

Harry v J.T. Magen & Co. Inc.

2025 NY Slip Op 33815(U)

October 8, 2025

Supreme Court, New York County

Docket Number: Index No. 157592/2020

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

BENTLEY HARRY,

Plaintiff,

- v -

J.T. MAGEN & COMPANY INC, RXR REALTY LLC,

Defendants.

-----X

J.T. MAGEN & COMPANY INC, RXR REALTY LLC

Plaintiffs,

-against-

TOPROCK INTERIORS, INC.

Defendant.

-----X

INDEX NO. 157592/2020

03/28/2025,
03/28/2025,
03/28/2025

MOTION DATE

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595991/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 134, 152, 153, 156, 159, 164, 165, 172, 175, 176, 177, 178

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 136, 137, 138, 139, 140, 141, 142, 148, 149, 150, 151, 154, 157, 160, 173, 179, 180

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 003) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 135, 143, 144, 145, 146, 147, 155, 158, 161, 166, 167, 168, 169, 170, 171, 174, 181, 182, 183

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

Upon the foregoing documents, it is

ORDERED that plaintiff's motion (MS #2) seeking summary judgment pursuant to CPLR § 3212, on his Labor Law § 240(1) cause of action as asserted against defendants, J.T.

Magen & Company Inc. (“JT Magen”) and RXR Realty LLC (“RXR”) is denied as while plaintiff has submitted testimony that establishes that the ladder he was instructed to use was not an adequate safety device for the task he was performing¹ (*see Hasan v Macerich Co.*, 239 AD3d 568 [1st Dept 2025] [holding that a ladder is an insufficient safety device if it requires the worker to use the top step of the ladder]), defendants submit an affirmation from plaintiff’s co-worker, Fitzroy Barnes, who plaintiff testified witnessed his accident (NYSCEF Doc No 85 at 160:25 – 161:3), averring that he never witnessed plaintiff’s accident and further contradicting plaintiff’s testimony regarding their assigned tasks (NYSCEF Doc No 149), and the affirmation is sufficient to raise triable issues of fact (*Muco v Bd. of Educ. of City of New York*, 203 AD3d 610 [1st Dept 2022]); and it is further

ORDERED that the portion of defendants, JT Magen and RXR’s motion (MS #3) seeking summary judgment pursuant to CPLR § 3212, dismissing plaintiff’s Labor Law § 241(6) cause of action as asserted against them is granted as plaintiff submits no opposition to this portion of the motion and therefore his Labor Law § 241(6) cause of action is deemed abandoned; and it is further

ORDERED that the portion of defendants, JT Magen and RXR’s motion (MS #3) seeking summary judgment pursuant to CPLR § 3212, dismissing plaintiff’s Labor Law § 200 and common law negligence claims is granted since they have established that they “did not actually exercise supervision or control over the means or methods of plaintiff’s injury-producing work” (*Siegel v Delta Airlines, Inc.*, 227 AD3d 516, 517 [1st Dept 2024]; *see* NYSCEF Doc No 126 at

¹ Plaintiff testified that in order to install pieces of sheetrock, he was required to ascend the ladder to the topmost part, then climb on to a duct above the ladder, where he could access the installation area. Plaintiff’s accident occurred when he descended off the duct, back onto the top of the ladder, which tipped and fell over (NYSCEF Doc No at 112:25 – 118:20; 138:3 – 150:4)

12:4 – 132:9), and while plaintiff cites to JT Magen’s project supervisor’s testimony² and argues it raises an issue of triable fact, “[g]eneral supervisory authority to oversee the progress of the work is insufficient to impose liability” (*Bulux v Moran*, 189 AD3d 761, 762-63 [2d Dept 2020]); and it is further


ORDERED that the portion of defendants, JT Magen and RXR’s motion (MS #3) seeking summary judgment on their contractual indemnification claim as asserted against third-party defendant, TopRock Interiors Inc. (“TopRock”) is granted as “in contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Uluturk v City of New York*, 298 AD2d 233, 234 [1st Dept 2002]), and here as explained above defendants did not exercise actual control over the injury producing work, and thus their only liability can stem from a statutory violation; and it is further

ORDERED that third-party defendant, TopRock’s motion (MS #1) seeking summary judgment dismissing plaintiff’s Labor Law §§ 241 (6) & 240 (1)³ is granted as for plaintiff’s Labor Law § 241(6) for the reasons stated above, and denied as for plaintiff’s Labor Law §

² While, plaintiff cites to a portion of testimony where, the project supervisor, Brian Piazza, testified that he had the authority to direct the “means and methods” of Toprock’s work, as a whole, Piazza’s testimony establishes that JT Magen did not actually exercise authority or direction over how the work was being performed, outside of general supervisory authority (NYSCEF Doc No 123 at 46:3 – 46:10 [“Q: Did anyone from J.T. Magen instruct Toprock employees on how to accomplish their work? A: No. Q: So that would have been in the discretion of Toprock employees for that job? A: Correct”]).

³ While plaintiff does not have any direct claims against TopRock, pursuant to CPLR § 1008 a third-party defendant may “avoid third-party liability by defeating plaintiff’s claim against defendant/third third-party plaintiff” (*Velez v Div. Nine Holding Corp.*, 52 AD3d 292 [1st Dept 2008]).

240(1) claim as there is a triable issue of fact regarding plaintiff's accident.


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10/8/2025
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE