

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

D25251
W/prt

_____AD3d_____

Argued - October 29, 2009

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2007-08997

DECISION & ORDER

Adam Enos, appellant, v Werlatone, Inc., et al.,
defendants, Glenn Werlau, et al., respondents.

(Index No. 1258/06)

Litman & Litman, P.C., East Williston, N.Y. (Jeffrey E. Litman of counsel), for
appellant.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated August 17, 2007, as granted that branch of the motion of the defendants Glenn Werlau and Christel Werlau which was for leave to reargue that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them, which had been determined in an order dated May 2, 2007, and, upon reargument, in effect, vacated the determination in the order dated May 2, 2007, denying that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them, and thereupon granted that branch of the motion.

ORDERED that the order dated August 17, 2007, is affirmed insofar as appealed from, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly granted reargument and, upon reargument, properly granted that branch of the motion of the defendants Glenn Werlau and Christel Werlau which was for summary judgment dismissing the complaint insofar as asserted

December 1, 2009

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against them, which alleged causes of action sounding in common-law negligence and violations of Labor Law § 200. These defendants established their prima facie entitlement to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325). The evidence demonstrated that the plaintiff's accident allegedly arose from the means and methods of the work performed, that the work was directed and controlled exclusively by the defendant Michael Werlau, and that the defendants Glenn Werlau and Christel Werlau did not have authority to exercise any supervisory control over the work, that is, they did not “bear[] the responsibility for the manner in which the work [was] performed” (*Ortega v Puccia*, 57 AD3d 54, 62; see *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877; *Lombardi v Stout*, 80 NY2d 290, 295; *Kwang Ho Kim v D&W Shin Realty Corp.*, 47 AD3d 616, 620; *Ragone v Spring Scaffolding, Inc.*, 46 AD3d 652, 655; *Peay v New York City School Constr. Auth.*, 35 AD3d 566, 567; *Locicero v Princeton Restoration, Inc.*, 25 AD3d 664, 666). In opposition to the motion, the plaintiff failed to present evidence sufficient to raise a triable issue of fact, since a mere showing that Glenn Werlau or Christel Werlau had general supervisory authority over the project is not sufficient for this purpose (see *Enriquez v B & D Dev., Inc.*, 63 AD3d 780, 781; *Ortega v Puccia*, 57 AD3d at 62; *Mas v Kohen*, 283 AD2d 616; *Braun v Fischbach & Moore*, 280 AD2d 506; *Loiacono v Lehrer McGovern Bovis*, 270 AD2d 464, 465).

RIVERA, J.P., DICKERSON, HALL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court