

Simmons v Rodriguez
2020 NY Slip Op 32928(U)
May 8, 2020
Supreme Court, Dutchess County
Docket Number: 51346/2017
Judge: Hal B. Greenwald
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At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on May 8, 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
DAVID SIMMONS

Plaintiff

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-against-

DECISION AND ORDER

FREDERICK J. RODRIGUEZ, BETTY B. RODRIGUEZ,
and RIVER MANAGEMENT, DEVELOPMENT and
REALTY, INC.

(Motion Sequence 2)

Defendants

-----X
Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Defendants Notice of Motion for Summary Judgment:

<u>Papers</u>	<u>Numbered</u>
Defendants Notice of Motion/ Affirmation of Michael Cook, Esq./ Exhibits A-N	1
Affirmation of John Del Duco III, Esq.	2
Defendant’s Reply Affirmation of Wehrheim, Esq.	3

RELEVANT BACKGROUND

Plaintiff commenced this action on or about June 6, 2017, for damages against the Defendants, alleging negligence resulting from Defendants violations of Labor Law §§ 200, 240(1) and 241(6). Plaintiff was employed by River Management Development and Realty, Inc. (“RIVER”), as a maintenance worker with the duties of painting, maintaining and cleaning apartments managed by RIVER. Plaintiff alleges that on or about June 11, 2014, his supervisor, Chuck Knapp, a foreman with RIVER assigned him to paint the exterior and interior of 50 Lake Pleasant Drive, Staatsburg, New York, a two-story home, which incidentally is the home of

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Frederick Rodriguez, the Branch President of RIVER. Plaintiff was directed to use RIVER's equipment and supplies for his work at Mr. Rodriguez's home. Plaintiff alleges that he loaded the company's ladders, paint and tarp into the company's vehicle, and drove to Mr. Rodriguez's home with Mr. Knapp, and worked for the day. All the equipment and supplies were left at Mr. Rodriguez's home. The next day Plaintiff went back to Mr. Rodriguez's home to complete the painting, by himself. As Plaintiff was working on a ladder, the ladder fell, and Plaintiff sustained injury for which he now seeks damages. *See* Affirmation of Michael Cook, Esq. at paragraphs 6-7.

Defendant, RIVER, Plaintiff's employer at the time of the accident, entered a stipulation of discontinuance, as Plaintiff claimed and received Worker's Compensation Benefits, as a result of the accident, and said Defendants are no longer a party to this action. Defendants Frederick Rodriguez and Betty Rodriguez, file the instant motion, seeking summary judgment in their favor and against the Plaintiff. Defendants allege that under the home owner exemption, they are exempt from liability, as they were not present and did not direct or control the work Plaintiff was doing on their home and as such did not violate the Labor Laws at issue, therefore they were not negligent. *See*, Stipulation of Discontinuance as NYSCEF Doc. No. 15; *see also*, Affirmation of Michael Cook, Esq. at paragraphs 8-13.

Plaintiff opposes the motion for summary judgment. Plaintiff takes the position that as Defendant Rodriguez was the Branch President, as supervisor of all operations of RIVER, he had control over Plaintiff's work at Defendant's home. Plaintiff argues that the assignment to paint Defendants' home was outside of Plaintiff's normal duties, therefore Mr. Rodriguez, as the administrator, supervisor of Mr. Knapp, authorized and directed Plaintiff's work to be performed. Plaintiff argues that Mr. Rodriguez as a property manager, has a certain expertise, that made him aware of the equipment needed to provide safety, while doing the work at Defendant's home. Plaintiff alleges that he was performing work above ten feet on a leaning ladder, requiring safe ladders and scaffolding but such equipment was not provided. As a result of not having the proper equipment to perform the task at Defendant's home, the ladder slipped, causing Plaintiff to fall. Plaintiff was seriously injured, requiring three surgeries to his shoulder and is now permanently disabled. Plaintiff contends that Mr. Rodriguez had direct control over his work, being the Branch Manager for RIVER and controlled every aspect of operations for that business, including the work assigned to Plaintiff. Plaintiff further argues that Defendant should not be able to hide behind the

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homeowner's exemption because it was not designed to protect persons with Defendants sophistication and expertise. *See*, Affirmation of Anthony LoBiondo, Esq. at paragraphs 12-17.

Defendants in reply, argue that the case law relied on by Plaintiff is misinterpreted, as the Courts have granted the exemption to persons who were more than laymen, similar to the instant matter. Defendants also argue that there is no case law denying summary judgment because Defendant acts in an administrative capacity for the contractor, thus the evidence and law warrant summary judgment in favor of Defendants.

DISCUSSION

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. *See, Ortega v Puccia*, 57 A. D. 3d 54, 61 (2nd Dept. 2008). Labor Law §§240(1) and 241(6) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices, and the reasonable and adequate protection necessary to protect workers from risks, by maintaining compliance with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor. *See, Ramirez v I.G.C. Wall Sys., Inc.*, 140 A. D. 3d 1047, 1049 (2nd Dept. 2016); *see also, Carlton v City of New York*, 161 A. D. 3d 930, 934 (2nd Dept. 2018). A party's liability is contingent upon the existence of a hazard contemplated and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein. *See, Francis v Foremost Contr. Corp.*, 47 A. D. 3d 672, 674 (2nd Dept. 2008).

In order for a defendant to receive the protection of the homeowner's exemption to liability under Labor Law §241(6), the party seeking the exemption must show that the dwelling is a residence for only one or two families and that it did not have direct or control the work. The exception was enacted to protect those who lacking business sophistication, would not know or anticipate the need to obtain insurance to cover them against absolute liability. *See, Nai Ren Jiang v Yeh*, 95 A. D. 3d 970, 970-71 (2nd Dept 2012). However, the Courts have found that there is no basis for concluding that this exemption is applicable to homeowners who hardly are lacking in sophistication or business acumen such that they would fail to recognize the necessity to insure

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against the strict liability imposed by the statute. Such owners do not fall within the class protected by the exemption. *See, Van Amerogen v Donnini*, 78 N.Y.2d 880, 882-83 (1991).

Defendant's arguments about his role as merely a homeowner entitled to the exemption, lacks merit. Defendant acknowledges that both the contractor and property owners, have the obligation of providing the safety devices and equipment such as scaffolds needed for the work to be performed safely on its property. Defendant is the Branch President of RIVER and he manages all aspects of the property management. Defendants have proffered caselaw in support of persons having expertise and sophistication, like Defendant, qualifying for the exemption. However, this issue is fact specific. Whether this exemption should apply to Defendants is a question of fact.

The function of the court on a motion for summary judgment is not to resolve the issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See, Pearson v Dix McBride, LLC*, 63 A.D. 3d 895, 895 (2nd Dept. 2009). Questions of material fact are to be determined by the jury. *See, Prevost v One City Block LLC*, 155 A. D. 3d 531, 535 (1st Dept. 2017). Thus, it would be inappropriate to grant summary judgment in this instance. To that extent, Defendant's application for summary judgment is **denied**.

Accordingly, it is hereby,

ORDERED, that Defendant's Motion for Summary judgment t is denied; and it is further ORDERED, that the parties and their respective counsel shall **appear in Court for conference on July 28, 2019 at 9:30 a.m.**

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: May 8, 2020
Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry,

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except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.