SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ **PART** 47

Justice

----------X

RAMONA SANDOVAL-MORALES,

Plaintiff,

- v -

164-20 NORTHERN BOULEVARD LLC,CAPITAL BUILDERS GROUP, INC.,NEW ERA MECHANICAL CORP.,

Defendants.

----------X

CAPITAL BUILDERS GROUP, INC.,

Third-Party Plaintiff,

-against-

PARAMOUNT PAINTING GROUP, LLC,

Third-Party Defendant.

----------x

164-20 NORTHERN BOULEVARD LLC,

Second Third-Party Plaintiff,

-against-

PARAMOUNT PAINTING GROUP, LLC,

Second Third-Party Defendant.

----------x

NEW ERA MECHANICAL CORP.,

Third Third-Party Plaintiff,

-against-

INDEX NO. 158954/2017

MOTION DATE 02/22/2022, 02/22/2022, 02/24/2022

MOTION SEQ. NO. 006 007 008

DECISION + ORDER ON MOTION

PARAMOUNT PAINTING GROUP, LLC,

Third Third-Party

Defendant.

----------x

164-20 NORTHERN BOULEVARD LLC,

Fourth Third-Party

Plaintiff,

-against-

FLUSHING BANK,

Fourth Third-Party

Defendant.

----------x

The following e-filed documents, listed by NYSCEF document number (Motion 006) 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 327, 328, 361, 362, 363, 364, 394, 395, 396, 413, 414, 424

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 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, 329, 365, 366, 367, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 397, 398, 415, 416, 417, 418, 422

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

The following e-filed documents, listed by NYSCEF document number (Motion 008) 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, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 325, 326, 330, 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, 357, 358, 359, 360, 368, 369, 370, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 412, 419, 420, 421, 423, 425, 426, 427

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

This is an action to recover damages for personal injuries allegedly sustained by a union painter on September 19, 2017, when, while working at a construction site at 164-20 Northern Boulevard, Queens, New York (the Premises), she was struck in the head by a valve that fell from above.

In motion sequence number 006, third-party defendant/second third-party defendant/third third-party defendant Paramount Painting Group, LLC (Paramount) moves, pursuant to CPLR § 3212, for summary judgment dismissing the second third-party complaint, the third third-party complaint, all common-law indemnification and breach of contract for the failure to procure insurance claims against it and all cross-claims of fourth third-party defendant Flushing Bank (Flushing).

In motion sequence number 007, defendant/third-party plaintiff Capital Builders Group, Inc. (Capital) moves, pursuant to CPLR § 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims and all cross-claims and counterclaims for common-law indemnity and contribution against it, and for summary judgment in its favor on its contractual and common-law indemnification claims against co-defendant/fourth third-party plaintiff New Era Mechanical Corp. (New Era) and Paramount.

Plaintiff cross-moves, on motion sequence number 007, pursuant to CPLR § 3025 (b) for leave to amend her bill of particulars to add more specific Industrial Code provisions and, pursuant to CPLR § 3212, for summary judgment in her favor on her Labor Law §§ 200 and 241 (6) claims against Capital.

In motion sequence number 008, Flushing moves, pursuant to CPLR § 3212, for summary judgment in its favor on its cross-claims against Capital.

Capital cross-moves, on motion sequence number 008, pursuant to CPLR § 3212, for summary judgment dismissing Flushing's contractual indemnification claim as against it.

Defendant/second third-party plaintiff/fourth third-party plaintiff 164-20 Northern Boulevard LLC (Northern) also cross-moves, on motion sequence number 008, pursuant to

CPLR § 3212, for summary judgment dismissing the complaint against it and for summary judgment in its favor on its common-law indemnification claims against Capital and New Era.

The motions and cross-motions are consolidated for disposition.

BACKGROUND

On the day of the accident, the Premises was owned by Northern and leased to Flushing. Flushing hired Capital to provide general contractor services for a gut renovation project at the Premises (the Project). Capital hired New Era to provide plumbing services at the Project. Capital also hired Paramount to provide painting services at the Project. Plaintiff was employed by Paramount.[1]

Plaintiff's Deposition Testimony

Plaintiff testified that on the day of the accident, she was a painter apprentice employed by Paramount at the Project. Her duties included prep work, sanding, and painting. Her supervisor was a Paramount employee named "Jordan" (plaintiff's tr at 20). Her coworkers on the day of the accident were "Gus" and "Coasd" (*id.* at 24). Gus acted as the foreman on the Project. There were several other trades on site.

Paramount provided materials (such as paint, buckets and ladders) but did not provide personal tools or safety equipment, such as hardhats (*id.* at 112 and 261). Plaintiff testified that Paramount did not have safety meetings and did not direct the use of hard hats (*id.* at 252).

At approximately 2:25 pm, Gus directed plaintiff to wash five-gallon paint buckets in a slop sink on the first floor of the Premises (the Sink) (*id.* at 33). The Sink was in a janitor's

[1] By stipulation of discontinuance dated July 12, 2018, Capital discontinued its second-third-party action against Paramount (NYSCEF Doc. No. 268). The identically captioned third-party action remains. The caption on this Order reflects the corrected caption with respect to said dismissal.

closet. There was a ladder in the closet, "folded leaning on the wall" (*id.* at 125). The closet also had "tiles missing" in the ceiling (*id.* at 37).

Plaintiff testified that she walked into the room and began cleaning buckets in the Sink. After approximately "two minutes" (*id.* at 129), "something just fell on [her]" (*id.* at 40). Immediately after the accident, she identified the object that hit her; a "valve" that she saw lying on the ground near the doorway (*id.* at 40). The valve was "the size of a brick" (*id.* at 41). She did not know exactly where it fell from, but believed it fell from the open tiles in the ceiling.

Plaintiff was not wearing a hard hat at the time of the accident. She further testified that she was not required to wear a hardhat at the Premises (*id.* at 112).

Shortly after the accident, while waiting for the ambulance, a plumber named "Benny" spoke with her and explained that he had "disconnected the valve and left it there" (*id.* at 41). She reiterated that she did not know what the valve was on top of before it fell (*id.* at 248).

Plaintiff testified that after recovering from the accident, she returned to work (*id.* at 65), but regularly felt dizzy and nauseous (*id.* at 66). She continued working on several jobs for Paramount after the accident (*id.* at 67-68). She stopped working two to three months after the accident because of "dizziness, [her] memory, the concentration . . . [her] mental health was not okay" (*id.* at 71). She testified that she has continued looking for "[s]edentary" work (*id.* at 158).

Deposition Testimony of David Lasday (Northern's Property Manager)

David Lasday testified that on the day of the accident, he was Northern's property manager for the Premises. His duties included communicating with tenants, marketing and renting the Premises (Lasday tr at 13). He confirmed that Northern was the owner of the Premises on the day of the accident.

Lasday also testified that Northern and Flushing entered into a lease agreement for the Premises in September of 2016. Flushing intended to use the Premises as a bank. To do so, Flushing needed to perform "a substantial renovation" (*id.* at 28).

Northern was not involved in and did not provide any materials or equipment for the Project (*id.* at 44-45). Lasday was unfamiliar with Capital or any of the subcontractors on the Project. Lasday also did not visit the Premises with any regularity. He did not know when the accident occurred or what caused it.

Deposition Testimony of Marek Brzostek (Capital's Construction Superintendent)

Marek Brzostek testified that on the day of the accident, he was Capital's superintendent for the Project. His duties included scheduling and generally supervising and directing the trades. Flushing hired Capital, a general contracting company, as the general contractor for the Project. Capital hired the subcontractors. It did not provide any materials, tools or equipment (Brzostek tr at 31).

Capital had two or three people at the Premises on any given day. Brzostek was present every day. He would prepare a daily "quick safety meeting" for the subcontractor foremen (*id.* at 26). He would also prepare daily logs listing who was present and what work was performed. He had the authority to stop work if he saw a dangerous condition (*id.* at 126). When asked in general whether he ever directed individual workers' work, he testified "[y]es" (*id.* at 126).

Brzostek was present at the Premises at the time of the accident but did not witness it. He testified that the accident occurred in a janitor's closet. He learned of the accident shortly after it happened and spoke with plaintiff. He saw her sitting on the floor in the janitor's closet, bleeding from the head (*id.* at 42). He learned from her that something had fallen on her head (*id.* at 40).

At his deposition, Brzostek was shown a photograph of the accident scene. He confirmed that it showed "an electrovalve" – a plumbing valve used with hot water lines (*id.* at 46). He testified that they are typically 4-inches by 4-inches and weigh about two pounds (*id.* at 47). He also recalled that there was a 6- or 8-foot A-frame ladder in the room, "standing up unfolded" – i.e. open (*id.* at 51). He explained that the ladder "took up most of the space" in the janitor's closet, which was small – approximately "6 by 5 feet" (*id.* at 52). The janitor's closet also housed a "hot water heater tank" (*id.* at 84) that was "hung above the [drop] ceiling" (*id.* at 85).

Brzostek prepared an accident report. He was shown a copy of the accident report and confirmed it was his. He prepared it after speaking with plaintiff and "Benny" (*id.* at 59). The report stated that a valve fell from the ladder onto plaintiff.

Brzostek testified that there was "a standard policy that you have to wear hardhats at a construction site" (*id.* at 92). He wore his hardhat at the Project. If he saw someone without a hardhat he would "point it out" to the worker and the foreman (*id.* at 92). He also stated that "painting is finish work, so many times painters don't wear hardhats" (*id.* at 111). He testified that Capital usually has "a couple of hardhats extra" on site if needed (*id.* at 131).

Deposition Testimony of Edward Fitzpatrick (New Era's President)

Edward Fitzpatrick testified that on the day of the accident, he was New Era's president. He was not present at the Premises at the time of the accident. He learned of the accident either from a New Era employee or from Capital. He then spoke with Benny Velez, a New Era employee, over the telephone.

Fitzpatrick did not know anything about the accident, except from what Velez told him. Velez explained to Fitzpatrick that he was installing a valve in a hot water heater, left the valve on top of the ladder and "stepped away from his work zone to take care of something"

(Fitzpatrick tr at 12). Before he got back, plaintiff "had moved the ladder and the zone valve fell and hit [her] in the head" (*id.* at 13).

Fitzpatrick confirmed that Capital hired New Era for plumbing work at the Project. He was shown a copy of a contract between Capital and New Era and confirmed that it was the contract for the Project.

Deposition Testimony of Peter Leodis (Paramount's Project Manager)

Peter Leodis testified that on the day of the accident, he was Paramount's project manager at the Project. His duties included overseeing Paramount's workers at the Project. Paramount was hired by Capital. Capital would tell Paramount "what portion of the work [Capital] wanted done. [It] wouldn't tell [Paramount] how to do it" (Leodis tr at 43). Paramount's foreman, Gus, would directly oversee Paramount's workers.

Leodis was not present at the Premises every day. He learned about the accident from Gus. Gus did not witness the accident (*id.* at 34). Leodis did not know any specifics of the accident, except that plaintiff was hit in the head by "some type of valve" (*id.* at 36).

According to Leodis, Paramount would provide its employees with hard hats and would "typically" have them available on site (*id.* at 20). He testified that hard hats were required while working, though "at the end of the job when everything is pretty much finished up you usually are not required to wear a hard hat" (*id.* at 21). If a ceiling was open in a work area – such as if the tiles of the drop ceiling had been removed – he would recommend using a hard hat, due to the risk of falling hazards (*id.* at 41).

Gus was responsible for speaking with the general contractor on any issues, such as determining what areas were off limits or where Paramount could clean their tools. Occasionally, Paramount would instruct its employees to clean paint buckets as well (*id.* at 29).

After the accident, plaintiff continued to work for Paramount. Leodis was unsure how much longer she worked, and he did not know why she stopped.

Deposition Testimony of Danielle Blomquist (Flushing's Vice President)

Danielle Blomquist testified that on the day of the accident she was a vice president of distribution and enterprise services at Flushing. Her responsibilities included, amongst other things, managing "branch build-outs [and] working with contractors" (Blomquist tr at 11).

She testified that Flushing hired Capital for the Project. Flushing did not hire any other entity to perform construction work. During the Project, she would visit the site once a week for progress updates.

Blomquist recalled hearing that someone was injured at the Premises, but he did not recall when or what happened. Flushing did not prepare any reports or conduct any inquiries into the accident.

Deposition Testimony of Benjamin Velez (New Era's Employee)

Benjamin Velez testified that on the day of the accident, he was a plumber employed by New Era at the Project. He was the only plumber on site on the day of the accident. He was performing final punch work.

On the day of the accident, he spoke with Brzostek, Capital's superintendent, regarding "a couple of things that had to be finished" including "the water heater . . . in the maintenance closet" (Velez tr at 19). Specifically, he had to install "a couple of valves" (*id.*). He was shown a picture of the valve that struck plaintiff and confirmed it was of the type that he was installing that day.

Velez testified that shortly before the accident, he informed the painters that he needed to turn off the water to the first floor, so they wouldn't be able to clean anything until he turned it

back on (*id.* at 24). He then turned off the water and began his work on the water heater in the janitor's closet. He placed a valve "on top of the ladder" (*id.* at 26), "on the tray" (*id.* at 37). Then, while he was working, Brzostek asked him to check on "something downstairs" (*id.* at 25). Specifically, Velez testified, Brzostek told him to stop his work "because [Brzostek] wanted [Velez] to see something downstairs and have a conference" (*id.* at 31). Later, Velez clarified that Brzostek did not tell him how to do his work but gave him direction regarding "interruptions with the other trades . . . if [he] had to shut down water or need the electric killed" (*id.* at 61).

Velez then "cordoned off the area" and "closed the door" to the closet (*id.* at 26). At the request of Brzostek, Velez "[p]ut a strip of caution tape in front of" the door (*id.* at 35-36). He left the valve on top of the ladder "[b]ecause [he] was called away" by Brzostek (*id.* at 72).

While he was downstairs, he learned of the accident. He went back upstairs, noticed that the caution tape "was removed" (*id.* at 38) and saw plaintiff "holding her head and bleeding" (*id.* at 28). Velez also noticed that the ladder he had used was moved to the side.

DISCUSSION

"It is well settled that 'the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once such a *prima facie* showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010]). "The court's

function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Procedural Issues

Timeliness of Northern's cross-motion (Motion Sequence Number 008)

Plaintiff and New Era argue that Northern's cross-motion for summary judgment dismissing the complaint is untimely.

In motion sequence number 008, Flushing moves for summary judgment in its favor on its indemnification claims against Capital. Notably, Northern's cross-motion does not address Flushing's claims. Rather, Northern's cross-motion only addresses the complaint and its common-law indemnification claims against Capital and New Era.

The deadline for filing of dispositive motions in this case was within 60 days of the filing of the note of issue (NYSCEF Doc 214). Plaintiff filed the note of issue on November 30, 2021 (NYSCEF Doc. No. 215). Northern's cross-motion was filed on April 8, 2022, over 120 days after the note of issue's filing (NYSCEF Doc. No. 215).

Courts should not consider late summary judgment motions without "a satisfactory explanation for the untimeliness" – i.e. showing good cause for the delay – even if it means

permitting less than meritorious claims or defenses to continue to trial (*Brill v City of New York* (2 NY3d 648, 652 [2004]). Nevertheless, a cross-motion seeking relief that is nearly identical to the relief sought in a timely motion for summary judgment is not untimely (*see Altschuler v Gramatan Mgt., Inc.*, 27 AD3d 304, 304 [1st Dept 2006] [cross motion that "was largely based on the same arguments raised in [the movant's] timely motion" was not untimely and was properly considered]).

Here, the relief sought in Northern's cross-motion is not identical to the relief sought in Flushing's motion. Further, as Northern cross-moves on Flushing's motion, it also seeks relief against nonmoving parties (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 88 [1st Dept 2013] ["The rule is that a cross motion is an improper vehicle for seeking relief from a nonmoving party"]).

> "A cross motion is merely a motion by any party against the party who made the original motion . . . . Allowing movants to file untimely, mislabeled 'cross motions' without good cause shown for the delay, affords them an unfair and improper advantage. Were the motions properly labeled they would not be judicially considered without an explanation for the delay"

(*id.* at 87-88 [internal quotation marks and citations omitted]). Northern does not address the timeliness issue in its cross-motion memorandum or its reply.

Accordingly, in light of the foregoing, Northern's cross-motion is untimely and must be denied.

Plaintiff's Failure to Include a Statement of Material Facts

Capital and Paramount argue that plaintiff's cross-motion for summary judgment should be denied because plaintiff failed to comply with 22 NYCRR § 202.8-g (a) (as in effect prior to August 2022).

The version of section 202.8-g in effect at the time of the filing of the subject motions provides, in pertinent part, the following:

> "(a) Upon any motion for summary judgment . . . there shall be annexed to the notice of motion a separate, short, and concise, statement in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried."

Here, while plaintiff did not file her own statement of material facts in support of her cross-motion, she did file a "Response to Statement of Material Fact" to Capital's material statement of facts, as required by 22 NYCRR § 202.8-g (b) (NYSCEF Doc. No. 376). The motion and cross-motion address identical facts. Requiring plaintiff to file her own statement of material facts where she has already materially addressed the facts in her responsive document would elevate form over substance and create needless extra paperwork (*see e.g. On the Water Prods., LLC v Glynos,* 211 AD3d 1480, 1481 [4th Dept 2022] ["[B]lind adherence to the procedure set forth in 22 NYCRR 202.8-g [is] not mandated"] [internal quotation marks and citation omitted]; *see also Zar Realty LLC v Xia,* 77 Misc3d 1225(A), 2023 NY Slip Op 50036(U), *2 [Sup Ct, NY County 2023] [holding that plaintiff did not run afoul of section 202.8-g (a) where it provided a "reasonably concise statement of facts (even if not set out in a different, sequentially numbered document)" and where "defendant [had] no trouble identifying the relevant factual allegations"]).

Finally, to the extent that New Era argues that plaintiff's cross-motion is untimely, it is not. Plaintiff's cross-motion is directly addressed to Capital's motion, seeks near identical relief, and is founded on theories of liability that were raised and discussed throughout discovery (*Altschuler*, 27 AD3d at 304).

Therefore, plaintiff's cross-motion will be considered.

Plaintiff's Cross-Motion to Amend the Bill of Particulars

In her cross-motion on Capital's motion, plaintiff seeks, pursuant to CPLR § 3025 (b), to amend her bill of particulars to include violations of Industrial Code 12 NYCRR §§ 23-1.7 (a) (overhead hazards) and 1.8 (c) (1) (head protection). CPLR § 3025 (b) provides the following:

> "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . . Leave shall be freely given upon such terms as may be just . . . . Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Leave to amend a pleading "shall be freely given absent prejudice or surprise resulting directly from the delay" (*Tri-Tec Design, Inc. v Zatek Corp.,* 123 AD3d 420, 420 [1st Dept 2014] [internal citation and quotation marks omitted]).

> "Mere delay in seeking to amend a pleading does not warrant denial of the motion, in the absence of prejudice. The type of prejudice necessary to warrant denial of the motion requires some indication that the [opposing party] has been hindered in the preparation of [its] case or has been prevented from taking some measure in support of [its] position"

(*id.* at 420 [internal quotation marks and citation omitted]). Further, a movant "need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.,* 74 AD3d 499, 500 [1st Dept 2010] [internal citation omitted]).

As an initial matter, the original bill of particulars (NYSCEF Doc. No. 309) includes reference to 12 NYCRR § 23-1.7 and 1.8. Plaintiff now seeks leave to specify the subsections as noted above.

Several defendants argue that they would be prejudiced by the inclusion of these subsections, but they fail to articulate how they would be so prejudiced, especially considering

that the prior bill of particulars references the theories of liability that underpin these claims. Moreover, multiple defendants specifically address the subject subsections in their own motions for summary judgment.

Defendants cannot claim surprise either as these sections do not create new theories of liability. Section 1.7 (a) references objects falling from above and section 1.8 (c) (1) references use of hardhats. These two issues were covered during discovery and were extensively briefed by the parties in their respective motions.

Therefore, section 1.7 (a) or 1.8 (c) (1) – which both address issues relevant to plaintiff's accident – are not palpably insufficient or clearly devoid of merit with respect to this action.

Accordingly, plaintiff will be granted leave to amend her bill of particulars to include violations of Industrial Code sections 23-1.7 (a) and 1.8 (c) (1).

The Labor Law § 241 (6) Claims (Motion Sequence 007 and Plaintiff's Cross-Motion)

Capital moves for summary judgment dismissing the Labor Law § 241 (6) claims against it. Plaintiff cross-moves for summary judgment in her favor on this claim as against Capital.

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

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

Labor Law § 241 [6] imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection for workers and to comply with specific safety rules which have been set forth by the Commissioner of the Department of Labor (*St. Louis v Town of N.*

Elba, 16 NY3d 411, 413 [2011]). "The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable" (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). In addition, "[t]he [Industrial Code] provision relied upon by [a] plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*id.*, citing *Ross*, 81 NY2d at 504-505). Therefore, in order to prevail on a Labor Law § 241 [6] claim, "a plaintiff must establish a violation of an implementing regulation which sets forth a specific standard of conduct" (*see Ortega v Everest Realty LLC*, 84 AD3d 542, 544 [1st Dept 2011]), and that the violation was a proximate cause of the injury (*see Egan v Monadnock Constr., Inc.*, 43 AD3d 692, 694 [1st Dept 2007], *lv denied* 10 NY3d 706 [2008]; *Corona v HHSC 13th Street Dev. Corp.*, 197 AD3d 1025, 1026 [1st Dept 2021]).

Here, plaintiff voluntarily withdraws all Industrial Code provisions alleged in her bills of particulars, except for sections 1.7 (a) and 1.8 (c) (1) (as discussed above).

Industrial Code 12 NYCRR 23-1.7 (a)

Industrial Code 12 NYCRR 23-1.7 (a) governs overhead hazards.[2] It provides, in pertinent part, the following:

> "(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 . . . ."

Section 23-1.7 (a) is sufficiently specific to support a Labor Law § 241 (6) claim (*see Baptiste v RLP-E., LLC*, 182 AD3d 444, 445 [1st Dept 2020]). Importantly, "where an object unexpectedly falls on a worker in an area not normally exposed to such hazards, [section 1.7 (a)

[2] Plaintiff does not specifically address subsection 1.7 (a) (2), which governs areas where employees are not required to work or pass. This subsection does not apply to this action. It is uncontested that plaintiff was working in the accident location at the time of her accident.

(1)] does not apply" (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept 2007]).

Here, there is no testimony establishing that the area was normally exposed to falling objects such that overheads protections would be warranted pursuant to section 1.7 (a) (1). Rather, the evidence establishes that plumbing punch-work was being performed in the janitor's closet. Such limited one-time work does not establish that the area was regularly exposed to falling objects. Plaintiff's argument that the area was regularly exposed to falling hazards is not supported by the documentation she puts forth. Therefore, section 23-1.7 (a) is inapplicable to this action.

Accordingly, defendants are entitled to summary judgment dismissing this claim and plaintiff is not entitled to summary judgment in her favor on the same claim.

Industrial Code 12 NYCRR 23-1.8 (c) (1)

Industrial code 12 NYCRR 23-1.8 (c) (1) requires the use of hardhats for persons "required to work or pass within any area where there is a danger of being struck by falling objects or materials. . . ."

Section 23-1.8 (c) (1) "is sufficiently concrete to give rise to Labor Law § 241 (6) liability" (*Rutkowski v New York Convention Ctr. Dev. Corp.*, 146 AD3d 686, 687 [1st Dept 2017]).

> "In order to prevail on a Labor Law § 241 (6) cause of action premised upon a violation of 12 NYCRR 23-1.8 (c) (1), the plaintiff must establish that the job was a 'hard hat' job, and that the plaintiff's failure to wear a hard hat was a proximate cause of his injury"

(*Seales v Trident Structural Corp.*, 142 AD3d 1153, 1157 [2d Dept 2016] [internal quotation marks and citations omitted]).

Here, there are questions of fact as to whether, at the time of the accident, the work site was a "hard hat job," such that use of hard hats was required by the Industrial Code.

Plaintiff testified that she was not required to wear a hardhat (plaintiff's tr at 112). However, Leodis, Paramount's project manager, testified that hard hats were typically required on site (Leodis tr at 21). But then he also noted that "at the end of the job when everything is pretty much finished up you usually are not required to wear a hard hat" (*id.* at 21; *see also* Brzostek tr at 111 ["painting is finish work, so many times painters don't wear hardhats"]). Moreover, Leodis continued, hardhats should be used "[i]f the ceiling is open" in a work area, such as the subject janitor's closet (*id.* at 41).

Given the conflicting testimony, plaintiff has failed to establish that the site was, in fact, a hard hat job and defendants have failed to establish that "the site had progressed to the point that there was no longer a danger of being struck by falling objects or materials" such that it was not, as a matter of law, a hard hat site (*Seales*, 142 AD3d at 1157).

Accordingly, Capital and plaintiff are not entitled to summary judgment on plaintiff's Labor Law § 241 (6) claim predicated on Industrial Code 12 NYCRR 23-1.8 (c) (1).

The Common-Law Negligence and Labor Law § 200 Claims (Motion Sequence 007 and Plaintiff's Cross-Motion)

Capital moves for summary judgment dismissing the common-law negligence and Labor Law § 200 claims against it. Plaintiff cross-moves for summary judgment in her favor on the same claims.

Labor Law § 200 "is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Labor Law § 200 (1) states, in pertinent part, as follows:

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

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the premises (*see Ruisech v Structure Tone, Inc.*, 208 AD3d 412, 414 [1st Dept 2022]; *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012] ["Claims for personal injury under [section 200] and the common law fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed"]).

Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless "it actually exercised supervisory control over the injury-producing work" (*Jackson v Hunter Roberts Constr, LLC*, 205 AD3d 542, 543 [1st Dept 2022] [internal quotation marks and citation omitted]; *Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012] ["liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work"]). "General supervisory authority is insufficient to constitute supervisory control" (*Hughes v Tishman Constr Corp.*, 40 AD3d 305, 306 [1st Dept 2007]).

Where "a plaintiff's injuries stem not from the manner in which the work was being performed, but, rather, from a dangerous condition on the premises, a general contractor may be liable in common-law negligence and under Labor Law § 200 if it has control over the work site

and actual or constructive notice of the dangerous condition" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]; *Keating v Nanuet Bd. of Educ.*, 40 AD3d 706, 708 [2d Dept 2007];). Notably, "[w]here a defect is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises" (*Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 406 [1st Dept 2018]).

Here, plaintiff was injured when an unsecured valve – situated either on top of a ladder or coming from an opening in the ceiling – fell onto her head.

Capital, assuming the means and method standard, argues that there is no evidence in the record showing that it exercised actual supervision or control over plaintiff's work or that of New Era. Capital then argues that even if the dangerous condition standard is applicable, it cannot be held liable because there is no evidence that it had notice that Velez left a water valve on top of a ladder in the in the janitor's closet.

In opposition to Capital's motion and in support of her cross motion, plaintiff argues that the dangerous condition standard is applicable because plaintiff testified that the valve came from the opening in the ceiling tiles and that Capital had notice of the opening and was required to remedy it. Further plaintiff notes that Capital's report on plaintiff's accident states that a "water valve fell from the ceiling and hit [plaintiff] in the head." Plaintiff also argues and several co-defendants join her argument, that even if the means and method standard is applicable Capital directed New Era's injury-producing work. Specifically, they argue that Brzostek, Capital's project manager, directed Velez, New Era's employee, to check on "something downstairs" (Velez's tr at 25) and to "have a conference" (*id.* at 31), and to "[p]ut a

strip of caution tape in front of" the door of the janitor's closet (*id.* at 35-36). Velez testified, however, that Brzostek never told him how to install or remove valves (*id.* at 61).

In light of the conflicting evidence as to how plaintiff's accident occurred (i.e., the valve fell from the top of a ladder versus it fell from an opening in the ceiling) thereby implicating which of the two standards is applicable under Labor Law § 200; and the conflicting evidence if under the means and method standard Capital's supervisory role at the Project, and the conflicting evidence if under the dangerous condition standard whether Capital had notice of the dangerous condition in light of its management of New Era's employee (also disputed), summary judgment must be denied to both Capital and plaintiff.

Accordingly, that branch of Capital's summary judgment motion seeking dismissal of plaintiff's common-law negligence and Labor Law § 200 claims as against it and plaintiff's cross motion for summary judgment on the same claims will both be denied.

Northern, New Era and Flushing's Contractual Indemnification Third-Party Claims Against Paramount (Motion Sequence Number 006)

Paramount moves for summary judgment dismissing Northern's second third-party contractual indemnification claim against it, New Era's third third-party contractual indemnification claim against it and Flushing's fourth third-party cross-claim for contractual indemnification against it.

"A party is entitled to full contractual indemnification provided that the 'intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances'" (*Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82, 87-88 [1st Dept 2018], quoting *Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987]).

"In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Correia v Professional Data Mgt.,* 259 AD2d 60, 65 [1st Dept 1999]; *see also Lexington Ins. Co. v Kiska Dev. Group LLC,* 182 AD3d 462, 464 [1st Dept 2020][denying summary judgment where indemnitee "has not established that it was free from negligence"]).

Further, unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, "[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (*Correia,* 259 AD2d at 65).

Paramount argues that Northern, New Era and Flushing do not have written contracts with Paramount and that there are no contractual indemnification provisions that require it to indemnify Northern, New Era or Flushing. Notably, Northern, New Era and Flushing do not oppose this portion of Paramount's motion.

Accordingly, Paramount is entitled to summary judgment dismissing Northern's second third-party contractual indemnification claim against it, New Era's third third-party contractual indemnification claim against it and Flushing's fourth third-party cross-claim for contractual indemnification against it.

Capital's Third-Party Contractual Indemnification Claim Against Paramount (Motion Sequence Number 007)

Capital moves for summary judgment in its favor on its third-party contractual indemnification claim against Paramount.

Additional facts relevant to this claim

Capital and Paramount entered into a "Standard form of agreement between contractor and subcontractor" on July 10, 2017 (Capital's notice of motion, exhibit AA, NYSCEF Doc. No.

323) (The Capital/Paramount Agreement). It contains an indemnification provision that provides the following, as relevant:

> In consideration of the Contract Agreement and to the fullest extent permitted by law, [Paramount] shall indemnify and hold harmless the Owner and [Capital] and employees of them from and against claims . . . arising out of or resulting from performance of [Paramount's] work, provided that such claim . . . cause [sic] in whole or in part by negligent acts or omissions of [Paramount] . . . .

(*id.*).

Here, plaintiff was injured while she was performing work on behalf of Paramount, therefore, the accident arose from Paramount's work on the Project. The indemnification provision also requires a finding that the accident also arose from Paramount's negligent acts or omissions, however, Capital fails to raise any arguments suggesting that Paramount was, in fact, negligent. Therefore, Capital has not established, as a matter of law, that the indemnification provision has been triggered at this juncture the action.

Accordingly, Capital is not entitled to summary in its favor on its contractual indemnification claim against Paramount.

Capital's Contractual Indemnification Cross-Claim Against New Era (Motion Sequence Number 007)

Capital moves for summary judgment on its contractual indemnification cross-claim against New Era. Capital and New Era entered into an agreement, dated May 8, 2017, for plumbing work on the Project (Capital's notice of motion, exhibit Z; NYSCEF Doc. No. 322 [the Capital/New Era Agreement]). The Capital/New Era Agreement contains an indemnification provision that, while not identical to the Capital/Paramount Agreement's provision, is substantially similar. It requires New Era to provide indemnification for any claim "arising out

of . . . [New Era's] Work . . . caused in whole or in part by the negligent acts or omissions of [New Era]" (*id.*, Art. 1.1).

As with its motion against Paramount, Capital fails to raise any argument regarding whether New Era was, in fact, negligent as a matter of law. Therefore, it has not established, as a matter of law, that the indemnification provision has been triggered at this juncture in the action.

Accordingly, Capital is not entitled to summary judgment in its favor on its contractual indemnification claim against New Era.

Northern, New Era and Paramount's Cross-Claims for Contractual Indemnification Against Capital (Motion Sequence Number 007)

Capital moves for summary judgment dismissing Northern, New Era and Paramount's contractual indemnification cross-claims against it on the ground that no such indemnification provision exists requiring Capital to indemnify these entities. No party identifies a pertinent indemnification provision or otherwise opposes dismissal of these claims.

Accordingly, Capital is entitled to summary judgment dismissing Northern, New Era and Paramount's cross-claims for contractual indemnification against it.

Flushing's Fourth Third-Party Contractual Indemnification Cross-Claim Against Capital (Motion Sequence Number 008)

Flushing moves for summary judgment in its favor on its cross-claim for contractual indemnification against Capital and Capital cross-moves for summary judgment dismissing this claim.

Flushing and Capital entered into an AIA "Standard Form of Agreement Between Owner and Contractor" in May 2017 (Flushing's notice of motion, exhibit GG [the Flushing/Capital Agreement]). The Flushing/Capital Agreement contains an indemnification provision that provides in pertinent part:

> "To the fullest extent permitted by law, [Capital] shall indemnify and hold harmless [Flushing] . . . from and against liabilities, claims . . . arising out of . . . (b) any negligent acts, omissions or misconduct of [Capital or] its subcontractors . . . ."

(*id.*, § 3.18.1).

Flushing argues that this agreement merely requires a finding that the accident arose from Capital's work. It does not, the provision clearly requires that the accident arise out of the negligent acts or omissions of Capital or its subcontractors, New Era and Paramount.

As Flushing does not raise or otherwise address whether Capital or its subcontractors were negligent with respect to plaintiff's accident, it has failed to meet its prima facie burden.

For the first time in its reply papers Flushing raises a different argument to obtain indemnification. Since this argument was raised for the first time in Flushing's reply papers, it will not be considered (*see e.g. JPMorgan Chase Bank, N.A. v Luxor Capital, LLC*, 101 AD3d 575, 576 [1st Dept 2012] [denying to consider argument raised "for the first time in [movant's] reply"]).

In its cross-motion, Capital argues that there is no claim against Flushing for which Capital would need to indemnify Flushing. In support of this position, it argues that Flushing is only a party to this matter due to Northern's fourth third-party action and that, in that action, Northern is not entitled to judgment on its claims against Flushing on antisubrogation grounds. Therefore, it argues, Flushing will have no damages to support its indemnification claim.

In making this argument, Capital essentially asks the court to make declarations on behalf of non-moving parties additional insured status and other insurance related issues without providing sufficient evidence to support its position, such as a tender letter. Further, to the extent that Capital's arguments require a determination of any policy matters, the court declines to do so, the insurers are not parties to this action.

Accordingly, Flushing is not entitled to summary judgment in its favor on its contractual indemnification cross-claim against Capital and Capital is not entitled to summary judgment dismissing this claim.

The Contribution and Common-Law Indemnification Claims and Cross-Claims Against Paramount (Motion Sequence Number 006)

Paramount moves for summary judgment dismissing the third-party, second third-party, and third third-party contribution and common-law indemnification claims brought by Capital, Northern and New Era, respectively, and Flushing's fourth third-party cross-claim for contribution and common-law indemnification against it.

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident'" (*Perri v Gilbert Johnson Enters., Ltd.,* 14 AD3d 681, 684-685 [2d Dept 2005], quoting *Correia v Professional Data Mgt.,* 259 AD2d at 65]); *see also Spielmann v 170 Broadway NYC LP,* 187 AD3d 492 [1st Dept 2020]).

Paramount argues that, as plaintiff's employer, it is shielded from liability under Workers' Compensation Law § 11.

Workers' Compensation Law (WCL) § 11 sets forth, in pertinent part, as follows:

> An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a 'grave injury' which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, . . . or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

Therefore, "[a]n employer's liability for an on-the-job injury is generally limited to workers' compensation benefits, but when an employee suffers a 'grave injury' the employer also may be liable to third parties for indemnification or contribution" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 412-413 [2004]).

Here, in her bill of particulars, plaintiff has alleged a brain injury.[3] Not all brain injuries are statutory "grave injuries" under the WCL. A brain injury will only be considered a "grave injury" under WCL § 11 when it results in "permanent total disability." "Permanent total disability in the context of Workers' Compensation Law § 11 means unemployable in any capacity" (*Clarke v Empire Gen. Contr. & Painting Corp.*, 189 AD3d 611, 612 [1st Dept 2020], citing *Rubeis,* 3 NY3d at 417). In addition, it is "the burden of the party seeking summary judgment to show, by competent admissible evidence, that the plaintiff's injuries were not 'grave'" (*Altonen v. Toyota Motor Credit Corp.*, 32 AD3d 342, 343 [1st Dept 2006] [citation omitted]).

In support of the position that plaintiff's alleged brain injury is not a grave injury as contemplated by WCL § 11, Paramount relies upon the expert affidavits of two medical experts (Paramount's notice of motion, exhibits Z and AA; NYSCEF Doc. No. 285 and 286 [affidavits of Drs. Erlangers and Benders, respectively]) in addition to plaintiff's own testimony.

Specifically, both doctors opined that plaintiff's brain injuries do not render her unemployable (*id.*, exhibit Z, p. 14 [opining that plaintiff "is capable of returning to full-time work"]; exhibit AA, p. 10 [opining that plaintiff "is able to work"]). Further, plaintiff's

[3] In her complaint and bill of particulars, plaintiff does not state that her alleged brain injuries constitute a "grave injury."

testimony also indicates that she continued to work for several months after the accident (plaintiff's tr at 67-69) and continued to look for sedentary work thereafter (*id.* at 158).

Further, while plaintiff testified that she suffers from headaches and lack of focus, such complaints do not rise to the level of a grave injury (*Anton v West Manor Const. Corp.*, 100 AD3d 523, 524 [1st Dept 2012] ["daily headaches and frustrating loss of focus from which plaintiff testified he suffered do not satisfy the acquired brain injury standard"]).

Given the foregoing, Paramount has set forth evidence establishing that plaintiff's alleged brain injury is not a "grave injury" as contemplated by WCL § 11.

No evidence is marshalled in opposition to Paramount's motion. Therefore, no question of fact is raised as to whether plaintiff's injuries rise to the level of a "grave injury" under the WCL.

Therefore, as plaintiff's alleged injuries do not rise to the level of a grave injury, WCL § 11 bars any claims for contribution or common-law indemnification against Paramount, plaintiff's employer.

Accordingly, Paramount is entitled to summary judgment dismissing all contribution and common-law indemnification claims and cross-claims as against it.

The Contribution and Common-Law Indemnification Claims Against Capital (Motion Sequence Number 007)

Capital moves for summary judgment dismissing all contribution and common-law indemnification claims against it without specifying which parties are making these claims against it. Capital argues that it did not exercise supervision over plaintiff or New Era's work, that it did not create or have actual or constructive notice of the condition that caused plaintiff's accident and therefore it is not negligent and cannot be liable for common law indemnification or for contribution.

As discussed above, because there is a question of fact as to how plaintiff's accident occurred, there remains a question of fact as to Capital's liability for the accident, if any.

Accordingly, Capital is not entitled to summary judgment dismissing any contribution and common-law indemnification claims against it.

New Era, Northern and Flushing's Breach of Contract for the Failure to Procure Insurance Claim Against Paramount (Motion Sequence Number 006)

Paramount moves for summary judgment dismissing New Era, Northern and Flushing's claims for breach of contract for the failure to procure insurance on the ground that Paramount had no contracts with these entities and, therefore, no contractual duty to procure such insurance.

New Era, Northern and Flushing do not oppose dismissal of these claims.

Accordingly, Paramount is entitled to summary judgment dismissing New Era, Northern and Flushing's claims for breach of contract for the failure to procure insurance.

The parties remaining arguments have been considered and are unavailing.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the branch of the motion brought by third-party defendant/second third-party defendant/third third-party defendant Paramount Painting Group, LLC (Paramount) (motion sequence number 006), pursuant to CPLR 3212, for summary judgment dismissing the second third-party complaint and the third third-party complaint is granted, and the second third-party complaint and the third third-party complaint are dismissed; and it is further

ORDERED that the branch Paramount's motion for summary judgment seeking dismissal of all common-law indemnification and breach of contract for the failure to procure insurance claims against it and all cross claims of fourth third-party defendant Flushing Bank (Flushing) is granted and those claims are dismissed as against Paramount; and it is further

ORDERED that the motion brought by defendant/third-party plaintiff Capital Builders Group, Inc. (Capital) (motion sequence number 007), pursuant to CPLR 3212, for summary judgment dismissing the common-law negligence and Labor Law §§ 200 and 241 (6) claims against it as well as all cross-claims and counterclaims for common-law indemnify and contribution against it, and for summary judgment in its favor on its contractual and common-law indemnification claims against co-defendant/fourth third-party plaintiff New Era Mechanical Corp. (New Era) and Paramount is granted to the extent that

(1) the Labor Law § 241 (6) claims except that claim predicated upon a violation of Industrial Code 12 NYCRR 23-1.8 (c) (1); and

(2) New Era, Paramount and defendant/second third-party plaintiff/fourth third-party plaintiff 164-20 Northern Boulevard LLC's (Northern) contractual indemnification claims

are dismissed; and the motion is otherwise denied; and it is further

ORDERED that Flushing's motion (motion sequence number 008), pursuant to CPLR 3212, for summary judgment in its favor on its contractual indemnification claim against Capital is denied; and it is further

ORDERED that the branch of plaintiff's cross-motion (on motion sequence number 007), pursuant to CPLR 3025 (b), for leave to amend her bill of particulars is granted; and it is further

ORDERED that the branch of plaintiff's cross-motion, pursuant to CPLR 3212, for summary judgment in her favor on her Labor Law §§ 200 and 241 (6) claims against Capital is denied; and it is further

ORDERED that Northern's cross-motion (on motion sequence number 008) for summary judgment, pursuant to CPLR 3212, for summary judgment dismissing the complaint

against it and for summary judgment in its favor on its common-law indemnification claims against Capital and New Era is denied; and it is further

ORDERED that Capital's cross-motion (on motion sequence number 007) for summary judgment, pursuant to CPLR 3212, seeking dismissal of Flushing's contractual indemnification claim is denied; and it is further

ORDERED that the remainder of the action is severed and shall continue.

20230524151635PGOETZ1F1F982FAF4EE4DAE9EB21A3DBD2E74B1

5/24/2023
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE