

Quilla v Jansen
2024 NY Slip Op 35500(U)
August 12, 2024
Supreme Court, Westchester County
Docket Number: Index No. 60055/2023
Judge: Linda S. Jamieson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp __x__ Dec _____ Seq. No. __1__ Type __SJ__

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X

MARIA QUILLA,

Index No. 60055/2023

Plaintiff,

DECISION AND ORDER

-against-

JEAN-PAUL JANSEN and KIRSTEN KOLLERIE,

Defendants.

-----X

The following papers numbered 1 to 5 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit, Affirmation and Exhibits	1
Statement of Material Facts	2
Affirmation and Exhibit in Opposition	3
Counterstatement of Material Facts	4
Affirmation in Reply	5

Defendants bring their motion seeking summary judgment in their favor dismissing the complaint in its entirety. This case arises out of an accident that occurred to plaintiff at defendants' single-family home.

Background

The facts are as follows: plaintiff is a housekeeper who worked 12 hours a week for defendant homeowners, spread out over three days. Plaintiff generally had a routine as to what tasks she would complete on each day, but occasionally defendants would ask her to do different tasks, such as cleaning the windows outside the house.

On the day in question, defendant Kollerie asked plaintiff to clean the cobwebs off the windows at the entrance to the house. This was a task that plaintiff would do periodically. Plaintiff testified at her deposition that "I didn't do it weekly, but I could do it every two or three weeks. Whenever the gentleman tells me, Maria, the glasses are getting dirty or the wife. So I understood at the time that they needed to be cleaned." The Court notes that at another point in her deposition, plaintiff testified that she had cleaned the windows before September 9, 2022, the date of the accident, "around three to four times between spring and summer, and they didn't ask me to clean the windows in the winter."

Plaintiff testified that the first time she had to clean the windows, at a date prior to the accident, "the gentleman told me to go get the ladder. He instructed me to go get the ladder in the garage. So I get the ladder, I step on it." Plaintiff further testified that although when she first began

cleaning this area, she tried to use a broom, "the area is very narrow, and it was very difficult. So I gathered some kind of rag or cloth to do it." She did not testify that defendants told her to use rags, or otherwise specify how the work should be done.

On the day of the accident, plaintiff went to the garage and got the ladder that she usually used and set it up on the flat area in front of the windows.¹ She climbed up and down the ladder twice prior to the accident, repositioning the ladder each time. Plaintiff testified at her deposition that she climbed to the top step of the ladder so that she could reach the windows. When she went to descend the ladder the third time after cleaning, the ladder shook and she fell down.

Plaintiff testified that no one was outside when she was cleaning or when she fell. A passerby heard her screaming and came to help her. Defendant Jansen, who was on a video call for work at the time, heard the commotion and came outside. Kollerie was not home when plaintiff had her accident.

¹ In her opposition papers, plaintiff's counsel states that "on September 9, 2022, Plaintiff was at Defendants' house cleaning, and she was asked to clean the windows above the front doors. She was directed by Defendants to get the ladder from the garage and clean the windows as she did in the past." A review of the specific passages of plaintiff's deposition testimony shows that that was not what plaintiff had testified. She did not say that that day she "was directed by Defendants to get the ladder from the garage."

Analysis

As the Second Department has explained, "Labor Law §§ 240(1) and 241(6) provide an exemption for owners of single and two-family houses such that liability can only be imposed where the homeowner directs or controls the work being performed." *Dasilva v. Nussdorf*, 146 A.D.3d 859, 859, 45 N.Y.S.3d 531, 533 (2d Dept. 2017) ("defendants made a prima facie showing that they were entitled to the protection of the homeowner's exemption by submitting evidence demonstrating that the work being performed directly related to the residential use of the cottage and that they did not direct or control the manner in which the plaintiff performed his work."). The reason for this is that "the strict liability imposed by the [Labor Law] statutes "should not apply to owners of one and two family homes who are not in a position to know about, or provide for the responsibilities of absolute liability." *Cannon v. Putnam*, 76 N.Y.2d 644, 649 (1990).

On this motion, defendants present to the Court evidence that plaintiff's work was "directly related to the residential use" of their home, and that they did not control or direct the manner in which plaintiff did the work. All that defendants did is ask plaintiff to clean the windows, having previously directed her to a ladder for her to use. They did not specify that she should not use a broom, direct that she use rags, tell

her to stand on the top step or otherwise supervise her window-cleaning work. This is sufficient to establish their prima facie case with respect to any claims arising under Labor Law §§ 240(1) and 241(6).²

To the extent that plaintiff pleads claims arising under Labor Law § 200, and common law negligence (neither of which were plead in the complaint but were mentioned in the Bill of Particulars), the Second Department has explained that "Where a premises condition is at issue, property owners may be held liable for a violation of Labor Law § 200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident." *Ortega v. Puccia*, 57 A.D.3d 54, 61-62, 866 N.Y.S.2d 323, 329-30 (2d Dept. 2008). It does not appear that plaintiff asserts a "premises condition" claim, but a "manner of work" claim. The Court explained in *Ortega* that "when the manner of work is at issue, no liability will attach to the owner solely because he or she may have had notice of the allegedly unsafe manner in which work was performed. Rather,

² Any Labor Law § 241(6) claims must be dismissed because these claims require the citation of a section of the Industrial Code, which plaintiff fails to do. *Perez v. 286 Scholes St. Corp.*, 134 A.D.3d 1085, 1086, 22 N.Y.S.3d 545, 546 (2d Dept. 2015) ("As a predicate to a section 241(6) cause of action, a plaintiff must allege a violation of a concrete specification promulgated by the Commissioner of the Department of Labor in the Industrial Code."). It appears that plaintiff has abandoned this claim, as she does not mention it in her opposition papers.

when 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. Although property owners often have a general authority to oversee the progress of the work, mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200." *Id.* As set forth above, the Court finds that defendants have met their prima facie burden of demonstrating that they did not supervise or control the performance of the work.

In opposition to the motion, plaintiff's counsel contends in his affirmation that plaintiff has "succeeded in raising a question of fact as to whether Defendants directed Plaintiff to use a ladder too short to reach the locations that she was told to clean without standing on the top step which was unreasonably dangerous and not an acceptable safe use of the ladder."

Counsel also asserts that "Plaintiff testified that she was given a 6-foot A-Frame ladder to use to remove cobwebs and to dust the windows that were located above the front doors of the premises. Plaintiff Deposition pp. 17, 30-31. The windows were way above six feet from the ground and required Plaintiff to

stand on the top step to reach the windows and clean them." The problem with these assertions is that this is **not** plaintiff's testimony. Instead, plaintiff specifically testified that she did **not** know how high the ladder was: "it's taller than me. I don't know how many feet is - how many feet high." Nor did plaintiff testify about how high the windows were off the ground.

Contrary to plaintiff's counsel's assertion, there is no evidence that "Defendants directed Plaintiff to misuse the ladder in a dangerous fashion by standing on the top step. . . ." As the evidence does not support plaintiff's contentions, plaintiff has failed to create a triable issue of fact. *Bates v. Porter*, 203 A.D.3d 792, 160 N.Y.S.3d 888, 889 (2d Dept. 2022) (summary judgment for homeowners appropriate where "In opposition, the plaintiffs failed to raise a triable issue of fact.").

Accordingly, the motion is granted. The action is dismissed in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 12, 2024



HON. LINDA S. JAMIESON
Justice of the Supreme Court

To: Mirman, Markovits et al.
Attorneys for Plaintiff
291 Broadway, Sixth Floor
New York, New York 10007

Law Offices of John Trop
Attorney for Defendants
120 White Plains Road, Suite 200
Tarrytown, NY 10591