

**Messina v Motorola Solutions, Inc.**

2021 NY Slip Op 34129(U)

October 5, 2021

Supreme Court, Bronx County

Docket Number: Index No. 36374/2017E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seq. 8

THOMAS MESSINA,

Index No.: 36374/2017E

Plaintiff,

- against -

**DECISION and ORDER**

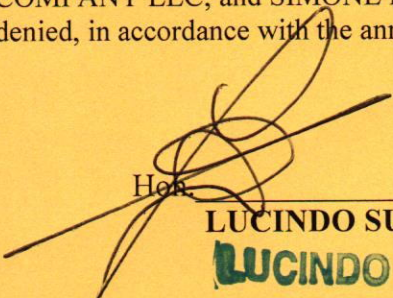
MOTOROLA SOLUTIONS, INC., CUSHMAN & WAKEFIELD, INC., TRACTEL, INC., THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW YORK CITY (FDNY), NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS (NYCDOITT), THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICE (NYCDCAS), THE PUBLIC SAFETY ANSWERING SERVICE CENTER II ("PSAC II"), HUTCH METRO CENTER I, LLC, HUTCH MANAGEMENT, LLC, HUTCH REALTY PARTNERS, LLC, TISHMAN CONSTRUCTION CORPORATION, TISHMAN TECHNOLOGIES CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, HUTCH 40 MANAGER LLC, HUTCH 40 LLC, SIMONE DEVELOPMENT COMPANY, L.L.C., and SIMONE DEVELOPMENT CORPORATION,

Defendants.

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Exhibits	1, 2, 3
Affirmation in Opposition, Exhibits	4, 5
Affirmation in Reply	6

Upon the enumerated papers, and due deliberation Defendants , HUTCH METRO CENTER I, LLC; HUTCH MANAGEMENT, LLC; HUTCH REALTY PARTNERS, LLC; HUTCH 40 MANAGER LLC; HUTCH 40 LLC; SIMONE DEVELOPMENT COMPANY LLC; and SIMONE DEVELOPMENT CORPORATION's motion for summary judgment is denied, in accordance with the annexed decision and order.

**Dated: October 5, 2021**

Hon.   
**LUCINDO SUAREZ, J.S.C.**  
**LUCINDO SUAREZ, J.S.C.**

**Check one:**

- Case Disposed in Entirety
- Case Still Active

**Motion is:**

- Granted  GIP
- Denied  Other

**Check if appropriate:**

- Schedule Appearance  Settle Order
- Fiduciary Appointment  Submit Order
- Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

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Mtn. Seq. 8

THOMAS MESSINA,

Index No.: 36374/2017E

Plaintiff,

- against -

**DECISION and ORDER**

MOTOROLA SOLUTIONS, INC., CUSHMAN & WAKEFIELD, INC., TRACTEL, INC., THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW YORK CITY (FDNY), NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS (NYCDOITT), THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICE (NYCDCAS), THE PUBLIC SAFETY ANSWERING SERVICE CENTER II (“PSAC II”), HUTCH METRO CENTER I, LLC, HUTCH MANAGEMENT, LLC, HUTCH REALTY PARTNERS, LLC, TISHMAN CONSTRUCTION CORPORATION, TISHMAN TECHNOLOGIES CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, HUTCH 40 MANAGER LLC, HUTCH 40 LLC, SIMONE DEVELOPMENT COMPANY, L.L.C., and SIMONE DEVELOPMENT CORPORATION,

Defendants.

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PRESENT: Hon. Lucindo Suarez,

The issue in Defendants, HUTCH METRO CENTER I, LLC; HUTCH MANAGEMENT, LLC; HUTCH REALTY PARTNERS, LLC; HUTCH 40 MANAGER LLC; HUTCH 40 LLC; SIMONE DEVELOPMENT COMPANY LLC; and SIMONE DEVELOPMENT CORPORATION’s, (“Moving Defendants”) motion for summary judgment is

whether they have met their *prima facie* burden entitling them to a dismissal of Plaintiff's complaint and all cross claims asserted against them. This court finds they have not.

Plaintiff, an electrician by trade was injured at a construction site and claims violations of the Labor Law. Moving Defendants claim they did not own, control, manage or maintain the subject premises and therefore owe no duty to the Plaintiff for the injuries he sustained. In support of their motion, Moving Defendants provided the affidavit of Manager, Joseph Simone, on behalf of all Moving Defendants denying ownership and control.

Plaintiff opposes Moving Defendants' motion arguing that the motion is premature as only Plaintiff has been deposed and none of the Moving Defendants have been deposed at the time this motion was submitted. In addition, he argues that the affidavit, provided by Moving Defendants is a self-serving affidavit therefore, should not be considered by this court.

"Summary judgment is a drastic remedy." *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240, 942 N.Y.S.2d 13 (2012). A movant is entitled to summary judgment only if there is no triable issue of fact such that the movant is entitled to judgment as a matter of law, viewing the facts "in the light most favorable to the plaintiff" and drawing all "available inference[s] . . . in the plaintiff's favor." *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 27 N.Y.S.3d 468, 47 N.E.3d 747 (2016); *see also Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986).

Here, the motion is based on the cursory and conclusory affidavit of Mr. Simone, which states alleged facts without supporting proof or any statement that the averments are based on personal knowledge. An affidavit without supporting proof has no probative value:

“A conclusory statement in an affidavit will not suffice (*Wells Fargo Bank, N.A. v Jones*, 139 AD3d 520, 524, 32 NYS3d 95 [1st Dept 2016]), and where an affiant's knowledge is based on unidentified [\*639] and unproduced records, "the affidavit lacks [\*\*\*2] any probative value" and cannot be the basis for an award of summary judgment (*Dempsey v Intercontinental Hotel Corp.*, 126 AD2d 477, 479, 511 NYS2d 10 [1st Dept 1987]; see also *Barraillier v City of New York*, 12 AD3d 168, 169, 784 NYS2d 55 [1st Dept 2004]; *Great Am. Ins. Co. v Auto Mkt. of Jamaica, N.Y.*, 133 AD3d 631, 632-633, 19 NYS3d 329 [2d Dept 2015]).” (*Residential Credit Solutions, Inc. v Gould*, 171 A.D.3d 638, 638-639, 101 N.Y.S.3d 2, 3 (1st Dep’t 2019).

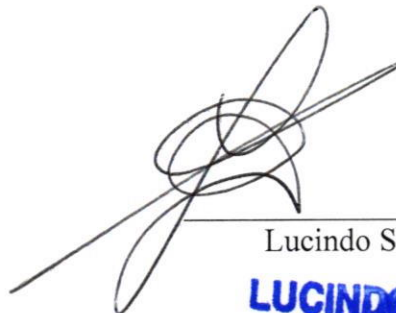
As such, this court finds that Moving Defendants have not met their *prima facie* burden entitling them to a dismissal.

Accordingly, it is

ORDERED, that Moving Defendants’ motion seeking a dismissal is denied.

This constitutes the decision and order of the court.

Date: October 5, 2021



Lucindo Suarez, J.S.C.

**LUCINDO SUAREZ, J.S.C.**