

Ochoa v 3475 Third Ave. Hous. Dev. Fund Corp.

2021 NY Slip Op 34282(U)

June 16, 2021

Supreme Court, Bronx County

Docket Number: Index No. 31545/2019E

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT – COUNTY OF BRONX

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

JULIO OCHOA,

Index No. 31545/2019E

Plaintiff,

- against -

Hon. Lucindo Suarez
Justice Supreme Court

3475 THIRD AVENUE HOUSING DEVELOPMENT
FUND CORPORATION, *et al.*,

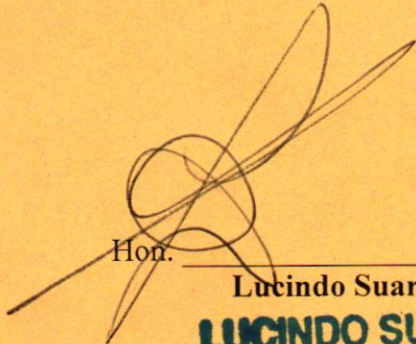
Defendants.

The following papers numbered ____ to ____ were read on this motion (NYSCEF Seq. No. 4) for noticed on _____ and duly submitted as Nos. _____ on the Motion Calendar of _____

NYSCEF Sequence No. 4	Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	74-86
Cross Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits, Memorandum of Law	89-102
Reply Affidavit	1-3-105

Upon the foregoing papers, the motion of the Defendant is decided, in accordance with the annexed decision and order.

Dated: 6/16/2021



Hon. _____

Lucindo Suarez, J.S.C.
LUCINDO SUAREZ, J.S.C.

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

JULIO OCHOA,

Index No. 31545/2019E

Plaintiff,

- against -

DECISION and ORDER

3475 THIRD AVENUE HOUSING
DEVELOPMENT FUND CORPORATION, *et al.*,

Defendants.

Hon. Lucindo Suarez, J.S.C.

Defendants Alegria Operating LLC, Alegria Health & Wellness and Alegria Operating LLC d/b/a Alegria Health & Wellness (collectively “Alegria”) move pursuant to CPLR §3212 to dismiss Plaintiff’s complaint and all cross-claims against them. Plaintiff opposes the motion.

In this Labor Law action, Plaintiff alleges that he fell off a ladder while performing work at a construction site.

Alegria moves for summary judgment on the ground that they were tenants of the premises, did not take possession, did not contract for the work, and did not control the work. They contend that the work was contracted for and paid by the lessor/owner 3475 Third Avenue MM LLC (referred to in the amended lease as the “owner”), 3475 Third Avenue Owner Realty LLC (referred to in the amended lease the “record owner” or “building owner”), and 3475 Third Avenue Housing Development Fund (referred to in the amended lease “nominee” of the building owner). The motion is supported by the affidavit of Kaveh Askari, the sole member of Alegria Operating who stated that:

“[N]either I nor anyone else on behalf of Alegria ever had anything to do with directing or controlling the buildout and work at the leased premises, including any work taking place at the time of the accident. Neither I nor anyone else at Alegria contracted for or controlled any of the work, or supervised any of the work, or provided materials or equipment (including safety equipment); and Alegria had no right to do so. The entire buildout of the premises was undertaken by Alegria’s landlord-the owner, and the owner's representative - defendant Pillar Property Management LLC.”

The motion is further supported by the affidavit of Kiumarz Geula, who states that he is the sole member of 3475 Third Avenue MM LLC and the Managing Member of 3475 Third Avenue Realty LLC, which is the Managing Member of 3475 Third Avenue Owner Realty LLC (the “Owner”). He attests to the accuracy of the Askari affidavit.

In opposition, Plaintiff contends that Algeria’s proof is insufficient to grant summary judgment. This argument is based on the denials of the co-defendants 3475 Third Avenue Housing Development Fund and Pillar Property Management LLC, which denied in their pleadings that they hired or engaged the general contractor for the work herein. Plaintiff also contends that summary judgment is premature.

Analysis

The court’s function on this motion for summary judgment is issue finding rather than issue determination. (*Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 [1978].) The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party. (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d 824 [2014].)

A tenant or lessee “who fulfills the role of owner by contracting to have work performed for his benefit” will be deemed an “owner” for purposes of liability under the Labor Law. (*Kane v. Coundorous*, 293 A.D.2d 309, 311, 739 N.Y.S.2d 711, 714 [1st Dept. 2002].) Conversely, a tenant who has no involvement in contracting for or controlling the work is not liable under the Labor Law. (*Ferluckaj v. Goldman Sachs & Co.*, 12 N.Y.3d 316, 908 N.E.2d 869, 880 N.Y.S.2d 879 [2009].)

Here, Algeria established their *prima facie* entitlement to a dismissal. They adduce proof by affidavit, by submission of the lease and lease amendment, and the affidavit of the agent of the owner, that they did not contract for or control Plaintiff’s injury-producing work. In opposition, Plaintiff has not raised any issues of fact. The denials of the co-defendants (who have not opposed the present motion) in the pleadings herein do not constitute evidentiary proof. Moreover, the motion is not premature. The knowledge of who contracted for the work herein is in the possession of the various owner entities (one of whom have not been made parties herein) and the general contractor. The movants do not have any greater knowledge as they did not contract for the work.

Conclusions

Accordingly, based upon the foregoing, it is hereby

ORDERED, that motion of Defendant Alegria is granted, and it is

ORDERED, that all claims and cross-claims against Defendants Alegria are dismissed.

This constitutes the decision and order of the court.

Dated: June 16, 2021

A handwritten signature in black ink, consisting of a central circular scribble with several long, sweeping lines extending outwards, resembling a stylized 'S' or a bird's wing.

Hon. Lucindo Suarez, J.S.C

LUCINDO SUAREZ, J.S.C.