

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

D33297  
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Argued - November 14, 2011

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2011-06034

DECISION & ORDER

German Pacheco, respondent, v Halstead  
Communications, Ltd., et al., defendants,  
Michael Marthaler, et al., appellants.

(Index No. 30885/09)

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Ryan Perrone & Hartlein, Mineola, N.Y. (Robin Mary Heaney and William T. Ryan  
of counsel), for appellants.

Harris Law Group, LLP, Rego Park, N.Y. (Carole R. Moskowitz of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendants Michael  
Marthaler and Debra Marthaler appeal from an order of the Supreme Court, Queens County  
(McDonald, J.), entered April 22, 2010, which denied, as premature, their motion for summary  
judgment dismissing the complaint and all cross claims insofar as asserted against them.

ORDERED that the order is reversed, on the law, with costs, and the motion of the  
defendants Michael Marthaler and Debra Marthaler for summary judgment dismissing the complaint  
and all cross claims insofar as asserted against them is granted.

The defendants Michael Marthaler and Debra Marthaler (hereinafter together the  
appellants), are the owners of real property, improved by a single-family home, located in Mohegan  
Lake. On November 28, 2007, the plaintiff, an employee of the defendants Halstead  
Communications, Ltd. (hereinafter Halstead), and Mobilpro Installation Services, LLC (hereinafter  
Mobilpro), fell from a ladder while installing a satellite dish on the appellants' home. He  
commenced this action alleging, inter alia, violations of Labor Law §§ 200, 240(1), and 241(6), and  
common-law negligence. The Supreme Court denied, as premature, the appellants' motion for

December 20, 2011

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summary judgment dismissing the complaint and all cross claims insofar as asserted against them. We reverse.

The appellants made a prima facie showing of entitlement to judgment as a matter of law dismissing the causes of action alleging violations of Labor Law §§ 240(1) and 241(6) insofar as asserted against them by demonstrating that they were the owners of a one- or two-family dwelling who contracted for but did not direct or control the work that allegedly caused the plaintiff's injuries (*see* Labor Law §§ 240[1], 241[6]; *Gittins v Barbaria Constr. Corp.*, 74 AD3d 744; *Parnell v Mareddy*, 69 AD3d 915). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the appellants directed or controlled the work (*see Duncan v Perry*, 307 AD2d 249, 250). Furthermore, in opposition to the appellants' showing, the plaintiff failed to raise a triable issue of fact as to whether the appellants' dwelling was not a one- or two-family dwelling or that it was used for a commercial purpose (*see Ramirez v Begum*, 35 AD3d 578, 578-579; *Small v Gutleber*, 299 AD2d 536, 537).

The appellants also made a prima facie showing of their entitlement to judgment as a matter of law dismissing the common-law negligence and Labor Law § 200 causes of action by demonstrating that they did not have authority to exercise supervisory control over the plaintiff (*see Chowdhury v Rodriguez*, 57 AD3d 121). In opposition, the plaintiff failed to raise a triable issue of fact (*see Ortega v Puccia*, 57 AD3d 54, 62-63; *Ferrero v Best Modular Homes, Inc.*, 33 AD3d 847, 851).

Moreover, there was no reason to delay the determination of the motion pending completion of discovery since the plaintiff failed to demonstrate that such discovery was necessary to oppose the motion or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the appellants (*see Espada v City of New York*, 74 AD3d 1276; *Hill v Ackall*, 71 AD3d 829; *Boadnaraine v City of New York*, 68 AD3d 1032). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion (*see Pina v Merolla*, 34 AD3d 663).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

Accordingly, the appellants' motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them should have been granted.

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court