also Guallpa v Leon D. DeMatteis Constr. Corp.*, 121 AD3d 416, 419-420 [1st Dept 2014], citing *Filannino*).

Here, the BPCA defendants' cross motion seeks relief on certain causes of action which are "nearly identical" to those raised by Liro and Stalco in their timely motion, i.e., the dismissal of the common-law negligence and Labor Law §§ 200, 240 (1) and 241 (6) claims, as well as dismissal of the BPCA defendants' cross claims and counterclaims against them for common-law and contractual indemnification and breach of contract for failure to procure insurance.

Thus, based upon the foregoing, the court will consider the BPCA defendants' cross motion seeking dismissal of the complaint, as well as summary judgment in their favor on the common-law and contractual indemnification and breach of contract for failure to procure insurance claims against Liro and Stalco.

The Labor Law § 240 (1) Claim (motion sequence number 004, 005, 006 and the BPCA defendants' cross motion)

Plaintiff moves for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against BPCA, Liro and Stalco. In their separate motions, BPCA cross-moves and Liro and Stalco move for summary judgment dismissing the Labor Law § 240 (1) claim against them. Labor Law § 240 (1), also known as the Scaffold Law (*Ryan v Morse Diesel*, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant part:

> "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]).

> "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, 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"

(*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]; *Hill v Stahl*, 49 AD3d 438, 442 [1st Dept 2008]; *Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 267 [1st Dept 2007]).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287 [2003]; *Felker v Corning Inc.*, 90 NY2d 219, 224-225 [1997]; *Torres v Monroe Coll.*, 12 AD3d 261, 262 [1st Dept 2004]).

Initially, as no party has opposed that part of the BPCA defendants' cross motion seeking dismissal of the complaint and cross claims as against the MP defendants, these defendants are entitled to dismissal of these claims and cross claims against them.

That said, as the owner of the Premises where the accident occurred, BPCA may be liable for plaintiff's injuries under Labor Law § 240 (1). However, it must be determined as to whether Liro, as construction manager, and Stalco, as the prime contractor in charge of construction, may also be liable for plaintiff's injuries as an agent of the owner and/or general contractor.

As to Liro, while

> "a construction manager of a work site is generally not responsible for injuries under Labor Law § 240 (1) [and 241 (6)], one may be vicariously liable as an agent of the property owner for injuries sustained under the statute in an instance where the manager had the ability to control the activity which brought about the injury"

(*Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]; *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 318 [1981]).

> "When the work giving rise to [the duty to conform to the requirements of Labor Law §§ 240 (1) and 241 (6)] has been delegated to a third party, that third party then obtains the concomitant authority to supervise and control that work and becomes a statutory 'agent' of the owner or general contractor"

(*Russin*, 54 NY2d at 318).

Here, Liro is entitled to dismissal of the Labor Law § 240 (1) claim against it, as it did not supervise or control the injury-producing work at issue in this case, i.e., the placement of the

unsecured ladder. As Liro notes, plaintiff testified that this work, which included the placement of the ladder, was solely supervised by his Olympic foreman.

Thus, plaintiff is not entitled to summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against Liro, and Liro is entitled to dismissal of said claim against it.

As to Stalco, while Labor Law § 240 (1) applies to owners, general contractors and their agents, "'prime contractors incur no liability for personal injuries arising out of work not specifically delegated to them'" (*Bennett v Hucke*, 131 AD3d 993, 994 [2d Dept 2015], quoting Russin, 54 NY2d at 315). "There is a distinction between a general contractor and a prime contractor for general construction" (*Kulaszewski v Clinton Disposal Servs.*, 272 AD2d 855, 856 [4th Dept 2000]). "Generally speaking, the prime contractor for general construction . . . has no authority over other prime contractors unless the prime contractor is delegated work in such a manner that it stands in the shoes of the owner or general contractor with the authority to supervise and control the work" (*Walsh v Sweet Assoc.*, 172 AD2d 111, 113 [3d Dept 1991] [citations omitted]). "There is no question that 'the absolute liability imposed upon owners and general contractors pursuant to Labor Law § 240 (1) and § 241 (6) does not apply to prime contractors having no authority to supervise or control the work being performed at the time of the injury'" (*Morris v C & F Bldrs., Inc.*, 87 AD3d 792, 793 [3d Dept 2011], quoting *Hornicek v William H. Lane, Inc.*, 265 AD2d 631, 631-632 [3d Dept 1999]; *see Villanueva v 80-81 & First Assoc.*, 141 AD3d 433, 434 [1st Dept 2016] [where "[t]he evidence show[ed] that [the defendant] was, at most, a prime contractor, and therefore not liable under Labor Law § 240 (1) or § 241 for injuries caused to the employees of other contractors with which it was no in privity of contract, since it had not been delegated the authority to supervise and control plaintiff's work"]).

Here, Stalco established its "prima facie entitlement to judgment as a matter of law dismissing [the Labor Law § 240 (1) claim]" by demonstrating that it was not the "general contractor or an agent of an owner or general contractor with the authority to supervise and control" plaintiff's work (*Bennett*, 131 AD3d at 995).

Initially, "the record demonstrates that [BPCA] separately retained various prime contractors for the job" (*Paulino v 580 8th Ave. Realty Co., LLC*, 138 AD3d 631, 631 [1st Dept 2016]). In addition, as applies herein, it is well settled that, when a contractor submits evidence that demonstrates that it did not perform work where the accident occurred and did not create the alleged defective condition, it is entitled to summary judgment as a matter of law (*Sand v City of New York*, 83 AD3d 923, 925 [2d Dept 2011]; *Cino v City of New York*, 49 AD3d 796, 797 [2d Dept 2008]). "In opposition, plaintiff failed to raise an issue of fact" (*Villanueva*, 141 AD3d at 434).

Thus, plaintiff is not entitled to summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against Stalco, and Stalco is entitled to dismissal of said claim against it. Therefore, in the remainder of this decision, the Labor Law claims will be addressed in regard to BPCA only.

As to BPCA, plaintiff has met his prima facie burden of establishing that Labor Law § 240 (1) was violated through his uncontested testimony that, while he performed his assigned work, the unsecured ladder on which he was working shifted, causing him to fall to the ground and become injured. Importantly, "'[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240 (1)'" (*Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept

2004] [where the plaintiff was injured as a result of an unsteady ladder, the plaintiff did not need to show that ladder was defective for the purposes of liability under Labor Law § 240 (1), only that adequate safety devices to prevent the ladder from slipping or to protect the plaintiff from falling were absent], quoting *Kijak v 330 Madison Ave. Corp.*, 251 AD2d 152, 153 [1st Dept 1998]; *Hart v Turner Constr. Co.*, 30 AD3d 213, 214 [1st Dept 2006] [the plaintiff "met his prima facie burden through testimony that while he performed his assigned work, the eight-foot ladder on which he was standing shifted, causing him to fall to the ground"]; *Rodriguez v New York City Hous. Auth.*, 194 AD2d 460, 461 [1st Dept 1993] [Labor Law § 240 (1) violated where the ladder the plaintiff fell from "contained no safety devices, was not secured in any way and was not supported by a co-worker"]).

"[A] presumption in favor of plaintiff arises when a scaffold or ladder collapses or malfunctions 'for no apparent reason'" (*Quattrocchi v F.J. Sciame Constr. Corp.*, 44 AD3d 377, 381 [1st Dept 2007] [citation omitted], *affd* 11 NY3d 757 [2008]). "Whether the device provided proper protection is a question of fact, except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his materials" (*Nelson v Ciba-Geigy*, 268 AD2d 570, 572 [2d Dept 2000]; *Cuentas v Sephora USA, Inc.*, 102 AD3d 504, 504 [1st Dept 2013]; *Melchor v Singh*, 90 AD3d 866, 869 [2d Dept 2011] [where the plaintiff was injured when the top of the ladder that he was working on slid away from the house, Court held that "[t]he defect in the ladder, and the fact that it was not secured, were substantial factors in causing plaintiff to fall"]).

It should be noted that, contrary to defendants' contention, it is not necessary for plaintiff to show that the ladder was defective in order to recover under Labor Law § 240 (1), as "[i]t is sufficient for purposes of liability under section 240 (1) that adequate safety devices to . . . protect plaintiff from falling were absent" (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d

289, 291 [1st Dept 2002]; *Serra v Goldman Sachs Group, Inc.*, 116 AD3d 639, 640 [1st Dept 2014] [Court properly granted partial summary judgment as to liability on the plaintiff's Labor Law § 240 (1) claim "since plaintiffs submitted uncontradicted deposition testimony that the unsecured extended ladder upon which plaintiff was working slipped and fell out from underneath him"]; *McCarthy v Turner Constr., Inc.*, 52 AD3d 333, 333-334 [1st Dept 2008] [where plaintiff sustained injuries "when the unsecured ladder he was standing on to drill holes in a ceiling tipped over," the plaintiff was not required to demonstrate, as part of his prima facie showing, that the ladder he was working on at the time of the accident was defective]).

In addition, due to the nature of the task at hand, an additional and/or different safety device, such as a rope to tie it off or other securing method was required to prevent plaintiff from falling (*see Ortega v City of New York*, 95 AD3d 125, 131 [1st Dept 2012] [where the plaintiff was working on an elevated work platform that "was taller than it was wide and rested upon wooden planks atop an uneven, gravel surface," the Court considered that "[i]t was foreseeable both that the plaintiff could fall off the elevated work platform and that the . . . rack could topple over"]; *Nimirovski v Vornado Realty Trust Co.*, 29 AD3d 762, 762 [2d Dept 2006] [as it was foreseeable that pieces of metal being dropped to the floor could strike the scaffold and cause it to shake, additional safety devices were required to satisfy Labor Law § 240 (1)]).

"'[T]he availability of a particular safety device will not shield an owner or general contractor from absolute liability if the device alone is not sufficient to provide safety without the use of additional precautionary devices or measures'" (*Nimirovski*, 29 AD3d at 762, quoting *Conway v New York State Teachers' Retirement Sys.*, 141 AD2d 957, 958-959 [3d Dept 1988]).

BPCA argues that it is entitled to dismissal of the Labor Law § 240 (1) claim against it because plaintiff's own improper placement of the ladder, as well as the fact that he did not wait

for it to be secured before descending down it, makes him the sole proximate cause of the accident. Where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability under Labor Law § 240 (1) (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]). "[T]he duty to see that safety devices are furnished and employed rests on the employer in the first instance" (*Aragon v 233 W. 21st St.*, 201 AD2d 353, 354 [1st Dept 1994]). "When the defendant presents some evidence that the device furnished was adequate and properly placed and that the conduct of the plaintiff may be the sole proximate cause of his or her injuries, partial summary judgment on the issue of liability will be denied because factual issues exist" (*Ball v Cascade Tissue Group-N.Y., Inc.*, 36 AD3d 1187, 1188 [3d Dept 2007]).

In any event, as discussed previously, as the ladder required securing, and as it was not secured, any alleged negligence on plaintiff goes to the issue of comparative fault, and comparative fault is not a defense to a Labor Law § 240 (1) cause of action, because the statute imposes absolute liability once a violation is shown (*Bland v Manocherian*, 66 NY2d 452, 460 [1985]; *Guaman v 1963 Ryer Realty Corp.*, 127 AD3d 454, 455 [1st Dept 2015] [Court noted that "[e]ven if there were admissible evidence [that the 'plaintiff failed to attach his safety harness to the lifeline in the proper manner'], the scaffold fell as a result of the ropes supporting it being loosened, rendering plaintiff's alleged conduct contributory negligence which is not a defense to a Labor Law § 240 (1) claim"]; *Bisram v Long Is. Jewish Hosp.*, 116 AD3d 475, 476 [1st Dept 2014]; *Berrios v 735 Ave. of the Ams., LLC*, 82 AD3d 552, 553 [1st Dept 2011] [Court held that "even if plaintiff could be found recalcitrant for failing to use a harness, defendants' 'failure to provide proper safety [equipment] was a more proximate cause of the accident'"]; *Milewski v Caiola*, 236 AD2d 320, 320 [1st Dept 1997] [Court held that "even if plaintiff could be deemed

recalcitrant for not having used the harness, no issue exists that the failure to provide proper safety planking was a more proximate cause of the accident"]).

"[T]he Labor Law does not require a plaintiff to have acted in a manner that is completely free from negligence. It is absolutely clear that 'if a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it'" (*Hernandez v Bethel United Methodist Church of N.Y.*, 49 AD3d 251, 253 [1st Dept 2008], quoting *Blake*, 1 NY3d at 290). Where "the owner or contractor fails to provide adequate safety devices to protect workers from elevation-related injuries and that failure is *a* cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence" (*Tavarez v Weissman*, 297 AD2d 245, 247 [1st Dept 2002] [internal quotation marks and citations omitted]).

Moreover, these defendants have not established that plaintiff was recalcitrant by showing that "(a) plaintiff had adequate safety devices at his disposal; (b) he both knew about them and that he was expected to use them; (c) for 'no good reason' he chose not to use them; and (d) had he used them, he would not have been injured" (*Tzic v Kasampas*, 93 AD3d 438, 439 [1st Dept 2012], citing *Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 10 [1st Dept 2011]; *see also Durmiaki v International Bus. Machs. Corp.*, 85 AD3d 960, 961 [2d Dept 2011]). Importantly, Velentzas admitted in his deposition that he never specifically instructed plaintiff to not go down the ladder.

Also, plaintiff was under no duty himself to fetch an alternate safety device, because "[t]o place that burden on employees would effectively eviscerate the protections that the legislature put in place" (*DeRose v Bloomingdale's Inc.*, 120 AD3d 41, 47 [1st Dept 2014]). To that effect, "workers would be placed in a nearly impossible position if they were required to demand

adequate safety devices from their employers or the owners of buildings on which they work" (*id.*).

Finally, BPCA's argument that plaintiff's work was not covered under the Labor Law because he was only cleaning and installing plugs at the time of the accident fails, as "plaintiff was performing a task ancillary to the construction work and was engaged in a 'covered activity' within the meaning of Labor Law § 240 (1)" (*Gallagher v Resnick*, 107 AD3d 942, 944 [2d Dept 2013] [Labor Law § 240 (1) applied where the plaintiff's job responsibilities included "climbing to the roof of the building to take measurements in preparation for the fabrication" of stones used in the construction of the building]). "The intent of the statute [is] to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts" (*Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878, 882 [2003] [Labor Law § 240 (1) applied where the plaintiff was inspecting an air-conditioning return fan as part of a larger project to overhaul the building's air conditioning systems]; *compare Martinez v City of New York*, 93 NY2d 322, 326 [1999] [Labor Law § 240 (1) did not apply where the "plaintiff's work as an environmental inspector during phase one [of the asbestos removal project] was merely investigatory, and was to terminate prior to the actual commencement of any subsequent asbestos removal work . . . [and] none of the activities enumerated in the statute was underway"]).

Importantly, Labor Law § 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]).

Thus, plaintiff is entitled to partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against BPCA, and BPCA is not entitled to summary judgment dismissing said claim against it.

The Common-Law Negligence and Labor Law §§ 200 and 241 (6) Claims Against BPCA, Liro and Stalco

As to BPCA, "[s]ince plaintiff is entitled to summary judgment as to liability on his section 240 (1) claim, we need not address plaintiff's [common-law negligence and] Labor Law § 200 [and] § 241 (6) . . . claims" against it (*Jerez v Tishman Constr. Corp. of N.Y.*, 118 AD3d 617, 617 [1st Dept 2014]). In addition, as plaintiff does not oppose dismissal of these claims as against BPCA, Liro or Stalco, BPCA, Liro and Stalco are entitled to dismissal of the common-law negligence and Labor Law §§ 200 and 241 (6) claims against them.

The Cross Claims and Counterclaims Against BPCA, Liro and Stalco (motion sequence number 004, 005 and the BPCA defendants' cross motion)

Liro moves for summary judgment dismissing all cross claims and counterclaims against it. However, as it has not identified said claims, nor offered any argument in support of said request, it is not entitled to dismissal of all cross claims and counterclaims against it.

As to Stalco, as discussed previously, it had no connection to the work at issue in this case. Thus, it is entitled to summary judgment dismissing all cross claims against it.

As to BPCA, as no negligence on its part caused or contributed to the accident, it is entitled to dismissal of all cross claims against it sounding in common-law indemnification. In addition, the relevant contracts between it and the various entities required them to indemnify BPCA and procure additional insurance in favor of BPCA, and not the other way around. Thus, all cross claims for contractual indemnification and breach of contract for failure to procure insurance are dismissed as against BPCA.

Liro's Second Third-Party Claims for Contractual Indemnification and Breach of Contract for Failure to Procure Insurance Against Olympic (motion sequence number 004)

Liro moves for summary judgment in its favor on its second-third party claims for contractual indemnification and breach of contract for failure to procure insurance as against Olympic.

Liro's Second-Third Party Claim for Contractual Indemnification Against Olympic:

Additional Facts Relevant to the Issue Of Contractual Indemnification:

Section 21.3 of the agreement between BPCA and Olympic, dated April 8, 2010 (the BPCA/Olympic Contract) sets forth an indemnification provision (the Olympic Indemnification Provision), which states, in pertinent part, as follows:

> "[Olympic] shall hold [BPCA], [Liro], Architect, [the MP defendants] (except that Contractor will not be liable to [the MP defendants] for their own negligence or willful misconduct) and their servants, agents and employees harmless from and shall indemnify them against any and all liability, loss, cost, damage or expense, including attorneys' fees, by reason of claims of its employees or employees of its Subcontractors for injuries or death or by reason of claims of any other person or persons . . . occasioned in whole or in part by any act or omission of [Olympic], its Subcontractors and their servants, agents and employees whether or not it is contended that [BPCA] contributed thereto or was responsible therefore by reason of nondelegable duty. If, however, this indemnification is limited by applicable law, then the said indemnification hereby shall be limited to conform with such law, it being the intention that this indemnification shall be as permitted by applicable law"

(Liro's notice of motion, exhibit X, the BPCA/Olympic Contract, the Olympic Indemnification Provision, § 21.3). It should also be noted that Olympic's contract provides that the construction manager on the Project was not to be responsible for the means and methods or safety programs in connection with Olympic's work, and that Olympic was to provide all of its own equipment for the Project.

Initially, as plaintiff was an employee of Olympic, relevant to this issue is Workers' Compensation Law § 11, which prescribes, in pertinent part, as follows:

> "An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a 'grave injury' which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot . . . or an acquired injury to the brain caused by an external physical force resulting in permanent total disability."

Therefore, "[a]n employer's liability for an on-the-job injury is generally limited to workers' compensation benefits, but when an employee suffers a 'grave injury' the employer also may be liable to third parties for indemnification or contribution" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 412-413 [2004]).

However, as is relevant here, "[e]ven in the absence of grave injury, an employer may be subject to an indemnification claim based upon a provision in a written contract" (*Mentesana v Bernard Janowitz Constr. Corp.*, 36 AD3d 769, 771 [2d Dept 2007]; *see also Echevarria v 158th St. Riverside Dr. Hous. Co., Inc.*, 113 AD3d 500, 502 [1st Dept 2014]). In order for a written contract to meet the requirements of Workers' Compensation Law § 11, it must be shown that the contract was "sufficiently clear and unambiguous" (*Rodrigues v N & S Bldg. Contrs., Inc.*, 5 NY3d 427, 433 [2005]; *Tullino v Pyramid Cos.*, 78 AD3d 1041, 1042 [2d Dept 2010]). "When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed [internal quotation marks and citation omitted]" (*Meabon v Town of Poland*, 108 AD3d 1183, 1185 [4th Dept 2013]; *Mikulski v Adam R. West, Inc.*, 78 AD3d 910, 911 [2d Dept 2010]).

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; *see*

Tonking v Port Auth. of N.Y. & N.J, 3 NY3d 486, 490 [2004]; *Torres v Morse Diesel Intl., Inc.*, 14 AD3d 401, 403 [1st Dept 2005]).

With respect to contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of its vicarious liability, and "'[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant'" (*De La Rosa v Philip Morris Mgt. Corp.*, 303 AD2d 190, 193 [1st Dept 2003] [citation omitted]; *Keena v Gucci Shops*, 300 AD2d 82, 82 [1st Dept 2002]).

