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| Rodriguez v Miller Plumbing & Heating, Inc. |
| 2014 NY Slip Op 31869(U) |
| May 30, 2014 |
| Supreme Court, Bronx County |
| Docket Number: 302368/2013 |
| Judge: Norma Ruiz |
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| This opinion is uncorrected and not selected for official publication. |

6-25-2014

PART 22

(8)

| | |
|---------------------|--------------------------|
| Case Disposed | <input type="checkbox"/> |
| Settle Order | <input type="checkbox"/> |
| Schedule Appearance | <input type="checkbox"/> |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

RODRIGUEZ, FRANCISCA PAGUADA

Index No. 0302368/2013

-against-

Hon. NORMA RUIZ

MILLER PLUMBING

Justice.

The following papers numbered 1 to 4 Read on this motion, **SUMMARY JUDGMENT DEFENDANT**
Noticed on **December 16 2013** and duly submitted as No 23 on the Motion Calendar of 2-24-14

| | PAPERS NUMBERED | |
|--|-----------------|---|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | 1 | 2 |
| Answering Affidavit and Exhibits | 3 | |
| Replying Affidavit and Exhibits | 4 | |
| _____ Affidavits and Exhibits | | |
| Pleadings - Exhibit | | |
| Stipulation(s) - Referee's Report - Minutes | | |
| Filed Papers | | |
| Memoranda of Law | | |

Upon the foregoing papers this

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: 5/30/14

Hon. NR
NORMA RUIZ, J.S.C.

C

NEW YORK SUPREME COURT ----- COUNTY OF BRONX

PART 22

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 302368/2013

FRANCISCA PAGUADA RODRIGUEZ

Plaintiff,

Decision and Order

-against-

HON. NORMA RUIZ

MILLER PLUMBING AND HEATING, INC., JOHN
GALLIN & SON, INC., SIRINA FIRE PROTECTION
CORP., HUDSON MERIDAN CONSTRUCTION
GROUP, LLC, JGM CONSTRUCTION

Defendant.

The following papers numbered 1 to 4 Read on this motion SUMMARY JUDGMENT
Noticed on 12/16/13 and duly submitted as No. 23 on the Motion Calendar of 2/24/14

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion

| to: | Papers | Numbered |
|-----|---|----------|
| | Notice of Motions and Affidavits Annexed..... | 1-2 |
| | Answering Affidavits..... | 3 |
| | Replying Affidavits | 4 |
| | Memorandum of Law | |

Other:

Upon the foregoing papers, the foregoing motion(s) [and/or cross-motions(s), as indicated below, are consolidated for disposition] and decided as follows:

Defendant JGM Construction Group, LLC ("JGM") moves for summary judgment.

Upon a review of the moving papers and opposition submitted thereto the motion is granted.

In this negligence action, the plaintiff seeks damages for injuries she sustained in a work related accident. On July 20, 2011, the plaintiff was performing cleaning services at the building located at 499 Park Avenue, in the city and state of New York. As she passed through an office

doorway on the 15th floor, a piece of metal framing fell and struck her on her head. The subject premises was under construction/renovation on the date of the accident. This action was commenced against several of the contractors that were working at the subject premises.

The moving defendant JGM moves for summary judgment prior to being deposed on the grounds that it did not owe the plaintiff any duty since it did not own, operate, maintain, manage, supervise, direct, repair, control, or perform work at the location where the plaintiff's action occurred. JGM annexed the affidavit of its vice president John Comack ("Comack") who averred that he has first hand knowledge of the work JGM performed at the subject premises. Comack explained that in October of 2011 the owner of the subject premises sought bids for (1) the build out of a tenant suite on the 12th floor and (2) the renovation of the public corridor and elevator lobby on the 15th floor of the building. In February GM submitted separate bids for each job and was only awarded the work on the 12th floor. Comack averred that JGM's work was confined to the 12th floor. When it completed the work on May 2, 2011 (approximately two months before the plaintiff's date of accident) JGM and all of its subcontractors left the site.

Comack also explained that the building owner listed JGM on the initial permits as the contractor for both the 12th floor and 15th floor projects. Thereafter, he withdrew the work permit for the 15th floor.

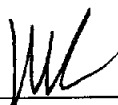
In addition to Comack's affidavit, it submitted the parties contract which was for the work performed on the 12th floor.

Despite having cross claims against JGM, none of the co-defendants submitted any opposition to this motion. Plaintiff did not oppose the motion on the rounds that it is premature and that there is a question of fact regarding whether or not JGM performed any work in the area in question. It annexed a document from the NYC Buildings Department website entitled "Work Permit Data" that appears to indicate that a permit for "removal of interior non bearing partitions as per plans filed herein" was issued to JGM. However, as the movant correctly points out in the reply affirmation, the permit does not indicate that it was issued for the work on the 15th floor.

Accordingly, the motion is granted. This action is dismissed ONLY AS AGAINST defendant JGM.

This constitutes the decision and order of the Court.

Dated: 5/30/14
Bronx, New York



HON. NORMA RUIZ, J.S.C.