

Pillco v 160 Dikeman St. LLC

2023 NY Slip Op 34987(U)

March 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 524963/2019

Judge: Robin K. Sheares

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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FABIAN PILLCO,
Plaintiff,

-against-

160 DIKEMAN STREET LLC and KSK
CONSTRUCTION GROUP, LLC,
Defendants.

-----X

KSK CONSTRUCTION GROUP, LLC,
Third-Party Plaintiff

Index No.: 524963/2019

DECISION/ORDER

-against-

Motion Sequence No. 02

ATA CONSTRUCTION NEW YORK INC.,
Third-Party Defendant.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion:

<u>Papers</u>	<u>NYSCEF Document No:</u>
<u>Sequence # 02</u>	
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed	49 - 51
Exhibits	52 - 58
Opposition	68; 73
Exhibits	69 - 70; 74 - 75
Reply	72; 78

Plaintiff having made a motion on January 18, 2023 for partial summary judgment on his cause of action that defendants violated Labor Law § 240(1); and

Defendants/third-party plaintiffs KSK Construction Group, LLC and 160 Dikeman Street LLC having filed an Affirmation in Opposition on February 28, 2023; and

Third-party defendant ATA Construction New York Inc. having filed an Affirmation in Opposition on March 7, 2023; and

Plaintiff having filed Reply on March 8, 2023; and

The motion having come to be heard on March 9, 2023 before Hon. Robin K. Sheares, and Timothy Norton of Ginarde Gallardo Gonzalez Winograd, LLP having appeared and argued on behalf of the plaintiff, and Michael Fabiani, Esq., of Fabiani Cohen & Hall, LLP, having appeared and argued on behalf of KSK and 160 Dikeman; and John Gorton of Gorton & Gorton LLP, having appeared and argued on behalf of ATA; and

The Court having found that, because the plaintiff was the sole witness to his accident and defendant has demonstrated materially different versions of how the accident occurred, there exist triable issues of fact warranting the denial of this motion. See, *Ward v Uniondale WG, LLC*, 2015 NY Slip Op 31215[U] [Sup Ct, NY County 2015];

And the Court having found that the medical records submitted in opposition contained statements of how the accident occurred that differed in key respects from the account presented by plaintiff at his depositions;

And the Court having found that such discrepancies are sufficient to place the plaintiff's credibility into question;

And the Court having found that the affidavit of plaintiff's supervisor Bulent Yalcin also differed in key respects from the account presented by plaintiff at his depositions;

NOW, upon plaintiff's motion for partial summary judgment, it is

ORDERED that that the motion is DENIED for the foregoing reasons, namely, (1) that plaintiff was the sole witness to the accident, and plaintiff's credibility was placed into question by the accident descriptions within the medical records submitted in opposition, thus summary judgment is improper pursuant to well-settled case law in the Second Department, and (2) that the affidavit testimony of plaintiff's supervisor Mr. Yalcin raised an issue of fact to preclude a finding of summary judgment; and it is

ORDERED that the Clerk of the Court is directed to enter this order.

This constitutes the Decision/Order of the Court.

ENTER:



Hon. Robin K. Sheares, J.S.C.

For clerks use only

MG _____

MD

Motion Seq. # 02