

Tuohy v Osprey Workshops , LLC
2019 NY Slip Op 34828(U)
December 6, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 601156/2015
Judge: George Nolan
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Short Form Order

Index No. 601156/2015

SUPREME COURT – STATE OF NEW YORK
PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. George Nolan
Justice Supreme Court

TIMOTHY TUOHY,

Plaintiff,

-against-

OSPREY WORKSHOPS, LLC, ANTHONY
LITTLE and THE DR. HUNTINGTON
SHELDON REVOCABLE TRUST,

Defendants.

x

Mot. Seq. No. #001 - MG
Mot. Seq. No. #002 - MG
Orig. Return Date: 06/27/2019
Mot. Submit Date: 11/21/2019

PLAINTIFF'S ATTORNEY
ZLOTOLOW & ASSOCIATES PC
270 W. Main Street
Sayville, NY 11782

DEFENDANTS' ATTORNEY
HOFFMAN ROTH & MATLIN, LLP
Attorneys for Osprey Workshops, LLC
and Anthony Little
505 8th Avenue, Suite 1704
New York, NY 10018

CASCONE & KLUEPFEL, LLP
Attorneys for The Dr. Huntington Sheldon
Revocable Trust
1399 Franklin Avenue, Suite 302
Garden City, NY 11530

Upon the e-filed documents numbered 29 through 42, and 48 through 70 and, upon due deliberation and consideration by the Court of the foregoing papers, it is hereby determined as follows.

Defendant, the Dr. Huntington Sheldon Revocable Trust (hereinafter "the Trust"), moves for an order pursuant to CPLR 3212, granting the Trust summary judgment and dismissing the complaint and all cross claims against it.

Defendants Osprey Workshops, LLC, and Anthony Little (hereinafter "Little") move for an order pursuant to CPLR 3124 compelling the plaintiff, Timothy Tuohy, to appear for an additional deposition and independent medical examination.

These motions are hereby consolidated for consideration and are decided as follows.

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This action arises out of an accident that occurred on August 6, 2014 at premises known as 25 Atlantic Avenue, Amagansett, New York (hereinafter "25 Atlantic Avenue"). 25 Atlantic Avenue was part of a larger holding which has been owned by the Sheldon family since the late 1930's. This larger property was subdivided into four parcels in 2011 and 25 Atlantic Avenue, which is sometimes referred to in the parties' submissions as the "Main House," is one of the subdivided parcels. 25 Atlantic Avenue was transferred to the Trust in 2014.

In 2014, the Trust contracted with non-party, Witty & Gazda, P.C., to serve as the general contractor for construction work at 25 Atlantic Avenue, which involved the renovation of two upstairs bedrooms and an exterior patio/terrace (hereinafter "the Project"). The defendant Little, a carpenter doing business as Osprey Workshops, LLC, had an ongoing relationship with the Sheldon family and Dr. Sheldon and his wife, Adelaide, had spoken to him about working on the Project. However, Little was too busy to perform this work and he contacted Witty & Gazda on behalf of the Sheldons.

For the most part, Witty & Gazda used subcontractors for the 25 Atlantic Avenue project. However, they had one employee on-site, the plaintiff Timothy Tuohy. The plaintiff testified at his deposition that he was employed as the "job site logistics manager"; his employer described Tuohy as a "lead laborer." In any event, on the date of the accident, Tuohy climbed an A-frame ladder to clean cement off a greenhouse that was connected to the residence at 25 Atlantic Avenue. While the greenhouse was not within the scope of the Project, it appears that one of the Project's subcontractors, a mason, splattered cement on the greenhouse while working on the patio/terrace. The plaintiff testified that he was cleaning the greenhouse by spraying Windex on the cement, scraping it with a razor blade and wiping it with a paper towel. He further testified that while he was performing this task, the ladder wobbled, he lost his balance and fell through the greenhouse glass and onto the greenhouse floor.

The principals of plaintiff's employer, Patrick Witty and James Gazda, testified at their depositions that Witty & Gazda was the general contractor for the Project. They testified that the plaintiff Tuohy reported to and was supervised by them and no one else had the authority to supervise his work. They also testified that only Witty, Gazda and perhaps an office manager identified as Dorothy, had the authority to direct plaintiff to perform tasks and to direct the plaintiff's means and methods of performing those tasks. Gazda was more involved in the project than Witty; Gazda supervised the project, including the subcontractors, and was responsible for the day-to-day work performed by Tuohy and the subcontractors. Neither Witty nor Gazda was aware the plaintiff intended to clean the greenhouse before the accident occurred.

Mr. Little's role on the Project is disputed. According to Little, he was doing other work for the Sheldons at the Amagansett property during the Summer of 2014 and he served as the Sheldons' representative on the Project, making sure the property was kept clean and undamaged. The plaintiff claimed in his deposition testimony that Little managed the project. He further testified that Witty and Gazda told plaintiff to do whatever Little instructed and plaintiff reported to Little every day on the job. The plaintiff also claimed that Little showed him the cement splatter on the greenhouse,

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instructed Tuohy on how the cement should be cleaned and directed him to get the work done.

The plaintiff seeks to recover against the defendants for his personal injuries alleging negligence and violations of Labor Law §§ 200, 240 and 241(6). The Trust asserts that as the owner of a single family residence, it is entitled to summary judgment dismissing the plaintiff's claims under Labor Law §§ 240(1) and 241(6). The Trust further argues that the plaintiff's negligence claim should be dismissed as the Trust did not exercise supervision and control over the means and methods of plaintiff's work and did not create or have notice of the condition that allegedly caused plaintiff's accident.

Labor Law §§ 240 and 241 "provide an exemption for owners of single and two-family houses such that liability can only be imposed where the homeowner directs or controls the work being performed" (*Tomacek v. Westchester Additions & Renovations, Inc.*, 97 AD3d 737, 738, 948 NYS2d 671[2d Dept 2012]). "[I]n order for a defendant to receive the protection of the homeowners' exemption, the defendant must satisfy two prongs required by the statutes. First, the defendant must show that the work was conducted at a dwelling that is a residence for one or two families (citations omitted)...and the second requirement of the homeowners' exemption is that the defendants 'not direct or control the work'" (*Chowdhury v. Rodriguez*, 57 AD3d 121, 126-127, 867 NYS2d 123 [2d Dept 2008] quoting Labor Law §§ 240[1] and 241[6]).

The deposition testimony of all parties and non-party witnesses established that the Trust had no role in directing or controlling the work performed at 25 Atlantic Avenue and neither plaintiff or Little contend otherwise. However, the plaintiff argues that the Trust has failed to establish that 25 Atlantic Avenue was a one or two family residence. The court disagrees with this contention. The deposition testimony of Mark Langan, a trustee of the Dr. Huntington Sheldon Revocable Trust, and Adelaide Sheldon, established *prima facie* that 25 Atlantic Avenue was a residence used exclusively by the Sheldons and their extended family. In opposition, the plaintiff fails to raise a triable issue of fact as to the status of 25 Atlantic Avenue as a one family residence. Accordingly, the Trust is entitled to the protection of the homeowners' exemption and the plaintiff's claims against the Trust under Labor Law §§ 240 and 241 must be dismissed.

Labor Law § 200(1) is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work (*Rizzuto v. L.A. Wenger*, 91 NY2d 343, 670 NYS2d 816 [1998]). Unlike Labor Law § 240 and § 241, § 200 does not provide an exemption for a single and two-family houses. "Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective conditions at a work site, and those involving the manner in which the work is performed" (*Ortega v. Puccia*, 57AD3d 54, 61, 866 NYS2d 323 [2d Dept 2008]).

The plaintiff and defendant Little argue that the negligence and Labor Law § 200 claims against the Trust cannot be dismissed because the Trust permitted a dangerous condition to exist on the premises, namely the greenhouse. This argument must be rejected. The deposition testimony of Adelaide Sheldon established that the greenhouse was compliant with the applicable building code.

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Further, the greenhouse was fenced to prevent individuals from approaching the greenhouse from the outside (the deposition testimony established that the only entrance to the greenhouse was from inside the residence). The plaintiff and defendant Little have failed to submit any evidence whatsoever to suggest that the greenhouse was in a defective or unsafe condition.

Further, it is apparent that the proximate cause of the plaintiff's accident and injuries was the manner in which the plaintiff was performing his work, namely standing on a ladder and attempting to clear concrete from the greenhouse by hand with Windex, a razor blade and paper towels. When a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law § 200 unless it is shown that the owner or general contractor had the authority to supervise or control the performance of the work (*Ortega, id* at 61). In this case, the Trust did not have the authority to supervise or control the performance of plaintiff's work. Accordingly, the plaintiff's negligence and Labor Law § 200 claims against the Trust are also dismissed.

As to defendant Little's motion to compel further discovery, the defendant is entitled to a further deposition and independent medical examination of the plaintiff.

Based on the foregoing, it is

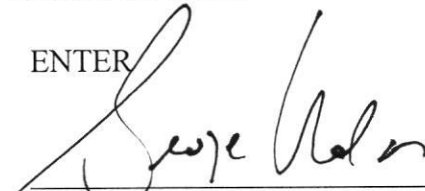
ORDERED that the motion (motion sequence no. 001) of the defendant, the Dr. Huntington Sheldon Revocable Trust, for summary judgment pursuant to CPLR 3212 is hereby granted and the complaint and all cross-claims against the Trust are hereby dismissed; and it further

ORDERED that the motion (motion sequence no. 002) of the defendants Osprey Workshops, LLC, and Anthony Little for an order pursuant to CPLR 3124 compelling further discovery is hereby granted and the plaintiff is directed to appear for a further deposition and independent medical examination on dates agreed to by the parties to occur within 90 days of the date of this order.

The parties are reminded that this matter is scheduled for a compliance conference before the undersigned on January 9, 2020 at 9:30 a.m.

The foregoing constitutes the decision and Order of the Court.

ENTER



HON. GEORGE NOLAN, J.S.C.

Date: December 6, 2019
Riverhead, New York

FINAL DISPOSITION

NON-FINAL DISPOSITION