

Eide v Steuerwald
2012 NY Slip Op 30229(U)
January 13, 2012
Sup Ct, Suffolk County
Docket Number: 09-14926
Judge: Denise F. Molia
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SHORT FORM ORDER

COPYINDEX No. 09-14926
CAL No. 11-01028OTSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY**PRESENT:**Hon. DENISE F. MOLIA
Justice of the Supreme CourtMOTION DATE 8-5-11 (#002)
MOTION DATE 10-11-11 (#003)
MOTION DATE 9-30-11 (#004)
MOTION DATE 10-14-11 (#005)
ADJ. DATE 10-14-11
Mot. Seq. # 002 - MD
003 - MD
004 - XMG; CASEDISP
005 - MD-----X
LEE EIDE and JEANANN EIDE,

Plaintiffs,

- against -

CHARLES STEUERWALD a/k/a CHARLES E.
STEUERWALD and DAWN M.
STEUERWALD,Defendants.
-----XCHARLES STEUERWALD a/k/a CHARLES E.
STEUERWALD and DAWN M.
STEUERWALD,

Third-Party Plaintiffs,

- against -

DARREN MOORE CONTRACTING CORP.,

Third-Party Defendant.
-----XPALERMO, PALERMO & TUOHY, P.C.
Attorney for Plaintiffs
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Upon the following papers numbered 1 to 57 read on these motions and cross motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-15; 16-22; 23-24; Notice of Cross Motion and supporting papers 25-36; Answering Affidavits and supporting papers 37-53; 54-55; Replying Affidavits and supporting papers 56-57; Other defendant's memorandum of law, (and after hearing counsel in support and opposed to the motion) it is,

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ORDERED that the motions (002, 005) by plaintiffs Lee Eide and Jeanann Eide, the cross motion (003) by defendants/third-party plaintiffs Charles Steuerwald and Dawn Steuerwald, and the motion (004) by third-party defendant Darren Moore Contracting Corp. are consolidated for purposes of this determination; and it is

ORDERED that the motions by plaintiffs Lee Eide and Jeanann Eide for partial summary judgment on the issue of liability on their complaint are denied; and it is

ORDERED that the cross motion by defendants/third-party plaintiffs Charles Steuerwald and Dawn Steuerwald for summary judgment dismissing plaintiffs' complaint is granted; and it is

ORDERED that the motion by third-party defendant Darren Moore Contracting Corp. for summary judgment dismissing the complaint against it is denied, as academic.

Plaintiff Lee Eide commenced this action to recover damages pursuant to Labor Law §§ 200, 240 (1), and 241(6) for personal injuries he allegedly sustained on September 15, 2008 while working at a construction site of a new home located at 232 Silas Carter Road, Manorville, New York. At the time of the accident plaintiff was an employee of Darren Moore Contracting Corp. ("DCM"), a subcontractor hired by defendants Charles Steuerwald and Dawn Steuerwald to frame the new premises. Plaintiff allegedly was injured when he fell from the second floor of the premises onto a pile of wood debris while trimming a loose piece of plywood sub-flooring. By way of his complaint, plaintiff alleges causes of action against the defendants for common law negligence, premises liability, and violations of Labor Law §§ 200, 240 (1), and 241(6). The complaint also asserts a claim by plaintiff's wife, Jeanann Eide, for loss of consortium and reimbursement of medical expenses. On November 12, 2009, the Steuerwalds commenced a third-party action against DCM alleging causes of action for common law and contractual indemnification, contribution, and breach of contract based upon DCM's alleged failure to obtain liability insurance naming the Steuerwalds as additional insureds.

Plaintiffs now move for partial summary judgment on the issue of liability on the grounds Charles Steuerwald directed and controlled his work, that the Steuerwalds failed to provide him with any safety devices designed to prevent him from falling, and that the Steuerwalds were engaged in the construction of the premises for commercial purposes and, therefore, are not exempt under the single family home exception of the Labor Law. The Steuerwalds oppose plaintiffs' motion and cross-move for summary judgment dismissing the complaint. The Steuerwalds argue that they are exempted from liability, as they constructed the single family home for their own residential use, and neither controlled nor directed plaintiff's work at the time of his accident. The Steuerwalds further assert that they did not create nor have actual or constructive notice of the alleged defective condition. Alternatively, the Steuerwalds request that they be granted partial summary judgment on the issue of liability on their third-party claims against DCM. DCM opposes plaintiff's motion on similar grounds and moves for summary judgment dismissing the third-party complaint against it. Plaintiffs submitted an additional motion (005) requesting the identical relief contained in their initial moving papers.

