

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Dennis v. Cerrone

2021 N.Y. Slip Op. 01655 (App. Div. 2021) · No. CA 19-01769 · Decided March 19, 2021

SUMMARY

The New York Appellate Division, Fourth Department reversed a directed verdict favoring Mark Cerrone, Inc. in an action involving injuries allegedly sustained during residential construction work. The court held that, viewing the trial evidence favorably to the plaintiff, rational issues remained regarding the company's authority to supervise and control the work and its potential liability under Labor Law §§ 200, 240(1), and 241(6), requiring reinstatement of the amended complaint and a new trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Carni, J.P.; Lindley, J.; Curran, J.; Winslow, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	March 19, 2021
DOCKET	CA 19-01769
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a nonjury trial in which the Supreme Court granted defendant Mark Cerrone, Inc.'s motion for a directed verdict and awarded costs to the defendant.
STANDARD OF REVIEW	On a motion for a directed verdict, the evidence must be viewed in the light most favorable to the nonmoving party, credibility issues must be resolved in that party's favor, and the motion may be granted only if there is no rational process by which the factfinder could find for the nonmoving party.
PRECEDENTIAL VALUE	published
PARTIES	Joseph Dennis v. Mark Cerrone, Inc.

TOPICS

motion for directed verdict

construction law

construction defects

standard of review

appellate procedure

PRACTICE AREAS

construction law

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personal injury

QUESTIONS PRESENTED

1. Whether Supreme Court properly granted MCI's motion for a directed verdict after the nonjury trial.
2. Whether the trial evidence, viewed in the light most favorable to plaintiff, provided a rational basis for finding MCI liable under Labor Law §§ 240 (1) and 241 (6).
3. Whether the trial evidence provided a rational basis for finding MCI liable under Labor Law § 200 or the common law based on MCI's ability to supervise and control the method and manner of plaintiff's work and its actual exercise of that authority.

HOLDINGS

1. The directed verdict was improper because the evidence, viewed in the light most favorable to plaintiff, left rationally resolvable factual and credibility issues concerning MCI's potential liability.
2. The evidence provided a rational basis for a factfinder to determine that MCI had either the power to enforce safety standards and choose responsible contractors or the power to coordinate and supervise the overall project, so the Labor Law §§ 240 (1) and 241 (6) claims could not be resolved against plaintiff by directed verdict.
3. The evidence provided a rational basis for a factfinder to determine that MCI could be liable under Labor Law § 200 or the common law because MCI may have had the ability to supervise and control the method and manner of plaintiff's employer's work and may actually have exercised that authority.

KEY QUOTATIONS

*“In determining a motion for a directed verdict, the court must view the evidence in the light most favorable to the nonmoving party and resolve all issues of credibility in favor of the nonmoving party . . . , and may grant the motion only if there is no rational process by which the [factfinder] could find for the plaintiff[] as against the moving defendant” (*1)*

*“[T]he trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in [the] light most favorable to the nonmovant” (*1)*

FACTUAL BACKGROUND

Plaintiff allegedly sustained injuries while performing framing work at a residential construction project. Defendant Vincent Cerrone owned the residence, while Mark Cerrone, Inc. had employees who performed various aspects of the project; Vincent Cerrone was also an MCI part owner, general superintendent, and vice president. The trial proof continued to present factual issues concerning whether MCI had authority to control,

supervise, coordinate, or enforce safety standards concerning the work and whether it actually exercised that authority.

PROCEDURAL HISTORY

Dennis commenced an action for injuries allegedly sustained while performing framing work at a residential construction project. In a prior appeal, the court affirmed summary judgment dismissing the claims against Vincent Cerrone but held that Supreme Court had erred in granting Mark Cerrone, Inc.'s motion for summary judgment dismissing the Labor Law § 240 (1) claim because factual issues remained regarding MCI's authority to control or supervise the work. After a nonjury trial, Supreme Court granted MCI's motion for a directed verdict. The Appellate Division reversed, denied the directed-verdict motion, reinstated the amended complaint against MCI, and granted a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment is reversed, MCI's motion for a directed verdict is denied, the amended complaint against MCI is reinstated, and a new trial is granted.

CASES CITED

- Dennis v. Cerrone, 167 A.D.3d 1475 (4th Dep't 2018)
- Wolf v. Persaud, 130 A.D.3d 1523, 1524 (4th Dep't 2015)
- Matter of Wright v. State of New York, 134 A.D.3d 1483, 1484-1485 (4th Dep't 2015)
- Szczerbiak v. Pilat, 90 N.Y.2d 553, 556 (1997)
- Rauls v. DirecTV, Inc., 113 A.D.3d 1097, 1098 (4th Dep't 2014)
- Mulcaire v. Buffalo Structural Steel Constr. Corp., 45 A.D.3d 1426, 1428 (4th Dep't 2007)
- Ross v. Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494, 505 (1993)
- Lombardi v. Stout, 80 N.Y.2d 290, 295 (1992)
- Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d 876, 877 (1993)