

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE BERNICE D. SIEGAL IA Part 19
Justice

Idelfonso Luciano Ramirez A/K/A x
Luciano Ramirez,
Plaintiff,

-against-

Spinsational LLC, Titanium Properties, LLC,
Dem North Management Corp., Ravidas
Construction Inc., Titan Properties, LLC,
Barry Coleman and Michael Yanis,

Defendants.

Spinsational LLC. and Barry Coleman, x

Third-Party Plaintiff

-against-

Tito Quesada,

Third-Party Defendant.

_____ x

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Number 22804 2011
Motion
Date September 25, 2013

Motion
Cal. Number 141
Motion Seq. No. 5

The following papers numbered 1 to 3 read on this motion by defendant Spinsational, LLC and defendant Barry Coleman pursuant to CPLR 3211 and 3212 that (a) the Second Amended Complaint be dismissed or (b) that the Court grant summary judgment in favor of Spinsational and Barry Coleman on all counts in the Second Amended Complaint, and/or (c) if the Court dismisses the Second Amended Complaint, the Court enter summary judgment in favor of Spinsational and Barry Coleman on the Supplement Complaint.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2
Reply Affidavits.....	3

Upon the foregoing papers it is ordered that: The branch of the motion which is for summary judgment dismissing the cause of action based on common law negligence asserted against defendant Spinsational and defendant Coleman is granted. The branch of the motion which is for summary judgment dismissing the cause of action based on Labor Law §200 asserted against defendant Spinsational and defendant Coleman is granted. The branch of the motion which is for summary judgment dismissing the cause of action based on Labor Law §240 asserted against defendant Spinsational is denied. The branch of the motion which is for summary judgment dismissing the cause of action based on Labor Law §240 asserted against defendant Coleman is granted. The branch of the motion which is for summary judgment dismissing the cause of action based on Labor Law §241(6) asserted against defendant Spinsational and defendant Coleman is granted.

The facts of this case and the relevant law are discussed more fully in this court’s memorandum and order (one paper) rendered on the companion motion for summary judgment by defendant DEM North Management Corp. and defendant Titan Properties, LLC.

Briefly, defendant Titan owns a building located at 450 North State Road, Briarcliff Manor, New York which is managed by defendant DEM. Defendant Titan leased the building to defendant Spinsational, LLC whose members include defendant Barry Coleman and defendant Michael Yanis. Defendant Spinsational hired third party defendant Tito Quesada, the employer of plaintiff Idelfonso Luciano Ramirez, to soundproof the walls and ceiling of the studio. On May 28, 2011, plaintiff Ramirez climbed on top of a scaffold and then stood on a ladder that had been placed on top of the scaffold. He knew that the scaffold had wheels which locked, but he did not check the wheels before he climbed onto the scaffold. After climbing up the scaffold and ladder, the plaintiff reached up with both of his hands to work on the ceiling. The scaffold rolled away from the wall, and he fell to the floor, breaking both wrists.

Contrary to the defendants’ objections, the second amended complaint is the relevant pleading for this motion. This court permitted the plaintiff to serve a second amended complaint by memorandum and order dated July 17, 2013. Moreover, the

defendants failed to demonstrate any prejudice, and their motion addresses the second amended complaint.

With respect to defendant Coleman, he is only a member of Spinsational, the limited liability company which rented the premises and contracted for the work. As a mere member of a limited liability company, he is not responsible for its torts or contracts. (*See*, LLC Law §609.) He is not an “owner” within the scope of the relevant provisions of the Labor Law, nor did he supervise the plaintiff’s work. On the other hand, a tenant such as defendant Spinsational who contracts for the work is an “owner” within the meaning of the relevant provisions of the Labor Law. (*See*, *Walp v. ACTS Testing Labs, Inc./Division of Bureau Veritas*, 28 AD3d 1104[2006]; *Crespo v. Triad, Inc.*, 294 AD2d 145 [2002].)

In any event, in regard to the causes of action based on common law negligence and Labor Law §200, “[i]t is settled law that where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under section 200 of the Labor Law” (*Lombardi v. Stout*, 80 NY2d 290, 295 [1992]; *see*, *Smith v. Nestle Purina Petcare Co.*, *supra*; *LaRosa v. Internap Network Services Corp.*, 83 AD3d 905 [2011].) In regard to the cause of action based on Labor Law §240, while defendant Coleman is not an owner within the meaning of that statute and so has no liability under it, defendant Spinsational, an “owner,” is not entitled to summary judgment because there is an issue of fact concerning whether the actions of plaintiff Ramirez were the sole proximate cause of his accident. (*See*, *e.g. Singh v. City of New York*, -AD3d-. -NYS2d -, 2014 WL 56112 [2014] [fall from ladder]; *Corchado v. 5030 Broadway Properties, LLC*, 103 AD3d 768 [2013] [fall from ladder which allegedly “kicked out”]; *Allan v. DHL Exp. (USA), Inc.*, 99 AD3d 828 [2012] [fall from scaffold]; *Schick v. 200 Blydenburgh, LLC*, 88 AD3d 684 [2011] [fall from ladder allegedly not placed properly by plaintiff]; *Berenson v. Jericho Water Dist.*, 33 AD3d 574 [2006] [fall from scaffold with an allegedly inadequate wooden plank placed by plaintiff or workers under his supervision].) In regard to the cause of action based on Labor Law §241(6), the defendants are entitled to summary judgment because the plaintiff failed to raise a genuine issue of fact concerning whether there was a violation of the Industrial Code and whether such violation was a proximate cause of his injuries. (*See*, *Melchor v. Singh*, 90 AD3d 866 [2011]; *Blair v. Cristani*, 296 AD2d 471 [2002]; *Beckford v. 40th Street Associates*, 287 AD2d 586[2001].)

Dated:

Bernice D. Siegal, J.S.C.