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| Tejada v 15 Cliff LLC |
| 2019 NY Slip Op 35051(U) |
| November 4, 2019 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 26713/2018 |
| Judge: Lucindo Suarez |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 3

ALEXANDER TEJADA,

Index No.: 26713/2018

Plaintiff,

- against -

15 CLIFF LLC, CP IV 15 CLIFF LLC, GREP ATLANTIC
LLC, and BAY RESTORATION CORP.,

Defendants.

DECISION and ORDER

BAY RESTORATION CORP.,

Third-Party Plaintiff,

- against -

AI DESIGN LLC d/b/a CUSTOM METAL AND GLASS,

Third-Party Defendant.

PRESENT: Hon. Lucindo Suarez

At issue is whether Defendant 15 CLIFF LLC (“15 Cliff”) made a *prima facie* showing that Plaintiff’s complaint and all cross-claims asserted against it should be dismissed pursuant to CPLR §3212. This court finds that 15 Cliff established its *prima facie* burden for dismissal as there are no triable issues of fact to preclude same.

This action was commenced by Plaintiff for injuries he allegedly sustained while working on a construction site in March 2018. 15 Cliff contended that it should be dismissed from this matter because there is no evidence to establish that it was the owner of the subject construction site or the general contractor during the relevant time period to impute liability against it under the Labor Law. Further, 15 Cliff argued that it had no connection with the subject construction

site with the exception that it owned some unsold units in the condominium building in front of the subject construction site. However, it maintained that since Plaintiff alleged in his verified bill of particulars that his accident occurred on an elevated exterior metal grid platform located on the north side of the condominium building and not inside one of its units that liability under the Labor Law cannot attach. It also annexed copies of the condominiums' by-laws, which indicated that it was responsible for the maintenance and upkeep of common areas.

Moreover, 15 Cliff argued that it established its *prima facie* burden for dismissal via the affidavit of its managing agent, Michael Garcia, who averred that it had no connection with the subject construction site or with Plaintiff's injury-producing work. In addition, 15 Cliff attached a contractor/subcontractor contract purportedly relating to the subject construction site wherein it listed Defendant CP IV 15 CLIFF LLC as the owner of same.

In opposition, Non-Movants posited similar arguments that the instant motion should be denied as it was prematurely made since discovery is in its infancy. Non-Movants also argued that discovery could yield information connecting 15 Cliff in some manner to Plaintiff's injury-producing work. In addition, Plaintiff attempted to raise an issue of fact by alleging that because discovery was not interchanged, he had no way to determine who the owner of the subject construction site was nor did he know where the accident occurred as he claimed that information was in the sole possession of Defendants.

This court finds that Plaintiff's arguments are unavailing. Plaintiff unequivocally provided in his verified bill of particulars that his injury occurred on an elevated exterior metal grid platform located on the north side of the condominium and not inside one of 15 Cliff's units. Likewise, this court finds that Non-Movants cannot avoid summary judgment by speculating that discovery will provide the necessary evidence to demonstrate that 15 Cliff was involved with

Plaintiff's injury-producing work. *See Baxter St. Condominium v. LPS Baxter Holding Co., LLC*, 126 A.D.3d 417, 5 N.Y.S.3d 52 (1st Dep't 2015). Therefore, this court finds that 15 Cliff established its *prima facie* burden for dismissal of Plaintiff's complaint and all cross-claims.

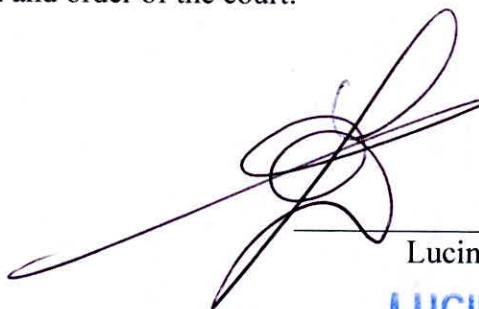
Accordingly, it is

ORDERED, that 15 Cliff's application seeking to dismiss Plaintiff's complaint and all cross-claims is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: November 4, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.