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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOHN A. MILANO IA Part 3
Justice

MARIO GRANADOS, X
: Index
: Number 10373 1995
: Plaintiff, :
: - against - :
: ANTHONY CAMPO and ANGELA CAMPO, :
: Motion
: Date May 9, 2000
: Defendants. :
: Motion
: Cal. Number 49
: X

ANGELA CAMPO, :
: Third-Party Plaintiff, :
: - against - :
: LAWRENCE BRICK MASON, :
: Third-Party Defendant. :
: X

ANTHONY CAMPO, :
: Second Third-Party Plaintiff, :
: - against - :
: LAWRENCE BRICK MASON CORP., :
: Second Third-Party Defendant. :
: X

MARIO GRANADOS, :
: Plaintiff, :
: - against - :
: ANTHONY CAMPO, ANGELA CAMPO, ARCHWOOD :
: ESTATES, INC., and CAMPO ESTATES INC., :
: Defendants. :
: Index
: Number 4638 1997
: X

MARIO GRANADOS, :
: Plaintiff, :
: - against - :
: ANTHONY CAMPO, ANGELA CAMPO, CAMPO :
: ESTATES, INC., ARCHWOOD ESTATES, INC. :
: and LA TER CONTRACTING, INC., :
: Defendants. :
: Index
: Number 16180 1997
: X

The following papers numbered 1 to 24 read on this motion by plaintiff for summary judgment on the issue of liability on his Labor Law §§ 240 and 241(6) claims against defendants Anthony Campo, Archwood Estates, Inc. and Campo Estates, Inc., cross motion by defendant La Ter Contracting, Inc. (hereinafter "La Ter") for summary judgment dismissing plaintiff's complaint as asserted against it under Index No. 16180/97 and all cross claims and cross motion by second third-party defendant Lawrence Brick Mason Corp. (hereinafter "Lawrence Brick") for summary judgment dismissing Anthony Campo's second third-party complaint.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-5
Notice of Cross Motion - Affidavits - Exhibits ...	6-13
Answering Affidavits - Exhibits	14-18
Reply Affidavits	19-24

Upon the foregoing papers it is ordered that the motion and cross motions are determined as follows:

Plaintiff claims to have been injured when he fell through an opening on the second floor of a one-family dwelling that was under construction for the purpose of Anthony Campo's private use. Anthony Campo was the owner of the property and the president of defendant Archwood Estates, Inc. Defendant La Ter was hired to perform the carpentry work and, at the time of the accident, had essentially completed framing and sheathing the house, which included preparing the window and door openings. After these openings on the second floor were created, it is apparent that certain wood beams were nailed across the openings to prevent persons from falling out of the openings to the ground below. There is conflicting evidence as to whether La Ter installed the barriers or whether Anthony Campo did it himself.

On October 26, 1994, plaintiff was working as a laborer for Lawrence Brick, which was hired to construct three chimneys on the premises. He claims that while retrieving cement with a shovel from a hi-lo machine through one of the openings on the second floor, he leaned against the protective beam and it gave way, causing him to fall to the ground below. However, the witness for Lawrence Brick testified at his deposition that masonry work had not yet begun on the second floor at the time of the accident and that plaintiff was merely instructed to clean up the wood scraps on the second floor. In addition, certain witnesses testified that the hi-lo machine was not located near the scene of the alleged accident. Further, Anthony Campo has testified that, immediately after the accident, he observed all protective beams were still

intact on the second floor. Finally, inexplicably, plaintiff's bill of particulars to La Ter indicates that the accident involved the use of a scaffold.

Plaintiff seeks summary judgment against defendants Archwood Estates, Inc., Campo Estates, Inc. and Anthony Campo on his claims pursuant to Labor Law §§ 240 and 241(6). At the outset, with respect to Archwood Estates, Inc. and Campo Estates, Inc., plaintiff has failed to establish that they entered into any contract for the construction of the home and accordingly, summary judgment with respect to said defendants is denied. Defendant Anthony Campo, as the owner of a one-family dwelling who contracted for the construction may only be held liable pursuant to Labor Law §§ 240 and 241(6) if he directed or controlled the work. (See, Jonchuk v Weafer, 199 AD2d 591.) "In analyzing whether a homeowner's actions amount to direction or control of a project, the relevant inquiry is the degree to which the owner supervised the method and manner of the work." (Jonchuk v Weafer, supra, at 592.) The defendant's conduct must amount to something more than the typical concerns of any homeowner. (See, Douglas v Beckstein, 210 AD2d 680.) Even where the homeowner is on the jobsite nearly every day, instructs the worker as to the tasks to be performed and inspects the work, such conduct is insufficient to impose liability under Labor Law §§ 240 and 241(6). (See, Douglas v Beckstein, supra; Valentia v Giusto, 182 AD2d 987.) Here, plaintiff alleges that Anthony Campo spoke with the La Ter foreman regarding the manner in which they were framing the building, helped schedule when La Ter employees would work, ordered the materials Lawrence Brick needed for their work, arranged for their delivery and made sure the work was done properly. These allegations are insufficient to rise to the degree of direction or control contemplated by the relevant statutes. Since plaintiff has failed to establish a prima facie entitlement to judgment, his motion for summary judgment is denied.

The motion must also be denied on other grounds. This case involves an unwitnessed accident and the record before the court raises issues as to plaintiff's credibility. Accordingly, summary judgment would be inappropriate. (See, Klein v City of New York, 89 NY2d 833.) Additionally, with respect to the Labor Law § 241(6) claim, there are issues of fact as to plaintiff's comparative fault. (See, Long v Forest-Fehlhaber, 55 NY2d 154.)

La Ter's cross motion for summary judgment is granted solely to the extent that plaintiff's Labor Law § 200, 240 and 241(6) claims against it are dismissed. Liability pursuant to Labor Law §§ 240 and 241(6) is imposed only upon "contractors and owners and their agents." That term has come to be limited to general contractors and owners and their agents, or those who have been given the authority to supervise and control the work being performed at the time of the injury. (See, Russin v Lewis N. Picciano & Son, 54 NY2d 311; Hojohn v Beltrone Constr. Co.,

255 AD2d 658.) La Ter has established that it was not a general contractor and did not have the authority to supervise or control plaintiff's work. Additionally, for these same reasons, it had no duty to provide a safe workplace pursuant to Labor Law § 200. (See, D'Amico v New York Racing Assn., 203 AD2d 509.) However, with respect to plaintiff's common-law negligence claim and the cross claims, issues of fact exist at least as to whether La Ter may have negligently created a dangerous condition which contributed to the alleged accident.

The cross motion by Lawrence Brick for summary judgment is denied. Given the fact that numerous issues exist as to the manner in which the alleged accident occurred, a finding that Lawrence Brick was free from negligence as a matter of law would be improper.

Dated: September 6, 2000

Justice John A. Milano