

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

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Submitted - October 4, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-07808

DECISION & ORDER

Benzion Miller, et al., respondents, v Yeshiva
Zichron Mayir Gedola, et al., defendants, Dynamic
Air Flow Mechanical Corp., appellant.

(Index No. 13793/03)

Brody, Benard & Branch, LLP, New York, N.Y. (Mary Ellen O'Brien of counsel),
for appellant.

Kelner and Kelner, New York, N.Y. (Gail S. Kelner of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Dynamic Air Flow Mechanical Corp. appeals from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated June 26, 2006, as granted that branch of the plaintiffs' cross motion which was for summary judgment on the issue of liability on their Labor Law § 240(1) cause of action and denied its motion for summary judgment dismissing the causes of action to recover damages based on Labor Law §§ 240(1), 241(6), and § 200 and common-law negligence.

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

A subcontractor will be held liable under Labor Law § 240(1) where it has become an agent of the owner or general contractor (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318; *Stevenson v Alfredo*, 277 AD2d 218, 220). Here, the plaintiffs established their prima facie entitlement to summary judgment on their Labor Law § 240(1) cause of action by demonstrating, inter alia, that the appellant, Dynamic Air Flow Mechanical Corp. (hereinafter Dynamic), had the authority to supervise and control the work which gave rise to the injured plaintiff's injuries, and thus

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was a statutory agent of the owner or general contractor (*see Stevenson v Alfredo*, 277 AD2d 218, 220; *Sog v G.S.E. Dynamics*, 239 AD2d 489, 491; *McGlynn v Brooklyn Hosp.-Caledonian Hosp.*, 209 AD2d 486). In opposition, Dynamic failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted that branch of the plaintiffs' cross motion which was for summary judgment on their Labor Law § 240(1) cause of action.

Dynamic's remaining contentions are without merit.

RIVERA, J.P., KRAUSMAN, FLORIO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court