

<b>Mahtani v 96th St. Lofts LLC</b>
2022 NY Slip Op 34189(U)
December 12, 2022
Supreme Court, New York County
Docket Number: Index No. 158613/2021
Judge: David B. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

*Justice*

-----X

INDEX NO. 158613/2021

KARINA LAXMI MAHTANI,

Plaintiff,

MOTION SEQ. NO. 002

- v -

96TH STREET LOFTS LLC, ROCK BUILDERS INC., RENT  
A UNIT NY INC., and SPRING SCAFFOLDING LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 67, 68, 69, 70, 71

were read on this motion to/for

SUMMARY JUDGMENT

In this personal injury action commenced by Karina Laxmi Mahtani, defendant Spring Scaffolding LLC (“Spring”) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it. Plaintiff and defendant Rent A Unit NY Inc. (“RAU”) oppose the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff was allegedly injured on June 15, 2021 when she tripped and fell in the roadway located in front of 223 East 96th Street in Manhattan (“the site” or “the premises”). In her complaint, filed September 20, 2021, plaintiff claimed that she was caused to fall due to an “industrial nut and bolt, which was partially embedded into and jutting out from the asphalt.” Doc. 1. She alleged that the premises were owned, managed and/or maintained by defendant 96th Street Lofts LLC (“96th Street”), which hired defendants Rock Builders Inc. (“RBI”) and/or RAU to

serve as a general contractor or construction manager with respect to certain construction, renovation, alteration, and/or demolition work at the site. Doc. 1. She also alleged that 96th Street hired Spring to work at the premises and that all of the defendants were negligent in creating the condition which caused her to fall. Doc. 1.

RBI joined issue by its amended answer filed December 15, 2021, in which it denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and cross-claimed against RAU and Spring. Doc. 11.

Spring joined issue by its answer filed January 7, 2022, in which it denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and cross-claimed against 96<sup>th</sup> Street, RBI, and RAU. Doc. 14.

96<sup>th</sup> Street joined issue by its answer filed February 10, 2022, in which it denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and cross-claimed against RBI, RAU, and Spring. Doc. 17.

RAU joined issue by its answer filed October 4, 2022, in which it denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and cross-claimed against 96<sup>th</sup> Street, RBI, and Spring. Doc. 62.

Spring now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it. Docs. 50-60. In support of the motion, Spring argues that it is not liable for plaintiff's accident since it never performed work at the premises, did not have any equipment there, and did not hire anyone to perform work at the site. Doc. 52 at pars. 4-6. Spring maintains that, as of the date of the alleged incident, Spring had a sidewalk bridge erected at 205 East 95<sup>th</sup> Street, which was across the street from the premises. Doc. 52 at par. 19.

In support of the motion, Spring submits the affidavit of Lorant Varga, its Vice President since January 2020, who represents, inter alia, that the company had no involvement in any work at the premises; was hired to work across the street from the site; and did not use the type of bolt, depicted in photographs exchanged by plaintiff, which allegedly caused her to fall. Doc. 55.

In opposition, RAU argues that Spring's motion must be denied because the latter fails to establish as a matter of law that it did not cause or contribute to the alleged occurrence. Doc. 67. It further asserts that Spring's motion must be denied since RAU's motion to dismiss pursuant to CPLR 3211(a)(1) and (a)(7) was denied. Doc. 67. Additionally, RAU maintains that the motion is premature because no depositions have been held. Doc. 67.

Plaintiff opposes the motion by asserting that Varga's affidavit is conclusory. Doc. 68. Specifically, plaintiff alleges that, although Varga attests that he "ha[s] personal knowledge regarding [Springs'] business practices, work records and contracts", he does not represent that he was ever at the job site, and thus has no basis for his representations that Spring did not use the type of bolt depicted in plaintiff's photographs and that Spring did not observe any asphalt being poured in the roadway.

In reply, Spring argues that it is entitled to summary judgment dismissing the complaint and all cross claims since it clearly did not cause or contribute to the alleged accident. Doc. 70.

### LEGAL CONCLUSIONS

It is well settled that a party moving for summary judgment pursuant to CPLR 3212 "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and

citation omitted]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324).

Here, Spring has established its prima facie entitlement to summary judgment by submitting Varga's affidavit proving that the company was not involved in any work at the premises. Although plaintiff claims that Varga's affidavit is conclusory, Varga represents that he has personal knowledge regarding Spring's "business practices, work records and contracts" and, relying on this information, he properly represents that the said company did not do any work at the premises.

In opposition, neither plaintiff nor RAU raises a material issue of fact warranting denial of the motion. RAU's argument that Spring's motion must be denied since its motion to dismiss pursuant to CPLR 3211(a)(1) and (a)(7) was denied is without merit, since the standard of proof involved in RAU's motion was clearly different. In denying RAU's motion to dismiss pursuant to CPLR 3211(a)(7), this Court held that plaintiff properly pleaded a cause of action for negligence as against that entity. Doc. 48. In denying RAU's motion pursuant to CPLR 3211(a)(1), this Court reasoned that the affidavit of a representative of the company is not the type of "documentary evidence" which entitles a movant to dismissal. Doc. 48. Here, however, Varga's affidavit is clearly the type of documentary evidence which is considered on a motion for summary judgment.

Additionally, Spring's representation that it had no involvement in the work at the premises (Doc. 51 at par. 8) is deemed admitted since neither plaintiff nor RAU submitted an itemized response to Spring's "Rule 202.8-g Statement of Materials [sic] Facts" in its opposition to the motion (*Vachris v City of NY*, 2022 NY Slip Op 31768[U], \*7 [Sup Ct, NY County 2022]).

The remainder of the parties' contentions are either without merit or need not be addressed given the findings above.

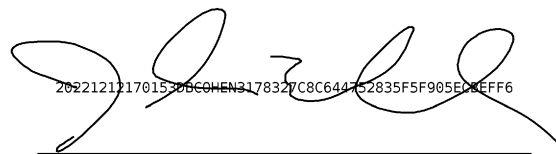
Accordingly, it is hereby:

ORDERED the motion by defendant Spring Scaffolding LLC seeking summary judgment dismissing the complaint and all cross claims against it pursuant to CPLR 3212 is granted, and the complaint and all cross claims against Spring Scaffolding LLC are dismissed with costs and disbursements to said defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of defendant Spring Scaffolding LLC; and it is further

ORDERED that the claims and cross claims against defendant Spring Scaffolding LLC are hereby severed, and the balance of the action, as asserted against defendants 96<sup>th</sup> Street Lofts LLC, Rock Builders Inc., and Rent A Unit NY Inc. shall continue; and it is further

ORDERED that the parties remaining in the action are to appear in person for a preliminary conference at 71 Thomas Street, Room 305, New York, New York on January 31, 2023 at 10:00 a.m., unless the parties email a completed preliminary conference form (available on this Court's website) to the Part 58 Clerk at [sfc-part58-clerk@nycourts.gov](mailto:sfc-part58-clerk@nycourts.gov) no later than January 30, 2023 at 3:00 p.m.



2022121217015205COHEN3178327C8C644752835F5F905E28EFF6

DAVID B. COHEN, J.S.C.

12/12/2022  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: