

Durakovic v W2001Z/15CPW Realty, LLC

2025 NY Slip Op 33843(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 159859/2023

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

-----X

SENAID DURAKOVIC,

Plaintiff,

- v -

W2001Z/15CPW REALTY, LLC, W2001Z/15CPW RETAIL
SUB LLC, FIFTEEN CENTRAL PARK WEST
CONDOMINIUM, PROPERTY NY 100-11 LLC, and
VERICON CONSTRUCTION COMPANY,

Defendants.

-----X

PROPERTY NY 100-11 LLC,

Third-Party Plaintiff,

-against-

Z. ELEZAJ, INC.,

Third-Party Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party
Index No. 596095/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39,
40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 61, 62

were read on this motion to/for DISMISS

This premises liability action alleging violations of the Labor Law concerns injuries
allegedly sustained by plaintiff Senaid Durakovic ("Plaintiff") while he was working at 15
Central Park West, Penthouse 20 ("the Premises"). Defendant Vericon Construction Company
("Vericon") moves to dismiss the entirety of Plaintiff's Verified Complaint as against it and all
cross-claims against it pursuant to CPLR 3211 (a) (7). Plaintiff opposes the motion, while the
other defendants take no position.

Plaintiff was employed as a painter by third-party defendant Z. Elezaj, Inc. (“Z. Elezaj”). Z. Elezaj was hired in April 2023 by the owner of the Premises, defendant PROPERTY NY 100-11 LLC (“Owner”), for painting and plaster work in connection with a redecoration of the Premises (NYSCEF Doc No. 18). Plaintiff claims that, on September 11, 2023, he was working on the Premises when he was injured by falling “from a height/ladder” (NYSCEF Doc No. 38, Verified Complaint ¶ 180). In his Verified Bill of Particulars, Plaintiff alleges, *inter alia*, that the defendants failed to provide him with a properly secured ladder or to otherwise protect him from height related risks (NYSCEF Doc No. 50, Bill of Particulars ¶ 16). The Verified Complaint alleges that Vericon was involved in the work on the Premises and that its role involved oversight over Plaintiff’s work (Verified Complaint ¶¶ 141-178). Plaintiff’s Bill of Particulars does not distinguish between the defendants with respect to their alleged relationship to the Premises or work therein.

Plaintiff commenced this action in October 2023 seeking recovery for defendants’ alleged negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6). In their respective answers, the Owner and defendants W2001Z/15CPR Retail Sub LLC, Fifteen Central Park West Condominium assert cross-claims against Vericon for common-law indemnification, contractual indemnification, and contribution (NYSCEF Doc Nos. 13, 20, 28).

Vericon argues that Plaintiff’s claims, and the other defendants’ cross-claims, should be dismissed as against it because it did not perform any work at the Premises and was not a party to any agreement related to construction management thereat. In support of its motion, Vericon submits an affidavit from its president, Stephen Mellett, stating that it was not an agent for the Owner, was not party to any contract related to work on the Premises, and did not perform any work there as a general contractor, project manager, or safety manager (NYSCEF Doc No. 49,

Mellett aff). It also furnishes emails from its counsel to Plaintiff's attorney requesting a voluntary discontinuance on the basis that it was not involved in the project (NYSCEF Doc No. 49). Plaintiff contends in opposition that Vericon does not meet its burden under CPLR 3211 (a) (7) of showing that he fails to state a cause of action for his claims, that Mellett's affidavit alone is insufficient to establish that there is no cause of action against Vericon, and, in the alternative, that dismissal would be premature under CPLR 3211 (d) as no formal discovery has been completed.

On a motion to dismiss pursuant to CPLR 3211, "the allegations in the complaint are to be afforded liberal construction, and the facts alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory" (*M & E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]; *see also Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "A motion to dismiss under CPLR 3211 (a) (7) for failure to state a cause of action must be denied if the factual allegations contained within the four corners of the pleading manifest any cause of action cognizable at law" (*M & E 73-75 LLC*, 189 AD3d at 5).

Pursuant to CPLR 3211(a)(1), a defendant may "submit evidence in support of the motion attacking a well-pleaded cognizable claim" (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014]). "When documentary evidence is submitted by a defendant, the standard morphs from whether the plaintiff has stated a cause of action to whether it has one" (*id.* at 135 [internal quotation marks and citation omitted]). Dismissal is warranted pursuant to CPLR 3211 (a) (1) "only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon*, 84 NY2d at 88). "Factual affidavits, however, do not constitute documentary evidence within the

meaning of the statute” (*Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014], citing *Flowers v 73rd Townhouse LLC*, 99 AD3d 431, 431 [1st Dept 2012]).

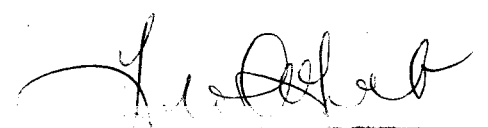
As a threshold matter, the Court finds that the Verified Complaint sufficiently sets for the requisite elements for Plaintiff’s causes of action against Vericon under Labor Law §§ 200, 240 (1), and 241 (6), and common law negligence. Namely, it alleges Vericon exercised such supervisory control over Plaintiff’s work such that it either owed him a common law duty of care or would be strictly liable under Labor Law §§ 240 (1) and/or 241 (6), that Plaintiff was injured, and that Vericon either breached its duty to him or the injury arose out of a gravity-related incident for liability under Section 240 (1) or due to an Industrial Code violation such that liability under Section 241 (6) would be warranted. As to the evidence proffered by Vericon, the Court finds that the Mellett affidavit is insufficient to support dismissal pursuant to CPLR 3211 (a) (1), as it is merely an unsupported factual affidavit that does not constitute documentary evidence within the statute’s meaning and therefore cannot on its own support dismissal (*Art & Fashion Group Corp.*, 120 AD3d at 438). Vericon does not produce any documentary evidence that conclusively establishes a defense as a matter of law.

Accordingly, it is hereby:

ORDERED that Vericon’s motion to dismiss is denied in its entirety.

The foregoing constitutes the decision and order of the court.

10/7/2025
DATE



HON. LESLIE A. STROTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	J.S.C.
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE