SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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AGIM MUJAJ, CYME MUJAJ,

Plaintiff,

- v -

DEVASH LLC,MOINIAN LLC,THE MOINIAN GROUP, N & A GENERAL CONSTRUCTION CORP., TRISTATE PLUMBING SERVICES CORP., TRANSPARENT CONSTRUCTION LLC,VERICON CONSTRUCTION CO. LLC

Defendant.

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INDEX NO. 151529/2018

MOTION DATE 09/26/2023

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 132, 134, 135, 136, 138, 140, 141, 142, 143, 146, 147 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 137, 139, 144, 145 were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 005 and 006 are consolidated for disposition. Defendant N & A General Construction Corp. ("NA")'s motion (MS005) for summary judgment dismissing plaintiff's complaint and all claims against it is denied. Defendant Vericon Construction Co. LLC ("Vericon")'s motion (MS006) for summary judgment dismissing plaintiff's complaint and the crossclaims asserted against it by NA is granted.

Background

This Labor Law action arises out of injuries that plaintiff Agim Mujaj (hereinafter, "plaintiff") suffered while doing demolition work at a construction site in Manhattan. On the day of the accident, plaintiff was doing work for non-party On Site Demolition and Trucking Corp.

("On Site Demolition") on the second floor of the building. Plaintiff testified that he was told to use a ladder to remove a wire (NYSCEF Doc. No. 107 at 22). He explained that he went almost all the way up the ladder to grab the wire, then pulled on the wire which caused pipes to fall on him from above (*id*. at 51-52). Plaintiff added that he didn't remember anything after falling off the ladder (*id*. at 52). Plaintiff testified that he did not see any other trades or entities working at the job site on the day of his accident (*id*. at 63).

Discussion

To be entitled to the remedy of summary judgment, the moving party "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 from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id*.). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec*,

Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"While under Labor Law §§ 240 and 241 owners and general contractors are generally absolutely liable for statutory violations other parties may be liable under those statutes only if they are acting as the 'agents' of the owner or general contractor by virtue of the fact that they had been given the authority to supervise and control the work being performed at the time of the injury" (*Serpe v Eyris Productions, Inc.*, 243 AD2d 375, 379-80, 663 NYS2d 542 [1st Dept 1997] [internal quotations and citation omitted]).

MS005[1]

NA moves for summary judgment on the ground that it was neither the general contractor nor the owner of the premises for purposes of plaintiff's Labor Law actions. It emphasizes that plaintiff worked for On Site Demolition, which was the only entity working on the second floor. NA claims it was hired as a general contractor to do interior commercial construction work on only the 14th and 17th floors at the building. It argues that it did not supervise, direct or control On Site Demolition's work. NA acknowledges that it was sued in this case based upon a single permit, which it claims was erroneous, that identified it as the general contractor for the demolition on the second floor.

NA claims that it was asked to pull the permit as a favor to the owners of the building because On Site Demolition could not get the permit themselves. NA observes that there is an invoice to 3 Columbus Circle LLC with NA's header regarding demolition work (NYSCEF Doc. No. 110) which mentions the second floor and is stamped as paid. Nevertheless, NA asserts it

[1] The Court observes that plaintiff requested oral argument for MS005, only. That request is denied given the number of parties and that there were multiple motions. The Court declines to make the parties incur additional expenses under these circumstances.

never received any payment for this demolition work. It claims that there were two checks later issued directly to On Site Demolition for the work (NYSCEF Doc. No. 111).

In opposition, plaintiff questions how this Court could grant NA summary judgment when there is a permit that names NA as the general contractor. Plaintiff points out that NA did not provide a copy of the permit, any contract for any work done in the building, an agreement with the building owner or anything to show it was not the general contractor in the area where plaintiff was injured. He adds that NA is not entitled to summary judgment based solely on self-serving statements from its attorney and its employee.

In reply, NA argues that the evidence shows that it simply pulled a permit but did not have any involvement as general contractor.

The Court denies the motion. Plaintiff correctly pointed out that NA failed to meet its burden on a motion for summary judgment by failing to include the subject permit or any other documents to show that it was merely a placeholder and not the general contractor for the second-floor job site. NA did not include, for instance, documents showing that its contract with the owner of the building limited its scope of work to certain floors not including the second floor or even documents that suggest another entity was the general contractor for the second-floor work.

In any event, there is clearly a question of fact about the scope of NA's work at the building. At the deposition of NA's employee, he admitted that NA is listed on the permit as the general contractor because the contractor could not get its own permit (NYSCEF Doc. No. 108 at 14). Moreover, NA included an invoice that says it got paid for demolition work on the second floor (NYSCEF Doc. No. 110). A fact finder is necessary to assess whether it believes NA's

arguments that these documents (the permit was not included in the papers) should be wholly ignored. The Court cannot do that on a motion for summary judgment.

The Court observes that NA did not make any substantive arguments about each of plaintiff's Labor Law claims and so the Court, accordingly, evaluates only NA's assertion that it is not a proper Labor Law defendant. Simply put, there are issues of fact about whether it was a general contractor for the work on the second floor and therefore a proper Labor Law defendant.

MS006

Vericon moves for summary judgment on the ground that it was merely a subcontractor hired to do work on the basement/first floor area as part of a renovation for a Chase Bank branch. It attaches a master agreement between it and JP Morgan Chase & Co. (NYSCEF Doc. No. 123) as well as daily construction reports which show it only worked in the Chase Bank branch area. Vericon maintains that On Site Demolition did not do any work in the basement/first floor area. It insists it is not a proper Labor Law defendant because it was not the general contractor, owner or a contractor responsible for plaintiff's injuries.

In opposition, plaintiff argues that Vericon did not adequately address that it was doing repair and construction work on the HVAC, ceilings, and pipes and speculates that this work might have caused the dangerous condition that led to plaintiff's fall. He insists that there is an issue of fact with respect to whether the work done by Vericon on the ceiling pipes was done negligently and was therefore a proximate cause of plaintiff's accident.

Plaintiff insists that it is not a coincidence that the plumbing system fell on plaintiff a mere six days after Vericon worked on this same system one floor below. He argues that Vericon did not include an expert affidavit to prove its case.

In reply, Vericon emphasizes that it had nothing to do with plaintiff's work and that it did not delegate or supervise plaintiff's work.

The Court grants Vericon's motion. Vericon met its burden by showing the construction agreement and purchase order that shows the work was limited to the basement/first floor. And it submitted inspection reports which show its work was limited to the space *below* where plaintiff was working (NYSCEF Doc. No. 126).

And plaintiff failed to raise an issue of fact in opposition. Instead, plaintiff only offered speculation that, somehow, Vericon's work on the basement/first floor made the plumbing *in the ceiling* on the second floor a dangerous condition. Although plaintiff insists that Vericon needed an expert, the Court finds that it was plaintiff who needed an expert affidavit to explain how a contractor working on the first floor could have caused plaintiff's accident on the second floor, caused by something falling from the second floor's ceiling. Plaintiff testified that his accident happened while he was on a ladder, *reaching up* to remove a wire. That is, he was far removed from the first floor. Plaintiff was not, for instance, working on the floor (which might raise an issue of fact if Vericon was working on the ceiling of the first floor). Put another way, plaintiff needed to adequately explain the plumbing system such that he could raise an issue of fact about the nature of the dangerous condition and how Vericon caused it even though it was never on the second floor and never near the ceiling of the second floor.

The fact is that plaintiff did not offer a cogent theory of how a contractor who was not doing work anywhere near where plaintiff was assigned to work is liable for plaintiff's accident.

Accordingly, it is hereby

ORDERED that defendant N&A General Construction Corp.'s motion (MS005) for summary judgment is denied; and it is further

ORDERED that Vericon Construction Co. LLC's motion (MS006) for summary judgment is granted and all claims against this defendant are severed and dismissed and the Clerk is directed to enter judgment accordingly upon presentation of proper papers therefor.

9/28/2023
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**