Initially, pursuant to the terms of the Olympic Indemnification Provision, Liro is entitled to contractual indemnification from Olympic for claims arising out of Olympic's work on the Project. Here, the subject claims arise out of Olympic's work because plaintiff was an employee of Olympic, and plaintiff was injured in the performance of Olympic's work. Therefore, as a review of the record reveals that no negligence on the part of Liro caused the accident, that Liro did not exercise any supervision, direction or control over Olympic's employees, and that Liro did not supply or improperly place the ladder at issue in this case, Liro is owed contractual indemnification from Olympic.

It should be noted that, in its opposition, Olympic argues that the Olympic Indemnification Provision violates General Obligations Law § 5-322.1, in that it purports to indemnify the Liro for its own negligence and does not contain a "savings clause" (*see Cabrera v Board of Educ. of City of N.Y.*, 33 AD3d 641, 643 [2d Dept 2006] [an indemnification clause that purports to indemnify a party for its own negligence is not void under General Obligations Law § 5-322.1 if it authorizes indemnification "to the fullest extent permitted by law"]).

In any event, as in the instant case, where there is no negligence on the part of the proposed indemnitee, that statute does not apply (*see Brown v Two Exch. Plaza Partners*, 76

NY2d 172, 177 [1990]). General Obligations Law § 5-322.1 "only prohibits enforcement of a contractual indemnification clause if the party seeking indemnification was negligent, or had the authority to supervise, direct, or control the work that caused the injury" (*Naranjo v Star Corrugated Box Co., Inc.*, 11 AD3d 436, 438 [2d Dept 2004] [citations omitted]).

Thus, Liro is entitled to summary judgment in its favor on its second third-party claim for contractual indemnification against Olympic.

Liro's Second Third-Party Claim for Breach of Contract for Failure to Procure Insurance Against Olympic

Additional Facts Relevant to this Issue:

Olympic's insurance procurement obligations are set forth in Article 13 of the BRPCA/Olympic Contract. Pursuant to section 13.1, Olympic was to obtain a commercial general liability insurance policy with liability limits of $1,000,000.00 per occurrence and an excess liability insurance policy with limits of not less than $10,000,000.00. In addition, Olympic was to name Liro as an additional insured on the commercial general liability insurance policy on a primary basis. Further, whatever insurance Liro carried was to be secondary to Olympic's insurance.

Here, Liro does not put forward any evidence whatsoever to support its claim that Olympic failed to procure the necessary insurance. In opposition, Olympic fails to demonstrate that it procured the same. Thus, as a question of fact exists as to this issue, Liro is not entitled to summary judgment in its favor on its second third-party claim for breach of contract for failure to procure insurance as against Olympic.

Liro's Cross Claims for Contractual Indemnification and Breach of Contract for Failure to Procure Insurance Against Stalco (motion sequence number 004)

Liro moves for summary judgment in its favor on its cross claims for contractual indemnification and breach of contract for failure to procure insurance as against Stalco.

Liro's Cross Claim for Contractual Indemnification Against Stalco

Additional Facts Relevant to this Issue:

Section 21.3 of the construction agreement between BPCA and Stalco Olympic, dated April 10, 2010 (the BPCA/Stalco Contract) sets forth an indemnification provision (the Stalco Indemnification Provision), which states, in pertinent part, as follows:

> "[Stalco] shall hold [BPCA], [Liro], Architect, [the MP defendants] (except that Contractor will not be liable to [the MP defendants] for their own negligence or willful misconduct) and their servants, agents and employees harmless from and shall indemnify them against any and all liability, loss, cost, damage or expense, including attorneys' fees, by reason of claims of its employees or employees of its Subcontractors for injuries or death or by reason of claims of any other person or persons . . . occasioned in whole or in part by any act or omission of [Olympic], its Subcontractors and their servants, agents and employees whether or not it is contended that [BPCA] contributed thereto or was responsible therefore by reason of nondelegable duty. If, however, this indemnification is limited by applicable law, then the said indemnification hereby shall be limited to conform with such law, it being the intention that this indemnification shall be as permitted by applicable law"

(Liro's notice of motion, exhibit U, the BPCA/Stalco Contract, the Stalco Indemnification Provision, § 21.3).

Here, as discussed previously, Stalco had nothing to do with the work that caused the accident to occur. Therefore, as the accident did not arise from Stalco's work, Liro is not entitled to summary judgment in its favor on its cross claim for contractual indemnification against Stalco.

Liro's Cross Claim for Breach of Contract for Failure to Procure Insurance Against Stalco

Additional Facts Relevant to this Issue:

Stalco's insurance procurement obligations are set forth in Article 13 of the BRPCA/Stalco Contract. Pursuant to section 13.1, Stalco was to obtain a commercial general liability insurance policy with liability limits of $1,000,000.00 per occurrence and an excess liability insurance policy with limits of not less than $10,000,000.00. In addition, Stalco was to name Liro as an additional insured on the commercial general liability insurance policy on a primary basis. In addition, whatever insurance Liro carried was to be secondary to Stalco's insurance.

Here, Liro does not put any evidence whatsoever to support its claim that Stalco failed to procure the necessary insurance. Thus, Liro is not entitled to summary judgment in its favor on the breach of contract for failure to procure insurance against Stalco.

The BPCA Defendants' Cross Claims for Common-law Indemnification Against Liro and Stalco

The BPCA defendants' cross-move for summary judgment in their favor on their cross claim for common-law indemnification against Liro and Stalco. "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]; *Priestly v Montefiore Med. Ctr./Einstein Med. Ctr.*, 10 AD3d 493, 495 [1st Dept 2004]). "It is well settled that an owner

who is only vicariously liable under the Labor Law may obtain full indemnification from the party wholly at fault" (*Chapel v Mitchell*, 84 NY2d 345, 347 [1994]).

Here, a review of the record reveals that no negligence on the part of either Liro or Stalco caused or contributed to the accident. In fact, plaintiff testified that the relevant work underway at the time of the accident that was directly responsible for his injuries was solely directed and supervised by his employer, Olympic. As discussed previously, although, as construction manager, Liro may have coordinated the work of the individual prime contractors and had general oversight duties, it did not supervise or direct the specific injury-producing work that caused the accident. Further, as also discussed previously, Stalco's work on the Project was not related in any way to the subject work associated with the accident.

Thus, the BPCA defendants are not entitled to summary judgment in their favor on their cross claims for common-law indemnification against Liro and Stalco.

The BPCA Defendants' Cross Claim for Contractual Indemnification Against Liro

The BPCA defendants cross-move for summary judgment in their favor on their cross claim for contractual indemnification against Liro.

Additional Facts Relevant to this Issue:

Section 17 of the contract between BPCA and Liro (the BPCA/Liro Contract), entitled "Indemnity" (the Liro Indemnification Provision), required Liro to indemnify the BPCA defendants, in pertinent part, as follows:

> "[Liro] shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees and disbursements, arising out of the performance of the Work"

(the BPCA/Liro Contract, the Liro Indemnification Provision). In addition, Liro's work under the BPCA/Liro Contract, as set forth in schedule A, was limited to construction management duties, which did not include duties to supervise and direct the work of the individual contractors on the Project.

Thus, as the accident did not arise under Liro's work on the Project, the BPCA defendants are not entitled to summary judgment in their favor on the cross claim for contractual indemnification against Liro.

The BPCA Defendants' Cross Claim for Contractual Indemnification Against Stalco

As set forth above, the Stalco Indemnification Provision in the BPCA/Stalco Contract required that Stalco indemnify the BPCA defendants for injuries that arose under Stalco's work. As discussed previously, Stalco was not involved in any way with the work associated with the accident, and therefore plaintiff's injuries did not arise from Stalco's work under the BPCA/Stalco Contract.

Thus, the BPCA defendants are not entitled to summary judgment in their favor on their cross claim for contractual indemnification against Stalco.

The BPCA Defendants' Cross Claim for Breach of Contract for Failure to Procure Insurance Against Liro

The BPCA defendants cross-move for summary judgment in their favor on their cross claim for breach of contract for failure to procure insurance against Liro.

Additional Facts Relevant to this Issue:

Section 10 of the BPCA/Liro Contract, entitled, "Insurance" (the Liro Insurance Provision), requires that Liro obtain commercial general liability insurance at $1,000,000.00 per each occurrence and $2,000,000.00 in the aggregate. In addition, Liro was to name the BPCA defendants as additional insureds under the subject policy.

