

Orellana v Harris
2024 NY Slip Op 35454(U)
April 5, 2024
Supreme Court, Queens County
Docket Number: Index No. 723411/2020
Judge: Cassandra A. Johnson
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CASSANDRA A. JOHNSON
Justice

IA Part 2

BOLIVAR ORELLANA,

Index
Number 723411/2020

Plaintiff,

Motion
Date July 19, 2023

-against-

Motion Seq. No. 1

JUDI HARRIS,

Defendant.

X

The following numbered papers read on this motion by defendant for summary judgment, pursuant to CPLR 3212, dismissing all claims asserted against her.

Papers
Numbered

Notice of Motion – Affidavits – Exhibits	EF 19 – 36
Answering Affidavits – Exhibits	EF 40 – 44
Reply Affidavits – Exhibits	EF 45 – 47

Upon the foregoing papers it is ordered that the motion is determined as follows:

Background

In this personal injury action, the plaintiff alleges that on October 1, 2019, he sustained injuries using a circular saw while repairing a terrace located on a bluff at the defendant's home at 3 Bluff Road, Nissequogue, Suffolk County (the premises). The plaintiff was a self-employed handyman. At the time of the accident, the defendant owned the premises and retained the plaintiff to repair parts of the premises damaged by a storm.

The plaintiff testified that in 2019, he worked to repair the storm damage to the defendant's property. He supervised coworkers and managed tools and equipment ordered by the defendant. When necessary, he selected machines and informed the defendant to make the payments. The work included repairing damage to a terrace located on a bluff on the premises. The defendant provided tools like the circular saw, which the plaintiff used as needed. The plaintiff further testified to the defendant's lack of direction in job execution, and that she never handled the



machines herself. The plaintiff testified that he informed the defendant that the circular saw was “bad” and “was not working anymore,” to which the defendant agreed to purchase a new one. The plaintiff stated that despite informing the defendant about the saw “not working anymore” before the accident, he continued using it. At the time of the accident, he was operating a circular saw to cut a 4x4 post to align with the top of a 2x12 plank, as part of the repair work to the terrace. As he cut the post, the saw became jammed with sand, unexpectedly kicked back, and caused the plaintiff’s injury.

As a result of the accident, the plaintiff commenced the instant action against the defendant asserting causes of action under Labor Law §§ 240 (1), 241 (6), 200, and for common-law negligence. The defendant moved for summary judgment dismissing all the claims asserted against her.

Labor Law § 240 (1)

The court will first address the defendant’s motion for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240 (1). “The statute is intended to protect workers from gravity-related occurrences stemming from the inadequacy or absence of enumerated safety devices” (*Ortega v Puccia*, 57 AD3d 54, 58 [2d Dept 2008]). Here, the facts alleged are not within the purview of Labor Law § 240 (1) as there is no allegation of a gravity related occurrence (*see* Labor Law § 240 [1]). Moreover, the plaintiff, in opposition, failed to address Labor Law § 240 (1) and has, thus, abandoned his reliance on it (*see Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 737 [2d Dept 2023]). Accordingly, the defendant is entitled to summary judgment dismissing this cause of action.

Labor Law § 241 (6)

The court next turns to the defendant’s branch of the motion for summary judgment dismissing the cause of action alleging a violation of Labor Law § 241 (6). In support of her motion, defendant submits the pleadings, and the deposition transcripts of the plaintiff and defendant. The defendant contends that the homeowner’s exemption applies because she owned the premises, which is a single-family dwelling, and that she did not direct or control the plaintiff’s work that caused the accident.

Owners and contractors are subject to strict liability under Labor Law §§ 240 (1) and 241 (6), except owners of one- and two-family dwellings who contract for, but do not direct or control the work (*see Salgado v Rubin*, 183 AD3d 617, 618 [2d Dept 2020]; *Abdou v Rampaul*, 147 AD3d 885, 885-886 [2d Dept 2017]). “[I]n order for a defendant to receive the protection of the homeowners’ exemption, the defendant must satisfy two prongs required by the statute. 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 121, 126 [2d Dept 2008]; *Ortega v Puccia*, 57 AD3d 54, 60 [2d Dept 2008]). “The second requirement of the homeowners’ exemption is that the defendants ‘not direct or control the work’. The expressed and unambiguous language of both statutes focuses upon whether the defendants supervised the methods and manner of the work” (*Chowdhury*, 57 AD3d at 126-127; *see* Labor Law §§ 240 [1] and 241 [6]; *Ortega*, 57 AD3d at 60). “[G]eneral supervision with respect to the project, providing instructions related to the

aesthetic appearance of the work, and inspecting the work to assess progress are insufficient to meet the requisite direction or control necessary to fall outside the protections of the homeowners' exemption" (*Navarra v Hannon*, 197 AD3d 474, 478 [2d Dept 2021]; see *Santibanez v North Shore Land Alliance, Inc.*, 197 AD3d 1123 [2d Dept 2021]; *Chowdhury*, 57 AD3d at 126-127).

As to the first prong, it is undisputed that the plaintiff's accident occurred at the defendant's property, which is a single-family dwelling. Regarding the second prong, the plaintiff testified that the defendant did not direct or control the work. The defendant testified that she accepted the plaintiff's suggestions regarding necessary tools, and if unavailable, she would procure them for the plaintiff's work. The defendant further testified that she instructed the plaintiff on the frequency of tasks she wanted him to perform in the work area on the premises. "[S]ince these actions are no more extensive than would be expected of the typical homeowner who hired a contractor to renovate his or her home" (*Navarra*, 197 AD3d at 478), this court finds that defendant's actions do not rise to the requisite level of direction and control to fall outside the purview of the homeowner's exemption (see *Navarra*, 197 AD3d at 478; *Chowdhury*, 57 AD3d at 126-127). Finally, although the defendant acknowledges that she gave the circular saw to the plaintiff, this "was not equivalent to directing or controlling the work and could not serve as a predicate for liability outside of the homeowners' exemption" (*Chowdhury*, 57 AD3d at 127). Therefore, the defendant established, *prima facie*, that the premises where the work was conducted is a residential dwelling, and that she did not direct or control the work being performed (see *Navarra*, 197 AD3d at 478; *Chowdhury*, 57 AD3d at 126-127).

In opposition, the plaintiff argues that the defendant testified to being "in charge of" the plaintiff, specifically instructing the cutting of the vertical 4x4 posts to match the level of the 2x12 planks. The plaintiff contends that this direction was not solely for aesthetic purposes but rather a necessary component of the permits the defendant had acquired for the subject work. Contrary to the plaintiff's contentions, the defendant testified that she did not require any type of permit or license from either the town, the county, or the state because the renovation work consisted of repairs done under the original permits acquired in the fall of 2015. Additionally, while the defendant testified that she told the plaintiff to cut the subject posts for aesthetic reasons, and that she inspected the work "to see the progress that was being made," at most, this demonstrates that the defendant monitored the progress of the work, approved the aesthetics of the work, and oversaw the work's general quality, such as the cutting of the subject posts so it would "look right" aesthetically. Inasmuch as such involvement has been found to be typical homeowner interest in the ongoing progress of the work, it does not constitute the kind of direction or control necessary to overcome the homeowner's exemption from liability (see *Chowdhury*, 57 AD3d at 127). Therefore, the court finds that the plaintiff failed to raise any triable issues of fact that warrant denial of the summary judgment motion (see *Navarra*, 197 AD3d at 478; *Chowdhury*, 57 AD3d at 126-127). Accordingly, the defendant is entitled to summary judgment dismissing the Labor Law § 241 (6) cause of action.

Labor Law § 200 and Common-Law Negligence

The court will now consider the branch of defendant's motion for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence. In support of her motion, the defendant asserts that she did not violate these provisions

because the circular saw was not defective, and she did not create the alleged defective condition as she never used the saw.

“Labor Law § 200 is a codification of the common-law duty of owners, contractors, and their agents to provide workers with a safe place to work” (*Navarra*, 197 AD3d at 476, quoting *Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). “Cases involving Labor Law § 200 fall into two broad categories, namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed (*Navarra*, 197 AD3d at 476, quoting *Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]; see *Reinoso v Han Ma Um Zen Ctr. of NY., Inc.*, 206 AD3d 772, 774 [2d Dept 2022]). Where the “plaintiff’s injuries arise from the manner in which the work is performed, to be held liable under Labor Law § 200, a defendant must have the authority to exercise supervision and control over the work” (*Navarra*, 197 AD3d at 476, quoting *Torres*, 127 AD3d at 1165). “[I]f a defendant property owner loans equipment to a worker, the defendant’s ownership of and control over its own equipment, and the concomitant authority to remedy its dangers and defects, is to be governed by the common-law standard that speaks to defect creation or actual or constructive notice of the condition” (*Chowdhury*, 57 AD3d at 130-131).

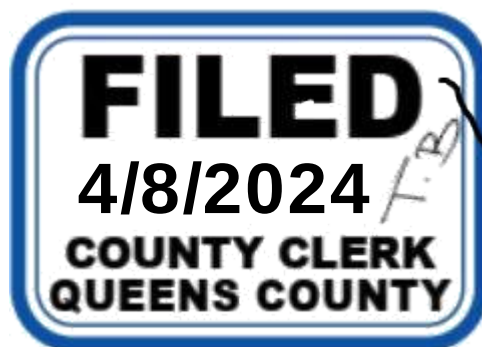
While the defendant’s submissions establish, *prima facie*, that she did not direct or control the means and method of the plaintiff’s work, and that she did not create the alleged defective condition, issues of fact exist as to whether the circular saw was defective, and whether the defendant had notice of the alleged defect. Here, the plaintiff testified that he informed the defendant before the accident that the circular saw was “bad” and “was not working anymore.” This testimony contradicts the defendant’s testimony, as the defendant testified that she did not receive any complaints from the plaintiff or the other workers about the circular saw before the accident. As such, the defendant failed to demonstrate, *prima facie*, that the circular saw was not defective, and that she lacked notice of the allegedly defective condition with respect to the circular saw (see *Reinoso*, 206 AD3d at 774). Accordingly, the court denies this branch of defendant’s motion for summary judgment.

Conclusion

Accordingly, the branches of defendant’s motion for summary judgment dismissing the plaintiff’s Labor Law §§ 240 (1) and 241 (6) claims are granted.

The branch of defendant’s motion for summary judgment dismissing the plaintiff’s Labor Law § 200 and common-law negligence claims is denied.

Dated: April 5, 2024



J.S.C.