

**Guinea v Abeco Constr. LLC**

2024 NY Slip Op 33442(U)

September 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 518303/2023

Judge: Devin P. Cohen

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

**Index Number** 518303/2023  
**Seqs.** 001

Part LL1M

**DECISION/ORDER**

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

GERMAN LOPEZ GUINEA,

Plaintiff,

against

ABECO CONSTRUCTION LLC, NATHAN S. CHERA, AND  
FLORENCE CHERA,

Defendants.

**Papers Numbered**

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>

ABECO CONSTRUCTION LLC,

Third-Party Plaintiff,

against

SANTOS LOPEZ trading as S&E HOME IMPROVEMENT  
CONTRACTING AND S&E HOME IMPROVEMENT  
CONTRACTING,

Defendants.

Upon the foregoing papers, defendants Nathan Chera and Florence Chera (the Cheras)'s motion for summary judgment (Seq. 001) is decided as follows:

**Introduction**

As outlined in his complaint, plaintiff commenced this action to recover for damages that he claims to have sustained on May 4, 2024 at the premises known as 251 Lake Street, Brooklyn, NY. Plaintiff claims that he fell from a ladder while working on the roof of a home owned by the Cheras. The plaintiff was employed by third-party defendant S&E Home Improvement Contracting (S&E) and was performing carpentry and framing work. No depositions have been conducted to date.

### 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 NY2d 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]).

#### Labor Law §§ 240 (1) and 241 (6)

“Labor Law §§ 240 (1) and 241 (6) contain identical provisions expressly exempting owners of one- and two-family dwellings who contract for but do not direct or control the work. In order to satisfy its prima facie burden on the basis of these exemptions, a moving defendant is required to demonstrate not only that their house was a one- or two-family residence, but also, that they did not direct or control the work being performed” (*Nucci v County of Suffolk*, 204 AD3d 817, 819 [2d Dept 2022] [internal citations omitted]).

The Cheras admit to owning the premises located at 251 Lake Street, Brooklyn, and admit to hiring AbeCo Construction LLC (AbeCo). The Cheras claim that the home was a two-family home when they purchased it and that the home was being converted into a one-family home (Chera affs. at para. 4).<sup>1</sup> The Cheras admit that they visited the site and did occasional walkthroughs, and discussed aesthetic decisions with Nathan Azizo, representative of AbeCo. However, the Cheras contend that they intended to occupy the home themselves, that they did not have a commercial purpose for the home, and that they did not direct or control the work.

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<sup>1</sup> The Cheras submit essential identical affirmations in support of the motion. Therefore, the affidavits will be referenced together here.

Therefore, the Cheras seek summary judgment on plaintiff's claims based on their lack of supervisory authority at the site and the single-family dwelling exception to statutory liability under Labor Law §§ 240 (1) and 241 (6).

In opposition, plaintiff and co-defendants contend that the motion for summary judgment is premature. Notably, the Chera's admit to having a role in making aesthetic decisions, and the Appellate Division has found that aesthetic decisions can rise to the level of controlling the work in some situations (*see Venter v Cherkasky*, 200 AD3d 932 [2d Dept. 2021]). Moreover, there are open questions of fact as to what the Cheras' walkthroughs consisted of and the extent of authority to direct and control the work they maintained. Finally, since the homeowner's exemption requires an assessment of parties' intent at the time of purchase and renovation, the opposing parties contend that they must have an opportunity to examine the Cheras about the timeline between the purchase of the property in March 2021 and now. The Cheras' affidavits also do not indicate that they have moved into the premises, despite purchasing the property over three years ago.

Parties "should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment" (*Valdiva v Consolidated Resistance Co. of Am., Inc.*, 54 AD3d 753, 755 [2d Dept 2008]). Here, there are material issues of fact about, *inter alia*, the Cheras' role at the site and their intentions for the property that cannot be resolved in the absence of depositions. Therefore, the Cheras' motion for summary judgment (Seq. 001) is denied.

Labor Law § 200

Defendants also seek summary judgment on plaintiff's Labor Law § 200 claim.

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]). Owners may be liable under Labor Law § 200 in cases that involve dangerous means and methods if they directed or controlled the work, and may be liable in cases involving dangerous premises conditions if they created the condition, or had actual or constructive notice of the condition and failed to remediate it (*id.* at 61–62).

Here, there are questions of fact as to the extent of the Cheras’ involvement with the work at the site. Discovery is required to reveal the extent of their decision-making authority, the frequency of their walkthroughs, and any other indications of whether they controlled the work or their relationship with any dangerous conditions.

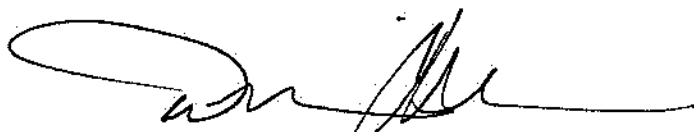
Defendants’ motion is therefore also denied as to plaintiff’s Labor Law § 200 claims.

### **Conclusion**

Defendants’ motion (Seq. 001) is denied.

This constitutes the decision of the court.

September 19, 2024  
DATE



**DEVIN P. COHEN**  
Justice of the Supreme Court