87 N.Y.2d 362, 662 N.E.2d 1068, 639 N.Y.S.2d 778

Philip R. Bartoo, Appellant,
v.
Robert O. Buell, Respondent.
Dennis E. Pangburn, Appellant,
v.
Robert O. Buell, Respondent.
Allen Skiver, Jr., et al., Appellants,
v.
Robert O. Buell, Defendant and Third-Party Plaintiff-Respondent. General Roofing & Heating Co., Inc., Third-Party Defendant-Respondent.
Thomas F. Anderson, Appellant,
v.
Mary Flanagan, Respondent.

Court of Appeals of New York
28, 29
Argued January 11, 1996;
Decided February 13, 1996

CITE TITLE AS: Bartoo v Buell

SUMMARY

Appeals, in the first three above-entitled actions, from a judgment of the Supreme Court (George F. Francis, J.), entered March 6, 1995 in Allegany County, which dismissed plaintiffs' causes of action for common-law negligence and violations of Labor Law §§ 200 and 240 (2). The appeals bring up for review two prior nonfinal orders of the Appellate Division of the Supreme Court in the Fourth Judicial Department, entered November 19, 1993, which, with two Justices dissenting, (1) reversed, on the law, two orders (one order as to plaintiffs Philip R. Bartoo and Dennis E. Pangburn, and one order as to plaintiffs Allen Skiver, Jr. and Judy Skiver) of that Supreme Court (George F. Francis, J.), entered in Allegany County, granting motions by plaintiffs for summary judgment on the issue of liability pursuant to Labor Law § 240 (1) and § 241 (6), (2) denied the motions by plaintiffs for summary judgment, and (3) granted summary judgment in defendant's favor dismissing plaintiffs' causes of action pursuant to sections 240 (1) and 241 (6).

Appeal, in the fourth above-entitled action, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Fourth Judicial Department, entered December 23, 1994, which affirmed an order of the Supreme Court (Harold L. Galloway, J.), entered in Monroe County, insofar as it denied a motion by plaintiff for partial summary judgment and granted a cross motion by defendant for summary judgment dismissing plaintiff's cause of action pursuant to Labor Law § 240 (1).

Bartoo v Buell, 198 AD2d 819, affirmed. ***363**

Pangburn v Buell, 198 AD2d 819, affirmed.

Skiver v Buell, 198 AD2d 819, affirmed.

Anderson v Flanagan, 210 AD2d 955, affirmed.

HEADNOTES

Labor
Safe Place to Work
Liability of Owner--Exemption for Owners of One-and Two-Family Dwellings--Structure Jointly Used for Residential and Commercial Purposes

(1) An owner of a one- or two-family dwelling who contracts for work that directly relates to the residential use of the home, even if the work also serves a commercial purpose, is shielded by the homeowner exemption from the absolute liability of Labor Law §§ 240 and 241. Accordingly, defendant, the owner of a one-family dwelling who did not direct or control the repair work plaintiffs performed on a barn which defendant used partially to store his own and a neighbor's belongings, is exempt from liability under section 240 (1) and section 241 (6) for injuries sustained by plaintiffs when a scaffold platform collapsed, notwithstanding that defendant leased space in a separate portion of the barn to certain individuals for an annual storage fee to store golf carts. The repair work on the roof was undertaken to preserve the structural integrity of the barn itself and to protect defendant's own possessions and those of his neighbor which he stored at no charge, as well as the golf carts stored for a fee. Though the repair work served the commercial purpose of protecting

the stored golf carts from weather damage, any commercial benefit was ancillary to the substantial residential purpose served by fixing the leaking barn roof. The fact that the work was performed on the barn and not on the residential home itself does not alter the analysis; the barn, located on defendant's property and used in part for personal storage purposes, is akin to a garage and should be considered an extension of the dwelling within the scope of the homeowner exemption.

Labor
Safe Place to Work
Liability of Owner--Exemption for Owners of One-and Two-Family Dwellings--Structure Jointly Used for Residential and Commercial Purposes

(2) An owner of a one- or two-family dwelling who contracts for work that directly relates to the residential use of the home, even if the work also serves a commercial purpose, is shielded by the homeowner exemption from the absolute liability of Labor Law §§ 240 and 241. Accordingly, defendant, the owner of a one-family dwelling which she uses five days a week to operate a day-care center, who contracted for but did not control or direct the construction of an additional bedroom, is exempt from liability under section 240 (1) for injuries sustained by plaintiff in connection with the bedroom construction. The addition of the bedroom was directly related to the residential use of the home. Although a commercial purpose may also be served by the bedroom addition, the record shows that defendant uses the downstairs bedroom for her own residential purposes.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Premises Liability, §§ 615, 616.

NY Jur 2d, Premises Liability, §§ 392, 393. ***364**

ANNOTATION REFERENCES

See ALR Index under Premises Liability.

POINTS OF COUNSEL

Embser & Woltag, P. C., Wellsville *(G. William Gunner* of counsel), for appellants in the first and second above-entitled actions.

The single-family dwelling exemption from Labor Law § 240 (1) is not available for work on a detached barn where the barn is utilized for the commercial purpose of renting space to a number of unrelated individuals over an extended period of time. *(Zimmer v Chemung County Performing Arts,* 65 NY2d 513; *Haimes v New York Tel. Co.,* 46 NY2d 132; *Van Amerogen v Donnini,* 78 NY2d 880; *Khela v Neiger,* 202 AD2d 641; *Lombardi v Stout,* 80 NY2d 290; *Cannon v Putnam,* 76 NY2d 644; *Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494; *Becker v Royce,* 170 AD2d 974; *Gernstl v Edwards,* 162 AD2d 966; *Balduzzi v West,* 144 AD2d 1036.)

Dwyer & Black, P. C., Olean *(Joseph C. Dwyer* of counsel), for appellants in the third above-entitled action.

An owner, who elects to commercially rent multiple golf cart spaces in a barn 50 feet from his residence, should not be entitled to Labor Law immunity, when a scaffold collapses during repairs to the roof of the barn. *(Bohnhoff v Fischer,* 210 NY 172; *Lombardi v Stout,* 80 NY2d 290; *Mullen v Karas,* 144 Misc 2d 840; *Gernstl v Edwards,* 162 AD2d 966; *Becker v Royce,* 170 AD2d 974; *Cannon v Putnam,* 76 NY2d 644; *Van Amerogen v Donnini,* 78 NY2d 880; *Krukowski v Steffensen,* 194 AD2d 179; *Balduzzi v West,* 141 Misc 2d 944, 144 AD2d 1036; *Zahn v Pauker,* 107 AD2d 118.)

Alfred J. Heilman, Rochester, for appellant in the fourth above-entitled action.

I. The dwelling exemption to liability under Labor Law § 240 should be narrowly construed and not extended to defendant's business operation. *(Rocovich v Consolidated Edison Co.,* 78 NY2d 509; *Lombardi v Stout,* 80 NY2d 290; *Van Amerogen v Donnini,* 78 NY2d 880; *Krukowski v Steffensen,* 194 AD2d 179.)

II. Because defendant made regular and substantial commercial use of her dwelling, she was obliged to provide the worker a safe place to work. *(Zahn v Pauker,* 107 AD2d 118; *Krukowski v Steffensen,* 194 AD2d 179; *Cannon v Putnam,* 76 NY2d 644.)

Shane & Franz, Olean *(J. Michael Shane* of counsel), for respondent in the first and second above-entitled actions and for ***365** defendant and third-party plaintiff-respondent in the third above-entitled action.

The premises of defendant Buell qualify as a single-family residence exempt from the provisions of Labor Law § 240 (1). *(Cannon v Putnam,* 76 NY2d 644; *Pigott v Church of Holy*

Infancy, 179 AD2d 161, 80 NY2d 759; *Van Amerogen v Donnini,* 78 NY2d 880; *Becker v Royce,* 170 AD2d 974; *Gernstl v Edwards,* 162 AD2d 966; *Mascia v Immaculate Heart of Mary R. C. Church,* 178 AD2d 1023; *Zahn v Pauker,* 107 AD2d 118; *Balduzzi v West,* 144 AD2d 1 036; *Yelland v Weissman,* 177 AD2d 874.)

Chamberlain, D'Amanda, Oppenheimer & Greenfield, Rochester *(Henry R. Ippolito* of counsel), for third-party defendant-respondent in the third above-entitled action.

The owner of a barn adjacent to his one-family dwelling comes within the exemption from strict liability under sections 240 and 241 of the Labor Law for owners of one- and two-family dwellings who contract for but do not direct or control the work, despite his allowing some of his golfing buddies to store their golf carts in the barn and receiving payments of $25 annually from some of them. *(Zahn v Pauker,* 107 AD2d 118; *Balduzzi v West,* 141 Misc 2d 944, 144 AD2d 1036; *Gernstl v Edwards,* 162 AD2d 966; *Becker v Royce,* 170 AD2d 974; *Cannon v Putnam,* 76 NY2d 644; *Van Amerogen v Donnini,* 78 NY2d 880; *Yelland v Weissman,* 177 AD2d 874; *Pigott v Church of Holy Infancy,* 179 AD2d 161, 80 NY2d 759; *Khela v Neiger,* 85 NY2d 333; *Lombardi v Stout,* 80 NY2d 290.)

