

**Delaluz v Walsh**

2019 NY Slip Op 35180(U)

December 20, 2019

Supreme Court, Richmond County

Docket Number: Index No. 151457/2016

Judge: Orlando Marrazzo, Jr.

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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RAUL GARCIA DELALUZ,

Plaintiff,

-against-

CHRISTINE A. WALSH, WILLIAM J. OLIANDER,  
LILLIAN R. OLIANDER and BUILT HOME  
IMPROVEMENTS LLC,

Defendant.

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The following papers numbered 1 through 3 were marked fully submitted on November 12, 2019.

	Papers Numbered
Defendants' Notice of Motion and Affirmation in Support of Motion for Summary Judgment with Exhibits Annexed (dated July 8, 2019).....	1
Plaintiff's Affirmation in Opposition (dated September 12, 2019) .....	2
Defendant's Reply (dated November 5, 2019).....	3

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Plaintiff commenced this action against defendants Christine A. Walsh ("Walsh"), William J. and Lillian R. Oliander (together "Oliander") and Built Home Improvements under Labor Law 240, 241(6) and 200 to recover for injuries he allegedly sustained while working in a home owned by defendants, Walsh and Oliander.<sup>1</sup> Defendants Walsh and Oliander now move to dismiss the plaintiff's complaint and any cross-claims asserted against them, pursuant to CPLR 3212, asserting the home owner's exemption. This Court grants Defendants' motion seeking summary judgment

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<sup>1</sup> The Olianders are co-owners of the property, but do not live on the premises.

after a review of the moving papers, opposition and attached exhibits and testimony for the reasons set forth below.

FACTS

On August 18, 2016, the plaintiff, Raul Garcia Delaluz, was directed to install granite around a bathtub located at 34 Douglas Avenue, a two-family home, in Staten Island, New York. The plaintiff was employed by Monumental Granite and Marble, who had been contracted to install the granite only, by defendant Walsh, as a part of the remodeling of the second-floor bathroom in the house. Defendant Built Home Improvements had been contracted to do the overall remodeling under separate contract.

At his deposition on January 8, 2019, the plaintiff testified that on the day of the accident he arrived at the premises at approximately 1:00 p.m. with another worker named Julian. He also testified that no other contractors or workers in the house when they arrived. He asked the “lady” or “gentleman” at the house where the granite was to be installed. The workers were escorted to the upstairs bathroom, by one of the parties, but plaintiff could not remember which one of them took them upstairs.

The plaintiff testified that when the accident occurred the granite had already been installed and that he and Julian were about to put on the sealer. The plaintiff stepped into the bathtub opening, which was covered with plywood as the tub could not be installed until the granite was installed. Plaintiff stepped into the square opening with is right foot. As he was about to place his left foot inside, the piece of wood covering the bottom of the tub, broke, and his body fell through the opening, up to his knee. As a result, he was injured.

Christine Walsh was deposed on January 22, 2019. She testified that she co-owned 34 Douglas Avenue with her parents and has lived there since 1997. She further testified that in August of 2016, she contracted with Built Home Improvements to remodel a bathroom on the second floor of the house. The Contract was signed by Christine Walsh and Robert Pillarella, the President of Built Home Improvements on August 3, 2016 ( See, Exhibit H, defendants' motion).

Originally, Walsh had contracted with Built Home to tile around the bathtub, but then changed her mind and wanted to install granite. Pillarella told Walsh that Built Home did not work with granite and that she would have to find someone else to install it. After shopping around, she settled on Monumental (See defendants' 1). Defendant Walsh testified that she dealt directly with Monumental as to the granite. Other than picking out the color, she did not have any input as to how it was to be installed.

#### ANALYSIS

The defendants' have established their prima facie right to summary judgment dismissing plaintiff's causes of action alleging violations of Labor Law §§ 240 and 241(6). Under the homeowner's exemption, owners of a one or two-family dwelling used as a residence are exempt from liability under Labor Law §§ 240(1) and 241(6) unless they directed or controlled the work being performed ( *see Chowdhury v. Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]). The homeowner's exemption was enacted to protect owners of one and two-family dwellings who are not in a position to realize, understand, and insure against the responsibilities of strict liability imposed by Labor Law §§ 240(1) and 241(6) ( *see Cannon v. Putnam*, 76 NY2d 644 [1990]; *Parise v. Green Chimneys Children's Services, Inc.*, 106 AD2d 970 [2d Dept 2013]). “[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 only one or two families” (*Chowdhury v. Rodriguez*, 57 AD3d at 126; see Labor Law §§ 240[1], 241 [6]; *Rodriguez v. Gany*, 82 AD3d 863, 864 [2d Dept 2011]). “The second requirement ... is that the defendants did not direct or control the work” (*Chowdhury v. Rodriguez*, 57 AD3d at 126, quoting Labor Law §§ 240[1], 241[6]; see *Rodriguez v. Gany*, 82 AD3d at 864). “ ‘The expressed and unambiguous language of both [Labor Law §§ 240(1) and 241(6)] focuses upon whether the defendants supervised the methods and manner of the work’ ” (*Nai Ren Jiang v. Yeh*, 95 AD3d 970, 971 quoting *Chowdhury v. Rodriguez*, 57 AD3d at 127; see *Ortega v. Puccia*, 57 AD3d 54 [2d Dept 2008]; *Abdou v. Rampaul*, 147AD3d 885, [2d Dept 2017]).

In the instant case, defendants have satisfied the two prongs. As to prong one, attached as Exhibit M to defendants’ moving papers, is the NYC Department of Buildings Property Profile Overview as well as, the Certificate of Occupancy of 34 Douglas Avenue. The property is classified as a 2-Family residential Dwelling.

As to the second prong, there is no evidence that defendant Walsh directed or controlled the work being performed. During his deposition the plaintiff testified that when he arrived at Douglas Avenue there was a lady and a gentleman at the house. He didn’t remember who told him where the granite was to be installed. Plaintiff further testified that after he was shown the way to the upstairs bathroom, he received no further instructions as to how the work was to be performed, nor did either party come up and check on its progress for the entire time he was there, until the very end of the job.

During her testimony, Christine Walsh stated that when the plaintiff arrived, she escorted him to the upstairs bathroom and went back downstairs to the kitchen. At some point a worker named “Rick” arrived from Home Built Improvements who was there to discuss doing other work

in the house that was unrelated to the bathroom remodeling. When Walsh told Rick that the men were installing the granite, he decided to run upstairs and take a look. When Rick came back down at approximately 4:00 p.m, he told Walsh that the granite looked good and that they were almost finished. He waited in the kitchen with Walsh for them to come down. Defendant Walsh further testified that Built Home Improvements were not scheduled to do any work in the bathroom that day, because they were waiting for the granite to be installed.

The term “direction and control of the work being performed” is strictly construed to mean that the homeowner oversees the method and manner of the work being performed (*see Walsh v. Kresge*, 69 AD3d 612 [2d Dept 2010]; *Garcia v. Petrakis*, 306 AD2d 315 [2d Dept 2003]).

Here, defendant has established her entitlement to the homeowner's exemption by offering proof that she did not supervise, direct, or control the work being performed at her two -family home, but merely displayed typical homeowner interest in the ongoing construction process (*see Chowdhury v. Rodriguez*, 57 AD3d at 127–128, *Cardace v. Famuzzi*, 2 AD3d 557 2d Dept 2003]; *Garcia v. Petrakis*, 306 AD2d 315 [2d Dept 2003]). In opposition, the plaintiff failed to raise a triable issue of fact regarding defendant's direction and control over the work being performed which led to his injuries (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]).

Likewise, there is no evidence to support the plaintiff's contention that defendants are liable for common-law negligence or pursuant to Labor Law § 200. For an owner to be held liable for common-law negligence or pursuant to Labor Law § 200, the plaintiff must show that the owner supervised or controlled the work, or had actual or constructive notice of the unsafe condition causing the accident (*see Cuartas v. Kourkoumelis*, 265 AD2d 293 [2d Dept 1999]). Since there is no issue of fact as to whether defendants exercised control over the injured plaintiff's work or had knowledge of any unsafe condition that caused the accident, the plaintiffs' claims

alleging common-law negligence and a violation of Labor Law § 200 must also be dismissed  
(see *Decavallas v. Pappantoniou*, 300 AD2d 617 [2d Dept 2002]).

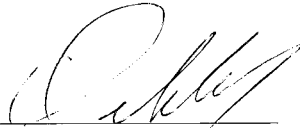
Accordingly, for the foregoing reasons, it is hereby

**ORDERED** that defendants' motion for summary judgment is granted in its entirety and  
it is further

**ORDERED** that the complaint against defendants, Walsh and the Olianders, including  
any cross-claims is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 20, 2019

  
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Orlando Marrazzo, J.S.C.

Hon. Orlando Marrazzo, Jr.  
Supreme Court Justice