

Torrez v Blue Dream Bldrs., Inc.

2024 NY Slip Op 32546(U)

July 3, 2024

Supreme Court, Kings County

Docket Number: Index No. 514314/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 514314/2022
Seq. 001

Part LL1

DECISION/ORDER

ROBERTO ANTONIO ABREU TORREZ,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed	<u>1</u>
Order to Show Cause and Affidavits Annexed. . . .	<u>2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>3</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

BLUE DREAM BUILDERS, INC., DAVID L. GRUNFELD,
AND CHANA GRUNFELD,

Defendants.

Upon the foregoing papers, Blue Dream Builders, Inc., David L. Grunfeld, and Chana Grunfeld’s (collectively, the defendants) motion for summary judgment (Seq. 001) is decided as follows:

Procedural History and Factual Background

Plaintiff commenced this Labor Law action for injuries he claims to have sustained on March 28, 2022, after a metal beam fell and struck his leg at a construction site located at 2054 57th Street, Brooklyn, New York. David and Chana Grunfeld (the Grunfelds) owned the property and claim a two-family home was being constructed at the time of the accident. The Grunfelds hired Blue Dream Builders Inc. (Blue Dream) as the general contractor to perform the construction. Blue Dream hired sub-contractor A1 Iron Works NY Corp. (A1 Iron). Plaintiff was employed by A1 Iron.

The defendants submit affidavits from the Grunfelds in support of their motion. The Grunfelds affirm that the property was a residential property for which they hired Blue Dream to perform renovations in order to make room for Chana’s aging parents (D. Grunfeld Aff. at 2; C.

Grunfeld at 2). There is confusion between the Grunfelds as to what type of home was originally on the property prior to the construction: Chana states there was a two-family home while David states there was a single-family home (*id.*).

The Grunfelds state that the property will not be rented out or used for other commercial purposes, and that it will be their primary residence (*id.*). The Grunfelds do not specify whether the property was used in any commercial capacity prior to the construction. The Grunfelds state they had no role whatsoever in the construction except for periodic progress reports from Blue Dream.

Discovery has not been completed and no party has been deposed. The defendants now move to dismiss plaintiff's Labor Law §§ 200, 240(1), and 241(6) claims.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 N.Y.2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

The plaintiff claims he was injured due to the defendants' violations of New York Labor Law §§ 200, 240 (1), and 241 (6). Defendants now move to dismiss all three claims, alleging that they did not control the means and methods or have notice of a defective condition as to the §200 claim and that the homeowners exemption applies to the §§ 240 (1) and 241 (6) claims against him.

Labor Law § 200

“Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work” (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). “[W]hen 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 party to be charged had the authority to supervise or control the performance of the work.” (*id.*).

The Grunfelds affirm that they never directed or controlled the work at the site in any manner nor did they have any actual or constructive notice of any dangerous condition. The Grunfelds state they occasionally received progress reports from Blue Dream.

In opposition, plaintiff argues that there are significant material issues of fact necessitating the completion of discovery and depositions.

Labor Law § 240 (1) and 241 (6)

Labor Law contains an exemption for owners of one and two-family dwellings who contract for but do not direct or control the work or have constructive notice of a defective condition. The homeowner’s exemption requires satisfying two prongs: (1) the dwelling is a residence for only one or two families, and (2) the defendant did not direct or control the work or have notice of a defective condition (*Nai Ren Jiang v Shane Yeh*, 95 AD3d 970, 971 [2d Dept 2012]).

Conclusion

There has been no opportunity to depose any party. Furthermore, detailed information about past and intended uses of the subject property are exclusively in the control of the

defendant owners. There remain material issues of fact which cannot be resolved by substituting a self-serving affirmation in place of the obligation to testify in examinations before trial.

Accordingly, defendants' motion for summary judgment (Seq. 001) is denied.

This constitutes the decision and order of the court.

July 3, 2024
DATE



DEVIN P. COHEN
Justice of the Supreme Court