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08/25/20

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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HARLIN GOMEZ SANCHEZ,

Plaintiff(s),

**VERIFIED ANSWER  
WITH CROSS CLAIMS**  
Index No. 509873/2020

-against-

LENDLEASE TURNER, A JOINT VENTURE,  
LENDLEASE (US) CONSTRUCTION LMB INC.,  
TUNDR CONSTRUCTION COMPANY, TVS NEW  
YORK, P.C. and ROGER & SONS CONCRETE, INC.,

Defendant(s).

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The defendant ROGER & SONS CONCRETE, INC. by its attorneys, MONTFORT, HEALY,  
McGUIRE & SALLEY LLP, answering the complaint of the plaintiff, herein, respectfully shows to this  
Court and alleges:

FIRST. Defendant denies that they have any knowledge or information thereof sufficient to form  
a belief as to the truth of each and every allegation contained in paragraphs designated "1", "2", "3", "4",  
"5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23",  
"24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41",  
"42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59",  
"60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77",  
"78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "117" and  
"118" of the complaint herein, and respectfully refers all questions of law to this Court.

SECOND. Upon information and belief, defendant denies each and every allegation set forth in  
paragraphs designated "94", "95", "96" and "97" of the complaint herein, except defendant admits that  
ROGER & SONS CONCRETE, INC. was and still is a domestic corporation organized and existing under

THIRD. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "98", "99", "100", "101", "102", "103", "104", "105", "106", "107", "108", "110", "111", "112", "113", "114", "115", "116", "120", "121", "122", "123", "124", "125", "126", "127" and "128" of the complaint herein.

FOURTH. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "109", "119", "129" and "130" of the complaint herein, and respectfully refers all questions of law to this Court.

**ANSWERING THE ALLEGED SECOND CAUSE OF ACTION**

FIFTH. Answering paragraph designated "131" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "FOURTH" of the defendant's answer.

SIXTH. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "132", "133" and "134" of the complaint herein.

SEVENTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "135" of the complaint herein, and respectfully refers all questions of law to this Court.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

EIGHTH. Upon information and belief, that the injury or injuries, if any, sustained by the plaintiff at the time and place, or on the occasion referred to in the plaintiff's complaint, were sustained or so suffered or caused, in whole or in part, by the negligent act or acts and/or assumption of risk of the plaintiff, and that any damages recoverable by plaintiff, if any, shall be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

NINTH. Upon information and belief, the defendant, ROGER & SONS CONCRETE, INC. is

free from any negligence and in no way contributed to the occurrence and injuries referred to in the plaintiff's complaint.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TENTH. That in entering upon the activity upon which plaintiff was engaged at the time of the occurrence, the plaintiff assumed the risk thereof.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

ELEVENTH. Upon information and belief, in the event plaintiff recovers at time of trial against defendant, ROGER & SONS CONCRETE, INC., such recovery for non-economic loss shall not exceed defendant's equitable share determined in accordance with the relative culpability of each person, party and/or entity, which caused or contributed to the total liability for non-economic loss; provided that the liability of the defendant, ROGER & SONS CONCRETE, INC., are found to be fifty percent or less of the total liability of all persons, parties and/or entities liable.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWELFTH. This action is dismissible in that the defendant did not have notice of the alleged defective conditions prior to the happening of the accident.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

THIRTEENTH. The plaintiff's claim must fail as the answering defendants do not owe a legal duty to the plaintiff.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES :**

FOURTEENTH. That the plaintiff was the sole proximate cause of the incident complained of.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

FIFTEENTH. The damages alleged in the complaint were caused in whole or in part by the plaintiff's failure to exercise reasonable care and in failing to mitigate damages through the exercise of reasonable care.

**AS AND FOR A EIGHTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

SIXTEENTH. Plaintiff's injuries, if any, were caused by the culpable conduct of parties other than the answering defendants and over whom defendants had no control.

**AS AND FOR A NINTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

SEVENTEENTH. If the plaintiff sustained any damages as alleged in the complaint, there was a superseding and/or intervening cause(s) leading to said alleged damages and, as such, defendants' could not have proximately caused the alleged damages.

**AS AND FOR A TENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

EIGHTEENTH. Plaintiff does not come within the class of persons afforded protection pursuant to the Labor Law based upon the circumstances surrounding the alleged occurrence.

**AS AND FOR A ELEVENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

NINETEENTH. Upon information and belief, plaintiff was a recalcitrant worker and failed to use appropriate safety devices which had been provided and were readily available.

**AS AND FOR A TWELFTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTIETH. These answering defendants did not cause or create the alleged defective condition.

**AS AND FOR A THIRTEENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-FIRST. If injuries and damages were sustained by plaintiff at the time and place and in the manner alleged in Plaintiff's Verified Complaint, such injuries and damages are attributable to plaintiff's violation of Section 12 NYCRR 23-1.6 and plaintiff is barred from recovery.

**AS AND FOR A FOURTEENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-SECOND. Upon information and belief, plaintiff was a recalcitrant worker and failed to use appropriate safety devices which had been provided and were readily available, and as such, these answering defendants cannot be held liable to plaintiff for any alleged violation of Labor Law §§240(1) or 241(6).

**AS AND FOR A FIFTEENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-THIRD. That these answering defendants cannot be held liable for plaintiff's alleged injuries on the grounds that plaintiff, through exercise of reasonable care, could have discerned the alleged hazard and/or defect, apprehended the defect and/or hazard and avoided the danger, as such, which were known to plaintiff, were open, obvious, notorious and apparent.

**AS AND FOR A SIXTEENTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-FIFTH. In the event plaintiff(s) recover a verdict or judgment against defendant(s), then said verdict or judgment must exclude or be reduced by those amounts which will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future medical costs health care, life care or other economic loss or benefit that is offered or provided under or in connection with the Patient Protection and Affordable Care Act.

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