

**Nieznalski v Rockledge Scaffold Corp.**

2021 NY Slip Op 31505(U)

May 4, 2021

Supreme Court, New York County

Docket Number: 154469/2012

Judge: Laurence L. Love

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE**

**PART IAS MOTION 63M**

*Justice*

-----X

**INDEX NO. 154469/2012**

RAFAL NIEZNALSKI, EDYTA NIEZNALSKI,

**MOTION DATE 3/25/2021**

Plaintiff,

**MOTION SEQ. NO. 005 006 007  
008 009 010**

- v -

ROCKLEDGE SCAFFOLD CORP., BASONAS  
CONSTRUCTION CORP., LUCKY WALNUT ASSOCIATES,  
L.P., HOUSTON PLACE CONDOMINIUM, BOARD OF  
MANAGERS OF HOUSTON PLACE CONDOMINIUM,  
COOPER SQUARE REALTY SERVICES,  
INC., INTEGRATED CONSTRUCTION SERVICES  
INC., ALL-CITY REMODELING INC., SHUR ELECTRICAL  
CONTRACTORS CORP.,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

ROCKLEDGE SCAFFOLD CORP., BASONAS  
CONSTRUCTION CORP.

Third-Party  
Index No. 595873/2016

Plaintiff,

-against-

CONSOLIDATED SCAFFOLD AND BRIDGE CORP.,  
CONSOLIDATED SCAFFOLDING, INC.

Defendant.

-----X

HOUSTON PLACE CONDOMINIUM, BOARD OF MANAGERS  
OF HOUSTON PLACE CONDOMINIUM, COOPER SQUARE  
REALTY SERVICES, INC.

Second Third-Party  
Index No. 595571/2019

Plaintiff,

-against-

ROCKLEDGE SCAFFOLD CORP., BASONAS  
CONSTRUCTION CORP., CONSOLIDATED SCAFFOLD &  
BRIDGE CORP., CONSOLIDATED SCAFFOLDING, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 207, 208, 209, 210, 211, 212, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 369, 370, 371, 372, 374, 375, 379, 380, 381, 388, 390, 391, 392, 393

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 365, 389

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 363, 364, 373, 376, 377, 378, 394

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 357, 358, 359, 360, 361, 362, 367

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

The following e-filed documents, listed by NYSCEF document number (Motion 009) 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 366, 368, 384, 385, 386, 387

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

The following e-filed documents, listed by NYSCEF document number (Motion 010) 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420

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

Upon the foregoing documents, the motions are decided as follows:

Defendant, Basonas Construction Corp, (“Basonas”) moves under motion sequence 5 for an Order granting summary judgment, dismissing Plaintiffs’ Complaint and all crossclaims asserted against it or in the alternative; granting Basonas’ cross-claims for common law and contractual indemnification against Rockledge Scaffold Corp (“Rockledge”) and Consolidated Scaffold & Bridge Corp (“Consolidated”). Rockledge cross-moves for an Order granting summary judgment dismissing the plaintiff’s complaint and all crossclaims asserted against it. Plaintiffs, Rafal and Edyta Nieznalski cross-move for an Order granting Summary Judgment as to liability in favor of the Plaintiffs as against the Defendants, Houston Place Condominium (“Houston

Place”), Board of Managers of Houston Place Condominium (“Board of Managers”), Cooper Square Realty Services, Inc. (“Cooper”), Basonas and Rockledge and denying the motions of Basonas and Rockledge. Lucky Walnut Associates (“Lucky”) moves under motion sequence number 6 for an Order granting it summary judgment, dismissing this action as asserted against it. Houston Place, Board of Managers, and Cooper move under motion sequence 7 for an Order granting summary judgment dismissing plaintiff’s complaint and all claims and cross-claims asserted against them as defendants, granting summary judgment in the second third party action on breach of contract, contractual and common law indemnity claims over and against Basonas, granting summary judgment in the second third party action over and against Consolidated on contractual and common law indemnity and granting summary judgment in the second third party action against Rockledge for indemnification. All-City Remodeling, Inc. (“All-City”) moves under motion sequence 8 for an Order granting it summary judgment, dismissing plaintiff’s complaint and dismissing all claims, counter-claims, cross-claims and third-party claims as made against All-City. Integrated Construction Services, Inc (“Integrated”) moves under motion sequence 9 for and Order, dismissing Plaintiff’s Complaint and granting it summary judgment and dismissing all counterclaims, crossclaims and third-party claims asserted against it. Shuir Electrical Contractors Corp. (“Shuir”) moves under motion sequence 10 for an Order granting it summary judgment, dismissing plaintiff’s complaint and all cross-claims asserted against it.

Plaintiff’s commenced the instant action on July 11, 2012 by e-filing a summons and complaint seeking to recover for injuries allegedly sustained on May 14, 2012, at approximately 2:00 P.M. when Mr. Nieznalski was struck by falling debris while walking on the sidewalk in the area of 240 East Houston Street, New York, New York. On or about August 21, 2012, Rockledge interposed an answer. On or about September 6, 2012, Basonas interposed an Answer to Plaintiffs’

Complaint asserting cross-claims for common law indemnification and contractual indemnification over and against Rockledge and Lucky. On September 19, 2014, Lucky interposed an Answer to Plaintiffs' Complaint. On or about August 8, 2016, this Court issued an Order consolidating *Rafal Nieznalski and Edyta Nieznalski v. Integrated Construction Services, Inc., All-City Remodeling Inc. and Shiur Electrical Contractors Corp.*, bearing Supreme Court, New York County Index No. 154568/2015; and *Rafal Nieznalski and Edyta Nieznalski v. Houston Place Condominium and Board of Managers of Houston Place Condominium, Fenwick Keats Managements Inc. and Cooper Square Realty Services Inc.*, bearing Supreme Court, New York County Index No. 151493/2015 under this Index Number. On November 16, 2016, Rockledge and Basonas initiated a Third-Party action against Consolidated. On July 2, 2019, Houston, Board of Managers and Cooper initiated a Third-Party Action against Rockledge, Basonas, and Consolidated.

Pursuant to a contract dated May 21, 2010 between Houston, Board of Managers and Basonas, Basonas was hired by Houston to perform exterior restoration, roof replacement, and elevator masonry bulkhead repairs at 240 East Houston Street, New York, New York. Said contract required Basonas to erect, install and dismantle a sidewalk shed at said location. Pursuant to a contract dated June 9, 2020, Basonas subcontracted Rockledge to erect, install and dismantle the sidewalk shed at issue. Said contract required Rockledge to indemnify Basonas for the contracted work. Arising out of said contract, Rockledge obtained a Department of Buildings permit to install and remove the 212 linear feet of sidewalk shed at the location. On July 1, 2011, Rockledge subcontracted with Consolidated to perform installation, erection, dismantling and removal of sidewalk sheds and pipe scaffolding and on May 14, 2012, Consolidated dismantled and removed the subject sidewalk shed pursuant to said contract.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1<sup>st</sup> Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of Houston Place, Board of Managers, Cooper Square, Basonas and Rockledge's motions, movants submit the deposition transcripts of plaintiff, Rafal Nieznalski, Michael Brion, the owner of Basonas, and John Harrington, the Controller of Rockledge, together with the relevant proposals and contracts, which establish as follows:

Mr. Nieznalski testified that on May 14, 2012, he took the "6" subway train to Astor Place, walked to the Polish newspaper stand on the corner of Seventh Street and First Avenue, purchased Polish newspapers and then began to walk home. He walked down 6th Street towards Avenue A and made a left turn onto the north side of East Houston Street. As he walked on East Houston

Street for approximately thirty to forty feet, a construction worker raised his hand to stop Plaintiff him from proceeding forward on the sidewalk. Mr. Nieznalski observed a sidewalk bridge/shed “directly” above him and further down towards the east side of East Houston. Upon stopping, plaintiff turned his head because there was a noise and there was falling debris from there when he looked that way. On plaintiff’s right side he observed construction debris falling into the container. He further observed a “Big plume of smoke rise from the container covering part of the sidewalk right behind the worker who was standing in front of me.” After seeing the big plume/cloud of smoke and falling debris, “The construction worker stood to the side with the motion of the hand like let us in. The lady with two children went forward. I wanted to wait so that dust settles down because there was a lot of it. Then I heard the noise and a big splash of construction debris was falling in front of me. A big piece of wood and at that moment I feel very big hit in my head.” See pg. 70 at ¶ 4-11.

Mr. Brion testified that “In order for the sidewalk shed to be removed, I would have to have completed my work, have to have all my equipment removed, and the project signed off by the architect. At that point, I would normally schedule the removal of the sidewalk shed...I do know that is exactly what happened...By code, I can’t remove the sidewalk shed until all the work is completed.” See pg. 52 ¶ 10-25. Mr. Brion further testified that scaffolding erection, installation and dismantling/removal is not a task that Basonas ever performs, which is why they contracted with Rockledge for sameId. at pg. 64 ¶ 11-20. See also, pg. 65 ¶ 2-24.

Mr. Harrington identified a copy of the contract between Basonas and Rockledge pursuant to which Rockledge was contracted to furnish, erect, and subsequently dismantle and remove approximately 212 linear feet of sidewalk shed. He further testified that Rockledge obtained a Department of Buildings permit to install and remove the 212 linear feet of sidewalk shed at 240

East Houston Street, and that Rockledge was responsible for any work being done under/pursuant to this permit. Mr. Harrington testified that Consolidated Scaffold actually removed the sidewalk shed pursuant to a subcontract and that as the subcontractor, Consolidated was responsible for their own safety even though it was Rockledge's responsibility to erect and dismantle the sidewalk shed at issue pursuant to the contract between Rockledge and Basonas.

Each of the movants now seek summary judgment dismissing plaintiff's complaint and all claims and cross-claims asserted against them as there is no documentary or testimonial evidence that Basonas, Rockledge, Board of Managers or Cooper Square caused, created or contributed in any way to the falling debris that struck Plaintiff on May 14, 2012 and plaintiff cross-moves for summary judgment against said moving defendants.

However, as discussed in *Tytell v. Battery Beer Distrib., Inc.*, 202 A.D.2d 226, 226–27 (1<sup>st</sup> Dept. 1994),

Generally, a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent contractor's negligence (*Kleeman v. Rheingold*, 81 N.Y.2d 270, 273, 598 N.Y.S.2d 149, 614 N.E.2d 712; *Rosenberg v. Equitable Life Assur. Socy.*, 79 N.Y.2d 663, 668, 584 N.Y.S.2d 765, 595 N.E.2d 840). Exceptions to this rule exist where the employer is negligent in selecting, instructing or supervising the contractor, where the contractor is employed to do work that is inherently dangerous or where the employer bears a specific nondelegable duty (*Kleeman v. Rheingold*, supra, 81 N.Y.2d at 274, 598 N.Y.S.2d 149, 614 N.E.2d 712).

The Court of Appeals long ago held that “ ‘[w]hen one undertakes work in a public highway which, unless carefully done, will create conditions which are dangerous to members of the public using the highway, in the usual and ordinary manner, he is under a duty to use requisite care. That duty cannot be delegated’ ” (*Wright v. Tudor City Twelfth Unit*, 276 N.Y. 303, 307, 12 N.E.2d 307, quoting *Boylhart v. DiMarco & Reimann, Inc.*, 270 N.Y. 217, 221, 200 N.E. 793; see also, *Rohlfs v. Weil*, 271 N.Y. 444, 449, 3 N.E.2d 588; 3 N.Y.Jur.2d “Agency” § 360 at 189). The construction of a sidewalk bridge extending over an area frequented by pedestrians is clearly a



project which must be carefully done in order to avoid the creation of such a dangerous condition. Thus, defendants-appellants may not argue that they are not vicariously liable for any lack of due care in constructing the bridge.

While each of the above named movants have established that they were not directly responsible for the construction debris which struck plaintiff, and Board of Managers hired Basonas as an independent contractor, who hired Rockledge as an independent contractor, who hired consolidated as an independent contractor, the issue of proper construction of a sidewalk bridge removes this action from the general rule and said defendants may not argue that they are not vicariously liable for the alleged lack of due care in disassembling the sidewalk bridge. See also, *Porteous v. J-Tek Group, Inc.*, 125 A.D.3d 411; 3 N.Y.S.3d 17 (1st Dept., 2015).

Houston Place has established its entitlement to dismissal of all claims asserted against it as it is not a legal entity and Cooper Square has established that as the managing agent of a building who is not in complete and exclusive control of the management and operation of the building and was not involved in the relevant construction project, it cannot be subject to liability for non-feasance, see, *Jones v. Park Realty*, 168 A.D.2d 945 (4<sup>th</sup> Dept. 1990).

In support of plaintiffs' cross-motion for summary judgment, plaintiffs also submit the expert affidavit of Scott Silberman, a Professional Engineer, who explains, in detail that Board of Managers violated the Administrative Code of the City of New York, Section 28-301.1, that Basonas and Rockledge violated the NYC Building Code (2008) Chapter 33, whose provisions specifically govern the conduct of all construction or demolition operations with regard to the safety of the public and property, and that the accident and injuries sustained by Rafal Nieznalski on May 14, 2012, were caused by the negligence of the Defendants' noncompliance. As such, plaintiff has established a *prima facie* entitlement to summary judgment as against Board of Managers, Basonas and Rockledge. Plaintiff has further established a *prima facie* entitlement to

summary judgment as against Consolidated as they were the only entity present at the construction site on the date of plaintiff's accident and "launched a force or instrument of harm" specifically allowing construction debris to fall on plaintiff.

"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). In *Great Northern Ins. Co. v. Interior Const. Corp.*, 7 N.Y.3d 412 (2006), the Court of Appeals held that a commercial lease containing an indemnification provision running from the tenant to the landlord and requiring the tenant to maintain a CGL policy naming the landlord as an additional insured did not violate General Obligations Law section 5-321(6), which in certain contexts prohibits a party from being indemnified for its own negligence.

As discussed, *supra*, Board of Managers, Basonas and Rockledge were each under a non-delegable duty to safeguard members of the public using the sidewalk shed during the entire course of construction and as such, all are vicariously liable. It is undisputed that the only workers on the premises at the time of plaintiff's accident were employed by Consolidated (with the exception of a Rockledge truck and driver who were not involved in the subject accident) and that same were negligent in allowing Rafal Nieznalski to be struck with construction debris. As such, Board of Managers, Basonas and Rockledge are vicariously liable despite a lack of negligence on any of their parts, and each seeks contractual and common law indemnification.

Movants contracts contain the following indemnification provisions:

In the contract between Board of Managers and Basonas, the Indemnification Clause states:

17.1 To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless owner, managing agent, architect and their respective boards of directors, managers, officers, principals, subsidiaries, affiliates, shareholders, unit

owners, employees, representatives, agents, personal representatives, heirs, successors and assigns (the "Indemnified Parties") from any and all claims, suits, damages, liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the work of the contractor, its agents, servants, subcontractors or employees, or the use by contractor, its agents, servants, subcontractors or employees of the facilities owned by owner. This agreement to indemnify specifically contemplates full indemnity in the event of liability imposed against the owner and/or managing agent without negligence and solely by reason of statute, operation of law or otherwise, and partial indemnity in the event of any actual negligence on the part of owner and/or managing agent, either causing or contributing to the underlying claim. In that event, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, by operation of law or otherwise.

As the indemnification agreement specifically contemplates that Basonas shall indemnify Board of Managers "in the event of liability imposed against the owner and/or managing agent without negligence and solely by reason of statute, operation of law or otherwise" as is the case here and it cannot be disputed that plaintiff's injuries arise out of the work at issue in this case, Board of Managers is entitled to contractual indemnification from Basonas.

In the contract between Basonas and Rockledge, the indemnification clause states:

11. Rockledge Scaffold Corporation agrees to indemnify, defend and hold the customer [BASONAS]...harmless from and against all claims, damages, losses, suits, judgments, actions and expenses (including attorney's fees and costs) caused directly and solely by Rockledge Scaffold Corporation, its employees or other persons under the direct and immediate control of Rockledge Scaffold Corporation.

In addition, this contract requires Rockledge to obtain general liability insurance that names Basonas as an additional insured as follows:

13. Rockledge Scaffold Corporation agrees to name the customer [BASONAS] and such other parties as the Customer [BASONAS] shall request in writing, as an additional insured as

evidenced by a Certificate of Insurance to be provided by Rockledge Scaffold Corporation prior to commencement of work.

As Consolidated, who dismantled the sidewalk shed at issue, did so under the direction and immediate control of Rockledge pursuant to the July, 1 2011 labor contract, and the contracts contain broad, clear, and unequivocal indemnification and insurance provisions in favor of Basonas, Basonas is entitled to contractual indemnification from Rockledge.

In the contract between Rockledge and Consolidated, the indemnification clause states:

4. Subcontractor [CONSOLIDATED SCAFFOLD] shall indemnify and hold harmless (1) contractor, (2) contractor's customer, (3) owner and the owner parties...from and against all losses, liabilities, damages, claims, judgments, costs, fines, penalties, actions or proceedings and attorneys' fees, and shall defend the indemnified parties in any action or proceeding, including appeals, for personal injury to or death of any person...arising out of the work, acts, omissions or other conduct of subcontractor [CONSOLIDATED SCAFFOLD]...in connection with subcontractor's performance of the work and its other obligations under this agreement...

Said contract also specifies that "to the extent that the Contractor [ROCKLEDGE] is required to designate any person or entity as additional insured under their policies of liability insurance, such person or entity also shall be named as additional insured on the policies procured by subcontractor [CONSOLIDATED SCAFFOLD]. As Consolidated was the only contractor on site at the time of plaintiff's accident, it cannot be disputed that plaintiff's injuries arose out of Consolidated's performance under its contract. As such, Rockledge is entitled to contractual indemnification from Consolidated.

As discussed in *McCarthy v. Turner Const., Inc.*, 17 N.Y.3d 369, 377-78 (2011),

party's right to indemnification may arise from a contract or may be implied "based upon the law's notion of what is fair and proper as between the parties" (*Mas v. Two Bridges Assoc.*, 75 N.Y.2d 680, 690 [1990]). "Implied[, or common-law,] indemnity is a restitution concept which permits shifting the loss because to fail to do so

would result in the unjust enrichment of one party at the expense of the other” (id., citing *McDermott v. City of New York*, 50 N.Y.2d 211, 216–217 [1980]; see also *Rosado v. Proctor & Schwartz*, 66 N.Y.2d 21, 24 [1985] [indemnity may be implied “to prevent a result which is regarded as unjust or unsatisfactory” and “is frequently employed in favor of one who is vicariously liable for the tort of another” (internal quotation marks and citations omitted) ] ). Common-law indemnification is generally available “in favor of one who is held responsible solely by operation of law because of his relation to the actual wrongdoer” (*Mas*, 75 N.Y.2d at 690; see *D'Ambrosio v. City of New York*, 55 N.Y.2d 454, 460, [1982] ). a party cannot obtain common-law indemnification unless it has been held to be vicariously liable without proof of any negligence or actual supervision on its own part. But a party's (e.g., a general contractor's) authority to supervise the work and implement safety procedures is not alone a sufficient basis for requiring common-law indemnification. Liability for indemnification may only be imposed against those parties (i.e., indemnitors) who exercise actual supervision (see *Felker*, 90 N.Y.2d at 226, 660 N.Y.S.2d 349, 682 N.E.2d 950; see also *Colyer v. K Mart Corp.*, 273 A.D.2d 809, 810, 709 N.Y.S.2d 758 [4th Dept.2000] [for standard] ). Thus, if a party with contractual authority to direct and supervise the work at a job site never exercises that authority because it subcontracted its contractual duties to an entity that actually directed and supervised the work, a common-law indemnification claim will not lie against that party on the basis of its contractual authority alone.

Here, Board of Managers, Basonas and Rockledge have all been held vicariously liable without proof of any negligence or actual supervision on any of their own parts. Specifically, all have been held liable for the negligence of Consolidated. As such, Board of Managers, Basonas and Rockledge are each entitled to common-law indemnification on the part of Consolidated.

In support of its motion, Lucky Walnut submits the affidavit of Jerry Atkins, a Managing Member of Atkins & Breskin, LLC. Atkins & Breskin LLC is the managing member of Lucky Walnut Associates LLC. At the time of plaintiff's accident, Lucky owned a single ground-level commercial unit at Houston Place Condominium. Said affidavit establishes that Lucky did not oversee, supervise, or direct any of the construction work performed at 240 East Houston Street,

including the assembly and disassembly of the sidewalk shed, nor did it have any responsibility to do so. As such, Lucky is entitled to summary judgment, dismissing this action.

In support of its motion, All-City submits the affidavit of of George Tsimoyianis, the president of All City. Said affidavit establishes that All-City performed construction/renovation work at the premises 240 East Houston Street, New York, N.Y. from November 2010 through April 2012. All-City was not performing any work at 240 East Houston Street, New York, N.Y. on or about May 14, 2012. Moreover, all work performed by All-City between November 2010 through April 2012 was interior renovation work in individual condominium units and interior hallways. As such, All-City is entitled to summary judgment, dismissing this action.

In support of its motion, Integrated submits the affidavit of Henry Gonzalez, the President of Integrated Construction Services, Inc on the date of plaintiff's accident. Said affidavit establishes that Integrated Construction performed minor cosmetic work to the exterior of Lucky Walnut's ground-level condominium unit, at the first floor only, during which time a plywood wall completely enclosed the first floor of 240 East Houston. The affidavit further establishes that Integrated Construction never performed any exterior work above the first floor of 240 East Houston and never performed any interior work above the first floor of 240 East Houston, other than the application of small areas of touch-up paint. As such, Integrated Construction is entitled to summary judgment, dismissing this action.

In support of its motion, Shuir submits the affidavit of Declan Delahunty, the Chief Executive Officer of Shuir, which establishes as follows: Shuir was hired by Rockledge to install vandal proof lighting in a sidewalk shed at 240 East Houston. This specific light installation, which amounted to the only work within the scope for which Shuir was hired, was completed on June 22, 2010. No employees or agents of Shuir conducted any work at 240 East Houston from the time the

vandal proof lighting was complete up to, and including, May 14, 2012, the date of plaintiff's alleged accident. As such, Shuir has established a *prima facie* entitlement to summary judgment, dismissing this action.

Plaintiff opposed Lucky, All-City, Integrated and Shuir's motions contending said motions are premature. A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant. See, *Jannetti v. Whelan*, 131 A.D.3d 1209, 1210 (2nd Dept. 2015). Plaintiff has failed to establish same. As such all said motions must be granted.

ORDERED that Basonas Construction Corp's motion (seq. 5) is GRANTED to the extent that Basonas is entitled to contractual indemnification granting against Rockledge Scaffold Corp and Basonas is entitled to common law indemnification against Consolidated Scaffold & Bridge Corp. The portion of Basonas's motion seeking summary judgment, dismissing Plaintiffs' Complaint is DENIED; and it is further

ORDERED that Rockledge's Cross-motion (seq 5) seeking an Order granting summary judgment dismissing the plaintiff's complaint and all crossclaims asserted against it is DENIED; and it is further

ORDERED that Plaintiffs, Rafal and Edyta Nieznalski's Cross-motion for an Order granting Summary Judgment as to liability in favor of the Plaintiffs as against the Defendants, Houston Place Condominium, Board of Managers of Houston Place Condominium and Cooper Square Realty Services, Inc is GRANTED as against defendant, Board of Managers of Houston Place Condominium, only and DENIED as to defendants, Houston Place Condominium and Cooper Square Realty Services, Inc; and it is further



ORDERED that Lucky Walnut Associats' motion (seq 6) seeking an Order granting it summary judgment, dismissing this action as asserted against it is GRANTED in its entirety and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that Houston Place, Board of Managers, and Cooper's motion (seq 7) is GRANTED to the extent that plaintiff's complaint and all claims and cross-claims asserted against Houston Place and Cooper are dismissed and Board of Managers is GRANTED summary judgment in the second third party action for contractual indemnity over and against Basonas and Board of Managers is GRANTED summary judgment in the second third party action over and against Consolidated on common law indemnity and Board of Managers is GRANTED summary judgment in the second third party action against Rockledge for indemnification. The other branches of said motion are DENIED; and it is further

ORDERED that All-City Remodeling, Inc's motion (seq 8) for an Order granting it summary judgment, dismissing plaintiff's complaint and dismissing all claims, counter-claims, cross-claims and third-party claims as made against All-City is GRANTED in its entirety and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that Integrated Construction Services, Inc's motion (seq 9) for and Order, dismissing Plaintiff's Complaint, granting it summary judgment and dismissing all counterclaims, crossclaims and third-party claims asserted against it is GRANTED in its entirety and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to



said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that Shuir Electrical Contractors Corp’s motion (seq 10) for an Order granting it summary judgment, dismissing plaintiff’s complaint and all cross-claims asserted against it is GRANTED in its entirety and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant.

5/4/2021  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE