

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - September 25, 2008

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-05320
2007-05334

DECISION & ORDER

Narinder Kaur, et al., respondents, v 1715 Avenue
T Realty, LLC, et al., defendants, Triple M
Construction, Inc., et al., appellants.
(Appeal No. 1)

Narinder Kaur, et al., respondents, v 1715 Avenue
T Realty, LLC, et al., respondent-appellant, Triple M
Construction, Inc., et al., appellants-respondents,
et al., defendants.
(Appeal No. 2)

(Index No. 5023/03)

Morris Duffy Alonso & Faley, New York, N.Y. (Pauline E. Glaser and Kevin F. Mahon of counsel), for appellants in Appeal No. 1 and appellants-respondents in Appeal No. 2.

Friedman & Moses LLP, New York, N.Y. (Steven B. Dorfman of counsel), for respondents.

In an action to recover damages for personal injuries, etc., (1) the defendants Triple M Construction, Inc., and Gurmit Singh appeal (a), as limited by their brief, from so much of an order of the Supreme Court, Kings County (F. Rivera, J.), dated April 20, 2007, as granted that branch of the plaintiffs' motion which was for summary judgment on the issue of the liability of the defendant Triple M Construction, Inc., and (b) from an order of the same court dated May 8, 2007, which, inter alia, denied the cross motion of the defendant Triple M Construction, Inc., for summary judgment on its cross claim against the defendant 1715 Avenue T Realty, LLC, and (2) the defendant 1715 Avenue T Realty, LLC, cross-appeals from the order dated May 8, 2007.

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KAUR v 1715 AVENUE T REALTY, LLC

ORDERED that the appeal by the defendant Gurmit Singh is dismissed, as he is not aggrieved by the portions of the orders appealed from (*see* CPLR 5511); and it is further,

ORDERED that the appeal by the defendant Triple M Construction, Inc., from the order dated May 8, 2007, and the cross appeal from that order, are dismissed as abandoned (*see* 22 NYCRR 670.8[e]); and it is further,

ORDERED that the order dated April 20, 2007, is reversed insofar as appealed from by the defendant Triple M Construction, Inc., on the law, and that branch of the plaintiffs' motion which was for summary judgment on the issue of the liability of the defendant Triple M Construction, Inc., is denied; and it is further,

ORDERED that the defendant Triple M Construction, Inc., is awarded one bill of costs, payable by the plaintiffs.

The injured plaintiff, Narinder Kaur, and her family resided on the second floor of a two-story building owned by the defendant 1715 Avenue T Realty (hereinafter Avenue T). In the fall of 2002, Avenue T hired the defendant Triple M Construction, Inc. (hereinafter Triple M), to convert the first floor of the premises from residential apartments to commercial space. On October 30, 2002, during the course of the renovation work, the injured plaintiff was standing on the second floor landing of the building's only staircase when the landing collapsed, causing her to fall through to the first floor. The injured plaintiff and her husband subsequently commenced this action against Avenue T, Triple M, and several other parties allegedly involved in the renovation project.

In support of that branch of their motion which was for summary judgment on the issue of the liability of the contractor Triple M, the plaintiffs made a prima facie showing that they were entitled to judgment as a matter of law by submitting evidence that Triple M was performing renovation work in the building pursuant to a contract which required, inter alia, replacement of support beams and removal of partitions, and that the work performed by Triple M caused the staircase landing to collapse (*see Alvarez v Prospect Hosp.*, 68 NY2d 320). However, in opposition, Triple M submitted deposition testimony indicating that another contractor had been hired to perform work on the staircase, that it did not perform any work on or around the staircase, and that workers employed by other contractors were observed working around the staircase prior to the accident. In light of the conflicting evidence on the issue of whether Triple M's work was a proximate cause of the collapse of the staircase landing, that branch of the plaintiffs' motion which was for summary judgment on the issue of Triple M's liability should have been denied (*see Kolivas v Kirchoff*, 14 AD3d 493).

MASTRO, J.P., ANGIOLILLO, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court