SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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INDEX NO. 151443/2018

MOTION SEQ. NO. 004 005

ANDRES JIMENEZ,

Plaintiff,

- v -

ST. NICHOLAS AVENUE HOUSING DEVELOPMENT FUND CORP., H.S.C. MANAGEMENT CORP., and FITSUM NETSANET,

DECISION + ORDER ON MOTION

Defendant.

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ST. NICHOLAS AVENUE HOUSING DEVELOPMENT FUND CORP. and H.S.C. MANAGEMENT CORP.,

Third-Party
Index No. 595211/2020

Plaintiffs,

-against-

FITSUM NETSANET,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 171, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 199, 200, 202, 205, 206, 207, 208, 209, 210, 215, 216, 217, 218

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 172, 197, 198, 201, 203, 204, 211, 212, 213, 214, 219, 220, 221, 222

were read on this motion for SUMMARY JUDGMENT.

Gorayeb & Associates, P.C., New York, NY (Martin J. Moskowitz of counsel), for plaintiff.
Lewis Brisbois Bisgaard & Smith LLP, New York, NY (Patrick McAvaddy and Alea K. Roberts of counsel), for defendants/third-party plaintiffs St. Nicholas Avenue Housing Development Fund Corp. and H.S.C. Management Corp.
Ahmuty, Demers & McManus, Albertson, NY (Daniel Glattman of counsel), for third-party defendant Fitsum Netsanet.

Gerald Lebovits, J.:

This action arises from a construction site accident. Plaintiff, Andres Jimenez, was using a table saw to cut a piece of wood. The table-saw blade made contact with his hand, injuring him. The accident occurred in an apartment in a residential cooperative building.

Plaintiff brought this action against the co-op, defendant St. Nicholas Avenue Housing Development Fund Corp., and the co-op's management company, defendant H.S.C. Management Corp. Plaintiff raises claims for violations of the Labor Law and negligence. St. Nicholas and HSC brought a third-party action against Fitsum Netsanet, the shareholder-owner of the apartment. They assert claims for contractual indemnification, common-law indemnification, contribution, and breach of contract for failure to procure insurance. (NYSCEF No. 31 [third-party complaint].)

On motion sequence 004, Netsanet moves for summary judgment to dismiss St. Nicholas and HSC's third-party claims. Netsanet also moves, in the alternative, for summary judgment to dismiss plaintiff's complaint, as permitted under CPLR 1008. (*See Muniz v Church of Our Lady of Mt. Carmel*, 238 AD2d 101, 102 [1st Dept 1997].) St. Nicholas and HSC cross-move for summary judgment in their favor on their third-party claims.[1] Summary judgment dismissing the third-party claims is granted in part and denied in part. The cross-motion for summary judgment in the third-party plaintiffs' favor is granted in part and denied in part.

On motion sequence 005, plaintiff moves for summary judgment in his favor on his Labor Law § 241 (6) claim premised on an asserted violation of 12 NYCRR 23-1.12 (c) (2) and (3). St. Nicholas and HSC cross-move for summary judgment dismissing plaintiff's complaint; alternatively, they seek partial summary judgment on the issue of plaintiff's comparative fault. (NYSCEF No. 173 at 1-2.) The motion and cross-motion are granted in part and denied in part.

I. Motion Sequence 004

Netsanet moves for summary judgment to dismiss St. Nicholas and HSC's third-party claims for contractual indemnification, common-law indemnity, contribution, and breach of contract. St. Nicholas and HSC cross-move for summary judgment in their favor on those claims. With respect to the contractual-indemnification claim, the motion and cross-motion are denied. With respect to the common-law indemnification, contribution, and breach of contract claims, the motion is granted, the cross-motion is denied, and those claims are dismissed.

[1] Netsanet argues that St. Nicholas and HSC's cross-motion is procedurally defective, because they did not mention their request for summary judgment in their notice of cross-motion and filed the cross-motion more than 60 days after the note of issue was filed. (NYSCEF No. 205 at 4, 7.) Notwithstanding the notice-of-motion deficiency, the court, in its discretion, still considers the motion itself. (*See* CPLR 2001; *cf. Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2d Dept 2018].) And notwithstanding any untimeliness, the court still considers the motion, because St. Nicholas and HSC and Netsanet seek summary judgment for "nearly identical" relief. (*Filannino v Triborough Bridge and Tunnel Auth.*, 34 AD3d 280, 281 [1st Dept 2006].)

A. Contractual Indemnification

St. Nicholas and HSC claim that they are entitled to contractual indemnification from Netsanet. In seeking summary judgment dismissing that claim, Netsanet argues that St. Nicholas and HSC waived their subrogation rights and that his own actions did not cause plaintiff's injury. Therefore, Netsanet says, the contractual-indemnification claim fails as a matter of law. This court disagrees.

1. Subrogation Clause

Netsanet argues that under his lease, "any claim for contractual indemnification is barred where the [third-party] Plaintiffs are covered by insurance which contains a waiver of subrogation clause." (NYSCEF No. 129 at 9.) St. Nicholas is covered by a Chubb insurance policy. (*Id.*) Netsanet argues that because the Chubb policy contains a waiver of subrogation, St. Nicholas and HSC may not bring a contractual-indemnification claim against him under the lease. (*Id.* at 10, 17; NYSCEF No. 217 at 4.) Using the same reasoning, Netsanet claims that St. Nicholas and HSC released Netsanet from liability in this action. (NYSCEF No. 129 at 17.)

The lease contains a contractual-indemnification provision. But the lease also provides that the contractual-indemnification term does not apply when the corporation is "covered by insurance which provides for waiver of subrogation against the Shareholder." (NYSCEF No. 149 [proprietary lease].) St. Nicholas's Chubb policy provides that the insurer waives its right to recover against an outside party for covered losses—but only *if* the insured [St. Nicholas] waived its rights to recover against that party in a contract. (NYSCEF No. 150 at 39 [Chubb policy].) In other words, the Chubb policy does not automatically "effect[ ] a waiver of subrogation against the landlord." (*Continental Ins. Co. v 115-123 West 29th St. Owners Corp.*, 275 A.D.2d 604, 605 [1st Dept 2000].) And Netsanet provides no evidence of an agreement carrying the waiver into effect. (*See Baker v 40 E. 80 Apt. Corp.*, 204 AD3d 462, 463 [1st Dept 2022].)

St. Nicholas and HSC's contractual-indemnification claim is not foreclosed by the subrogation-waiver language in St. Nicholas's insurance policy.

2. Lease Violation

The indemnification provision provides that "[t]he Shareholder agrees to hold the Corporation harmless from all liability, loss, damage, and expense arising from injury to person or property occasioned by the failure of the Shareholder to comply with any provision hereof or due wholly or in part to any act, default, or omission of the Shareholder." (NYSCEF No. 149 at 40 [lease].)

Netsanet claims that this provision was never triggered because the accident did not arise from Netsanet's failure to comply with a lease provision, nor due to his acts, defaults, or omissions. (NYSCEF No. 129 at 12.) Netsanet argues that St. Nicholas and HSC do not allege that the accident occurred because of Netsanet's failure to abide by the lease; and that the accident instead resulted from plaintiff's "own affirmative acts." (NYSCEF No. 129 at 12.)

Netsanet's position is that he was merely a shareholder in the co-op. As such, he says, his "act of engaging Plaintiff's employer to perform work at the Subject Property is insufficient to qualify as an act, default, or omission that led to Plaintiff's alleged accident" when he neither created nor had notice of any dangerous condition. (*Id.* at 13.)

St. Nicholas and HSC argue that Netsanet failed to give notice to St. Nicholas and obtain written consent from it before performing construction, in contravention of the lease. (NYSCEF No. 174 at 18; NYSCEF No. 149 at ¶ 5.04 [a].) They claim that had St. Nicholas's board known about the construction, it "could have performed its diligence in selecting/approving the contractor, and taking other such precautions as necessary to prevent the accident from occurring." (NYSCEF No. 174 at 19.)

