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Homeowners Acting As Their Own General Contractor

Still Entitled to the Protections of the Homeowner Exception of Labor Law §241(6) as Long as They do not Control or Direct the Manner in which the Work Is Being Performed at the Time of Plaintiff's Injury.

The Appellate Division, Fourth Judicial Department recently held that homeowners acting as their own general contractor in the construction of their home still qualified for the homeowner's exception set forth in New York Labor Law §214(6), even though they had the contractual authority to direct the manner in which Plaintiff performed his tasks, finding it significant that they did not exercise that supervisory authority.

In *McNabb v. Oot Bros., Inc.*, the defendant homeowners contracted with their two co-defendants for consulting services in connection with the design and construction of their home but elected to act as their own general contractor. Plaintiff was injured while performing work for his employer, a drywall contractor, at a house being built by the defendant homeowners. Plaintiff was working on stilts when he tripped over an electrical cord, causing him to sustain injuries.

Plaintiff brought an action alleging violations of Sections 200, 240(1), and 241(6) of New York's Labor Law along with common-law negligence claims against all three defendants. Each of the three defendants moved for summary judgment seeking to dismiss the complaint.

The Supreme Court concluded that none of the defendants were liable under Labor Law §240 because the accident was not caused by an elevation-related hazard. Supreme Court also dismissed the other claims against the homeowner's consultants determining that neither company acted as a general contractor or the agent of the homeowners and, therefore, did not exercise supervisory control over the safety of the worksite.

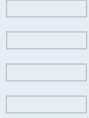
With regard to the Labor Law §241(6) claim against the homeowners, the lower court found that Plaintiff raised an issue of fact as to whether the homeowners directed or controlled his work under the homeowner's exception provided in the statute. Nevertheless, the court dismissed this claim, insofar as it was based upon 12 NYCRR 23-1.5(a), against the homeowners because the regulation was not sufficiently specific to support the claim.

With respect to the Labor Law §200 claim and common-law negligence cause of action against the homeowners, the lower court concluded that the homeowners did not actually move for summary judgment with respect to those claims. The homeowners appealed from this part of the order and plaintiff then cross-appealed from the part of the order dismissing the claims against all defendants based upon Labor Law §241(6).

The Appellate Division unanimously modified the order of the Supreme Court by

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granting the motions of defendants in their entirety and dismissing the amended complaint against all defendants. The Fourth Department found that the Supreme Court erred in determining that the defendant homeowners were not entitled to the homeowner's exception set forth within Labor Law §241(6).

Labor Law §241(6) provides:

All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted to provide reasonable and adequate protection and safety to persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, **except owners of one and two-family dwellings who contract for but do not direct or control the work**, shall comply therewith. (emphasis added).

The fact that homeowners are in effect acting as their own general contractor will not bar the application of the single-family homeowner exemption so long as the homeowners did not control or direct the method or manner of the work being performed by plaintiff at the time of the injury, *Soskin v. Scharff*, 309 A.D.2d 1102.

The Appellate Division found that the Record established that the homeowners did not control or direct the manner in which Plaintiff or his employer performed the insulation work in the house. The Appellate Division found it significant that the homeowners did not furnish the electrical cord in plaintiff's work area nor did they suggest any particular tools, materials or safety devices be used. The Court also noted that the exemption applies even though the homeowners were present at the construction site from time to time and hired subcontractors to perform certain work.

The Fourth Department further determined that the claims against the co-defendants were properly dismissed finding that those defendants established that they did not have the authority to control plaintiff's work.

As it relates to the Supreme Court's refusal to dismiss the common-law negligence cause of action and Labor Law §200 claim against the homeowners on the grounds that they did not explicitly seek summary judgment on those claims, the Appellate Division found that the homeowners implicitly sought that relief. Here, the Appellate Division found it sufficient that the homeowners' motion demonstrated that they did not direct or control the work and thus could not be held liable for Plaintiff's injuries. The Fourth Department further concluded that the homeowners were entitled to summary judgment on those claims. Although the agreement between the homeowners and the drywall company provided the homeowners with authority to direct or control the work, the Fourth Department determined that they did not exercise that supervisory control over Plaintiff and his employer and they neither created nor had actual or constructive notice of the dangerous condition. ■

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