

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

245

CA 14-01126

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ.

JEFFERY BURNS, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

LECESSE CONSTRUCTION SERVICES LLC, DUKES
PROPERTY DEVELOPMENT, LLC, THE MILLS HIGH
FALLS HOUSING DEVELOPMENT FUND COMPANY, INC.,
U.S. CEILING CORP., URBAN LEAGUE OF
ROCHESTER, NY, INC., DEFENDANTS-APPELLANTS,
AND PRO CARPET, INC., DEFENDANT.

PRO CARPET, INC., THIRD-PARTY
PLAINTIFF-APPELLANT,

V

JEFFERY W. BURNS, DOING BUSINESS AS BURNS FLOORING,
THIRD-PARTY DEFENDANT-RESPONDENT.
(APPEAL NO. 2.)

BURDEN, GULISANO & HICKEY, LLC, BUFFALO (PHILIP M. GULISANO OF
COUNSEL), FOR DEFENDANTS-APPELLANTS LECESSE CONSTRUCTION SERVICES LLC,
THE MILLS HIGH FALLS HOUSING DEVELOPMENT FUND COMPANY, INC. AND URBAN
LEAGUE OF ROCHESTER, NY, INC.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, ROCHESTER (MATTHEW
A. LENHARD OF COUNSEL), FOR DEFENDANT-APPELLANT DUKES PROPERTY
DEVELOPMENT, LLC.

LIPPMAN O'CONNOR, BUFFALO (ROBERT H. FLYNN OF COUNSEL), FOR
DEFENDANT-APPELLANT U.S. CEILING CORP.

GOERGEN, MANSON & MCCARTHY, BUFFALO (KELLY J. PHILIPS OF COUNSEL), FOR
THIRD-PARTY PLAINTIFF-APPELLANT.

TREVETT CRISTO SALZER & ANDOLINA, P.C., ROCHESTER (DANIEL P. DEBOLT OF
COUNSEL), FOR THIRD-PARTY DEFENDANT-RESPONDENT.

CELLINO & BARNES, P.C., ROCHESTER (K. JOHN WRIGHT OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeals from an order of the Supreme Court, Monroe County (J.
Scott Odorisi, J.), entered May 30, 2014. The order, insofar as
appealed from, adhered to the prior order denying that part of the

motion of defendant Dukes Property Development, LLC, and that part of the cross motion of defendant U.S. Ceiling Corp., seeking summary judgment dismissing the Labor Law § 241 (6) claim against them.

It is hereby ORDERED that said appeals by defendants Lecesse Construction Services LLC, The Mills High Falls Housing Development Fund Company, Inc. and Urban League of Rochester, NY, Inc. and defendant-third-party plaintiff Pro Carpet, Inc. are unanimously dismissed without costs, and the order insofar as appealed from is reversed on the law without costs, those parts of the motion of defendant Dukes Property Development, LLC and the cross motion of defendant U.S. Ceiling Corp. with respect to the Labor Law § 241 (6) claim are granted, and that claim is dismissed against them.

Same memorandum as in *Burns v Lecesse Constr. Servs. LLC* ([appeal No. 1] ___ AD3d ___ [July 2, 2015]).

Entered: July 2, 2015

Frances E. Cafarell
Clerk of the Court