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

PRESENT: HON. ROLANDO T. ACOSTA Justice

PART 61

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

Index Number : 100753/2006
CALACO, RONALDO
VS
SCOOP MANAGEMENT
Sequence Number : 004
SUMMARY JUDGMENT

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	Set
Answering Affidavits — Exhibits	
Replying Affidavits	attached

Cross-Motion: ☐ Yes ☐ No

FILED
APR 25 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/18/07

SO ORDERED

J.S.C.
ROLANDO T. ACOSTA

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 61

Ronaldo Calaco,

Plaintiff,

– against –

Scoop Management Inc., Scoop 14, Inc. and Madison Tower NY, LLC.

Defendants.

DECISION/JUDGMENT

Index No. 100753/06

Motion Seq. 4

Present:
Hon. Rolando T. Acosta
Supreme Court Justice

The following documents were considered in reviewing defendant Madison Tower NY, LLC's motion for summary judgment:

Papers	**Numbered**
Notice of Motion, Affirmation in Support	**1, 2 (Ex. A-K)**

On January 18, 2006 plaintiff Ronaldo Calaco commenced this action to recover for personal injuries allegedly sustained on July 19, 2005 at the premises known as 430 West 14 Street, New York, New York ("premises") while working as a painter employed by A.G.I. Construction. Defendant Madison Tower NY, LLC ("Madison") was the owner of the premises at the time of the alleged accident, and brings the instant motion for summary judgment dismissing plaintiff's Labor Law § 200 claim against it, and for judgment on its cross-claims for indemnification against defendants Scoop Management, Inc., and Scoop 14, Inc.

Specifically, Madison argues that it did not supervise or control the manner in which the plaintiff's work was performed or that there was even an unsafe condition at the premises at the time of plaintiff's accident. Indeed, Madison has provided plaintiff's deposition testimony in which plaintiff acknowledged he did not know who the owner of the premises was, and that he did not receive any direction or supervision from anyone he believed to be an owner of the premises. Accordingly, Madison seeks summary judgment dismissing plaintiff's Labor Law

§ 200[1] claim against it, based upon the principle that "[a] property owner may be held liable under Labor Law § 200 'only where the plaintiff's injuries were sustained as a result of a dangerous condition at the work site, rather than as a result of the manner in which the work was performed, and then only if the owner exercised supervision and control over the work performed at the site or had actual or constructive notice of the [dangerous] condition'". Pirotta v. Eklecco, 292 A.D.2d 362, 364 (2nd Dept. 2002) quoting Giambalvo v. Chemical Bank, 260 A.D.2d 432, 433 (2nd Dept. 1999); see also Ryder v. Mount Loretto Nursing Home Inc., 290 A.D.2d 892 (3rd Dept. 2002).

Defendant Madison likewise seeks summary judgment on its cross-claims against defendants Scoop Management Inc. and Scoop 14 Inc. ("Scoop"). The prior owner of the premises, Starwood Urban Retail MM., LLC, executed a lease with Scoop for the subject premises on July 31, 2002, and both parties executed a second draft of the lease on August 19, 2004. Subsequent to the second lease, defendant Madison became the owner of the subject premises and seeks summary judgment on its cross-claims of indemnification against Scoop pursuant to Section 41 of the lease. Section 41 of the lease provides that the tenant [Scoop] shall hold harmless the owner [Madison] "from and against any and all... claim for, any injury...arising from or in connection...from any work, installation or thing whatsoever done in, at or about the Premises... provided that Tenant shall not be responsible for Liabilities resulting directly from the negligence or willful misconduct of the Indemnified Parties."

It is well settled that the proponent of a motion for summary judgment must establish that "there is no defense to the cause of action or that the cause of action or defense has no merit," (C.P.L.R. §3212[b]), sufficiently to warrant the court as a matter of law to direct judgment in his or her favor. Bush v. St. Claire's Hospital, 82 N.Y.2d 738, 739 (1993); Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). This standard requires that the proponent of the motion "tender[] sufficient evidence to eliminate any material issues of fact from the case," id., "by evidentiary proof in admissible form." Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions." C.P.L.R. §3212(b).

Where the proponent of the motion makes a prima facie showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue

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[1] Labor Law § 200 is a codification of the common-law duty of an owner to provide construction workers with a safe work site.

requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so. Vermette v. Kenworth Truck Company, 68 N.Y.2d 714, 717 (1986); Zuckerman v. City of New York, supra, 49 N.Y.2d at 560, 562. Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist. Id., at 562.

In the present case, Madison has provided evidence in admissible form that it did not supervise or direct the work being performed at the premises at the time of his accident. Madison has also provided the lease which provides that it is entitled to indemnification absent proof of negligence or willful misconduct on the part of Madison. As Madison made a prima facie showing of entitlement to summary judgment, the burden shifted to the plaintiff and co-defendant Scoop Management Inc., and Scoop 14, Inc. to demonstrate the existence of a triable issue of fact. Plaintiff and defendants Scoop having defaulted on the motion, have failed to do so. Accordingly, based upon the foregoing, it is hereby

ORDERED that defendant Madison Tower NY, LLC's motion to dismiss plaintiff's Labor Law § 200 claim is GRANTED, unopposed; and it is further

ORDERED that defendant Madison Tower NY, LLC's motion's for judgment on its cross-claims for indemnification against defendants Scoop Management Inc., and Scoop 14, Inc. is GRANTED, unopposed.

Dated: April 18, 2007

ENTER

SO ORDERED

Rolando T. Acosta, J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

ROLANDO T. ACOSTA
J.S.C.

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