

Cekic v Messineo

2020 NY Slip Op 34742(U)

August 4, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 620415/2016

Judge: George Nolan

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Short Form Order

Index No. 620415/2016

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

P R E S E N T:

Hon. George Nolan
Justice Supreme Court

_____ x

RIFAT CEKIC,
Plaintiff,

-against-

STEVEN MESSINEO, JACQUELINE
MESSINEO, BURIM N. REGJAJ and AIDA
AHMETAJ-REGJAJ,

Defendants.

_____ x

BURIM N. REGJAJ and AIDA AHMETAJ-
REGJAJ,

Third-Party Plaintiffs,

-against-

SMD CONSTRUCTION GROUP, INC.,

Third-Party Defendant.

_____ x

Mot. Seq. No. #003 - Mot D
Orig. Return Date: 03/05/2020
Mot. Submit Date: 07/09/2020

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Upon the e-filed documents numbered 51 through 64 and 69 through 76, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

ORDERED the motion of defendants/third-party plaintiffs Burim N. Regjaj and Aida Ahmetaj-Regjaj (hereinafter “the defendants”) for an order pursuant to CPLR 3212 granting summary judgment in their favor and dismissing the plaintiff’s complaint against them is decided as follows.

This personal injury action arises out of an accident that occurred on September 20, 2014 at

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residential premises located at 37 Golden Gate Dr., Shirley, New York (hereinafter “subject premises”) owned by the defendants. The plaintiff, Rifak Cekic, allegedly fell from a ladder while painting the living room of the subject premises.

The plaintiff commenced this action by filing a summons and complaint on December 15, 2016 naming Steven Messineo and Jacqueline Messineo as the sole defendants. On November 21, 2017, the plaintiff filed a supplemental summons and amended complaint adding the Regjajs as defendants in this action. In 2018, the parties executed a stipulation discontinuing the action against the Messineos as they had sold the subject premises to the defendants prior to the date of the plaintiff’s accident. In 2019, the defendants commenced a third-party action against SMD Construction Group, Inc. (hereinafter “SMD”) alleging they had contracted with SMD to provide painting services at the subject premises and that the plaintiff was an employee or agent of SMD when the accident occurred. The defendants seek indemnification and contribution from SMD.

The plaintiff asserts claims based upon Labor Law §§200, 240(1) and 241(6) and common law negligence. The defendants argue that as owners of a single family residence, they are entitled to summary judgment dismissing the plaintiff’s Labor Law §§240 and 241 claims. The defendants further assert that the plaintiff’s Labor Law §200 claim and common law negligence claim should be dismissed because defendants 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 the plaintiff’s accident.

In support of their motion, the defendants have submitted *inter alia* copies of the pleadings, the verified bill of particulars, the plaintiff’s and defendants’ deposition transcripts and photographs of the accident location taken shortly after the subject accident occurred.

At his deposition conducted on December 4, 2018, the plaintiff testified that he obtained the painting job at the defendants’ property through his son-in-law, David Lalic, who was a part owner of SMD. However, plaintiff claims he was never employed by SMD. In any event, Lalic gave him the defendants’ address and he drove to the subject premises on September 20, 2014, arriving at about 9:00 a.m. Defendant Burim Regjaj met plaintiff at the house. When plaintiff went in the defendants’ house he observed that a new hardwood floor had been installed in the living room and paper had been laid on the floor to protect it; however the paper was not secured to the floor.

Plaintiff further testified he wasn’t expecting to perform the painting work on that day and he claims he told Burim Regjaj that he would return the next day with a helper and materials. However, Regjaj was insistent that plaintiff paint the living room and kitchen immediately because he needed to move furniture in on the following day. Although plaintiff had brushes and tools necessary for plastering and painting, he had no ladders or poles. Plaintiff testified that he went with Regjaj to a nearby Home Depot and Regjaj purchased paint, rollers and a ladder. Plaintiff testified that he asked Burim Regjaj to buy a “painter’s ladder” (an A-frame ladder) but Regjaj purchased an extension ladder instead because he was having security cameras installed on the outside of his house

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and needed the longer ladder. When plaintiff and Regjaj arrived back at the house, the ladder was set up for the purpose of painting a 15 foot high wall in the living room. After the ladder was set up in the living room defendant Burim Regjaj left the house.

The extension ladder had rubber steps but plaintiff placed a thin piece of molding at the bottom of the ladder to prevent it from sliding. He moved the ladder several times before the accident occurred. The last time plaintiff positioned the ladder, the feet of the ladder were on the paper that was protecting the floor. He was on the ladder with a brush in one hand and a container of paint in the other when the ladder slid and he fell to the ground. Plaintiff identified photographs showing the ladder lying flat on the living room floor, the molding that was supposed to prevent the ladder from sliding and the protective paper that had apparently been moved by the sliding ladder.

Defendant Burim Regjaj was deposed on January 7, 2019. He is employed as a building superintendent in New York City where he also resides. He purchased the house at 37 Golden Great Drive, Shirley, with his wife Aida Ahmetaj-Regjaj for their family to use on weekends and holidays. He closed on the purchase of the subject premises shortly before Labor Day, 2014 and he was getting the house ready for his family's use. He had hired a contractor to install new wood floors in the living room of the house and security cameras were scheduled to be installed by another contractor on the same day the accident occurred. Interior painting needed to be done and this job was given priority as Regjaj was storing furniture in the garage and was anxious to move it inside. In his capacity as a building superintendent, he had done business with SMD and he knew its owner, David Lalic. He agreed with Lalic that SMD would provide painting services at the subject premises.

According to defendant Burim Regjaj, he had agreed to provide the primer and paint for this job but SMD was supposed to provide all other equipment and materials. Defendant Regjaj requested that SMD send two employees named Carlos and Bagram. However, when defendant went to the subject premises on the morning of September 20, 2014, he saw the plaintiff alone waiting for him outside. The plaintiff had no painting tools with him except a paintbrush. Defendant Burim Regjaj went to a nearby Home Depot to purchase paint and rollers for the plaintiff to use. Defendant testified that he did not provide a ladder to the plaintiff but there was an extension ladder in the house which he had rented for the installation of the security cameras (Regjaj stated there was also an A-frame ladder in the garage). There was paper placed on the new hardwood floor in the living room, laying loose and not taped down. Defendant Regjaj couldn't remember whether he or the plaintiff put the paper down on the floor. He told plaintiff which rooms to paint and gave no further direction. He left the plaintiff alone to do the painting and later in the day he received a phone call from David Lalic informing him of the plaintiff's accident. He returned to his house and saw the extension ladder flat on the living room floor with paint and blood on the floor as well.

Aida Ahmetaj-Regjaj testified at a deposition on January 7, 2009. She co-owns the house at 37 Golden Gate Dr., Shirley with her husband. She had no involvement in hiring the contractors who performed work at the subject premises and she had no contact with the plaintiff. She was not present at the subject premises on September 20, 2014.

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“Although Labor Law sections 240(1) and 241 each ‘impose non delegable duties upon contractors, owners and their agents to comply with certain safety practices for the protection of workers engaged in various construction-related activities...[,] the Legislature has carved out an exemption for the owners of one and two-family dwellings who contract for but do not direct or control the work’” (*Vogler v. Perrault*, 149 AD3d 1298, 1298, 52 NYS3d 544 [3d Dept 2017] quoting *Bombard v. Pruiksma*, 110 AD3d 1304, 975 NYS2d 183 [3d Dept 2013]). In order to satisfy their *prima facie* burden to obtain judgment as a matter of law on the basis of the “homeowner’s exemption” the defendants are required to demonstrate that their house was a single or two-family residence (which is not contested here), and that they did not “direct or control” the work performed by the plaintiff (Labor Law § 240(1); see *Ortega v. Puccia*, 57 AD3d 54, 866 NYS2d 323 [2d Dept 2008]). Whether a defendant’s conduct amounts to direction and control depends on the degree of supervision exercised over “the manner and method of the work to be performed” (*Affri v. Busch*, 13 NY3d 592, 592, 894 NYS2d 370 [2009], quoting *Duda v. Rouse Constr. Corp.*, 32 NY2d 405, 345 NYS2d 524 [1973]).

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 [1998]). Unlike Labor Law §240 and § 241, § 200 does not provide an exemption for 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*, 57 AD2d 54, 61, 866 NYS2d 323 [2d Dept 2008]). “[F]or an owner to be held liable pursuant to Labor Law § 200, a plaintiff must show that the owner supervised or controlled the work, or had actual or constructive notice of the unsafe condition which caused the accident” (*Miller v. Shah*, 3 AD3d 521, 522, 770 NYS2d 739 [2d Dept 2004]).

Here, as to the defendant Burim Regjaj, the defendants have failed to meet their *prima facie* burden as the evidence submitted by the defendants demonstrate the existence of triable issues of fact as to all causes of action against him. With regards to the plaintiff’s Labor Law §§ 240 and 241 claims, there is clearly a triable issue of fact as to whether defendant Burim Regjaj supervised the manner and method of the plaintiff’s work. The record shows that the actions of defendant Burim Regjaj, who is employed as a building superintendent in New York City, went far beyond those that “would be expected of the typical homeowner who hired a contractor to renovate his or her home” (*Orellana v. Dutcher Ave. Bldrs., Inc.*, 58 AD3d 612, 614, 871 NYS2d 352 [2d Dept 2009]). Defendant Burim Regjaj was heavily involved in the renovation of his newly acquired property and he hired multiple contractors to perform work at his house.

As to the painting work specifically, there is no dispute that defendant Burim Regjaj not only purchased the paint required for the job but also went to Home Depot on the date of the plaintiff’s accident to buy paint rollers after the plaintiff appeared at the work site with no tools and equipment. Defendant Regjaj acknowledged he may have placed the paper in an unsecured fashion on the living room floor which, arguably, contributed to the happening of the accident. And the plaintiff testified

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that defendant Regjaj provided him with an extension ladder even after he advised defendant Regjaj to purchase an A-frame ladder. Defendant Regjaj denies providing the plaintiff with a ladder but it is undisputed that the plaintiff did not bring a ladder to the work site and he ultimately utilized an extension ladder that Regjaj rented.

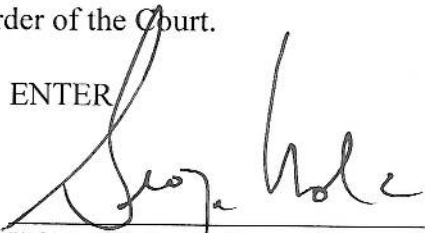
With regard to the plaintiff's Labor Law § 200 and common law negligence causes of action, as noted above, there is a triable issue of fact as to whether defendant Burim Ragjaj had the authority to supervise and control the manner of the plaintiff's work and, therefore, could have ensured that the work was performed in a safe manner. Further, there is a question of fact as to whether defendant Burim Regjaj created the dangerous condition which caused the accident, i.e. providing an unsafe ladder, placing unsecured paper on the floor of the living room, or had actual or constructive notice of these conditions.

While triable issues of fact remain as to the defendant Burim Regjaj's liability under Labor Law §§ 200, 240(1) and 241(6) and common law negligence, no such questions exist as to defendant Aida Ahmetaj-Regjaj. Mrs. Regjaj met her prima facie burden by establishing that she did not direct or control the manner of the plaintiff's work and that she did not have notice of the conditions that allegedly caused the plaintiff's accident. The plaintiff has failed to produce evidence that would raise a triable issue of fact as to the liability of defendant Aida Ahmetaj-Regjaj.

Based on the foregoing, the defendants' motion is granted to the extent that all causes of action in the complaint as asserted against defendant Aida Ahmetaj-Regjaj are dismissed. The defendants' motion is denied in all other respects.

The parties are reminded that this matter is scheduled for a pre-trial conference before the undersigned on September 2, 2020 at 9:30 a.m.

The forgoing constitutes the decision and Order of the Court.

ENTER

HON. GEORGE NOLAN, J.S.C.

Date: August 4, 2020
Riverhead, New York

 FINAL DISPOSITION

 X NON-FINAL DISPOSITION