

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

0113875/2001 PART 51

SANATASS, CHRISTOPHER
VS
CONSOLIDATED INVESTING

DEX NO.

SEQ 4

JTION DATE

SUMMARY JUDGMENT

JTION SEQ. NO.

MOTION CAL. NO.

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

The motion and cross motion for summary judgment are resolved in accordance with the Court's Decision, Order and Partial Judgment dated February 22, 2005.

FILED

FEB 28 2005

NEW YORK
COUNTY CLERKS OFFICE

Dated: 2-22-05

Sarah A. Evans

Check one: FINAL DISPOSITION

HON. SARAH A. EVANS, J.S.C.
NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 51

-----X
CHRISTOPHER SANATASS and CYNTHIA
SANATASS,

Plaintiffs,

Index No. 113875/01

-against-

CONSOLIDATED INVESTING COMPANY, INC.,
CONSOLIDATED INVESTING COMPANY,
NORBERT NATANSON, HERBERT ROSENBERG
As Trustee of the Last Will and Testament of
NATHAN SCHULMAN, MARION FELDMAN,
CHROMA COPY and DAZIAN LLC,

DECISION, ORDER and
PARTIAL JUDGMENT

Defendants.

-----X
CONSOLIDATED INVESTING COMPANY, INC.,
And CONSOLIDATED INVESTING COMPANY,
Third Party Plaintiffs,

-against-

CHROMA COPY INTERNATIONAL, INC.,
CHROMA COPY INTERNATIONAL L.P.,
CHROMA COPY INTERNATIONAL, LTD.,
CHROMA COPY OF AMERICAN, INC.,
and C2 MEDIA, LLC,

Third Party Defendants.

-----X
SARALEE EVANS, JSC

Recitation, as required by CPLR § 2219[a], of the papers considered in review of this motion and cross motions for summary judgment.

Papers	Numbered
Notice of Motion, Affirmation and Exhibits	1
Notice of Cross Motion, Affirmation & Exhibits	2
Affirmation in Partial Support and in Opposition	3
Affirmation in Opposition to Cross Motion.	4

Affirmation in Reply. 5
Affirmation in Reply 6

Upon the foregoing cited papers, the Decision/Order on the motion and cross motion is as follows:

Plaintiffs sue for injuries plaintiff Christopher Sanatass sustained while he was installing an air conditioner on the eleventh floor of 423 West 55th Street on January 17, 2000. The eleventh floor was occupied by C2 Media Inc., pursuant to a lease from then- building owners Geralf Rosenberg and George Feldman as trustees, Consolidated Investing Company and Arthur Segall as executor. The entire eleventh floor was leased to third party defendant Chroma Copy International. The lease was assigned to C2 Media, LLC, who occupied the premises at the time of plaintiff's accident.

At the time of his injury, plaintiff had been assigned by his employer as lead mechanic with a crew of two helpers to install the air conditioner and related duct work. He did not know who had hired his employer to do the work.. He had been to the site the preceding Friday to measure for the ducting and returned on Monday to do the installation. Steel rods were placed in the ceiling from which the air conditioner was to hang. Plaintiff and his helpers then lifted the unit towards the ceiling using two jacks they had brought with them that belonged to plaintiff's employer. According to the complaint when the unit was about 7 feet in the air, one of the two jacks "failed" and the air conditioner dropped 4 feet, striking plaintiff and knocking him to the ground.

According to plaintiff the jack was defective and not properly maintained. A specification sheet for the type of jack used states that each jack will elevate a load of 500

pounds, where loads are centered 12 inches from the center post. Plaintiff had used two such lifts to elevate an air conditioner measuring 5 and 1/2 feet by 6 and 1/2 feet that weighed somewhere between 1,500 and 2,500 pounds.

Plaintiff contends that defendant building owners had a nondelegable duty to provide him with proper hoists pursuant to Labor Law §240(1) and a safe workplace pursuant to Labor Law §241(6). Defendants Consolidated Investing Company, Inc., and Consolidated Investing Company, (Consolidated) owners of the building and third party plaintiffs, move for summary judgment, alternatively dismissing the complaint as against them or granting summary judgment on the third party complaint which seeks indemnification by the tenant named on the lease and the assignee.

The lease submitted by defendants requires the permission of the landlord before any work is done on the premises. According to movants' witnesses, no permission had been sought to install an air conditioner, and Consolidated was unaware that any work was being done. Consolidated moves for summary judgment dismissing the complaint because the work done was not construction or alteration of the premises, and alternatively, for indemnification. Plaintiffs concede that the record does not state a claim under Labor Law §200 or for common law negligence, but cross move for summary judgment on their claims under Labor Law §240 and §241(6).

Defendants first contend that plaintiff is not a covered person under Labor Law §240(1) because he was not engaged in "altering" the building or engaged in construction. Alteration has been defined as "...making a *significant* physical change to the configuration or composition of the building or structure." *Jablon v. Solow*, 91 NY2d 457, 465 (1998). Here, plaintiff was

engaged to install an air conditioner and duct work. The air conditioner was to be affixed to the ceiling but little information has been provided about the work involved or how the ducting was to be done. In the absence of any details with respect to what work was done to the ceiling, whether the ducting would be run inside or outside the walls, etc., there is an issue of fact as to whether plaintiff's activities are properly characterized as alteration under §240(1) and therefore as construction under § 241(6). See, *Panek v. County of Albany*, 99 NY2d 452, 457 (2003); *Nagel v. D & R Realty Corp.*, 99 NY2d 98, 103 (2002).

Defendants' further contend that they had no knowledge of the work that was done without the owners' consent. The lease between the owners and third party defendant Chroma Copy International provides that all alterations of any kind require the prior written approval of the landlord. Defendant owner's general partner affirmed that no one affiliated with the building ever authorized installation of the air conditioner and that no one was aware of plaintiff, his company or his accident until suit was brought two years later. The question is thus raised as to whether plaintiff was an employee for purposes of Labor Law §240(1) and §241(6).

In order to avail himself of the protections afforded employees under the Labor Law, a plaintiff must demonstrate that he was hired by someone, be it the owner, contractor or their agent." *Abbate v. Lancaster Studio Assoc.*, 3 NY3d 46, 51 (2004). Cases imposing Labor Law §240(1) liability on an out of possession owner all have in common "some nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest." *Abbate*, *supra* at 51.

Here, plaintiff was hired to work without defendants' knowledge and in direct violation of the lease. Under the circumstances, defendants cannot be charged with the duty of providing

proper equipment or safe working conditions for workers of whom they are unaware. *Morton v. State of New York*, __ AD3d__ (2d Dept. 2004); 2004 NY App. Div. LEXIS 15575. Defendants' motion for summary judgment dismissing the complaint as to Consolidated Investing Company Inc. And Consolidated Investing Company is therefore granted and the plaintiffs' cross motion denied. In light of this ruling, the court has not considered movants' application for indemnification.

For the foregoing reasons, it is

ORDERED that defendants' motion for summary judgment is granted and the complaint together with all cross claims and counterclaims against them is hereby severed and dismissed as against defendants Consolidated Investing Company, Inc and Consolidated Investing Company, and it is further

ORDERED that the Clerk is directed to enter judgment in favor of said defendants, and it is further

ORDERED that the remainder of the action shall continue.

Dated February 22, 2005
New York, N. Y.

ENTER:

FILED
FEB 28 2005
COUNTY OF YORK
Saralee Evans
Saralee Evans, JSC
CLERK'S OFFICE

HON. SARALEE EVANS