Supreme Court of the State of New York
County of Kings

Part 91

ARTURO HUERTA,

Plaintiff,

against

658 WEST 188TH STREET LLC AND BOROUGH CONSTRUCTION GROUP LLC,

Defendants.

BOROUGH CONSTRUCTION GROUP LLC,

Third-Party Plaintiff,

against

BUILDING SOLUTIONS NYC CORP.,

Third-Party Defendants.

658 WEST 188TH STREET LLC ,

Second Third-Party Plaintiff,

against

BUILDING SOLUTIONS NYC CORP., SAFETX CONTRACTING CORP., AND JOSE GONZALEZ,

Second Third-Party Defendants.

Index Number 505570/2017
SEQ# 003-009

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed	1-6
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	7-12
Replying Affidavits	13-15
Exhibits	
Other	

Upon the foregoing papers, the motions for summary judgment filed by plaintiff (Mot. Seq. 003), defendant Borough Construction Group LLC ("Borough Construction") (Mot. Seq. 004 and 007), defendant 658 West 188th Street LLC (Mot. Seq. 005 and 009), plaintiff's motion to sever or to dismiss the third-party action (Mot. Seq. 006), and second third-party defendant

Safetx Contracting Corp.'s ("Safetx") motion to sever and for summary judgment (Mot. Seq. 008) are decided as follows:

Introduction

Plaintiff commenced this action against defendants 658 West 188th Street and Borough Construction for injuries he claims to have sustained as a result of defendants' negligence and violations of New York Labor Law §§ 200, 240(1) and 241(6). 658 West 188th Street and Borough Construction each asserts cross-claims against the other for common-law and contractual indemnification, and contribution. Borough Construction commenced a third-party action against Building Solutions NYC Corp. ("Building Solutions") for common-law and contractual indemnification, contribution, and breach of contract. 658 West 188th Street commenced a second third-party action against Building Solutions, Safetx, and Jose Gonzalez for contractual indemnification, contribution, and breach of contract.

Factual Background

658 West 188th Street LLC is the owner of a property located at 658 West 188th Street, in Manhattan. 658 West 188th Street hired Borough Construction as the general contractor for construction work on the subject property. Borough Construction hired Building Solutions who, in turn, hired Safetx, plaintiff's employer, to perform demolition on the project.

At his deposition, plaintiff testified as follows: On the project at issue, plaintiff was tasked with replacing old metal beams with new metal beams inside the building. Plaintiff also supervised a group of workers at the project. On the day of the accident, plaintiff was working on a scaffold, without a harness, approximately 12 feet off the ground. He had asked his supervisor, also a Safetx employee, for a harness and/or lifeline, but was told he did not need one

because the scaffold was enclosed. While he was on the scaffold, someone passed him an electric hammer. Plaintiff opined that, when he received the hammer, the scaffold could not take the weight of both him and the hammer, and he fell. On prior occasions, Safetx had provided a harness and lifeline to plaintiff, but did not always insist that plaintiff use them. Also, on prior occasions, plaintiff had inspected the scaffold on which he was going to work, but only when the scaffold looked uneven. He would also inspect the boards on the scaffold if the board did not say "OSHA" on it. Plaintiff also knew from his experience that he should use a harness when performing at such work.

Mohamed "George" L. Hadidy, the principal of Safetx, testified at his deposition that Safetx provides its employees with harnesses and lifelines, and they are expected to use such equipment. Mr. Hadidy also testified that plaintiff was in charge of safety on the project when Philippos Kapansis, a supervisor with Safetx, was not present. Mr. Kapansis testified at his deposition that Safetx brought harnesses and lifelines to the job site, which they stored on the site in the company's van. He also testified that he told Safetx workers to wear their harnesses and tie off when working on a scaffold above a certain height. He testified that, even though the scaffolding was enclosed, one should not work on the scaffolding without a harness and lifeline.

Emanuel Kanaris, a principal of Borough Construction, testified at his deposition that Borough Construction hired Building Solutions, who hired the scaffolding contractor. He also testified that Safetx, and not Borough Construction, determined the means and methods of performing its own work. Angeliki Zorbas, a principal of Building Solutions, testified at his deposition that Jose Gonzalez was the subcontractor that brought the scaffold from which plaintiff fell.

During discovery, it was suggested that Mr. Gonzalez had passed away. It was further suggested that Mr. Gonzalez may have died prior to commencement of the action against him. The court held a conference on January 7, 2021 to address the implications of Mr. Gonzalez's purported passing. The parties explained that they had been unable to confirm whether or when Mr. Gonzalez actually died. The parties have now agreed to the dismissal of the second third-party claims against him and filed a stipulation to that effect.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Plaintiff's Negligence and Labor Law Claims

Plaintiff moves for summary judgment on his claims for violation of Labor Law §§ 240(1) and 241(6). Defendant Borough Construction moves for summary judgment to dismiss these claims as well as plaintiff's claim for negligence and violation of Labor Law § 200.

1. Plaintiff's Negligence and Labor Law § 200 Claims.

"Labor Law § 200 is a codification of the common law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violation of Labor Law § 200 are evaluated using the same analysis (*Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]). A property owner or general contractor is liable in two circumstances: (1) if there is

evidence that the owner or general contractor either created a dangerous condition, or had actual or constructive notice of it without remedying it within a reasonable time; or (2) if there are allegations of use of dangerous or defective equipment at the job site and the owner or general contractor supervised or controlled the means and methods of the work (*Grasso v New York State Thruway Auth.*, 159 AD3d 674, 678 [2d Dept 2018]; *Wejs v Heinbockel*, 142 AD3d 990, 991-92 [2d Dept 2016], *lv to appeal denied*, 28 NY3d 911 [2016]).

The first circumstance for liability does not apply because this action does not concern a dangerous condition on the premises itself, but rather a defective piece of equipment (*Ortega v Puccia*, 57 AD3d 54, 62 [2d Dept 2008]; *compare DeFelice v Seakco Const. Co., LLC*, 150 AD3d 677, 678 [2d Dept 2017]).

With regard to the second circumstance for liability, Borough Construction argues that it had only a general duty of supervision regarding plaintiff, which is not sufficient for Labor Law § 200 liability. In support, Borough Construction references the deposition testimony of plaintiff, who testified that he supervised Safetx workers. Borough Construction also references the deposition of Mr. Kanaris, who testified that he did not direct Safetx workers on how to do their job. In his opposition, plaintiff does not appear to contest Borough Construction's argument. Accordingly, plaintiff's claims against Borough Construction for negligence and violation of Labor Law § 200 are dismissed.

B. Plaintiff's Labor Law § 240(1) Claim.

Labor Law § 240(1) imposes upon owners and general contractors a non-delegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]). In order to receive protection

under Labor Law § 240(1), plaintiff must prove that: (1) he was permitted or suffered to work on the construction project; and (2) he was hired by the owner, contractor or their agent to work at the site (*Gallagher v Resnick*, 107 AD3d 942, 944 [2d Dept 2013]). Plaintiff must also prove that defendants violated the statute and that the violation was a proximate cause of the accident (*Escobar v Safi*, 150 AD3d 1081, 1082-83 [2d Dept 2017]). Defendants are liable under Labor Law § 240(1) if the injured worker's "task creates an elevation-related risk of the kind that the safety devices listed in section 240(1) protect against" (*id.*, quoting *Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 681 [2007]).

In further support of his motion, plaintiff submits the affidavit of Kathleen Hopkins, a certified site safety manager. Ms. Hopkins opines that:

> Plaintiff was clearly not provided with a safe means of vertical elevation to access the height of the steel beam. If for any reason(s) the scaffold could not be erected in compliance with the Labor Laws and Industrial Code Rules, then the Plaintiff should have been provided with other safe means of elevation such as a hoist in the form of a scissor lift or a boom manlift. The Plaintiff falling from the scaffold resulting in the Plaintiff's injuries was indisputably a gravity-based accident.

Thus, Ms. Hopkins concludes that defendants violated Labor Law §240(1).

In opposition, defendants (and Borough Construction in support of its own motion), argue that plaintiff was the sole proximate cause of the accident because he did not use a harness and/or lifeline. Plaintiff may be considered the sole proximate cause of the accident as a "recalcitrant worker," if he was provided with a proper safety device or one was readily available, and he was specifically instructed to use the device but disregarded the instruction without good reason (*Garbett v Wappingers Cent. School Dist.*, 160 AD3d 812, 815-16 [2d Dept 2018]; *Silvas v Bridgeview Inv'rs, LLC*, 79 AD3d 727, 731 [2d Dept 2010]).

There is no evidence of a specific instruction given to plaintiff to use a harness and/or

lifeline. Indeed, plaintiff testified that he specifically requested a harness and/or lifeline but his supervisor refused his request because the scaffolding was enclosed. Mr. Kapansis testified, generally, that one should wear a harness while working on a scaffolding regardless of whether it was enclosed, but defendants reference no evidence that plaintiff refused a specific instruction to wear the harness or lifeline. Instead, defendants argue that plaintiff, as a supervisor, should have effectively told himself to wear the harness and lifeline because of his experience and responsibilities. However, plaintiff himself had a supervisor, Mr. Kapansis, who told him he did not need to wear the equipment.[1]

Alternatively, defendants argue that plaintiff was the sole proximate cause of his accident because he did not wear the harness and/or lifeline, despite his experience in the field. While comparative negligence is not a defense to a claim for violation of Labor Law § 240(1), proof that a worker's own conduct was the sole proximate cause of the accident bars recovery under Labor Law § 240(1) (*Aguilar v Graham Terrace, LLC*, 186 AD3d 1298 [2d Dept 2020]). Borough Construction relies on the Court of Appeals decision in *Montgomery v Fed. Express Corp.* (4 NY3d 805 [2005]). Although Borough Construction refers to this decision in the context of its "recalcitrant worker" argument, the decision does not refer to this doctrine. Instead, the Court of Appeals held that because a worker had failed to use a ladder to get up and down from a height, but chose rather to jump down from a height, causing injury, the worker was the sole proximate cause of the accident (*id.* at 806). Accordingly, defendants have failed to rebut plaintiff's prima facie showing that defendants failed to provide an adequate safety device,

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[1] At his deposition on March 27, 2019, plaintiff testified that his supervisor "Felipe" told him that he (plaintiff) did not need a harness or lifeline (Huerta Tr. at 28-29). The court concludes that, given the context, plaintiff was referring to Mr. Philippos Kapansis.

and this failure caused plaintiff's accident.

Based on the foregoing, the portion of plaintiff's motion seeking summary judgment on his claim for violation of Labor Law § 240(1) is granted, and the portion of Borough Construction's motion for summary judgment seeking to dismiss this claim is denied.

C. Plaintiff's Labor Law § 241(6) Claim.

Labor Law § 241(6) imposes on owners and contractors a non-delegable duty to "provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed" (*Lopez v New York City Dept. of Envtl. Protection*, 123 AD3d 982, 983 [2d Dept 2014]). To prove such a claim, plaintiff must prove a violation of a rule or regulation promulgated by the Commissioner of the Department of Labor (*Vita v New York Law School*, 163 AD3d 605, 608 [2d Dept 2018]).

As set forth in his bill of particulars, plaintiff bases his Section 241(6) claim on alleged violations of Industrial Code §§ 23-1.5 1.7, 1.15, 1.16, 1.17, 1.21, 1.24, 3.2, 3.3, 5.1, 5.2, 5.3, 5.9; and 29 CFR 1910/1926. Borough Construction moves to dismiss the claims based on those sections, and plaintiff concedes in his opposition and his reply that he is withdrawing his claims as to these sections, except for Industrial Code §§ 23-5.1(c) and (f), which state:

> (c) Scaffold structure.
>
> (1) Except where otherwise specifically provided in this Subpart, all scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use. (See Labor Law, § 240, subdivision 3.) Such maximum weight shall be construed to mean the sum of both dead and live loads.
>
> Exception: Paragraph (1) above does not apply to scaffold suspension ropes. (See section 23-5.19 of this Subpart.)
>
> (2) Every scaffold shall be provided with adequate horizontal and diagonal

bracing to prevent any lateral movement.

