Degidio v City of New York
2018 NY Slip Op 32901(U)
November 14, 2018
Supreme Court, New York County
Docket Number: 151460/2013
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 32**

Justice

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JOSEPH DEGIDIO,

Plaintiff,

- v -

CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY, MTA CAPITAL CONSTRUCTION, NEW YORK CITY TRANSIT AUTHORITY, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, HUDSON YARDS DEVELOPMENT CORPORATION, MANITOWOC COMPANY, INC., HOFFMAN EQUIPMENT COMPANY,

Defendants.

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METROPOLITAN TRANSPORTATION AUTHORITY, MTA CAPITAL CONSTRUCTION,

Third-Party Plaintiffs,

- v -

HOFFMAN EQUIPMENT COMPANY and J&E INDUSTRIES, LLC,

Third-Party Defendants.

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INDEX NO. 151460/2013

MOTION DATE _____

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259

were read on this motion to/for SUMMARY JUDGMENT.

The motion by defendants Metropolitan Transportation Authority, MTA Capital Construction and the New York City Transit Authority (collectively, "MTA Defendants") for summary judgment is granted in part and denied in part. The cross-motion by plaintiff for

summary judgment is denied. The cross-motion by defendant J&E Industries, LLC ("J&E") for summary judgment is granted to the extent that it sought to dismiss the third-party complaint. The cross-motion by defendant Hoffman Equipment Company ("Hoffman") is denied. The cross-motion by defendants the City of New York and Hudson Yards Development Corporation (collectively, the "City") is denied.

Background

This case arises out of a crane accident that occurred on April 3, 2012 during construction of the new Hudson Yards subway station that extended the 7-line. Plaintiff was working for Yonkers Contracting Company, Inc. ("Yonkers"), the general contractor assigned to work on the foundation and tunnels that connected to the subway platform. On the date of the accident, plaintiff was assigned to work on a platform area about sixty feet below street level to assist J&E employee Mike Simmermeyer with transporting a bundle of rebar. A crane was needed to transport the rebar to its proper place. Plaintiff oversaw that the bundle of rebar was secured and that the straps were equally spaced so that it could be attached to the crane.

However, as the crane was moving into position, the boom of the crane collapsed when a cable broke. At his 50-h hearing, plaintiff testified that "It happened so fast and I don't remember. Like I was telling Mr. Gill here, it was like God pushed me out of the way. I reacted so fast. I don't know 'cause I had more experience than Mike did—you know, he's been in the union only like three or four years—I just don't remember. It happened so fast that all I heard was the crash and my leg was pinned" (NYSCEF Doc. No. 124 at 46).

When asked if the boom was being lowered when it was directly above plaintiff, he answered that "It was very close. It was right there" (*id.*). Plaintiff testified that the crane was operated by someone from Yonkers and that although it was dusk, there were bright lights on at

the time of the accident (*id.* at 53). Plaintiff stated that "From what I know the boom collapsed, but I don't know what the cause was" (*id.*at 52). Plaintiff then claimed that debris knocked him to the ground and his leg got caught in rebar (*id.* at 60). Plaintiff said he had to jump to get out of the way (*id.* at 62) and that he slipped his boot off to free himself from the rebar (*id.* at 63).

At his *deposition*, plaintiff described the accident as follows: "Guy pushed me out of the way. It was just a big loud—I don't know. I don't know what happened that day" (NYSCEF Doc. No. 125 at 155). Plaintiff added that "I took a glance and seen it where it was and I just continued talking to Mike and—and then just the whole thing—I don't know what happened. I really don't know. I can't. I don't remember" (*id.*). When asked whether he heard a noise, plaintiff insisted that "No, I didn't hear anything. I don't know what made me move. I really—I can't answer that" (*id.*).

Plaintiff testified that he did not remember whether he ran or not and claimed that "I got hit and I fell to the ground. My leg was caught. I crawled underneath here . . . My foot got pinned underneath the block of the crane and actually my boot fell off and something hit me in the back of my—back of my body because had my helmet flew off, and I fell forward, and I was just in—I was screaming. I was in pain" (*id.* at 156).

Plaintiff theorized that he was whipped by the cable and knocked over (*id.* at 157). But plaintiff maintained he never saw the cable make contact with his body and that "I was—I was on the run. My back was away toward—my back was away. My back was towards the crane towards what was going on behind me" (*id.* at 158). A few questions later, plaintiff insisted that he had not run (*see id.* at 165-66) and then claimed that he did not remember whether he ran or not (*id.* at 166). Plaintiff insisted that he "didn't know the crane collapsed" (*id* at 170).

In his affidavit submitted in opposition to MTA's motion and in support of his cross-motion, plaintiff insists that "the crane swung toward us, and the loaded boom started coming down; that is when all hell broke loose" (NYSCEF Doc No. 143, ¶ 6). He added that "I felt something push me out of the way, I heard a crash and my leg was pinned. As I testified at my 50-h (page 52) and my deposition (pages 173), the boom of the crane collapsed and fell on us" (*id.*).

Discussion

To be entitled to the remedy of summary judgment, the moving party "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 from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec,*

Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

MTA's Motion and Plaintiff's Cross-Motion

Labor Law § 200

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

"Claims for personal injury under this statute and the common law fall under two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-44, 950 NYS2d 35 [1st Dept 2012]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*id.* at 144).

"Where an alleged defect or dangerous condition arises from a subcontractor's methods over which the defendant exercises no supervisory control, liability will not attach under either the common law or section 200" (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 272, 841 NYS2d 249 [1st Dept 2007]).

MTA claims that plaintiff is unable to state a claim under Labor Law § 200 because there is no evidence that MTA supervised and controlled plaintiff's work on the date of the accident.

MTA points to plaintiff's testimony that the crane was controlled by his employer (Yonkers) and that he was working with J&E employees. MTA also observes that it had only one employee on site (Joseph Vieitez) who would generate a report describing the day's progress, but that Mr. Vieitez did not supervise anyone at the site.

Because plaintiff failed to oppose this branch of MTA's motion, this claim is severed and dismissed.

Labor Law § 240(1)

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder 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" (*id.* at 501).

The MTA Defendants claim that plaintiff was the sole proximate cause of his injuries because he could not provide a reason for not standing underneath the protective overhang. They insist that plaintiff did not provide any reason why he failed to take advantage of this purportedly safe space.

Plaintiff opposes and cross-moves for summary judgment on only his 240(1) claim. Plaintiff contends that he never witnessed any other workers on the site take cover under the

overhand while the crane was being used and that he was never instructed about standing anywhere other than right next to the load to be moved by the crane.

The Court denies this branch of the MTA Defendants' motion because the fact that the overhang might have been a safer place does not foreclose liability against the MTA Defendants. There is no evidence that plaintiff knew that he was supposed to stand under the overhang while the crane was in use and chose not to (*Matter of East 51st St. Crane Collapse Litig.*, 89 AD3d 426, 428 931 NYS2d 860 [1st Dept 2011]). Plaintiff's testimony that he crawled towards the overhang after the collapse is not dispositive—recognizing a potentially safe place to take refuge does not establish that plaintiff knew he should have stood there *before* the accident. This is not a case where plaintiff was handed a safety device or given a safety instruction and ignored it. It may be that plaintiff could have avoided injury if he had stood under the overhang. But without any indication that he ignored explicit instructions to stand there, the Court cannot grant this branch of the MTA Defendants' motion.

In reaching this conclusion, the Court denies the MTA Defendants' argument that plaintiff was the sole proximate cause of his accident. Plaintiff had nothing to do with the collapse of the crane: he did not operate it, inspect it, or supervise those who did. Plaintiff's injuries allegedly occurred from the malfunction of the crane rather than from his own actions.

The Court also denies plaintiff's cross-motion for summary judgment on his 240(1) claim because plaintiff failed to offer a cogent account of the accident. The Court cannot discern what actually occurred because plaintiff offers conflicting accounts of the accident and it is not clear what caused plaintiff to fall. Plaintiff wavers back and forth about whether he ran from the crane or jumped and whether his foot was caught in rebar or under the crane. At his 50-h hearing, plaintiff claimed that he was pushed; at his deposition he claimed that he was whipped by the

cable and knocked over; and in his affidavit he says the boom fell on us. Obviously, if the boom fell directly on plaintiff, he would have suffered more severe injuries. But that is beside the point.

The Court also observes that plaintiff testified that he did not know that the crane collapsed until after the accident. Why would plaintiff need to run (if he did run) or jump (if he did jump) if he was not aware that the crane collapsed? Moreover, on many occasions during his 50-h hearing and in his deposition, plaintiff asserts that he did not know exactly what happened. Without offering a cogent account of what he witnessed, the Court cannot grant plaintiff summary judgment because the Court cannot make any findings about what led to plaintiff's purported injuries.

The fact is that on a motion for summary judgment the Court cannot make credibility determinations and the Court simply does not know what plaintiff's story is other than that he was at the worksite, the crane collapsed (although he did not see it collapse) and he hurt his ankle and leg. Summary judgment is inappropriate here (*Wilson v Haagen-Dazs Co., Inc.*, 215 AD2d 338, 338, 627 NYS2d 41 [1st Dept 1995] [finding that the trial court properly denied plaintiff's motion for summary judgment on Labor Law claims where he provided conflicting versions of his accident]). A jury must decide whether plaintiff can sufficiently prove that the crane's collapse caused him injuries. The Court cannot make that finding as a matter of law on these papers.

Labor Law § 241(6)

"The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6) .

. . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" *(Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

Plaintiff cites violations of Industrial Code sections 23-8.1; 8.1(b)(1); 8.1(f)(2)(i); 8.1(f)(5); 8.1(f)(6); 8.1(f)(7); 8.2; 8.2(f)(2)(i) and 8.3.

These claims are severed and dismissed because plaintiff failed to specifically address each individual Industrial Code section. Plaintiff makes only a general claim that these sections are applicable and that the MTA Defendants failed to meet their prima facie case to dismiss the named sections. But the fact is that the MTA Defendants address each individual section (see NYSCEF Doc. No. 130 at 24-27). In opposition, plaintiff offers his own affidavit which quotes various code sections (NYSCEF Doc. No. 143, ¶¶ 9-12) but does not include any analysis as to why the MTA Defendants are not entitled to summary judgment. Directly quoting Industrial Code sections cannot form the only basis of an opposition. And plaintiff's memorandum of law also fails to make specific arguments about why these sections should not be dismissed (*see* NYSCEF Doc. No. 146 at 20-25).

For example, the MTA Defendants maintain that Industrial Code Section 23-8.1(f)(6) should be dismissed. This section provides that "Mobile cranes, tower cranes and derricks shall not hoist or carry any load over and above any person except as otherwise provided in this Part (rule)." The MTA Defendants assert that this section is inapplicable because there was no load attached to the crane when it collapsed. Plaintiff offers nothing in response other than to claim that his cited sections are applicable; therefore, this section must be dismissed.

It is not this Court's role to make arguments for plaintiff. Plaintiff must raise an issue of fact; asserting that he "has alleged violations of several applicable and sufficiently specific subsections of Industrial Code § 23-8.1 and 8.2" (NYSCEF Doc. No. 146) is not sufficient.

MTA and J&E's Cross-Motion

The MTA Defendants' third-party complaint against J&E alleges causes of action for common law indemnification, contribution, contractual indemnification and breach of contract.

"An insurance agreement is subject to principles of contract interpretation. Therefore, as with the construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court" (*Burlington Ins. Co. v NYC Tr. Auth.*, 29 NY3d 313, 321, 2017 NY Slip Op 04384 [2017] [internal quotations and citations omitted]).

The MTA Defendants claim that J&E agreed to indemnify Yonkers and the MTA Defendants for any personal injury claims "arising out of or in connection with, or as a consequence of, the Work of the Subcontractor under this Subcontract." The MTA Defendants point out that at the time of the crane collapse, plaintiff was assisting J&E employees with moving bundles of rebar belonging to J&E which were to be installed by J&E.

J&E cross-moves for summary judgment dismissing plaintiff's complaint and dismissing the third-party complaint against J&E. J&E acknowledges that there is an indemnity provision in the subcontract between Yonkers (plaintiff's employer and the general contractor) and J&E but insists that the accident was not caused by J&E's work. J&E emphasizes that the bundle of rebar was never hooked up to the crane before it collapsed and that it was Yonkers' responsibility to operate and maintain the crane.

As an initial matter, the MTA Defendants correctly point out that they need not prove that J&E was the proximate cause of the claim in order to seek contractual indemnification. In *Burlington* (cited above), the Court of Appeals rejected the argument that the phrase "caused by" was synonymous with the phrase "arising out of" before concluding that "caused by" required a showing of proximate cause to be entitled to contractual indemnification (*Burlington*, 29 NY3d at 322-24).

However, that does not end the Court's analysis. The Court must consider whether the phrase used in the contract between J&E and Yonkers requires J&E to indemnify the MTA Defendants. The phrase arose out of is "ordinarily understood to mean originating from, incident to, or having connection with" (*Maroney v New York Cent. Mut. Fire Ins. Co.*, 5 NY3d 467, 472, 805 NYS2d 533 [2005]).

The relevant indemnification provision in the J&E subcontract requires J&E to indemnify "All claims, damages, liabilities . . . brought against the Indemnities by any person . . . arising out of or in connection with, or as a consequence of, the Work of the Subcontractor under this Subcontract or any person or entity employer, either directly or indirectly, by the Subcontractor . . ." (NYSCEF Doc. No. 128 at 11 [Paragraph 9.1(a)]).

The scope of J&E's work is defined in paragraph 2, which instructs J&E to do rebar installation (*id.* at 1-2). This section notes that J&E had to, among other things, "Furnish all tie wire, incidentals and accessories, shaft spacers, and touch-up paint" and included "Unloading, inventory and staging of all reinforcing steel" (*id.* at 2). The contract contains a list of items excluded from the agreement, which includes "hoisting" (*id.* at 3).

Here, the Court grants J&E's cross-motion to the extent that it seeks dismissal of the third-party complaint against it because there is no evidence that the parties intended to include

operation of the crane in the subcontract. There is no mention of a crane in the entire subcontract. If the parties intended to include crane operation as part of the indemnification provision, then they would have referenced it as part of J&E's work in the contract. J&E cannot be held liable for something it had no relation to or control over.

The evidence submitted on this record demonstrates that J&E was doing rebar work and that Yonkers was responsible for moving the piles of rebar to their proper location. J&E did not have any employees operating the crane or supervising the crane operators. And there is no dispute that the crane collapsed before it picked up any of the rebar. The crane collapse did not occur because J&E tried to hook up a heavy load. The crane collapsed for reasons having nothing to do with J&E.

Although plaintiff tripped on or had his foot caught in rebar, the fact is that at the time of the accident, the crane was about to move rebar. The rebar was part of the work that was being done at that time. And the Court finds that the argument that J&E should have had a qualified rigger waiting to load the rebar is irrelevant because the crane did not collapse because of the rebar.

In this project, just like in many large construction jobs, there are often many contractors performing tasks at the same time. Here, that meant that Yonkers helped J&E do its work by moving the rebar so that J&E could install it. But that does not mean that J&E must indemnify the MTA Defendants. The Court is unable to find that it was the intent of the parties to have J&E indemnify for a crane malfunction, especially where there is no mention of a crane in the subcontract and where hoisting is explicitly excluded.

For these foregoing reasons, the remaining causes of action against J&E for common law indemnification, contribution and breach of contract are also dismissed. There is no basis to find that J&E was responsible for plaintiff's accident.

Hoffman's Cross-Motion

Hoffman cross-moves for summary judgment dismissing plaintiff's claims against it. Hoffman insists that it is not a proper Labor Law defendant because it was neither the owner nor general contractor. In opposition to Hoffman's cross-motion, plaintiff fails to address this point. Therefore, plaintiff's claims against Hoffman are severed and dismissed.

Hoffman also cross-moves for summary judgment dismissing the MTA Defendant's third-party complaint against them which alleges causes of action for contribution and common law indemnification.

Hoffman acknowledges that it was hired by Yonkers to make repairs on the crane in 2010 and in 2011. Hoffman stresses that the last time it did any work on the crane was in December 2011, four months prior to the accident. Hoffman also argues that the work it did on the crane in December 2011 did not involve the crane's boom or the boom cables. Hoffman blames Yonkers for not properly maintaining or replacing cables.

In opposition, the MTA Defendants points to a report attached to Hoffman's moving papers that allegedly identifies defects that Hoffman failed to identify. They claim that Hoffman was called to the job site on five occasions between June 24, 2011 and April 3, 2012 to address issues with the crane, including problems with the boom hoist rope.

The Crane Tech Solutions ("CTS") report concludes that "the boom hoist rope failed due to fatigue breaks as a direct result of improper maintenance and the lack of proper inspections

leading up to the failure" (NYSCEF Doc. No. 173 at 27). The wires holding up the boom were simply "no longer able to support the boom" (*id.* at 28).

The Court finds that there are issues of fact [redacted] that prevent the Court from granting Hoffman's cross-motion. There is no dispute that Hoffman completely rebuilt the crane in 2010 and 2011. And the CTS report, attached by Hoffman, suggests that the accident occurred from improper maintenance and lack of proper inspections.

The question is to what extent, if any, is Hoffman liable for the purportedly improper maintenance or inadequate inspections. The Court cannot find as a matter of law that Hoffman is not liable on a theory of common law indemnification where it was tasked with repairing the crane just four months (according to Hoffman) before the accident. At trial, Hoffman might be able to convince a jury that the problems with the crane were exclusively caused during the four months leading up the accident. Hoffman might point to the significant increase in the use of the crane between December 2011 and the accident in April 2012. But the Court cannot ignore the work that Hoffman did so close in time to the accident. And the cause of accident, according to CTS, was not from improper use of the machine or from a distinct, intervening event. In other words, the accident did not occur because the crane operator misused the crane. It was from improper maintenance. That ambiguous conclusion might include Hoffman's maintenance work on the machine.

The City's Cross-Motion

The City cross-moves for summary judgment dismissing plaintiff's complaint on the grounds that neither of these defendants are proper Labor Law defendants and that the City

cannot be held liable for the performance of a governmental function. The City also alleges that it is immune for its inspection of the subject crane.

Here, the Court finds that this cross-motion is untimely and is denied. The note of issue was filed in this case on March 26, 2018 and the City failed to file this "cross-motion" until August 6, 2018, more than 120 days after the note of issue was filed. The Court is unable to conclude that the City's papers constitute a proper cross-motion because it is moving against plaintiff rather than MTA (the party that made the initial motion). And the issues raised in this cross-motion, including immunity and the City's status as a Labor Law defendant, are not identical to the issues raised in MTA's motion (*see Median v R.M. Resources,* 107 AD3d 859, 861, 968 NYS2d 533 [2d Dept 2013] [finding that a branch of a cross-motion was properly denied as untimely because it did not raise issues that were nearly identical to the original motion]).

Some of the other cross-motions in this motion were either proper cross-motions (the cross-motions by plaintiff and J&E) and all of them were filed within 120 days after the note of issue was filed. The City cannot extend its time to make a dispositive motion by calling it a cross-motion where it does not seek any relief whatsoever against the party that initially moved.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by defendants Metropolitan Transportation Authority, MTA Capital Construction and the New York City Transit Authority is granted only to the extent that plaintiff's Labor Law ¶¶ 200 and 241(6) claims are severed and dismissed and denied as to the remaining branches of the motion; and it is further

ORDERED that the cross-motion for summary judgment by plaintiff is denied; and it is further

ORDERED that the cross-motion for summary judgment by third-party defendant J&E Industries, LLC is granted to the extent that the third-party complaint and all claims against this party are hereby severed and dismissed and denied to the extent that it sought to dismiss plaintiff's complaint; and it is further

ORDERED that the cross-motion by defendant Hoffman Equipment Company for summary judgment is granted to the extent that plaintiff's claims against this party are severed and dismissed and denied to the extent that the motion sought to dismiss the third-party complaint against it; and it is further

ORDERED that the cross-motion by defendants City of New York and Hudson Yards Development Corporation for summary judgment is denied.

11-14-18

DATE

ARLENE P. BLUTH, J.S.C.

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