Zicari, McConville, Cooman, Morin & Welch, P. C., Rochester *(Kevin S. Cooman, John J. Considine, Jr.,* and *J. Michael Wood* of counsel), for respondent in the fourth above-entitled action.

I. The one- and two-family dwelling exception to Labor Law § 240 exempts defendant from absolute liability. *(Gordon v Eastern Ry. Supply,* 82 NY2d 555; *Ross v Curtis-Palmer Hydro-Elec. Co.,* 81 NY2d 494; *Lombardi v Stout,* 80 NY2d 290; *Salzler v New York Tel. Co.,* 192 AD2d 1104; *Haimes v New York Tel. Co.,* 46 NY2d 132; *Cannon v Putnam,* 76 NY2d 644; *Khela v Neiger,* 85 NY2d 333; *Enderby v Keppler,* 184 AD2d 1058; *Van Amerogen v Donnini,* 78 NY2d 880; *Mandelos v Karavasidis,* 86 NY2d 767.)

II. Absolute liability under the Labor Law for residential day-care providers would be inconsistent with the Legislature's policy of protecting day-care providers. *(People v Town of Clarkstown,* 160 AD2d 17.)

III. Defendant falls within the class of persons entitled to the dwelling-owner exemption under both the plain language of the exemption ***366** and the legislative history of the exemption. *(Van Amerogen v Donnini,* 78 NY2d 880; *Rivera v Revzin,* 163 AD2d 896, 79 NY2d 760; *Lombardi v Stout,* 80 NY2d 290; *Pigott v Church of Holy Infancy,* 179 AD2d 161, 80 NY2d 759; *Haimes v New York Tel. Co.,* 46 NY2d 132; *Cannon v Putnam,* 76 NY2d 644.)

OPINION OF THE COURT

Ciparick, J.

(1, 2) The issue presented by these separate appeals is whether the homeowner exemption of Labor Law § 240 (1) and § 241 (6) applies to a structure jointly used for residential and commercial purposes. We conclude that defendants, owners of one-family dwellings who did not direct or control the work, are entitled to the protection of the homeowner exemption, notwithstanding the presence of some commercial activity on their properties.

I.

A. *BARTOO V BUELL*

Fifty feet from defendant Robert Buell's residence in Allegany County is a barn in which he stores personal belongings, including a boat and miscellaneous equipment, as well as a neighbor's sailboat and car. In a separate portion of the barn, Buell leases space to nine individuals to store their golf carts for a $25 annual storage fee.

When the barn roof developed a leak, Buell contracted with General Roofing & Heating, Inc. to repair and paint the roof. During the course of the repair work, three of General Roofing & Heating's employees, plaintiffs Philip Bartoo, Dennis Pangburn, and Allen Skiver, Jr., were severely injured when a scaffold platform on which they were working collapsed. Bartoo and Pangburn together commenced one action, and Skiver and his wife commenced a separate action, both sets of plaintiffs asserting claims for, among other things, violations of Labor Law § 240 (1) and § 241 (6).

After the two actions were consolidated, Supreme Court granted plaintiffs' separate motions for summary judgment and held that the homeowner exemption of Labor Law § 240 (1) and § 241 (6) did not exempt Buell from liability because the barn had been used in part for commercial purposes. In separate orders, the Appellate Division, with two

Justices dissenting, reversed and granted summary judgment in Buell's favor dismissing plaintiffs' Labor Law § 240 (1) and § 241 (6) ***367** causes of action, holding that the homeowner exemption applied to the facts of this case (*see, Bartoo v Buell,* 198 AD2d 819). Subsequently, a judgment of Supreme Court was entered dismissing plaintiffs' remaining causes of action. Plaintiffs filed this appeal as of right pursuant to CPLR 5601 (a) and (d).

B. *ANDERSON V FLANAGAN*

Defendant Mary Flanagan, who operates a children's day-care center in her East Rochester home five days each week, decided to add a bedroom to the first floor of her two-story home. She entered into a contract with Mark Halliman to construct the downstairs bedroom and to install a sliding glass door leading from the bedroom to the backyard.

Halliman's employee, plaintiff Thomas Anderson, sustained injuries when, in attempting to get down from the roof, he missed a stepladder and fell to the ground. Anderson commenced suit against Flanagan for, among other things, a violation of Labor Law § 240 (1). Supreme Court held that Flanagan, the owner of a one-family dwelling who did not direct or control the work, was exempt from liability under Labor Law § 240 (1) and granted summary judgment dismissing that cause of action against Flanagan. The Appellate Division unanimously affirmed for the reasons stated by Supreme Court (*see, Anderson v Flanagan,* 210 AD2d 955) and we granted leave to appeal.

II.

In 1980, the Legislature amended Labor Law §§ 240 and 241 to exempt "owners of one and two-family dwellings who contract for but do not direct or control the work" from the absolute liability imposed by these statutory provisions. The amendments, intended by the Legislature to shield homeowners from the harsh consequences of strict liability under the provisions of the Labor Law, reflect the legislative determination that the typical homeowner is no better situated than the hired worker to furnish appropriate safety devices and to procure suitable insurance protection (*see, Cannon v Putnam,* 76 NY2d 644, 649). As stated by the Law Revision Commission, "an exemption for one and two family dwelling owners is needed" because "the theory of dominance of the owner over the subcontractor or worker breaks down at this level" (Recommendation of NY Law Rev Commn, reprinted in 1980 McKinney's Session Laws of NY, at 1659).

Mindful of this history and remedial purpose, we have avoided an overly rigid interpretation of the homeowner ***368** exemption and have employed a flexible "site and purpose" test to determine whether the exemption applies. For example, in *Cannon,* we concluded that the homeowner was exempt from liability, even though some commercial activity occurred on the property, where the work had been "undertaken solely in connection with defendant's residential use of the property" (76 NY2d, at 650, *supra; see also, Khela v Neiger,* 85 NY2d 333).

In keeping with our pragmatic interpretation of the homeowner exemption, we have declined to apply the exemption where a building, though structurally a one-family dwelling, was used by its owner exclusively for commercial purposes (*see, Van Amerogen v Donnini,* 78 NY2d 880). The exemption, we held, is not designed to protect homeowners "who use their one or two-family premises entirely and solely for commercial purposes and who hardly are lacking in sophistication or business acumen such that they would fail to recognize the necessity to insure against the strict liability imposed by the statute" (*id.,* at 882; *see also, Lombardi v Stout,* 80 NY2d 290).

The question posed by these cases is how to apply the site and purpose test when a single structure is used for both residential and commercial purposes. Unlike the situation where a one- or two-family dwelling serves only commercial purposes, in which case the dwelling is "more accurately considered [a] commercial enterprise[ ]" (*Lombardi, supra,* at 297), a residence that houses a business may nevertheless retain its character as a home. As we noted in *Cannon,* a "homeowner who hires someone to paint his own living-room ceiling should be afforded the benefit of the statutory exemption from liability even if he also maintains a business on the property. In terms of the legislative purpose, such a homeowner is no more or less likely to 'know about, or provide for the responsibilities of absolute liability' for home-improvement-related injuries than is a similarly situated homeowner who happens to conduct a business on a separate parcel of land" (76 NY2d, at 650, *supra* [citation omitted]).

Accordingly, we conclude 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. ***369**

III.

Applying these principles to the cases now on appeal, we conclude that the work in each case directly related to the residential use of the property and that each defendant, an owner of a one-family dwelling who did not direct or control the work, is exempt from liability under Labor Law § 240 (1) and § 241 (6).

(1) In *Buell,* the repair work on the roof was undertaken to preserve the structural integrity of the barn itself and to protect Buell's own possessions and those of his neighbor which he stored at no charge, as well as the golf carts stored for a fee. Though the repair work served the commercial purpose of protecting the stored golf carts from weather damage, any commercial benefit was ancillary to the substantial residential purpose served by fixing the leaking barn roof. Finally, the fact that the work was performed on the barn and not on the residential home itself does not alter the analysis; the barn, located on Buell's property and used in part for personal storage purposes, is akin to a garage and should be considered an extension of the dwelling within the scope of the homeowner exemption.

(2) Similarly, in *Anderson,* we conclude that the addition of the bedroom was directly related to the residential use of the home and that Flanagan is exempt from the absolute liability of Labor Law § 240. Flanagan decided to add the bedroom because, although two bedrooms were located on the second floor of her home, no bedroom was located on the first floor. Although a commercial purpose may also be served by the bedroom addition, the record shows that Flanagan uses the downstairs bedroom for her own residential purposes.

Accordingly, in *Bartoo,* the judgment appealed from and the orders of the Appellate Division brought up for review should be affirmed, with costs, and in *Anderson,* the order of the Appellate Division should be affirmed, with costs.

Chief Judge Kaye and Judges Simons, Titone, Bellacosa, Smith and Levine concur.

In *Bartoo v Buell:* Judgment appealed from and orders of the Appellate Division brought up for review affirmed, with costs.

In *Anderson v Flanagan:* Order affirmed, with costs. ***370**