Gilzynski v 784 Park Ave. Realty, Inc.
2017 NY Slip Op 30033(U)
January 9, 2017
Supreme Court, New York County
Docket Number: 156042/2012
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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PIOTR GILZYNSKI,

Plaintiff,

-against-

784 PARK AVENUE REALTY, INC., DOUGLAS ELLIMAN PROPERTY MANAGEMENT, ROBERT GOLDFEIN, VALERIE GOLDFEIN,

Defendants.

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DOUGLAS ELLIMAN PROPERTY MANAGEMENT

Third-Party Plaintiff,

-against-

NEW YORK FINE INTERIORS, INC., VALERIE GOLDFEIN, ROBERT GOLDFEIN,

Third-Party Defendants.

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DECISION & ORDER
Index No. 156042/2012

Motion Seq: 004

HON. ARLENE BLUTH.:

The motion by Robert Goldfein and Valerie Goldfein (collectively, "Goldfeins") for summary judgment dismissing plaintiff's claims against them is granted.

Background

This action arises out of injuries allegedly suffered by plaintiff while he was working at

the Goldfeins' apartment located at 784 Park Avenue, New York, NY on March 8, 2012. Plaintiff was working for NY Fine Interiors (a party which had never appeared and has a default judgment entered against it) at a construction project at the Goldfeins' cooperative apartment. Plaintiff was cutting a door frame at the apartment when he allegedly suffered his injuries.

The Goldfeins claim that plaintiff's Labor Law §§ 241(6) and 240(1) claims should be dismissed because the Goldfeins, cooperative shareholders of a single family residence, are exempt from liability under these Labor Law sections. The Goldfeins also claim that plaintiff's Labor Law § 200 claim should be dismissed because they did not supervise, direct or control plaintiff's work at the time of his accident.

In opposition, plaintiff claims that the Goldfeins directed and controlled plaintiff's work through their interior designer, Chris Maya. Plaintiff insists that the hiring of Maya demonstrates that the Goldfeins hired an agent for the purposes of directing and controlling the work performed at their apartment.

In reply, the Goldfeins insist that it is undisputed that the subject apartment was a single family residence. The Goldfeins claim that any liability that may be imputed to an agent or general contractor does not pass to the homeowner.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers

(*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York,* 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee,* 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Labor Law § 240(1) and § 241(6)

Labor Law § 240(1) provides that "All contractors and owners and their agents, except owners of one and two family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing . . . of a building or structure shall furnish or erect or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders . . . and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 241(6) requires that "All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places" (Labor Law § 241[6]). These

requirements do not apply to "owners of one and two-family dwellings who contract for but do not direct or control the work" (*id.*).

"Labor Law § 241(6) contains language identical to that contained in § 240(1) exempting from its application "'owners of one and two-family dwellings who contract for but do not direct or control the work'" (*Ortega v Puccia*, 57 AD3d 54, 60, 866 NYS2d 323 [2d Dept 2008] [internal quotations and citations omitted]).

These exemptions for homeowners were "intended by the Legislature to shield homeowners from the harsh consequences of strict liability under the provisions of the Labor Law, reflect the legislative determination that the typical homeowner is no better situated than the hired worker to furnish appropriate safety devices and to procure suitable insurance protection" (*Bartoo v Buell*, 87 NY2d 362, 367, 639 NYS2d 778 [1996]).

It is undisputed that the cooperative apartment owned by the Goldfeins is a single family residence and that the Goldfeins did not direct or control the work. In fact, plaintiff's counsel admits that "Mr. Goldfein himself did not direct or control the work, he hired interior designer Chris Maya to do just that" (affirmation of plaintiff's counsel ¶ 12). Plaintiff offers no case law in support of his claim that hiring an agent (Mr. Maya, the interior designer) eliminates the homeowners' exemption from the Labor Law. While Mr. Maya may, or may not, be subject to liability depending on his involvement in the construction process, that does not have any effect on the homeowners' exemption (*cf. Weiser v Builders Square, Inc.*, 164 Misc2d 623, 625-26, 625 NYS2d 455 [Sup Ct, Erie County 1995] [holding that an agent of an owner is not protected by the homeowners' exemption for single family homes]).

In the instant case, the Goldfeins hired both a general contractor and an interior designer to handle the renovation of their apartment. During the construction, the Goldfeins were not living at the apartment (Robert Goldfein tr at 15). The Goldfeins were kept abreast of the renovation work by Mr. Maya (*id.* at 16) and although Mr. Goldfein occasionally spoke with NY Fine Interiors, he left the details of the work to Mr. Maya (*id.* at 18-19). Mr. Goldfein also claimed that he would visit the apartment during the construction process but did not discuss any safety practices while at the site (*id.* at 20-21).

There is nothing to suggest in the record before this Court that the Goldfeins had any role in directing or controlling plaintiff's work. Therefore, they are entitled the homeowners' exemption and plaintiff's Labor Law § § 241(6) and 240(1) claims are severed and dismissed.

Labor Law § 200

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601 NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

"It is settled law that where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under section 200 of the Labor Law"

(*Lombardi v Stout*, 80 NY2d 290, 295, 590 NYS2d 55 [1992]).

Mr. Goldfein claimed in his affidavit that he hired Mr. Maya and NY Fine Interiors (as general contractor) to perform the renovation at his apartment (aff of Robert Goldfein ¶5). Mr. Goldfein insists that he did not hire subcontractors and never gave any instructions or directions to the workers (*id.* ¶¶ 6, 9, 10). Mr. Goldfein insists that he would visit the apartment with his wife on occasion but only to receive updates on the work. Mrs. Goldfein also claims that she never directed or controlled any work being performed in the apartment (aff of Valerie Goldfein ¶10).

In opposition, plaintiff failed to raise an issue of fact to rebut the Goldfeins' argument that they did not have any supervisory responsibilities. Plaintiff appears to rely, as he did above, on the theory that the hiring of Mr. Maya somehow means that the Goldfeins supervised the work performed at their apartment. However, hiring an interior designer or a contractor does not mean that the Goldfeins exercised any supervisory control over plaintiff. Therefore, plaintiff's Labor Law § 200 claim against the Goldfeins is severed and dismissed.

Accordingly, it is hereby

ORDERED that the motion by the Goldfeins for summary judgment dismissing all of plaintiff's claims against them is granted.

This is the Decision and Order of the Court.

Dated: January 9, 2017
New York, New York

ARLENE P. BLUTH
J.S.C.

ARLENE P. BLUTH, JSC