

This opinion is uncorrected and subject to revision in the Official Reports. This opinion is not available for publication in any official or unofficial reports, except the New York Law Journal, without approval of the State Reporter or the Committee on Opinions (22 NYCRR 7300.1)

proximate cause of the fire. In addition, while the general rule is that an employer who hires an independent contractor is not liable for the independent contractor's negligent acts, there are exceptions to this rule. (Kleeman v Rheingold, 81 NY2d 270; Rosenberg v Equitable Life Assur. Soc. of U.S., 79 NY2d 663.) Exceptions to the rule are based upon public policy concerns and generally recognized ones include instances in which an employer's duty is held to be nondelegable, as well as situations where the employer is under a statutory duty to control the work or where the work involves a special danger which is inherent in the work. (See, Kleeman v Rheingold, supra; Rosenberg v Equitable Life Assur. Soc. of U.S., supra.) On the papers presented, it cannot be said as a matter of law that none of these exceptions is applicable to permit the imposition of liability upon defendants for any negligence on the part of Tashkent. Whether the work for which the independent contractor was employed is inherently dangerous is normally a question of fact for the jury. (Rosenberg v Equitable Life Assur. Soc. of U.S., supra.) Furthermore, defendants' nondelegable duty under Multiple Dwelling Law § 78 to maintain the premises in good repair (see, Mas v Two Bridges Assocs., 75 NY2d 680, 687) could render them vicariously liable for any negligence on the part of Tashkent in repairing the roof. (See, Dowling v 257 Assocs., 235 AD2d 293; see also, Rosenberg v Equitable Life Assur. Soc. of U.S., supra; cf., Mercado v Slope Assocs., 246 AD2d 581.) Nor have defendants refuted plaintiffs' allegation that defendants were statutorily obligated to control the roof repair work.

Moreover, on the current record, it cannot be determined as a matter of law that defendants are not liable to plaintiffs for their own alleged acts of negligence including, without limitation, negligence in the hiring or supervision of Tashkent. (See, Kleeman v Rheingold, supra, at 274, n 1.) Accordingly, summary judgment dismissing the complaint is precluded.

Although a party which is held vicariously liable for the negligent acts of another is entitled to indemnification from the party wholly at fault (Chapel v Mitchell, 84 NY2d 345), a summary determination as to any portion of defendants' third-party claim against Tashkent for common-law indemnification is not available at this time since, as noted above, the record does not establish, as a matter of law, that Tashkent was wholly responsible for the accident or that defendants' liability to plaintiffs, if any, is only vicarious. (See, Guzman v Haven Plaza Hous. Dev. Fund Co., 69 NY2d 559, 567-569; Schroeder v Centro Pariso Tropical, 233 AD2d 314; Teplani v Joma Holdings, Inc., 220 AD2d 407.)

Dated: March 23, 2001

J.S.C.