

Martinez v Quality Sheetrocking & Constr.
2025 NY Slip Op 35416(U)
March 5, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 607136/2023
Judge: Paul E. Hennings
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SHORT FORM ORDER

INDEX No. 607136/2023CAL. No. 202400663OTSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 75 - SUFFOLK COUNTY**PRESENT:**Hon. PAUL E. HENNINGS
Justice of the Supreme CourtMOTION DATE 7/30/24ADJ. DATE 10/8/24

Mot. Seq. # 001 MG

Mot. Seq. # 002 MotD

Mot. Seq. # 003 MD

-----X
PASTOR MARTINEZ,

Plaintiff,

- against -

QUALITY SHEETROCKING &
CONSTRUCTION, WALLACE W.
KLUGHERS, II, WALLACE W. KLUGHERS, II
d/b/a QUALITY SHEETROCKING &
CONSTRUCTION and JONATHAN
MAUTSCHKE,Defendants.
-----X

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Attorney for Defendant Jonathan Mautschke

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Upon the following papers read on these e-filed motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant Jonathan Mautschke, filed June 25, 2024; by defendants Quality Sheetrocking & Construction, Wallace W. Klughers, II, and Wallace W. Klughers, II, d/b/a Quality Sheetrocking & Construction, filed July 24, 2024; by plaintiff, filed August 20, 2024; Notice of Cross-Motion and supporting papers __; Answering Affidavits and supporting papers by plaintiff, filed August 20, 2024; by defendants Quality Sheetrocking & Construction, Wallace W. Klughers, II, and Wallace W. Klughers, II, d/b/a Quality Sheetrocking & Construction, filed September 30, 2024; by defendant Jonathan Mautschke, filed October 1, 2024; Replying Affidavits and supporting papers by defendant Jonathan Mautschke, filed October 1, 2024; by plaintiff, filed October 2, 2024; by defendants Quality Sheetrocking & Construction, Wallace W. Klughers, II, and Wallace W. Klughers, II, d/b/a Quality Sheetrocking & Construction, filed October 7, 2024; Other __; it is

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ORDERED that these motions are consolidated for the purposes of this determination; and it is further

ORDERED that the motion by defendant Jonathan Mautschke for summary judgment dismissing the complaint and all cross-claims against him is granted; and it is further

ORDERED that the motion by defendant Wallace W. Klughers, II, d/b/a Quality Sheetrocking & Construction, for summary judgment dismissing the complaint and all cross-claims against him is granted to the extent that it seeks dismissal of plaintiff's first cause of action and Jonathan Mautschke's cross-claims, and is otherwise denied; and it is further

ORDERED that the motion by plaintiff for partial summary judgment in his favor on his Labor Law § 240 (1) claim is denied.

Plaintiff commenced this action to recover damages for personal injuries he sustained when he fell from a ladder while working on a construction project at the residential property owned by defendant Jonathan Mautschke. Defendant Wallace W. Klughers, II, d/b/a Quality Sheetrocking and Construction, was retained by Mautschke to provide contracting and project management services on the project. Plaintiff asserted both Labor Law and common law negligence claims against defendants, alleging, among other things, that they were negligent in failing to provide him with proper safety equipment with which to perform his work.

Mautschke now moves for summary judgment dismissing the complaint and the cross-claims against him on the grounds that he was the owner of a single-family dwelling who did not control or direct plaintiff's work, and that he did not create or have actual or constructive notice of the alleged dangerous condition that injured plaintiff. His submissions in support of the motion include transcripts of the parties' deposition testimony. Plaintiff opposes the motion, arguing, in part, that there are triable issues of fact as to whether Mautschke supervised the work being done on his property, and submits his own affidavit.

Klughers moves for summary judgment dismissing the complaint and all cross-claims against him on the grounds that he was not the general contractor on the project, that he was not negligent, and that he had no authority to direct or control plaintiff's work. In support of the motion, he submits, among other things, the project management agreement between he and Mautschke. Plaintiff opposes the motion, arguing that Klughers is a proper Labor Law defendant.

Plaintiff moves for partial summary judgment in his favor on his Labor Law § 240 (1) claims, arguing, in part, that the defendants herein are proper Labor Law defendants. His submissions in support of the motion include his affidavit. Klughers opposes the motion, arguing that he was not a general contractor. Mautschke opposes the motion on the ground that he is exempt from Labor Law §§ 240 and 241 liability, as he was the owner of a single-family dwelling and did not direct or control plaintiff's work.

