

Gonzalez v NTGL, LLC
2025 NY Slip Op 35413(U)
January 7, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 601521/2019
Judge: Joseph Farneti
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SHORT FORM ORDER

INDEX No. 601521/2019
CAL. No. 202400645OTSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH FARNETI
Acting Justice of the Supreme CourtMOTION DATE 8/22/24
ADJ. DATE _____
Mot. Seq. # 003 MG-----X
CHRISTOPHER GONZALEZ,

Plaintiff,

- against -

NTGL, LLC, BULGIN & ASSOCIATES, INC. and
MARDERS THE LANDSCAPE STORE, INC.,Defendants.
-----X

BULGIN & ASSOCIATES INC.,

Third-Party Plaintiff,

- against -

WILY'S CARPENTRY INC.,

Third-Party Defendant.
-----XSHULMAN & HILL, PLLC
Attorney for Plaintiff
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Brooklyn, NY 11242CUOMO LLC
Attorney for Defendant/Second Third-Party
Plaintiff NTGL, LLC
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New York, NY 10170LEWIS JOHS AVALLONE AVILES, LLP
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Bulgin & Associates, Inc.
1377 Motor Parkway, Suite 400
Islandia, NY 11749

NTGL, LLC,

Second Third-Party Plaintiff,

- against -

WILY'S CARPENTRY INC.,

Second Third-Party Defendant.

CHESNEY, NICHOLAS & BROWER, LLP
Attorney for Third-Party Defendant/Second
Third-Party Defendant Wily's Carpentry Inc.
485 Underhill Boulevard
Syosset, NY 11791

Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant/second third-party plaintiff NTGL, LLC; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other Memorandum of Law; it is

ORDERED that the motion by defendant/second third-party plaintiff NTGL, LLC for summary judgment dismissing the complaint and cross claims against it is granted

This action was commenced by plaintiff Christopher Gonzalez to recover damages for personal injuries he allegedly sustained on April 27, 2018, when he slipped and fell while carrying a container of construction debris down a dirt ramp at the premises located at 195 Highland Terrace, Bridgehampton, New York. The subject premises, which was under construction on the date of the accident, was owned by defendant/second third-party plaintiff NTGL, LLC ("NTGL"). Plaintiff was an employee of third-party defendant Wily's Carpentry, Inc. ("Wily's"), a subcontractor of defendant/third-party plaintiff Bulgin & Associates Inc. ("Bulgin"), on the date of the accident.

Defendant NTGL now moves for summary judgment dismissing the complaint against it on the grounds that it is exempted from plaintiff's Labor Law §§ 240 (1) and 241 (6) claims, and that it cannot be held liable under the common law or Labor Law § 200, since it neither controlled nor directed plaintiff's work at the time of the alleged accident and did not have notice of any dangerous condition which allegedly caused the accident. In support of its motion, NTGL submits, inter alia, copies of the pleadings, the parties' deposition testimony, its contract with Bulgin, and the subcontract between Bulgin and Wily's. No party has submitted opposition to NTGL's motion.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must offer evidence in admissible form, and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

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The homeowner's exemption to liability under Labor Law § 240 and § 241 is available to "owners of one and two-family dwellings who contract for but do not direct or control the work" (Labor Law §§ 240 [1]; 241 [6]; *see Sanders v Sanders-Morrow*, 177 AD3d 920, 114 NYS3d 114 [2d Dept 2019]; *Castellanos v United Cerebral Palsy Assn. of Greater Suffolk, Inc.*, 77 AD3d 879, 909 NYS2d 757 [2d Dept 2010]; *Ferrero v Best Modular Homes, Inc.*, 33 AD3d 847, 823 NYS2d 477 [2d Dept 2006]). The phrase "direct or control" is construed strictly to apply only where the home owner supervises the method and manner of the injury-producing work (*see Hicks v Aibani*, 157 AD3d 870, 67 NYS3d 476 [2d Dept 2018]; *Arama v Fruchter*, 39 AD3d 678, 833 NYS2d 665 [2d Dept 2007]; *Mayen v Kalter*, 282 AD2d 508, 722 NYS2d 760 [2d Dept 2001]). Merely providing instructions about the aesthetic design of the premises, offering suggestions, scheduling work, and retaining limited powers of general supervision reflects a typical homeowner's interest in the ongoing progress of the work and does not constitute the kind of direction or control necessary to overcome the homeowner's exemption from liability (*see Navarra v Hannon*, 197 AD3d 474, 152 NYS3d 489 [2d Dept 2021]; *DiMaggio v Cataletto*, 117 AD3d 984, 986 NYS2d 536 [2d Dept 2014]; *Bombard v Pruiksma*, 110 AD3d 1304, 975 NYS2d 183 [3d Dept 2013]; *Nai Ren Jiang v Shane Yeh*, 95 AD3d 970, 944 NYS2d 200 [2d Dept 2012]; *Chowdhury v Rodriguez*, 57 AD3d 121, 867 NYS2d 123 [2d Dept 2008]).

Here, NTGL established, *prima facie*, the applicability of the homeowners' exemption to liability under Labor Law §§ 240 and 241 (6) by demonstrating that the subject premises was a one-family dwelling used exclusively for residential purposes, and that its members did not exercise direction or control over the injury-producing work (*see Lazo v Ricci*, 178 AD3d 811, 115 NYS3d 424 [2d Dept 2019]; *DiMaggio v Cataletto*, 117 AD3d 984, 986 NYS2d 536; *Nai Ren Jiang v Shane Yeh*, 95 AD3d 970, 944 NYS2d 200; *Paez v Shah*, 78 AD3d 673, 910 NYS2d 511 [2d Dept 2010]). In this regard, Daryl Simon testified that she and her husband are the sole members of NTGL and that the subject property was acquired by NTGL for the purpose of owning the land and constructing a house for their family. Simon further testified that Bulgin was hired as the general contractor for the construction of the house, that she did not direct the work of the contractors, and that her husband did not visit the premises during its construction. In opposition, no party raised a material issue warranting denial of the motion (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595). Accordingly, plaintiff's claims against NTGL under Labor Law §§ 240 (1) and 241 (6) are dismissed.

As to the branch of NTGL's motion seeking dismissal of the common law and Labor Law § 200 claims, "[c]ases 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" (*Ortega v Puccia*, 57 AD3d 54, 61, 866 NYS2d 323 [2d Dept 2008]; *see Chowdhury v Rodriguez*, 57 AD3d 121, 867 NYS2d 123). Labor Law § 200 codifies the common-law duty of an owner or contractor to provide employees with a safe place to work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877, 609 NYS2d 168 [1993]; *Dasilva v Nussdorf*, 146 AD3d 859, 45 NYS3d 531 [2d Dept 2017]), and liability under the statute is governed by common-law negligence principles (*see Chowdhury v Rodriguez*, 57 AD3d 121, 867 NYS2d 123). Where a premises condition is at issue, an owner or contractor may be held liable for a violation of Labor Law § 200 if the owner or contractor either created the dangerous condition that caused the

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accident or had actual or constructive notice of the condition (*see Ortega v Puccia*, 57 AD3d 54, 866 NYS2d 323; *Azad v 270 5th Realty Corp.*, 46 AD3d 728, 848 NYS2d 688 [2d Dept 2007]). By contrast, when a claim arises out of alleged dangers in the method of the work or the use of defective equipment, 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 or the provision of the alleged defective equipment (*see Chavez-Lezama v Kun Gao*, 173 AD3d 826, 103 NYS3d 510 [2d Dept 2019]; *Rodriguez v Mendlovits*, 153 AD3d 566, 60 NYS3d 87 [2d Dept 2017]; *Abdou v Rampaul*, 147 AD3d 885, 47 NYS3d 430 [2d Dept 2017]; *Ortega v Puccia*, 57 AD3d 54, 866 NYS2d 323).

Here, NTGL established its prima facie entitlement to dismissal of plaintiff's claims under the common law and Labor Law § 200 by demonstrating that the Simons did not control or supervise plaintiff's work or have notice of any dangerous condition which allegedly caused the accident (*see Rendon v Callaghan*, 206 AD3d 945, 170 NYS3d 192 [2d Dept 2022]; *Khan v Khan*, 197 AD3d 1165, 153 NYS3d 529 [2d Dept 2021]; *Ortega v Puccia*, 57 AD3d 54, 866 NYS2d 323; *Azad v 270 5th Realty Corp.*, 46 AD3d 728, 848 NYS2d 688; *Miller v Shah*, 3 AD3d 521, 770 NYS2d 739 [2d Dept 2004]). The deposition testimony of the parties establishes that the defendant homeowners did not direct or supervise plaintiff's work. Moreover, the evidence establishes that the Simons did not create, or otherwise have actual or constructive notice of any dangerous condition with regard to the ramp on which plaintiff was walking at the time of his accident. No party offered any evidence raising a triable issue of fact in opposition to NTGL's motion (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595). Accordingly, plaintiff's claims against NTGL under Labor Law § 200 and common-law negligence are dismissed.

The branch of NTGL's motion for summary judgment dismissing the cross claims asserted against it is also granted. NTGL's prima facie showing that it is not liable for the injuries sustained by the plaintiff necessarily defeats the cross claims for common-law indemnification and contribution asserted against it by Bulgin and Marders the Landscape Store, Inc. ("Marders") (*see Tapinekis v Rivington House Health Care Facility*, 17 AD3d 572, 793 NYS2d 484 [2d Dept 2005]). In addition, NTGL has established its entitlement to dismissal of the cross claims for contractual indemnification and breach of contract asserted against it through its submissions demonstrating that there were no contracts obligating it to indemnify Bulgin or Marders (*see Bessios v Regent Assocs.*, 214 AD3d 554, 187 NYS3d 6 [1st Dept 2023]). In opposition to NTGL's motion, no party raised an issue of fact in this regard.

Dated: 1/7/2025


 A.J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION