

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MILTON A. TRINGALI

PART 22

Index Number : 113982/2004 J.S.C.

CHEN, SHE

vs

EMREALP, SERHAT

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO.

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO.

9/28/05

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The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
OCT 28 2005
NEW YORK
COUNTY CLERK'S OFFICE

The Defendant/Third-Party Plaintiff Serhat Emrealp's motion for summary judgment dismissing the complaint is granted and the complaint is hereby dismissed in its entirety.

The movant on a summary judgment motion must establish his case as a matter of law. Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). A motion for summary judgment must be denied if a triable issue of fact exists. C.P.L.R. Section 3212; Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). The proponent of a summary judgment motion has the initial burden of coming forward with evidentiary proof in an admissible form demonstrating that it entitled to summary judgment. Zuckerman, supra. In the instant case the defendant makes out a prima facie case entitling him to summary judgment on the issue of liability as he demonstrates he bears no liability in this accident.

Once the movant has established a *prima facie* case that it is entitled to summary judgment, the burden then shifts to the defendant to tender sufficient evidence in admissible form to defeat the motion. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980) Mere allegations and conclusions are insufficient to defeat a summary judgment motion. The plaintiff's opposition papers fail to raise a triable issue of fact in dispute concerning the occurrence of the accident and any possible liability in same on behalf of the defendant.

Accordingly, summary judgment in favor of defendant dismissing the complaint. Clerk is directed to enter judgment accordingly. MB J.S.C.

12/14/05

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):