Plaintiff testified that, on the date of the accident, he was employed by nonparty Long Island Power Solutions. He stated that he was working at 6 Granada Court in Montauk, where he was sent to install solar

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panels. He stated that his instructions for what to do at the job site came from his employer and supervisor, and not anyone else present on the property. He testified that he climbed a ladder that was placed on a deck to install a junction box on the roof, and that the ladder belonged to Long Island Power Solutions. He testified that nobody instructed him to use this ladder, that it was not “tied off,” and that he did not ask for assistance before using the ladder. Plaintiff testified that he climbed approximately twelve feet up the ladder, and that when he tried to step off onto the roof, the ladder slid out from under him, and he fell to the ground. He stated that there was nothing wrong with the rubber coating on the feet of the ladder, and that it was in “pretty good condition.” He testified that nobody on the premises had told him anything with regard to the manner in which he was using the ladder, and that he did not see the owner of the property or anyone he understood to be the general contractor on the day of his accident.

Mautschke averred that he owned the property where the accident took place, and that, at the time of the accident, it was a single-family home. He averred that he did not control or direct plaintiff’s work, and that he was not present on the property when the accident occurred. He further testified that Klughers was contracted to coordinate and oversee the scheduling and work of the subcontractors at the property. He testified that Klughers was responsible for overseeing the progress of “those contractors he recommended to [Mautschke].” Mautschke testified that he performed work during the project as well, including clearing debris and tearing down a wall. He testified that, in general, he would visit the site every day to check on progress, but that he was usually there alone, because he wanted to “stay out of [the contractors’s] way.” He stated that the subcontractors were told how to perform their work by their own project managers or bosses. He testified that he did not know whether Klughers was directing the subcontractors as to how to perform their work. He testified that Klughers was not involved with the solar paneling work, and did not contract with Long Island Power Solutions. Mautschke stated that he contracted directly with Long Island Power Solutions, that he did not supply ladders or other equipment to Long Island Power Solutions, that he never held any safety meetings with its employees, and that the ladder that plaintiff was using when he fell belonged to Long Island Power Solutions.

Klughers testified that Quality Sheetrocking and Construction is the “d/b/a” for his construction business. He testified that he was hired by Mautschke to perform construction-related services for his home at 6 Granada Court. He testified that Mautschke hired him to provide services to the construction project as a “project manager,” and that his duties involved acting as a “liaison” between Mautschke and the contractors. He testified that he oversaw progress on the construction, and kept a ledger detailing the financial commitments to the various contractors. He testified that he did not consider himself the “general contractor” on the project, and that he did not instruct the contractors as to how to perform their work. Klughers testified that he scheduled and coordinated the other contractors, and that he built a deck, and installed siding and trim on the house. Klughers stated that Mautschke performed various tasks on the project as well, including clearing debris, and taking down drywall. He stated that he had no part in hiring the contractor that installed the solar panels, and that he did not direct the solar panel contractor as to how to perform its work.

Labor Law § 200 codifies the common-law duty of property owners, contractors, and their agents to provide workers with a safe place to work (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816 [1998]). “Cases involving Labor Law § 200 fall into two broad categories, namely, those where

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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” (*Carranza v JCL Homes, Inc.*, 210 AD3d 858, 860, 179 NYS3d 95 [2d Dept 2022], quoting *Torres v City of New York*, 127 AD3d 1163, 1165, 7 NYS3d 539 [2d Dept 2015]; see *Murphy v 80 Pine, LLC*, 208 AD3d 492, 173 NYS3d 552 [2d Dept 2022]). “[W]hen a claim arises out of an alleged dangerous premises condition, a property owner or general contractor may be held liable in common-law negligence and under Labor Law § 200 when the owner or general contractor has control over the work site and either created the dangerous condition causing an injury, or failed to remedy the dangerous or defective condition while having actual or constructive notice of it” (*Rodriguez v HY 38 Owner, LLC*, 192 AD3d 839, 841, 143 NYS3d 411 [2d Dept 2021]; see *Agosto v Museum of Modern Art*, 219 AD3d 674, 194 NYS3d 568 [2d Dept 2023]). Where “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-Elec. Co.*, 81 NY2d 494, 505, 601 NYS2d 49 [1993]). “A defendant has the authority to supervise or control the work for the purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed” (*Flores v Crescent Beach Club, LLC*, 208 AD3d 560, 563, 173 NYS3d 574 [2d Dept 2022], quoting *Ortega v Puccia*, 57 AD3d 54, 62, 866 NYS2d 323 [2d Dept 2008]; see *Murphy v 80 Pine, LLC*, 208 AD3d 492, 173 NYS3d 552). Where a plaintiff alleges that an accident involves both a dangerous condition on the premises and the means and methods of the work, a property owner or general contractor moving for summary judgment is obligated to address the proof applicable to both liability standards (see *Venter v Cherkasky*, 200 AD3d 932, 159 NYS3d 487 [2d Dept 2021]).

Labor Law § 240 (1) holds that “[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building shall furnish or erect” suitable safety devices to guard against gravity-related hazards (see *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 727 NYS2d 37 [2001]). “To prevail on a Labor Law § 240 (1) cause of action, a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries” (*Gomez v Kitchen & Bath by Linda Burkhardt, Inc.*, 170 AD3d 967, 968, 96 NYS3d 609 [2d Dept 2019]). “Although comparative fault is not a defense to the strict liability of the statute, where the plaintiff is the sole proximate cause of his or her own injuries, there can be no liability under Labor Law § 240(1)” (*Orellana v 7 W. 34th St., LLC*, 173 AD3d 886, 887, 103 NYS3d 496 [2d Dept 2019] [quotations and citations omitted]).

Labor Law § 241 (6) imposes a nondelegable duty of reasonable care upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816 [1998]). Labor Law § 241 (6) provides, in relevant part, that “[a]ll areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places.” A general contractor may be held liable even if it did not control or supervise the worksite (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816). To support a claim under this section, a plaintiff “must demonstrate a violation of a rule or regulation of the Industrial Code which gives a specific, positive

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command, and is applicable to the facts of the case” (*Bianchi v New York City Tr. Auth.*, 192 AD3d 745, 748, 144 NYS3d 101 [2d Dept 2021]). Owners of one and two-family dwellings who contract for but do not direct or control the work being done are exempt from liability under § 241 (6).

Mautschke demonstrated his prima facie entitlement to summary judgment dismissing the complaint against him (*see DiMaggio v Cataletto*, 117 AD3d 984, 986 NYS2d 536 [2d Dept 2014]; *Nai Ren Jiang v Yeh*, 95 AD3d 970, 944 NYS2d 200 [2d Dept 2012]; *Ortega v Puccia*, 57 AD3d 54, 866 NYS2d 323 [2d Dept 2008]). He submitted evidence demonstrating that he was the owner of a single-family dwelling, and that he did not control or direct the work being done on his property. Therefore, he is exempt from liability under Labor Law §§ 240 (1) and 241 (6). Furthermore, he established his entitlement to dismissal of plaintiff’s Labor Law § 200 and common law negligence claims by demonstrating that he did not bear responsibility for the manner in which plaintiff performed his work, and that he did not create, or have actual or constructive notice of any alleged dangerous condition that caused plaintiff’s accident (*see Sandals v Shemtov*, 138 AD3d 720, 29 NYS3d 448 [2d Dept 2016]).

In opposition, plaintiff failed to raise a triable issue of fact (*see id.*). Plaintiff argues that Mautschke had supervisory control over the work being done because he performed work on the property, and oversaw the progress of the construction projects. Mautschke testified that he only inspected the work after the contractors were done working each day, and the work he attested to having performed, i.e., cleaning up debris and taking down a wall, was not sufficient to transform him from the owner of the property into a “de facto supervisor” of plaintiff’s work (*Levy v Baumgarten*, 147 AD3d 823, 824, 46 NYS3d 664 [2d Dept 2017]; *Edgar v Montechiari*, 271 AD2d 396, 397, 706 NYS2d 117 [2d Dept 2000] [a homeowner will be found to have directed and controlled the work where he or she supervises the method or manner of the work]). Plaintiff confirmed that the only instructions he was given as to how to do his work came from other employees of Long Island Power Solutions. Accordingly, Mautschke’s motion is granted.

Klughers made a prima facie case of entitlement to summary judgment dismissing plaintiff’s Labor Law § 200 and common law negligence causes of action against him, as well as Mautschke’s first and second cross-claims (*see Wilson v Bergon Constr. Corp.*, 219 AD3d 1380, 1382-83, 195 NYS3d 800 [2d Dept 2023]). Klughers’ testimony demonstrated that he did not direct plaintiff as to the means or manner of his work, and that, at most, he maintained “[m]ere general supervisory authority” over the site. Furthermore, he demonstrated that he did not create, or have actual or constructive notice of any alleged dangerous condition that caused plaintiff’s fall (*see Wynne v B. Anthony Constr. Corp.*, 53 AD3d 654, 862 NYS2d 379 [2d Dept 2008]). In response, plaintiff failed to raise a triable issue of fact (*id.*). Plaintiff’s negligence claims having been dismissed against Klughers, and the complaint having been dismissed against Mautschke, Mautschke’s cross-claims based upon Klughers’ alleged negligence are dismissed as well.

Klughers, however, failed to make a prima facie case of entitlement to summary judgment dismissing the Labor Law §§ 240 (1) and 241 (6) causes of action (*see Yearwood v Post Park, LLC*, 91 AD3d 767, 936 NYS2d 562 [2d Dept 2012]; *Nienajadlo v Infomart New York, LLC*, 19 AD3d 384, 797 NYS2d 504 [2d Dept 2005]). Klughers failed to demonstrate that he was not a “general contractor” pursuant to Labor Law §§ 240 (1) and 241 (6) (*see Nienajadlo v Infomart New York, LLC*, 19 AD3d 384, 385, 797 NYS2d 504; *cf. Gonzalez v Magestic Fine Custom Home*, 115 AD3d 796, 797, 982 NYS2d 498 [2d Dept 2014] [defendant was not general contractor under Labor Law where it was not charged with “the duty of

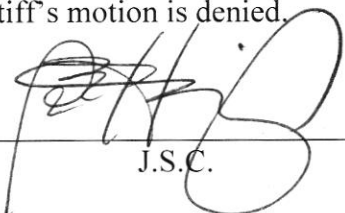
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co-ordinating all aspects of [the] construction project”]; *Rodriguez v JMB Architecture, LLC*, 82 AD3d 949, 919 NYS2d 40 [2d Dept 2011]). Although Klughers testified that he was not the general contractor on the project, and that he did not oversee or control the work done by the subcontractors, the project management agreement states that Klughers bore responsibility for the “planning, scheduling, expediting, coordination and supervising necessary for the prompt execution of the project by all workman, suppliers of material contractors, subcontractors.” The agreement, therefore, gave Klughers “many of the powers of a general contractor,” raising a triable issue of fact as to whether Klughers was the general contractor on the project and whether he had the authority to supervise and control plaintiff’s work (*Nienajadlo v Infomart New York, LLC*, 19 AD3d 384, 385, 797 NYS2d 504). Accordingly, Klughers’ motion is granted to the extent that it seeks dismissal of plaintiff’s first cause of action and Mautschke’s cross-claims, and is otherwise denied.

Mautschke having demonstrated his prima facie entitlement to summary judgment dismissing the complaint against him, the court will address plaintiff’s motion for summary judgment on his Labor Law § 240 (1) cause of action against Klughers only. Plaintiff failed to demonstrate his prima facie entitlement to summary judgment, as there remain triable issues of fact as to whether Klughers was the “general contractor” on the project at the time of plaintiff’s accident (*see Natoli v City of New York*, 32 AD3d 507, 820 NYS2d 313 [2d Dept 2006]). “Although a construction manager is generally not considered a contractor responsible for the safety of the workers at a construction site pursuant to Labor Law §§ ... 240 (1) and 241(6), it may nonetheless become responsible if it has been delegated the authority and duties of a general contractor, or if it functions as an agent of the owner of the premises” (*Argueta v Hall and Wright, LLC*, 230 AD3d 1200, 1201, 219 NYS3d 110 [2d Dept 2024] [internal quotations and citations omitted]). “A party is deemed to be ... a general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured” (*Seales v Trident Structural Corp.*, 142 AD3d 1153, 1157, 38 NYS3d 49 [2d Dept 2016]). “[A] role of general supervision is insufficient to impose liability” (*Argueta v Hall and Wright, LLC*, 230 AD3d 1200, 1201, 219 NYS3d 110). Here, the project management agreement between Klughers and Mautschke vested Klughers with the authority and duty to provide “planning, scheduling, expediting, coordination and supervising necessary for the prompt execution of the project by all workman, suppliers of material contractors, subcontractors.” However, Klughers testified that he never exercised control over any contractors on the project, that he merely oversaw progress on the construction, and that he and Mautschke never intended for the contract to grant him the ability to control or direct the work of other contractors. Klughers’ testimony and the contract raise triable issues of fact as to whether Klughers was a “general contractor,” and whether he had the authority to control plaintiff’s work, and thus be subject to liability under § 240 (1) (*see Sheridan v Albion Cent. School Dist.*, 41 AD3d 1277, 838 NYS2d 296 [4th Dept 2007]). Accordingly, plaintiff’s motion is denied.

Dated: March 5, 2025

 J.S.C.

☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION