SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 29

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CHRISTOPHER JONES, Index No.: 155820/2016

Plaintiff,

-against-

85 RYERSON GROUP LLC, 87 RYERSON REALTY LLC and PK INTERIORS, INC.,

Defendants.

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85 RYERSON GROUP LLC and 87 RYERSON REALTY LLC,

Third-Party Plaintiffs,

-against-

BLUEWATER PLUMBING AND HEATING, INC. and ALL STAR CONCRETE AND MASON, INC.,

Third-Party Defendants.

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Kalish, J.:

This is an action to recover damages for personal injuries allegedly sustained by a junior mechanic when, while working at a construction site located at 85 Ryerson Street, Brooklyn, New York (the Premises), he slipped and fell on a plywood ramp which was located in front of the entrance to the basement.

In motion sequence 001, defendant PK Interiors, Inc. (PK) moves for summary judgment dismissing the action and further moves for summary judgment dismissing the cross claims asserted by the co-defendants 85 Ryerson Group LLC and 87 Ryerson Realty LLC (together, the Ryerson defendants) .

In motion sequence number 002, the Ryerson defendants move, pursuant to CPLR 3212, for summary judgment dismissing the complaint against them, as well as for summary judgment in their favor on their third-party claims against third-party defendant Bluewater Plumbing and Heating, Inc. (Bluewater).[1]

Also in motion sequence number 002, Plaintiff Christopher Jones cross-moves to amend his bill of particulars and for summary judgment in his favor on those parts of his Labor Law § 241 (6) claim predicated on alleged violations of Industrial Code sections 23-1.7 (d) and 23-1.22 (b) (2) and the common-law negligence and Labor Law § 200 claims as against the Ryerson defendants.

BACKGROUND

On the day of the accident, January 26, 2016, the Ryerson defendants owned the Premises (85 and 87 Ryerson Street Brooklyn, New York) where the accident occurred. The Ryerson defendants hired Bluewater to install various plumbing fixtures for the construction project at the Premises (the Project), which entailed the gut renovation of two side-by-side brownstone buildings. Plaintiff was employed by Bluewater as a junior mechanic. It is alleged that Ryerson served as the general contractor on the project and that PK worked on the project as the carpentry trade responsible for drywalls, sheeting, framing and finishing.

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[1]It should be noted that after submission of the motions, pursuant to a stipulation, plaintiff has discontinued the action with prejudice as against defendant PK Interiors, Inc. (PK) (see Transcript page 4). In addition, at oral argument held on November 13, 2019, the court granted the entirety of PK's motion (motion sequence number 001) seeking dismissal of all cross claims asserted by the Ryerson defendants as against it (see Transcript page 47) and denied Ryerson's motion for summary judgment for indemnification from PK.

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of his accident, he was working for Bluewater as a junior mechanic on the Project, which entailed the renovation of two residential brownstones which were located next to each other. Each brownstone was three stories high and had a basement. The main entrance to each building was located atop a staircase leading up from the street level, and the entrance to each basement was located below that staircase. Bluewater was serving as a plumber on the Project, installing plumbing fixtures throughout the Premises. Plaintiff testified that he was not supervised by any of the site's owners or their employees.

Plaintiff testified that his accident occurred as he was attempting to enter the entryway to the basement of the Premises. At the time, he was on his way into the basement to remove some gas pipes. In order to do so, he had to descend a ramp made of plywood pieces (the Ramp) that extended to the doorway of the basement from the direction of the sidewalk.

Plaintiff explained that the Ramp was made of multiple pieces of plywood lying on top of each other. The pieces of wood were not attached to each other in any way. The Ramp was the only access into the basement. At times, plaintiff had observed workers bring materials down the Ramp and into the basement. Plaintiff had used the Ramp on previous occasions. Plaintiff further explained that there was a trench with a vertical pipe sticking out of it located in front of the basement entrance. Eventually, concrete would be poured around the pipe to create a drain. Plaintiff did not know who installed the Ramp, and he never made any complaints about its condition.

