SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

JOHN VENTICINQUE et al

INDEX NO. 159481/2016

MOT. DATE

- v -

MOT. SEQ. NO. 5, 7-16

1211 6TH AVENUE PROPERTY OWNER, L.L.C et al

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

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This is an action for personal injuries sustained by plaintiff John Venticinque (sometimes "plaintiff") at a construction site. Specifically, plaintiff claims that while on an unsecured ladder on the 29th floor of 1211 Sixth Avenue, New York, New York (the "premises"), he was struck from behind by a sprinkler pipe. There were no witnesses, and the plaintiff does not know what caused the pipe to fall. Eleven motions are currently pending in this action, which are hereby consolidated for the court's consideration and disposition in this single decision/order.

In motion sequence 5, defendants/third-party plaintiffs 1211 6th Avenue Property Owner LLC ("1211 Property Owner"), 1211 6th Avenue Syndication Partners JV, L.P., Cushman & Wakefield, Inc. and Cushman & Wakefield Facilities Management, Inc. (all four entities collectively the "owner defendants"), move for summary judgment dismissing plaintiffs' Second Amended Verified Complaint and all cross-claims, with prejudice, and/or granting them summary judgment dismissing plaintiffs' Labor Law §§ 241(6) and 200 and general negligence claims and/or in the alternative granting them contractual indemnification against RBC Capital Markets, LLC ("RBC"), Benchmark Builders, Inc. ("Benchmark"), Liberty Contracting Corp. ("Liberty") and/or ADCO Electrical Corp. ("ADCO").

In motion sequence 7, fifth third-party defendant Litespeed Electric, Inc. ("Litespeed") moves for summary judgment dismissing third-party plaintiff Americon Construction's ("Americon") complaint in its entirety, as well as dismissal of any and all crossclaims/counterclaims.

In motion sequence 8, defendant Par Plumbing Co., Inc. ("Par Plumbing") and fourth third-party defendant Par Fire Protection, LLC ("Par Fire" and collectively the "Par defendants") move for summary judgment severing and dismissing the complaint and all third-party complaints against them.

In motion sequence 9, plaintiffs move for summary judgment: [1] against 1211 Property Owner and

Dated: 11/30/21

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

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

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

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

☐FIDUCIARY APPOINTMENT ☐ REFERENCE

Benchmark on liability as to the Labor Law § 240[1] claim; [2] against 1211 Property Owner and Benchmark on the Labor Law § 241[6] claim premised upon Industrial Code § 23-1.7[a]; and [3] against Benchmark on liability as to the Labor Law § 200 and common law negligence claim.

In motion sequence 10, fifth third-party defendant Lacor Mechanical Systems, Inc. ("Lacor") moves for summary judgment dismissing Americon's complaint.

In motion sequence 11, fifth third-party defendant Superior Acoustics ("Superior") moves for summary judgment dismissing Americon's claims against it as well as all crossclaims.

In motion sequence 12, Americon moves for summary judgment regarding all claims brought by plaintiff; as well as for summary judgment on its crossclaims for common law and contractual indemnification against its unspecified subcontractors and dismissing all crossclaims brought against Americon.

In motion sequence 13, Liberty moves for summary judgment dismissing plaintiff's complaint as well as all crossclaims, third-party claim and counterclaims.

In motion sequence 14, McGowan moves for summary judgment dismissing the fifth third-party Complaint and all crossclaims against it.

In motion sequence 15, ADCO moves to dismiss all third-party claims and crossclaims against it.

Last, but not least, Benchmark and RBC move (sequence 16) for: [1] summary judgment dismissing plaintiffs' common law negligence and Labor Law §§ 200, 241[6] claims; [2] summary judgment on their claims/cross-claims for contractual indemnification including attorneys' fees, costs and expenses, or alternatively conditional indemnity, against Liberty, ADCO and Par Fire; [3] summary judgment dismissing all cross-claims and counterclaims against them for common-law indemnity and contribution; and [4] summary judgment dismissing ADCO's crossclaim against Benchmark for contractual indemnification.

Plaintiffs oppose: (1) 1211 Property Owner's motion for summary judgment dismissing plaintiffs' Labor Law § 241(6) claim; (2) the Par defendants' motion for summary judgment dismissing plaintiffs' Labor Law §§ 240 and 241(6) claims; (3) Benchmark's motion for summary judgment dismissing plaintiffs' Labor Law §§ 241(6) and 200 claims; and (4) Liberty's motion for summary judgment dismissing plaintiffs' Labor Law §§ 240[1] and 241(6) claims.

The owner defendants oppose plaintiffs' motion as to the Labor Law §§ 240[1] and 241[6] claims. They further oppose Liberty's motion to dismiss their claims for contractual indemnification, common law indemnification and contribution from Liberty. The owner defendants also oppose ADCO's motion seeking summary judgment dismissing their crossclaims seeking contractual indemnification and/or breach of contract against ADCO. Finally, the owner defendants oppose Benchmark/RBC's motion to dismiss their claims seeking common law indemnification and/or contribution against Benchmark.

Americon Construction, Inc. ("Americon") partially opposes the owner defendants' motion to the extent that the owner defendants suggest Americon had any responsibility, direction, control, supervision, management or safety responsibilities related to the plaintiff's scope of work. RBC, Benchmark and Liberty oppose the branch of the owner defendants' motion seeking contractual indemnification against them. Americon opposes Litespeed, Par, Liberty, McGowan, Lacor and Superior's motions for summary judgment dismissing all claims for common law and contractual indemnification brought against them by Americon. Benchmark and RBC oppose the Par defendants' motion to the extent that they seek dismissal of Benchmark and RBC's crossclaims.

ADCO has submitted an affirmation in "partial support" of Lightspeed, Lacor, Superior and McGowan's motions, admitting that it does not have a contract with these entities for the work involved with or arising out of plaintiff's accident and therefore does not oppose those portions of the motions seeking

summary judgment dismissing its crossclaims for common law indemnification and contribution against these parties. ADCO opposes Par Fire's motion for summary judgment on the fourth third-party complaint. ADCO opposes plaintiffs' motion to the extent that plaintiffs argue the subject ladder was defective or was a substantial factor in causing Venticinque's accident and injuries. ADCO further opposes Americon's motion to the extent that Amiercon's motion applies to it, to wit, to the extent that Americon seeks summary judgment on its crossclaims for common law indemnification against ADCO, even though Americon did not assert any crossclaims against ADCO. ADCO opposes Liberty's motion as well. Finally, ADCO opposes Benchmark/RBC's motion arguing that Benchmark is not entitled to summary judgment dismissing plaintiff's Labor Law § 200 and common law negligence claims, contractual indemnity against ADCO, and that all crossclaims for common law indemnity and contribution against Benchmark should not be dismissed. ADCO represents that it "does not object to the granting of a dismissal of the cross-claims seeking contractual indemnification and will, upon presentation of the appropriate stipulation by BENCHMARK, withdraw this cross-claim."

Benchmark and RBC oppose plaintiff's motion as to the Labor Law §§ 240[1] and 241[6] claims. Benchmark and RBC further oppose Lacor's motion. Benchmark and RBC oppose Americon's motion to the extent that Americon seeks summary judgment dismissing Benchmark and RBC's crossclaims. Benchmark and RBC oppose Liberty and McGowan's motions as well. Finally, Benchmark and RBC oppose ADCO's motion seeking summary judgment dismissing their claims against ADCO for contractual indemnity and breach of contract for failure to procure insurance.

Liberty opposes the Par defendants' motion for summary judgment to dismiss Liberty's third-party claims against them as well as plaintiff's motion-in-chief as to the Labor Law §§ 240[1] and 241[6] claims. Liberty also joins in Benchmark/RBC's arguments opposing Lacor's motion and further argues that if the Court denies Liberty's motion for summary judgment, then it should also deny the branch of Lacor's motion to dismiss Liberty's claims. Liberty makes the same argument in partial opposition to Superior and McGowan's motions. Finally, Liberty opposes Benchmark/RBC's motion to the extent that Benchmark seeks contractual indemnification.

The Par defendants, Lacor, McGowan, Superior, Lightspeed and Liberty oppose Americon's motion to the extent Americon seeks contractual indemnity from them.

The Par defendants and Superior oppose Liberty and Benchmark/RBC's motion as well.

Superior opposes plaintiffs' motion for summary judgment pursuant to Labor Law §241(6) premised on violation of Industrial Code §23- 1.7(a).

Issue has been joined and the motions were timely filed. Therefore, summary judgment relief is available. At the outset, to the extent that the parties argue a motion should be denied on procedural grounds because the movant failed to include a copy of the pleadings, these arguments are rejected. Such defect is not fatal and therefore the court will consider each motion on the merits (*see i.e. Sensible Choice Contracting, LLC v. Rodgers*, 164 AD3d 705 [2d Dept 2018]).

Another procedural issue which the court will address is Benchmark/RBC's response to undisputed statement of facts. It is improper because it does not actually respond to facts, admitting or denying them and then state what is in dispute. Rather, Benchmark/RBC largely objects to the Par defendants' statement of material facts. This is improper practice and therefore the court declines to consider Benchmark/RBC's response to undisputed statement of facts. The court now substantively addresses the motions.

Relevant facts and disputes as to all motions

Many of the relevant facts are in dispute. What is not in dispute is that at the time of plaintiff's accident, there were two different construction projects on the 29th floor of the premises. 1211 Property Owner owned the premises upon which the projects were situated. Defendant Cushman & Wakefield,

Inc. was the management company for the premises. On January 8, 2015, 1211 Property Owner entered into a contract with Americon to serve as a general contractor for a renovation project in connection with the common areas of the 29th floor, including the restrooms and corridors. Defendant RBC was allegedly the tenant on the 29th floor of the premises at the time of the accident. RBC has been named in this action as RBC CAPITAL MARKETS, LLC, and has entered an appearance in that form.

However, non-party RBC Wealth Management hired defendant Benchmark as the general contractor to perform construction in RBC's space on the 29th floor of the building. There is no real dispute that it was in connection with this second project that plaintiff performed the injury-producing work.

Benchmark hired ADCO and the Par defendants to perform electrical work. Par Fire's work included cutting and capping existing branch sprinkler piping and installing new sprinkler heads with associated branch piping and connection to the existing main. Par Fire claims that it completed its cutting/capping work one week prior to plaintiff's accident and began the installation after plaintiff's accident.

Meanwhile, Par Plumbing was first hired by Americon to provide plumbing and materials regarding pantries for a lactation room. This work was completed on February 5, 2015, five months before plaintiff's accident. Benchmark also hired Par Plumbing to perform additional plumbing work consisting of furnishing and installing plumbing pipes and other plumbing fixtures. Par Plumbing claims that this work for Benchmark did not begin until after plaintiff's accident.

Benchmark also hired Liberty to perform demolition work. Liberty disputes that it was "the demolition contractor" at the project, *per se*, because Benchmark's subcontracts with other trades contained demolition requirements.

Superior did work on the 29th floor of the premises for both Americon and Benchmark. For Americon, Superior did fire stop patching on the 29th floor of the premises. Superior was a drywall and ceiling contractor for Benchmark pursuant to a purchase order agreement. Superior maintains that it did not do any work on the sprinkler system.

