

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14082
X/cb

_____AD3d_____

Argued - January 30, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
ROBERT A. LIFSON, JJ.

2006-00194

DECISION & ORDER

Sebastian Maciejewski, et al., plaintiffs, v 975 Park Avenue Corporation, et al., defendants third-party plaintiffs-appellants; Roy E. Green, et al., third-party defendants-respondents.

(Index Nos. 260018/03 & 75399/04)

Flynn, Gibbons & Dowd, New York, N.Y. (Lawrence A. Doris of counsel), for defendants third-party plaintiffs-appellants.

Hoey, King, Toker & Epstein, New York, N.Y. (Danielle M. Regan and David P. Feehan of counsel), for third-party defendants-respondents.

In an action to recover damages for personal injuries, etc., the defendants third-party plaintiffs appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Knipel, J.), dated December 6, 2005, as granted the third-party defendants' motion for summary judgment dismissing the third-party complaint and denied that branch of their cross motion which was for summary judgment on the third-party complaint.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The third-party defendants, Roy E. Green and Harriet Green, resided in, and were proprietary lessees of, a single-family cooperative apartment in a building owned by the defendant third-party plaintiff 975 Park Avenue Corporation (hereinafter 975 Park Avenue) and managed by the defendant third-party plaintiff Charles H. Greenthal Management Corp. (hereinafter Greenthal Management). The third-party defendants hired Ziggy's Painting Company to perform certain

February 27, 2007

Page 1.

MACIEJEWSKI v 975 PARK AVENUE CORPORATION

painting services on the interior of their apartment. The injured plaintiff Sebastian Maciejewski (hereinafter Maciejewski) was employed by Ziggy's Painting Company and while working in the apartment he fell off a ladder and was injured. Thereafter, Maciejewski commenced this action against 975 Park Avenue and Greenthal Management alleging, inter alia, that they were liable for his injuries pursuant to Labor Law § 240(1). By third-party summons and complaint, 975 Park Avenue and Greenthal Management alleged that to the extent they were found liable for Maciejewski's injuries, the third-party defendants were liable to indemnify them.

The Supreme Court properly determined that the third-party defendants were entitled to summary judgment dismissing the third-party complaint. The third-party defendants established a prima facie entitlement to summary judgment by demonstrating, as a matter of law, that they were not negligent (*see Perri v Gilbert Johnson Enters. Ltd.*, 14 AD3d 681, 684-85; *cf. Frank v Meadowlakes Dev. Corp.*, 6 NY3d 687, 691-93), and that they were exempt from liability under Labor Law § 240(1) because they came under the exception contained in that statute for the "owners of one and two-family dwellings who contract for but do not direct or control the work" (*see Xirakis v 1115 Fifth Ave. Corp.*, 226 AD2d 452, 453, quoting Labor Law § 240[1]). The third-party defendants also demonstrated that there was no agreement in effect requiring them to indemnify 975 Park Avenue or Greenthal Management (*see Berenson v Jericho Water Dist.*, 33 AD3d 574; *see also Tonking v Port Auth. of N.Y. and N.J.*, 3 NY3d 486, 489-90). In opposition, 975 Park Avenue and Greenthal Management failed to raise a triable issue of fact.

MILLER, J.P., SPOLZINO, RITTER and LIFSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court