Where a party breaches a clause requiring it to maintain an insurance policy naming another as insured it is "liable for any damages flowing from its breach of contract, including liability for plaintiff's injury" (*Spencer v B.A. Painting Co., B & F Abramowitz*, 224 AD2d 307, 307 [1st Dept 1996]).

Here, the BPCA defendants claim that Liro has failed to provide the additional insured coverage relative to this claim. However, in their cross motion, these defendants put forth no evidence whatsoever in support of this assertion. In opposition to the BPCA defendants' cross motion, Liro submits a copy of the policy it procured from Starr Indemnity & Liability Company evidencing that Liro obtained commercial general liability insurance at $1,950,000.00 per occurance and $3,950,000.00 in the aggregate, naming the BPCA defendants as additional insureds.

Thus, the BPCA defendants are not entitled to summary judgment in their favor on their cross claim for breach of contract for failure to procure insurance against Liro.

The BPCA Defendants' Cross Claim for Breach of Contract for Failure to Procure Insurance Against Stalco

The BPCA defendants cross-move for summary judgment in their favor on their cross claim for breach of contract for failure to procure insurance against Stalco.

Additional Facts Relevant to this Issue:

Section 13.1 of the BPCA/Stalco Contract, entitled "Insurance" (the Stalco Insurance Provision), requires that Stalco obtain commercial general liability insurance at $1,000,000.00 per each occurrence and $3,000,000.00 in the aggregate. In addition, Stalco was to name the BPCA defendants as additional insureds under the subject policy. Annexed to Stalco's opposition to the BPCA defendants' motion, as exhibit E, is a copy of the policy of insurance issued to Stalco by the Travelers Insurance Company (the Travelers Policy). The Travelers

Policy provides that Stalco have coverage with a $1,000,000.00 per each occurrence and $2,000,000.00 aggregate limit. As such, the Travelers Policy reveals that Stalco did not obtain proper insurance coverage, as required under the Stalco Insurance Provision.

Thus, the BPCA defendants are entitled to summary judgment in their favor on their cross claim for breach of contract for failure to procure insurance against Stalco.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the part of defendant/second third-party plaintiff Liro Program and Construction Management, PE, P.C. s/h/i/a The Liro Group's (Liro) motion (motion sequence number 004), pursuant to CPLR 3212, for summary judgment dismissing the complaint against it is granted, and the complaint is dismissed as against Liro; and it is further

ORDERED that the part of Liro's motion (motion sequence number 004), pursuant to CPLR 3212, for summary judgment in its favor on its second third-party claim for contractual indemnification against third-party/second third-party defendant Olympic Plumbing & Heating Services, Inc. (Olympic) is granted, and the motion is otherwise denied; and it is further

ORDERED that defendant Stalco Construction Inc.'s (Stalco) motion (motion sequence number 005), pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it is granted, and the complaint and all cross claims are dismissed as against Stalco, with the exception of the BPCA defendants' cross claim for breach of contract for failure to procure insurance; and it is further

ORDERED that the part of plaintiff Jonathan Negrin's motion (motion sequence number 006) for summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against

defendant/third-party plaintiff Battery Park City Authority (BPCA) is granted, and the motion is otherwise denied; and it is further

ORDERED that the part of BPCA and defendants/third-party plaintiffs MP Freedom, LLC and MP Liberty, LLC's (the MP defendants) (collectively, the BPCA defendants) cross-motion, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against the MP defendants is granted, and the complaint and all cross claims are dismissed as against the MP defendants with costs and disbursements to the MP defendants as taxed by the Clerk of Court and the Clerk is directed to enter judgment in favor of the MP defendants; and it is further

ORDERED that the parts of the BPCA defendants' motion, pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims, as well as all cross claims against BPCA, are granted, and these claims and cross claims are dismissed as against BPCA; and it is further

ORDERED that the part of the BPCA defendants' motion, pursuant to CPLR 3212, for summary judgment in its favor on their cross claim for breach of contract for failure to procure insurance claims against Stalco is granted, and the motion is otherwise denied; and it is further

ORDERED that the action shall continue; and it is further

ORDERED that counsel are directed to appear for a status conference at 60 Centre Street in Manhattan, Room 218, on September 12, 2018, at 9:30 a.m..

8-10-18
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

KELLY O'NEILL LEVY
JSC

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE