

<b>Genao v Board of Mgrs. of the Park Ave. Ct. Condominium</b>
2018 NY Slip Op 30612(U)
February 2, 2018
Supreme Court, Bronx County
Docket Number: 21385/2014E
Judge: Robert T. Johnson
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 12**

**FRANCISCO GENAO,**

**Plaintiff,**

**-against-**

**BOARD OF MANAGERS OF THE PARK AVENUE  
COURT CONDOMINIUM, BLUE WOODS  
MANAGEMENT GROUP INC., MIGUEL RANITO  
P. ANACORETA CORREIA, MARIA DE  
CONCEICADO DE LIMA PIMENTEL ALMIRO DE  
VALE, and TUDOR REALTY SERVICES CORP.,**

**Defendants.**

**DECISION AND ORDER**

**Index No. 21385/2014E**

**The following papers, numbered 1-3 were considered on the motion for summary judgment:**

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion and annexed Exhibits and Affidavits.....	1
Answering Affidavits and Exhibits.....	2
Reply Affirmation.....	3

**Upon the foregoing papers, it is ordered that the motion for summary judgment is granted.**

This action was commenced to recover damages for personal injuries allegedly sustained by plaintiff on November 9, 2012 as a result of a fall from a scaffold while working on the ceiling at Apartment P-16-A located at 120 East 87th Street in New York County. Defendants Miguel Ranito P. Anacoreta Correia ("Correia") and Maria De Conceicado De Lima Pimentel Almiro De Vale ("De Vale") owned the condominium unit and contracted with plaintiff's employer, non-party 360 Restorations ("360"), to perform renovation work. Defendants now move pursuant to CPLR 3212 for an order granting them summary judgment dismissing plaintiff's Labor Law §§240 and 241(6) claims on the ground that they are exempt from liability since they are the owners of a single-family residence. Defendants also allege they are not liable

on plaintiff's Labor Law §200 and common-law negligence claims because they had no control over the means and methods of the work and did not create or have actual or constructive notice of a hazardous condition. Plaintiff had alleged in his verified bill of particulars that the scaffold was "insufficiently anchored and unstable."

Plaintiff testified that he was employed by 360 as a painter/plasterer. The wood floor in the living room had been removed several days before the accident and a temporary plywood floor was installed. Plaintiff complained to his boss, Michael Higgins ("Higgins"), that the plywood was not level but he was told that the floor was not yet finished. Plaintiff received all his instructions from Higgins and Higgins provided the scaffold plaintiff used for his work. Plaintiff was standing on top of the scaffold when scaffold moved to the right. Plaintiff testified the scaffold shifted because "[t]he plywood moved" and that "[i]t was not level." He could not recall falling from the scaffold. He knew the owners of the unit as Maria (De Vale) and Miguel (Correia). He never spoke to Miguel and he spoke to Maria just one time.

Correia testified that he and his wife, De Vale, purchased the unit in April 2012, hired 360 in July to perform renovation work and moved in four months later. The work included installing a new wood floor through the entire apartment. Correia visited the apartment three or four times during the renovation. He never spoke to anyone other than Higgins. De Vale testified that she visited the apartment once or twice each week except in July and August. She spoke only to Higgins although she recalled greeting plaintiff one time. De Vale testified that new parquet flooring was laid in the living room. She did not know who provided the ladder or scaffold.

Correia and De Vale have also submitted affidavits. Correia avers that he had no involvement in coordinating the work and made no particular observations about the scaffold or temporary plywood floor. He received no complaints about the scaffold or plywood floor and was never told the plywood floor was uneven. The court declines to consider De Vale's affidavit. De Vale testified through a Portuguese interpreter at her deposition. The English-language affidavit of a non-English speaker is inadmissible in the absence of a translator's

affidavit (See CPLR 2102(b); *Rui Qin Chen Juan v. 213 W. 28 LLC*, 149 AD3d 539 [1<sup>st</sup> Dep't 2017]).

Owners of one- or two-family dwellings who contract for but do not control the work are exempt from liability under Labor Law §§ 240 and 241(6) (See *Affri v. Basch*, 13 NY3d 592 [2009]). Plaintiff did not address these claims in his opposition. Since it is unrefuted that defendants are the owners of a one-family residence, albeit in a condominium building, and that they did not direct or control plaintiff's work, defendants' motion for summary judgment dismissing plaintiff's Labor Law §§ 240 and 241(6) is granted (See *Alvarado v. French Council LLC*, 149 AD3d 581 [1<sup>st</sup> Dep't 2017]).

A property owner is liable under Labor Law § 200 and under the common-law where the owner creates a dangerous condition or has actual or constructive notice of it (See *Mendoza v. Highpoint Assoc., IX, LLC*, 83 AD3d 1 [1<sup>st</sup> Dep't 2011]). When the condition arises out of a contractor's means and methods over which the owner has no control, the owner is not liable (See *Delaney v. City of New York*, 78 AD3d 540 [1<sup>st</sup> Dep't 2010]). Defendants have met their burden on summary judgment (See *Lopez v. Dagan*, 98 AD3d 436 [1<sup>st</sup> Dept 2012]), lv denied, 21 N.Y.3d 855 [2013]). Defendants did not supervise or control the work. They also had no notice of a dangerous condition with the scaffold or direct plaintiff to use- it.

The court declines to consider plaintiff's affidavit submitted in opposition as there is no translator's affidavit submitted (See *Rui Qin Chen Juan v. 213 W. 28 LLC.*, supra). Plaintiff testified through a Spanish interpreter at his deposition. Even if the affidavit were considered, he fails to raise a triable issue of fact in opposition. A homeowner who visits the site to express what he or she wished to see is insufficient to establish control over the means and methods of a contractor's work (See *Marcano v. Hailey Dev. Group, LLC*, 117 AD3d 518 [1<sup>st</sup> Dep't 2014]). To the extent plaintiff now identifies the temporary plywood floor as a hazardous condition, he still has not raised a triable issue. Plaintiff tendered no evidence that defendants created the condition. Further, the hazardous condition did not arise from an inherent defect with the property, but from the means and methods of 360's work over which defendants had no

control.

Accordingly, it is

ORDERED, that the motion of defendants Miguel Ranito P. Anacoreta Correia and Maria De Conceicado De Lima Pimentel Almiro De Vale dismissing plaintiff's complaint is granted; and it is further

ORDERED, that plaintiff's complaint against defendants Miguel Ranito P. Anacoreta Correia and Maria De Conceicado De Lima Pimentel Almiro De Vale is dismissed.

This reflects the decision and order of this court.

**Dated: February 2, 2018**

  
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**Robert T. Johnson, J.S.C.**