McGowan preformed work for Americon at the premises; it changed 105 pendant sprinkler heads to upright sprinkler heads. Litespeed did not perform any services or work at the location of plaintiff's accident despite being sent a purchase order requesting work by Americon. There is no dispute that the purchase order was never executed by Litespeed and the work relative to that purchase order was never done. The remaining subcontractor, Lacor, was also retained by Americon to perform work on the 29th floor. Lacor claims that its scope of work for the project was to furnish labor and materials to cut cap and drop ductwork on the 29th floor and did not involve the sprinkler pipes in any way. Benchmark/RBC and Liberty dispute Lacor's claims about the work it performed at the premises.

Plaintiff's accident

On the date of the accident, Venticinque was working for ADCO as an electrician. He claims that he was installing electrical wires on the 29th floor of the premises while standing on an unsecured ladder when a sprinkler pipe hit him in the head. Plaintiff further claims that the ladder then shifted, causing him to fall backwards. The defendants/third-party defendants dispute whether the accident took place. There were no witnesses to the accident.

The A-frame ladder Plaintiff was using at the time of his alleged accident was provided by ADCO. Plaintiff's work was only directed by ADCO's general foreman, Mike Loreto and ADCO's sub foreman, Carmine Denicola. After the accident, Plaintiff testified that he saw broken hanger clips still attached to the pipe, which were supposed to hold the sprinkler pipe that hit him, to the ceiling.

Benchmark generated an accident report in connection with plaintiff's accident. The Benchmark report was prepared by Richard Caston, Benchmark's superintendent. This report provides in pertinent part as follows:

> I was working un installing temporary lighting wire on the north side of the 29th floor. Par sprinkler was onsite the previous week backing out the branch lines and capping the main leaving the pipe in the hangers for Liberty to remove. The main piping is to stay in place. At the time of the accident, Liberty had 2 laborers taking down the sprinkler pipe carefully not to make noise on the floor below, We had Liberty scheduled for that night to complete any miscellaneous demo and remove the pipe off the floor. BBI did not witness the incident but I was contacted by the foreman from ADCO, Mike Loreta, after the accident and informed me that when Liberty cut a section of pipe it swung down and hit the electrician on the head which knocked him to the floor. At first, did not feel he need medical attention but later decided to go to the hospital. I was told he was wearing his hard hat at the of the accident. Signs indicating their requirement are posted through out the site. I have been told the injured electrician has not returned to work as of today. See attached accident report from ADCO.

Ralph Occipinti created the ADCO Accident Investigators Report in connection with plaintiff's accident. Attached to the report is a statement by Mike Loretto. The ADCO report describes the accident as follows: "WHILE WORKNG ON LADDER, A SPRINKLER PIPE HANGER BROKE LOOSE AND HIT JONN IN HEAD, NECK AND SHOULDER CAUSING JONN VENTICINQUE TO FALL TO GROUND ON HIS RIGHT SHOULDER."

There is no dispute that the sprinkler pipes were not fully removed before the accident and there was some sprinkler piping still in the ceiling. ADCO's accident report further reads: "WHILE WORKING, JOHN VENTICINQUE WAS STANDING ON A 6-FOOT FIBERGLASS LADDER, APPROXIMATELY 4 FT UP FROM FLOOR ON LADDER, A PORTION OF EXISTING 1 INCH SPRINKLER PIPING DISLARGED (sic) FROM SUPPORT AT CONCRETE CEILING FROM DEMOLITION WORK PERFORMED DDURING THE PRIOR WORK NIGHT OF 7/12/2015."

Occipinti opined at his deposition that the accident could have been prevented by the full removal of the short section of the sprinkler pipe that was left by Liberty. Occipinti further claimed that the failure to remove the sprinkler pipe created a hazard unknown to plaintiff since it appeared to be supported with pipe hanger.

That same day, Liberty was demolishing the sprinkler pipes at the same time that plaintiff was performing his work. Liberty's foreman, Salvatore Biundo, was at the project on the date of plaintiff's accident. Biundo testified that he did not see the accident, and no one reported it to him.

Meanwhile, Denicola testified that he observed a Liberty employee on a ladder cutting down sprinkler pipe, similar to the type that struck plaintiff, with a "sawzall" (cutting tool) in the area where plaintiff ultimately had his accident. He observed the sprinkler pipe that struck plaintiff, which was hanging from the ceiling.

The pipe that allegedly struck the plaintiff was connected to pipes that Par Fire cut and capped. Antonio Velez, a witness produced on behalf of Par Fire, is alleged to have cut the sprinkler pipe. Velez did not specifically recall the job at issue. Velez testified that when cutting sprinkler pipe, if the hanger was small or missing or the pipe was otherwise unstable, he would take the pipes down.

Plaintiff's ADCO co-worker, Jeffrey Michelstein, was working with plaintiff on the 29th floor on the accident day. On the date of the accident, Michelstein testified at a deposition that he witnessed two employees from Liberty on the 29th floor performing demolition work, which included cutting sprinkler

pipes out of the ceiling. Michelstein further testified that Liberty was cutting sprinkler pipes, and leaving the cut sprinkler pipes in the ceiling and not removing them as they cut them.

Discussion

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

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

The court will first consider plaintiffs' motion for summary judgment and the parties' motions to dismiss plaintiff's complaint.

Plaintiffs' motion (seq. 9) and all motions seeking dismissal of plaintiff's claims (seqs. 5, 8, 12, 13 and 16)

At the outset, there is no opposition to the owner defendants' motion seeking dismissal of plaintiff's claims and all crossclaims against 1211 6th Avenue Syndication Partners JV, L.P., Cushman & Wakefield, Inc. and Cushman & Wakefield Facilities Management, Inc. Therefore, that portion of motion sequence 5 is granted.

Next, relative to all claims, the court rejects any argument that the accident did not occur as plaintiff claims. Indeed, all evidence on this record supports plaintiff's version of events. Since the defendants/third-party defendants have failed to raise a triable issue of fact on this point, these arguments are hereby rejected.

Section 240[1]

Plaintiffs argue that they are entitled to summary judgment because the unsecured ladder supplied to plaintiff was inadequate for the task at hand, and proper equipment was not otherwise provided to him - including overhead protection to prevent against falling objects.

The owner defendants assert that plaintiff was the sole proximate cause of his accident. Specifically, they argue that plaintiff failed to address whether he used any available safety devices on the job site which could have prevented the accident such as a harness, lifeline, guardrail system or baker's scaffold and/or whether or not such safety devices were not available. Benchmark argues that "plaintiff hasn't proven that: (i) the pipe that struck him required securing, that the pipe fell because of the absence or inadequacy of a safety device of the type enumerated in Labor Law § 240(1), (ii) that the pipe striking the plaintiff constituted a violation of Labor Law § 240(1), [and] (iii) that the admittedly defect free ladder that the plaintiff was using actually caused the plaintiff to fall from the ladder..."

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

All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a premises or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks,

pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

Labor Law § 240 protects workers from "extraordinary elevation risks" and not "the usual and ordinary dangers of a construction site" (*Rodriguez v. Margaret Tietz Center for Nursing Care, Inc.*, 84 NY2d 841 [1994]). "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)" (*Narducci v. Manhasset Bay Associates*, 96 NY2d 259 [2001]).

Section 240[1] was designed to prevent accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person (*Runner v. New York Stock Exchange, Inc.*, 13 NY3d 5999 [2009] quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The protective devices enumerated in Labor Law § 240 [1] must be used to prevent injuries from either "a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 [1991]).

Since there is no dispute that the ladder was unsecured and that plaintiff was struck by a falling pipe, plaintiff has demonstrated a *prima facie* cause of action for violation of Labor Law § 240[1] against 1211 Property Owner and Benchmark. Contrary to the owner defendants' contention, plaintiff has established the absence of any alternative adequate safety devices. As for Benchmark's arguments, the court rejects its assertion that plaintiff has not met his burden on this motion. There is no dispute that he was struck by a falling pipe, and Benchmark's attempt to speculate that something other than the force of gravity caused the pipe to fall is insufficient to raise a triable issue of fact.

Accordingly, plaintiff's motion is granted to the extent that plaintiff is entitled to summary judgment on liability on his Section 240[1] claim against 1211 Property Owner and Benchmark.

Section 241[6]

Plaintiffs argue that the undisputed evidence shows that the defendants violated Industrial Code § 23-1.7(a). The owner defendants reiterate the same unsuccessful argument they raised in opposition to plaintiff's motion on Section 240[1]. Finally, Benchmark contends that the plaintiff has failed to establish that the accident location was one "normally exposed" to falling material or objects, that Industrial Code Rule 23-1.7(a) is applicable, and "that several contractors working near each other at a construction site constitutes a violation of Labor Law § 200 as a matter of law."

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

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

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

Industrial Code § 23-1.7(a) states in pertinent part as follows:

> (a) Overhead hazards. (1) Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. Such overhead protection shall consist of tightly laid three-quarter inch exterior grade plywood or other material of equivalent strength. Such overhead protection shall be provided with a supporting structure capable of supporting a loading of 100 pounds per square foot.

The court disagrees with plaintiffs that they have established a violation of Industrial Code § 23-1.7(a). The owner defendants and Benchmark argue that plaintiff was not "normally exposed" to falling objects while working on the 29th floor as contemplated by Section 23-1.7(a). The pipes, which were being worked on and ultimately removed, should have been removed if unstable. However, the fact that a pipe fell and hit plaintiff does not render the area normally susceptible to falling pipes. Rather, the facts here are akin to those in the First Department case of *Buckley v. Columbia Grammar & Preparatory*, (44 AD3d 263 [2007]). In that case, the First Department held that 12 NYCRR §23-1.7(a) does not apply "where an object unexpectedly falls on a worker in an area not normally exposed to such hazards" (id. at 272).

Plaintiff further alleges that the defendants violated Industrial Code §§ 23-1.16, 23-1.7 and 23-3.2[b]. All three are inapplicable: the first two set requirements for equipment which plaintiff was not provided with and the last codifies preparations for the demolition of buildings or other structures. The premises was not undergoing a demolition and thus Section 23-3.2[b] is inapplicable.

Accordingly, plaintiff's Section 241[6] claim is severed and dismissed.

Section 200 and common law negligence

Plaintiffs move for summary judgment on the Labor Law § 200 and common law negligence claims against Benchmark. They contend that Benchmark allowed Liberty to perform its work at the same time as plaintiff, thereby giving rise to the dangerous condition which resulted in plaintiff's injuries. Benchmark disputes this argument.

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

On this claim, the court agrees with Benchmark that plaintiff has not established as a matter of law that Benchmark was negligent by permitting plaintiff and Liberty to work simultaneously. At best, triable issues of fact exist on this issue which precludes summary judgment. Accordingly, plaintiff's motion is denied as to this claim.

Plaintiff is silent as to the Section 200 claim against the owner defendants and since there is no opposition to the branch of the owner defendants' motion seeking dismissal of this claim, that portion of motion sequence 5 is granted.

As for the remaining motions to the extent the parties seek dismissal of plaintiff's claims, including the owner defendants' motion and Benchmark, they are denied based upon the court's reasoning above.

Balance of the owner defendants' motion (sequence 5)

The owner defendants seek contractual indemnification against Benchmark/RBC, Liberty and/or ADCO. Benchmark/RBC argue that the owner defendants' motion is not supported by admissible evidence (the lease) and that the movants failed to establish that plaintiff's accident occurred in the leased portion of the premises. Americon requests that the owner defendants' claims for contractual and common law indemnity against it be dismissed. Finally, Liberty argues that the owner defendants have not asserted any crossclaims against it, plaintiff's accident did not arise out of its work and any crossclaim for contractual indemnification is barred by anti-subrogation. ADCO has not submitted opposition to the owner defendants' motion seeking relief against it, however it has separately moved for summary judgment dismissing all claims/crossclaims against it (motion sequence 16).

