| **Rooney v D.P. Consulting Corp.** |
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| 2020 NY Slip Op 34168(U) |
| December 15, 2020 |
| Supreme Court, New York County |
| Docket Number: 160208/2013 |
| Judge: Carol R. Edmead |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

***Justice***

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PATRICK ROONEY,

Plaintiff,

- v -

D. P. CONSULTING CORP., EDGE GENERAL CONTRACTING, INC.,SKIG LLC,151 HUDSON STREET LLC,151 HUDSON STREET CONDOMINIUM, ANDREWS BUILDING CORP,

Defendant.

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**INDEX NO.** 160208/2013

**MOTION DATE** 02/11/2020, 02/11/2020, 02/12/2020

**MOTION SEQ. NO.** 004 005 006

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 218, 223, 225, 238, 241, 244, 249, 250, 251, 252, 255, 258, 259

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 219, 224, 237, 239, 242, 245, 247, 254, 256

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 220, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 240, 243, 246, 248, 253, 257

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, it is

ORDERED that the branch of Defendant D.P. Consulting Corp.'s ("D.P.") motion (Motion Seq. 004), pursuant to CPLR 3212, for summary judgment dismissing Plaintiffs' Labor Law claims, is granted to the extent that Plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed; and it is further

ORDERED that the branch of D.P.'s motion (Motion Seq. 004), pursuant to CPLR 3212, for summary judgment on its crossclaim for contractual indemnification as against defendant Edge General Contracting, Inc. (Edge) is denied and its crossclaim for common law indemnification against Edge and against defendants SKIG LCC, 151 Hudson Condominium, and Andrews Building Corp (collectively, the SKIG Defendants), is denied; and it is further

ORDERED that the branch of D.P.'s motion (Motion Seq. 004), for dismissal of all crossclaims asserted against it is denied; and it is further

ORDERED that the branch of Edge's motion (Motion Seq. 005), pursuant to CPLR 3212, for summary judgment dismissing Plaintiffs' Labor Law claims, is granted to the extent that Plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed; and it is further

ORDERED that the branch of Edge's motion (Motion Seq. 005), pursuant to CPLR 3212, for summary judgment dismissing D.P's crossclaims is granted to extent that D.P.'s contractual indemnification claim is dismissed, and it is further

ORDERED that the branch of the SKIG Defendants' motion (Motion Seq. 006), pursuant to CPLR 3212, for summary judgment dismissing Plaintiff's Labor Law §§ 240(1) and 241(6) claims is granted; and it is further

ORDERED that the branch of the SKIG Defendants' motion (Motion Seq. 006), pursuant to CPLR 3212, for summary judgment granting their contractual indemnification claim against D.P. is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the remainder of the claims against the parties in this action are severed and shall continue; and it is further

ORDERED that counsel for D.P. shall serve a copy of this Order with Notice of Entry within 20 days of entry on all parties.

## MEMORANDUM DECISION

In this Labor Law action, the following motions are consolidated for disposition.

In Motion Seq. 004, defendant D.P. Consulting Corp. ("D.P.") moves, pursuant to CPLR 3212, for summary judgment dismissing Plaintiff Patrick Rooney's Labor Law §§ 240(1), 241(6), and 200 claims against it, as well as any and all crossclaims against it. D.P. also seeks summary judgment on its claims for common law and contractual indemnification.

In Motion Seq. 005, defendant Edge General Contracting, Inc. ("Edge") moves for summary judgment dismissing Plaintiff Patrick Rooney's Labor Law §§ 240(1), 241(6), and 200 claims against it, as well as any and all crossclaims against it.

In Motion Seq. 006, defendants SKIG LCC ("SKIG"), 151 Hudson Condominium ("151 Hudson"), and Andrews Building Corp. ("Andrews") (collectively, "the SKIG Defendants") move for summary judgment dismissing Plaintiff Patrick Rooney's Labor Law §§ 240(1) and 241(6) claims against them, as well as summary judgment granting their contractual indemnification claim against D.P.

## BACKGROUND FACTS

On September 27, 2011, Plaintiff, an elevator technician employed by non-party Major Elevator, was working at 151 Hudson Street in Manhattan ("the subject premises"), a mixed-use condominium building owned by 151 Hudson and operated and managed by Andrews. Plaintiff was assigned to work at the subject premises pursuant to a service contract between his employer and 151 Hudson. Plaintiff was performing work on an elevator in connection with renovations being undertaken by SKIG, 151 Hudson's ground floor commercial tenant, when he fell while stepping down from the top of the elevator after completing his job.

Separately from the renovations being conducted by SKIG, 151 Hudson had also hired D.P. as a general contractor for sidewalk excavation work outside the subject premises. D.P. in turn subcontracted the sidewalk work to Edge. Plaintiff alleges that he fell into a pit that had been created in the course of the sidewalk excavation work and sustained various injuries.

***Plaintiff's Deposition Testimony***

Plaintiff began working for his employer, Major Elevator, in June or July 2011 as a supervisor of elevator maintenance and trouble shooting (NYSCEF doc No. 152 at 38-9). Plaintiff oversaw maintenance for Major Elevator's clients and described his job as "making sure that we went to every one of [the clients] at least once a month, checked on the machines" (*id.* at 38). Plaintiff was familiar with 151 Hudson as one of Major Elevator's clients and had been to the building several times prior to the day of his accident to perform maintenance work and shutdowns (*id.* at 70).

On September 27, 2011, the day of the accident, Plaintiff arrived at the subject premises to service one of the two elevators located inside 151 Hudson. Plaintiff was told by his employer, Major Elevator, that he was assigned to take out the first floor door lock on the rear opening of the elevator and the first floor rear call buttons so that the elevator would not open into SKIG's store (*id.* at 69). Plaintiff was specifically told that task that day was part of the renovation work taking place on the first floor, as SKIG needed to cut off access to its store while its renovations were ongoing (*id.* at 71).

Plaintiff testified that he was told by his supervisor to bill separately for the work performed that day as it was a billable job and therefore an "extra" beyond the scope of the general maintenance agreement (*id.* at 110-111). However, Plaintiff elsewhere in deposition

referred to his task as a "service call" and noted that it took only between 10 and 15 minutes to complete (*id.* at 175, 349).

To accomplish the task of sealing off the elevator door, Plaintiff and his coworker dropped the elevator into the basement so they could perform their work (*id.* at 80). Plaintiff positioned the elevator so he could stand on top of the elevator car to work on the door lock (*id.* at 81). The exterior elevator door opened onto a loading dock platform, which, due to the separate sidewalk work being performed, was only accessible via a wooden ramp (*id.* at 85).

Plaintiff opened the junction box at the top of the elevator to remove the pieces that made up the door lock. He then removed wiring to ensure the elevator would not stop at the ground floor (*id.* at 89-93). Plaintiff testified that after he finished his work with the lock on top of the elevator door, he took a step back out of the elevator, struck the ramp with his left foot, and tripped. Plaintiff then reached for the orange snow fencing surrounding the ramp, but the fence and the wood pieces to which it was attached all came apart and fell with him into the hole in the sidewalk (NYSCEF doc No. 153 at 176-77). Plaintiff fell about eight to ten feet into the hole but was able to stand up after and complete his task after a brief rest (*Id.* at 220-229).

***John Wolf's Deposition Testimony***

John Wolf, a former resident and member of the board of 151 Hudson, was an eyewitness to the accident. Wolf has offered conflicting testimony regarding how the accident occurred.

Wolf lived at 151 Hudson for approximately eight years from 2008 until late 2014 or early 2015 (NYSCEF doc No. 161 at 9). SKIG purchased the first floor retail space sometime prior to September 2011 and commenced its renovation shortly thereafter (*id.* at 16, 19). SKIG's renovation coincided with the separate project of 151 Hudson's improvements to its sidewalk

vault and lobby (*id.* at 18). Wolf noted that D.P. had been hired to oversee the sidewalk work but SKIG had its own contractor, Quest, in charge of its renovations (*id.* at 32).

Wolf was familiar with Major Elevator as the company that serviced the building's elevators (*id.* at 21). He did not know whether Major Elevator was contacted specifically to stop the elevator from opening on to SKIG's retail space (*id.* at 22). Wolf was outside the building the morning of the accident and saw Major Elevator's employees but was not sure specifically why they were present (*id.* at 63).

According to Wolf, Plaintiff stepped off the elevator and decided to sit back on a wooden barrier top of the sidewalk, and it gave way as it could not support his weight. Wolf testified that Plaintiff fell approximately two feet onto a void in the sidewalk, not a hole, and he immediately got back up (NYSCEF doc No. 161 at 73). When shown photos of the accident site, Wolf stated that he did not believe Plaintiff fell into the 10-foot excavation, but he could not recall which portion of the fencing Plaintiff attempted to sit in.

Wolf's version of the accident was confirmed by Ray Cicola, the president of Edge General Contracting, who provided a statement to D.P. shortly after the accident occurred (NYSCEF doc No. 167, ¶ 85).

***Thomas Pepe's Deposition Testimony***

Thomas Pepe, who is now retired but was previously employed by D.P., testified on behalf of D.P. Pepe could not remember the specific details of the job, but testified that D.P.'s contract with 151 Hudson was for sidewalk replacement (NYSCEF doc No. 159 at 23). Pepe recalled that D.P. "subbed the [151 Hudson] job out" to Edge, meaning that Edge was responsible for all facets of the job, including securing permits, setting up protection protocols, securing equipment, material and labor, and supervising the job (*Id.* at 19).

Pepe testified that a supervisor from D.P. would have been assigned to check on the project from time to time, but none of D.P.'s employees would have regularly been at the subject premises as the job was completely subcontracted to Edge (*Id.* at 43-45). Pepe had no personal knowledge of what barricades or safety devices may have been used at the job site, but he never received complaints or safety violation notices related to the project (*id.* at 50-58). Pepe was not familiar with Plaintiff's accident or his employer (*id.* at 59).

## PROCEDURAL HISTORY

Plaintiff originally commenced his personal injury action against D.P., Edge, SKIG, and 151 Hudson in November 2013. Plaintiff then served a supplemental summons and complaint against all defendants in April 2014 (NYSCEF doc No. 136).

This action was temporarily stayed in April 2017 when the insurer for the SKIG Defendants went into liquidation (NYSCEF doc No. 79). After the stay ended, Plaintiff moved to amend his complaint to add a cause of action under Labor Law § 240(1), which was granted by this Court in December 2018 (NYSCEF doc No. 111).

Following additional depositions, Plaintiff filed his Note of Issue on November 14, 2019 (NYSCEF doc No. 150). The motions consolidated for disposition in this decision were originally filed in February 2020 but were not fully submitted until September 2020 due to delays caused by the COVID-19 pandemic.

D.P. moves for dismissal of Plaintiff's Labor Law claims on the grounds that the testimony and evidence establish that Plaintiff was not performing work that falls within the protections of the Labor Law at the time of the accident, and that any injuries sustained were proximately caused by Plaintiff's own conduct. D.P. additionally contends that it did not supervise, control, or direct Plaintiff's work as D.P. subcontracted the sidewalk work to Edge,

and the sidewalk work was wholly unrelated to Plaintiff's elevator assignment. D.P. also contends it is entitled to contractual indemnification from Edge pursuant to its subcontract, which requires Edge to indemnify D.P. and procure insurance on D.P.'s behalf. D.P. finally argues it is entitled to common law indemnification from the SKIG Defendants, as it was their work and alleged negligence that contributed to Plaintiff's accident.

