

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19795
O/kmg

_____AD3d_____

Submitted - May 29, 2008

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2007-09201

DECISION & ORDER

Ru Fa Zheng, respondent, v Liliana
Goldman Cohen, appellant.

(Index No. 993/04)

Hawkins Feretic & Daly, LLC, New York, N.Y. (James M. Merlino of counsel), for appellant.

Morelli & Ratner, P.C., New York, N.Y. (Scott Kreppein of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Vaughan, J.), dated August 15, 2007, as denied those branches of her motion which were for summary judgment dismissing the causes of action to recover damages for violation of Labor Law §§ 240(1) and 241(6).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff commenced this action against the defendant after he was injured while performing construction work on the defendant's property in Brooklyn. The defendant alleges that although the property is registered as a "legal" three-family home, there have never been more than two families in residence since she purchased the house, and that she neither directed nor controlled the subject construction work. The defendant contends that she therefore is entitled to summary judgment dismissing the causes of action predicated upon alleged violations of Labor Law §§ 240(1) and 241(6) since these statutes provide an exemption from their respective provisions for "owners of one and two-family dwellings who contract for but do not direct or control the work" (Labor Law § § 240[1], 241[6]).

June 24, 2008

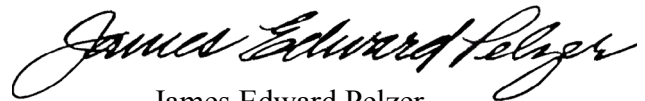
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The defendant failed to demonstrate her prima facie entitlement to judgment as a matter of law since there is a triable issue of fact as to whether the property was used and occupied as a three-family dwelling during her ownership. In addition, the record does not “unequivocally [demonstrate] that the sole purpose of the construction work was to convert a multiple dwelling” into a one-family or two-family home, in which case the defendant would be afforded the “homeowner exemption” provided for in the Labor Law (*Stejskal v Simons*, 3 NY3d 628, 629; see *Kehla v Neger*, 85 NY2d 333; *Cannon v Putnam*, 76 NY2d 644). Accordingly, the Supreme Court properly denied the defendant’s motion, regardless of the sufficiency of the plaintiff’s opposition (see *Alvarez v Prospect Hospital*, 68 NY2d 320).

RIVERA, J.P., FISHER, LIFSON and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court