Diaz v H&Z Bldg. Consulting Group, LLC
2020 NY Slip Op 35552(U)
January 29, 2020
Supreme Court, Bronx County
Docket Number: Index No. 28453/2019
Judge: Lucindo Suarez

Mtn. Seq. # 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

CHRISTOPHER DIAZ,

Plaintiff,

- against -

H&Z BUILDING CONSULTING GROUP, LLC and JAMES DUFFY,

Defendants.

Index No.: 28453/2019

DECISION and ORDER

PRESENT: Hon. Lucindo Suarez

The issue in Defendant James Duffy's ("Defendant") summary judgment motion is whether the "homeowner's exemptions" as set forth under Labor Law §§240 and 241 applies and whether Plaintiff's Labor Law §200 claim should be dismissed. This court finds in the affirmative.

Labor Law §240(1), imposes absolute liability on building owners, contractors, and their agents whose failure to provide adequate protection to workers employed on a construction site proximately causes injury to a worker. *Santos v. Condo* 124 LLC, 161 A.D.3d 650, 78 N.Y.S.3d 113 (1st Dep't 2018).

Similarly, 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 N.Y.2d 343, 693 N.E.2d 1068, 670 N.Y.S.2d 816 (1998).

Lastly, Labor Law §200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work. *Licata v. AB*

Green Gansevoort, LLC, 158 A.D.3d 487, 71 N.Y.S.3d 31 (1st Dep't 2018). Where an existing defect or dangerous condition causes injury, liability under Labor Law §200 attaches if the owner or general contractor created the condition or had actual or constructive notice of it. Id. In addition, under Labor Law §200, liability for a dangerous condition may arise from the methods employed by a subcontractor, over which the owner or general contractor exercises supervision and/or control. *Makarius v. Port Auth. of NY & New Jersey,* 76 A.D.3d 805, 907 N.Y.S.2d 658 (1st Dep't 2010).

However, "the homeowner's exemptions" precludes the imposition of the otherwise absolute statutory liability under Labor Law §§240 and 241 upon "owners of one and two-family dwellings who contract for but do not direct or control the work." *Farias v. Simon*, 122 A.D.3d 466, 997 N.Y.S.2d 28 (1st Dep't 2014). The exemptions though do not "encompass homeowners who use their one [and] two-family premises entirely and solely for commercial purposes." *Id.*

Here, Defendant argues that he is entitled to a finding that the residential homeowner's exemptions applies to him, thereby, lifting any vicarious liability imposed upon him by virtue of Labor Law §§240 and 241. Defendant via his affidavit averred that he clearly falls within the homeowner's exemption because the location of Plaintiff's accident occurred within his two-family residential home that he owned, and that he did not direct or control the work being performed thereat. Moreover, he averred that the subject two-family residential home is exclusively his residence and same is not used for any commercial purposes.

In addition, Defendant contends that Plaintiff's Labor Law §200 claim must be dismissed. Defendant argued that he did not have notice or constructive notice that a defective condition existed at his two-family residential home. He argues that he was not present while any of the construction work was being performed nor did Plaintiff make any allegations that his injuries

resulted from any defective conditions at the two-family residential home. Moreover, Defendant averred via his affidavit that he did not oversee or control the means and methods of Plaintiff's injury-producing work.

In opposition, Plaintiff argues that this court should deny the instant application as it is premature in that Defendant has not provided any discovery. Plaintiff further contends that it is unclear from Defendant's affidavit if the subject two-family residential home was being renovated as Defendant's primary residence or for the purpose of future sale or rental. Moreover, Plaintiff argues that it is unclear from Defendant's affidavit whether Defendant H&Z Building Consulting Group was actually doing work on the day of loss. Therefore, Plaintiff posits that without the benefit of a full deposition of Defendant the aforementioned cannot be confirmed.

This court finds that the "homeowner exemptions" pursuant to Labor Law §§240 and 241 are applicable to the instant matter. Defendant tendered sufficient evidence via his affidavit to demonstrate that the place of Plaintiff's accident was within a two-family residential home, which he owned, that he did not direct or control the work being performed thereat, and that the subject home was exclusively his residence and not used for any commercial purpose.

Although Plaintiff contested said averments, he failed to satisfy his burden in proffering evidentiary proof in admissible form sufficient to establish the existence of material issues of fact to require a trial with respect to the applicability of the "homeowner exemptions". Furthermore, this court is unpersuaded as to Plaintiff's argument that a deposition is required in order to confirm the veracity of Defendant's affidavit. Plaintiff could have supplied this court with his own affidavit as a person with firsthand knowledge of the facts surrounding his accident to contest Defendant's averments, however, he failed to do so.

Likewise, this court finds that Plaintiff failed to satisfy his burden in proffering evidentiary proof in admissible form sufficient to establish the existence of material issues of fact to require a trial with respect to his Labor Law §200 claim. Defendant's averments that he lacked notice or constructive notice of a defective condition, that he was not present while any of the construction work was being performed, and that Plaintiff did not make any allegations that his injuries resulted from any defective conditions went uncontroverted. Similarly, Defendant's averments that he did not oversee or control the means and methods of Plaintiff's injury-producing work went uncontested. Plaintiff's speculation that evidence enabling him to raise triable issues of fact might be uncovered if he were afforded a further opportunity for discovery is not a sufficient ground for the denial of summary judgment. *See Petrillo v. Durr Mech. Constr., Inc.*, 306 A.D.2d 25, 759 N.Y.S.2d 662 (1st Dep't 2003).

Accordingly, it is

ORDERED, that Defendant James Duffy's summary judgment motion seeking to dismiss Plaintiff's complaint is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: January 29, 2020

Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.