

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

D30688  
H/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 7, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

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2010-08549

DECISION & ORDER

Eli Antonio Martinez, plaintiff-respondent, v  
408-410 Greenwich Street, LLC, defendant-respondent,  
Basile Builders Group, Inc., defendant third-party  
plaintiff-respondent, Real Estate Management Services,  
Inc., appellant; Plumbing Works, Inc., third-party  
defendant.

(Index No. 30352/07)

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Charles J. Siegel, New York, N.Y. (Peter E. Vairo of counsel), for appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick and Louisa Chan of counsel), for defendant third-party plaintiff-respondent.

Barry McTiernan & Moore, New York, N.Y. (Laurel A. Wedinger of counsel), for third-party defendant.

In an action to recover damages for personal injuries, the defendant Real Estate Management Services, Inc., appeals from an order of the Supreme Court, Kings County (F. Rivera, J.), entered July 26, 2010, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents, and the motion of the defendant Real Estate Management Services, Inc., for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted.

April 5, 2011

MARTINEZ v 408-410 GREENWICH STREET, LLC

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The defendant Real Estate Management Services, Inc. (hereinafter REMS), established its prima facie entitlement to judgment as a matter of law by submitting the deposition testimony of its president, which demonstrated that REMS was neither the general contractor nor an agent subject to liability under the Labor Law (*see Huerta v Three Star Constr. Co., Inc.*, 56 AD3d 613; *Aversano v JWH Contr., LLC*, 37 AD3d 745, 746-747; *Feltt v Owens*, 247 AD2d 689, 690-691). The deposition testimony indicated that REMS did not supervise or control the plaintiff or his work, and that the only function it performed in connection with the construction project was obtaining a work permit. In opposition, no triable issue of fact was raised (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The fact that REMS was listed as the contractor on the work permit, without more, was insufficient to raise a triable issue of fact as to whether REMS was the contractor at the subject work site (*see Huerta v Three Star Constr. Co., Inc.*, 56 AD3d at 613). Accordingly, the Supreme Court should have granted REMS's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court