

Orellana v 5541-1274 Fifth Ave. Manhattan LLC

2026 NY Slip Op 30817(U)

March 5, 2026

Supreme Court, New York County

Docket Number: Index No. 152497/2020

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

MILTON ALFREDO BARRERA ORELLANA,
Plaintiff,

INDEX NO. 152497/2020

MOTION DATE 03/14/2025

MOTION SEQ. NO. 008

- v -

5541-1274 FIFTH AVENUE MANHATTAN LLC, REIDY
CONTRACTING GROUP LLC, H&L IRONWORKS CORP.,
LCD ELEVATOR, INC., AKELIUS REAL ESTATE,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

REIDY CONTRACTING GROUP LLC
Plaintiff,

Third-Party
Index No. 595725/2020

-against-

H&L IRONWORKS CORP., LCD ELEVATOR INC.

Defendant.

-----X

5541-1274 FIFTH AVENUE MANHATTAN LLC

Second Third-Party
Index No. 595899/2020

Plaintiff,

-against-

LCD ELEVATOR, INC., TOUCHSTONE CONTRACTING INC.

Defendant.

-----X

H&L IRONWORKS CORP.

Third Third-Party
Index No. 595319/2023

Plaintiff,

-against-

TOUCHSTONE CONTRACTING INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 297, 303, 306, 310, 314, 320, 321, 322, 357, 360, 366, 371, 376, 384, 389

were read on this motion to/for

JUDGMENT - SUMMARY

This action arises out of injuries sustained by plaintiff while employed at a construction site. Second/third third-party defendant, Touchstone Contracting Inc. (“Touchstone”), now moves for summary judgment seeking dismissal of all claims against them, any cross claims for common law indemnification and contribution on the ground that the causes of action are barred by Workers Compensation Law Section 11; dismissal of the second third-party complaint for contractual indemnification asserted by defendant second third-party plaintiff 5541-1274 Fifth Avenue Manhattan LLC fail on the grounds that there is no contractual relationship between it and Touchstone; and dismissal of the third third-party complaint dismissing all causes of action asserted by H & L Ironworks as against Touchstone, and all cross claims, which sound in contractual indemnification and breach of contract on the grounds that there is no evidence of any negligence on the part of Touchstone that would trigger contractual indemnification, and that there is no basis for the claim that Touchstone did not procure insurance.

Defendant/third-party defendant/second third-party defendant L.C.D. ELEVATOR REPAIR, INC. i/s/h/a LCD ELEVATOR, INC. (hereinafter “LCD”) submits a partial opposition to the instant motion¹, the motion is otherwise unopposed. For the reasons set forth below, Touchstone’s motion for summary judgment is granted.

¹Defendants/third-party plaintiffs 5541-1274 Fifth Avenue Manhattan LLC and Akelius Real Estate Management (together, “Akelius”) affirmation in opposition is filed under the motion sequence number associated with Touchstone’s motion (Motion Seq. No. 8); the opposition does not address Touchstone’s motion for summary judgment; it opposes plaintiff’s motion for summary judgment (Motion Sequence No. 10); and LCD’s motion for summary judgment (Motion Sequence No. 9).

Summary Judgment Standard

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Discussion

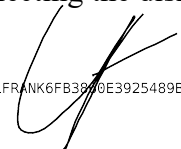
Touchstone's motion is substantively unopposed. Touchstone has established the claims asserted against it are barred by the Worker's Compensation Law in that plaintiff was employed by Touchstone and did not sustain a grave injury. Further, Touchstone has established and that it did in fact procure insurance and was not negligent, thereby defeating the claims asserted in the third party complaints.

The basis of LCD's opposition was limited to the recitation of facts, which for the purposes of this motion need not be addressed nor are dispositive for the purposes of establishing Touchstone's *prima facie* case of dismissal of the third-party complaints. Accordingly, it is hereby

ORDERED that all claims and cross-claims asserted against Touchstone Contracting Inc. are dismissed with prejudice, and the matter is severed and continues as against all other defendants; and it is further

ORDERED that the Clerk is directed to amend the caption reflecting the dismissal.

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3/5/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: