

<b>Uzeyiroglu v Edler Estate Care Inc.</b>
2018 NY Slip Op 31247(U)
June 15, 2018
Supreme Court, New York County
Docket Number: 157947/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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NACI UZEYIROGLU and ACELYA UZEYIROGLU,

Index No. 157947/2015

Plaintiffs

- against -

DECISION AND ORDER

EDLER ESTATE CARE INC., JON P. VACCARI,  
and STEPHEN FLEMING,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiffs move for summary judgment on liability for their claim under New York Labor Law § 240(1) against the only remaining defendant Edler Estate Care Inc. C.P.L.R. § 3212(b) and (e). Although Edler Estate Care concedes that plaintiff Naci Uzeyiroglu was injured due to a Labor Law § 240(1) violation, as explained below, plaintiffs fail to show that Edler Estate Care was liable for the violation as a general contractor for the construction at the former defendants' premises.

The contract through which the premises' owners retained Edler Estate Care, dated June 14, 2014, provides merely that its responsibilities included "day to day operations of site, trade coordination, material delivery and handling, schedule required inspections, coordination with home owner on scheduling, material delivery, and quality control." Aff. of Edmund Chakmakian Ex. L, at 1. Absent Edler Estate Care's authority to stop the construction work or ensure work site safety, Edler Estate Care was not a general contractor liable for a Labor Law § 240(1)

violation. White v. 31-01 Steinway, LLC, \_\_\_ A.D.3d \_\_\_, 2018 WL 2920974, at \*1 (1st Dep't June 12, 2018); DaSilva v. Haks Engrs., Architects & Land Surveyors, P.C., 125 A.D.3d 480, 481 (1st Dep't 2015). See Walls v. Turner Constr. Co., 4 N.Y.3d 861, 864 (2005).

As the contract is silent regarding Edler Estate Care's authority to stop work, the contract fails to support the deposition testimony by the premises owner, former defendant Jon Vaccari, that Edler Estate Care was authorized to stop the other subcontractors' work. The contract's plain terms, not the parties' understanding of the contract, govern the parties' responsibilities and authority under the contract. White v. 31-01 Steinway, LLC, \_\_\_ A.D.3d \_\_\_, 2018 WL 2920974, at \*1; DaSilva v. Haks Engrs., Architects & Land Surveyors, P.C., 125 A.D.3d at 481. Regarding Edler Estate Care's actual exercise of authority to stop work during work site operations, the deposition testimony by James Edler, Edler Estate Care's co-owner and corporate representative, denies the exercise of any such authority, contradicting Vaccari's testimony. James v. Alpha Painting & Constr. Co., Inc., 152 A.D.3d 447, 451 (1st Dep't 2017); DaSilva v. Haks Engrs., Architects & Land Surveyors, P.C., 125 A.D.3d at 482. Uzeyiroglu testified, moreover, that only his employer's foreman directed his work. DaSilva v. Haks Engrs., Architects & Land Surveyors, P.C., 125 A.D.3d at 482; Griffiths v. FC-Canal, LLC, 120 A.D.3d 1100, 1101 (1st Dep't 2014).

Nor does the contract dated September 16, 2014, through

which Vaccari retained Uzeyiroglu's employer, indicate any entity's responsibility or authority to supervise the work or site. Jon Vaccari's admission, corroborated by James Edler, that Vaccari hired and paid all the subcontractors working on the project demonstrates that Edler Estate Care did not exercise this general contractor's function either. Paulino v. 580 8th Ave. Realty Co., LLC, 138 A.D.3d 631, 631 (1st Dep't 2016); Sparendam v. Lehr Constr. Corp., 24 A.D.3d 388, 390 (1st Dep't 2005). See Pipia v. Turner Constr. Co., 114 A.D.3d 424, 427 (1st Dep't 2014). The work permit application indicating that Edler Estate Care was the general contractor, which is not executed by Edler Estate Care itself or anyone shown to have held the authority to admit this fact, Gordzica v. New York City Tr. Auth., 103 A.D.3d 598, 598 (1st Dep't 2013); Boyce v. Gumley-Haft, Inc., 82 A.D.3d 491, 492 (1st Dep't 2011); Silvers v. State of New York, 68 A.D.3d 668, 669 (1st Dep't 2009); Aquino v. Kuczinski, Vila & Assoc., P.C., 39 A.D.3d 216, 221 (1st Dep't 2007), is insufficient alone to demonstrate such status. Kosovrasti v. Epic (217) LLC, 96 A.D.3d at 696; Martinez v. 408-410 Greenwich St., LLC, 83 A.D.3d 674, 675 (2d Dep't 2011); Kilmetis v. Creative Pool & Spa, Inc., 74 A.D.3d 1289, 1291 (2d Dep't 2010); Huerta v. Three Star Constr. Co., Inc., 56 A.D.3d 613, 613 (2d Dep't 2008).

For all these reasons, the court denies plaintiffs' motion

for summary judgment on their claim under Labor Law § 240(1)  
against defendant Edler Estate Care Inc. C.P.L.R. § 3212(b).

DATED: June 15, 2018

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.