The court rejects Benchmark/RBC's procedural argument for the reasons stated by the owner defendants. Cushman and Wakefield, Inc's property manager demonstrated sufficient personal knowledge to establish the admissibility of the lease and that the accident occurred in the RBC's leased portion of the premises. Moreover, plaintiff's own testimony clearly established where his accident occurred and there are no triable issues of fact on this point.

Americon's improper request for relief is not properly noticed and therefore is not properly before the court. Otherwise, it is rejected.

As for Liberty and ADCO, the court rejects the owner defendants' contention that they can move for summary judgment on claims not asserted in this action. In their Answer, the owner defendants did not assert crossclaims against Liberty or ADCO. Moreover, they did not commence a third-party action against Liberty or ADCO. At a minimum, since issue has not even been joined, the court must deny the owner defendants' motion for contractual indemnification against Liberty and ADCO.

The court now turns to the relevant contracts. In the lease between 1211 Property Owner and RBC, RBC agreed to the following:

> Tenant shall indemnify and hold harmless Landlord...and its and their respective partners, directors, officers, agents and employees from and against any and all claims, together with all costs, expenses and liabilities (excluding consequential damages) incurred or in connection with each such claim or action or proceeding thereon, including, without limitation, reasonable attorneys' fees and expenses, arising from or in connection with:
>
> (i) the conduct or management of the Demised Premises or of any business therein, or any work or thing whatsoever done, or any condition created (other than by Landlord) in or about the Demised Premises during the term of this Lease...or during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the Demised Premises ...
>
> (iii) any accident, injury or damage whatever (unless caused solely by the negligence or willful misconduct of Landlord or Landlord's agents of their respective employees) occurring in, at or upon the Demised Premises

In its contract with RBC, Benchmark agreed to the following:

> To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner...and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury...or to injury...but only to the extent caused by the negligent acts or omissions of the Con-

> tractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expenses is caused in part by party indemnified hereunder.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; *see also Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). However, "General Obligations Law § 5-322.1 prohibits and renders unenforceable any promise to hold harmless and indemnify a promisee which is a construction contractor or a landowner against its own negligence" (*Kilfeather v Astoria 31st St. Assoc.*, 156 AD2d 428 [2d Dept 1989]).

Here, there is no dispute that plaintiff was injured during the course of a project in space leased to RBC due an accident which was not caused solely by the 1211 Property Owners' negligence or that of its agents. Therefore, the owner defendants are entitled to contractual indemnification from RBC.

The owner defendants seek contractual indemnification from Benchmark pursuant to its contract with RBC. However, there is an issue of fact as to whether Benchmark and/or its subcontractors were negligent and whether their negligence was a proximate cause of plaintiff's accident, since it is unclear on this record why the pipe fell on plaintiff. Accordingly, that branch of the owner defendants' motion is denied.

Accordingly, the balance of the owner defendants' motion is granted to the extent that they are entitled to contractual indemnification from RBC.

Balance of the Par defendants' motion (sequence 8)

As for the remainder of the Par defendants' motion, the court finds that issues of fact preclude summary judgment. There is no dispute that Par Fire was not at the project between July 8 and the accident date of July 13, 2015. Par Fire maintains that in performing its cutting and capping work, it did not touch the hangers that hold up the sprinkler pipes, had no role in removal or demolition of sprinkler pipes and its work had no effect on the stability of said pipes. Par Fire further asserts that it was Liberty's responsibility to remove the sprinkler pipes. Finally, Par Fire points to Liberty's testimony arguing that Liberty admitted that the sprinkler pipes "seemed in good shape" on the day of the accident, a week after Par Fire's work was completed, when Liberty arrived on site to do its demolition work. Liberty disputes this characterization of Biundo's testimony, arguing that it was outside Liberty's scope of work to maintain the pipes.

Plaintiff disputes whether Par Fire's work jeopardized the stability of the sprinkler pipes. Further, plaintiff asserts that Par Fire and Par Plumbing are one and the same.

As for Par Plumbing, it maintains that its work did not involve the sprinkler pipes and its work was completed five months prior to plaintiff's accident. Liberty argues that Par Pluming has failed to establish these facts because it has not provided the scopes of work and drawings to the court, and the witness which Par Plumbing relies upon did not work at the project.

Vince Vairo, Par Fire's witness, explained "capping" as follows:

> Q And tell us, when you use the term cutting and capping, ... [j]ust explain exactly what that means.
>
> ...
>
> A Okay.

So the main is there, the thicker of the two pipes, right, and off the main comes the branch line or stringer line.
From that point we will cut as closely as possible to the main that is to remaining, so within a foot or whatever, wherever we can, cut the stringer line to detach it from the main, and you back-out that small piece of pipe that was still screwed into the main, and then you plug the hole on the main.

Now, the branch line is just basically hanging in the air, disconnected, so later on the demo people can come in and take it all apart because we are contracted just to cut the line and cap it at the main, not to demo anything.

Q So, when you say not to demo anything, do I understand your testimony correctly that what was done by Par Fire at this particular job site was that your men cut the branch line and after cutting the branch line and capping it, they left it in place on the hangers that were then and there existing?

A Correct.

Q And you left it on the hangers so that the demo company would come in and remove the branch lines from the hangers; is that correct?

A Correct.

Par Fire is not entitled to summary judgment on this record. Indeed, it has not established *prima facie* that its work did not contribute and/or cause the pipe to fall and hit plaintiff. As for Par Plumbing, the court finds that there is an issue of fact as to whether Par Fire and Par Plumbing were one and the same. Par Plumbing's witness testified that the Par defendants share offices, vehicles, tools and other equipment, use the same document templates and logos, and otherwise hold themselves out to be one and the same. At a minimum, there is a question of fact as to whether these entities are one and the same.

As for the crossclaims, Par Fire was contractually obligated to indemnify RBC and Benchmark. Article 8 of the Subcontractor Master Agreement contains an indemnity provision which provides as follows:

Article 8 – Indemnification

To the fullest extent permitted by law, subcontractor [Par Fire] agrees to indemnify, defend and hold harmless Benchmark Builders and additional indemnitees, if any ... from any and all claims ... including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries ... brought or assumed against any of the indemnitees ... arising out of or in connection with or as a result of or consequence of the performance of the work of the subcontractor [Par Fire] under this agreement ... whether or not caused in whole or in part by the subcontractor or any person or entity employed either directly or indirectly by the subcontractor ... . . The parties expressly agree that this indemnification agreement contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contribution to the underlying claim in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault. Under no cir-

> cumstance shall this agreement be interpreted to require Subcontractor [Par Fire] to indemnify an Indemnitee for an Indemnitee's negligence or wrongdoing...

The Subcontractor Master Agreement defines "Indemnitees" as follows:

"Indemnitees" shall include Contractor [Benchmark], and all parties Contractor [Benchmark] is obligated by contract or otherwise . . . .to indemnify, defend and hold harmless.

Purchase Order ¶ 3.0 states that it is "subject to all conditions and terms indicated in Benchmark Builders, Inc., Master Subcontractor Agreement and AIA document A-201, 2000 Edition – General Conditions."

Paragraph 4 of the Purchase Order states as follows:

> Insurance requirements and Hold Harmless Indemnity as detailed in attached Exhibit B of this purchase order and as indicated in the master Subcontractor Agreement, shall apply to all work performed by subcontractor on behalf of Benchmark Builders, Inc.

Paragraph 2 of the Purchase Order contains an indemnity provision which provides in relevant part as follows:

> 2. Indemnification
>
> A. To the fullest extent permitted by law, Subcontractor [Par Fire] agrees to indemnify, defend and hold harmless the Owner [RBC], Contractor [Benchmark] and all additional indemnitees, if any . . . from any and all claims . . . . including attorneys' fees, costs, court costs, expenses and disbursements related to . . . personal injuries . . . arising out of or in connection with or as a result of or consequence of the performance of the Work of the Subcontractor [Par Fire] under this agreement. . .

Given the broad language of the indemnity agreement the alleged occurrence arose out of or was in connection with or as a result of or consequence of the performance of Par Fire's work. Based upon the foregoing, Par Fire did not prove that it was free from negligence. Therefore, the portion of the motion seeking the dismissal of the RBC and Benchmark cross claims for contribution and common law indemnity is denied.

Balance of Americon's motion (sequence 12)

Americon moves for summary judgment, arguing that it is not properly a defendant in this action since plaintiff's accident occurred as part of RBC's project and Americon did not cause or create the condition which resulted in plaintiff's accident nor did it owe plaintiff a duty of care. Americon further seeks summary judgment on their common law and contractual indemnification claims without specifying against whom it seeks such relief. On reply, Americon's counsel blithely states that Americon is entitled to contractual indemnification "[i]n the unlikely scenario that this Court deem Americon liable" from its subcontractors.

The Par defendants, Lacor, McGowan, Superior, and Litespeed partially oppose the motion to the extent Americon seeks relief against them. Benchmark/RBC opposes the motion to the extent Americon seeks dismissal of the crossclaims asserted by them against it. Liberty also opposes the motion, contending that it should be denied as a successive motion for summary judgment and further arguing/speculating that there is a possibility that McGowan's work caused plaintiff's accident.

At the outset, Americon's failure to properly notice against which entity it seeks indemnification from is a substantial procedural defect. Given the complexity of the motion papers by the point at which Americon filed its motion, its counsel should have taken the time to identify which parties Americon believed it was entitled to indemnification from and on what grounds. Instead, Americon's counsel devotes mere paragraphs to the point and lumps its subcontractors together as if that is proper argument. It is not. It is wholly improper for Americon to expect its adversaries and this court to sift through the papers, operative contracts and the other parties' contentions to frame a proper argument upon which relief should be granted. Accordingly, the balance of Americon's motion is denied.

Balance of Liberty's motion (sequence 13)

Liberty denies that its work caused the sprinkler pipe to fall and hit plaintiff. Therefore, Liberty contends that it is entitled to summary judgment dismissing all third party/crossclaims against it. Superior maintains that Liberty's motion to dismiss its crossclaims for common law indemnity and contribution should be denied because it was responsible for the pipe that struck plaintiff or there is at least a question of fact on that point. The owner defendants oppose dismissal of their claims for contractual and common law indemnification, as well as contribution against Liberty. The Par defendants, ADCO, Benchmark/RBC

Liberty's motion is denied, because it has failed to *prima facie* establish that its work did not cause or contribute to the pipe falling and hitting plaintiff. Finally, Liberty's contract with Benchmark required it to indemnity Benchmark/RBC from all claims "caused by, arising out of or in any way incidental to or in connection with" Liberty's work and the happening of the accident indisputably triggers Liberty's indemnity obligation under the broad scope of the indemnity clause. Accordingly, Liberty's motion is denied in its entirety.

Balance of Benchmark/RBC's motion (sequence 16)

Benchmark/RBC seek summary judgment on their crossclaims for contractual indemnification against Liberty, ADCO and Par Fire, or at least conditional indemnity. They further seek summary judgment dismissing all crossclaims and counterclaims against them for common law indemnity and contribution, including ADCO's crossclaim for contractual indemnification.

The Par defendants argue that Benchmark was responsible for coordinating the work of its trades and is therefore not entitled to indemnification. The Par defendants otherwise contend that their work had not connection to plaintiff's accident, an argument which is rejected later in this decision (*infra p. 13*).

Americon partially opposes Benchmark/RBC's motion to the extent that the former objects to the latter's statement of facts.

The owner defendants oppose Benchmark/RBC's motion, maintaining that "In directing and allowing the demolition contractor to perform work in the same area the plaintiff was performing work, Benchmark was negligent in the coordination of trades. The negligent coordination of trades gave rise to the dangerous condition, i.e. falling sprinkler pipe, that caused the plaintiff's accident. In failing to properly coordinate the trades, Benchmark created an unsafe working environment and failed to provide reasonable and adequate protection to the safety and health of the plaintiff.

ADCO and Liberty echo the owner defendants' arguments maintaining that Benchmark has not established freedom from negligence. ADCO further argues that neither are an owner and therefore cannot obtain contractual indemnification.

Liberty and Benchmark entered into an "Indemnity Agreement" which provides in relevant part as follows:

> For good and valuable consideration, and in consideration of Benchmark Builders, Inc. granting contractor [Liberty] named below and those working on its behalf... collectively, "contractor's parties" permission to perform work at the property, contractor [Liberty] covenants and agrees, to the fullest extent permitted by law, to defend, protect, indemnify... the Benchmark Builders, Inc., Twenty-First Century Fox, Inc. News America Inc., 1211 6th Ave. Property Owner LLC, 1211 6th Avenue Property Management, LLC, Callahan Capital Properties LLC, Cushman & Wakefield, Inc., Royal Bank of Canada, . . . are collectively hereinafter known as the "indemnitees" from and against each and every claim, demand, or cause of action against any or all of the indemnitees with respect to any and all liability, judgment, cost, expense... damage, loss, penalty, fine, lien or other encumbrance in connection therewith on account of bodily and/or personal injury... to the extent caused by, arising out of or in any way incidental to or in connection with (I) the performance or lack of performance of any or all work to be performed by or on behalf of contractor's [Liberty's] parties, and/or (II) any and all fraudulent, wrongful and or negligent acts and/or omissions, and/or willful misconduct, by contractor's parties... ."

Meanwhile, Benchmark's contract with ADCO contained the indemnity provisions cited herein at pgs. 9-10, *supra*.

Certainly, the court agrees with Benchmarks' adversaries that Benchmark has not demonstrated freedom from negligence and is therefore only entitled to conditional indemnification in the event that relevant contractual provisions have been triggered. However, while there is no dispute that plaintiff's accident arose out of ADCO's work, it is unclear whether Liberty was negligent and/or its acts caused or plaintiff's accident arose out of Liberty's work. Similarly, Benchmark has not established that plaintiff's accident arose out of or in connection with or as a result of or consequence of the performance of the Par defendants' work.

Otherwise, the court rejects ADCO's argument that the term "owner" only applied to 1211 Property Owner, a non-signatory to its contract with Benchmark and the purchase order. Accordingly, Benchmark/RBC are only entitled to conditional indemnification against ADCO and the balance of their motion is denied.

Litespeed's motion (sequence 7)

Litespeed's motion must be granted for the reasons that follow. Litespeed has established that it did not perform any services or work at the location of plaintiff's accident despite being sent a purchase order requesting work by third-party plaintiff Americon. The purchase order was never executed by Litespeed and the work relative to that purchase order was never done. Although Americon signed and submitted the purchase order, Litespeed never signed and returned it. Finally, Litespeed never billed for this job nor received payment.

Litespeed has therefore established that it is entitled to summary judgment dismissing all claims and crossclaims against it because there is no dispute that it did not perform any work in the area where plaintiff's accident occurred. Nor can it be held liable for contractual indemnification because there was no enforceable contract between Litespeed and Americon. Accordingly, Litespeed's motion (sequence 7) is granted in its entirety and all claims and crossclaims against Litespeed are severed and dismissed.

Lacor's motion (sequence 10)

Lacor moves for summary judgment dismissing Americon's complaint. It maintains that it was not onsite for months prior to plaintiff's accident, and no later than before the date of the last bill it sent for the work it performed at the premises, which was March 30, 2015. Therefore, Lacor moves for sum-

mary judgment dismissing Americon's claims for contribution and common law indemnification. Benchmark/RBC oppose the motion, and their counsel asserts that "Lacor not only worked for Americon, they also worked for Benchmark and performed work in the ceiling of the space where the plaintiff claimed he was injured shortly prior to the plaintiff's accident." Liberty also points to the purchase order for work by Lacor and claims that Lacor demolished ceiling hung air conditioner units at multiple locations at the premises a week prior to plaintiff's accident. On reply, Lacor admits to being present at the premises the week before plaintiff's accident but maintains that no party has asserted a theory of negligence in connection with the work it performed during this time and that such claims are otherwise "attenuated".

Lacor has established that the work it performed pursuant to its contract with Americon did not cause or contribute to plaintiff's accident. In turn, no party has raised a triable issue of fact on this point. As to the work Lacor performed a week prior to plaintiff's accident pursuant to a purchase order with Benchmark, Benchmark/RBC have failed to raise a triable issue of fact as to whether this work caused or contributed to plaintiff's accident. Mere supposition will not suffice to rebut a *prima facie* showing of entitlement to summary judgment. Accordingly, Lacor's motion is also granted in its entirety and all claims/crossclaims against it are severed and dismissed.

Superior's motion (sequence 11)

Superior moves for summary judgment, arguing that it did not perform any demolition work at the accident location and therefore the indemnification provision in its contract with Americon was not triggered. Superior casts the blame on Liberty, and asserts "Plaintiff's accident was clearly the result of work performed by LIBERTY and/or in connection with or a result of or the consequence of the work performed by LIBERTY and not by any work performed by SUPERIOR." Americon and Liberty oppose Superior's motion.

There is no dispute that Americon hired Superior to perform work in the common areas of the 29th floor near the restrooms, which is not where plaintiff's accident took place. Indeed, Superior did not perform any work on the sprinkler pipes on the 29th floor of the premises.

Paragraph 4 of the Terms and Conditions of the Superior/Americon agreement contain the insurance and indemnity clauses. The insurance clause requires Superior to purchase insurance to protect owner; Americon and subcontractor for claims (including bodily injury claims) which may arise out of or result from operations, attempted operations, or failure to perform operations under this agreement. The insurance clause requires Superior to name Americon an additional insured on the subcontractors primary and excess liability policies to completely protect Americon from claims arising out of or resulting from Subcontractor's operations, attempted operations, or failure to perform operations under this agreement.

The indemnity clause requires that SUPERIOR to defend and indemnify, Americon from and against all claims…fees and expenses on account of bodily or personal injury …arising out of or in connection with or relating to the operations, attempted operations, or failure to perform operations in connection with or pursuant to this agreement.

Since there is no dispute that plaintiff's accident did not arise out of or in connection with or relating to Superior's work pursuant to its contract with Americon, the indemnity clause was not triggered. Relatedly, Superior has necessarily shown that it did not breach its insurance obligations. Accordingly, Superior's motion dismissing Americon's claims against it is granted. Relatedly, Superior is entitled to dismissal of Liberty's crossclaims for the same reason; there is no evidence that Superior was negligent, that its work caused or contributed to plaintiff's accident, or that it supervised plaintiff's work. Accordingly, the balance of Superior's motion is also granted and Liberty's crossclaims against Superior are severed and dismissed.

McGowan's motion (sequence 14)

McGowan also argues that it is entitled to summary judgment dismissing the claims/crossclaims against it because it did not perform work in the area where plaintiff's accident after months prior to plaintiff's accident. Benchmark/RBC oppose the motion, arguing that it is not supported by sufficient proof. Specifically, Benchmark/RBC argue that McGowan's principle "Mr. McGowan did not have any recollection of being there or any first-hand knowledge of the work". Americon rehashes its previously unsuccessful arguments against the other subcontractors. Finally, Liberty opposes McGowan's motion, and maintains that "there are several possible causes to the alleged accident having nothing to do with Liberty's work, including T. McGowan using large wrenches to remove 105 sprinkler heads".

McGowan performed work at 1211 Avenue of the Americas on the 29th floor in February 2015. Said work was completed in a couple of days. It is undisputed that the scope of McGowan's work involved turning 105 sprinkler heads from pendant to upright. Other than that work, McGowan did not perform any other work on the floor. On this record, McGowan has established that the work it performed did not cause or contribute to plaintiff's accident. The opposition is unavailing. As McGowan's counsel succinctly states in reply, "[h]ow the work of turning the sprinkler heads on a sprinkler pipe months before an accident, with those pipes being demolished in the interim could have caused this accident defies logic and common sense." Accordingly, McGowan's motion is granted in its entirety.

ADCO's motion (sequence 15)

ADCO moves for summary judgment dismissing all third-party claims and crossclaims against it. It argues that plaintiff did not sustain a grave injury within the meaning of the Workers' Compensation Law, Section 11, and therefore any claims for common law indemnification and contribution are barred. Only the owner defendants and Benchmark RBC oppose ADCO's motion. There is no opposition to ADCO's motion as to the common law indemnification and contribution claims. Accordingly, that portion of the motion is granted without opposition.

Benchmark/RBC oppose dismissal of their remaining crossclaims. On reply, ADCO attempts to address Benchmark/RBC's breach of contract claims, but these arguments are improperly raised for the first time on reply and are therefore rejected. The balance of the motion is denied for the reasons stated herein, as the court has already found that Benchmark/RBC are entitled to conditional indemnification from ADCO.

As for the owner defendants, their arguments were already considered and rejected herein (see p. 9). Accordingly, ADCO's motion is granted to the extent that it is entitled to summary judgment dismissing all claims and crossclaims for common law indemnification and contribution against it.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that motion sequence 5 is granted to the following extent:

[1] all claims and crossclaims against defendants 1211 6th Avenue Syndication Partners JV, L.P., Cushman & Wakefield, Inc. and Cushman & Wakefield Facilities Management, Inc. are severed and dismissed;

[2] plaintiffs' Labor Law § 241[6] claim is severed and dismissed; and

[3] the owner defendants are granted summary judgment against RBC on their claims for contractual indemnification;

And it is further

ORDERED that motion sequence 7 is granted in its entirety and all claims and crossclaims against Litespeed are severed and dismissed; and it is further

ORDERED that motion sequence 8 is denied; and it is further

ORDERED that motion sequence 9 by plaintiffs is granted to the extent that plaintiffs are entitled to summary judgment on liability on the Labor Law §§ 240[1] claim against 1211 Property Owner and Benchmark; and it is further

ORDERED that motion sequence 9 is otherwise denied; and it is further

ORDERED that motion sequence 10 is granted in its entirety and all claims and crossclaims against Lacor are severed and dismissed; and it is further

ORDERED that motion sequence 11 is granted in its entirety and all claims and crossclaims against Superior are severed and dismissed; and it is further

ORDERED that motion sequence 12 is denied; and it is further

ORDERED that motion sequence 13 is denied; and it is further

ORDERED that motion sequence 14 is granted in its entirety and all claims and crossclaims against McGowan are severed and dismissed; and it is further

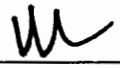
ORDERED that motion sequence 15 is granted to the extent that ADCO is entitled to summary judgment dismissing all claims and crossclaims for common law indemnification and contribution against it; and it is further

ORDERED that motion sequence 16 is granted to the extent that Benchmark/RBC are entitled to conditional indemnification against ADCO and the balance of their motion is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 11/30/21
New York, New York

So Ordered:



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