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

D33517
O/kmb

_____AD3d_____ Argued - December 12, 2011

DANIEL D. ANGIOLILLO, J.P.
PLUMMER E. LOTT
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-09605 DECISION & ORDER

Sonia Areli Amaya Serrano, et al., appellants,
v Sophia Popovic, etc., defendant third-party
plaintiff-respondent, Pami Construction Corp.,
defendant-respondent, et al., defendant; Baschnagel
Brothers, Inc., third-party defendant-respondent.

(Index No. 11691/07)

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Mark R. Bernstein of counsel), for appellants.

Perez & Varvaro, Uniondale, N.Y. (Joseph Varvaro of counsel), for defendant third-party plaintiff-respondent.

Farber, Brocks & Zane, LLP, Mineola, N.Y. (William S. Brocks and Tracy L. Frankel of counsel), for defendant-respondent.

Gregory J. Allen, New York, N.Y. (Linda A. Stark of counsel), for third-party defendant-respondent.

In an action to recover damages for personal injuries and wrongful death, the plaintiffs appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Queens County (Rosengarten, J.), entered August 19, 2010, as, upon an order of the same court dated June 24, 2010, denying their motion for summary judgment on the issue of liability against the defendant Pami Construction Corp. and granting those branches of the motion of the defendant Pami Construction Corp., and the separate motion of the defendant Sophia Popovic, individually and as executor of the estate of Jacob Popovic, which were for summary judgment dismissing the complaint insofar as asserted against each of them, is in favor of those defendants and against the plaintiff, dismissing the complaint insofar as asserted against them.

ORDERED that the judgment is affirmed insofar as appealed from, with one bill of costs.

On February 21, 2007, during the construction of a single-family house and attached garage owned by Sophia Popovic and Jacob Popovic (hereinafter together the Popovics), the plaintiffs' decedent fell from the roof of the house. The plaintiffs subsequently commenced this action against, among others, Sophia Popovic, individually and as executor of the estate of Jacob Popovic, and Pami Construction Corp. (hereinafter Pami), the construction manager hired by the Popovics, to recover damages for personal injuries and wrongful death, alleging causes of action sounding in common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6).

The Supreme Court properly granted that branch of the motion of Sophia Popovic, individually and as executor of the estate of Jacob Popovic, which was for summary judgment dismissing the complaint insofar as asserted against her. With respect to the causes of action alleging violations of Labor Law §§ 240(1) and 241(6), Sophia Popovic made a prima facie showing that the work was performed at a one-family dwelling and that the Popovics did not direct or control the work (*see Rodriguez v Gany*, 82 AD3d 863, 864-865; *Chowdhury v Rodriguez*, 57 AD3d 121, 126). With respect to the causes of action alleging common-law negligence and a violation of Labor Law § 200, Sophia Popovic made a prima facie showing that the Popovics did not have the authority to supervise or control the decedent's work (*see Ferreira v City of New York*, 85 AD3d 1103, 1106; *Ortega v Puccia*, 57 AD3d 54, 61-63). In opposition, the plaintiffs failed to raise a triable issue of fact.

The Supreme Court also properly granted that branch of Pami's motion which was for summary judgment dismissing the complaint insofar as asserted against it. The evidence submitted by Pami showed that, prior to the date of the accident, safety equipment, including planks and brackets, had been removed from the main roof of the house and placed on the roof of the garage in anticipation of the completion of the installation of the garage roof. The evidence also showed that, on the date of the accident, the decedent was instructed to work only on the garage roof, and was not instructed to do any work on the main roof. Under the circumstances of this case, Pami established, as a matter of law, that the decedent's decision to climb onto the roof of the main house, where there was no safety equipment, was the sole proximate cause of his injuries (*see Robinson v E. Med. Ctr., LP*, 6 NY3d 550, 554-555; *Montgomery v Fed. Express Corp.*, 4 NY3d 805, 806; *Capellan v King Wire Co.*, 19 AD3d 530, 532; *Misirlakis v East Coast Entertainment Props.*, 297 AD2d 312, 312-313). In opposition, the plaintiffs failed to raise a triable issue of fact.

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

ANGIOLILLO, J.P., LOTT, AUSTIN and COHEN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court