

<b>Brandman v 52 W. 13th P, LLC</b>
2019 NY Slip Op 32838(U)
September 25, 2019
Supreme Court, New York County
Docket Number: 152452/2012
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. W. FRANC PERRY**

**PART IAS MOTION 23EFM**

*Justice*

-----X  
KENNETH BRANDMAN,  
  
Plaintiff,

**INDEX NO. 152452/2012**

**MOTION DATE 07/25/2019**

**MOTION SEQ. NO. 008**

- v -

52 WEST 13TH P, LLC, COLGATE SCAFFOLDING &  
EQUIPMENT, CORP., KSK CONSTRUCTION GROUP,  
KISKA DEVELOPMENT GROUP, LLC, GEMINI REAL  
ESTATE, CONSOLIDATED EDISON, DANICA GROUP,  
LLC, DANICA PLUMBING & HEATING CORP., FSM  
ELECTRICAL CORP., COOPER III HEATING &  
PLUMBING, LLC,

**DECISION AND ORDER**

Defendants.

-----X

KISKA DEVELOPMENT GROUP, LLC,  
  
Third-Party Plaintiff,

Third-Party  
Index No. 590508/2013

-against-

CDR EXPERTS, INC.,  
  
Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

In motion sequence number 008, defendant Colgate Scaffolding & Equipment, Corp. ("Colgate"), moves, pursuant to CPLR 3212, for an order granting Colgate summary judgment and dismissing all causes of action asserted against Colgate in this action. The motion is submitted without opposition.

## BACKGROUND

On October 6, 2010, Colgate was dissolved as a New York Corporation (Farrell Aff., NYSCEF Doc. No. 220, ¶ 2). Since dissolution, Colgate has had no equipment at any job site, and has not provided any services, labor or equipment regarding the construction alleged in the Complaint (*id.* at ¶ 3). Colgate has no employees, officers, project records, or bank accounts (O'Connor Deposition, NYSCEF Doc. No. 223, p. 12).

In 2011, defendant Kiska Development Group, LLC ("Kiska"), issued a subcontract to CS Bridge Corp. d/b/a Colgate Scaffold regarding construction at the premises located at 54 West 13th Street, New York, New York (the "Premises"). (*id.* at pp. 12-13).

On May 4, 2012, Plaintiff commenced this action seeking damages for injuries he sustained on February 13, 2012, when he tripped and fell on a steel plate in front of the building at the Premises (Complaint, NYSCEF Doc. No. 209, ¶ 91). The Complaint asserts a single cause of action for negligence against all defendants.

Now, after extensive discovery, Colgate moves, pursuant to CPLR 3212, for an order granting Colgate summary judgment and dismissing all causes of action asserted against Colgate in the Complaint on the grounds that it was dissolved as a corporation two years prior to this litigation and was not involved in the construction that gave rise to Plaintiff's injuries.

## DISCUSSION

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1<sup>st</sup> Dept 2007], *citing Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect*

*Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted]). Upon proffer of evidence establishing a prima facie showing of entitlement by the movant, “the party opposing a motion for summary judgment bears the burden of ‘produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*People v Grasso*, 50 AD3d 535, 545 [1<sup>st</sup> Dept 2008], quoting *Zuckerman v City of New York*, 49 NYS2d 557, 562 [1980]).

“[T]he elements of a negligence claim [] are the existence of a duty, a breach of that duty, and that such breach was a proximate cause of the events which produced the injury” (*The Bd. of Directors of the Lefferts Gardens II Condominium v Lefferts Blvd. Corp.*, 2013 N.Y. Slip Op. 30649[U] [Sup Ct, Queens County 2013], quoting *Lapidus v State*, 57 AD3d 83, 92 [2d Dept 2008]).

Here, Colgate establishes through affidavits, exhibits, and deposition testimony that it was dissolved in 2010, two years prior to Plaintiff’s injuries in February of 2012, and that it was not hired to perform any construction at the Premises; rather, it was CS Bridge Corp. d/b/a Colgate Scaffold that was hired to perform certain construction work at the Premises (*see Long Oil Heat, Inc. v Polsinelli*, 128 AD3d 1296, 1297 [2015] [holding that “a dissolved corporation is precluded from engaging in new business and has no existence, either de jure or de facto, except for a limited de jure existence for the sole purpose of winding up its affairs”]). Thus, Plaintiff’s injuries were not caused by any negligence by Colgate, who was not responsible for any construction at the Premises or the installation of the steel plate on which Plaintiff tripped.

Accordingly, it is hereby

ORDERED that Defendant Colgate Scaffolding & Equipment, Corp.’s motion for summary judgment is granted; and it is further

ORDERED that the Complaint is dismissed in its entirety as against Defendant Colgate Scaffolding & Equipment, Corp., with costs and disbursements as taxed by the clerk; and it is further

ORDERED that the action is severed and shall continue against the remaining Defendants; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

9/25/2019  
DATE

  
W. FRANC PERRY, J.S.C.  
**HON. W. FRANC PERRY, III**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE