

Ramirez v Hansum

2020 NY Slip Op 35535(U)

September 30, 2020

Supreme Court, Bronx County

Docket Number: Index No. 20657/2019E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. 2

CESAR A. RAMIREZ RAMIREZ,

Index No.: 20657/2019E

Plaintiff,

- against -

DECISION and ORDER

NATHALIE HANSUM,,
MICHAEL J. HANSUM,
ABC MANAGEMENT 1 TO 10, and
ABC CONTRACTORS 1 TO 10,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue is whether Defendants proffered evidence in admissible form to establish their *prima facie* entitlement to the protections of the homeowners' exemption of the Labor Law statutes and if so, whether triable issues of fact exist. Furthermore, if Defendants cannot prevail whether Plaintiff in his cross-motion established his *prima facie* entitlement to liability pursuant to Labor Law §§240(1) and 241(6).

Plaintiff was injured when he fell from a ladder while performing renovation work at a single-family home owned by Defendants Natalie Hansum and Michael Hansum ("Defendants"). Defendants move for dismissal of the complaint arguing that the single-family homeowner's exemption of the Labor Law statute applies.

Labor Law §§240(1) and 241(6) contain identical language exempting from the statutes "owners of one and two-family dwellings who contract for but do not direct or control the work" *Chowdhury v. Rodriguez*, 57 A.D.3d. 121, 867 N.Y.S.2d 123 (2d Dep't 2008). In order for a

defendant to receive the protection of the homeowners' exemption, the defendant must satisfy two prongs required by the statutes. *Id.* First, the defendant must show that the work was conducted at a dwelling that is a residence for only one or two families. *Id.* The second requirement is that the defendants not direct or control the work. *Id.*

Defendants argue that the exemption applies to them as the home where Plaintiff was working on the day of his injury was a single-family home not in use for commercial purposes and that they did not control or supervise Plaintiff's work. Plaintiff argues that: 1) the home was not occupied by Defendants at the time of his injuries, 2) that Defendants did not live in the home, and 3) that Defendants were renovating the home with the intention of selling the home and therefore the single family dwelling exemption should not apply to Defendants.

The court finds no admissible evidence that the premises at the time of Plaintiff's injuries was utilized for anything other than a single-family home. Plaintiff's arguments that the home was being used for commercial purposes because Defendants intended to sell the home in the future misapplies the law and the intent of the exemption. The mere fact that the Defendants did not occupy the home, that the home was vacant or that the intended purpose of the renovations was to sell the home in the future, does not obviate the fact that the home remained a single family dwelling. Whether the home was not occupied because it was uninhabitable due to tree damage as Defendants posit or whether it was unoccupied for several years because the Defendants resided in a different home, the home always remained a single-family dwelling. Furthermore, Defendant Michael J. Hansum's affidavit stated the home was not a rental nor was it ever rented or leased to anyone since the home was constructed in 1957, therefore, this court finds that the home was never used or intended to be used for any commercial purpose.

This court also finds that Plaintiff did not oppose Defendants argument that they did not supervise or control Plaintiff's injury-producing work, the second prong requirement of the exemption. As such, this court finds that Defendants met their *prima facie* burden and that Plaintiff failed to raise any triable issues of fact. Therefore, this court dismisses Plaintiff's Labor Law §§240(1) and 241(6) claims.

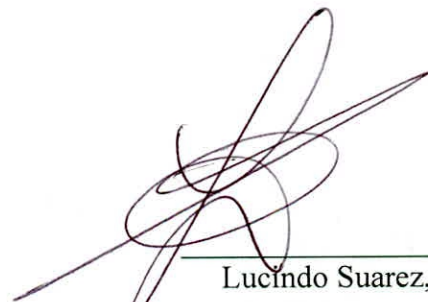
Lastly, Plaintiff did not oppose the dismissal of his Labor Law §200 claim, as such, that portion of Plaintiff's complaint is dismissed without opposition.

Accordingly, it is

ORDERED, that Plaintiff's complaint against Defendants NATHALIE HANSUM and MICHAEL J. HANSUM is dismissed in its entirety; and it is further

ORDERED, that Plaintiff's cross-motion is denied.

Dated: September 30, 2020



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.