

<b>Dupree v 510 W. 22nd St. Owner LLC</b>
2021 NY Slip Op 32534(U)
December 1, 2021
Supreme Court, New York County
Docket Number: Index No. 153588/2018
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ADAM SILVERA PART 13**

*Justice*

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ROEDELLE DUPREE,

Plaintiff,

- v -

510 WEST 22ND STREET OWNER LLC, 510 WEST 22ND STREET PARTNERS LLC, 510 WEST 22ND STREET MANAGER LLC, VOA 510 WEST 22ND STREET LLC, ALBANESE ORGANIZATION, INC., ALBANESE DEVELOPMENT CORPORATION, ALBANESE 510 WEST 22ND, LLC, CAVA CONSTRUCTION CO., INC., CAVA CONSTRUCTION & DEVELOPMENT, INC., OMNIBUILD CONSTRUCTION INC.,

Defendant.

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510 WEST 22ND STREET OWNER LLC, 510 WEST 22ND STREET PARTNERS LLC, 510 WEST 22ND STREET MANAGER LLC, VOA 510 WEST 22ND STREET LLC, ALBANESE ORGANIZATION, INC., ALBANESE DEVELOPMENT CORPORATION, ALBANESE 510 WEST 22ND, LLC, CAVA CONSTRUCTION CO., INC., CAVA CONSTRUCTION & DEVELOPMENT, INC., OMNIBUILD CONSTRUCTION INC.

Plaintiff,

-against-

FEAL GROUP, INC.

Defendant.

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**DECISION + ORDER ON MOTION**

Third-Party  
Index No. 595464/2019

The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 106, 107, 108, 109, 110, 111

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that third-party defendant Feal Group, Inc.'s

(hereinafter referred to as “third-party defendant Feal”) motion for summary judgment seeking to dismiss the third-party complaint is denied for the reasons set forth below.

Here, third-party defendant Feal moves for summary judgment to dismiss the third-party complaint arguing that plaintiff was not employed by third-party defendant Feal, did not receive instructions from them, the subject ladder was not set up or provided by them, and that they did not require plaintiff to perform the type of work he was performing at the time of the accident. According to third-party defendant Feal, plaintiff testified that he was employed by Ekon Energy on the date of the accident and that defendant/third-party plaintiff Omnibuild Construction Inc. (hereinafter referred to as “defendant/third-party plaintiff Omnibuild”) was the general contractor. Third-party defendant Feal further argues that plaintiff was under defendant/third-party plaintiff Omnibuild’s control and direction. As such, third-party defendant Feal argues that plaintiff’s injuries did not result from its negligence.

In opposition, defendants/third-party plaintiffs 510 West 22<sup>nd</sup> Street Owner, LLC, 510 West 22<sup>nd</sup> Street Partners, LLC, 510 West 22<sup>nd</sup> Street Manager, LLC, VOA 510 West 22<sup>nd</sup> Street, LLC, Albanese 510 West 22<sup>nd</sup> LLC, Albanese Organization, Inc., Albanese Development Corp., Cava Construction & Development Inc., and Omnibuild Construction Inc. argue that issues of fact exist as to the relationship between Ekon Energy and third-party defendant Feal. In support of its opposition, plaintiff’s deposition transcript is proffered. A review of such transcript reveals that plaintiff testified that he was employed by Ekon Energy and that his understanding was that Ekon Energy and a company named Feal was the same company. Moreover, defendants/third-party plaintiffs further proffer an agreement between defendant Cava Construction & Development and third-party defendant Feal to raise issues of fact.

Upon review of all the papers, the Court finds that issues of fact exist to preclude summary judgment. The agreement between defendant Cava Construction & Development and third-party defendant Feal states that third-party defendant Feal “shall furnish all labor, materials, equipment, and services, including but not limited to, competent supervision, ...tools, and scaffolding necessary for proper performance of the Work... . [Third-party defendant Feal] acknowledges that it has ...the opportunity, to inspect the site and accepts conditions as they presently exist.” Affirmation in Opposition, Exh. C, Purchase Order Terms and Conditions, ¶5. Furthermore, such agreement explicitly states that “the prevention of accidents on or in the vicinity of the Project is [third-party defendant Feal’s] responsibility, even if the Construction Manager establishes a safety program for the entire Project. ...[Third-party defendant Feal] shall indemnify the Construction Manager for any and all fines, costs, damages and/or expenses incurred by the Construction Manager because of [third-party defendant Feal’s] failure to comply with reasonable safety requirements.” *Id.* at ¶11. With regards to equipment, such agreement specifically states that “[i]n the event [third-party defendant Feal’s] Work includes installation of materials or equipment that is furnished by others, it shall be the responsibility of [third-party defendant Feal] to exercise proper care in handling, storing, and installing such items.” *Id.* at ¶12. Thus, issues of fact exist as to the relationship, if any, between Ekon Energy and third-party defendant Feal, as well as third-party defendant Feal’s responsibility to the equipment used at the worksite, including the ladder in question herein. As issues of fact exist, third-party defendant Feal’s motion for summary judgment is denied.

Accordingly, it is

ORDERED that third-party defendant Feal Group, Inc.’s motion for summary judgment to dismiss the third-party complaint is denied in its entirety; and it is further

ORDERED that within 30 days of entry, defendants/third-party plaintiffs shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

12/1/2021

DATE

ADAM SILVERA, J.S.C.

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