

Elhakim v 4010 LLC

2020 NY Slip Op 35611(U)

November 10, 2020

Supreme Court, Queens County

Docket Number: Index No. 713938/2019

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

FILED

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

**1/14/2021
11:23 AM**

**COUNTY CLERK
QUEENS COUNTY**

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

HEND ELHAKIM,

Plaintiff,

- against -

Index No.: 713938/2019
Motion Date: 11/5/2020
Motion No.: 14

4010 LLC, T.N.T. PLUMBING & HEATING,
INC., HAMMOND ARCHITECTURE PLLC, NEW
CODE CONSULTING LLC and RCM PROJECTS
CORP.,

Motion Seq.: 3

Defendants.

- - - - - x

4010 LLC,

Third-Party Plaintiff,

- against -

OCEAN QUEENS INTERNATIONAL INC., d/b/a
KANARA and KHALED AFIFI,

Third-Party Defendants.

- - - - - x

The following electronically filed documents read on this motion by defendants HAMMOND ARCHITECTURE PLLC (Hammond) and NEW CODE CONSULTING LLC (New Code) for an Order pursuant to CPLR 3211(1)(7) and/or CPLR 3212(a), dismissing the Complaint of plaintiff against Hammond, dismissing the third-party complaint of T.N.T. Plumbing & Heating (TNT) against Hammond and New Code, dismissing all cross-claims and counterclaims asserted against Hammond and New Code, and removing their names from the caption:

	Papers <u>Numbered</u>
Notice of Motion-Affirmation-Affidavits-Exhibits....EF	67 - 87
4010 LLC's Affirmation in Opposition-Exhibits.....EF	92 - 99
TNT's Affirmation in Opposition-Exhibits.....EF	100 - 105
Reply Affirmation.....EF	106 - 109

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on September 24, 2016 when part of the ceiling at the premises located at 40-10 25th Avenue, Queens, New York collapsed on her due to water leaks.

Since commencement of this action, plaintiff and 4010 LLC have discontinued their actions against New Code.

Plaintiff testified that the ceiling collapsed above her office. At the time of the incident, she was in her office, working at her desk, when she was struck by a metal water pipe, a piece of wood, and debris that fell from and/or through the ceiling. In August 2016, she had filed a complaint with the Department of Buildings, concerning water leaks affecting the subject premises. On September 20, 2016, she advised Mr. Mohamed of 4010 LLC that the ceiling in the rear storage room of the leased premises had fallen. Mr. Mohamed sent people, including TNT, to repair the damage. TNT told her the leak required too much work, and they would have to come back.

In support of the motion, Eric Hammond, the sole member of New Code, submits an affidavit dated August 4, 2020. Eric Hammond affirms that New Code is an expeditor with duties consisting of filing paperwork with the New York City Department of Buildings (DOB) on behalf and at the request of architects. His name along with New Code is listed as Filing Representative in the records for Hammond in connection with certain applications filed during the course of the project at the subject premises. A plumbing permit was issued to Themies N. Tambassopoulos for TNT, and a construction permit was issued to RCM Projects Corp. (RCM). No permits were applied for or issued to New Code or Hammond. New Code was not hired by anyone to do any work at the subject premises. New Code is not a contractor or a plumber. New Code had no access to the premises or control over the premises. Eric Hammond affirms that he was never at the subject premises.

Patrick Hammond also submits an affidavit dated August 4, 2020. Patrick Hammond affirms that he was hired as an architect by 4010 LLC in 2015 to prepare plans for an alteration of the existing structure. In connection with that work, he provided 4010 LLC with a proposal covering the scope of work. He used New Code as an expeditor. He had nothing to do with the hiring or supervision of the plumbers or any other contractors involved with the project. He did not visit the premises other than to do a field verification of existing conditions years prior to the subject incident. 4010 LLC hired its own contractors. The plans he filed had nothing to do with the ground floor space. He did not control the premises or do any construction at the subject

premises. He was not hired to do any construction. He did not file the application for the issuance of a permit on behalf of TNT.

Based on the submitted evidence, counsel for New Code and Hammond contends that neither party owed a duty of care to plaintiff or any other party. Specifically, counsel contends that the landlord, and not the moving defendants, had the duty to maintain the premises. Moreover, counsel contends that TNT's common law indemnification and contribution claims must fail since neither Hammond nor New Code had any notice of the conditions plaintiff complained of.

4010 LLC opposes the motion on the grounds that, inter alia, Hammond did not make a prima facie showing of entitlement to summary judgment since an architect is under a duty to use a degree of care that would have been exercised by a reasonably prudent architect to make the envisioned site reasonably safe for intended users (citing Cubito v Kreisberg, 69 AD2d 738 [2d Dept. 1979]). Additionally, counsel contends that the motion is premature as Hammond has not yet provided any discovery and has not yet been deposed.

TNT also opposes the motion and submits the affidavit of Themies Tambassopoulos, the President of TNT, in support of such opposition. TNT adopts the arguments set forth by 4010 LLC and also argues that, inter alia, the claims should not be dismissed as against New Code.

Upon review and consideration of the motion, oppositions, and reply thereto, this Court finds as follows:

Regarding New Code, this Court finds that based on Eric Hammond's affidavit stating that New Code merely is an expeditor, New Code established that it did not owe a duty to plaintiff, and thus, cannot be held liable for the injuries sustained by plaintiff. As such, any and all cross-claims asserted against New Code for contribution and common law indemnity must also be dismissed since New Code cannot be held negligent.

However, this Court finds that the motion is premature as to Hammond since "a party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party's position may exist but cannot be stated" (Matter of Fasciglione, 73 AD3d 769, 770 [2d Dept. 2010]). Here, the complaint alleges that defendants were negligent by "knowingly, permitting, suffering and allowing the aforesaid premises to be, become, remain in a defective, unsafe and

dangerous condition". Accordingly, since Hammond admits that it submitted plans for the subject premises, it had a duty of reasonable care towards plaintiff, and thus, had to establish at the very least that a faulty design did not create a risk of personal injury. Here, none of the moving defendants have been deposed. Moreover, it appears that information concerning, inter alia, whether Hammond designed plans in a manner free of negligence and whether Hammond's plans were unrelated to the plumbing and heating system throughout the subject premises, is in Hammond's exclusive knowledge as no written discovery has yet been exchanged and Hammond has not yet been deposed. Additionally, the permits filed by Hammond specifically identify plumbing as a type of work. As such, issues of fact preclude summary judgment at this time.

Any procedural arguments not specifically addressed herein were considered and denied by the Court since opposition was submitted.

Accordingly, upon the circumstances of this matter, and in the discretion of the Court, it is hereby

ORDERED, that defendant HAMMOND ARCHITECTURE PLLC's summary judgment motion is denied with leave to renew at the conclusion of discovery; and it is further

ORDERED, that defendant NEW CODE CONSULTING LLC's motion is granted, and any and all cross-claims asserted against defendant New Code Consulting LLC are dismissed.

Dated: November 10, 2020
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C

FILED

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**COUNTY CLERK
QUEENS COUNTY**