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(f) Scaffold maintenance and repair. Every scaffold shall be maintained in good repair and every defect, unsafe condition or noncompliance with this Part (rule) shall be immediately corrected before further use of such scaffold.

Ms. Hopkins opines in her affidavit that defendants violated these sections.

The Second Department has held that Industrial Code § 23-5.1(f) does not "set forth safety standards that were sufficiently specific to support a Labor Law § 241(6) claim" (*Karwowski v Grolier Club of City of New York*, 144 AD3d 865, 867 [2d Dept 2016]). Defendants argue that *Karwowski* also held that Industrial Code § 23-5.1(c) is too general to impose liability, but the holding is a bit ambiguous. The court in *Karwowski* concludes that "defendant established . . . that 12 NYCRR 23-1.15, 23-1.16, 23-5.1 (c)-(e), (g)-(k); 23-5.3 (e), (g); 23-5.4, 23-5.5, 23-5.6, 23-5.13 (d) and 23-5.18 (a)-(d), (f), (i) were inapplicable to the facts of this case or too general to impose liability" (*Karwowski*, 144 AD3d at 867). It is not clear whether the Second Department determined that § 23-5.1(c) was inapplicable solely in that case or always too general to impose liability.

Defendants also rely on the First Department, which has held that § 23-5.1(c) is not sufficiently specific to support a claim for violation of Section 241(6) (*see, e.g.*, *Mutadir v 80-90 Maiden Lane Del LLC*, 110 AD3d 641, 643 [1st Dept 2013]). This court is not required to follow the guidance of the First Department. In the absence of clear and binding precedent to the contrary from the Second Department, this court concludes that § 23-5.1(c), which provides specific values for the weight that a scaffold must bear, is sufficiently specific in this circumstance to support liability under Labor Law § 241(6).

Accordingly, the portion of plaintiff's motion for summary judgment regarding plaintiff's claim for violation of Labor Law § 241(6) based on Industrial Code § 5.1(c) is granted. Conversely, the portion of Borough Construction's motion for summary judgment regarding plaintiff's claims for violation of Labor Law § 241(6) based on Industrial Code §§ 23-1.5 1.7, 1.15, 1.16, 1.17, 1.21, 1.24, 3.2, 3.3, 5.1, 5.2, 5.3, 5.9, and 29 CFR 1910/1926, except for Industrial Code §§ 23-5.1(c), is otherwise granted.

Defendants' Cross-Claims and Third-Party Claims for Contribution and Indemnification

A. 658 West 188th Street's Cross-claims Against Borough Construction

658 West 188th Street moves for summary judgment motion on its cross-claim for indemnification against Borough Construction. To prove a claim for common-law indemnification, 658 West 188th Street must show that it was not negligent, and that Borough Construction was "responsible for negligence that contributed to the accident or, in the absence of any negligence, that [Borough Construction] had the authority to direct, supervise, and control the work giving rise to the injury" (*Poalacin v Mall Properties, Inc.*, 155 AD3d 900, 909 [2d Dept 2017]).

As plaintiff testified, he was supervised by another Safetx employee. There is no evidence that suggests that either Borough Construction or 658 West 188th Street supervised plaintiff. Also, as held above, Borough Construction was not responsible in negligence for the condition that caused the scaffold to collapse. Thus, 658 West 188th Street is not entitled to summary judgment on its claim for common-law indemnification against Borough Construction.[2]

[2] Although Borough Construction moves to dismiss 658 West 188th Street's cross-claims against, Borough Construction makes no argument in its motion (Seq.004) in favor of their dismissal.

"The right to contractual indemnification depends upon the specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). Also, to be entitled to indemnification, 658 West 188th Street must prove it was not negligent (*Davies v Simon Prop. Group, Inc.*, 174 AD3d 850, 855 [2d Dept 2019]; *Cava Const. Co., Inc. v Gealtec Remodeling Corp.*, 58 AD3d 660, 662 [2d Dept 2009]).

658 West 188th Street's contract with Borough Construction states:

> To the fullest extent permitted by law, the contractor shall indemnify and hold harmless the owner, including their agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from, caused in whole or in part by negligent acts or omissions of the contractor, their agents, servants, employees or subcontractors.

Thus, pursuant to its contract with Borough Construction, Borough Construction was required to indemnify 658 West 188th Street for claims caused by Borough Construction's fault, or the fault of Borough Construction's subcontractors, which include Building Solutions and Mr. Gonzalez. Based on the testimony of Mr. Kanaris and Mr. Zobas, Mr. Gonzalez provided the scaffold from which plaintiff fell. Mr. Gonzalez has since been dismissed from this action on consent of the parties. That said, Mr. Gonzalez might bear some responsibility by providing the scaffold, although evidence of his negligence is not presented in these motions. Accordingly, 658 West 188th Street is not entitled to summary judgment on its claim for contractual indemnification against Borough Construction.

B. Borough Construction's and 658 West 188th Street's Claims Against Safetx

Borough Construction moves for summary judgment on its cross-claims against Safetx. However, Borough Construction is not a co-defendant with Safetx. Therefore, it cannot assert cross-claims against Safetx (*see BAS Communications, Inc. v YTK Corp.*, 15 Misc 3d 1104[A], 2007 N.Y. Slip Op. 50480[U] [Sup Ct, Nassau County 2007] [disregarding such cross-claims because the CPLR does not allow it]; *see also Hernandez v Ten Ten Co.*, 26 Misc 3d 1201[A], 2009 NY Slip Op 52618[U] [Sup Ct, NY County 2009]). Furthermore, Borough Construction did not commence a third-party action against Safetx. Accordingly, this motion (Seq. 007) is denied.

658 West 188th Street asserts third-party claims for contractual and common-law indemnification against Safetx and moves for summary judgment on those claims. Pursuant to Kings County Supreme Court Uniform Civil Term Rules, Part C, Rule 6, a party must move for summary judgment within 60 days from the date of the filing of the note of issue. Here, the note of issue was ultimately filed on December 11, 2019. 658 West 188th Street filed this summary judgment motion on August 10, 2020, more than 60 days after the note of issue was filed and also more than 60 days after Safetx answered the second-third party complaint. However, Safetx served discovery demands when it answered on May 14, 2020, and is not clear whether discovery was complete by the time 658 West 188th Street filed this motion. Under the circumstances, there is good cause to hear this motion (*Brill v City of New York*, 2 NY3d 648 [2004]).

With regard to 658 West 188th Street's contractual indemnification claim, the contract between Borough Construction and Safetx states that Safetx will indemnify 658 West 188th Street from and against any claims "arising out of or resulting from performance of [Safetx's]

work, to the extent caused by the acts or omissions of [Safetx], or anyone directly or indirectly employed by them or anyone for whose acts they may be liable". Here, the accident arose out of plaintiff's work as a Safetx employee. Accordingly, 658 West 188th Street's contractual indemnification claim against Safetx is granted.

To prove a claim for common-law indemnification, 658 West 188th Street must show that they were not negligent and that Safetx was "responsible for negligence that contributed to the accident or, in the absence of any negligence, that [Safetx] had the authority to direct, supervise, and control the work giving rise to the injury" (*Poalacin.*, 155 AD3d at 909). As previously stated, 658 West 188th Street was not negligent. It is not clear whether Safetx was negligent here, but plaintiff testified that Safetx supervised his work. Accordingly, 658 West 188th Street's common-law indemnification claim against Safetx is granted.

C. Plaintiff's and Safetx's Motions to Sever, to Dismiss, and for Summary Judgment

Plaintiff moves to sever or to dismiss the second third-party action by 658 West 188th Street against Building Solutions, Safetx, and Jose Gonzalez. Safetx moves to sever the second third-party action or for summary judgment dismissing 658 West 188th Street's claims against it. Pursuant to CPLR 1010, a court may dismiss or sever a third-party claim. However, severance is not appropriate "where there are common factual and legal issues and the interests of judicial economy and consistency of verdicts will be served by having a single trial" (*Zili v City of New York*, 105 AD3d 949, 950 [2d Dept 2013]; *see also Pescatore v Am. Export Lines, Inc.*, 131 AD2d 739 [2d Dept 1987] [denying a motion to dismiss or sever where there were common factual and legal issues, and where there was adequate time to conduct discovery]).

On June 24, 2019, defendant 658 West 188th Street served a Second Third-Party

Summons and Complaint on Second Third-Party Defendants Building Solutions, Safetx and Jose Gonzalez. In May 2020, only Safetx filed an answer. It appears that, to date, Building Solutions has not answered the second third-party complaint. In addition, the parties stipulated to the discontinuance of 658 West 188th Street's claims against Mr. Gonzalez.

Plaintiff does not argue that the legal and factual issues in the main action may be adjudicated separately from the second-third-party action. Instead, plaintiff argues that the time it takes for discovery to be completed in the second-third-party action will delay the main action, thereby prejudicing him. Under the present circumstances, plaintiff does not identify how any possible delay will prejudice him, nor does he establish that such prejudice outweighs the need to adjudicate common legal and factual issues together (*New York Schools Ins. Reciprocal v Milburn Sales Co., Inc.*, 138 AD3d 940, 941 [2d Dept 2016] [holding that "any potential prejudice resulting from the delay was outweighed by the interests of judicial economy and consistency of verdicts that would be served by having a single trial"]; *Herrera v Mun. Hous. Auth. of City of Yonkers*, 107 AD3d 949, 949 [2d Dept 2013] [denying severance because, despite any delay, the main action and the third-party indemnification action involved common questions of law and fact]; *Quiroz v Beitia*, 68 AD3d 957, 960-61 [2d Dept 2009]).

Finally, the portion of Safetx's motion seeking summary judgment, filed on June 12, 2020, is denied as untimely. Safetx was served with the second third-party complaint on June 17, 2019, through the Secretary of State. Safetx did not answer until May 14, 2020, nearly a year later, and several months after the note of issue was filed. If Safetx wanted the opportunity to move for summary judgment, it should have answered within the time permitted by the CPLR. This is different than the timing 658 West 188th Street's motion because 658 West 188th Street

could not move until Saftex answered and until discovery was complete regarding its claims against Safetx.

Conclusion

For the foregoing reasons, the various motions are resolved as follows:

a) plaintiff's motion for summary judgment on its claims against defendants (Mot. Seq. 003) is granted as to his claims for violation of Labor Law § 240(1), and for § 241(6) based upon Industrial Code § 23-5.1(c);

b) defendant Borough Construction Group's motion for summary judgment to dismiss plaintiff's claims (Mot. Seq. 004) is granted to the extent that plaintiff's claims for negligence and violation of Labor Law § 200, and violation of Labor Law § 241(6) based on Industrial Code §§ 23-1.5 1.7, 1.15, 1.16, 1.17, 1.21, 1.24, 3.2, 3.3, 5.1, 5.2, 5.3, 5.9, and 29 CFR 1910/1926, except for Industrial Code § 23-5.1(c), are dismissed;

(c) defendant 658 West 188th Street LLC's motion for summary judgment on its cross-claims for indemnification against Borough Construction (Mot. Seq. 005) is denied;

(d) plaintiff's motion to sever or dismiss the second third-party action (Mot. Seq. 006) is denied;

(e) Borough Construction's summary judgment motion on its cross-claims against Safetx (Mot. Seq. 007) is denied;

(f) Safetx's motion to sever the second third-party action or grant summary judgment dismissing all cross-claims against it (Mot. Seq. 008) is denied; and

(g) 658 West 188th Street's summary judgment motion on its second third-party claims for common-law and contractual indemnification against Safetx (Mot. Seq. 009) is

granted.

This constitutes the decision and order of the court.

January 15, 2021
DATE

DEVIN P. COHEN
Justice of the Supreme Court