St. Nicholas and HSC have not provided evidence showing how plaintiff's injury stemmed from Netsanet's alleged failure to notify St. Nicholas and obtain approval. Nor do they identify whether such notice would have prompted them to respond to problems with plaintiff's employer's manner of performance. St. Nicholas and HSC merely argue in conclusory fashion in their memorandum of law—which is not evidence—that St. Nicholas would have taken precautions to prevent the accident from happening if there had been notice and approval. (NYSCEF No. 174 at 19 [memorandum of law].) Moreover, Netsanet raises an issue of fact about whether St. Nicholas and HSC were on notice. In his deposition testimony, Netsanet testified that he did reach out to HSC about the construction. (*See* NYSCEF No. 146 at 13-15.) And he provides an email communication he had with an HSC employee about the construction. (NYSCEF No 218 [email].)

Given these conflicting accounts, fact questions exist about whether plaintiff's injuries resulted from Netsanet's breach of requirements of his lease. The St. Nicholas/HSC motion for summary judgment in their favor on the contractual-indemnification claim is denied. Netsanet's cross-motion seeking dismissal of that claim is denied.

B. Contribution and Common-Law Indemnification

St. Nicholas and HSC have brought claims for contribution and common-law identification against Netsanet. Netsanet argues that St. Nicholas and HSC have not established that he was negligent, and therefore that he cannot be held liable for common-law indemnification or for contribution under CPLR 1401. Netsanet argues that plaintiff "assumed the risk of injury by neglecting to use the blade guard." (NYSCEF No. 129 at 15.) He further contends that even if St. Nicholas and HSC were negligent, he is not liable to them because he is merely a lessee and did not create or have notice of any dangerous conditions or provide the defective tools. (*Id.*)

A party seeking common-law indemnification must "prove not only that [it was] not negligent, but also that the proposed indemnitor . . . was responsible for negligence that contributed to the accident or, in the absence of any negligence, had the authority to direct, supervise, and control the work giving rise to the injury." (*Shaughnessy v Huntington Hosp. Assoc.*, 147 AD3d 994, 999 [2d Dept 2017] [internal quotation marks omitted].) To prove liability for common-law negligence "for injuries arising from the manner in which work is

performed, a defendant must have authority to exercise supervision and control over the work." (*Daeira v Genting N.Y., LLC*, 173 AD3d 831, 835 [2d Dept 2019] [internal quotation marks omitted].)

Here, St. Nicholas and HSC do not provide evidence that Netsanet himself was negligent; nor that he had authority to control the work being performed at his apartment. And Netsanet testified that he did not communicate with the construction workers, provide the machinery, or direct the work. (*See* NYSCEF No. 146 at 25-26). Netsanet's motion for summary judgment dismissing these claims against him is granted; St. Nicholas/HSC's cross-motion seeking the grant of summary judgment to them on the claims is denied.

C. Breach of Contract

Netsanet argues that St. Nicholas and HSC's claim for breach of contract for failure to procure insurance should be dismissed, because Netsanet's lease does not contain that requirement. (NYSCEF No. 129 at 16.) St. Nicholas and HSC do not oppose this portion of the motion or point to any such provision. Netsanet's request for summary judgment dismissing this claim is granted.

II. Motion Sequence 005

On motion sequence 005, plaintiff moves for summary judgment on his Labor Law § 241 (6) claim. St. Nicholas and HSC cross-move to dismiss plaintiff's negligence and Labor Law §§ 200 and 241 (6) claims. They also seek partial summary judgment on the issue of comparative fault. Plaintiff's motion is denied. St. Nicholas and HSC's cross-motion to dismiss is denied. Their cross-motion to limit the scope of their liability to their comparative fault is granted.

A. Common-Law Negligence and Labor Law § 200 Claims Against St. Nicholas and HSC

In their cross-motion, St. Nicholas and HSC argue that the Labor Law § 200 and negligence claims should be dismissed against both St. Nicholas and HSC because they lacked either (i) "authority to direct, control, or supervise the Plaintiff's work" or (ii) actual or constructive notice of the hazardous condition. (NYSCEF No. 174 at 8-9.) They provide deposition testimony in which HSC employee Tarangelo represented that, to her knowledge, no one at HSC knew about the work that was going to be performed at the unit or supervised that work. (NYSCEF No. 190 at 39, 42-43 [Tarangelo deposition]; *see also* NYSCEF No. 191 at 21 [former president of co-op board explaining he never saw any communications about the work that would be performed on the unit].) The court agrees with St. Nicholas and HSC.

Labor Law § 200 (1) "codifies an owner's or general contractor's common-law duty of care to provide construction site workers with a safe place to work." (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143 [1st Dept 2012].) Common-law negligence and Labor Law § 200 claims "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." (*Id.* at 143-144.) If "an existing defect or dangerous condition caused the injury,

liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it." (*Id.* at 144.) If "the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work." (*Id.*)

Here, there is no dispute that plaintiff was injured when the table saw blade cut his hand. This injury resulted from the manner and means of his work. (*See id.* [holding that plaintiff's injury was caused by manner-and-means when he was "furnished with a defective saw" and supervisor "directed him to operate the saw while standing on an unsecured pallet"].) Plaintiff does not claim that St. Nicholas or HSC "furnished [the] tools and equipment to complete [the] work" or that they had "control over the equipment used by plaintiff to enable it to avoid or correct the alleged unsafe condition of the saw"—evidence of which would constitute a basis for liability. (*Foley v Consol. Edison Co. of New York, Inc.*, 84 AD3d 476, 477 [1st Dept 2011].) To the contrary, Tarangelo testified that St. Nicholas did not provide any of the tools used for the construction, and that neither St. Nicholas nor HSC supervised the construction work. (NYSCEF No. 190 at 42-43.)

Accordingly, St. Nicholas and HSC's motion for summary judgment to dismiss the negligence and Labor Law § 200 claims against them is granted.

B. Labor Law § 241 (6) Claim against St. Nicholas and HSC

Labor Law § 241 (6) provides that all areas in which "construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places." A § 241 (6) claim must be predicated on a violation of the Industrial Code (Title 12 of the NYCRR).[2] (*See Toussaint v Port Auth. of New York and New Jersey*, 38 NY3d 89, 94 [2022].) Plaintiff contends that St. Nicholas and HSC violated 12 NYCRR 23-1.12 (c) (2) and (3).[3] Summary judgment on plaintiff's

[2] Netsanet argues that should the court deny St. Nicholas/HSC's request for summary judgment dismissing the § 241 (6) claim, the court should also do so on the § 200 claim, because violation of an Industrial Code rule is evidence of negligence for § 200 purposes. (NYSCEF No. 205 at 9.) But even if this court denies summary judgment on the § 241 (6) claim, it may still properly grant summary judgment on the § 200 claim. The two provisions have different scopes: Labor Law § 200 (1) "codifies the common law duty to maintain a safe workplace, but to recover under this provision, a plaintiff must show that an owner or general contractor exercised some supervisory control over the operation." (*Toussaint*, 38 NY3d at 94 [internal citations omitted].) On the other hand, the "duty to comply with the Commissioner's regulations imposed by Labor Law § 241 (6) is nondelegable and there is no need to show that an owner exercised supervision for reasons related only to that section." (*Id.*) The court may therefore, grant summary judgment dismissing plaintiff's § 200 claim based on a showing of lack-of-control, while permitting plaintiff's § 241 (6) claim to proceed based on evidence of a violation of an Industrial Code provision.

[3] In his bill of particulars, plaintiff refer to additional sections of the Industrial Code as bases for his § 241 (6) claims. He does not, however, raise those additional sections on this motion or in

§ 241 (6) claim is denied. Partial summary judgment on the issue of comparative fault is granted to St. Nicholas and HSC.

HSC argues at the threshold that the Labor Law § 241 claim against it should be dismissed because it is not a proper § 241 defendant. HSC contends that it is merely the property manager rather than the owner or an agent of the owner (St. Nicholas); and that it lacked knowledge of the work or authority or control over the work's performance.[4] (NYSCEF No. 174 at 5-7.) Plaintiff argues that HSC may be held liable as St. Nicholas's agent. This court concludes that an issue of fact exists on this issue.

Under Labor Law § 241, unlike § 200, the statutory-agent test "is not whether [the defendant] actually supervised the work, but whether it had *the authority* to do so." (*Merino v Cont. Towers Condominium*, 159 AD3d 471, 472 [1st Dept 2018] [emphasis added].) St. Nicholas and HSC contend that HSC did not know about the renovations at Netsanet's apartment and therefore could not have supervised the work being done there. But plaintiff has raised a dispute of fact on this question, through emails suggesting that an HSC employee knew about the then-proposed construction. And HSC does not otherwise show that it lacked supervisory authority over that construction, whether not it exercised such authority. The court therefore declines to grant summary judgment dismissing plaintiff's § 241 (6) claim against HSC on this ground.

On the merits, 12 NYCRR 23-1.12 (c) (2) provides that "[e]very power-driven saw, other than a portable saw, shall be equipped with a guard which covers the saw blade to such an extent as will prevent contact with the teeth." It also requires that "[e]very such saw shall be provided with a cut-off switch within easy reach of the operator without his leaving the operating position."

In his deposition testimony, plaintiff testified that the saw table had no blade guard, but that he felt he needed to use the table saw anyway because he needed the work. (NYSCEF No. 159 at 62-63 [Jimenez transcript].) Plaintiff also provides the affidavit of an engineer who opines that the table saw plaintiff used "did not have the safety feature, protective blade guard, splitter,

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response to St. Nicholas's and HSC's cross-motion. (*See generally* NYSCEF Nos. 207 [plaintiff's opposition to cross-motion], 211 [affirmation in support of § 241(6) summary judgment motion].) St. Nicholas, HSC, and Netsanet argue that the court should therefore deem those Industrial Code provisions abandoned. (*See* NYSCEF No. 203 at 4; NYSCEF No. 197 at 8 [Netsanet's memo in opposition].) The court agrees that because plaintiff did not raise the additional violations in opposition to the cross motion, he has abandoned them. (*See Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012] ["Where a defendant so moves, it is appropriate to find that a plaintiff who fails to respond to allegations that a certain section is inapplicable or was not violated be deemed to abandon reliance on that particular Industrial Code section. However, that is not the case where the plaintiff is the moving party."].)

[4] HSC makes a similar argument with respect to plaintiff's Labor Law § 200 claim. That argument has been addressed above.

anti-kickback."[5] (NYSCEF No. 167 at ¶ 12.) Plaintiff further testified that to make the angle cuts required on the project, he would have had to remove the blade guard anyway. (NYSCEF No. 142 at 59 [Jimenez EBT testimony].)

St. Nicholas and HSC argue that there was a blade guard, but the testimony they cite to support that representation does not indicate there was one.[6] (*See* NYSCFF No. 141 at 84-93; NYSCEF No. 142 at 59 [defense counsel asking only "*if* the saw had a blade guard installed, how would you have made the angle cut"] [emphasis added].) Nor does defendant provide evidence that there were other, safer devices available for plaintiff to use. (*Cf. Once v Service Ctr. of New York*, 96 AD3d 483, 483 [1st Dept 2012] [granting judgment on liability when "[t]he jury found that the power saw provided by appellants had no guard, in violation of Industrial Code § 23-1.12(c), and that no other adequate devices were available to plaintiff. There is no evidence that plaintiff misused the saw, which he had been directed to use."]; *accord McCrea v Arnlie Realty Co. LLC*, 140 AD3d 427, 429 [1st Dept 2016] ["[T]o raise a triable issue of fact as to whether a plaintiff was the sole proximate cause of an accident, the defendant must produce evidence that adequate safety devices were available, that the plaintiff knew that they were available and was expected to use them, and that the plaintiff unreasonably chose not to do so, causing the injury sustained."].)

That said, St. Nicholas, HSC, and Netsanet raise an issue of fact about whether defendant would have used the blade guard had one been provided. They point to plaintiff's testimony in which he said he would not have done so. (NYSCEF No. 142 at 59; *cf. Galawanji v 40 Sutton Place Condominium*, 262 AD2d 55, 55 [1st Dept 1999] [affirming § 241 (6) verdict in plaintiff's favor when "[t]he record [did] not support appellants' contention that plaintiff would not have worn protective goggles while engaged in a grinding operation even if they had been provided."].) The court thus concludes that an issue of fact exists about whether there was a violation of the blade-guard portion of § 23-1.12 (c) (2).

With respect to 12 NYCRR 23-1.12 (c) (3), plaintiff claims that the table saw had no spreader or anti-kickback fingers. (NYSCEF No. 152 at 10.) Twelve NYCRR 23-1.12 (c) (3) requires that "[e]very table circular saw used for ripping shall be provided with a spreader securely fastened in position and with an effective device to prevent material kickback." Plaintiff

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[5] The court disregards the portion of the expert's opinion as to the *cause* of the accident, and that there was a regulatory violation, as an intrusion on the court's province of resolving questions of law. (*See Singh v Kolcaj Realty Corp.*, 283 AD2d 350, 351 [1st Dept 2001] [disregarding "opinion given by plaintiff's expert 'with a reasonable degree of engineering certainty'" when the "proximate cause of plaintiff's injuries [was] the ultimate issue to be decided in [that] case, and whether the asserted negligence [was] sufficiently remote from the injury alleged to have resulted [was], in any event, a question of law for the court"].)

[6] Netsanet also argues that had plaintiff made sure all the flooring was straightly laid ("squared" [*see* NYSCEF No. 142 at 21 [explaining the concept of squaring]]), he would have been able to use the rip fence—a device for cutting straight pieces of wood—and therefore that plaintiff was the proximate cause of his injuries. But Netsanet does not establish through evidence that a rip fence was an alternative safety device that would have protected plaintiff or that plaintiff had a duty to square the room. (NYSCEF No. 197 at 10.)

testified to the absence of anti-kickback fingers at deposition. (NYSCEF No. 141 at 105 [EBT testimony].) Plaintiff's expert represents the same. (NYSCEF No. 167 at ¶ 12.)

St. Nicholas and HSC (and Netsanet) argue that whether or not there was a blade saw spreader, or anti-kickback device, plaintiff was the sole proximate cause of his injuries.[7] According to St. Nicholas and HSC, "all Plaintiff had to do in order to avoid this incident was simply turn off the power saw before trying to remove the jammed wood." (NYSCEF No. 174 at 15 [emphasis omitted].) Indeed, plaintiff testified that he did not use the off switch to stop the table saw once the blade jammed. (NYSCEF No. 141 at 99.) Plaintiff testified that he did not do so, because the incident happened too quickly; that "usually what you do is wiggle the wood and the blade keeps rotating" (NYSCEF No. 141 at 99); and that he would have needed to turn the saw back on anyway (NYSCEF No. 142 at 35). St. Nicholas and HSC have not shown that plaintiff's failure to use the off switch was the *sole* cause of his injuries. At the same time, they have at least shown that the failure to use the off switch was *a* cause. St. Nicholas and HSC are entitled to partial summary judgment on liability to the extent that their liability, if any, must be limited by the extent of plaintiff's comparative fault. But their request for summary judgment dismissing plaintiff's § 241 (6) altogether claim is denied. (*See Ortega-Estrada v 215-219 W. 145th St. LLC*, 118 AD3d 614, 615 [1st Dept 2014] ["[C]omparative negligence is a viable defense to a Labor Law § 241(6) claim."].)

Accordingly, it is

ORDERED that the branch of Netsanet's motion for summary judgment to dismiss St. Nicholas and HSC's third-party complaint against him (mot seq 004) is granted in part, and the third-party claims for contribution, common-law indemnification, and breach of contract are dismissed; and the motion is otherwise denied; and it is further

ORDERED that the branch of St. Nicholas and HSC's cross-motion for summary judgment in their favor on their third-party claims against Netsanet (mot seq 004) is denied; and it is further

ORDERED that plaintiff's motion for partial summary judgment in his favor on his Labor Law § 241 (6) claim (mot seq 005) is denied; and it is further

ORDERED that the branch of St. Nicholas and HSC's cross-motion for summary judgment to dismiss plaintiff's complaint against them (mot seq 005) is granted to the extent that plaintiff's negligence and Labor Law § 200 claims are dismissed, and the motion is otherwise denied; and it is further

ORDERED that the branch of Netsanet's motion seeking summary judgment dismissing plaintiff's complaint (motion sequence 004) is denied; and it is further

[7] Netsanet's contention that plaintiff was the sole proximate cause of his injuries is the basis for Netsanet's alternative request for dismissal of plaintiff's complaint. (NYSCEF No. 129 at 20, 23.)

ORDERED that the branch of St. Nicholas and HSC's cross-motion for partial summary judgment on the issue of Jimenez's comparative fault (mot seq 005) is granted on liability as set forth above.

9/30/2024
DATE

HON. GERALD LEBOVITS
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