Plaintiff testified that "it was cold. It was freezing" on the day of the accident (plaintiff's 8/17/2017 tr at 78). Plaintiff did not recall whether it was snowing that day. However, plaintiff

testified that it had snowed less than five inches "recent[ly]," approximately one to three days prior to the day of the accident (*id.*). Plaintiff never saw anyone remove any snow at the site, and, except in passing to his work partner, he never made any complaints to anyone about the presence of snow at the accident location.

Specifically, plaintiff testified, in pertinent part, as follows:

"Q. Okay. On the day of your accident was there any snow on the ramp you described?

A. Yes.

Q. And was that snow there when you first arrived that day?

A. Yes.

Q. Okay. Was there ice on the ramp?

A. I mean, I don't know. I guess– maybe. Like, it was wet and slippery when I stepped on it, like, when I went down that time.

Q. Okay.

A. And the wood shifted when I went down.

Q. Okay. Did you slip on the ramp?

A. No. The wood shifted or it moved. I don't know how, but the plywood came– maybe came off the lip. I am not sure how the plywood moved, but that the plywood moved and that's what caused me to go down, because it was wet, slippery and then the wood moved.

Q. So after the wood moved, did you slip?

A. No, I am trying to– I am trying to word it correctly. Like I – when I stepped in through the threshold, I couldn't get my bearings, like, and I went right down. Like, I just– the wood shifted off the ledge or I am not sure where– I am not sure how. It had happened fast . . . . But the wood just shifted . . . I just went down"

(*id.* at 87-88).

At his deposition, when plaintiff was asked as to whether the snow and ice played any role in his accident, he responded, "I can't say for sure," noting "it was obviously wet . . . [so] it could have" (*id.* at 98). In addition, while plaintiff testified that his accident was caused when the Ramp shifted/moved, and that his feet did not slip, he also testified that he "slipped. [He] went down because of the-- [he] couldn't get [his] bearings because of, obviously, the snow and ice. [He] couldn't get [his] balance and [he] went down" (*id.* at 113). When plaintiff was asked to clarify whether he slipped or just lost his balance, plaintiff testified that he "slipped. [His] foot didn't catch because of the ice and snow" (*id.*).

Deposition Testimony of Moed Issa (Owner of the Premises)

Moed Issa testified that he was one of four owners of the Premises on the day of the accident. He testified that he only visited the work site about once or twice a week to check the progress of the work, and that the other owners were not involved in running the building at all. Issa hired PK to pull permits and perform general contracting work. Issa also hired the plumbers, electricians and cement workers for the Project. Notably, he assigned an employee who worked at a nearby Key Food supermarket that was owned by one of his partners to clear snow from the sidewalk adjacent to the Premises when necessary. Issa could not recall whether or not that person removed any snow from the Premises in 2017.

Issa further testified that Bluewater was retained to perform all of the plumbing work at the site. He maintained that Bluewater dug a trench at the Premises, which was necessary for the installation of a drain, and that the trench was covered by plywood. When Issa was shown a photograph of the Ramp and asked if he had seen it during any of his visits to the Premises, Issa replied that he "couldn't tell you" (Issa 8/15/2017 tr at 26). That said, he also testified,

> "I've been to that property, I know the work that it was being done and [Bluewater] did the trenches to put the piping and then they lay, at the end of the day [Bluewater] will put the plywood there so people can walk back in"

(*id.*). When Issa was asked if it was possible that the carpentry subcontractor, PK, might have been responsible for placing the plywood boards across the trench, Issa replied, "It wouldn't be PK's job . . . it will be the plumber's job . . . to cover that trench" (Issa 5/21/2017 tr at 22). Issa noted that the plywood pieces that comprised the Ramp always seemed secure when he passed by, that no one ever complained about the Ramp's safety.

Deposition Testimony of Donald Radeljic (PK's Vice President)

Donald Radeljic testified that he was PK's vice president, and that PK was a carpentry company. Pursuant to a contract with the Ryerson defendants, PK pulled permits for the Project and installed drywall, sheeting and framing. Radeljic asserted that PK did not install any ramps at the site. Radeljic maintained that he did not know who placed the plywood in front of the basement entrance, noting that "[i]t could have been anyone" (Radeljic tr at 18).

When Radeljic was asked at his deposition to identify the entity responsible for snow and ice removal at the site, he replied, "The owners" (*id.* at 20). He further testified that when it had snowed on previous occasions, "they sent people to clean up the snow" (*id.*). Radeljic maintained that snow removal was not within PK's scope of work.

Deposition Testimony of Roger Macaluso (Founder and CEO of Bluewater)

Roger Macaluso testified that he was Bluewater's founder and CEO. Macaluso explained that Bluewater was hired to perform plumbing work on the Project, such as installing piping and bathroom fixtures. When shown a copy of Bluewater's subcontract for the Project, Macaluso pointed out that the word "trenching" was crossed out "[b]ecause it wasn't part of [Bluewater's]

scope of work or it wasn't something [Bluewater] would provide" (Macaluso's tr at 13-14).

When Macaluso was asked if Bluewater's employees were tasked with installing planking as part of their work on the Project, he replied, "If it's not made of pipe, then chances are we didn't do it" (*id.* at 19). However, when he was asked whether Bluewater employees would have covered the trench with plywood if it was necessary to perform their work, he replied, "I– I really can't answer that" (*id.* at 20).

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 movant'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]).

The Labor Law § 241 (6) Claim Against the Ryerson Defendants

In their separate motions, the Ryerson defendants (seq 002) move for dismissal of the Labor Law § 241 (6) claim against them, and plaintiff (seq 002) cross-moves for summary judgment in his favor on those parts of the Labor Law § 241 (6) claim predicated on alleged

violations of Industrial Code sections 23-1.7 (d) and 23-1.22 (b) (1) (as per their amended bill of particulars).

Labor Law § 241 (6) provides, in pertinent part, as follows:

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

Labor Law § 241 (6) imposes a nondelegable duty on "owners and contractors to 'provide reasonable and adequate protection and safety' for workers" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety (*id.* at 503-505) and must further show that the violation was a proximate cause of the accident in order to prevail.

Initially, while plaintiff asserted multiple alleged Industrial Code violations in his bill of particulars, he did not oppose the Ryerson defendant's request for summary judgment dismissing said violations, nor did he move for summary judgment in his favor in regard to the same. Therefore, those alleged Industrial Code violations contained in the bill of particulars are deemed abandoned (*see Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003] [where plaintiff did

not oppose that branch of defendant's summary judgment motion dismissing the wrongful termination cause of action, his claim that he was wrongfully terminated was deemed abandoned]).

Thus, the Ryerson defendants are entitled to dismissal of those parts of the Labor Law § 241 (6) claim predicated on the abandoned provisions.

At oral argument held on November 13, 2019, this court granted that part of plaintiff's motion seeking to amend the bill of particulars to add alleged violations of Industrial Code sections 23-1.7 (d) and 23-1.22 (b) (2) (see transcript page 13 et al) and denied all other requests as to amendments. Thereafter, this court then accepted plaintiff's proposed amended bill of particulars, which was included with his application, deeming "it served based upon the way [the court] . . . ruled" (November 13, 2019 oral argument transcript, at 13-24).

Plaintiff's cross motion for summary judgment on Labor Law 241(6) and Defendant Ryerson's motion for summary judgment.

Industrial Code 12 NYCRR 23-1.7 (d)

Industrial Code 12 NYCRR 23-1.7 (d) provides:

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

Industrial Code 12 NYCRR 23-1.7 (d) contains specific directives that are sufficient to sustain a cause of action under Labor Law § 241 (6) (*Lopez v City of N.Y. Tr. Auth.*, 21 AD3d 259, 259-260 [1st Dept 2005]).

Industrial Code section 23-1.7 (d) may apply to the facts of this case because the Ramp,

which was the only pathway into the basement, was an elevated walking surface for the purposes of that section. However, a review of the record reveals that plaintiff's testimony in regard to the proximate cause(s) of his accident is vague and inconsistent. To that effect, plaintiff testified that his accident was caused solely due to the unsecured ramp shifting under his weight when he stepped on it, and he also testified that a slippery condition created by the presence of snow on the Ramp was also to blame.

To prevail on a motion for summary judgment on his Labor Law 241(6) claim, plaintiff must establish both a specific Industrial Code regulation that applies as well as a violation of such regulation which is a proximate cause of the accident

Thus, as a question of fact exists as to whether the presence of a foreign substance, i.e., snow, was a proximate cause of the accident, plaintiff is not entitled to summary judgment in his favor on that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.7 (d). Likewise, the Ryerson defendants on their motion for summary judgment are not entitled to dismissal of the same.

Industrial Code 12 NYCRR 23-1.22 (b) (2)

Industrial Code 12 NYCRR 23-1.22 (b) (2) is sufficiently specific enough to support a Labor Law § 241 (6) claim (*see Arrasti v HRH Constr. LLC*, 60 AD3d 582, 583 [1st Dept 2009]; *O'Hare v City of New York*, 280 AD2d 458, 458 [2d Dept 2001]).

Industrial Code 12 NYCRR 23-1.22 (b) (2), which set standards for construction of runways and ramps to be used by individuals, states, as follows:

> "(2) Runways and ramps constructed for the use of persons only shall be at least 18 inches in width and shall be constructed of planking at least two inches thick full size or metal of equivalent strength. Such surface shall be substantially

> supported and braced to prevent excessive spring or deflection. Where planking is used it shall be laid close, butt jointed and securely nailed."

As discussed previously, plaintiff testified that when he stepped on the Ramp, it shifted/moved under his weight because the pieces of plywood that comprised it were not properly secured and/or attached. As such, the accident was caused due to the fact that the ramp was not "substantially supported and braced to prevent excessive spring or deflection," and it's planking was not "securely nailed," as required by section 23-1.22 (b) (2). In opposition to the Plaintiff's motion the defendant has failed to raise any issue of fact as to the issue of the ramp being "securely nailed".

Thus, plaintiff is entitled to summary judgment in his favor on that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-1.22 (b) (2), and the Ryerson defendants are not entitled to dismissal of the same. The issue of the Plaintiffs alleged comparative negligence will await that portion of the trial on the issue of damages.

The Common-Law Negligence and Labor Law § 200 Claims against the Ryerson Defendants

In their separate motions (seq 002), plaintiff cross-moves for summary judgment in his favor on the common-law negligence and Labor Law § 200 claims against the Ryerson defendants, and the Ryerson defendants move for dismissal of said claims against them.

Labor Law § 200 is a "codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Cruz v Toscano*, 269 AD2d 122, 122 [1st Dept 2000] [internal quotation marks and citation omitted]; *see also Russin v Louis N. Picciano & Son*, 54 NY2d 311, 316-317 [1981]).

Labor Law § 200 (1) states, in pertinent part, as follows:

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

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: when the accident is the result of the means and methods used by the contractor to do its work, and when the accident is the result of a dangerous condition (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]).

"Where an existing defect or dangerous condition caused the injury, liability [under Labor Law § 200] attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 (1st Dept 2012); *Murphy v Columbia Univ.*, 4 AD3d 200, 202 [1st Dept 2004] [to support a finding of a Labor Law § 200 violation, it was not necessary to prove general contractor's supervision and control over plaintiff's work, "because the injury arose from the condition of the work place created by or known to the contractor, rather than the method of [the] work"]).

On the other hand, it is well settled that, in order to find an owner or its agent liable under Labor Law § 200 for defects or dangers arising from a subcontractor's methods or materials, it must be shown that the owner or agent exercised some supervisory control over the injury-producing work (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993] [no Labor Law § 200 liability where the plaintiff's injury was caused by lifting a beam, and there was no evidence that the defendant exercised supervisory control or had any input into how the beam

was to be moved]; *see also McGarry v CVP 1 LLC*, 55 AD3d 441, 442 [1st Dept 2008] [holding that "[t]he construction of a temporary staircase of cinder blocks is plainly part of one of the contractor's methods"]).

Moreover, "general supervisory control is insufficient to impute liability pursuant to Labor Law § 200, which liability requires actual supervisory control or input into how the work is performed" (*Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 311 [1st Dept 2007]; *see also Bednarczyk v Vornado Realty Trust*, 63 AD3d 427, 428 [1st Dept 2009] [Court dismissed common-law negligence and Labor Law § 200 claims where the deposition testimony established that, while the defendant's "employees inspected the work and had the authority to stop it in the event they observed dangerous conditions or procedures," they "did not otherwise exercise supervisory control over the work"]; *Burkoski v Structure Tone, Inc.*, 40 AD3d 378, 381 [1st Dept 2007] [no Labor Law § 200 liability where the defendant construction manager did not tell subcontractor or its employees how to perform subcontractor's work]; *Smith v 499 Fashion Tower, LLC*, 38 AD3d 523, 524-525 [2d Dept 2007]).

As noted above, a question of fact exists as to whether the accident was caused solely by the fact that the plywood pieces comprising the Ramp were not properly secured, or whether, in addition to the defectively designed and installed ramp, the accident was also caused by the presence of snow on the Ramp, which created a slippery condition.

Under either of these scenarios, the faulty design and installation of the Ramp contributed to the accident, and, therefore, the accident was caused due to the means and methods of that work. As the record is devoid of any evidence that the Ryerson defendants were responsible in any way for the creation or placement of the Ramp, plaintiff would not be entitled to summary

judgment in his favor on the common-law negligence and Labor Law § 200 claims as against the Ryerson defendants on this ground, and the Ryerson defendants would be entitled to dismissal of said claims against them (*see Stier v One Bryant Park LLC*, 113 AD3d 551, 552 [1st Dept 2014] [no Labor Law liability where the defendants did not "have responsibility for maintenance of the Masonite on the floor where plaintiff's injury occurred, since that level of the building had been turned over to a nonparty entity"]).

However, here, a question of fact exists as to whether the accident was also caused by the presence of snow on the Ramp. Since the Ryerson defendants were responsible for snow removal their failure to timely remove snow could be a basis for finding them liable under a means and methods analysis. In addition, the Ryerson defendants could also be found liable if they had actual or constructive notice of the subject slippery condition (*see Urban v No. 5 Times Sq. Dev., LLC*, 62 AD3d 553, 555 [1st Dept 2009]).

Thus, as a question of fact exists as to whether the presence of snow on the Ramp played a role in the happening of the accident, plaintiff is not entitled to summary judgment in his favor on the common-law negligence and Labor Law § 200 claims against the Ryerson defendants, and the Ryerson defendants are not entitled to dismissal of said claims against them.

The Ryerson Defendants' Third-Party Claim for Contractual Indemnification Against Bluewater

The Ryerson defendants move for summary judgment in their favor on their third-party contractual indemnification claim against Bluewater.[2]

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[2]At oral argument held on November 13, 2009, the Ryerson defendants agreed that all other third-party claims against Bluewater were without merit or withdrawn. Accordingly, with the exception of the third-party claim for contractual indemnification against Bluewater which the court reserved decision, the court denied those parts of the Ryerson defendants' motion

Additional Facts Relevant To This Issue:

The subcontract between the Ryerson defendants and Bluewater (the Ryerson/Bluewater Subcontract) contained the following indemnification provision (the Indemnification Provision), which states, in pertinent part, as follows:

> "To the fullest extent permitted by applicable law, [Bluewater] agrees to defend, indemnify and hold harmless [the Ryerson defendants] . . . and anyone else required by the Contract Documents, from and against any and all claims, damages or loss (including attorney's fees) arising out of or resulting from any work of and caused in whole or in part by any negligent act or omission of [Bluewater] or those employed by it or working or working under those employed by it at any level, regardless of whether or not caused in part by a party indemnified hereunder"

(the Ryerson defendants' notice of motion, exhibit P, the Ryerson /Bluewater Subcontract, the Indemnification Provision).

"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 that "'[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant' [citation omitted]" (*De La Rosa v Philip Morris Mgt. Corp.*, 303 AD2d 190, 193 [1st

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seeking summary judgment in their favor on the third-party claims against Bluewater (see transcript page 41).

Dept 2003]; *Keena v Gucci Shops*, 300 AD2d 82, 82 [1st Dept 2002]).

Here, although the Indemnification Provision purports to indemnify the Ryerson defendants for their own negligence, nevertheless, it does not violate General Obligations Law § 5-322.1, in that it contains a "savings clause," i.e., to "the fullest extent permitted by applicable law" (*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"]).

Therefore, in order to be entitled to contractual indemnification from Bluewater, it must be established that the accident was caused in whole or in part by some negligence on the part of Bluewater. Here, Issa testified that Bluewater's workers were responsible for placing the Ramp over the trench so that people could walk over it. In contrast, Macaluso testified that Bluewater's scope of work did not include digging trenches or covering them with planking. As a result of this conflicting testimony, a question of fact exists as to whether Bluewater was the entity responsible for placing the Ramp at the accident location, and whether any negligence on their part, in failing to properly secure the Ramp's plywood pieces, proximately caused the accident to occur.

Thus, the request for contractual indemnification is premature as there has been no finding of negligence on the part of Bluewater. As such, the Ryerson defendants are not entitled to summary judgment in their favor on the third-party claim for contractual indemnification against Bluewater. Further it has yet to be determined whether Ryerson is liable for negligence (as opposed to vicarious liability) *(see Wellington v Christa Constr. LLC*, 161 AD3d 1278, 1283

[3d Dept 2018] [holding that "factual question" regarding contractual indemnification defendant's negligence barred summary judgment to contractual indemnification plaintiff]).

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the motion (seq 001) by the defendant PK Interiors, Inc. (PK) for summary judgment, pursuant to CPLR 3212, dismissing the action and dismissing the cross claims asserted by the co-defendants 85 Ryerson Group LLC and 87 Ryerson Realty LLC (together, the Ryerson defendants) is granted and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the defendants/third-party plaintiffs 85 Ryerson Group LLC and 87 Ryerson Realty LLC's (together, the Ryerson defendants) motion (seq 002) for summary judgment, pursuant to CPLR 3212, is granted to the extent that plaintiff's Labor Law § 241 (6) is dismissed except to the extent that said claim is predicated on any violation of the Industrial Code sections 23-1.7(d) and 23-1.22(b)(2), and the motion is otherwise denied; and it is further

ORDERED that the cross motion (seq 002) of plaintiff Christopher Jones for summary judgment, pursuant to CPLR 3212, in his favor on his Labor Law § 241 (6) claim is granted to the extent that it is predicated on the violation of Industrial Code section 23-1.22 (b) (2), the motion to amend the bill of particulars is granted to the extent that the bill of particulars is amended to add 23-1.7(d) and 23-1.22(b)(2), and plaintiff's cross motion is otherwise denied.

The foregoing constitutes the decision and order of the Court.

Dated: Jan 13, 2020

ENTER:

J.S.C.
HON. ROBERT D. KALISH
J.S.C.