Edge moves for dismissal of Plaintiff's Labor Law claims, similarly asserting that Plaintiff was not performing work that falls within the protections of the Labor Law at the time of the accident, and that any injuries sustained were proximately caused by Plaintiff's own conduct. Edge also argues that D.P.'s contractual indemnification claim against it must be dismissed as a matter of law as D.P. has not demonstrated the existence of a contract between itself and Edge.

The SKIG Defendants move for dismissal of Plaintiff's Labor Law §§ 240(1) and 241(6) claims on the grounds that Plaintiff's accident involved conditions caused by the sidewalk excavation work unrelated to SKIG's renovations, and that the work Plaintiff was performing at the time does not fall within the scope of those Labor Law sections. The SKIG Defendants also contend they are entitled to contractual indemnification from D.P. pursuant to the contract between D.P. and 151 Hudson.

**DISCUSSION**

Summary judgment is granted when "the proponent makes '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,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has made a prima facie showing, 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]).

The function of a court in reviewing a motion for summary judgment "is issue finding, not issue determination, and if any genuine issue of material fact is found to exist, summary judgment must be denied" (*People ex rel. Cuomo v Greenberg*, 95 AD3d 474, [1st Dept 2012]). Where "credibility determinations are required, summary judgment must be denied" (*People ex rel. Cuomo v Greenberg*, 95 AD3d 474, [1st Dept 2012]). Thus, on a motion for summary judgment, the court is not to determine which party presents the more credible argument, but whether there exists a factual issue, or if arguably there is a genuine issue of fact (*DeSario v SL Green Management LLC*, 105 AD3d 421 [1st Dept 2013] (holding given the conflicting deposition testimony as to what was said and to whom, issues of credibility should be resolved at trial)).

***Plaintiff's Labor Law Claims Against Defendants***

As a preliminary matter, the Court notes that there are two conflicting reports of how the accident occurred, and the Court's role in a motion for summary judgment is not to assess whether Plaintiff or Defendants present a more credible version of the events (*DeSario*, *supra*). However, the Court can proceed to evaluate whether the work Plaintiff was engaged in at the time of his accident falls within the scope of Labor Law protections.

The Court also notes that, should it reach the conclusion that Plaintiff was engaged in work covered under the Labor Law, each defendant is a proper Labor Law defendant. 151 Hudson is the owner of the subject premises and Andrews is its agent. SKIG is the owner of the condominium unit connected to Plaintiff's task, and D.P. is the general contractor that oversaw the sidewalk excavation work at the site involved in Plaintiff's accident. Edge contends that it is not a proper defendant as it is not an owner or contractor and did not exercise control or supervision over Plaintiff's work (NYSCEF doc No. 167, ¶ 105). However, "when the work giving rise to the duty to conform to the requirements of Section 240(1) 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." (*Johnson v City of New York*, 120 AD3d 405, 406 [1st Dept 2014]; *Muriqi v Charmer Indus. Inc.,* 96 AD3d 535, 536 [1st Dept 2012]). Edge "functioned as the "eyes and ears'" for the subject construction project, and it had broad responsibility under its contract to coordinate and supervise the work (*Johnson*, *id.*). As D.P. subcontracted the entire sidewalk excavation job to Edge, it is an agent of D.P. and is thus a proper Labor Law defendant.

The Court thus proceeds to examine whether Defendants are subject to liability for Plaintiff's Labor Law claims.

***Labor Law § 240 (1)***

Labor Law § 240(1) 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."

The Court of Appeals has held that this duty to provide safety devices is nondelegable (*Gordon v Eastern Ry. Supply*, 82 NY2d 555, 559 [1993]), and that absolute liability is imposed where a breach has proximately caused a plaintiff's injury (*Bland v Manocherian*, 66 NY2d 452, 459 [1985]). A statutory violation is present where an owner or general contractor fails to provide a worker engaged in section 240 activity with "adequate protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). Where a violation has proximately caused a plaintiff's injuries, owners and general contractors are absolutely liable "even if they do not have a continuing duty to supervise the use of safety equipment" (*Matter of East 51st St. Crane Collapse Litig.*, 89 AD3d 426, 428 [1st Dept 2011]).

Here, the parties dispute whether the activity Plaintiff was engaged in at the time of the accident is covered by 240(1). Defendants argue that at the time of the accident, Plaintiff was engaged in routine maintenance as he was at the subject premises pursuant to his employer's ongoing maintenance agreement with 151 Hudson. "Routine maintenance" is not one of the enumerated activities under 240(1) and thus accidents stemming from the performance of routine maintenance are outside the scope of the statue's protection (*Esposito v N.Y. City Indus. Dev. Agency*, 1 NY3d 526, 683 [2003]).

Plaintiff, in opposition, contends that he was engaged in an enumerated activity as he was performing an "alteration" of the elevator. Plaintiff further contends that the purpose of his task of sealing off access to the elevator was to facilitate SKIG's renovations, and he was thus engaged in an "overall capital improvement" of the subject premises that included his work (NYSCEF doc No. 225 at 31).

In deposition, Plaintiff testified that the work he performed on the day of the accident was not part of his employer's maintenance agreement and he was told to bill separately for the work (NYSCEF doc No. 153 at 110-111). Plaintiff stated he was told by his supervisor that this was a billable job and an "extra" beyond the scope of the agreement (*id.*). Plaintiff also stated he was specifically told that his visit to the subject premises that day was part of the renovation work taking place on the first floor, as SKIG needed to cut off access to its store while its renovations were ongoing (NYSCEF doc No. 152 at 71).

Defendants do not dispute Plaintiff's testimony that his task the day of the accident was related to SKIG's renovations. Defendants note, however, that Plaintiff contradicted his own testimony as he stated at another point in his deposition that the whole job took between 10-15 minutes and referred to it as a "service call" (NYSCEF doc No. 152 at 175, 349). In discovery, Plaintiff produced various invoices and proposals for elevator modernization work prepared by his employer over the course of their relationship with 151 Hudson (NYSCEF doc No. 148), but Plaintiff has not identified a piece of documentary evidence that relates to the specific job at issue here.

Courts have repeatedly distinguished what is considered an "alteration" within the meaning of 240(1) from what constitutes "routine maintenance." An "alteration" is considered an activity that makes "a significant physical change to the configuration or composition of the building or structure" (*Joblon v Solow,* 91 NY2d 457, 465 [1998]). Courts have deemed relatively simple activities, such as those that involve the repair or replacement of parts in the normal course of wear and tear of equipment, to be routine maintenance. However, the Court of Appeals has held that courts should take a broad view of the work in question, as "it is neither pragmatic nor consistent with the spirit of the statute to isolate the moment of injury and ignore

the general context of the work. The intent of (240[1]) is to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts" (*Prats v Port Auth of N.Y. and N.J.*, 100 NY2d 878, 882 [2003]).

*Prats* involved a plaintiff who sustained injuries after falling off a ladder. Plaintiff was an assistant mechanic for a company that contracted with defendant Port Authority of New York and New Jersey ("Port Authority") to work on a project involving air conditioning systems at the World Trade Center (*id.* at 880). Plaintiff's employer's agreement involved various tasks and stated that his employer's obligations included ascertaining "the extent of all construction" related to the project and to satisfy Port Authority's inspection standards (*id.*). Plaintiff's tasks varied on a daily basis, and on the day of the injury, his task specifically was to ready units for inspection. Defendants argued Plaintiff was not entitled to the protections of 240(1) as he was performing an inspection at the time of the accident, which is not an enumerated activity and is instead considered routine maintenance (*id.*)

The Court of Appeals held that plaintiff was entitled to the protections of the statute even though he was only engaged in the non-enumerated activity of an inspection at the time of his injury. The Court explained that while plaintiff was not engaged in an enumerated activity at the specific time of the accident, "[h]e was a member of a team that undertook an enumerated activity under a construction contract," and "[h]e was engaged in a process involving the building's alteration…his work went beyond mere maintenance" (*id.* at 882). The Court advised that the question of whether a non-enumerated activity can nevertheless fall within 240(1) must be determined on a case-by-case basis. The factors that led the Court to find plaintiff's activity was covered were "his position as a mechanic who routinely undertook an enumerated activity, his employment with a company engaged under a contract to carry out an enumerated activity,

and his participation in an enumerated activity during the specific project and at the same site where the injury occurred" (*id*. at 883)

In the years since *Prats,* courts have continued to adhere to the proposition that even minor tasks must be evaluated within the broader context of the work being performed when assessing whether a worker is entitled to the protections of 240(1). In *Belding v Verizon N.Y., Inc.,* the First Department found that Plaintiff's installation of bomb blast film at the time of his accident was a protected activity, noting that "(Plaintiff's task) was part of an overall capital improvement that included plaintiff's work as evidenced by the fact that his company, engaged as a subcontractor, was a member of the team involved in the alteration. Accordingly, we reject the dissent's and defendants' attempt to isolate the specific task plaintiff was engaged in at the time of the injury" (65 AD3d 414, 415 [1st Dept 2009]). *See also Mananghaya v Bronx-Lebanon Hosp. Ctr*., 165 AD3d 117 (1st Dept 2018] (Plaintiff's removal of a chiller system was part of a significant change to the hospital's air conditioning system); *Serowik v Leardon Boiler Works Inc*., 129 AD3d 471 (1st Dept 2015) (Plaintiff's work was a necessary step in the installation of a tank in the building); *Santiago v Rusciano & Son, Inc*., 92 AD3d 585 (1st Dept 2012) (Plaintiff who was boarding up windows to secure premises for demolition was engaged in alteration).

Guided by *Prats* and its progeny, the Court notes that the dispositive question here is not whether Plaintiff's task of closing off the entry to the elevator with removal of the first floor door lock, putting in a junction box where the lock was, and running a connector through it was an "alteration" of the elevator that constituted a significant physical change. Rather, the Court must determine whether Plaintiff was sufficiently engaged in the overall alteration of the first floor to bring his work within the scope of 240(1).

In applying the factors outlined by the Court of Appeals in *Prats* to the case at bar, the Court finds that Plaintiff is not entitled to the protections of 240(1).

*First,* the record does not reflect that Plaintiff routinely undertook enumerated activities. Plaintiff testified that his job title for Major Elevator was “supervisor of maintenance and trouble shooting department” (NYSCEF doc No. 152 at 39). This distinguishes this case from *Prats,* where the plaintiff was a mechanic who was employed “substantially to perform work that involved alteration of a building” (*id.* at 822). While the *Prats* Court cautioned that job titles are not dispositive, Plaintiff also testified that his general duties were “maintaining” the elevators of his employer’s clients (*id.* at 43). He described his job as “making sure that we went to every one of [Major Elevator’s clients] at least once a month, checked on the machines” (NYSCEF doc No. 152 at 38). Plaintiff’s testimony regarding the scope of his job duties indicates that he mainly engaged in maintenance and routine repairs to elevators, and thus he did not regularly engage in work covered by 240(1).

*Second*, Plaintiff’s employer Major Elevator was not engaged under a contract to carry out an enumerated activity. Unlike the plaintiff in *Prats,* Plaintiff here was not employed by a company that was contracted specifically to perform work that was related to a detailed project at the building and involved various construction and alteration-related activities. Plaintiff could have been assigned to work at the building for any reason as his employer was a longstanding contractor whose relationship with 151 Hudson pre-dated the commencement of SKIG’s renovation in the fall of 2011 (NYSCEF doc No 161 at 16). Plaintiff in fact had been to the building several times prior to the day of his accident to perform maintenance work and shutdowns (NYSCEF doc No. 152 at 70). Regardless of whether Plaintiff’s task was a “billable job,” the fact remains that he was at the building on the day of the accident pursuant to his

employer's maintenance agreement and not pursuant to any separate agreement related to SKIG's renovations that involved carrying out specific construction and alteration activities.

*Third*, Plaintiff did not participate in any other enumerated activities for the specific project that is the subject of the litigation. Beyond his assigned task the day of the accident, Plaintiff does not contend he performed any other work related to SKIG's renovation. This case is thus distinguishable from *Prats,* where plaintiff happened to be performing a routine inspection at the specific time of his accident, but at other times was engaged in various enumerated activities at the subject worksite related to alteration and construction. In ruling for plaintiff, the *Prats* Court took into account the other task Plaintiff performed, such as constructing walls and leveling floors, that constituted enumerated activities. The evidentiary record here does not reflect that Plaintiff had any involvement with SKIG's renovation beyond the one task that led to his accident. Plaintiff's task thus cannot fall within 240(1) regardless of its connection to a renovation project.

As the scope of Plaintiff's work is not sufficiently connected to an alteration such that his task the day of his accident falls within the scope of 240(1), the Court finds that Defendants are entitled to dismissal of Plaintiff's claims under Labor Law § 240(1).[1]

Therefore, the branches of Defendants' motions to dismiss Plaintiff's Labor Law § 240(1) claim are granted and said claim is severed and dismissed.

***Labor Law § 241(6)***

Labor Law § 241 (6) provides, in relevant part:

> "All areas in which construction, excavation or demolition
> work is being performed shall be so constructed, shored,
> equipped, guarded, arranged, operated and conducted as to

[1] The parties also dispute whether Plaintiff's work involved an elevation-related risk, as required under 240(1). As the Court has already determined that Plaintiff was not engaged in work that falls within the scope of 240(1), it need not reach this issue.

provide reasonable and adequate protection and safety to
the persons employed therein or lawfully frequenting such places."

It is well settled that this statute requires owners and contractors and their agents "to provide reasonable and adequate protection and safety measures for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993], quoting Labor Law § 241 [6]). While this duty is nondelegable and exists "even in the absence of control or supervision of the worksite" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348-349 [1998]), "comparative negligence remains a cognizable affirmative defense to a section 241 (6) cause of action" (*St. Louis v Town of N. Elba*, 16 NY3d 411, 414 [2011]).

To maintain a viable claim under Labor Law Section 241(6), plaintiffs must allege a violation of a provision of the Industrial Code that requires compliance with concrete specifications (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). The Court of Appeals has noted that the Industrial Code should be sensibly interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the workplace (*St. Louis,* 16 NY3d at 416).

Here, Plaintiff alleges violations of Industrial Codes 23.1-7 (b)(1), 23-1.15(a), and 23-1.18(c), which pertain to requirements for safety railings around hazardous openings and barricades around sidewalks and pedestrian thoroughfares. [2]

The activities covered by Labor Law § 241(6) are more tightly circumscribed than the activities covered by section 240(1). Only "construction, excavation or demolition" are covered under the statute.

[2] Plaintiff's papers also initially alleged violations under Industrial Code Rules 23-1.3, 23-1.5, 23-1.19, and 23-2.5(2) (ii), but in response to Defendants' motions, Plaintiff concedes that Rules 23-1.3 and 23-1.5 do not support a cause of action under 241(6) and Rules 23-1.19 and 23-2.5(2)(ii) do not apply to the facts of this case. The Court thus deems them abandoned

As discussed *supra*, Plaintiff was engaged in routine maintenance at the time of his accident. In *Nagel v D & R Realty Corp.* (99 NY2d 98 [2002]), the Court of Appeals affirmed the dismissal of the 241(6) claim of a plaintiff who was injured while performing a two-year safety test on an elevator to ensure that the elevator's brakes still worked. Plaintiff in *Nagel* argued that "construction work" under 241(6) could be deemed to encompass certain types of maintenance and the protections of 241(6) should thus extend to his elevator safety test (*id.*). The Court held that the protections of 241(6) are "meant to protect workers engaged in duties connected to the inherently hazardous work of construction, excavation or demolition," and noted that 241(6) could extend to maintenance, but only within the context of construction (*id.* at 101). The *Nagel* Court also painstakingly went through the legislative history of the statute to support its conclusion that "the Legislature sought to protect workers from industrial accidents *specifically* in connection with construction, demolition or excavation work" (*id.* at 102 [emphasis added]).

In the years since *Nagel*, courts have continued to limit the application of 241(6) to those arising distinctly out of construction, excavation, or demolition. *See Martinez v Bauer,* 121 AD3d 495 (1st Dept 2014) (installation of furniture unit not connected to construction project); *Amendola v Rheedlen* 125th St., LLC 105 AD3d 426 (1st Dept 2013) (replacement of window shades and treatments was distinguishable from larger construction project); *Barnes v City of New York*, 77 AD 481 (1st Dept 2010) (disconnecting power cables from rail to allow signal construction project to proceed safely was a separate phase of work, distinct from construction).

In this case, it is undisputed that Plaintiff's task was not connected to any construction, demolition or excavation of a building or structure and is therefore not within the statute's coverage.

Accordingly, the branches of Defendants' motions to dismiss Plaintiff's Labor Law § 241(6) claim are granted and said claim is severed and dismissed.

***Labor Law § 200 and Common Law Negligence***

D.P. and Edge both move for dismissal of Plaintiff's claim under both the common law and Labor Law § 200[3].

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Dunham v Hilco Constr. Co.*, 89 NY 2d 425 [1996], *citing Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d [1993]). Labor Law § 200 is a general duty that does not require plaintiff to be engaged in an enumerated activity, and unlike Labor Law § 241(6), Labor Law § 200 "does not require that the plaintiff be engaged in construction, excavation or demolition" (*Mejia v Levenbaum*, 30 AD3d 262 [1st Dept 2006]). Thus, this Court's dismissal of Plaintiff's other Labor Law claims does not prevent this Court from proceeding to analyze Plaintiff's Labor Law § 200 and common law negligence claim.

Cases under Labor Law § 200 fall into two broad categories: those involving injury caused by a dangerous or defective condition at the worksite, and those caused by the manner or method by which the work is performed (*Urban v No. 5 Times Sq. Dev.,* LLC, 62 AD3d 553, 556 [1st Dept 2009]).

Where the alleged failure to provide a safe workplace arises from the methods or materials used by the injured worker, "liability cannot be imposed on [a defendant] unless it is shown that it exercised some supervisory control over the work" (*Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]). "General supervisory authority is insufficient to constitute supervisory

[3] The Court notes that the SKIG Defendants do not move for dismissal of Plaintiff's Labor Law § 200 and common law negligence claim and do not join in D.P. and Edge's arguments for dismissal.

control; it must be demonstrated that the [owner or] contractor controlled the manner in which the plaintiff performed his or her work, i.e., how the injury-producing work was performed" (*Id.*).

In contrast, where the defect arises from a dangerous condition on the work site, instead of the methods or materials used by plaintiff and his employer, an owner or contractor "is liable under Labor Law § 200 when [it] created the dangerous condition causing an injury or when [it] failed to remedy a dangerous or defective condition of which [it] had actual or constructive notice" (*Mendoza v Highpoint Assoc.*, IX, LLC, 83 AD3d 1, 9 [1st Dept 2011] [internal quotation marks and citation omitted]; see also *Minorczyk v Dormitory Auth. of the State of N.Y.*, 74 AD3d 675, 675 [1st Dept 2010]). In the dangerous-condition context, "whether [a defendant] controlled or directed the manner of plaintiff's work is irrelevant to the Labor Law § 200 and common-law negligence claims . . ." (*Seda v Epstein*, 72 AD3d 455, 455 [1st Dept 2010]).

D.P. and Edge each argue that they did not direct, control or supervise Plaintiff's work. While this is undisputed by Plaintiff, it is of no moment as Plaintiff is not alleging his accident was caused by the manner or method in which his work was performed. Plaintiff argues that his accident was caused by the defective condition of the "lack of an adequate fence around the excavation pit" (NYSCEF doc No. 225 at 48). Therefore, the material question for each defendant is not only whether it created the condition but whether it failed to remedy it after receiving actual or constructive notice, and it is irrelevant that none of the defendants controlled or supervised Plaintiff's work on the subject premises.

The Court notes there are questions of fact regarding which entity arranged the safety barrier and ramp used by Plaintiff. As discussed, D.P. and Edge also dispute Plaintiff's version of the events. However, as D.P. and Edge are the entities moving for summary judgment, the

Court must view the facts in the light most favorable to Plaintiff as the non-moving party (*Sherman v New York State Thruway Auth.,* 27 NY3d 1019, 1021 [2016]).

The Court thus proceeds to assess each defendant's liability under the assumption that Plaintiff's accident was indeed caused by a defective condition.

***D.P.***

While Plaintiff's task was unrelated to D.P.'s sidewalk excavation project, he was still allegedly injured by a dangerous condition that existed on the subject premises due to D.P.'s excavation work. D.P., as the general contractor of the sidewalk excavation work, asserts that it cannot be liable as Plaintiff asserts in his papers that he believes it was Edge that installed the inadequate barrier protection (NYSCEF doc No. 225 at 48). However, since as discussed above, Edge is a statutory agent of D.P., D.P. is assumed to have knowledge of its agent's acts (*See Solow v Avon Products, Inc,* 56 AD2d 785 [1st Dept 1977]).

Furthermore, regardless of which entity installed the barrier, D.P. must eliminate all material issues of fact as to whether it had constructive notice of the dangerous condition on its job site (*see Roppolo v Mitsubishi Motor Sales of Am., Inc.,* 278 AD2d 149 [1st Dept 2000]).

To show a lack of constructive notice, a defendant must show when it last inspected the premises (*see Jahn v. SH Entertainment, LLC*, 117 AD3d 473, 473 [1st Dept 2014] [holding the defendant owner's affidavit "was insufficient to establish a lack of constructive notice as a matter of law because he did not state how often he inspected the floor or that he or defendant's employees inspected the accident location prior to the accident"]; *compare Ezzard v One East River Place Realty Co*., LLC, 129 AD3d [1st Dept 2015] [in a misleveled elevator case, defendants made prima facie showing as to constructive notice by providing evidence of when they had last inspected the elevator]). D.P. has not done so, and it cannot escape liability by

arguing that it simply did not visit the subject premises. The Court notes that the doctrine of constructive notice exists in part to prevent defendants from avoiding responsibility by merely claiming ignorance of an unsafe condition.

As D.P. has not definitively established it lacked constructive notice of the defective condition, D.P is not entitled to dismissal of Plaintiffs' Labor Law § 200 and common law negligence claim at this juncture.

***Edge***

Edge argues it cannot be liable as it did not supervise or control Plaintiff's work. As discussed, that contention is immaterial to Edge's evidentiary burden in seeking dismissal of Plaintiff's § 200 claim. Regardless of Edge's status as a subcontractor, it can be liable under Labor Law § 200 if it created or had actual knowledge of the defective condition (*See Murphy v Columbia Univ.*, 4 AD3d 200 [1st Dept 2004]). Therefore, to demonstrate its entitlement to dismissal, Edge must disprove Plaintiff's contention that it was the entity that installed the fencing and must show that it lacked actual knowledge of the condition of the fencing at all times. Edge has not done so.

Additionally, D.P contends that its agreement with Edge subcontracted all aspects of the sidewalk excavation work, including oversight of safety at the job site (NYSCEF doc No. 225 at 48). Even if Edge did not actually install or maintain the fencing, it may still be liable if it displaced D.P.'s duty to maintain the premises safely (*Espinal v Melville Snow Contrs.,* 98 NY2d 136 [2002]). As discussed *infra*, the subcontract between D.P. and Edge has not been produced, and therefore a question of fact remains regarding whether Edge assumed the duty to maintain safety.

As Edge has not established that it did not create or have actual knowledge of the defective condition and has not demonstrated that it did not assume the duty to maintain a safe job site, Edge is not entitled to summary judgment at this juncture.

Accordingly, the branches of D.P. and Edge's motions seeking dismissal of Plaintiff's Labor Law § 200 and common law negligence claim are denied and the claim continues against both defendants.

***D.P.'s Contractual Indemnification Claim Against Edge***

In addition to the Labor Law claims, D.P. moves for summary judgment in its favor on its claim for contractual defense and indemnification, and failure to procure insurance, as against Edge. Edge moves for summary judgment dismissing said claim against it.

"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]).

"In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Correia v Professional Data Mgt.,* 259 AD2d 60, 65 [1st Dept 1999]; *see also Murphy v WFP 245 Park Co., L.P.*, 8 AD3d 161, 162 [1st Dept 2004]). Unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, "[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (*Correia,* 259 AD2d at 65).

The Court finds that D.P.'s contractual indemnification claim against Edge must be dismissed as D.P. has not demonstrated the existence of a written agreement between the parties

(NYSCEF doc No. 250, ¶ 8). Mr. Pepe, the owner of D.P., testified that the company would use purchase orders when it hired Edge, but that he had no written agreement or other documentation between D.P. and Edge related to the subject project of this litigation (*id.*, ¶ 9). D.P. argues that the parties entered into a general contract in 2011, but has not produced said contract, noting that it "cannot be located" (NYSCEF doc No. 259, ¶ 8). Obviously, the Court cannot evaluate the indemnification provisions of a contract that has not been produced.

D.P. nevertheless contends it is entitled to contractual indemnification for Edge's failure to procure insurance as Edge has a Certificate of Liability Insurance in which D.P. is named as a certificate holder. However, the fact remains that the parties have produced no written agreement by which any terms regarding defense and indemnity obligations are stated, including in the Certificate of Liability Insurance (NYSCEF doc No. 250, ¶ 12). The Certificate explicitly states that it "confers no rights upon the certificate holder" and "does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder" (NYSCEF doc No. 163). As the evidentiary record here contains no written agreement in which the parties agreed to name the movant as an additional insured, D.P.'s claim for breach of contract must be denied (*see Nielson v Vorando Forest Plaza, LLC*, 155 AD3d 424 [1st Dept 2014]).

Therefore, the branch of D.P.'s motion seeking summary judgment on its contractual indemnification claim against Edge is denied, and the branch of Edge's motion seeking dismissal of the contractual claim against it is granted.

***The SKIG Defendants' Contractual Indemnification Claim against D.P.***

The SKIG Defendants also move for summary judgment on their contractual indemnification claim against D.P.

On June 13, 2011, 151 Hudson entered into a contract with D.P. for their work on the sidewalk excavation at the subject premises. The rider to the contract sets forth the following indemnification provision:

> "To the fullest extent permitted by law, Contractor hereby agrees to and does indemnify, defend and hold the Owner and Engineer and their respective directors, officers, members, managers and employees harmless from and against any and all claims, actions, lawsuits, proceedings, liabilities, damages, losses, judgments, costs, expenses, attorneys fees, costs of any alternative dispute resolution and fees of expert witnesses, as well as the amount of any settlement, judgment or award (each a "Claim" and collectively the "Claims") asserted against or incurred by the foregoing indemnified persons result from performance of the work or any act or omission, but only to the extent caused by Contractor and/or any person within Contractor's control. The terms of the foregoing indemnity shall survive completion of the work, the termination of the agreement between Owner and Contractor to renovate the Project Site, and the termination of this Agreement."
>
> (*Id.* at Exhibit B, ¶ 1.0).

Here, the contract requires that indemnification is triggered by a claim that arises out of D.P.'s work *and* is caused by D.P. and/or any person within D.P.'s control. In *Lopez v Consol. Edison Co. of New York*, 40 N.Y.2d 605, 607 [1976], the Court of Appeals interpreted a similar indemnity clause that required the contractor to "indemnify and save harmless the Company from and against any and all liability arising from injury to person or property occasioned wholly or in part By [sic] any act or omission of the Contractor, his agents, servants or employees." The Court explained that "the indemnity clause, by its own terms, has no application unless there has been an 'act or omission' by Peckham resulting in injury to persons or property" (*id.* at 609).

D.P. argues that summary judgment on the SKIG Defendants' claim is premature as it cannot be said at this stage that the accident was caused by the acts or omissions of D.P., given the conflicting narratives about how Plaintiff's accident occurred. D.P. also contends that 151 Hudson is vicariously liable for Plaintiff's injuries, notwithstanding the provision, as it is the

undisputed owner of the subject premises, and that it was Edge, not D.P., that installed the allegedly defective fencing.

In support of their motion, the SKIG Defendants point out that while the exact circumstances of Plaintiff's accident are disputed, there is no dispute that Plaintiff claims he was injured due to fencing put up in connection with the sidewalk excavation work. 151 Hudson contracted with D.P. for the sidewalk excavation work, and the fact that it may have been Edge who physically put up the protective fencing and does not relieve D.P. of its contractual obligations herein, given that as D.P.'s subcontractor, Edge is an entity within D.P.'s control. D.P. also has not disputed John Wolf's deposition testimony that putting up the safety fencing was part of the scope of D.P.'s work (NYSCEF doc No. 206 at 157).

Notwithstanding the above, the Court finds that summary judgment for the SKIG Defendants on their contractual indemnification claim would be premature at this juncture as it has not yet been established that Plaintiff's accident was caused by the defective condition of inadequate fencing. Therefore, the Court cannot hold as a matter of law that Plaintiff's accident was caused by the acts or omissions of D.P. or its statutory agent Edge at this juncture. Of course, the Court also notes that D.P. is not entitled to dismissal of this claim as 151 Hudson will be owed indemnification pursuant to the contract should it be determined that Plaintiff's accident was caused by defective fencing installed around the excavation pit in the course of the sidewalk excavation work.

Therefore, the branch of the SKIG Defendants' motion seeking summary judgment on its contractual indemnification claims against D.P. is denied, and the branch of D.P.'s motion seeking dismissal of the contractual claim against it is also denied.

***D.P.'s Common-Law Indemnification Claims Against Edge and the SKIG Defendants***

D.P. also moves for summary judgment on its crossclaim against Edge and the SKIG Defendants for common law indemnification. Edge moves for its dismissal.

"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 at 65]); *see also Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 [1st Dept 2010]).

In other words, a claim for common-law indemnification is actionable only where a party has been found to be "vicariously liable without proof of any negligence . . . on its own part" (*McCarthy v Turner Constr., Inc.,* 17 NY3d 369, 377-378 [2011]).

D.P argues that it is entitled to common-law indemnification as the accident must have been caused by a negligent act or omission of Edge and D.P.'s scope of work did not pertain to Plaintiff's work at the subject premises. However, as discussed, it has not been established that Edge caused the accident. Furthermore, it is irrelevant that Plaintiff's work was unrelated to the sidewalk excavation job, given that Plaintiff's accident was still allegedly caused by an unsafe condition created in the course of the excavation job.

D.P makes no discrete argument for why it is entitled to common-law indemnification from the SKIG Defendants aside from its contention that Plaintiff was on the subject premises because of his employer's contract with 151 Hudson.

In any event, there has not yet been a finding of negligence or lack thereof on the part of any party as it has not yet been determined that Plaintiff's accident was caused by a defective condition. As no party has demonstrated that they are either free or guilty of the negligence that

may have led to a defective condition being created on the subject premises, summary judgment on common-law indemnification cannot be granted to D.P. at this juncture.

Therefore, the branch of D.P.'s motion seeking summary judgment on its common law indemnification crossclaims against its co-defendants is denied.

**CONCLUSION**

Based on the foregoing, it is hereby

ORDERED that the branch of Defendant D.P. Consulting Corp.'s ("D.P.") motion (Motion Seq. 004), pursuant to CPLR 3212, for summary judgment dismissing Plaintiffs' Labor Law claims, is granted to the extent that Plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed; and it is further

ORDERED that the branch of D.P.'s motion (Motion Seq. 004), pursuant to CPLR 3212, for summary judgment on its crossclaim for contractual indemnification as against defendant Edge General Contracting, Inc. (Edge) is denied and its crossclaim for common law indemnification against Edge and against defendants SKIG LCC, 151 Hudson Condominium, and Andrews Building Corp (collectively, the SKIG Defendants), is denied; and it is further

ORDERED that the branch of D.P.'s motion (Motion Seq. 004), for dismissal of all crossclaims asserted against it is denied; and it is further

ORDERED that the branch of Edge's motion (Motion Seq. 005), pursuant to CPLR 3212, for summary judgment dismissing Plaintiffs' Labor Law claims, is granted to the extent that Plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed; and it is further

ORDERED that the branch of Edge's motion (Motion Seq. 005), pursuant to CPLR 3212, for summary judgment dismissing D.P's crossclaims is granted to extent that D.P.'s contractual indemnification claim is dismissed, and it is further

ORDERED that the branch of the SKIG Defendants' motion (Motion Seq. 006), pursuant to CPLR 3212, for summary judgment dismissing Plaintiff's Labor Law §§ 240(1) and 241(6) claims is granted; and it is further

ORDERED that the branch of the SKIG Defendants' motion (Motion Seq. 006), pursuant to CPLR 3212, for summary judgment granting their contractual indemnification claim against D.P. is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the remainder of the claims against the parties in this action are severed and shall continue; and it is further

ORDERED that counsel for D.P. shall serve a copy of this Order with Notice of Entry within 20 days of entry on all parties.

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12/15/2020
**DATE**

**CAROL R. EDMEAD, J.S.C.**

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| **CHECK ONE:** | [ ] CASE DISPOSED | | [X] NON-FINAL DISPOSITION | |
| | [ ] GRANTED | [ ] DENIED | [ ] GRANTED IN PART | [X] OTHER |
| **APPLICATION:** | [ ] SETTLE ORDER | | [ ] SUBMIT ORDER | |
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