

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

D30297
O/ct

_____AD3d_____

Argued - February 14, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2010-02199

DECISION & ORDER

Lincoln Hernandez Florez, etc., appellant, v Michael Conlon, et al., defendants, Chris Schlesinger, et al., respondents.

(Index No. 6551/08)

Roura & Melamed (Alexander J. Wulwick, New York, N.Y., of counsel), for appellant.

Brill & Associates, P.C., New York, N.Y. (Corey M. Reichardt 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, Queens County (Elliot, J.), dated January 29, 2010, as granted that branch of the cross motion of the defendants Chris Schlesinger and Schlesinger Development, LLC, which was for summary judgment dismissing the complaint insofar as asserted against them.

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

The plaintiff allegedly was injured when he fell from a ladder while engaged in asbestos removal work on a single-family home renovation project. The owner of the home contracted directly with the plaintiff's employer. The plaintiff commenced this action against, among others, the defendants Chris Schlesinger and Schlesinger Development, LLC (hereinafter together the defendants), the construction managers, alleging violations of Labor Law §§ 200, § 240 (1), and

March 8, 2011

FLOREZ v CONLON

Page 1.

241(6), and common-law negligence. The Supreme Court granted that branch of the defendants' cross motion which was for summary judgment dismissing the complaint insofar as asserted against them.

The defendants established their prima facie entitlement to judgment as a matter of law by showing that they did not have the requisite supervision and control over the asbestos removal work to be considered the home owner's statutory agent with respect to that aspect of the project (*see Delahaye v Saint Anns School*, 40 AD3d 679, 683-684; *Linkowski v City of New York*, 33 AD3d 971, 975). In opposition, the plaintiff failed to raise a triable issue of fact (*see Delahaye v Saint Anns School*, 40 AD3d at 683-684; *Linkowski v City of New York*, 33 AD3d at 975). Accordingly, the Supreme Court properly granted that branch of the defendants' cross motion which was for summary judgment dismissing the complaint insofar as asserted against them.

MASTRO, J.P., SKELOS, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court