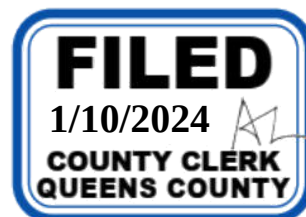


Hok Hang Cheng v AAA Lin Realty Inc.
2024 NY Slip Op 35228(U)
January 8, 2024
Supreme Court, Queens County
Docket Number: Index No. 713097/2019
Judge: Mojgan C. Lancman
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**Short Form Order**

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

IAS PART 20

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HOK HANG CHENG,

Index No.: 713097/2019

Plaintiff,

Motion Seq. No.: 8

-against-

Motion Date: 6.28.2023

AAA LIN REALTY INC. 83-11 QUEENS REALTY INC.;
83-13 HOLDINGS LLC; D&Z TOWER, INC.; HING
WONG CONSTRUCTION INC.; and NEPTUNE I INC.,

Motion Cal. No.: 5

Defendants.
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The papers bearing NYSCEF Doc. Nos. 167-198 were read on: (1) the motion filed by the defendants AAA Lin Realty Inc. ("AAA") and D&Z Tower, Inc. ("D&Z") (collectively, the "Moving Defendants"), for an Order granting summary judgment dismissing the complaint insofar as asserted against them; and (2) the cross-motion of the plaintiff, Hok Hang Cheng (the "Plaintiff"), for summary judgment against the defendant 83-11 Queens Realty Inc. ("Queens Realty").

The Plaintiff commenced this cause seeking to recover damages for personal injuries allegedly sustained in a construction-related accident. Presently before the Court are two motions. The Moving Defendants seek summary judgment dismissing the complaint. The Plaintiff cross-moves for summary judgment against Queens Realty pursuant to Labor Law § 240 [1]. For the following reasons, both motions, which are unopposed, are granted.

I. Factual Background

The Plaintiff, a construction worker, contends that he was injured on November 17, 2016 while he was working on a construction project (the "Accident"). Specifically, the Plaintiff alleges that he fell in the kitchen on the third floor of 83-13 Queens Boulevard, Elmhurst, New York 11373 (the "Premises").

At his deposition, the Plaintiff testified as follows with respect to the Accident:

I was instructed by the owners to arrive at 83-13 Queens Boulevard for work in the afternoon. I brought a circular saw in order to perform the work. The owners unlocked the door to the building and instructed me to install a hood under kitchen cabinets.

When I entered the kitchen, I placed my circular saw on to the floor. I had to create a hole in an upper kitchen cabinet as part of my work. I could not perform this job I was instructed to complete without standing on a piece of equipment. Therefore, a ladder was required in order for me to perform the work. However, a ladder was not provided by the owners or by the general contractor. I looked around for a ladder but could not find one. Therefore, I needed to use a milk crate, which was present in the kitchen, in order to access the upper kitchen cabinet.

As I was standing on the milk crate, the milk crate slipped out. As a result I fell on to the floor, which caused my face to come in to contact with the blade of the circular saw.

The Plaintiff commenced this cause on July 30, 2019. The complaint alleges, *inter alia*, violations of Labor Law §§ 200, 240, and 241 [6].

II. The Motion of AAA and D&Z

AAA and D&Z move for summary judgment on the ground that they are not liable pursuant to Labor Law §§ 200, 240 [1], and 241 [6].

Labor Law §§ 200, 240 [1], and 241 [6] apply to owners, contractors, and their agents (*see Romang v Welsbach Elec. Corp.*, 47 AD3d 789, 789 [2d Dept 2008]; Labor Law §§ 240 [1], 241 [6]). “[A] contractor may be held liable as an agent of the owner where it had the authority to supervise and control the work at issue” (*Caiazzo v Mark Joseph Contracting, Inc.*, 119 AD3d 718, 720 [2d Dept 2014]).

AAA submits the affidavit of Wei Feng Lin (“Lin”), its sole shareholder, in support of its application for summary disposition. Lin avers that AAA was neither the owner nor a tenant of the Premises when the Accident occurred and that the general contractor for the construction work was Hing Wong Construction (“Hing Wong”).

In support of its motion, D&Z submits the affidavit of Jian Hua Dong (“Dong”), its sole shareholder. Dong avers that D&Z was neither the owner nor a tenant of the Premises when the Accident occurred and that the general contractor for the construction work was Hing Wong.

Through the foregoing affidavits, AAA and D&Z, respectively, establish *prima facie* entitlement to summary disposition. Here, both defendants demonstrate that they bear no liability because, *inter alia*, they did not own the Premises and were not general contractors for the work at issue.

A triable issue of fact is not raised because this motion is unopposed. The Court notes that the Plaintiff specifically states in his cross-motion that he does not oppose the Moving Defendants’ application. Where, as here, a party fails to oppose some or all matters advanced on a motion for summary judgment, the facts as alleged in the movant’s papers may be deemed admitted as there

is, in effect, a concession that no question of fact exists (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539 [1975]; *Madeline D'Anthony Enter., Inc. v Sokolowsky*, 101 AD3d 606 [1st Dept 2012]; *Argent Mtge. Co., LLC v. Montesana*, 79 AD3d 1079 [2d Dept 2010]).

The Moving Defendants are thus granted summary judgment dismissing the complaint insofar as asserted against them.

III. The Plaintiff's Cross-Motion

The Plaintiff cross-moves for summary judgment against Queens Realty on his Labor Law § 240 [1] claim. Preliminarily, the Court notes that this application is procedurally defective in that relief is sought against a non-moving party. However, the Court elects to excuse this error because Queens Realty will not be prejudiced thereby; the interests of judicial economy will be served by the consideration of the application on the merits; and CPLR § 2001 authorizes the Court to excuse the error (*see Sweney v County of Niagara*, 122 AD3d 1432 [4th Dept 2014]; *Volpe v Canfield*, 237 AD2d 282 [2d Dept 1997]).

“Labor Law § 240 [1] imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites. The legislative purpose behind this enactment is to protect workers by placing the ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor, instead of on workers, who are scarcely in a position to protect themselves from an accident” (*Mogrovejo v HG Housing Development Fund Company, Inc.*, 207 AD3d 457, 459 [2d Dept 2022] [internal quotation marks and citations omitted]).

“To impose liability pursuant to Labor Law § 240 [1], there must be a violation of the statute and that violation must be a proximate cause of the plaintiff's injuries. Once the plaintiff makes a *prima facie* showing the burden then shifts to the defendant, who may defeat plaintiff's motion for summary judgment only if there is a plausible view of the evidence—enough to raise a fact question—that there was no statutory violation and that plaintiff's own acts or omissions were the sole cause of the accident” (*see id.*) [internal quotation marks and citations omitted]).

The Plaintiff establishes *prima facie* entitlement to summary judgment on his Labor Law § 240 [1] claim against Queens Realty by demonstrating that Queens Realty owned the Premises; that he was not provided a ladder; that he utilized a milk crate to perform his elevation-related work; and that he fell when the milk crate slipped out from under him (*see Portillo v DRMBRE-85 Fee LLC*, 191 AD3d 613, 614 [1st Dept 2021]; *Ferguson v Durst*, 178 AD3d 634, 635 [1st Dept 2019]).

Queens Realty fails to raise a triable issue of fact because it does not oppose the cross-motion. As noted, a concession is made that no question of fact exists when a summary judgment motion is not opposed (*see Kuehne & Nagel, Inc.*, 36 NY2d 539; *Madeline D'Anthony Enter., Inc.*, 101 AD3d 606; *Argent Mtge. Co., LLC*, 79 AD3d 1079).

In light of the foregoing, the Plaintiff is granted summary judgment on the issue of liability against Queens Realty on his Labor Law § 240 [1] claim.

IV. Conclusion

For reasons stated above, it is hereby:

ORDERED, that the motion by AAA and D&Z for summary judgment is granted; and it is further,

ORDERED, that the complaint and all cross-claims are dismissed insofar as asserted against AAA and D&Z; and it is further,

ORDERED, that the Plaintiff's cross-motion is granted; and it is further,

ORDERED, that the Plaintiff is granted summary judgment against Queens Realty on his Labor Law § 240 [1] claim; and it is further,

ORDERED, that AAA and D&Z shall serve a copy of this Order with Notice of Entry upon all other parties via NYSCEF by February 22, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
January 8, 2024



MOJGAN C. LANCMAN, J.S.C.

