SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

CARLOS ORDONEZ and MARIA TERESA ORELLANA

INDEX NO. 161328/15

MOT. DATE

- v -

MOT. SEQ. NO. 004, 005 and 006

ONE CITY BLOCK, LLC et al.

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s)._____

Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s)._____

Replying Affidavits NYSCEF DOC No(s)._____

This action arises from personal injuries sustained as a result of violations of the Labor Law. There are three motions for summary judgment pending before the court, which are hereby consolidated for consideration and disposition in this decision/order. In motion sequence 004, plaintiffs move for partial summary judgment on liability on the Labor Law § 240[1] claim against defendants One City Block, LLC ("1CB"), Taconic Management Company, LLC ("TMC") and W5 Group, LLC d/b/a Waldorf Demolition ("W5"). Defendants Waldorf Holding Corporation, Waldorf Exteriors LLC (collectively the "Waldorf Entities") and W5 (together with the Waldorf Entities, "Waldorf/W5") cross-move for summary judgment dismissing plaintiffs' complaint and all cross-claims against them. 1CB, TMC and Taconic Investment Partners, LLC ("TIP" and together with 1CM and TMC, "1CB/Taconic") oppose the motion. Plaintiffs partially oppose the cross-motion, except as to the Labor Law § 200 claims against Waldorf/W5.

In motion sequence 005, 1CB/Taconic moves for summary judgment dismissing plaintiffs' complaint against TIP and TMC and alternatively on 1CB and TMC's cross-claims for contractual and common law indemnification against W5. Plaintiff opposes all but the branch of the motion as to TIP. Waldorf/W5 opposes the motion as to the cross-claims.

Finally, in motion sequence 006, third-party defendant Calvin Maintenance, Inc. ("Calvin") moves for summary judgment dismissing the third-party complaint against it. Waldorf/W5 also opposes that motion. All but Calvin's motions were timely brought after note of issue was filed (*Brill v. City of New York*, 2 NY3d 648 [2004]). Therefore, summary judgment relief is available to all parties except Calvin (*see infra*).

At the outset, plaintiffs do not oppose the motions seeking to dismiss their claims against the Waldorf Entities and TIP as well as the Labor Law § 200 claims against W5. Accordingly, these claims are severed and dismissed and the court declines to address the parties' arguments with respect to these claims as moot.

Dated: 1/9/20

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. Check as appropriate: Motion is ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER

3. Check if appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Many of the relevant facts are in dispute. The facts and relevant disputed issues are as follows. Plaintiff's accident occurred on December 5, 2014 at approximately 7:25pm at the building located at 111 Eighth Avenue, New York, New York (the "building"). On that date, plaintiff was working for Calvin and the building was owned by 1CB. The building was undergoing a large demolition project spanning approximately 45,000 square feet which was referred to as the "Global Crossing Space Project" (the "construction site").

W5 was hired by TMC on behalf of 1CB to perform the demolition. Plaintiffs' counsel asserts that TMC and W5 acted jointly as the general contractor for the project. Calvin, in turn, was hired by W5 via an oral contract as a subcontractor to perform the demolition work.

On the evening of the accident, plaintiff testified at his deposition that he was on a scaffold using a blowtorch to "clean" or remove objects from the ceiling on the second floor of the building. For a portion of time, plaintiff was aided by a coworker named Jose Martinez. According to plaintiff, Martinez would move the scaffold around to areas so that plaintiff could "clean" and would pick up any debris that had fallen to the floor. Each time Martinez moved the scaffold, plaintiff testified that he just sat down on the top platform, as opposed to descending the scaffold, to save time. Plaintiff admitted that it was best practice to do the latter but maintained that no one told him he should get off the scaffold while it was in motion.

Martinez was deposed on behalf of Calvin and confirmed that he would push the scaffold from location to location so that plaintiff could complete his work. Martinez claimed that he did so at plaintiff's specific request so plaintiff "wouldn't have to keep coming down and going up."

Plaintiff testified that Martinez also held the scaffold in place when it wasn't being moved. Martinez denied that claim. At some point, plaintiff testified that Martinez was called away by Calvin's foreman, Angel Robles, "to go up a ladder that was a few feet away". As a result, Martinez was no longer purportedly holding the scaffold. Approximately five minutes later, plaintiff fell while reaching towards the ceiling. Specifically, plaintiff testified that he felt the scaffold move "[t]o the sides" immediately prior to his accident. Plaintiff had felt the scaffold move prior to his accident "[m]any times", but when asked why he didn't come down the scaffold and lock the wheels, he said "[t]hat was the reason I had a person that was looking out for me." Plaintiff further explained that he didn't lock the wheels on the scaffold himself because he "was concentrating in the job that I was performing" but admitted that he could have done so.

Martinez maintained that he locked all four wheels of the scaffold. Martinez confirmed that if the wheels were locked, the scaffold wouldn't move. Meanwhile, plaintiff repeatedly testified that the scaffold wheels were not locked at the time of his accident:

Q. Does each wheel have a safety?

A. Correct.

Q. Was the safety switch on each wheel activated or on at the time of your accident?

A. No,

Q. Were any of the safeties on at the time of your accident?

A. No.

Q. How do you know that?

A. Because the one who was helping, every time he had to move it, he would move it and hold it, move it and hold it.

Q. Are you supposed to make sure that the wheels are locked before you stand on a scaffold?

A. That is not my job's responsibility. That is the job responsibility of the helper.

Q. Did your supervisor ever tell you not to get on a scaffold with wheels that weren't locked?

A. No.

Q. Did Mr. Robles ever tell you not to get on a scaffold that wasn't the locked?

A. No...

The scaffold plaintiff fell from was made of metal. Everyone but plaintiff testified that the scaffold was six feet tall. Plaintiff claimed that it was eight feet high but admitted he didn't know that actual height of the scaffold. The scaffold had four wheels that, according to plaintiff, did not lock all at the same time. Plaintiff testified that Calvin had given him the scaffold and that he and others put the scaffold together several days prior to the accident. There is no dispute that the scaffold did not have any safety railings and plaintiff was not given a harness.

Martinez testified that he observed plaintiff's fall from approximately twenty feet away. Specifically, Martinez "saw that [plaintiff] took two steps back and he fell" ... "because he tripped on the lower plank". According to Martinez, he did not observe the scaffold move prior to plaintiff's accident. Martinez stated that he had "no idea" why plaintiff fell.

Martinez further testified that Robles also observed plaintiff's accident as well; Robles allegedly told Martinez that plaintiff appeared to have fallen because he was dizzy. Martinez then ran over to plaintiff, shut the blowtorch off and attempted to put plaintiff in a sitting position. Martinez observed that plaintiff was "knocked out" and not awake. A short while later, before paramedics came, Martinez was told to leave the building. Martinez never saw plaintiff again.

TMC produced Christopher MacArthur, its property manager at the time of plaintiff's accident, for a deposition. MacArthur testified as follows. TMC is a property management company and the "acting agent" or "managing agent" for 1CB. TIP is TMC's "parent company" which "does the buying and selling of properties." MacArthur signed the contract between 1CB and W5.

MacArthur explained that he and other TMC employees visited the construction site frequently. MacArthur stated that he and his boss, John Soden, directed the work at the construction site and that TCM's "engineers may have been involved a little bit." Specifically, MacArthur testified that he and Soden set up the timing of the work and provided access to the building along with an outsourced non-party security company. MacArthur also had the authority to stop the work. Meanwhile, TMC's engineers would marked what was to be demolished and what would stay at the construction site before the demolition began. While the contract required W5 to notify 1CB/TMC of any subcontractors it hired, MacArthur denied ever receiving any notification that W5 hired Calvin.

W5 produced Joseph Marrone for a deposition. Marrone is an owner/member of W5 and is also employed by Calvin. According to Malone, Waldorf Holding Corporation no longer exists and became W5 in 2005. Meanwhile, Waldorf Exteriors LLC is a different entity unrelated to the subject demolition work that does exterior demolition.

Marrone explained that he works as a project manager and "liaison" between the client and the subcontractors who do the work. He is only on site at the beginning of the job when he meets with the

client and subcontractors and periodically he will go to a site if there are "[q]uestions by subcontractors, questions by clients, changes in type of work, that's basically it." Marrone further testified:

Q. Do you know if it was Taconic Investment Partners LLC to be the general contractor?

A. I have no idea.

Q. Do you believe Taconic Management Company was the general contractor?

A. No idea.

Q. Was W5 Group the general contractor of the project?

A. We did the job for Taconic. If we were the general contractor I'm not sure.

Marrone further claimed that Calvin had 10-15 laborers at the construction site and Robles, Calvin's foreman, was the only person in charge. Marrone stated that he was the only employee of W5 who would have been present at the site since W5 does not employee any foremen, supers or laborers.

Parties' arguments

Plaintiffs have asserted causes of action under Labor Law §§ 200, 240[1] and 241[6]. They maintain that they have established *prima facie* liability under Labor Law § 240[1] against 1CB as the owner and "Taconic" and W5 as agents of the owner with the ability to control and stop the demolition work.

Waldorf/W5 argue that W5 did not control or supervise plaintiff's work and that there is at least a quest of fact that they did. They argue that plaintiff was the sole proximate cause of his accident and that plaintiff's credibility is a triable issue of fact. As for the Labor Law § 241[6] claim, Waldorf/W5 argue that Industrial Code 5.18[b] does not apply to scaffolds less than seven feet. They contend that that Waldorf Holdings Corporation and Waldorf Exteriors LLC are unrelated to the project and plaintiff's claims against them should be dismissed. Finally, Waldorf/W5 argue that the indemnity cross-claims are untimely, are premature and that questions of fact exist as to whether the indemnification clause was triggered under the circumstances.

In opposition to Waldorf/W5's cross-motion, 1CB/Taconic argue that W5 is a proper labor law defendant because it was 1CB's agent for the demolition work. In connection with their motion-in-chief, 1CB/Taconic argue that TMC is not a proper labor law defendant since it did not have the authority to supervise and control plaintiff's work. Alternatively, 1CB and TMC seek contractual indemnification against W5.

In opposition to the cross-motion, plaintiff maintains that W5 was a general contractor with the ability to direct and control plaintiff's work and that plaintiff was not the sole proximate cause of his accident. Plaintiffs further maintain that TMC was an agent for purposes of labor law liability and can be held liable in this action. As for the Labor Law § 241[6] claim, plaintiff maintains that W5 violated Industrial Code 5.18[b] which is not limited to scaffolds more than seven feet tall. Otherwise, plaintiffs argue that any factual disputes regarding plaintiff's fall do not preclude summary judgment on liability with respect to the Labor Law § 240[1] claim.

Meanwhile, 1CB/Taconic maintain that Waldorf/W5's cross-claims are meritless and should be dismissed. Waldorf/W5, however, argue that there is "significant evidence" that TMC and TIP acted as agents for the owner and maintained control and supervision over the subject construction site. They further argue that 1CB/Taconic are not entitled to contractual indemnification because Waldorf/W5

"were not negligent, did not breach any Labor Law duty of care, and did not supervise or control the relevant work."

Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; Ayotte v. Gervasio, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Labor Law § 240[1]

The court will first consider the parties' arguments in connection with plaintiffs' claims. Labor Law § 240[1], which is known as the Scaffold Law, imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v. Eastern Railway Supply, Inc.*, 82 NY2d 555 [1993]). The statute provides in pertinent part as follows:

> All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a premises 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 protects workers from "extraordinary elevation risks" and not "the usual and ordinary dangers of a construction site" (*Rodriguez v. Margaret Tietz Center for Nursing Care, Inc.*, 84 NY2d 841 [1994]). "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)" (*Narducci v. Manhasset Bay Associates*, 96 NY2d 259 [2001]).