At his examination before trial, plaintiff Lee Eide testified that he started work at the subject premises on September 12, 2008, and that from then onward his work was directed by DCM's supervisor, Darren Moore. He testified that Charles Steuerwald also was at the construction site, and that Darren Moore informed him that Steuerwald was "in charge of th[e] project." He testified that while Charles Steuerwald did not specifically direct his work, he witnessed him, among other things, questioning Darren Moore about the type of lumber used at the work site. He testified that he observed Mr. Steuerwald looking over the project and tossing chunks of wood into a compact Bobcat tractor at the site. He further testified that he overheard Mr. Steuerwald tell his supervisor that he wanted a wider stairwell to the basement of the premises, and that a fellow worker informed him that Mr. Steuerwald had requested that a window be moved and centered in the hallway. Plaintiff testified that on the day of the accident he was installing floor joists and sub-flooring on the second floor of the building. He testified that this task entailed gluing and nailing the sub-flooring to the joists, and then cutting away any excess sub-flooring that overhung the joists at the end of the building. He testified that his accident occurred as he was preparing to cut away excess sub-flooring on the overhanging front gable corner of the house, when the plywood on which he was kneeling suddenly gave way and caused him to fall. He testified that he did not observe any missing tacks or nails on the area of the sub-flooring prior to his accident, and that he could not see or measure how much of the sub-flooring overhung the end of the building while he was kneeling on its surface. Plaintiff testified that Mr. Steuerwald was not on the premises at the time of the accident, and that he did not know he was the owner of the premises until after the accident occurred. Plaintiff further testified that he received Workers Compensation Benefits as a result of the accident.

At an examination before trial, defendant Charles Steuerwald testified that the subject premises was meant to be a single family home for residential use by himself and his family. He explained that he and his wife purchased the land from his father and planned to relocate to the premises upon its completion. He testified that he consulted an architectural firm to draft the plan for the premises, and that he filed the building permit and hired all the necessary contractors needed to complete the project himself. He testified that they were all independent contractors, and that he visited the construction site at the end of each day for 15 or 20 minutes to check on the progress of their work. Steuerwald testified that he did not control or direct the work of the contractors, and that he required each of them to sign a "hold-harmless agreement" he obtained from his attorney. He further testified that he did not coordinate the contractors, as they worked on the construction site at different times, with each contractor performing their work after the previous one ended. Steuerwald testified that he constructed his current home and another residence located in Westhampton in the same manner. He testified that the construction of the premises in Westhampton was a business venture between himself, his father and an investor, and that upon its completion he leased the property to another family, as they could not get the property sold. He testified that during the construction phase of the Westhampton property the responsibility of hiring the contractors to build the home fell to he and his father, and that he hired some of those same contractors to aid in the construction of the subject premises. Steuerwald testified that he gave the architectural plans to DCM's supervisor with the agreement that they would perform their work according to those specifications. He testified that he followed DCM's progress, but that he did not personally supervise their work, as he only visited the construction site in the evenings. He testified that while the contractors were responsible for cleaning up debris from their own work, he did occasionally

cleaned up around the premises. He also testified that the Bobcat at the worksite was owned by his father, who lived next door to the premises, and that his father had used the Bobcat to do some minor excavation on the property.

At an examination before trial, DCM's principal, Darren Moore, testified that Mr. Steuerwald did not control or direct DCM's work, and that on the few occasions they spoke at the worksite he would inquire about the progress of their work. He testified that Mr. Steuerwald provided him with a copy of architectural drawings and requested that he performed his work according to those specifications. He further testified that, with the exception of questions concerning the cost to widen a stairwell and relocate a window, he did not recall Mr. Steuerwald talking to him about DCM's work.

Initially, the Court notes that plaintiffs' motion, designated as sequence 005, is denied, as it contains none of the pleadings served in the action (*see* CPLR 3212 [b]; *Wider v Heller*, 24 AD3d 433, 805 NYS2d 130 [2d Dept 2005]; *Gallagher v TDS Telecom*, 280 AD2d 991, 720 NYS2d 422 [4th Dept 2001]; *Mathiesen v Mead*, 168 AD2d 736, 563 NYS2d 887 [3d Dept 1990]). Moreover, the purported motion seeks the identical relief requested in plaintiffs' initial motion, and appears to be an improperly labeled reply to the cross motion by defendants/third-party plaintiffs Charles Steuerwald and Dawn Steuerwald.

It is well settled that an owner of a one or two family dwelling is subject to liability under Labor Law § 240 (1) or § 241 (6) only if he directed or controlled the work being performed (*see Duarte v East Hills Constr. Corp.*, 274 AD2d 493, 711 NYS2d 182 [2d Dept 2000]; *Rodas v Weissberg*, 261 AD2d 465, 690 N.Y.S.2d 116 [2d Dept 1999]). The phrase "direct or control" is construed strictly and refers to the situation where the "owner supervises the method and manner of the work" (*Rimoldi v Schanzer*, 147 AD2d 541, 545, 537 NYS2d 839 [2d Dept 1989]; *see also Duda v Rouse Constr. Corp.*, 32 NY2d 405, 345 NYS2d 524 [1973]; *Mayen v Kalter*, 282 AD2d 508, 508-509, 722 NYS2d 760 [2d Dept 2001]). "Instructions about aesthetic design matters, or retention of the limited power of general supervision, do not constitute 'direction' or 'control' as those terms are used in [Labor Law] 240" (*Decavallas v Pappantoniou*, 300 AD2d 617, 618, 752 NYS2d 712 [2d Dept 2002]). Indeed, "[a] homeowners involvement in these areas reflects typical homeowner interest in the ongoing progress of the work and does not constitute the kind of direction or control necessary to overcome the homeowner's exemption from liability" (*Chowdhury v Rodriguez*, 57 AD3d 121, 128, 867 NYS2d 123 [2d Dept 2008]; *see also Bucklaew v Walters*, 75 AD3d 1140, 905 NYS2d 813 [4th Dept 2010]; *Snyder v Gnall*, 57 AD3d 1289, 870 NYS2d 562 [3d Dept 2008]).

Here, plaintiffs failed to establish, prima facie, their entitlement to partial summary judgment on the issue of liability on their claims under Labor Law §§ 240 (1) and 241(6) by demonstrating that the Steuerwalds exercised direction and control over the method and manner of the plaintiff's work, such that they were not entitled to the homeowner's exemption from liability (*see Bucklaew v Walters, supra; Chowdhury v Rodriguez, supra; Decavallas v Pappantoniou, supra*). Notwithstanding Mr. Steuerwald's previous involvement with an investment property in the Town of Westhampton, his personal participation in the construction of the subject premises, including acquiring the building permit, hiring the contractors and requesting they sign hold-harmless agreements, does not constitute the

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kind of direction or control necessary to overcome the homeowner's exemption from liability (*see Chowdhury v Rodriguez, supra; Decavallas v Pappantoniou, supra*), and is insufficient to deprive defendants of the defense (*see eg Snyder v Gnall, supra; see also Lang v Havlicek*, 272 AD2d 298, 707 NYS2d 642 [2d Dept 2000]).

Plaintiffs also failed to establish their prima facie entitlement to summary judgment on the issue of liability with respect to their claims under the common law and section 200 of the Labor Law. The protection provided by Labor Law §200 codifies the common-law duty of a landowner to provide employees a safe place to work (*see Jock v Fien*, 80 NY2d 965, 590 NYS2d 878 [1992]). It applies to owners, contractors, or their agents (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311, 445 NYS2d 127 [1981]), who exercise control or supervision over the work, or who created an allegedly dangerous condition or had actual or constructive notice of it (*see Lombardi v Stout*, 80 NY2d 290, 590 NYS2d 55 [1992]; *Yong Ju Kim v Herbert Constr. Co.*, 275 AD2d 709, 713 NYS2d 190 [2d Dept 2000]). Thus, where, as here, the alleged defect or dangerous condition arises from the subcontractor's own work, and the owner exercised no supervisory control over the method and manner of the work, no liability attaches to the owner under either the common law or Labor Law §200 (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877, 609 NYS2d 168 [1993]; *Mas v Kohen*, 283 AD2d 616, 725 NYS2d 90 [2d Dept 2001]). Inasmuch as plaintiffs failed to meet their prima facie burden on the motion, it is unnecessary to consider defendants' opposition and plaintiffs' motion for partial summary judgment on the issue of liability on their claims under Labor Law §§ 200, 240 (1), 241(6) and the common law is denied.

Conversely, the Steuerwalds, the owners of the subject one family dwelling, are entitled to summary judgment dismissing plaintiffs' claims based on Labor Law §§ 200, 240 (1), 241(6), and the common law, on the grounds they did not control plaintiff's work, and, therefore, are exempt from liability under the homeowner's exception provided in the statute (*see Bucklaew v Walters, supra; Chowdhury v Rodriguez, supra; Snyder v Gnall, supra*). Dismissal of these predicate claims also requires dismissal of the derivative cause of action by plaintiff Jeanann Eide for loss of consortium and reimbursement of medical expenses. In opposition, plaintiffs failed to raise any triable issues warranting denial of the motion (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]). Accordingly, the motion by defendants Charles Steuerwald and Dawn Steuerwald for summary judgment dismissing plaintiffs' complaint is granted. Furthermore, the motion by DCM for summary judgment dismissing the third-party complaint against it for common law and contractual indemnification, contribution, and breach of contract based upon its alleged failure to obtain liability insurance naming the Steuerwalds as additional insureds is denied, as academic.

Hon. Denise F. Molia

Dated: 1-13-12

J.S.C.

X FINAL DISPOSITION NON-FINAL DISPOSITION