Suconota v Twin Sycamore LLC
2025 NY Slip Op 34724(U)
December 10, 2025
Supreme Court, New York County
Docket Number: Index No. 150950/2020
Judge: Denis Reo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 65

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JOSE EDUARDO SUCONOTA,

Plaintiff,

-against-

TWIN SYCAMORE LLC, MCKENNA CUSTOM HOMES INC.,

Defendant.

INDEX NO. 150950/2020

MOTION DATE 11/25/2024, 11/25/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

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TWIN SYCAMORE LLC

Third-Party Plaintiff,

-against-

MCKENNA CUSTOM HOMES, INC.

Third-Party Defendant.

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HON. DENIS REO:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 98, 105, 106, 107, 108, 109, 111, 113, 114, 115, 117, 118, 120, 122, 123

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 110, 112, 116, 119, 121

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Background

Jose Eduardo Suconota ("Plaintiff") commenced this personal injury litigation premised upon alleged violations of Labor Law §§ 240 (1), 241 (6), 200, and common-law negligence. Defendants now move for summary judgment dismissing these claims.

In Motion Sequence No. 001, defendant McKenna Custom Homes, Inc. ("McKenna") moves for summary judgment dismissing (1) Plaintiff's Labor Law §§ 240 (1), 241 (6), 200, and negligence claims, and (2) all crossclaims by the homeowner, defendant Twin Sycamore, LLC ("Twin Sycamore").

In Motion Sequence No. 002, Twin Sycamore moves for summary judgment dismissing (1) Plaintiff's claims under Labor Law §§ 240 (1), 241 (6), 200, and common-law negligence based on the one- or two-family homeowner's exemption, and (2) alternatively, seeks summary judgment on its cross claims against McKenna for contractual and common-law indemnification and breach of contract to procure insurance.

Plaintiff opposes both motions. The court consolidates the motions solely for disposition. For the following reasons, McKenna's and Twin Sycamore's motions to dismiss Plaintiff's claims are GRANTED.

FACTS

Plaintiff is a master mason who, on November 2, 2019, was employed by Larizza Landscaping and Excavation, LLC ("Larizza"). Plaintiff was the supervisor on the job site and reported only to the owner of Larizza, Joseph Larizza ("Mr. Larizza"). Plaintiff had a long history of working with Larizza, having been employed there since at least 2008.

On November 2, 2019, Plaintiff was injured while he installed bluestone treads on exterior steps of a residential property located at 388 Bedford Center Road, Bedford Hills, NY ("Residence"). The Residence is a private one-family residence owned by Twin Sycamore that serves as a summer residence for its members, Ned and Amada Offit, and their family. Additionally, the Residence is a year-round home for Mr. Offit's son while he attends school.

The Residence was purchased by Twin Sycamore in approximately 2017 and, at the time of the accident was undergoing a variety of renovations. At the time of the accident, Twin Sycamore had separate construction contracts with McKenna and Larizza. Pursuant to McKenna's agreement with Twin Sycamore, it performed internal and some external renovations at the Residence while Larizza's agreement was for general landscaping, hardscaping, and stonework, including the installation of the bluestone tread that fell on Plaintiff.

Prior to Larizza installing the treads that eventually injured Plaintiff, McKenna demolished the original exterior staircase and poured the base for the new one. This notwithstanding, McKenna never finished the exterior project. Twin Sycamore contracted directly with Larizza to install bluestone treads on the staircase in order to complete the exterior stairway project.

While Gregory McKenna ("G. McKenna"), President of McKenna Custom Homes, consistently testified at his deposition that McKenna did not have a contract for installing treads on the exterior staircase, he did state the following regarding site safety:

> Q. I know you we asked you earlier, but I just want to be clear on this. If you notice some work that you deemed to be unsafe or some practices that you deemed to be unsafe by one of Joe Larizza's workers on-site, would you correct their work or stop that work?
>
> A. Yes. If any decent human being -- if I see somebody doing something that is dangerous, you know, hanging off a ladder or using -- you would say, "Hey, don't do that."

(NYSCEF Doc. No. 93, G. McKenna Tr. at 69, Lns.4-15)

Mr. McKenna clarified this statement later in his testimony when he stated the following about his ability to direct and control Larizza's workers:

Q. Did McKenna have any authority to direct or instruct Larizza or his workers in their work?

A. We did not.

MR. MAZZEI: This is Rob Mazzei and I'm going to object to that question. It's okay. He answered it.

Q. You testified earlier that out of the kindness of your heart, if you saw somebody doing something unsafe, you might tell them not to do that because you don't want them to get injured or something to that effect. Did you actually have any authority to stop the work of a Larizza employee?

MR. MAZZEI: Just note my objection. The witness can answer.

A. We did not -- we were not contracted to -- by Joe, you know, by a -- we did not contract Joe Larizza.

Q. So you didn't have any authority to tell his workers what to do even though they were doing something dangerous, correct?

MR. MAZZEI: Same Objection. You can answer.

A. Yes.

(NYSCEF Doc. No. 93, G. McKenna Tr. 80, Ln 8- tr. 81, Ln. 11).

The record establishes that neither McKenna nor Twin Sycamore or its members directed, supervised or controlled Plaintiff's work. Neither Ned nor Amanda gave Larizza or McKenna any specific instructions on the means and methods of performing the work. In fact, Plaintiff himself admitted that he never received any instructions or directions from anyone other than his employer. Additionally, all equipment and tools used by Plaintiff were provided by Larizza. Only Larizza told Plaintiff how he was to perform his job. McKenna did not have any authority to direct or

instruct Larizza or its workers in their work. McKenna never checked Larizza's work to ensure that it was performed correctly. Likewise, the owners did not approve the work either. According to Mr. Larizza, the owners of the Residence were never there. The only individuals who reviewed Larizza's work were a designer and an architect.

Meetings were held at the Residence by the architect and landscape architect. Representatives from McKenna, Twin Sycamore, and Larizza attended these meetings as they were for the purpose of ensuring that workers did not "step on each other's toes." ((NYSCEF Doc. No. 75, Larizza Depo. Tr. 26, Lns. 5-10). Additionally, McKenna held safety meetings at the Residence; however, these were for McKenna employees and its subcontractors. Larizza employees did not attend McKenna's safety meetings.

Ned and Amada Offit would visit the property approximately two to three times a month but had no knowledge of how construction work was performed or what was considered to be safe work practices. Ned Offit stated that he would "rely on the expertise of the people [he] hired." (NYSCEF Doc. No. 73, Twin Sycamore Tr. 30, Lns. 18-19). Ned and Amanda Offit took an interest in the aesthetics and cost of the project but not in the daily supervision and control of the work. If they saw something that they did not like, they would speak with either the owner of McKenna or with Larizza.

At the time of the accident Plaintiff was working with an assistant mason, Luis Martinez ("Martinez"), along with an excavator operator, Orlando Rojas ("Rojas"), who was operating an excavator that was owned by Larizza. Rojas and Martinez were employees of Larizza. After cleaning and preparing the step, Plaintiff began installing a bluestone tread; the same tread Plaintiff had installed on six other steps. The step was attached to the excavator by a strap and lowered into place. Plaintiff and Martinez balanced, secured, and guided the step into place with the assistance

of the excavator. This was the "ordinary method" for installing bluestone treads. (NYSCEF Doc. No. 75, Larizza Depo. Tr. 27, Ln. 15- Tr. 28, Ln. 3).

After guiding the bluestone tread into place, Plaintiff used a rubber hammer to level it. The strap around the tread was then released, and the excavator began to back away as Plaintiff had his right foot on the step; however, as the excavator was retreating, the bluestone tread lifted causing Plaintiff to fall and the step to fall on Plaintiff's leg from a height of about three feet.

DISCUSSION

Motion Sequence No. 1- McKenna's Motion for Summary Judgment

A contractor is not liable under Labor Law §240 or 241 for personal injury caused to an employee of another contractor with whom there is no privity of contract unless the contractor has undertaken to oversee and control the actions of the injured party. (*Barrios v City of New York*, 75 AD3d 517 [2d Dept. 2010]; *citing Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318 [1981]; *Aversano v JWH Contr., LLC*, 37 AD3d 745 [2d Dept 2007]). The determinative factor is whether the party had "the right to exercise control over the work, not whether it actually exercised that right" (*Williams v Dover Home Improvement,* 276 AD2d 626, 626 [2d Dept 2000]). A homeowner's hiring of contractors and being engaged in scheduling of work is insufficient to hold a homeowner liable under Labor Law §241(6). (*See Nai Ren Jiang v Yeh*, 95 AD3d at 971 [In an action involving alleged violations of Labor Law §241[6], a homeowner's "activities in… providing the site plans prepared by [his architect, hiring various [] contractors and scheduling when they would work, reviewing plans and the progress of work, and making general decisions' are no more extensive than would be expected of the ordinary homeowner""]). Likewise, with regards to Plaintiff's Labor Law §200 and common law negligence claims, "where such a claim arises out of alleged defects or dangers arising from a subcontractor's methods or materials,

recovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation." (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]). The label given to a party at a worksite is immaterial for purposes of Labor Law liability; rather, the core inquiry is whether the party had the "authority to supervise or control the activity brining about the injury so as to enable it to avoid or correct the unsafe condition." (*Myles v Claxton*, 115 Ad3d 654 [2d Dept. 2014]; *citing Walls v Turner Constr. Co.*, 4 NY3d 861 [2005]; *Tilford v Sweet Home Real Property Trust*, 40 AD3d 966 [2d Dept 2007]; *Aranda v Park East Construction*, 4 AD3d 315 [2d Dept 2004]). A party's "mere status of 'general contractor' does not indicate liability." (*Krawiecki v Cerutti*, 218 AD2d 323 [3d Dept. 1996]).

McKenna testified that it was the "general contractor" for the "house renovations" at the Residence (NYSCEF, Doc. No. 74, McKenna Tr. 51, Lns. 8-22). Notwithstanding, it had no responsibility with regard to the installation of the bluestone treads that caused Plaintiff's injury. The work being performed by Plaintiff at the time of his accident was the subject of a separate written agreement between Larizza and Twin Sycamore. The evidence establishes that McKenna did not and had no right to supervise or control the work performed by Larizza. Plaintiff testified that no one aside from his employer directed and controlled his work. Additionally, no one from McKenna instructed Plaintiff on what specific work to perform at the Residence. McKenna never inspected Larizza's work to ensure that it was performed correctly. All of the equipment used by Plaintiff, including the excavator and strap used to secure the bluestone tread that fell on Plaintiff, were provided by Larizza. Furthermore, while McKenna held safety meetings at the Residence, it was for McKenna and its subcontractors, and Larizza was not at those meetings. The only meetings held at the site that Larizza attended were held by the architect and landscape architect

to ensure no one was "stepping each other's toes." (NYSCEF Doc. No. 75, Larizza Tr. 26, Lns. 5-10).

Since McKenna did not have the right or ability to supervise or control the work performed by Larizza or the "authority to supervise or control the activity brining about the injury so as to enable it to avoid or correct the unsafe condition" and because it did not have a contract with Larizza to install the bluestone treads, Plaintiff's claim against McKenna must be dismissed. Accordingly, McKenna's motion for summary judgment against Plaintiff is GRANTED.

Motion Sequence No. 2- Twin Sycamore's Motion for Summary Judgment

Labor Law § 240(1) does not apply to "owners of one and two-family homes who contract for but do not direct or control the work." (Labor Law §240[1], *Jagdeo v Borden House Condominium*, 235 AD3d 448 [1st Dept 2025]). "The homeowner exemption to liability under Labor Law § 240(1) is available to owners of one- and two-family dwellings who contract for the performance of work on the premises, but who do not direct or control the work" (*Nicholas v. Phillips*, 151 AD3d 731, 731 [2d Dept 2017]). The homeowner exemption is also available in cases involving claims brought pursuant to Labor Law § 241(6). (*Garcia v. Pond Acquisition Corp.*, 131 AD3d 1102, 1103 [2d Dept 2015]; *Nai Ren Jiang v Yeh*, 95 AD3d 970 [2d Dept 2012]). A homeowner relying on this exception must demonstrate "(1) that the work was conducted at a dwelling that is a residence for only one or two families, and (2) that the homeowner did not direct or control the work" (*Sanders v. Sanders–Morrow,* 177 AD3d 920 at 921 [2d Dept 2019]); *see Ortega v. Puccia,* 57 AD3d 54, 58–60 [2d Dept 2008]). Under the second prong of the homeowner exemption test, "'the relevant inquiry is the degree to which the owner supervised the method and manner of the actual work being performed by the injured employee'" (*Wadlowski v. Cohen,* 150 AD3d 930, 931 [2d Dept 2017], quoting *Jenkins v. Jones,* 255 AD2d 805, 805–806

[3d Dept 1998]). General supervision with respect to the construction, providing instructions related to the aesthetics of the work, and inspecting the work to assess progress are not sufficient to establish direction or control necessary to fall outside the protections of the homeowners' exemption (*see Campanello v. Cinquemani,* 179 AD3d 763, 764 [2d Dept 2020]). Inspecting the aesthetics of the project and the status of the work is "no more extensive than would be expected of the typical homeowner who hired a contractor to renovate his or her home." (*Orellana v. Dutcher Ave. Bldrs., Inc.*, 58 AD3d 612, 614 [2d Dept 2009]). The homeowner exemption is "intended to protect residential homeowners lacking in sophistication or business acumen from their failure to recognize the necessity of insuring against the strict liability imposed by the statute." (*Ortega,* 57 AD3d at 58).

Twin Sycamore has established that it is entitled to the protections of the Labor Law homeowner's exemption. The evidence demonstrates that the Residence is a single-family residence that Ned and Amanda Offit used as a summer home. Moreover, Twin Sycamore established that it did not direct or control the work performed by Plaintiff. Neither Twin Sycamore or its members ever gave instructions as to how Plaintiff's work was to be performed. In fact, Ned Offit stated that he had no knowledge of how construction work was performed and had no knowledge of what was considered safe work practices. Additionally, Ned Offit testified that he was only at the Residence approximately two to three times a month while the work was being performed.

Plaintiff's Labor Law §200 and common law negligence claims also must be dismissed. Like a contractor, a homeowner may only be held liable under Labor Law §200 where it "exercise[ed] supervisory control over the activity that brought about plaintiff's injury." *Ramirez v Hansum*, 202 AD3d 605 [1st Dept 2022]; *citing Affri v Basch*, 13 NY3d 592 [2009]; *Lombardi*

v Stout, 80 NY2d 290 [1992]). Here, there is no evidence that Twin Sycamore or its members exercised any supervisory control over Plaintiff and, therefore, these claims must be dismissed Twin Sycamore's motion for summary judgment against Plaintiff is GRANTED.

CONCLUSION

Accordingly, it is hereby

ORDERED that McKenna's motion for summary judgment against Plaintiff (Motion Seq. No. 1) is GRANTED and all crossclaims against Twin Sycamore are dismissed as moot; and it is further

ORDERED that Twin Sycamore LLC's motion for summary judgment against Plaintiff (Motion Sequence No. 002) is GRANTED and all cross claims against McKenna are dismissed as moot; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Denis Reo

12/10/2026
DATE

DENIS REO, A.J.S.C.

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