

**Hernandez v Zoria Hous. LLC**

2023 NY Slip Op 30747(U)

March 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 515334/2015

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of March 2023

HONORABLE FRANCOIS A. RIVERA  
-----X  
JOSE B. HERNANDEZ,

Plaintiff

**DECISION & ORDER**  
Index No. 515334/2015

-against-

ZORIA HOUSING LLC, TREES R US, INC.,  
and VIKRANT CONTRACTING & BUILDERS INC.,

Defendant

-----X  
VIKRANT CONTRACTING & BUILDERS INC.,

Third-Party Plaintiffs,

-against-

THE CITY OF NEW YORK,

Third-Party Defendant.

-----X

By notice of motion filed on February 22, 2022, under motion sequence number seventeen, defendant/third party plaintiff Vikrant Contracting & Builders Inc., (hereinafter VCB) seeks an order pursuant to CPLR § 3212 granting summary judgment in its favor: (1) dismissing the complaint of plaintiff Jose B. Fernandez (hereinafter the plaintiff) as asserted against it and (2) dismissing any cross claims asserted against it. Plaintiff filed opposition to VCB's motion. Defendant Zoria Housing LLC (hereinafter

Zoria) did not oppose VCB's motion to dismiss the cross claims it asserted against VCB. The Court reviewed NYSCEF document numbers 305 through and including 365 in determining motion sequence seventeen.

By notice of motion filed on March 4, 2022, under motion sequence number eighteen, Zoria seeks an order pursuant to CPLR § 3212 granting summary judgment in its favor dismissing all claims and cross claims asserted against it. The plaintiff filed opposition to Zoria's motion. VCB did not oppose Zoria's motion to dismiss the cross claims it asserted against Zoria. The Court reviewed NYSCEF document numbers 321 through and including 369 in determining motion sequence eighteen.

On July 10, 2017, Zoria interposed an answer to the plaintiff's complaint which asserted cross claims against VCB and Trees R US Inc.

On July 19, 2017, VCB interposed an answer to the plaintiff's complaint which asserted cross claims against Zoria and Trees R US Inc.

On February 8, 2023, the date scheduled for oral argument of VCB and Zoria's instant motions for summary judgment, the plaintiff did not appear for oral argument in Part 52 of this Court.

## **LAW AND APPLICATION**

The motion by VCB for an order dismissing the complaint of the plaintiff is granted on the basis that the plaintiff did not appear to orally argue plaintiff's opposition. Therefore, the complaint as asserted against VCB is dismissed as abandoned due to

plaintiff's failure to appear for oral argument to oppose VCB's motion to dismiss the complaint (*see Elam v. Ryder Sys., Inc.*, 176 AD3d 675, 676 [2nd Dept 2019], citing *Pita v. Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2nd Dept 2017]; see also *Kronick v. L.P. Thebault Co.*, 70 AD3d 648, 649 [2nd Dept 2010], citing *Genovese v. Gambino*, 309 AD2d 832, 833 [2nd Dept 2003]).

Furthermore, the motion by VCB to dismiss all cross claims asserted against it was also unopposed. Therefore, the cross claims asserted by Zoria against VCB are also dismissed based on Zoria's failure to oppose the motion to dismiss them (*see id.*).

Similarly, the motion by Zoria for an order dismissing the complaint of plaintiff Jose B. Fernandez is granted on the basis that the plaintiff did not appear to orally argue plaintiff's opposition. Therefore, the complaint as asserted against Zoria is dismissed as abandoned due to plaintiff's failure to appear for oral argument to oppose Zoria's motion to dismiss the complaint (*see Elam*, 176 AD3d at 676). Furthermore, the motion by Zoria to dismiss all cross claims asserted against it was also unopposed. Therefore, the cross claims asserted by VCB against Zoria are also dismissed based on VCB's failure to oppose the motion to dismiss them (*id.*).

## CONCLUSION

The motion by Vikrant Contracting & Builders Inc. for an order pursuant to CPLR § 3212 granting summary judgment in its favor dismissing the complaint of plaintiff Jose B. Fernandez as asserted against it and dismissing any cross claims asserted against it, is granted.

The motion by Zoria Housing LLC. for an order pursuant to CPLR § 3212 granting summary judgment in its favor dismissing any and all claims and cross claims asserted against it, is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:

*Francois A. Rivera*

J.S.C.

**HON. FRANCOIS A. RIVERA  
J.S.C.**