

Vai Hong Kotung v Leung Chung How Realty Corp.

2025 NY Slip Op 32784(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 157737/2020

Judge: Lynn R. Kotler

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

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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VAI HONG KOTUNG, as Administrator of the Estate of SHU
HU WU, Deceased, and GUANG HAI ZHU,

Plaintiffs,

- v -

LEUNG CHUNG HOW REALTY CORP.,

Defendant.

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LEUNG CHUNG HOW REALTY CORP.,

Third-Party Plaintiff,

-against-

JUNK REMOVAL MANAGEMENT CORP., KA LOK
SERVICES, INC.,

Third-Party Defendants.

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INDEX NO. 157737/2020

MOTION DATE 05/14/2025,
05/14/2025

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595964/2020

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 107, 109, 111, 113, 114, 115, 116, 118, 120, 123, 124

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 108, 110, 112, 117, 119

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

This negligence action arises from a June 2019 accident at 76 Mott Street in Manhattan (the "Property"), which is owned by defendant/third-party plaintiff Leung Chung How Realty Corp. ("Leung Chung"). Leung Chung now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint (MOT SEQ 003). Plaintiffs Vai Hong Kotung, as administrator of the estate of Shu Hu Wu ("Wu"), and Guang Hai Zhu ("Zhu") oppose the motion. Additionally, third-party defendant Ka Lok Services, Inc. ("Ka Lok") moves pursuant to CPLR 3212 for partial summary judgment dismissing Leung Chung's third-party cause of action

for common-law indemnity and contribution to the extent it is premised on the underlying personal injury claim asserted by Zhu, and dismissing in their entirety Leung Chung's remaining third-party causes of action for contractual indemnity and breach of contract for failure to procure insurance (MOT SEQ 004).¹ Ka Lok's motion is unopposed. Both motions are granted.

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024] [internal citation and quotation marks omitted]). However, if the moving party fails to carry its prima facie burden, the motion must be denied without regard to the sufficiency of the opposing papers (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]; *Alvarez*, 68 NY2d at 324).

The complaint asserts causes of action against Leung Chung for negligence and, with respect to Wu, wrongful death, based on allegations that plaintiffs were caused to fall while descending the Property's interior staircase due to an unidentified dangerous and defective condition on the stairs. "A defendant seeking summary judgment in a slip and fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (*Sabalza v Salgado*, 85 AD3d 436, 437 [1st Dept. 2011]; *see Ross v Betty G. Reader Revocable Tr.*, 86 AD3d 419, 421 [1st Dept. 2011]). "Once that showing is made, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect or notice of it" (*Rosario v Prana Nine Properties, LLC*, 143 AD3d 409, 410 [1st Dept. 2016]). A wrongful death claim requires, *inter alia*, that the decedent's death was caused by "the wrongful act, neglect or default of the defendant" (*Proano v Gutman*, 211 AD3d

¹ Leung Chung previously discontinued its claims against the other third-party defendant, Junk Removal Management Corp. (*see* NYSCEF Doc. No. 7).

978, 982 [2nd Dept. 2022]), which here allegedly consists of Leung Chung's purported negligence in maintaining the Property in a reasonably safe condition.

Leung Chung submits and principally relies upon the deposition transcripts for Zhu and non-party Darong Wu, which, together with its other submissions, establish the following facts: Leung Chung hired Ka Lok to move a fireproof file cabinet weighing approximately 1000 pounds from the third floor to the first floor of the Property. Wu and Zhu, along with Darong Wu, were employed by Ka Lok and sent to move the subject cabinet. They attempted to move the cabinet down the Property's interior stairs using a hand truck, to which the cabinet was strapped, with Darong Wu positioned above the cabinet holding the hand truck by the handles and Wu and Zhu positioned below the cabinet supporting the bottom of the hand truck. Leung Chung played no role in directing how the movers performed their work. Due to the weight of the cabinet, Darong Wu lost his grip on the hand truck, causing the cabinet's full weight to fall suddenly onto Wu and Zhu. This in turn caused Wu and Zhu to fall down to the bottom of the stairs where they were struck by the cabinet falling behind them, killing Wu and injuring Zhu. Notably, neither Zhu nor Darong Wu testified regarding any defective condition on the stairs that caused or contributed to the accident. Specifically, neither Zhu nor Darong Wu noticed any slippery condition on the stairs, nor did either claim to have lost their footing due to any such slippery condition. Leung Chung thus demonstrates, *prima facie*, that the subject accident was not caused by any defective condition for which it may be held liable.

Plaintiffs fail to raise a triable issue of fact in opposition. They contend there is a triable issue as to whether the accident was caused by a slippery condition on the stairs, relying on a few carefully selected quotes from Zhu's testimony in which he states the subject staircase was "slippery." These statements are insufficient, however, to raise a triable issue of fact, because Zhu subsequently clarified that he did not personally observe any slippery condition on the stairs and that his testimony earlier in his deposition regarding such a condition was based solely on statements he overheard purportedly made by Darong Wu. As such, Zhu's testimony regarding a slippery condition on the stairs is inadmissible hearsay. Moreover, Darong Wu, at his own deposition, testified that the hand truck "slipped" from his grip due solely to the excessive weight of the cabinet, said nothing about having slipped or otherwise lost his footing on the stairs, and expressly denied having observed any slippery condition on the stairs.

Plaintiffs also rely on the affirmation of their engineering expert, Stanley H. Fein, who avers that he conducted test to measure the coefficient of friction on the subject stairs, which indicated the stairs lacked sufficient slip resistance. This testimony does not avail plaintiffs, though, because “[p]roof that a floor is inherently slippery, standing alone, is insufficient to support a cause of action for negligence” (*Caicedo ex rel. Ferreira v Sanchez*, 116 AD3d 553, 555 [1st Dept. 2014] [internal quotation marks omitted]). Fein’s expert opinion regarding the inherent slipperiness of the stairs is relevant only if plaintiffs’ injuries were caused by such a condition. As just discussed, however, plaintiffs fail to submit any admissible evidence to demonstrate that a slippery condition on the subject stairs caused or contributed to their accident.

Therefore, Leung Chung’s summary judgment motion (MOT SEQ 003) is granted.

Ka Lok’s summary judgment motion (MOT SEQ 004) is likewise granted without opposition. Ka Lok demonstrates its entitlement to summary judgment dismissing Leung Chung’s third-party claim for contribution and common-law indemnity to the extent it relates to Zhu’s underlying personal injury claim. Ka Lok submits Zhu’s bill of particulars, in which Zhu alleges injuries consisting of a fractured rib, a partial ligament tear in his left thumb, a herniated disc, and several bulging discs. It further submits Zhu’s medical treatment and MRI imaging records, as well as Zhu’s deposition transcript. These submissions demonstrate that Zhu did not suffer a “grave injury” within the meaning of Workers' Compensation Law § 11 (*see Hernandez v Seadyck Realty Co., LLC*, 161 AD3d 711, 711–12 [1st Dept. 2018]; *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. 221-223 W. 82 Owners Corp.*, 120 AD3d 1140, 1140 [1st Dept. 2014]). As such, Leung Chung may not maintain a claim against Ka Lok for contribution and/or common-law indemnity with respect to Zhu’s injuries (*see Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 582 [1998]). In any event, given the dismissal of plaintiffs’ complaint against Leung Chung, Leung Chung’s cause of action for contribution and common-law indemnity in the third-party action is rendered academic (*see W. 125th St. Realty LLC v Chosen Realty Corp*, 227 AD3d 431, 431 [1st Dept. 2024]; *Locke v URS Architecture & Eng'g-New York, P.C.*, 202 AD3d 505, 507 [1st Dept. 2022]).

Ka Lok further submits an invoice for the moving services it performed on behalf of Leung Chung, which contains no indemnification or insurance procurement provision; a


discovery response stating that Ka Lok has no other documentation related to the subject work; and an attorney affirmation averring that Leung Chung has produced no written contract for the subject work in discovery. These submissions establish Ka Lok’s further entitlement to summary judgment dismissing Leung Chung’s remaining third-party claims for contractual indemnification and breach of contract for failure to procure insurance by demonstrating the absence of any contract containing either an express indemnification provision or an insurance procurement requirement (*see Saftier v Wakefern Food Corp.*, 220 AD3d 956, 957–58 [2nd Dept. 2023]).

Accordingly, it is

ORDERED that defendant Leung Chung How Realty Corp.’s motion for summary judgment dismissing plaintiffs’ complaint (MOT SEQ 003) and third-party defendant Ka Lok Services, Inc.’s motion for summary judgment dismissing the third-party complaint (MOT SEQ 004) are granted, and the complaint and third-party complaint are hereby dismissed; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

<u>8/8/2025</u> DATE	 LYNN R. KOTLER, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE