SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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JUAN JURADO,

Plaintiff, Decision and order

- against - Index No. 206/11

THE ALFRED CONDOMINIUM & SUSAN WERMAN,

Defendants, March 12, 2014

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PRESENT: HON. LEON RUCHELSMAN

The defendant Susan Werman moves pursuant to CPLR §3212 for summary judgement on the issue of liability arguing the Labor Law is inapplicable in this case. The defendant Alfred Condominium likewise moves seeking summary judgement that they cannot be liable for any labor law injuries. The also move seeking indemnification from Werman. The motions have been opposed respectively. Papers were submitted by all parties and arguments held. After reviewing all the arguments this court now makes the following determination.

Background

On January 31, 2008 the plaintiff Juan Jurado was injured while working at the apartment of the defendant doing renovation work. The location was a condominium located at 161 West 61st Street in New York County. Specifically, on that date the plaintiff was working as a taper and painter and fell while upon stilts sustaining injuries. The plaintiff was an employee of Harper Design Build Inc., that had been hired by defendant Werman to conduct renovation in the apartment. A lawsuit was commenced

alleging labor law violations as well as common law negligence. These summary judgement motions followed and the defendants essentially argues that they cannot be held liable for strict liability under Labor Law since the apartment is not covered under those statutes. Moreover, they contend that there has been no evidence any negligence at all was committed and no duty owed. The plaintiff counters that there are questions of fact that must be decided by a jury.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

The motion of Alfred seeking summary judgement dismissing the lawsuit on the grounds a Condominium owner cannot be liable under the labor law is granted without opposition (see, Gurvev v. Tomchinsky, 20 NY3d 194, 957 NYS2d 677 [2012]).

Concerning defendant Werman it is well settled that no causes of action based upon the strict liability provisions of the Labor Law are viable where the work was being performed on a one family or two family dwelling (see, Lombardi v. Stout, 80 NY2d 290, 590

NYS2d 55 [1992], Ennis v. Hayes, 152 AD2d 914, 544 NYS2d 99 [4th Dept., 1989]). There are two notable exemptions to the above mentioned exemption. The first concerns situations where the owner directs or controls the work being performed(Edwards v. Ackerman, 157 AD2d 770, 550 NYS2d 375 [2d Dept., 1990]). The second concerns where the property, although a one family home, is actually a commercial location (see, Van Amerogen v. Donnini, 78 NY2d 880, 573 NYS2d 443 [1991]). In Van Amerogen v. Donnini (supra) the court held that the one family exemption is inapplicable where the location is being used "entirely and solely for commercial purposes" (id). Further, in Bartoo v. Beull, 87 NY2d 362, 639 NYS2d 778 [1996] the court considered the situation where the property was being used for both, commercial and residential purposes. The court concluded that a property being used for commercial and residential purposes would entitle the owner to the one family exemption. The court stated that "when an owner of a one or two-family dwelling contracts for work that directly relates to the residential use of the home, even if the work also serves a commercial purpose, that owner is shielded by the homeowner exemption from the absolute liability of labor Law §§ 240 and 241" (id).

In this case the only evidence presented is the attorney registration of the defendant that lists the premises in her registration with the Unified Court System. However, the defendant has presented evidence that at no time did she ever conduct

business at the premises. Thus, there is no question of fact that the premises remained a residential premises without any commercial uses at all (see, Crowningshield v. Kim, 19 AD3d 975, 798 NYS2d 172 [3rd Dept., 2005]). Therefore, the defendant is entitled to the homeowner exception and consequently the motion seeking summary judgement dismissing all the causes of action is granted.

Further, the defendant's motion seeking to dismiss Alfred's claim for indemnification regarding attorney's fees is denied. In Canela v. TLH 140 Perry Street LLC, 47 AD3d 743, 849 NYS2d 658 [2d Dept., 2008] concerning language found in the by-laws of a condominium that required the owner to indemnify concerning "liability, cost and expense" arising out of work done at the unit, the court held that such by-laws were "sufficient to impose a duty upon the Unit Owners to indemnify the appellants for the amount of the settlement proceeds they paid to the plaintiff and for the amount of their attorney's fee incurred in defending the action" (id). Thus, clearly the language in the by-laws is sufficiently specific to impose indemnification for attorney's fees. Therefore, the portion of Werman's motion seeking dismissal of the indemnification claims is denied. Further, the motion of Alfred seeking summary judgement on those very claims is granted. There are no questions of fact that Alfred is entitled to reasonable attorney's fees. Therefore, the parties will be notified to appear before a judicial hearing officer where the reasonable amount of

attorney's fees due may be presented.

So ordered.

ENTER:

DATED: March 12, 2014
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC