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| Ramos v Blatt |
| 2018 NY Slip Op 33166(U) |
| December 3, 2018 |
| Supreme Court, New York County |
| Docket Number: 158763/2017 |
| Judge: Kathryn E. Freed |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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|--|---------------------------|--------------------|
| PRESENT: <u>HON. KATHRYN E. FREED</u> | PART | IAS MOTION 2 |
| | <i>Justice</i> | |
| -----X----- | INDEX NO. | <u>158763/2017</u> |
| GUILLERMO RAMOS, | | |
| Plaintiff, | | |
| - v - | MOTION SEQ. NO. | <u>002</u> |
| | | |
| DAVID BLATT, CHERYL BLATT, EVE BLATT, CEPRINE CONSTRUCTION, INC., PROGENY RESTORATION CORP., HITE CONSTRUCTION INC., | DECISION AND ORDER | |

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

SUMMARY JUDGMENT

In this personal injury action commenced by plaintiff Guillermo Ramos, defendant Ceprine Construction, Inc. d/b/a Ceprine Scaffolding Services (“Ceprine”), moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross-claims against it. After a review of the parties’ papers and the relevant statutes and case law the motion, which is unopposed, is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

On December 21, 2016, plaintiff, while employed at a construction site at 41 West 75th Street, New York, New York by a non-party employer, was allegedly struck by pieces of a scaffold. Plaintiff thereafter commenced this suit against defendants David Blatt, Cheryl Blatt, and Progeny Restoration Corp., alleging that his injuries resulted from defendants’ negligence in

their maintenance and supervision of the construction site. Doc. No. 1. Issue was joined by Ceprine by service of its Verified Answer on or about December 11, 2017. Doc. No. 7.

In their answers, defendants David Blatt, Cheryl Blatt, and Progeny Restoration Corp. (“Progeny”) asserted cross-claims against each other and Ceprine for contribution and indemnification. (Docs. 13, 15). Defendant Progeny commenced a separate action against Hite Construction, Inc. (“Hite”) under Index No. 151357/2018, which was consolidated with the within action under Index No. 158763/2017 by order of this Court dated July 12, 2016. Doc. No. 39.

Ceprine now moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff’s complaint and all cross-claims against it. In support of the motion, Ceprine submits a Stipulation of Partial Discontinuance (Doc. No. 31) between itself and the plaintiff, wherein plaintiff discontinues his action against Ceprine, without prejudice, based on an affidavit from Brian Friedenthal, the Operations Manager of Ceprine. Doc. No. 46. In his affidavit, Fridenthal avers that the only work Ceprine did at the subject premises was to install a supported steel frame pipe scaffold system at the rear of the building on April 17, 2017 and that Ceprine thus did not work at the premises until almost four months after plaintiff was injured. Ceprine additionally annexes a copy of the invoice between itself and Hite dated 4/18/2017. Doc. No. 45.

LEGAL CONCLUSIONS:

A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med.*

Ctr., 64 NY2d 851, 853 [1985].) The movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*) If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006].) If, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, then summary judgment will be denied. (*See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]; *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978].).

Additionally, the threshold question in tort cases is whether the defendant owed a duty of care toward the injured party. (*See Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 138 [2002].) Here, Ceprine did not owe a duty of care toward plaintiff at the time of his accident because Ceprine was not present at the subject premises until four months after the injury.

The Court also notes that not only has no party opposed this motion, but plaintiff has executed a stipulation of discontinuance as against Ceprine. Additionally, Ceprine has annexed the affidavit of Friedenthal and sufficient documentation that it is not liable for plaintiff's injury because it does not appear that it did any work at the site until a period of time after the injury. (*See Bermudez v City of New York*, 21 AD3d 258, 258–59 [1st Dept 2005] (court granted summary judgment where defendant established that it had cancelled a construction contract and therefore had not commenced work at the site where plaintiff was injured).)

And, insofar as Ceprine has established that plaintiff's accident did not arise or result from its work, summary judgment dismissing the cross-claims of the co-defendants in this action for contribution and indemnification must also be granted. (*See Barto v NS Partners, LLC*, 74 AD3d 1717, 1720 [4th Dept 2010] (dismissing cross-claims for indemnification where defendant established its nonliability to plaintiff).)

In accordance with the foregoing, it is hereby:

ORDERED that defendant Ceprine Construction, Inc. d/b/a Ceprine Scaffolding Services' motion for summary judgment, dismissing the complaint and all cross-claims against it is granted, and the Clerk is directed to enter judgment accordingly; and it is further

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

ORDERED that the caption be amended to reflect the dismissal of defendant Ceprine Construction, Inc. d/b/a Ceprine Scaffolding Services and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within twenty days of the entry of this order, counsel for the moving party shall serve a copy of this order with notice of entry upon all parties, upon the Clerk of the Court (60 Centre Street, Room 141B), and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision and order of the court.

12/3/2018

DATE

CHECK ONE:

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|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | CASE DISPOSED |
| <input type="checkbox"/> | GRANTED |
| <input type="checkbox"/> | SETTLE ORDER |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN |

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

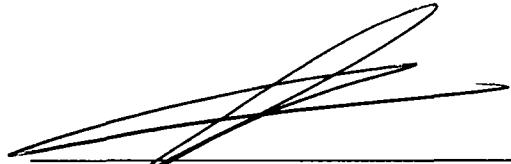
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:


KATHRYN E. FREED, J.S.C.