

Chang Cheng Zou v T&S Home Improvement Inc.

2019 NY Slip Op 35149(U)

November 26, 2019

Supreme Court, Queens County

Docket Number: Index No. 705447/2017

Judge: Chereé A. Buggs

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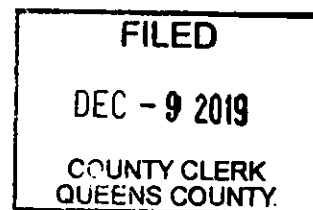
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30



CHANG CHENG ZOU,

Index No.:705447/2017

Plaintiff,

Motion

-against-

Date: August 21, 2019

T&S HOME IMPROVEMENT INC., BYUNG
J. AHN and SUNG S. AHN,

Motion Cal. No.: 62
Motion Sequence No.: 3

Defendants.

The following efile papers numbered 36-46 submitted and considered on this motion by defendants BYUNG J. AHN and SUNG S. AHN (hereinafter referred to as "Ahn defendants") seeking an Order pursuant to Civil Practice Law and Rules (hereinafter referred to as "CPLR") 3212 dismissing all claims asserted against them.

	Papers <u>Numbered</u>
Notice of Motion.....	EF 36-42
Affirmation in Opp.....	EF 43-45
Reply.....	EF 46

Plaintiff in this negligence/labor law action seeks damages for personal injuries sustained on August 16, 2016, when he fell from a scaffold while performing construction work on a one-family home owned by the Ahn defendants. The Ahn defendants entered into an agreement with Lin Developer, Inc. ("Lin") to have their home renovated which involved, among other things, adding a second floor. The renovation work began sometime in July 2016. The Ahn defendants temporarily vacated the premises from June 29, 2016 before the renovation work commenced, and returned when the renovation work was completed sometime in November 2017. At the time of the subject accident, plaintiff was working for Lin and his boss' name was Mr. Lin. Plaintiff had been working at the premises for about two weeks before the accident occurred. Plaintiff testified that the owners of the premises came every 2 or 3 days to look at the work progress. Plaintiff saw B. Ahn about 5 times in total at the premises, and whenever the owners came, they stayed only a short time. Plaintiff never spoke with the Ahn defendants directly while he worked at the premises. Plaintiff testified that

the Ahn defendants spoke English with Lin and that Lin would then translate what the owners said to him. Plaintiff admitted that he did not know what was being said directly between the Ahn defendants and Lin because he did not understand English. The Ahn defendants submitted an affidavit indicating that Lin never asked them about actual details and methods of construction; and that they did not direct or control the manner and method of work being performed by Lin employees, including plaintiff. The Ahn defendants also averred that they did not provide plaintiff with any tools, equipment or work materials, including the scaffold from which plaintiff fell. In fact, they were not present on the date of plaintiff's accident. Plaintiff seeks to recover damages against the Ahn defendants, among others, for injuries he allegedly sustained after falling from a scaffold while renovating the defendants' residence. Plaintiff asserts causes of action alleging violations of Labor Law §§ 200, 240 (1), and 241 (6), and common-law negligence. Upon the instant motion, the Ahn defendants move, inter alia, for summary judgment dismissing the complaint insofar as asserted against them.

Owners of a one- or two-family dwelling used as a residence are exempt from liability under Labor Law §§ 240 (1) and 241 (6) unless they directed or controlled the work being performed (*see Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]). “The homeowner's exemption was enacted to protect owners of one- and two-family dwellings who are not in a position to realize, understand, and insure against the responsibilities of strict liability imposed by Labor Law §§ 240 (1) and 241 (6)” (*Ramirez v I.G.C. Wall Sys., Inc.*, 140 AD3d 1047, 1048 [2d Dept 2016]; *see Cannon v Putnam*, 76 NY2d 644, 649 [1990]). “[I]n order for a defendant to receive the protection of the homeowners' exemption, the defendant must satisfy two prongs required by the statutes. First, the defendant must show that the work was conducted at a dwelling that is a residence for only one or two families” (*Chowdhury v Rodriguez*, 57 AD3d at 126; *see* Labor Law §§ 240 [1]; 241; *Rodriguez v Gany*, 82 AD3d 863, 864 [2d Dept 2011]). “The second requirement . . . is that the defendants ‘not direct or control the work’ ” (*Chowdhury v Rodriguez*, 57 AD3d at 126, quoting Labor Law §§ 240 [1] and 241; *see Rodriguez v Gany*, 82 AD3d at 864). “ ‘The expressed and unambiguous language of [Labor Law §§ 240 (1) and 241] focuses upon whether the defendants supervised the methods and manner of the work’ ” (*Nai Ren Jiang v Shane Yeh*, 95 AD3d 970, 971 [2d Dept 2012], quoting *Chowdhury v Rodriguez*, 57 AD3d at 127; *see Ortega v Puccia*, 57 AD3d 54, 59-60 [2d Dept 2008]; *Boccio v Bozik*, 41 AD3d 754, 755 [2d Dept 2007]; *Arama v Fruchter*, 39 AD3d 678, 679 [2d Dept 2007]).

Here, the Ahn defendants proffered evidence establishing that they owned the one-family dwelling and that they did not direct or control the work being performed (*see Abdou v Rampaul*, 147 AD3d 885, 885-86 [2d Dept 2017]; *Arama v Fruchter*, 39 AD3d at 679). In opposition, the plaintiff failed to raise a triable issue of fact. Plaintiff's contention that the Ahn defendants exercised supervision and control over how the work was performed is speculative. While plaintiff testified that B. Ahn would talk with Lin and that Lin would thereupon instruct plaintiff as to what to do, plaintiff also acknowledged that he does not speak English so that he did not know what Lin was saying with B. Ahn. There was no testimony regarding the details of the conversation between Lin and B. Ahn. Plaintiff saw Ahn about five (5) times in total at the premises, and whenever the owners came, he testified that it was for a short time. Plaintiff acknowledged that the Ahn defendants did not live at the premises while the work was being done; that B. Ahn spoke English with Lin and that

Lin would then translate what the owners said to him. Plaintiff testified that he observed B. Ahn speak with Lin at least three (3) times, and that the owners would talk with Lin with a blueprint and Lin would tell the workers what to do, such as, what to do with the balcony, what to do on the walls, where to place the door and windows. B. Ahn acknowledged that he gave Lin the blueprint that was prepared by an architect and asked him to do the construction work in accordance with the blueprint. The Ahn defendants also testified that Lin asked them to come to the premises about 5 to 7 times to get their feedback as to things like the window location, tile selections for the bathroom and kitchen and paint color. B. Ahn said Lin also made suggestions such as, where to place the window and that B. Ahn would usually go with Lin's suggestion because he was the expert. No evidence was presented that the Ahn defendants had the right to supervise and control plaintiff's work. At most, the evidence presented by the plaintiff in opposition to the defendants' motion for summary judgment demonstrated that the defendants, particularly B. Ahn, monitored the progress of the work, approved the aesthetics of the work, and oversaw the work's general quality. A homeowner's involvement in these areas reflects typical homeowner 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 *Chowdhury v Rodriguez*, 57 AD3d 121, 127 [2d Dept 2008]; *Affri v Basch*, 45 AD3d 615, 616 [2d Dept 2007]; *Arama v Fruchter*, 39 AD3d 678, 679 [2d Dept 2007]; *Edgar v Montechiari*, 271 AD2d 396, 397 [2d Dept 2000]; *McGuinness v Contemporary Interiors*, 205 AD2d 739, 740 [2d Dept 1994]; *Spinillo v Strober Long Is. Bldg. Material Ctrs.*, 192 AD2d 515, 516 [2d Dept 1993]). Notably, "plaintiff was injured, not by a dangerous condition, but by the methods or materials of his work" (*Fiallos v Vin's Crown Realty Assoc.*, 70 AD3d 630, 630 [2d Dept 2010]; see *Foley v Consolidated Edison Co. of N.Y., Inc.*, 84 AD3d 476, 477 [1st Dept 2011]; *Duarte v State of New York*, 57 AD3d 715, 716 [2d Dept 2008]). Consequently, the Ahn defendants' motion for summary judgment dismissing the Labor Law §§ 240 (1) and 241 (6) causes of action asserted against them, is granted (see *Youseff v Malik*, 112 AD3d 617, 618-619 [2d Dept 2013]; *Reilly v Loreco Constr.*, 284 AD2d 384, 385-386 [2d Dept 2001]).

To be held liable pursuant to Labor Law § 200 or the common law in a case such as this, where the claim arises out of the methods or means of the work, a defendant must have authority to supervise or control the work (see *Rodriguez v Gany*, 82 AD3d at 865; *Rojas v Schwartz*, 74 AD3d 1046 [2d Dept 2010]; *Ortega v Puccia*, 57 AD3d at 61-63). Here, defendants produced evidence sufficient to establish as a matter of law that there was no negligent act or omission on the part of anyone except plaintiff which caused or contributed to the happening of the accident, and that the happening of the accident was due solely to a "dangerous condition [which arose from plaintiff's] own methods in performing the work" (*Benefield v Halmar Corp.*, 264 AD2d 794 [2d Dept 1999]). Since the accident arose from the manner in which the work was performed, the Ahn defendants made a prima facie showing of their entitlement to judgment as a matter of law by establishing that they had no authority to supervise or control the performance of the plaintiff's work (see *Lombardi v Stout*, 80 NY2d 290, 295 [1992]; *Ortega v Puccia*, 57 AD3d 54, 62-63 [2d Dept 2008]; *Dupkanicova v Vasiloff*, 35 AD3d 650, 651 [2d Dept 2006]). In opposition, the plaintiff failed to raise a triable issue of fact (see *Ruiz v Walker*, 93 AD3d 838, 839 [2d Dept 2012]; *Pacheco v Halstead Communications, Ltd.*, 90 AD3d 877 [2d Dept 2011]) Therefore, it is

ORDERED, that the motion by the Ahn defendants for summary judgment dismissing the complaint, insofar as asserted against them is granted; and it is further,

ORDERED, that the caption shall be amended as follows:

Index No.:705447/2017

CHANG CHENG ZOU,

Plaintiff,

-against-

T&S HOME IMPROVEMENT INC.,
Defendant.

The foregoing constitutes the decision and Order of this Court.

Dated: November 26, 2019



Hon. Chereé A. Buggs, JSC

FILED
DEC - 9 2019
COUNTY CLERK
QUEENS COUNTY