Section 240[1] was designed to prevent 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 (*Runner v. New York Stock Exchange, Inc.*, 13 NY3d 5999 [2009] quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The protective devices enumerated in Labor Law § 240 [1] must be used to prevent injuries from either "a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 [1991]).

Plaintiffs have not demonstrated entitlement to partial summary judgment on liability with respect to the Labor Law § 240[1] claim. While plaintiff claims that the wheels to the scaffold weren't locked, Martinez testified that he did lock the wheels. The manner of plaintiff's accident bears on defendant's liability. Not every fall from a scaffold is sufficient to impose liability under Section 240[1]. There is an issue of whether adequate safety devices were provided to prevent the elevation-related risks of plaintiff's injury-producing work insofar as plaintiff claims the wheels of the scaffold were not locked at the time he fell. If a jury credits plaintiff's version of events, a jury could find liability against an owner, general con-

tractor or agent because plaintiff was not provided with adequate safety devices: locked wheels. an employee holding the ladder, a safety bar or a harness. However, a jury could credit Martinez' testimony that the wheels were locked and that plaintiff merely fell over and find that the safety locks on the wheels were an adequate safety device for the inherent risks of standing on top of the scaffold. There is a further question of fact as to whether plaintiff should have been provided additional safety devices (*see i.e. Nazario v. 222 Broadway, LLC*, 28 NY3d 1054 [2016]). Accordingly, plaintiffs' motion is denied.

While plaintiffs' motion must be denied, defendants have certainly not established that plaintiff was the sole proximate cause of his accident. That he could have descended the scaffold and locked the wheels himself prior to his accident merely goes to his contributory negligence, which is not a defense to a Labor Law § 240[1] claim. Accordingly, this argument is rejected.

W5 argues that it is not a proper labor law defendant. Plaintiff and 1CB/Taconic cite *Williams v. Dover Home Improvement*, (276 AD2d 625 [2000]), wherein the Second Department held that "a party which has the authority to enforce safety standards and choose responsible subcontractors is considered a contractor under Labor Law § 240(1). W5 contends that *Williams* is distinguishable and is otherwise not controlling. The court disagrees. As for whether *Williams* is controlling, W5 does not cite any First Department case which is contrary to it. Therefore, this argument fails. Therefore, it is of no moment that Marrone claims he did not go to the construction site or supervise the injury-producing work, since he admits that W5 had the ability to do so. Further, W5's contract with 1CB specifically provided that W5 "shall provide and furnish all labor, materials, appliances, appurtenances, supplies and services of every kind and nature for the complete performance of the demolition of the 2nd floor" at 111 8th Avenue, New York, NY 10011." Accordingly, W5's argument that it is not a proper labor law defendant is rejected.

The court also rejects TMC's argument that it cannot be held liable as an agent of 1CB. While has established that it did not hire Calvin, did not provide plaintiff with instructions or equipment, was not present on the day of the accident and was not contractually responsible for the work performed by plaintiff at the time of the accident, it has failed to demonstrate that it lacked the authority to do so (*see Merino v. Continental Towers Condominium*, 159 AD3d 471 [1st Dept 2018]). Indeed, MacArthur confirmed W5 was contractually obligated to obtain 1CB/TMC's approval before hiring a subcontractor. Accordingly, TMC is not entitled to summary judgment dismissing plaintiffs' claims against it.

Labor Law § 241[6]

Labor Law § 241[6] imposes a non-delegable duty on all contractors and owners, in connection with construction or demolition of buildings or excavation work, to ensure that:

[a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.

The scope of the duty imposed by Labor Law § 241[6] is defined by the safety rules set forth in the Industrial Code (*Garcia v. 225 E. 57th Owners, Inc.*, 96 AD3d 88 [1st Dept 2012] citing *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). Plaintiff must allege violations of specific, rather than general, provisions of the Industrial Code (*Rizzuto v. L.A. Wenger Contracting Co., Inc.*, 91 NY2d 343 [1998]). Plaintiff asserts that Industrial Code § 23-1.21(3) and (4) was violated as a matter of law.

Industrial Code § 23-5.18[b], entitled "Manually-propelled mobile scaffolds", states in pertinent part as follows:

> Safety railings required.
>
> The platform of every manually-propelled scaffold shall be provided with a safety railing constructed and installed in compliance with this Part (rule).

W5 argues that this provision does not apply to the scaffold plaintiff fell from because this scaffold was less than seven feet. The First Department squarely this argument in *Celaj v. Cornell* (144 AD3d 590 [2016]). Accordingly, W5's cross-motion to dismiss this claim must be denied.

Section 200 and common law negligence

As the court previously stated, plaintiffs do not oppose Waldorf/W5's motion to dismiss the Labor Law § 200 and common law negligence claims. Only TMC and TIP have moved to dismiss plaintiffs' claims, and plaintiffs have not opposed TIP's request for relief. In the body of 1CB/Taconic's motion, however, they argue that the Section 200/common law negligence claims should also be dismissed against it. While not properly noticed, there is no indication that the parties did not believe 1CB was also seeking summary judgment in its favor. Therefore, the court will therefore now consider plaintiff's Labor Law § 200 claim against both 1CB and TMC.

Labor Law § 200 codifies the common law duty of owners and general contractors to provide workers with a reasonably safe place to work (*Comes v. New York State Elec. And Gas Corp.*, 82 NY2d 876 [1993]). There are two categories of Labor Law § 200 and common law negligence claims: injuries arising from dangerous or defective premises conditions and injuries arising from the manner or means in which the work was performed (*Cappabianca v. Skanska USA Bldg. Inc.*, 99 AD3d 139 [1st Dept 2012]). In order to demonstrate a *prima facie* case under the former category, a plaintiff must prove that the owner or general contractor created the condition or had actual or constructive notice of it (*Mendoza v. Highpoint Asoc., IX, LLC*, 83 AD3d 1 [1st Dept 2011]). Where the injury was caused by the manner of the work, the owner or general contractor will be liable if it exercised supervisory control over the work performed (*Foley v. Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476 [1st Dept 2011]).

On this record, 1CB and TMC have established that they did not exercise supervisory control over the injury-producing work. Accordingly, their motion for summary judgment dismissing plaintiffs' Labor Law § 200 and common law negligence claims must be granted.

Cross-claims

1CB and TMC seek contractual indemnification from W5. Procedurally, Waldorf/W5 argues that 1CB/Taconic's cross-claims were untimely asserted nearly four years after this action was commenced and a month after note of issue was filed. Meanwhile, 1CB/Taconic contends that "courts are free to permit amendment either during or even after trial" and that Waldorf/W5 will not be prejudiced by same. The court agrees. The cross-claims are not meritless and 1CB/Taconic's failure to assert them was mere oversight. Finally, Waldorf/W5's failure to demonstrate prejudice resulting from the late amendment warrants interposition of the cross-claim.

Turning to the merits, "[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 also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). However, "General Obligations Law § 5-322.1 prohibits and renders unenforceable any promise to hold harmless and indemnify a promisee which is a construction contractor or a landowner against its own negligence" (*Kilfeather v Astoria 31st St. Assoc.*, 156 AD2d 428 [2d Dept 1989]).

The indemnification provision in the contract between 1CB and W5 provides as follows:

> To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, Architect, Lender, Consultants and their respective members, shareholders, agents, employees, successors, and assigns from and against all losses, claims, costs, damages, and expenses, arising out of or resulting from the

performance of the Work, or by Contractor's breach of this Agreement, except to the extent it is caused by the sole negligence of any Indemnitee hereunder.

Here, the contract between specifically requires W5 to indemnify the owner, 1CB, and its agents, TMC, against any loss, liability, or damage that arises out of the performance of its work, unless such loss was caused by 1CB or TMC's sole negligence. Here, since there is no dispute that plaintiff's accident occurred as a result of the performance of the subject work under the contract, and 1CB and TMC are free from negligence, the indemnification provision is clearly triggered. Accordingly, 1CB and TMC are entitled to summary judgment on their claim for contractual indemnification against W5.

As for Waldorf/W5's cross-claims, they are dismissed. There is no contract requiring 1CB/Taconic to indemnify Waldorf/W5 and 1CB/Taconic are otherwise entitled to dismissal of the remaining boilerplate cross-claims.

Third-party claims

W5's third-party claims against Calvin are for common law indemnity and contribution on the grounds that plaintiff suffered a grave injury as defined by Section 11 of the Workers' Compensation Law. Procedurally, W5 argues that that Calvin's motion is untimely. Calvin contends that it should not be bound by a preliminary conference order entered into before it was a party to this action and that this part's rules supersede those of the Justice who previously presided over this case.

Plaintiffs' Note of Issue was filed on May 10, 2019. Calvin's motion was filed June 13, 2019. The Preliminary Conference Order dated July 28, 2016 (the "PC Order") required that all motions for summary judgment be made within 30 days of filing of Note of Issue. It is true that this court does not ordinarily shorten the deadline imposed by the CPLR on the time to move for summary judgment. However, this court cannot simply ignore a prior Justice's order which did in fact shorten that deadline. A prior Justice's order is law of the case.

While Calvin was not a party to this action when the preliminary conference order was entered, it cannot argue that it mistakenly thought its time to move for summary judgment had been extended by the mere fact that this action was reassigned to this court. Calvin has been a party to this action approximately two years prior to its joinder of issue, which would undercut any reasonable excuse regarding a purported ignorance of the PC Order. The court is mindful of the confusion imposed by the lack of uniform rules between different justices of this court. But as the First Department recently noted, "statutory time frames – like court-ordered time frames … are not options, they are requirements, to be taken seriously by the parties." (*Appleyard v. Tiggos*, 171 AD3d 534 [April 16, 2019]). Further, the legislature saw fit to empower Justices to shorten the deadline to move for summary judgment, an issue which is beyond this court's review.

The court finds the circumstances here to be similar to those in *Appleyard*, where the movant acted without due diligence in bringing a late motion. Ignorance of statutorily-authorized, court-imposed deadlines is not a basis for showing good cause for a late motion.

While a court can consider an untimely motion for summary judgment upon good cause, Calvin does not make this argument.

Accordingly, Calvin's motion is denied.

Remaining issues

Since there can be no dispute that the crossclaims against the Waldorf Entities are unavailing since they either did not exist and/or had no connection to the demolition work, 1CB/Taconic's cross-claims against them are severed and dismissed.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that plaintiffs' motion for summary judgment (seq 004) is denied; and it is further

ORDERED that Waldorf/W5's cross-motion for summary judgment (seq 004) is granted only to the following extent: [1] plaintiffs' claims and any cross-claims against the Waldorf Entities are severed and dismissed; and [2] plaintiffs' Labor Law § 200 claims against W5 are severed and dismissed; and it is further

ORDERED that 1CB/Taconic's motion for summary judgment (seq 005) is granted to the following extent: [1] plaintiffs' claims and any cross-claims against TIP are severed and dismissed; [2] plaintiffs' Labor Law § 200 and common law negligence claims against 1CB and TMC are severed and dismissed; and [3] 1CB and TMC are entitled to summary judgment against W5 on their claim for contractual indemnification; and it is further

ORDERED that Cavin's motion for summary judgment is denied as untimely; and it is further

ORDERED that the motions and cross-motion are otherwise denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 1/9/20
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.