Velazquez-Sierra v Magnificent Urban Restoration Ltd.
2025 NY Slip Op 31847(U)
May 22, 2025
Supreme Court, New York County
Docket Number: Index No. 156669/2021
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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GREGORIO VELAZQUEZ-SIERRA,

Plaintiff,

- v -

MAGNIFICENT URBAN RESTORATION LTD., PETER S. DOWLING, DEBORAH W. DOWLING,

Defendant.

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INDEX NO. 156669/2021

MOTION DATE 06/13/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

PETER DOWLING, DEBORAH DOWLING

Plaintiff,

-against-

COBURN CONSTRUCTION MANAGEMENT CORP., UP CONSTRUCTION & RESTORATION, INC.

Defendant.

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Third-Party
Index No. 595866/2022

The following e-filed documents, listed by NYSCEF document number (Motion 005) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 120, 121, 122, 123, 124, 125, 126, 127, 128

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of March 4, 2025, Defendants Peter S. Dowling and Deborah W. Dowling's (collectively the "Dowlings") motion for summary judgment dismissing Plaintiff Gregorio Velasquez Sierra's ("Plaintiff") Complaint and any and all crossclaims against them is granted in part and denied in part.

I. Background

The Dowlings own a single-family home at 208 Adelphi Street, Brooklyn, New York (the "Premises"). In April of 2018, the Dowlings contracted with an architect for a gut renovation of

the Premises (the "Project") (NYSCEF Doc. 88 at 15). They retained Third-Party Defendant Coburn Construction Management Corp. ("Coburn") to serve as construction managers (NYSCEF Doc. 88 at 16). The general contractor was Defendant Magnificent Urban Restoration Ltd. ("Magnificent") (NYSCEF Doc. 88 at 38). It was Coburn's and Magnificent' s job to oversee all aspects of the project, including safety (NYSCEF Doc. 88 at 17-18; 38). The Dowlings received field reports from Mr. Coburn regarding the progress every week or two (NYSCEF Doc. 88 at 28-29).

On March 15, 2019, Plaintiff was allegedly injured while working at the Premises. Plaintiff testified he was injured when he lost balance while descending a staircase into the basement –he tried to grab a handrail to prevent his fall, but the handrail broke (NYSCEF Doc. 86 at 29). The Dowlings seeks summary judgment dismissing Plaintiff's Labor Law §§ 240(1) and 241(6) claims against them pursuant to the single-family homeowner exception. They also seek dismissal of Plaintiff's Labor Law § 200 and common law negligence claims, and dismissal of crossclaims asserted against them. The motion is opposed by Plaintiff and Magnificent and is partially opposed by Up Construction.

II. Discussion

A. Standard

Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340,

342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

B. The Homeowner Exception

The Dowlings' motion for summary judgment dismissing Plaintiff's Labor Law §§ 240(1) and 241(6) claims against them is granted. As stated by the Court of Appeals, for a person to be "directed" as used in Labor Law § 240(1), there must be supervision of the manner and method of the work to be performed (*Duda v John W. Rouse Const. Corp.*, 32 NY2d 405, 409 [1973]). The 1980 amendments to Labor Law §§ 240 and 241 which exempt the owners of one and two family dwellings who neither direct nor control work were intended to remove the burden of strict liability from such owners when they have nothing whatsoever to do with carrying out the work (*Hartman v. Galasso*, 226 AD2d 256, 257 [1st Dept 1996] citing *Rimoldi v Schanzer*, 147 AD2d 541, 545 [2d Dept 1989]). Discussions as to the work's progress and quality are comments of a type which might be expected of any homeowner and do not give rise to the level of direction or control contemplated by the Labor Law (*Hartman, supra.*).

It is undisputed that this is a single-family residence and there is no evidence that the residence was being used for commercial purposes. The undisputed evidence shows the Premises were vacant at the time and were purchased for use solely by the Dowlings. Moreover, there is no evidence that the Dowlings directed Plaintiff's work. Plaintiff did not even know who the Dowlings were, and other knowledgeable contractors at the Premises testified they had only seen the Dowlings on site on one occasion. Moreover, the testimony is undisputed that the Dowlings relied on their construction manager and general contractor to ensure the Premises remained safe. Simply put, there is no evidence the Dowlings were involved in anyway with Plaintiff's accident (*see also Jagdeo v Borden House Condominium*, 235 AD3d 448, 449 [1st Dept 2025]). Plaintiff's

opposition hinges on speculation as to whether the Dowlings intended to use the property as a commercial property or home – however the record evidence is clear that the property was purchased for use as a single-family home, and the Dowlings moved in once the renovation was complete. Therefore, Plaintiff's Labor Law §§ 240(1) and 241(6) claims asserted against the Dowlings are dismissed.

C. Labor Law § 200 and Common Law Negligence

The Dowlings' motion for summary judgment dismissing Plaintiff's Labor Law § 200 and Common Law Negligence claims are granted. Labor Law § 200 is a codification of the common-law duty to provide workers with a reasonable safe place to work and so if Plaintiff's Labor Law § 200 claims fail so too does his common law negligence claims (*Mejia v Levenbaum*, 30 AD3d 262 [1st Dept 2006]). As stated by the First Department, under Labor Law § 200, the owner is not required to supervise the contractor for the benefit of the contractor's employees unless the owner assumed direct responsibility for the method of work performed (*Lombardi v Stout*, 178 AD2d 208, 212 [1st Dept 1991]). As previously stated, there is no evidence the Dowlings supervised or controlled the methods of Plaintiff's work. Nor is there evidence that the Dowlings created or had notice of a defective handrail, which allegedly caused Plaintiff's injury. Indeed, according to Plaintiff, the handrail was built by some other contractor on site (NYSCEF Doc. 86 at 67-68]).

In any event, Plaintiff failed to oppose dismissal of his Labor Law § 200 and common law negligence claims and only opposes the application of the homeowner exception (NYSCEF Doc. 120). The failure to oppose a motion seeking dismissal of asserted claims results in those claims being dismissed as abandoned (*see Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]). Therefore, the Dowlings' motion for summary judgment dismissing Plaintiff's Complaint against them is granted.

D. Crossclaims and Third-Party Claims

The Dowlings' motion for summary judgment dismissing all crossclaims asserted against them is granted. As Plaintiff's Complaint against the Dowlings has been dismissed, the Dowlings cannot be held liable under any theory of contribution or indemnification.[1] However, to the extent the Dowlings sought summary judgment on their contractual indemnification claims against Magnificent and Up Construction, those claims are denied, as the Dowlings did not seek this relief in their notice of motion, but merely argue for it in their motion papers. (*Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443 [1st Dept 2024]; *Abizadeh v Abizadeh*, 159 AD3d 856 [2d Dept 2018]). Moreover, as there has been no finding of active negligence against Up Construction, any grant of summary judgment on the Dowlings' indemnification claims would be premature (*see Hartrum v Montefiore Hospital Housing Section II Inc.*, 2025 N.Y. Slip Op. 02008 at *2 [1st Dept 2025]).

Accordingly, it is hereby,

ORDERED that the Defendants/Third-Party Plaintiffs Peter S. Dowling and Deborah W. Dowling's motion for summary judgment is granted to the extent that Plaintiff's Complaint and all crossclaims asserted against them are hereby dismissed; and it is further

ORDERED that in all other respects Defendants/Third-Party Plaintiffs Peter S. Dowling and Deborah W. Dowling's motion for summary judgment is denied; and it is further

[*The remainder of this space is intentionally left blank.*]

[1] The Dowlings withdrew the portion of their motion seeking indemnification from Third-Party Defendant Coburn Construction Management Corp. (NYSCEF Doc. 128).

ORDERED that within ten days of entry, counsel for Defendants/Third-Party Plaintiffs Peter S. Dowling and Deborah W. Dowling shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/22/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☐ DENIED	☒	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE