

Papazaharias v D&D Bldg. Co. LLC

2025 NY Slip Op 33169(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 152321/2020

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

KONSTANTINOS PAPAZHARIAS,

Plaintiff,

- v -

D&D BUILDING COMPANY LLC, COHEN BROTHERS
REALTY CORPORATION, VICI INTERIORS
INC., PREMIUM ELECTRIC INC.,

Defendants.

-----X

D&D BUILDING COMPANY LLC, COHEN BROTHERS
REALTY CORPORATION

Plaintiffs,

-against-

VICI INTERIORS INC.

Defendant.

-----X

INDEX NO. 152321/2020

MOTION DATE 08/16/2024,
08/16/2024

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595213/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 102, 103, 104, 105, 106, 122, 124, 126, 128, 130, 131, 137

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 125, 127, 129, 132, 133, 134, 135, 136, 138

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

Upon the foregoing documents, it is

ORDERED that the portion of defendant, D &D Building Company (“D&D”) and Cohen Brothers Realty Corporation (“Cohen”)’s motion (MS #4) for summary judgment, on plaintiff’s Labor Law § 240(1) cause of action as asserted against them, is denied as plaintiff has raised a triable issue of fact by submitting testimony that he was not provided with a safety harness and

that the scaffold he was using shifted as he was climbing (NYSCEF Doc No 113 at 36:14 – 37:7; NYSCEF Doc No 111 at 145:12 – 145: 23) (*see Rom v Eurostruct, Inc.*, 158 AD3d 570 [1st Dept 2018]) and contrary to defendant’s arguments, plaintiff identified how the scaffolding was defective to defeat a summary judgment motion (*Dwyer v Cent. Park Studios, Inc.*, 98 AD3d 882, 883 [1st Dept 2012]); and it is further

ORDERED that the portion of D&D and Cohen’s motion (MS #4) for summary judgment on plaintiff’s Labor Law § 241(6) cause of action as asserted against them is denied, as there is a triable issue of fact as to whether defendants violated 12 NYCRR § 23-5.12(b)¹ requiring that scaffolds “shall be secure against movement in any direction” and here, as stated above plaintiff testified that the scaffold moved as he was climbing it (NYSCEF Doc No 113 at 36:14 – 37:7)² causing it to tip over; and it is further

ORDERED that the portion of D&D and Cohen’s motion (MS #4) for summary judgment on plaintiff’s Labor Law § 200 and common law negligence claims as asserted against them is granted as they established that they did not exercise any supervisory control over plaintiff’s work and plaintiff did not oppose this portion of their motion (*Comes v New York State Gas & Electric Gas Corp.*, 609 NYS2d 168 [1993]); and it is further

ORDERED that the portion of third-party defendant, Vici Interiors Inc.’s (“Vici”) motion (MS #3) for summary judgment on D&D and Cohen’s contractual indemnification cause of action is granted, and the portion of D&D and Cohen’s motion (MS #4) seeking summary judgment on the same cause of action is denied as the contract submitted by D&D and Cohen is

¹ D&D and Cohen incorrectly cite Industrial Code § 23-1.15, which pertains to handrails. However, when they quote from Industrial Code 23-5.12 the section that pertains to scaffolding and one of the provisions relied upon by plaintiff.

² Plaintiff’s testimony further raises triable issues of fact as to whether Industrial Code § 23-5.18(c) and Industrial Code § 23-5.18(g) were violated.

between Vici and non-party Worlds Away NYC, LLC (NYSCEF Doc No 118) and because “[a] party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement” (*Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82, 87-88 [1st Dept 2018]), and here D&D and Cohen failed to submit evidence that they were intended third-party beneficiaries of the contract (*see Benitez v Church of St. Valentine Williamsbridge New York*, 171 AD3d 593 [1st Dept 2019]); and it is further

ORDERED that the portion of D&D and Cohen’s motion (MS #4) for summary judgment on their breach of contract for a failure to procure insurance cause of action as against Vici is denied, because they failed to establish that they entered into a contract with Vici imposing such a requirement, and upon searching the record the cause of action is dismissed; and it is further

ORDERED that the portion of Vici’s motion (MS #3) for summary judgment on D&D and Cohen’s common law indemnification and contribution cause of actions is granted as it is undisputed that Vici was plaintiff’s employer and therefore common law causes of action arising from plaintiff’s alleged injuries suffered during performance of his work are barred pursuant to Workers’ Compensation Law § 11; and it is further

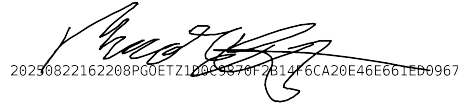
ORDERED that the third-party complaint is dismissed in its entirety as against Vici, with costs and disbursements to Vici as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued as against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal as well as the dismissal of plaintiff's claims as against Vici by decision/order dated October 29, 2020 (NYSCEF Doc No 36) and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Vici 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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|--------------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|------------------------------------|
| <u>8/22/2025</u> DATE | | | | | <hr/> PAUL A. GOETZ, J.S.C. |
| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |