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[1] James Augustus Proctor, et al., Plaintiffs-Respondents v Alcoa, Inc., et al., Defendants, Andal Corp, etc., Defendant-Appellant.**

14153, 190040/13

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

2015 N.Y. App. Div. LEXIS 938; 2015 NY Slip Op 00970

February 5, 2015, Decided

February 5, 2015, Entered

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [*1] Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Armand Kalfayan of counsel), for appellant.

Early Lucarelli Sweeney Meisenkothen, New York (Kyle A. Shamberg, of counsel), for respondents.

JUDGES: Acosta, J.P., Renwick, Feinman, Clark, Kapnick, JJ.

OPINION

Order, Supreme Court, New York County (Sherry Klein Heitler, J.), entered July 1, 2014, which denied the motion of defendant Andal Corp. (Andal) for summary

judgment dismissing the complaint as against it, unanimously affirmed, without costs.

The record presents triable issues of fact as to whether Andal's alleged predecessors-in-interest performed certain construction work at the former World Trade Center site, and were responsible for plaintiff's exposure to asbestos at the site (*see generally Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012]*). Although plaintiff failed to identify any entity that used asbestos during the period that he worked at the site in 1970, he submitted sufficient evidence to raise a triable issue of fact as to whether Andal's alleged predecessors-in-interest were present during that period and used an asbestos product in the area in which plaintiff worked. We have considered Andal's remaining arguments, and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER [*2] OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 5, 2015