

**Ardizzone v Summit Glory LLC**

2025 NY Slip Op 30522(U)

February 13, 2025

Supreme Court, New York County

Docket Number: Index No. 157243/2017

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

-----X

ANGELO ARDIZZONE, MARYBETH ARDIZZONE,  
Plaintiff,

- v -

SUMMIT GLORY LLC, FOSUN INTERNATIONAL LIMITED,  
AMERICON CONSTRUCTION INC., TITAN INDUSTRIAL  
SERVICES CORP., EASTERN DESIGN TILE & MARBLE,  
INC., KABACK ENTERPRISES, INC., MASPETH WELDING,  
INC., RIVCO CONSTRUCTION, LLC,

Defendant.

-----X

AMERICON CONSTRUCTION INC.

Plaintiff,

-against-

ISLAND ARCHITECTURAL WOODWORK, INC.

Defendant.

-----X

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595850/2021

The following e-filed documents, listed by NYSCEF document number (Motion 012) 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 538, 544, 552, 561, 578

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

This action arises out of injuries allegedly sustained by plaintiff Angelo Ardizzone, at a construction site. Plaintiff Marybeth Ardizzone has asserted derivative claims. Defendant Maspeth Welding, Inc. (“Maspeth Welding”), now moves for summary judgment dismissing all claims, crossclaims and counter claims against it. There is no opposition to this motion filed. For the reasons set forth below, the motion is granted.

## **Background**

This action arises from plaintiff's accident that occurred on June 9, 2016. At the time of the accident, defendant, Summit Glory LLC ("Summit"), owned 28 Liberty Street, New York, New York, the location of the subject accident. Summit retained non-party, CBRE, Inc., to be its exclusive property manager. Defendant, Fosun International Limited, owned Summit. Non-party tenant, Jones Lang Lasalle Americas, Inc., entered into a contract with defendant/third-party plaintiff, Americon Construction Inc. ("Americon"), the general contractor, to provide construction services in the tenant's leased space.

Defendant, Maspeth Welding, was hired by Americon Construction Inc., the general contractor, to install a steel beam in the conference room for the construction project located at 28 Liberty Street New York, NY.

Plaintiff was employed by non-party Allran Electric of NY LLC, a subcontractor hired by Americon to perform electrical work. At the time of the accident plaintiff completed installing a light fixture when he was coming down the ladder, his right foot slipped on debris, and his knee gave out. Plaintiff testified that the debris pile he stepped on consisted of sawdust, metal debris from ductwork, some steamfitter pieces of pipe and some pieces of M.C. cable. Plaintiff testified that there was no debris on the floor when he ascended the ladder. Further, plaintiff testified he does not know how the debris he slipped on got on the floor or how long the debris was on the floor prior to his slipping on it.

## **Summary Judgment Standard**

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the

absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

### **Discussion**

Defendant Maspeth Welding has established its *prima facie* entitlement to judgment as a matter of law. Maspeth Welding has established that it neither caused nor created the condition that caused plaintiff's accident, nor did it control the means and methods of plaintiff's work. Moreover, Maspeth Welding has established that it was not on site on the date of plaintiff's accident therefore could not have created the condition that caused plaintiff's accident. Thus, Maspeth Welding has established that plaintiff's Labor Law §§ 200, 240(1), and § 241(6) claims are not applicable as against it.

Additionally, as to the cross-claims for indemnification asserted against it, Maspeth Welding, has established, and it is undisputed, that plaintiff's accident did not arise out of its work, therefore a claims against it for contractual indemnification cannot survive. Accordingly, it is hereby

ORDERED that defendant Maspeth Welding, Inc.'s motion for summary judgment is granted and all claims and cross-claims are dismissed as against it; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

  
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2/13/2025  
DATE

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LYLE E. FRANK, 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