

At an IAS Part 23 of the Supreme Court of the State of New York, held in and for the County of Richmond, at 26 Central Avenue, Staten Island, New York 10301, on the 10<sup>th</sup> day of January, 2023

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Vincent Overeem

Plaintiff(s),

-against-

Xiaoxin Jin and Zhen Huang, trustees under the Xiaoxin Jin Trust

Defendant(s).

Hon. Wayne M. Ozzi, J.S.C.

DECISION & ORDER

INDEX # 151555/2022

MOTION SEQ. 001

The following papers were read and considered in the aforementioned motion(s) submitted on January 5, 2023 : NYSCEF Doc. Nos. 4-17

Defendant moves to dismiss the complaint.

The uncontroverted evidence shows that the subject premises whereat plaintiff was performing repair work is a one family home constituting defendants' residence, and that they did not direct or control plaintiff's work. Consequently, the exemption set forth in Labor Law Sec. 240(1) applies.

The mere fact that one of the parties has not completed discovery does not interdict the grant of summary judgment if otherwise warranted (Chemical Bank v. PIC Motors Corp., 58 NY2d 1023). The party opposing summary judgment must demonstrate an evidentiary basis to suggest that additional discovery might lead to relevant evidence.

**Plaintiff has failed to do so. Mere hope that some evidence might be uncovered during discovery is insufficient (O'Toole v. Volmer, 130 A.D.3d 597 (2d Dept.)).**

**Accordingly, the motion to dismiss is granted as to the second (Labor Law Sec. 200), third (Labor Law Sec. 240(1)), and fourth (Labor Law Sec. 241(6)) causes of action.**

**It is so ordered.**

**Dated: January 10, 2023**

**ENTER**



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**Wayne M. Ozzi  
J.S.C.**