

**Singh v Triad Master, LLC.**

2024 NY Slip Op 32137(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 155273/2019

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 02M

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PARAMJIT SINGH,

Plaintiff,

- v -

TRIAD MASTER, LLC., 503 FULTON STREET  
CONDOMINIUM, UNITED AMERICAN LAND, LLC, TRIAD  
RESI, LLC, ZDG, LLC,

Defendant.

INDEX NO. 155273/2019

MOTION DATE 08/24/2023,  
08/21/2023

MOTION SEQ. NO. 007 008

**DECISION + ORDER ON  
MOTION**

-----X

TRIAD MASTER, LLC., 503 FULTON STREET  
CONDOMINIUM, UNITED AMERICAN LAND, LLC, TRIAD  
RESI, LLC

Plaintiff,

-against-

ZDG LLC

Defendant.

Third-Party  
Index No. 595078/2020

-----X

TRIAD MASTER, LLC., 503 FULTON STREET  
CONDOMINIUM, UNITED AMERICAN LAND, LLC, TRIAD  
RESI, LLC

Plaintiff,

-against-

NY1 SARPANCH CONSTRUCTION INC.

Defendant.

Second Third-Party  
Index No. 595245/2020

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 228, 229, 230, 231,  
232, 233, 234, 235, 236, 237, 238, 240, 242, 246, 247, 248, 249, 250

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 239, 241, 243, 244, 245

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff Paramjit Singh (“Plaintiff”) commenced this action alleging violations of Labor Law §§ 200, 240(1), and 241(6) arising out of an accident at 234-248 Duffield Street in Brooklyn (“the building”). The building is owned by defendants Triad Master, LLC (“Triad”), 503 Fulton Street Condominium, United American Land, LLC (“United”), and Triad Resi, LLC (collectively “Owners”). Defendant ZDG, LLC (“ZDG”) had been retained by the Owners as construction manager for a gut renovation of the building. Plaintiff was employed by second third-party defendant NY1 Sarpanch Construction, Inc. (“Sarpanch”).

The Owners assert crossclaims for common law indemnification, contractual indemnification, and contribution against ZDG and subsequently commenced a third-party action against ZDG which reasserts these claims as well as a claim for breach of contract. The Owners also brought a third-party action against Sarpanch in which they assert causes of action for common law and contractual indemnification, contribution, and breach of contract for failure to procure insurance. ZDG moves for summary judgment dismissing Plaintiff’s Complaint and the Owners’ crossclaims against it. Sarpanch also moves for summary judgment dismissing the Owners’ Second Third-Party Complaint against it. The motions are consolidated herein for disposition.

In April 2017, Sarpanch was performing repair work on an elevated section of the building’s rooftop. This work required Sarpanch employees to use an extension ladder to climb to the top of the elevated portion of the roof. Plaintiff was working on this elevated area on April 19, 2017. The extension ladder allegedly fell as he was climbing down it, causing him to land on the rooftop and sustain injuries.

The Owners and ZDG dispute whether Sarpanch had been hired by one of the Owners or ZDG to perform work at the building and whether Sarpanch's work on the roof fell within the scope of the project that ZDG was overseeing in its capacity as construction manager. ZDG was retained as construction manager pursuant to a contract with Triad (NYSCEF Doc. No. 222, ZDG Contract). The contract specified that ZDG was responsible for hiring trade contractors for the renovation work and for supervising them in connection with the work (NYSCEF Doc. No. 222, ZDG Contract Article 2 § 1). The ZDG Contract defines a trade contractor as one specifically retained by ZDG, acting as the Owner's agent, for construction trade work for the renovation project at the building (Article 15 §§ 11, 20, 21). No party submits a copy of any written contract in which Sarpanch was retained to perform work on the building.

Kevin Yienger, the project manager for ZDG, testified that the renovation project was "substantially complete" by April 2017, but could not recall if the work was finished by the date of Plaintiff's accident (NYSCEF Doc. No. 221, Yienger EBT at 35). Yienger maintains that Sarpanch was hired separately by the Owners to perform work outside the scope of the project (*id.* at 61-63). He stated that ZDG's responsibilities at the building did not extend to contractors hired separately by the Owners (*id.* at 116-117). Christopher Fitzsimmons, a construction manager for defendant United, stated that he recommended Sarpanch to Mr. Yienger after one of ZDG's subcontractors failed to perform certain masonry work (NYSCEF Doc. No. 223, Fitzsimmons EBT at 29, 43).

Himmat Singh testified on behalf of Sarpanch and identified himself as a manager for the company (NYSCEF Doc. No. 219, Himmat Singh EBT at 14), although another Sarpanch employee, Mohinder Singh, testified that Himmat was the company's owner (NYSCEF Doc. No. 220, Mohinder Singh EBT at 21). Himmat Singh was unable to recall who had hired Sarpanch

to perform work on the building and did not know if Sarpanch entered a written contract to perform the work (at 35). In its Response to ZDG's Notice to Admit, Sarpanch states that it was hired by United (NYSCEF Doc. Nos. 225, 226). The Response is verified by an individual named Sarbjit Singh who is identified as a manager at Sarpanch. However, it is unclear what position in the company Sarbjit Singh had, if any, as Himmat Singh claimed during his deposition that nobody with that name had worked at Sarpanch in the past ten years (Himmat Singh EBT at 218-219). The Owners challenge the validity of Sarpanch's Response to the Notice to Admit due to the uncertainty as to Sarbjit Singh's role in the company and Himmat Singh's purportedly inconsistent testimony.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A court's function on summary judgment is issue finding rather than issue determination (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]). In order to defeat summary judgment, an

opposing party is “required to present a material issue of evidentiary fact comprised of more than just mere speculation or conjecture” (*Cillo v Resjefal Corp.*, 16 AD3d 339, 340 [1st Dept 2005]).

Labor Law §§ 240(1) and 241(6) provide for absolute liability for owners, general contractors, and their agents (*Santos v Condo 124 LLC*, 161 AD3d 650, 653 [1st Dept 2018]). For a party to be held liable as a statutory agent of the owner or general contractor, “it must be shown that the defendant had the authority to supervise and control the injury-producing work,” (*id.*, quoting *Walls v Turner Constr. Co.*, 4 NY3d 861, 864 [2005] [internal quotations omitted]). “Although a construction manager of a work site is generally not responsible for injuries under Labor Law § 240(1), one may be vicariously liable as an agent of the property owner for injuries sustained under the statute in an instance where the manager had the ability to control the activity which brought about the injury” (*Walls*, 4 NY3d at 863-864 [2005]). Labor Law § 200 “also applies to agents of the owner or general contractor, who are in a position to exercise supervision and control over the work, thus enabling them to avoid or correct an unsafe condition” (*Gonzalez v Glenwood Mason Supply Co., Inc.*, 41 AD3d 338, 339 [1st Dept 2007]).

ZDG contends that it was not a statutory agent in relation to Plaintiff’s injury as the scope of its responsibilities as construction manager did not extend to Sarpanch’s rooftop work. It maintains that Sarpanch’s work fell outside of the building renovation project, that the renovation work on the roof was completed months before Sarpanch was on site, and that it did not hire Sarpanch and thus had no agency over its work. ZDG cites Sarpanch’s Response to the Notice to Admit (NYSCEF Doc. No. 226) to support its contention that Sarpanch was hired pursuant to a contract with United. In opposition, Plaintiff and Owners argue that there are issues of fact about who hired Sarpanch, whether its work fell under ZDG’s responsibilities, and the questionable validity of ZDG’s Response to the Notice to Admit.

The Court finds that there are issues of fact as to which party hired Sarpanch to work on the building and therefore whether its work fell within ZDG's responsibility. The witnesses for Sarpanch, United, and ZDG offer conflicting accounts of which entity hired Sarpanch and none of the documentary evidence submitted indicates who did so. ZDG's motion for summary judgment dismissing Plaintiff's complaint and the crossclaims against is therefore denied.

In their Second Third-Party Complaint, the Owners assert causes of action against Sarpanch for contractual and common law indemnification, contribution, and breach of contract against Sarpanch. Sarpanch now moves for summary judgment dismissing these claims, arguing that these causes of action are precluded by Workers Compensation Law § 11 because Plaintiff did not suffer a grave injury. It further contends that these claims are barred because there is no contract requiring contribution, indemnification, or the procurement of insurance. The Owners concede that Plaintiff did not suffer a grave injury but argue that there is an issue of fact as to the existence of a contract with Sarpanch requiring indemnification.

Workers Compensation Law § 11 "limits an employer's exposure to third-party liability to those situations where the employee suffers a grave injury, or the employer enters into a written contract of contribution or indemnification with the third party," (*New York Hosp. Med. Ctr. of Queens v Microtech Contr. Corp.*, 22 NY3d 501, 510 [2014]). As the Owners concede that Plaintiff did not suffer a grave injury, the Court dismisses their common law indemnification and contribution claims against Sarpanch.

The Court finds that Sarpanch meets its prima facie burden of demonstrating the lack of a written contract with Owners requiring indemnification by submitting the testimony of Himmat Singh, who stated that Sarpanch usually did not enter into written contracts for its work and that he was not aware of any such contract with the Owners for the work on the building.

Additionally, Mr. Fitzsimmons of United testified that he had not seen a written contract for the project. The Owners fail to present a copy of any contract with Sarpanch and do not offer any other evidentiary proof in opposition. Their remaining opposition merely offers speculation and conjecture as to the existence of a written contract with Sarpanch and is therefore insufficient to defeat summary judgment (*Cillo*, 16 AD3d at 340).

Accordingly, it is hereby:

ORDERED that the motion for summary judgment of second third-party defendant NY1 Sarpanch Construction Inc. (Motion Sequence 007) is granted and the Second Third-Party Complaint is dismissed in its entirety; and it is further

ORDERED that the motion for summary judgment of defendant/first third-party defendant ZDG, LLC (Motion Sequence 008) is denied in its entirety.

This constitutes the Decision and Order of the Court.

6/24/2024

DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE