

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1078

CA 11-00958

PRESENT: SCUDDER, P.J., SMITH, CENTRA, GREEN, AND GORSKI, JJ.

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EDWARD CUNNINGHAM, III, PLAINTIFF-APPELLANT,

V

ORDER

LECHASE CONSTRUCTION, FREDERICO  
WRECKING CO., INC., AND FRIENDS OF FINGER  
LAKES PERFORMING ARTS CENTER, INC.,  
DEFENDANTS-RESPONDENTS.

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FREDERICO WRECKING CO., INC., THIRD-PARTY  
PLAINTIFF-APPELLANT,

V

CONTOUR ERECTION AND SIDING SYSTEMS, INC.,  
THIRD-PARTY DEFENDANT-RESPONDENT.

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LECHASE CONSTRUCTION SERVICES, LLC AND  
FRIENDS OF FINGER LAKES PERFORMING ARTS  
CENTER, INC., THIRD-PARTY  
PLAINTIFFS-APPELLANTS,

V

CONTOUR ERECTION AND SIDING SYSTEMS, INC.,  
THIRD-PARTY DEFENDANT-RESPONDENT.

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MAXWELL MURPHY, LLC, BUFFALO (ALAN D. VOOS OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

BROWN & TARANTINO, LLC, BUFFALO (ANN M. CAMPBELL OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS AND THIRD-PARTY PLAINTIFFS-APPELLANTS.

MACKENZIE HUGHES LLP, SYRACUSE (JENNIFER P. WILLIAMS OF COUNSEL), FOR  
THIRD-PARTY DEFENDANT-RESPONDENT.

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Appeals from an order of the Supreme Court, Erie County (John A. Michalek, J.), entered November 24, 2010 in a personal injury action. The order, inter alia, denied the motion of plaintiff for partial summary judgment on liability pursuant to Labor Law § 240 (1), granted those parts of the motions of defendants-third-party plaintiffs and third-party defendant seeking summary judgment dismissing the complaint, and granted that part of the motion of third-party defendant seeking summary judgment dismissing the third-party

complaints.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying those parts of the motions of defendants-third-party plaintiffs and third-party defendant seeking summary judgment dismissing the Labor Law § 240 (1) claim and the Labor Law § 241 (6) claim to the extent that it is premised on a violation of 12 NYCRR 23-3.3 (h), reinstating those claims and denying that part of the motion of third-party defendant seeking summary judgment dismissing the third-party complaints and reinstating the third-party complaints, and as modified the order is affirmed without costs (*see Charney v LeChase Constr.*, \_\_\_ AD3d \_\_\_ [Dec. 23, 2011]).

Entered: December 23, 2011

Frances E. Cafarell  
Clerk of the Court