

METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff-petitioner,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants-respondents.

SUPREME COURT OF THE UNITED
STATES

DOCKET NO.: 17-6375

APPENDIX OF RESPONDENT DENNIS DESIMONE

METHFESSEL & WERBEL, ESQS.

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Attorneys for Dennis DeSimone

Our File No. 63074 ELT

AMANDA J. SAWYER, ESQ.

On the Brief

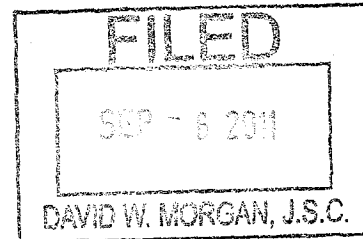
EDWARD L. THORNTON, ESQ.

Of Counsel and On the Brief

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METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

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DENNIS DESIMONE, AND JANE
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DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO.: GLO-L-956-05

Civil Action

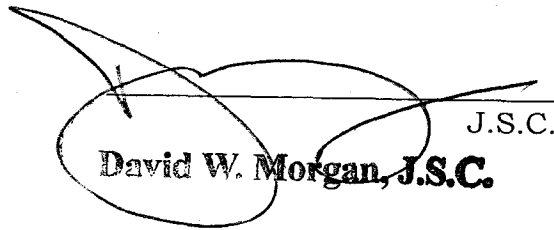
Final order
**ORDER FOR NEW TRIAL ON ALL
ISSUES** *Denied*

THIS MATTER having been brought before the Court on the
Motion of Methfessel & Werbel, attorneys for defendant Dennis
DeSimone, for an Order for a new trial on all issues, and the Court
having considered the matter and for good cause shown; *oral decision 9/2/11*

IT IS on this *5* day of *Sept* 2011;

ORDERED ~~that a new trial on all issues be held in the above~~
~~matter; and it is further~~ *Denied*

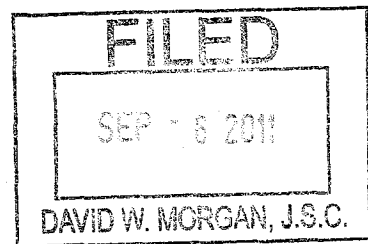
ORDERED that a copy of this Order be served on all counsel
within 7 days of the date hereof.


J.S.C.
David W. Morgan, J.S.C.

- ☒ Opposed
☐ Unopposed

add-on
8.5

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Our File No. 63074 ELT



METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO.: GLO-L-956-05

Civil Action

~~Final order~~
ORDER FOR REMITTITUR

Denied

THIS MATTER having been brought before the Court on the
Motion of Methfessel & Werbel, attorneys for defendant Dennis
DeSimone, for an Order for remittitur, and the Court having considered
the matter and for good cause shown;

oral decision 9/2/11

IT IS on this 6 day of Sept 2011;

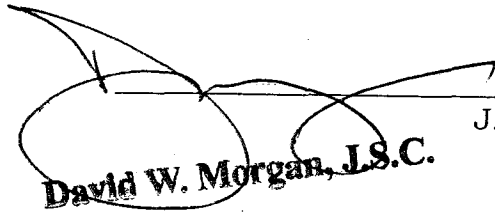
ORDERED that a remittitur in the amount of \$ _____

be entered in this matter; and it is further

Denied

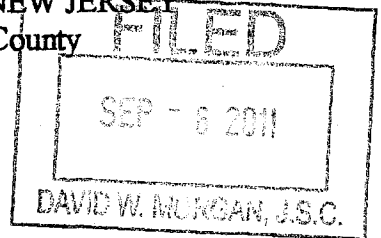
ORDERED that a copy of this Order be served on all counsel
within 7 days of the date hereof.

- ☒ Opposed
☐ Unopposed


David W. Morgan, J.S.C. J.S.C.

Faith Doncheva
800 Hessian Ave.
National Park, N.J. 08063

SUPERIOR COURT OF NEW JERSEY
Law Division Gloucester County
Donchev v. DeSimone
GLO-L-956-05



Final ORDER
oral decision 9/2/11

THIS MATTER having come before the court on this 6 day of Sept

and for good cause shown;

IT IS ORDERED THAT the plaintiff's claims for ~~wrongful death and survivorship~~

~~That flow from the plaintiff's death shall proceed to trial on _____ day of _____.~~

Motion to allow testimony of Dr. Zebreck Denied
Denied.

DAVID W. MORGAN

(☒) opposed
() unopposed

A-395-11T3

ORDER ON MOTION

FILED
APPELLATE DIVISION
April 26, 2012

JLD

CLERK

METODI DONCHEV & FAITH DONCHEV
VS
DENNIS DESIMONE, AND JANE DOE
DESIMONE, DENNIS DESIMONE'S WIFE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000395-11T3
MOTION NO. M-004081-11
BEFORE PART G
JUDGE(S): ARIEL A. RODRIGUEZ
VICTOR ASHRAFI

MOTION FILED: 03/06/2012
ANSWER(S) 03/21/2012
FILED:

BY: DENNIS DESIMONE
BY: FAITH DONCHEV

SUBMITTED TO COURT: March 26, 2012

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
18th day of April, 2012, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO SUPPRESS BRIEF OF
RESPONDENT

GRANTED

SUPPLEMENTAL:

The motion to suppress the respondent's brief is granted. However,
if respondent files a conforming brief no later than May 29, 2012, the
court will reconsider this decision.

In order to comply, the brief must meet all requirements set by Rule
2:6-1. A copy of the rule is attached hereto.

In addition, plaintiff's brief must:

- (1) adhere to a 65-page restriction.
- (2) present a concise statement of
facts limited to the evidence admitted
at trial or at any hearings before the
trial judge and must cite to the record
in reciting the evidence that appellant
is relying upon.
- (3) must not include any comments about
the conduct of adversary counsel that are

not part of the trial record.

(4) appellant may not present arguments in her brief challenging that trial court's ruling excluding evidence in support of a wrongful death claim and requesting reinstatement of that claim. That is so because appellant did not file a notice of cross-appeal.

In addition, references to an affidavit of a Dr. ZeBranek may not be made as part of the trial evidence. That affidavit may only be included in the record on appeal if it was part of the trial court's file and only if a relevant issue is presented on appeal as to a ruling of the trial court with respect to the affidavit;

See M-4083-11.

RULE 2:6. Appendices; Briefs; Transcript

2:6-1. Preparation of Appellant's Appendix; Joint Appendix; Contents

• (a) Contents of Appendix.

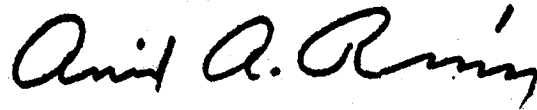
• **(1) Required Contents.** The appendix prepared by the appellant or jointly by the appellant and the respondent shall contain (A) in civil actions, the complete pretrial order, if any, and the pleadings; (B) in criminal, quasi-criminal or juvenile delinquency actions, the indictment or accusation and, where applicable, the complaint and all docket entries in the proceedings below; (C) the judgment, order or determination appealed from or sought to be reviewed or enforced, including the jury verdict sheet, if any; (D) the trial judge's charge to the jury, if at issue, and any opinions or statement of findings and conclusions; (E) the statement of proceedings in lieu of record made pursuant to R. 2:5-3(f); (F) the notice or notices of appeal; (G) the transcript delivery certification prescribed by R. 2:5-3(e); (H) any unpublished opinions cited pursuant to R. 1:36-3; and (I) such other parts of the record, excluding the stenographic transcript, as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised. If the appeal is from a summary judgment, the appendix shall also include a statement of all items submitted to the court on the summary judgment motion and all such items shall be included in the

appendix, except that briefs in support of and opposition to the motion shall be included only as permitted by subparagraph (2) of this rule.

- **(2) Prohibited Contents.** Briefs submitted to the trial court shall not be included in the appendix, unless either the brief is referred to in the decision of the court or agency, or the question of whether an issue was raised in the trial court is germane to the appeal, in which event only the material pertinent to that issue shall be included. A document that is included in appellant's appendix shall not also be included in respondent's appendix unless appellant's appendix includes only a portion of the document and the complete document is required for a full understanding of the issues presented. If the same document has been annexed to more than one pleading or motion filed in the trial court, the document shall be reproduced in the appendix only with the first such pleading or motion and shall be referred to thereafter only by notation to the appendix page on which it appears.
- **(b) Form.** Documents included in the appendix shall be abridged by omitting all irrelevant or formal portions, with asterisks being used to indicate omissions. The filing date of each included paper shall be stated at the head of the copy as well as its subject matter (e.g., Pretrial Order, Notice of Appeal). Each page shall be numbered consecutively followed by the letter "a" to indicate the appendix (e.g., 1a, 2a, etc.).
- **(c) Binding; Table of Contents.** The appendix may be bound with the brief or separately, into volumes containing no more than 200 sheets each. If bound with the brief, it shall follow the brief, but there shall be a single table of contents of the brief and appendix. If bound separately it shall be prefaced with a table of contents. The table of contents shall indicate the initial page of each document, exhibit or other paper included, and the pages of the stenographic record at which each exhibit was marked for identification and was offered into evidence. Attachments to a document by way of affidavits, exhibits or otherwise shall each be separately identified in the table of contents and the initial page of each such attachment noted therein. If there are multiple volumes of the appendix, each volume shall contain a full table of contents and shall specify on its cover the appendix pages included therein.

- **(d) Joint Appendix.** Whenever possible counsel shall agree upon a
- joint appendix, which shall be bound separately. The cost thereof shall be apportioned between them.

FOR THE COURT:



ARIEL A. RODRÍGUEZ, P.J.A.D.

L-000956-05 GLOUCESTER
ORDER - REGULAR MOTION
CLD

I hereby certify that the foregoing
is a true copy of the original on
file in my office. 
CLERK OF THE APPELLATE DIVISION

A-395-11T3

FILED
APPELLATE DIVISION
July 24, 2012

[Signature]

CLERK

ORDER ON MOTION

METODI DONCHEV & FAITH DONCHEV
VS
DENNIS DESIMONE, AND JANE DOE
DESIMONE, DENNIS DESIMONE'S WIFE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000395-11T3
MOTION NO. M-006658-11
BEFORE PART G
JUDGE(S): ARIEL A. RODRIGUEZ
VICTOR ASHRAFI

MOTION FILED: 06/25/2012
ANSWER(S) 07/02/2012
FILED:

BY: FAITH DONCHEV
BY: DENNIS DESIMONE

SUBMITTED TO COURT: July 16, 2012

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
23rd day of July, 2012, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION TO FILE & ACCEPT
RESPONDENT'S LETTER BRIEF AND
APPENDIX AS SUBMITTED

DENIED

SUPPLEMENTAL: The brief submitted does not actually or substantially
comply with the requirements of Rule 2:6-1. Therefore, there was no
compliance with the April 26, 2012 order (M-4081-11). The court provided
in this order the text of Rule 2:6-1. Respondent has to abide by the
rules.

FOR THE COURT:

[Signature]

ARIEL A. RODRIGUEZ, P.J.A.D.

L-000956-05 GLOUCESTER
ORDER - REGULAR MOTION
CLD

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION

[Signature]
Ra010

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

JOSEPH H. ORLANDO
CLERK

JOHN K. GRANT
DEPUTY CLERK

JACK G. TRUBENBACH
CHIEF COUNSEL



RICHARD J. HUGHES JUSTICE
COMPLEX
P.O. BOX 006
TRENTON, NEW JERSEY 08625-0006
(609) 292-4822

Date: July 24, 2012

FAITH DONCHEV (PRO SE)
800 HESSIAN AVENUE
NATIONAL PARK, NJ 08063

Re: METODI DONCHEV VS DENNIS DESIMONE
Docket No. A-000395-11T3

Dear FAITH DONCHEV:

The court has directed the Clerk's office to review documents submitted in order to determine if they comply with the court rules and policies of the Appellate Division. The enclosed material is being returned to you, unfiled, because replies to motion answers may not be filed without a motion seeking such permission.

Additionally, in an order filed July 24, 2012, the court denied the motion to file & accept respondent's letter brief and appendix as submitted. Specifically, the court states that "[r]espondent has to abide by the rules." Thus, your brief/appendix submitted May 29, 2012 will not be filed and you are suppressed from filing a respondent's brief/appendix at this time.

Sincerely,

JOSEPH H. ORLANDO
CLERK

By: Rachana R. Munshi
Rachana R. Munshi
Staff Attorney

Encls.

CC: METHFESSEL & WERBEL, P.C. - EDWARD L. THORNTON, ESQ.
(w/o encls.)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0395-11T3

METODI DONCHEV and
FAITH DONCHEV,

Plaintiffs-Respondents,

v.

DENNIS DESIMONE,

Defendant-Appellant.

Argued September 12, 2012 - Decided September 24, 2012

Before Judges Simonelli, Accurso and Lisa.

On appeal from the Superior Court of New
Jersey, Law Division, Gloucester County,
Docket No. L-0956-05.

Edward L. Thornton argued the cause for
appellant (Methfessel & Werbel, attorneys;
Mr. Thornton, of counsel and on the brief;
Amanda J. Sawyer, on the brief).

Respondents have not filed a brief.¹

¹ By order dated April 26, 2012, this court granted appellant's motion to suppress respondents' brief and indicated it would reconsider the decision if respondents filed a conforming brief no later than May 29, 2012. By order dated July 24, 2012, this court denied respondents' motion to file and accept a letter brief because the brief submitted did not actually or substantially comply with the requirements of Rule 2:6-1.

PER CURIAM

Defendant Dennis DeSimone appeals from the September 8, 2006, and January 5, 2007 Law Division orders, which denied his motions for summary judgment. Defendant also appeals from the July 8, 2011 judgment entered in plaintiffs' favor, and the September 6, 2011 order, which denied his post-trial cross-motion for remittitur or, in the alternative, a new trial. We conclude that summary judgment should have been granted, and reverse.

The following facts are derived from evidence submitted by the parties in support of, and in opposition to, the summary judgment motion, viewed in a light most favorable to plaintiff. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Defendant was the president of D.N. DeSimone Construction Company, Inc. (DND), a New Jersey corporation. Although he had approximately thirty-two years of construction experience, he did not usually supervise DND's construction projects. Instead, DND had three work crews, each of which was supervised by a foreman.

Defendant hired DND to complete several projects at his home, including garage roof repairs. DND usually hired subcontractors for roofing work, but defendant decided to use

DND's employees because the job was minor. DND paid for all of the project materials and labor and billed defendant.

On June 16, 2003, plaintiff Metodi Donchev (Donchev) and two other DND employees reported to defendant's home to make the garage roof repairs. When they arrived, defendant told them that the roof had been leaking, and pointed out a soft-spot in the rear of the garage "right of center." Defendant left the work site approximately ten minutes after the employees had arrived. No foreman was present at the time, and no employee was "in charge" of the work site; however, at least one of the employees had prior roofing experience.

Donchev had been employed by DND since 1996. Prior thereto, he worked for another construction company as well as independently in the field, and had experience with framing and carpentry work, and installing sheathing for walls and roofs. He purportedly had no experience replacing roofs, and his role on the day of the accident was limited to stripping the existing garage roof.

While working on the garage roof on June 16, 2003, Donchev fell through a soft spot in the "back rear corner" and landed on his groin on a wooden beam, injuring his perineal area and right shoulder. He continued working, and went to his family physician the next day. On June 18, 2003, he went to the

hospital for treatment. He later suffered complications related to his perineal injury, and was hospitalized from June 26 to July 2, 2003. On September 9, 2003, his doctor determined that his injuries had healed, and cleared him to return to work. In June 2004, Donchev filed a claim petition with the Division of Workers' Compensation (Division), seeking benefits for his injuries.

At his deposition, Donchev admitted that defendant had warned him and his co-workers that the garage roof had been leaking; however, he claimed it was difficult to determine the extent of the water damage because insulation covered the roof. Nonetheless, he also admitted that: (1) he saw water stains on the insulation; (2) the specific spot he fell through had not looked unsafe or unstable; (3) he and his co-workers had walked around the roof "all morning long" without incident; and (4) he knew that wood could rot if exposed to water.

On June 7, 2005, Donchev and his wife, plaintiff Faith Donchev² filed a complaint against defendant individually. Defendant filed a summary judgment motion, which the trial judge denied in a September 8, 2006 order and oral opinion. The judge acknowledged that "in normal circumstances," defendant would not

² For the remainder of this opinion we may sometimes refer to Donchev and his wife collectively as plaintiffs.

be liable for Donchev's injuries in his capacity as landowner because defendant hired DND to fix the roof, Donchev was injured while performing the work for which DND was hired, and defendant did not control the work. Nonetheless, the judge found defendant liable, concluding as follows:

In our case, we have [defendant] that clearly has the superior knowledge wearing two hats. He's the guy that owns the property and he's the guy that is hired to actually come on-site to fix the problem. And I say that because he's the owner of the company that comes on-site to fix it and specifically, it's he that allocates responsibility for who would actually do the work. And in that process, he picks a person that's never done it before.

It seems to me that under those set of facts, the policy that I just described; i.e., assigning responsibility to the person who has most knowledge would be defeated if I didn't assign it to the property owner, [defendant]. He's the one that has superior knowledge to everybody, including the [p]laintiff.

He's the company. He's the owner. He's the one that knows this particular individual has not participated in this activity before. He's the one who arguably has control over how the job is done because it's his employees, in the sense that he's the principal plaintiff the company that's actually performing the work.

And so because of the duplication of roles, the fact that this person wears a couple different hats, it seems to me that normally applied removal of responsibility doesn't apply to this particular case. It's a very unique set of facts but I think it's

a set of facts that basically doesn't allow the spirit or the policy behind the rule to be utilized.

Defendant later filed a second summary judgment motion arguing that the New Jersey Workers' Compensation Law (WCL), N.J.S.A. 34:15-70 to -142, barred plaintiffs' claims. In a January 5, 2007 order and oral opinion, the judge denied the motion. The judge acknowledged that the WCL barred plaintiffs' claims against defendant as DND's principal but held that the bar did not apply to defendant as the landowner.

Donchev died on November 17, 2006, of causes that remain in dispute. Thereafter, the complaint was amended to substitute his estate as a plaintiff and assert a wrongful death claim. In addition, in February 2008, the estate filed a dependency claim petition with the Division. On July 28, 2008, the Division approved a settlement between DND and the estate for \$30,000. The settlement contained the following language:

This is a lump sum settlement between the parties . . . which has the effect of a dismissal with prejudice, being final as to all rights and benefits of the petitioner and is a complete and absolute surrender and release of all rights arising out of this . . . claim petition[].

The parties agree that this settlement does contemplate a complete and absolute surrender and release of any and all rights by the petitioner's dependents as defined by N.J.S.A. 34:15-13 arising out of this . . . claim petition[].

I.

Defendant contends that the judge erred in denying the first summary judgment motion. He argues that, as a landowner, he was not liable for Donchev's injuries because he owed no duty to Donchev, an employee of an independent contractor, to prevent injury from a risk which was incident to the very work Donchev was hired to perform. Defendant also argues that he is not liable because he was not the general contractor for the project, did not oversee or supervise the workplace, and exercised no control over the manner and means by which DND's employees performed the roofing work.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Coyne v. N.J. Dep't of Transp., 182 N.J. 481, 491 (2005); Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253, 261 (App. Div. 2011), certif. denied, 209 N.J. 98 (2012). Thus, we consider, as the trial judge did, "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill, supra, 142 N.J. at 536.). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with

the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009). Applying these standards, we conclude that summary judgment should have been granted.

Generally, a landowner "who invites workmen of an independent contractor to come upon his premises is under a duty to exercise ordinary care to render reasonably safe the areas in which he might reasonably expect them to be working." Sanna v. Nat'l Sponge Co., 209 N.J. Super. 60, 66 (App. Div. 1986). However, a landowner's "duty to provide a reasonably safe place to work is relative to the nature of the invited endeavor and does not entail the elimination of operational hazards which are obvious and visible to the invitee upon ordinary observation and which are part of or incidental to the very work the contractor was hired to perform." Id. at 67; see also Rigatti v. Reddy, 318 N.J. Super. 537, 541-42 (App. Div. 1999); Accardi v. Enviro-

Pak Sys. Co., 317 N.J. Super. 457, 463 (App. Div.), certif. denied, 158 N.J. 685 (1999). "The landowner is under no duty to protect an employee of an independent contractor from the very hazard created by doing the contract work." Sanna, supra, 209 N.J. Super. at 67. A plaintiff can overcome this exception by showing that: (1) the landowner retained control over "the manner and means of doing the work which is the subject of the contract"; (2) the landowner hired an incompetent contractor; or (3) the work constituted a nuisance per se. Accardi, supra, 317 N.J. Super. at 463. These principles apply to a landowner who acts as a general contractor. Slack v. Whalen, 327 N.J. Super. 186, 194 (App. Div.), certif. denied, 163 N.J. 398 (2000).

Here, defendant hired a general contractor to repair his garage roof. Donchev, who had experience sheathing roofs, was working in his capacity as DND's employee at the time of the accident and knew about the roof's condition prior to starting the work. Defendant was not present during the actual work, and was not required to be there. He did not oversee, supervise, or exercise control over the means or method of the roofing work or provide any assistance or equipment. Thus, defendant, as a landowner, neither owed nor breached a duty of care to Donchev. His status as president of DND or experience in the construction industry was legally irrelevant because the employer-employee

relationship did not actually impact the way the DND employees carried out the roof work. Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 574 (1996). Thus, the judge erred in denying the first summary judgment.

II.

Defendant contends, in the alternative, that the judge erred in denying his second summary judgment motion. He argues that even if he was acting as Donchev's employer and breached a duty of care in this capacity, he is immune from suit pursuant to the WCL. We agree.

The WCL has been characterized as

a historic trade-off whereby employees relinquished their right to pursue common-law remedies in exchange for automatic entitlement to certain, but reduced, benefits whenever they suffered injuries by accident arising out of and in the course of employment. Thus the quid pro quo anticipated by the Act was that employees would receive assurance of relatively swift and certain compensation payments, but would relinquish their rights to pursue a potentially larger recovery in a common-law action.

[Millison v. E.I. du Pont de Nemours & Co., 101 N.J. 161, 174 (1985).]

The exception to the exclusive-remedy provision is when the employee's injuries arise from an employer's "intentional wrong." N.J.S.A. 34:15-8; Laidlow v. Hariton Mach. Co., Inc., 170 N.J. 602, 606 (2002). The "intentional wrong" exception

must be read narrowly. Millison, supra, 101 N.J. at 177. In the context of summary judgment, to establish intentional wrong the court must view the totality of the circumstances and make two inquiries:

The first is whether, when viewed in a light most favorable to the employee, the evidence could lead a jury to conclude that the employer acted with knowledge that it was substantially certain that a worker would suffer injury. If that question is answered affirmatively, the trial court must then determine whether, if the employee's allegations are proved, they constitute a simple fact of industrial life or are outside the purview of the conditions the Legislature could have intended to immunize under the [exclusive-remedy provision]. Resolving whether the context prong of Millison is met is solely a judicial function. Thus, if the substantial certainty standard presents a jury question and if the court concludes that the employee's allegations, if proved, would meet the context prong, the employer's motion for summary judgment should be denied; if not, it should be granted.

[Laidlow, supra, 170 N.J. at 623).]

There is no evidence in this case that defendant acted with knowledge that it was substantially certain that a worker would suffer injury. Accordingly, the judge erred in denying the second summary judgment motion.³

³ Having concluded that this matter must be reversed because of the improper denial of summary judgment, we need not address
(continued)

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

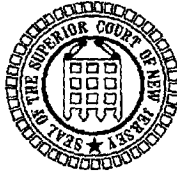
(continued)
defendant's contentions relating to the judgment and post-trial
motions.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

JOSEPH H. ORLANDO
CLERK

JOHN K. GRANT
DEPUTY CLERK

JACK G. TRUBENBACH
CHIEF COUNSEL



RICHARD J. HUGHES JUSTICE
COMPLEX
P.O. BOX 006
TRENTON, NEW JERSEY 08625-0006
(609) 292-4822

Date: October 11, 2012

FAITH DONCHEV (PRO SE)
800 HESSIAN AVENUE
NATIONAL PARK, NJ 08063

Re: METODI DONCHEV VS DENNIS DESIMONE
Docket No. A-000395-11T3

Dear FAITH DONCHEV:

The court has directed the Clerk's office to review documents submitted in order to determine if they comply with the court rules and policies of the Appellate Division. Your motion for reconsideration & redetermination that was received on October 9, 2012, is not being filed because you are suppressed from filing any papers in this appeal without leave of court. If you would like the motion for reconsideration filed, you must also submit a motion asking the court to vacate the suppression. Along with the motion, you must also submit a certification explaining why you would like the court to vacate the suppression and the motion filing fee of \$30.00. If you decide to file the motion to vacate suppression, please do so within ten (10) days.

Additionally, because of the large volume of material you have submitted for filing, we are sending only one copy of the material back to you. If you would like the remaining copies returned to you, you may pick them up at the Clerk's office or make other arrangements for their return. You may contact case manager, Cara Dunn, regarding how you will retrieve the remaining copies.

Sincerely,

JOSEPH H. ORLANDO
CLERK

By: Rachana R. Munshi
Rachana R. Munshi
Staff Attorney

Encls.

CC: METHFESSEL & WERBEL - EDWARD L. THORNTON, ESQ. ✓
(w/o encls.)

AD-01a

63074 ELT
Ra024

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 006
TRENTON, N.J. 08625-0006

MOTION FILING NOTICE

Date: October 15, 2012

FAITH DONCHEV (PRO SE)
800 HESSIAN AVENUE
NATIONAL PARK, NJ 08063

Title: METODI DONCHEV VS DENNIS DESIMONE
Docket No. A-000395-11T3
Motion No. M-000849-12
MOTION TO VACATE SUPPRESSION
MOTION FOR RECONSIDERATION & REDETERMINATION

The motion papers were filed under the above docket and motion numbers.

If deficiencies are noted below or an answer is to be submitted, please return a copy of this notice with said material to the attention of your case manager, Cara L. Dunn.

DEFICIENCIES

PROVIDE FILING FEE OF \$30.00

NO ANSWER CAN BE FILED WITHOUT LEAVE OF COURT ON THE MOTION FOR RECONSIDERATION & REDETERMINATION. ANY ANSWER FOR THE MOTION TO VACATE SUPPRESSION MUST BE FILED NO LATER THAN OCTOBER 22, 2012.

Original and 4 copies of all material are required unless otherwise specified above. If any deficiency noted above is not corrected within 10 days, the motion will be subject to dismissal. If you have any questions, please contact your case manager at 609-292-0201.

JOSEPH H. ORLANDO
CLERK

cc: METHFESSEL & WERBEL - EDWARD L. THORNTON, ESQ.

A-395-11T3

FILED
APPELLATE DIVISION
November 13, 2012

Julia

CLERK

ORDER ON MOTION

METODI DONCHEV & FAITH DONCHEV
VS
DENNIS DESIMONE, AND JANE DOE
DESIMONE, DENNIS DESIMONE'S WIFE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000395-11T3
MOTION NO. M-000849-12
BEFORE PART B
JUDGE(S): MARIE P SIMONELLI
ALLISON E. ACCURSO
JOSEPH F LISA

MOTION FILED: 10/12/2012
ANSWER(S) 10/26/2012
FILED:

BY: FAITH DONCHEV
BY: DENNIS DESIMONE

SUBMITTED TO COURT: November 5, 2012

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
8th day of November, 2012, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION TO VACATE SUPPRESSION
MOTION FOR RECONSIDERATION &
REDETERMINATION
AND SUMMARY DISPOSITION

DENIED

DENIED

DENIED

SUPPLEMENTAL:

FOR THE COURT:

Marie P Simonelli

MARIE P SIMONELLI, J.A.D.

L-000956-05 GLOUCESTER
ORDER - REGULAR MOTION
CLD

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION

Ra026

SUPREME COURT OF NEW JERSEY
M-1009/1010 September Term 2012
071881

METODI DONCHEV (DECEASED) AND
FAITH DONCHEV, HIS WIFE AND
EXECUTRIX,

PLAINTIFF-MOVANT,

V.

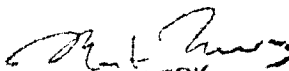
DENNIS DESIMONE,

DEFENDANT-RESPONDENT.

FILED

APR 26 2013

O R D E R

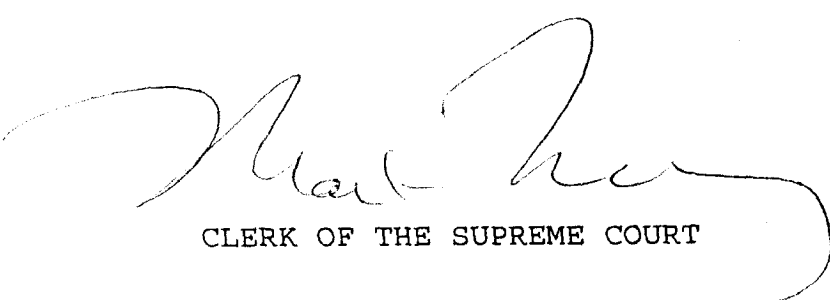

CLERK

This matter having been duly presented to the Court, it is
ORDERED that the motions to expand the record (M-1009), and for
summary disposition (M-1010) are denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 24th day of April, 2013.

The foregoing is a true copy
of the original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY


CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
C-708 September Term 2012
071881

METODI DONCHEV (DECEASED) AND
FAITH DONCHEV, HIS WIFE AND
EXECUTRIX,

PLAINTIFF-PETITIONER,

ON PETITION FOR CERTIFICATION

V.

DENNIS DESIMONE,

DEFENDANT-RESPONDENT.

FILED

APR 29 2013


CLERK

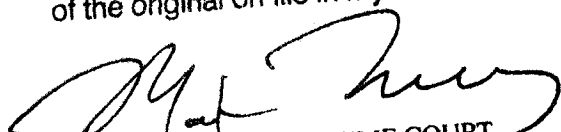
To the Appellate Division, Superior Court:

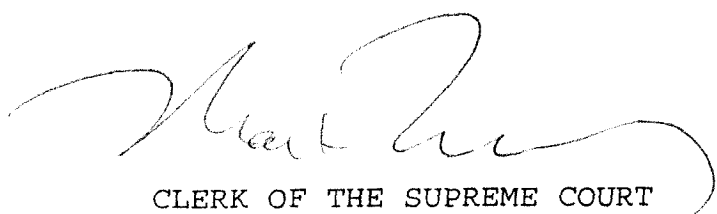
A petition for certification of the judgment in A-000395-11
having been submitted to this Court, and the Court having
considered the same;

It is ORDERED that the petition for certification is
denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 24th day of April, 2013.

The foregoing is a true copy
of the original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY


CLERK OF THE SUPREME COURT

63074 ELT
Ra028

METODI DONCHEV (DECEASED)
AND FAITH DONCHEV, HIS WIFE
AND EXECUTRIX,
PLAINTIFF-MOVANT,

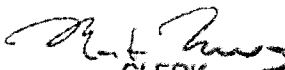
FILED

JUL 12 2013

O R D E R

V.

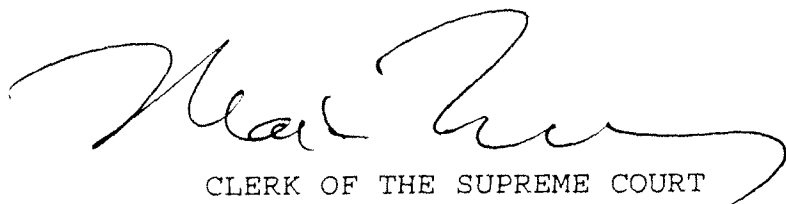
DENNIS DESIMONE,
DEFENDANT.


CLERK

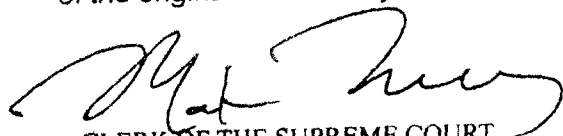
It is ORDERED that the motion for clarification and other
miscellaneous relief (M-1458) is denied; and it is further

ORDERED that the motion for reconsideration of the order
denying the petition for certification (M-1459) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 9th day of July, 2013.


CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY

A-000395-11

FILED

NOV 25 2013

DAVID W. MORGAN, J.S.C.

BY THE COURT

10
11/22
DWM

Metodi Donchev and Faith Doncheva,
his wife
Plaintiffs
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

Dennis DeSimone, Et. Al.
Defendant(s)

DOCKET GLO-L-956-05

JUDGMENT

In accordance with the jury's verdict of July 7, 2011, it is hereby ORDERED this 22 day of November 2013, THAT: *Reasons on record 11/22/13.*

1. For good cause shown the order of November 5, 2012 is vacated.
2. JUDGEMENT is entered in favor of the plaintiff, Estate of Metodi Donchev, on the survivor claim against the defendant, Dennis DeSimone, in the amount of \$371,375.00 comprised of \$5,775.00 for the lost income and \$365,600.00 for pain and suffering plus pre-judgment interest and costs in the amount of _____.
3. Judgment is entered in favor of plaintiff, Faith Doncheva, on the loss of consortium claim against the defendant, Dennis DeSimone, in the amount of \$150,000.00, plus interest and costs in the amount of _____.
4. IT IS ordered that Plaintiff's claim for damages after the date of death shall be re-instated and the issue of damages after the date of death shall be
 - () set for trial on _____.
 - () settled between the parties in the amount of _____.

Denied

Honorable DAVID W. MORGAN

David W. Morgan, J.S.C.

Superior Court of New Jersey
Gloucester

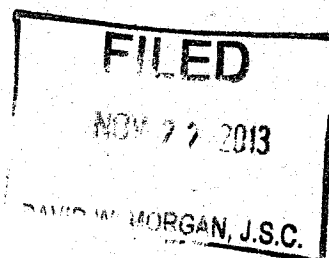
OCT 25 2013

FINANCE DEPARTMENT
RECEIVED-NOT FILED

Ra030

766
11/22
DWM

Edward L. Thornton - ID #018281977
METHFESSEL & WERBEL, ESQS.
2025 Lincoln Highway, Suite 200
PO Box 3012
Edison, New Jersey 08818
(732) 248-4200
+1(732) 248-2355
thornton@methwerb.com
Attorneys for Dennis DeSimone
Our File No. 63074 ELT



METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO.: GLO-L-956-05/
SUPREME COURT #071881

Civil Action

ORDER

THIS MATTER having been brought before the Court on cross-motion by Methfessel & Werbel, attorney's for defendant, and the Court having considered the plaintiff's submissions, defendant's submissions, and being aware of the history of this matter, and considering oral argument; *Reasons on record*

IT IS on this *22* day of November, 2013;

ORDERED that defendant's request for attorney's fees is hereby granted and defendant is instructed to submit a certification of cost and

Denied

Denial

fees to the Court within 10 days, upon which judgment will be entered;
and it is further

ORDERED that the Clerk of the Court is not to accept any further submissions of the pro se plaintiff for filing without the submissions being reviewed by the Assignment Judge or the Assignment Judge's designee to review for basic merit and only to accept for filing after approval of basic merit by the Assignment Judge; and it is further

ORDERED that if any further submission is accepted by the clerk for filing, the pro se plaintiff shall submit with the filing a check payable to the "Clerk of the Superior Court" in the amount of \$2,500.00 in anticipation of attorney's fees in opposing the matter.

ORDERED that a copy of this Order be served on all counsel within 7 days of the date hereof.

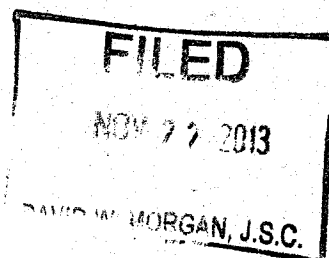
(✓) Opposed
() Unopposed

J.S.C.

David W. Morgan, J.S.C.

766
11/22
DWM

Edward L. Thornton - ID #018281977
METHFESSEL & WERBEL, ESQS.
2025 Lincoln Highway, Suite 200
PO Box 3012
Edison, New Jersey 08818
(732) 248-4200
+1(732) 248-2355
thornton@methwerb.com
Attorneys for Dennis DeSimone
Our File No. 63074 ELT



METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO.: GLO-L-956-05/
SUPREME COURT #071881

Civil Action

ORDER

THIS MATTER having been brought before the Court on cross-motion by Methfessel & Werbel, attorney's for defendant, and the Court having considered the plaintiff's submissions, defendant's submissions, and being aware of the history of this matter, and considering oral argument; *Reasons on record*

IT IS on this *22* day of November, 2013;

ORDERED that defendant's request for attorney's fees is hereby granted and defendant is instructed to submit a certification of cost and

Denied

Denial

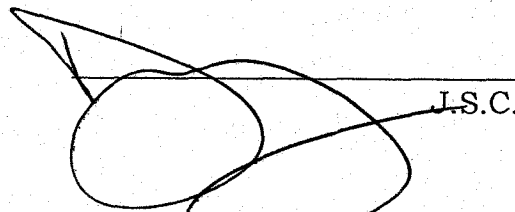
fees to the Court within 10 days, upon which judgment will be entered;
and it is further

ORDERED that the Clerk of the Court is not to accept any further submissions of the pro se plaintiff for filing without the submissions being reviewed by the Assignment Judge or the Assignment Judge's designee to review for basic merit and only to accept for filing after approval of basic merit by the Assignment Judge; and it is further

ORDERED that if any further submission is accepted by the clerk for filing, the pro se plaintiff shall submit with the filing a check payable to the "Clerk of the Superior Court" in the amount of \$2,500.00 in anticipation of attorney's fees in opposing the matter.

ORDERED that a copy of this Order be served on all counsel within 7 days of the date hereof.

(✓) Opposed
() Unopposed



David W. Morgan, J.S.C.

ORDER ON CROSS MOTION

METODI DONCHEV & FAITH DONCHEV
VS
DENNIS DESIMONE, AND JANE DOE
DESIMONE, DENNIS DESIMONE'S WIFE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000395-11T3
MOTION NO. M-004647-13
BEFORE PART B
JUDGE(S): MARIE P. SIMONELLI
ALLISON E. ACCURSO

CROSS MOTION 02/27/2014 BY: DENNIS DESIMONE
FILED:
ANSWER(S) FILED: 03/17/2014 BY: FAITH DONCHEV

SUBMITTED TO COURT: March 20, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
24th day of March, 2014, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

CROSS MOTION FOR FEES, COSTS AND
OTHER RELIEF

DENIED

SUPPLEMENTAL:

FOR THE COURT:



MARIE P. SIMONELLI, J.A.D.

L-000956-05 GLOUCESTER
ORDER ON CROSS-MOTION

CLD

63074 ELT

Ra035

ORDER ON MOTION WHEN CROSS MOTION FILED

METODI DONCHEV & FAITH DONCHEV
VS
DENNIS DESIMONE, AND JANE DOE
DESIMONE, DENNIS DESIMONE'S WIFE

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000395-11T3
MOTION NO. M-004069-13
BEFORE PART B
JUDGE(S): MARIE P.
SIMONELLI
ALLISON E.
ACCURSO

MOTION FILED: 02/07/2014 BY: FAITH DONCHEV
ANSWER(S) 02/27/2014 BY: DENNIS DESIMONE
FILED:

SUBMITTED TO COURT: March 20, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
24th day of March, 2014, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION TO VACATE SUPPRESSION	DENIED
MOTION TO REHEAR APPEAL ENTIRELY WITH ORAL ARGUMENT WITH PROPER NOTICE TO RESPONDENT OF DATE & TIME OF HEARING	DENIED
MOTION TO AFFIRM THE JURY VERDICT	DENIED
MOTION TO CORRECT THE ERRORS OF FACT WRITTEN IN THE SEPTEMBER 2012 OPINION OF THE APPELLATE COURT	DENIED
MOTION FOR AT LEAST THREE JUDGES TO HEAR THESE MOTIONS	DENIED
MOTION FOR ORAL ARGUMENT ON MOTION	DENIED
MOTION FOR REMAND THE ISSUE OF DAMAGES AFTER THE DATE OF DEATH TO THE TRIAL COURT	DENIED

SUPPLEMENTAL:

FILED, Clerk of the Appellate Division, March 24, 2014, A-000395-11

FOR THE COURT:



MARIE P. SIMONELLI, J.A.D.

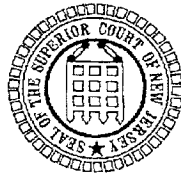
L-000956-05 GLOUCESTER
ORDER ON MOTION WHEN CROSS-FILED
CLD

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

JOSEPH H. ORLANDO
CLERK

JOHN K. GRANT
DEPUTY CLERK

JACK G. TRUBENBACH
CHIEF COUNSEL



RICHARD J. HUGHES JUSTICE
COMPLEX
P.O. BOX 006
TRENTON, NEW JERSEY 08625-0006
(609) 292-4822

Date: May 20, 2014

FAITH DONCHEV (PRO SE)
PO BOX 8134
CHANDLER, AZ 85256

Re: METODI DONCHEV VS DENNIS DESIMONE
Docket No. A-000395-11T3

Dear Faith Donchev:

The court has directed the Clerk's office to review documents submitted in order to determine if they comply with the court rules and policies of the Appellate Division. The following material is being returned to you, unfiled:

- (1) Your motion papers, received by the Clerk's office on April 24, 2014, to Presiding Judge for Administration Carmen Messano, P.J.A.D.;
- (2) Check number 362, issued by the Bank of America, in the amount of \$30.00; and
- (3) Your answer to Mr. Thornton's cross motion for fees, costs and other relief. The answer was received by the Clerk's office on May 15, 2014.

Your motion papers received April 24, 2014 are being returned to you unfiled because they do not comport with the New Jersey Court Rules, see R. 2:8-1(a); 2:6-2(a) & (b), and because this motion is seeking the same relief you have previously requested from this court. The papers received May 15, 2014 are being returned, unfiled, because Mr. Thornton's cross motion is not being filed and will be returned to counsel.

JOSEPH H. ORLANDO
CLERK

By: Rachana R. Munshi
Rachana R. Munshi
Staff Attorney

Encls.
Also encl. check #362

cc: METHFESSEL & WERBEL - EDWARD L. THORNTON, ESQ.
(w/o encls.)
PRO SE - FAITH DONCHEV (800 Hessian Avenue; National Park, NJ 08063)
(w/o encls.)

AD-01a

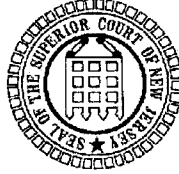
63074 Ra038 ELT

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

JOSEPH H. ORLANDO
CLERK

JOHN K. GRANT
DEPUTY CLERK

JACK G. TRUBENBACH
CHIEF COUNSEL



RICHARD J. HUGHES JUSTICE
COMPLEX
P.O. BOX 006
TRENTON, NEW JERSEY 08625-0006
(609) 292-4822

Date: May 20, 2014

METHFESSEL & WERBEL - EDWARD L. THORNTON, ESQ.
3 ETHEL RD STE 300
EDISON, NJ 08818-3012

Re: METODI DONCHEV VS DENNIS DESIMONE
Docket No. A-000395-11T3

Dear EDWARD L. THORNTON:

The court has directed the Clerk's office to review documents submitted in order to determine if they comply with the court rules and policies of the Appellate Division. The enclosed material (i.e., your cross motion for fees, costs & other relief, received May 6, 2014) is being returned to you, unfiled. This is because Ms. Donchev's motion papers, received April 24, 2014, will not be filed and are being returned to her under separate cover.

JOSEPH H. ORLANDO
CLERK

By: Rachana R. Munshi
Rachana R. Munshi
Staff Attorney

ENCLS.

CC: PRO SE - FAITH DONCHEV (w/o encls.)
(PO Box 8134; Chandler, AZ 85256 & 800 Hessian Avenue; National Park, NJ 08063)

FILED

JUL 25 2014

DAVID W. MORGAN, J.S.C.

Donchev et.al.
(plaintiffs).SUPERIOR COURT OF NEW JERSEY
LAW DIVISION COUNTY OF GLOUCESTER

v.

Docket No.- GL-L-956-05

DeSimone et. al.
(defendants)**CIVIL ACTION
ORDER**

THIS MATTER having come before the court on motion of the plaintiffs, for an order to re-instate the plaintiffs' claims in the September 2008 amended complaint and the July 8, 2011 judgment in plaintiffs favor in accordance with the July 7, 2011 jury verdict and an order for a jury trial on the triable issue of damages after the date of death from the wrongful death and survivorship claim; And the court considering all of the evidence submitted by the plaintiff, the new case law decided by the Appellate court, rule 4:37-2(b), the jury verdict from July 7, 2011 and other evidence submitted by the plaintiff, and any submissions by the defendant if any;

THIS COURT having considered the matter And for good cause shown;

IT IS ON THIS 25 DAY OF July, 2014 ordered as follows:Plaintiffs Motions are ~~GRANTED~~ Denied.

Plaintiffs 2008 amended complaint is re-instated in its entirety and the judgment against the homeowner of the property that was entered in the Superior Court on July 8, 2011 against the homeowner Dennis DeSimone in accordance with the jury verdict and in accordance with Rule 4:37-2(b) is re-instated.

The plaintiffs claim for damages from after the date of death from the Wrongful Death and Survivor claims in the 2008 amended complaint shall proceed to trial on _____, 2014 and Dr. ZeBranek shall testify at trial either in person or by de bene esse as permitted by the court rules.

SC- Honorable Judge David Morgan

David W. Morgan, J.S.C.

~~Per decision on~~ Per decision on record 7/25/14, any refiling of similar motion will be considered for possible sanctions and submission to procedure to determine if future motions should be subject to review and possible objection

Ra040

IN THE SUPERIOR COURT OF NEW JERSEY
COUNTY OF GLOUCESTER

Metodi Donchev, Faith Doncheva (his
wife), Anton Donchev (his son), and Rocitsa
Doncheva(his daughter)
Plaintiff,

vs.

Dennis DeSimone (homeowner), Jane Doe
DeSimone his wife), John Doe Responsible
Party, Jointly Severally and in the
Alternative Defendant

Docket No.: GLO-L-956-05

ORDER

Denied

FINDINGS OF FACT AND CONCLUSION OF LAW

- 1- The plaintiff, Metodi Donchev, was a lawful employee of DND Construction Inc. (DND) on June 16, 2003 when he fell through the roof of the defendant homeowner Dennis DeSimone's detached garage roof. A worker compensation claim was initiated by agreement with the carrier of DND Inc. on behalf of the plaintiff the week he fell.
- 2- Mr. DeSimone, the homeowner of the property where the plaintiff fell through the roof, is the defendant in this case, he testified at trial and in 2006 as follows;
 - Q. "You testified in 2006 at your deposition, that you were directly supervising the work at your home, is that correct?"
 - A. "Right. I was there to give them instructions."
 - "I gave them instruction in the morning".
 - Q. "His company foreman wasn't there. You were the only one who gave them instruction?" A. "Correct."
- 3- Dennis DeSimone on part of the Construction permit number 202-200 signed the following Certification as homeowner:

HOMEOWNER CERTIFICATION IN LIEU OF OATH (to be completed by owner)
I hereby certify I am the owner in fee of the property.

Mark the following applicable Boxes:

(xx) A. ... I attest that all construction, plumbing and electrical will be done in whole or part by me or by subcontractors under my supervision in accordance with all applicable laws....

I UNDERSTAND THAT IN MARKING BOX "A", I ACKNOWLEDGE THAT I AM ASSUMING RESPONSIBILITY FOR THE WORK DONE ON SAID PROPERTY, THE CONDITION OF THE PROPERTY PRIOR TO, DURING AND AFTER THE WORK PERFORMED, AND FOR THE PERFORMANCE OF THE SUBCONTRACTORS I HIRE, EMPLOY, OR OTHERWISE CONTRACT OR WITH WHOM I CONTRACT OR WITH WHOM I MAKE AGREEMENTS TO PERFORM WORK. I AM VOLUNTARILY AND KNOWINGLY ASSUMING THIS RESPONSIBILITY.

C. (XX) I further certify that I will perform or supervise the following work:
C.1. (xx) Building C.2 (xx) Fire protection

I Certify the following as required by the UCC N.J.A.C. 5:23-2.15(a)5:
All required state, county and local approvals have been given, including such certification as the construction official may require.

I understand that if any of the above statements are willfully false, I am subject to punishment. Signed Dennis DeSimone 4-9-02.

ORDER - 1

Ra041

- 1 4- On July 8, 2011 judgment was entered in plaintiffs favor against the
2 defendant in his capacity as homeowner in accordance with the jury
3 verdict that unanimously found the homeowner individually 100%
4 negligent and the plaintiff not negligent at all and that determined
5 the damages caused to the plaintiffs up until the date of death.
- 6 5- Post-trial the court denied defendants motion for 'REMITTITUR OR IN
7 THE ALTERNATIVE A NEW TRIAL ON ALL THE ISSUES' FINDING that there
8 is evidence to support the verdict; the plaintiffs again demanded a
9 trial on the damages after the of death that after trial this court
10 found there is a basis for.
- 11 6- The defendant did not make any motion for reconsideration in the
12 trial court and directly appealed the post-trial decisions without
13 filing a motion for leave to appeal and without a certification
14 pursuant to R 4:42.
- 15 7- The plaintiffs filed several responses to the defendants appeal, and
16 joined in part with the defendant appeal of the defendants motion
17 for a new trial on ALL the issues. Plaintiffs were not notified of
18 the date and time of the oral hearing in the Appellate court.
19 The Appellate opinion has written that in 2006 and 2007 summary
20 judgment should have been granted to a defendant Dennis DeSimone,
21 in his capacity as Principle of DND Inc. and that plaintiffs would
22 overcome the exception when a homeowner hires a contractor IF the
23 plaintiffs showed that the homeowner (1) exercised control or (2)
24 hired negligently or (3) there was a nuisance per se, AND that IF
25 the defendant was the plaintiffs EMPLOYER THEN worker compensation
26 is the plaintiffs exclusive remedy against THE PLAINTIFFS EMPLOYER.
27 The opinion also found that the plaintiff was working in his
28 capacity as employee of DND INC.
- 8- The Appellate Court September 2012 opinion reviewed interlocutory
orders from 2006 and 2007 in regards to 'the principle of DND Inc.'
which are interlocutory orders from prior to the plaintiffs death in
November 2006, from prior to the plaintiffs claim being amended in
2008 and from prior to discovery being completed.
- 9- The Appellate Court opinion did not review, reverse or vacate any
of the trial courts post-trial decisions, or the Jury verdict that
found the Homeowner individually negligent, or the Judgment entered
on June 8, 2011 in accordance with the Jury verdict against the
homeowner individually, for the damages caused to the plaintiffs up
until the plaintiffs death.

10- The homeowner Dennis DeSimone, the defendant in this case, and DND Inc. a corporation (who was the plaintiffs EMPLOYER) are separate entities; Dennis DeSimone the homeowner, or his homeowner WC CARRIER, did not provide any worker compensation benefits by agreement to the plaintiffs.

11- The update to the construction permit that the homeowner obtained (in his individual capacity as homeowner) from the NJ Department of Community affairs to permit the re-roofing of his detached garage roof to commence was not obtained in writing until June 27, 2003, eleven days after the plaintiff fell through the roof. N.J.A.C. 5:23-2.14 was in evidence at trial wherein it is written it is unlawful to commence construction work without obtaining a permit for the work performed, in writing prior, to commencing the work.

12- The homeowner testified he individually has a contractor's license in New Jersey, even prior to being principle of DND Inc., and has over 35 years construction experience and therefore he testified he has to know the permit process and construction laws well. He testified that he knew that if the building inspector found that work was being done without a permit for the work that a stop work order would have been issued.

13- The construction sub-code 1510.2 for re-roofing and OSHA 1926.501(a), which mirror each other were in evidence prior to an at trial; both require that the strength and structural integrity of the roof be determined prior to commencing the work, that the roof shall be capable of supporting the weight that will be encountered during re-roofing and that no employee shall be permitted to walk on a roof surface that will not support his weight.

14- The homeowner testified that he knew that DND Inc. was not a roof contractor and that the plaintiff was not a roofer.

15- The homeowner testified at a deposition in 2006 and at trial that (1)"he knew the roof was leaking for months and would not be safe to walk on"; (2)"the underside of the roof was concealed by insulation" and (3)that he only "showed the plaintiff "A" leak in the insulation under the garage roof, in the corner by the wall, where water had come through".

16- The plaintiff testified at a deposition in 2006 that was read at trial, he testified that, (1)" he never did re-roofing and was strictly a framer who worked with new materials"; (2)that " the defendant was the only one to instruct him to go on the roof to

1 strip shingles" that "his foreman with DND was not at the job site";
2 (3)that " the defendant never told him the roof was unstable and the
3 roof did not look unstable or water stained to the plaintiff on the
4 upper side where the plaintiff was and the underside of the roof the
5 plaintiff could not see because it was concealed by insulation in
6 the rafters under the roof" AND (4)" that just because he (the
7 defendant) said there was "A" leak in the insulation in the corner
8 under the roof did not mean the roof was rotted."

17- On June 8, 2005 the original claim was filed in this case.

18- On September 8, 2006, as documented in the transcripts, all
9 parties agreed that this claim is against the homeowner of the
10 property in his individual capacity as homeowner and that the
11 plaintiffs EMPLOYER was DND Construction Inc. a corporation, who
12 paid the plaintiff worker compensation benefits; and all parties
13 agreed that the corporation is the plaintiffs "EMPLOYER" for whom a
14 worker compensation barr may apply, and the barr does not apply to
15 the homeowner for his own individual acts of negligence.

19- On September 8, 2006 the defendants motion for summary
14 Judgment was denied; the defendants challenge to the complaint was
15 that the homeowner should be able to assume that the contractor he
16 hired and its employees were skilled, and that he should not be
17 responsible for a condition 'CREATED' by the work the plaintiff was
18 doing or for a condition that was open and obvious on ordinary
19 observation; the trial court found that the homeowner knowingly
20 picked the guy who never did it before and PUT HIM ON THE ROOF,
21 knowing that the plaintiff was not skilled with what you encounter
22 when working with a roof that was leaking and the homeowner know the
23 roof was not safe to walk on, but did not share that information
24 with the plaintiff. The court FOUND in 2006 that the court has to
25 give due inferences to the plaintiffs position, that the homeowner
26 knew he was not a roofer and the homeowner did exercise control.

20- The plaintiff and the homeowner both testified that the
23 condition in the pictures of the damaged water stained structure
24 under the roof, that collapsed beneath the plaintiff, was concealed
25 by insulation, it was not open and obvious on ordinary observation
26 and it was not created by the plaintiff; the condition in the
27 pictures in evidence of the underside of the roof taken after the
28 plaintiffs fall show the water stained damaged hazardous condition
of the roof structure was concealed by insulation but could have been discovered by the qualified building
inspector if the homeowner had obtained the permit update prior to
commencing the work as required.

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21- Both THE DEFENDANT AND THE PLAINTIFF testified that the plaintiff was not a roofer, and was strictly a framer with DND Inc. who worked building with new materials, building from the ground up, where there are no issues of deterioration or water damage.

22- The plaintiffs death certificate, that was in evidence at trial and went back with the jury when they deliberated, documents that plaintiff died from the ULTIMATE infection and pneumonia, as the defendant admitted to the jury in opening statement that: "the plaintiff died from the ULTIMATE INFECTION and the natural progression of that event".

23- In January 2007 defendants motion for summary judgment was denied, as written on the order " to the homeowner of the property where the plaintiff fell through the roof". Summary judgement was denied on the ground that the claim against the homeowner was barred by worker compensation 34:15-7, the homeowner was not the plaintiffs EMPLOYER, the homeowner or his carrier did not pay worker compensation by agreement. There was evidence that the homeowners was negligent in his individual acts or omissions in his capacity as homeowner and the homeowners negligent acts of negligent hiring, failing to obtain proper permits or failing to sufficiently warn the plaintiff that the roof was not safe to walk on were acts or omission as homeowner; they were not acts done while the homeowner was in the same employ as the plaintiff; AND AS THE HOMEOWNER signed on the permit certification the homeowner was responsible for the condition of the property, for the performance of anyone he engaged to do the work, for supervising and for abiding by all applicable laws in his capacity as homeowner.

24- In January 2007, since the plaintiff had just died in November 2006, defendant requested additional discovery and leave was granted for discovery and to amend the complaint to include the plaintiffs two minor children and counts five and six for wrongful death and survivorship.

25- September 2008 the claim was amended to include the plaintiffs children and the wrongful death and survivorship; SIGNIFICANTLY, defendant did not answer the amended complaint.

26- June 2008, the plaintiffs doctor submitted two reports to the worker compensation court and to the superior court, he testified at a deposition requested by the defendant in December 2008, at a two day 104 Hearing on May 13 and 14 2009 where he was qualified to testify in this case.

27- A de bene esse of the plaintiffs doctor was prepared in accordance with R 4:36-3 and R 4:19, and the doctors affidavit is in the trial court record and was in the defendant appendix with his appeal. Subsequent to the 104 hearing the plaintiffs wrongful death and survivorship claim was re-instated by court order dated July 29, 2010 by rule 4:37-2(b); The court found that infection from injuries and death from infection is common and that there is evidence and legitimate inferences therefrom that the plaintiffs sustained injury and damages and that the plaintiff died as a result of infection from his fall through the roof.

28- The July 29, 2010 Order of the trial court re-instated the plaintiffs wrongful death and survivor claim by rule 4:37-2(b), there is evidence and legitimate inferences that the plaintiffs death resulted from the plaintiff's fall through the roof that could lead to a judgment in plaintiffs favor and that evidence still exists; the July 29, 2010 order was not appealed by the defendant.

29- The July 29, 2010 Trial Court Order reads in part;
 This matter having come before the court to alter the August 24, 2009 order to allow plaintiffs' claims for Wrongful Death and Survivorship to proceed to trial, subsequent to plaintiff's expert being qualified to testify on medical issues; and the experts opinion being that the plaintiff's fall through the roof and the injuries from that fall caused a series of events that lead to plaintiff's death by pneumonia that is in his reports.
 Plaintiffs wrongful death and survivorship as related to death by pneumonia, sepsis, sepsis syndrome and cellulitis shall proceed to trial...

30- The affidavit of the plaintiffs doctor is in the trial court record in part as follows:
 10. After careful review of Mr. Donchev's medical records I have concluded in my medical opinion, that Mr. Donchev's Death, within reasonable medical probability was directly and casually related to his fell through the roof on June 16, 2003.
 18. I have concluded in my medical opinion after careful review of his medical records and data related to his fall that the impacts Mr. Donchev sustained caused multiple fractured ribs, fractures vertebrae and ligamentation injury, an A/C Separate of his right shoulder, atelectasis of his lung, development of pericardial and pleural effusions, ventilator dependence, internal organ and uro-genital damage, soft tissue and bone bruising and systemic infection and inflammation, multiple contusions and lacerations on his body and neck and head, cellulitis, sepsis, septic shock, thrombosis, immune system suppression and activation, hemostatic and physiological development of bacterial infection and pneumonia to which he succumbed in November 2006.

31- November 2010, the plaintiffs economic expert submitted a report of damages that she testified to at the jury trial; the reported total of damages exceeds \$1,7000,000.00 without intangibles for damages up until and after the date of death; there was no contrary evidence.

32- AS documented in transcripts, at the 2011 jury trial, in the defendants opening statement the defendant counsel admitted to the jury that the evidence would show, as it did, that:
 (1) "the plaintiff was an employee of DND Construction Inc."
 (2) that "the homeowner in this case was being sued for his own individual acts of negligence"; and (3) he told the jury that the evidence would show that "the plaintiff fell through the defendants garage roof, sustained multiple injuries, infection and an abscess and that the plaintiff died from the ULTIMATE INFECTION AND THE NATURAL PROGRESSION OF THAT EVENT" .

33- At the jury trial in 2011, the deposition of the deceased plaintiff was read, wherein he testified to his injuries, the infection and abscess developing in his groin, abdominal, scrotal, bladder and genital area that began in the week after his fall and was surgically drained in the weeks after his fall, and retreated multiple times with different intravenous an oral anti biotics.

34- The plaintiffs wife testified at trial that:
 "She was trained at the hospital about the plaintiffs injuries and infection" and that "in plaintiffs final admission, she told the doctors that he never had any diseases, and only wore glasses, and that ever since he had fallen through the roof, the infection that began from his injuries, kept showing in his blood and that the multi drug resistant bacterial infection was retreated multiple times with both oral and intravenous antibiotics; and she told the doctors to look for infection and that is what they found again in his final admission and what he was treated for until the day he died from the multi-drug resistant bacterial infection and bacterial pneumonia" as documented on the death certificate and in plaintiffs doctors affidavit and reports.

35- In first week of trial, it was discovered that in the week prior to trial the plaintiffs doctor himself was injured, the plaintiff prepared a video tape deposition according to rule 4:19 as rule 4:36-3 required. The defendant demanded that the plaintiffs doctor appear in person and the court ruled multiple times during trial that the plaintiffs doctor would have to appear in person.

36- the transcripts from trial document that the trial judge stated it shocked his conscience, and he questioned his own abuse of discretion, when the plaintiffs doctor flew from out of the country and came to trial in person, in a wheel chair, on July 5 and 6 to testify at trial on July 5 and 6; and the defendant objected to the doctor testifying because the defendant could not contact any doctor to appear at trial; As documented in the transcripts, the defendants counsel asserted that he did not pay any expert the 5000, that they required two weeks prior to trial and did not meet with them; The defendant did not give any prior notice to the court that any of defendants witnesses would be unavailable for trial. As documented in the transcripts, the Defendants counsel was asked at trial to call his doctors for them to appear at trial in the following days, but he could not contact any doctor who would appear. After trial defendant counsel asserted in his motion after trial that "he knew the first day of trial that he would not have any expert to testify", and the transcripts after trial show that the doctor defendant wanted to testified said to defendants counsel that he would not testify at trial; defendants counsel never informed the judge prior to trial that knew on the first day that defendant did not have any witness to testify and led the judge to believe otherwise, thereby prejudicing plaintiffs rights .
R 4:36-3 provides that if a expert is unavailable they are REQUIRED to appear in person OR BY VIDEO TAP TESTIMONY.

37- The jury trial was held in this case from June 8 through July 7, 2011.

38- The Jury was asked to decide if the homeowner was individually negligent?, Was the defendants negligence was the proximate cause of the plaintiffs injuries?, The percentage of negligence? Was the plaintiff was negligent?, and The amount of damages, if any, UP UNTIL the date of plaintiffs death? Due to the circumstances of the defendant not having any doctor at trial to help him examine plaintiffs doctor or testify, the trial judge stated in the post-trial decision transcripts that to be fair to the defendant, the issue of damages for after the date of death, that there is a basis for was reserved to later be decided if the jury found in the plaintiffs favor on negligence of the homeowner.

39- The defendant requested that the Kelly v. Borweigen case law be read as part of the jury charge.

1 40- At trial the judge stated AT TRIAL that if the jury found
2 in plaintiff favor on the negligence and proximate cause that
3 plaintiffs could make an application after trial to have the damages
4 after the date of death also decided by the jury; which plaintiffs
5 did do after trial, the jury did find the homeowner 100% negligent.

6 41- On July 7, 2011 the jury came to a unanimous verdict 7-0
7 that the Homeowner in his individual capacity was negligent, that
8 the homeowners negligence was 100% the proximate cause of the
9 plaintiffs injuries, that the plaintiff was not negligent at all and
10 determined the damages up until the date of death of \$531,775.00.

11 42- On July 8, and September 11, 2011 judgment was entered in
12 accordance with the jury verdict with costs and interest, the cost
13 and interest remain to be determined in full.

14 43- September 2011 the trial court denied the defendants motion
15 for "Remittitur of the verdict or in the Alternative a New Trial on
16 all the issues"; the defendant ACKNOWLEDGED that there were genuine
17 issues for trial, precluding any summary judgment and he claimed the
18 verdict was too high. The trial judge found that the verdict is
19 supported by the evidence, that the economist testimony was much
20 higher and found that there is a BASIS for the plaintiffs wrongful
21 death and survivor claim.

22 44- Plaintiffs again demanded a trial on the damages after the
23 date of death for the wrongful death and survivor claim.

24 45- The trial court found in 2006 that the homeowner "PICKED
25 THE GUY WHO NEVER DID IT BEFORE, AND PUT HIM ON THE ROOF"; the
26 plaintiffs' counsel asserted that there was evidence in the
27 defendant's 2006 depositions that the homeowner exercised control,
28 that he negligently hired and that he knew of the nuisance perse
that the roof was leaking for months and was not safe to walk on and
did not share that information with the plaintiff, which would have
protected the plaintiff. There was no motion made for
reconsideration of that order.

46- January 2007, the trial court denied summary judgment
'to the homeowner of the property where the plaintiff fell through
the roof'; There was evidence that the homeowner was negligent, that
he negligently hired, he exercised control and had the opportunity
to sufficiently warn the plaintiff of the nuisance perse.

1 The homeowner testified at his 2006 deposition that "he knew the
2 roof was leaking for months and was not safe to walk on" and that
3 "he was the only one to give the plaintiff, instruction and
4 direction" to "strip the shingles" off the roof; and the homeowner
5 "knew the plaintiff was not a roofer", knew that the plaintiff was
6 strictly a framer who worked with new materials and was experienced
7 with what you encounter when working with a roof that was leaking
8 and knew that DND Inc. was not a roof contractor. The defendant
9 homeowner testified that he certified, on the construction permit as
10 homeowner in writing, that he as homeowner was responsible for the
11 condition of the property and that the work would be done by him or
12 others under his supervision as homeowner in accordance with all
13 applicable laws. There was evidence and legitimate inferences
14 therefrom, that the homeowner breached his legal duties that he
15 signed to in writing, as homeowner, on the construction permit
16 certification of the homeowner.

17 47- There was evidence that could and did lead to a judgment in
18 plaintiffs favor.

19 Conclusions of Law

- 20 1- By rule 4:37-2(b) "IF" there is evidence and legitimate
21 inferences therefrom that "COULD" lead to a judgment in the
22 plaintiffs favor, then the court "SHALL DENY" INVOLUNTARY
23 DISMISSAL of the plaintiffs' claims. Judgment has already entered
24 in plaintiffs favor in accordance with the unanimous July 7, 2011
25 jury verdict.
- 26 2- There was evidence and legitimate inferences therefrom that
27 already led to a judgment in plaintiffs favor on all of
28 plaintiffs' claims that the jury decided to date, the damages
after the date of death that the defendant did not deny in any
answer to the 2008 amended complaint, are separable damage.
There is a basis for the claim. As written in the Appellate
opinion the damages after the date of death remain to be decided;
It would be an unjust result to deny plaintiffs right to a jury
trial on all triable issues.

3- The court has found multiple times that there is evidence and legitimate inferences therefrom that COULD lead to a judgment in plaintiffs favor on the plaintiffs wrongful death and survivorship claim, that the defendant never filed any answer to denying it and did not appeal the July 29, 2010 order that re-instated the plaintiffs wrongful death and survivor claim by R 4:37-2(b).

4- By R 4:46 summary judgment must be denied when there are genuine issues of material fact in dispute. The defendant cannot show that there is no set of facts that could lead to a judgment in plaintiffs favor.

5- Rule 4:50 (f) provides that the court for any reason that is just may relieve a party from a judgment or order.

6- Rule 1:7-5 and the NJ Appellate Standard of Review Section Six II number 23 provides that the trial court may "AT ANY STAGE OF THE ACTION" , EVEN AFTER TRIAL, AND "EVEN AFTER THE APPELLATE COURT HAS RULED ON AN INTERLOCUTORY ORDER", THE TRIAL COURT MAY correct "ANY ERROR" that is clearly "CAPABLE OF PRODUCING AN UNJUST RESULT".

7- Plaintiffs demand and have a substantial right to a trial by jury on all triable issues. R 1:8

8- Plaintiff requested the court to judicially notice the Lyon v. Barrett case law that is in plaintiffs appendix. The case law holds that a corporation who employs an employee and the landowner are separate entities, even if the homeowner is the principle of the corporation that employed the plaintiff; AND the plaintiff is entitled to Worker Compensation benefits from the incorporated EMPLOYER and to sue the third party homeowner, liable for the employees injuries, who as homeowner is as liable to the employee of his own corporation as he is to any other invitee. The court held that it is consistent with the WC law 34:15-40, the plaintiff is entitled to WC benefits from his incorporated Employer and to sue the third party homeowner. WC law 34:15-40 provides the employee and his descendants right to compensation from the employees "employer" shall not bar the plaintiffs right to sue a negligent third party, nor shall the compensation received from his employer be a measure of damages. The plaintiffs EMPLOYER or their WC carrier may at their request recover and assert a lien against any sums that the carrier of the incorporated company paid the employee .

1 WC Law 34:15-69.2 provides that any compensation or settlement
2 made with the Plaintiffs EMPLOYER "DND Inc.", or any release of
3 liability of "Plaintiffs EMPLOYER DND Inc." or their WC carrier
4 is ONLY applicable to release THOSE PARTIES, DND Inc. and their
5 carrier from liability and that the plaintiff and his descendants
6 "retain all of our rights against the negligent third party".

7 9- The Plaintiffs requested the court to judicially notice the new
8 case law decided by the Appellate Court February 2014. (a copy
9 is with the plaintiffs motion). In *Carmelota v. Carmelota* the
10 homeowner certified on the construction permit to the authorities
11 that he was responsible for the condition of the property, for
12 supervising and for the performance of any contractor and the
13 court held that the homeowner cannot shift his legal duties,
14 that it would be against public policy to not hold the homeowner
15 to his representations to the authorities and the jury must be
16 permitted to decide if the homeowner was negligent.

17 10- The Plaintiffs requested judicial notice of the Bushman
18 Supreme Court case law in the plaintiffs appendix, where-in after
19 the Supreme Court did a thorough research of New Jersey Law and
20 determined that there is no requirement in New Jersey for medical
21 expert testimony; and that the rules of evidence provide that a
22 party "MAY" use a medical expert to help understand evidence
23 that is outside the reasoning of an average juror.

24 11- The Plaintiffs requested judicial notice of the Ortiz
25 Supreme Court case law that is in the plaintiffs appendix; the
26 Supreme Court answered the question unanimously that "NO" Summary
27 judgment cannot be granted after a full trial on the merits, even
28 on a defense of qualified immunity; and that when there a genuine
issues of material fact disputed, as there were in this case and
as there were in Ortiz, then summary judgment MUST BE DENIED.

29 12- Rule 1:7-5 and 1:8 provide that plaintiffs have a
30 substantial right to oral argument and a right to a trial by a
31 jury and the trial court may at any stage correct any error which
32 is clearly capable of producing an unjust result.

ORDER*Denied*

This matter having come before the court on Plaintiffs motions and the court having considered the matter and for good cause shown, based on the foregoing findings of fact and conclusions of law, this court finds that, by rule 4:37-2(b) the plaintiffs motions must be **GRANTED**.

This court found on July 29, 2010 that there is evidence and legitimate inference that could lead to a judgment in plaintiffs on the 2008 Wrongful Death and Survivor claim that plaintiffs filed against the homeowner of the property where the plaintiff fell through the roof. The defendant did not appeal the July 29, 2010 order. There is a basis for the plaintiffs Wrongful Death and Survivorship claim, the plaintiffs have a substantial right to a jury trial on their claim for damages after the date of death.

This court finds that on July 7, 2011 the jury found in the plaintiffs favor on the plaintiff claims against the defendant homeowner individually; judgment has already entered in plaintiffs favor in accordance with the unanimous jury verdict that found the homeowner individually 100% negligent, that found the plaintiff was not negligent at all and for damages the plaintiffs claimed up until the date of Mr. Doncheva's death; the jury verdict that is supported by the evidence and the legitimate inferences therefrom..

Based on the facts and the law, specifically R. 4:37-2(b) this court SHALL NOT involuntarily dismiss plaintiffs' claims. Plaintiffs motion to re-instate plaintiff claims, to affirm the jury verdict and the judgment entered in accordance with the juries July 7, 2011 verdict must be **GRANTED**.

Denied

This court further finds pursuant to R. 1:7 and R.1:8 the trial court has jurisdiction to amend the July 25, 2010 court order and to correct any error that is clearly capable of producing an unjust result. Plaintiffs have a substantial right to oral argument and to a jury trial on all of plaintiffs claims including the plaintiffs Wrongful Death and Survivorship claim and the damages AFTER the date of death which are damages separable from the damages before the date of death. By r. 4:37-2(b) when there is evidence that could lead to a judgment in plaintiffs favor the court shall deny involuntarily dismissing plaintiffs claims.

Based on the foregoing, for the good and the just cause shown, *Reopen on 9/5/14*
IT IS ON THIS 5 DAY OF Sept, 2014, IT IS ORDERED AS FOLLOWS:

IT IS ORDERS THAT the plaintiffs motion to alter or amend the July 25, 2014 order amending the order to re-instate all of plaintiffs 2008 amended claim, to affirm the Judgment entered in accordance with the jury's July 7, 2011 verdict, plus cost and interest, and to order a jury trial on the plaintiffs ~~Wrongful Death and Survivorship claim and the damages after the date of~~ death are HEREBY GRANTED.

This court finds that there is evidence and legitimate inference that could and already did lead to judgments in plaintiffs favor plaintiffs and that plaintiffs have a substantial right to a jury trial on all of plaintiffs' claims, therefore pursuant to R. 4:37-2(b) the court shall deny involuntary dismissal of plaintiffs claims. This court finds that a grave injustice to a lawful employee of DND Inc. and his descendants would occur if plaintiffs motions are not granted.

1 IT IS ORDERED THAT the judgment entered in accordance with the
2 July 7, 2011 jury verdict against the individual homeowner of the property
3 where the plaintiff fell through the roof, with cost and interest, that is
4 supported by the evidence is affirmed and;

5
6 IT IS ORDERED THAT all of plaintiffs' claims against the homeowner of the
7 property where the plaintiff fell through the roof are re-instated.

8 IT IS ORDERED THAT plaintiffs claim for wrongful Death an Survivorship and
9 for the damages from after the date of plaintiffs death are re-instated and
10 shall proceed to trial on _____ day of _____, 2014.

11
12
13 Date: 9/5, 2014

14
15 _____
U.S.C. Honorable Judge David Morgan

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23 [Attorney Name]
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BY THE COURT

METODI DONCHEV and FAITH
DONCHEV, HIS WIFE,
Plaintiff

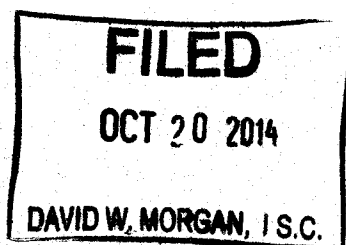
vs.

DENNIS DESIMONE, ET AL,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY
DOCKET NO. **GLO-L-956-05**

Civil Action



ORDER

This matter having come before the court on plaintiff's motion to enter judgment and plaintiff's motion for reconsideration as to the September 5, 2014 denial of to amend to grant relief requested, and for the reasons expressed as attached;

It is hereby ORDERED this 20th day of October, 2014, that plaintiff's request for reconsideration is DENIED.

FURTHER, it is hereby ORDERED this 20th day of October, 2014, that plaintiff's motion to enter judgment is DENIED.

FURTHER, it is hereby ORDERED this 20th day of October, 2014, that defendant's motion for attorney's fees is DENIED.

FURTHER, it is hereby ORDERED this 20th day of October, 2014, pursuant to N.J.R.Ct. 1:4-8, that plaintiff is sanctioned in the amount of \$50 and is to be put on notice that any further frivolous motions made to this Court shall lead to further, harsher sanctions, including monetary sanctions and Plaintiff being sanctioned from being able to

63074 ECT

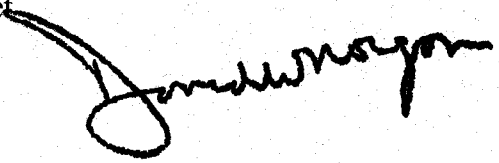
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file any further pleadings at the discretion of the Assignment Judge, Georgia M. Curio,
A.J.S.C.. The \$50 sanction shall be sent by cash or check, WITH A COPY OF THIS
ORDER, to:

Superior Court of NJ Finance Div.

Justice Complex, 70 Hunter Street

Woodbury, NJ 08096

A handwritten signature in black ink, appearing to read "David W. Morgan", written over a horizontal line.

DAVID W. MORGAN, J.S.C.

Determination Attached

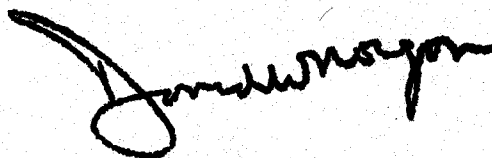
In a ruling dated September 24, 2012, the Appellate Division reversed two prior Law Division orders, which denied Defendant DeSimone's motions for summary judgment, as well as the July 8, 2011 judgment entered in Plaintiffs' favor, and the September 6, 2011 order, denying post-trial cross-motion for remitter or, in the alternative a new trial. Donchev v. Desimone, 2012 N.J. Super. Unpub. LEXIS 2166 (Law App. Div. 2012)

Since this ruling was handed down, beginning in October 2013, Plaintiff has moved for an order to vacate, to reinstate the judgment, and to enter judgment, all which have been denied. In addition, Plaintiff has now made two motions for reconsideration as well, with similar fates. Ever since the Appellate Division reversed this court, I have made it apparent and emphasized to the Plaintiff that there is nothing further this Court can do for her. Yet continuously, she files motions asking for relief which this Court has no authority to grant.

For these reasons, sanctions must be imposed. This Court looks toward N.J.R.Ct. 1:4-8, Frivolous Litigation, and to guidance provided in the Appellate Division's opinion in Rosenblum v. Borough of Closter, 333 N.J. Super 385 (Law App. Div. 2000).

Defendant and his counsel must comply with N.J.R.Ct. 1:4-8, and any other applicable statutes, rules, or case law if they wish to obtain attorney's fees and costs on any further motions.

Additionally, Plaintiff is hereby put on notice that any further motions or other pleadings entered into this Court on this matter will result in further, harsher sanctions, and that a letter has been sent to the Assignment Judge, Georgia M. Curio, A.J.S.C. notifying her of this court's desire to impose the sanction that would prevent Plaintiff from filing further motions or pleadings with this court, at the discretion of the Assignment Judge.



DAVID W. MORGAN, J.S.C.

FILED
DEC 05 2014
DAVID W. MORGAN, J.S.C.

BY THE COURT

Metodi Donchev, Faith
Doncheva (his wife)
Plaintiff(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

vs.
Dennis DeSimone, Et. Al.
Defendant(s)

DOCKET No. GLO-L-956-05

JUDGMENT

In accordance with the July 7, 2011 jury's unanimous verdict, that found Dennis DeSimone, the homeowner of 149 BREAK NECK Road, Negligent, that found the homeowner, Dennis DeSimone's negligence was 100% the proximate cause of the plaintiffs fall through the defendants detached garage roof on June 16, 2003 at the property address 149 Breakneck Road, Sewell New Jersey, that found that the plaintiff was not negligent at all and the jury verdict that determined the amount of damages to compensate the plaintiff Metodi Donchev and his wife Faith Doncheva for damages up until the date of death;

IT IS HEREBY ORDERED THIS 8 DAY OF Dec, 2014, THAT :

1. JUDGMENT IS ENTERED in favor of plaintiff, Estate of Metodi Donchev, on the survivor claim, against Defendant, Dennis DeSimone, Homeowner of the property at the address 149 Breakneck Rd Sewell New Jersey, for damages up until the date of death, in the amount of \$371, 375.00, comprised of \$5775.00 for lost income and \$ 365, 600.00 for pain and suffering from the date of plaintiffs fall through the roof on June 16, 2003 to the date of plaintiff's death, plus pre-judgment and post judgment interest and costs to be determined.
2. JUDGMENT IS ENTERED in favor of plaintiff, Faith Doncheva, on the loss of consortium claim against the Defendant, Dennis DeSimone, Homeowner of the property, 149 Breakneck Road, Sewell, New Jersey, for damages from the date of plaintiffs fall through the roof on June 16, 2003 up until the date of plaintiff's death, in the amount of \$150,000.00 plus pre-judgment and post-judgment interest and cost to be determined.

Court refers this matter to
Assignment Judge to consider
whether subsequent motions should
be accepted for filing.

DAVID W. MORGAN, J.S.C.

Determination Attached

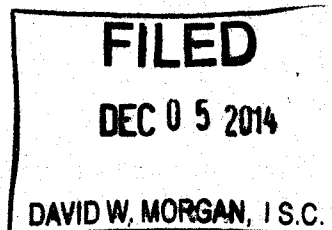
Plaintiff motion to vacate portion
of Oct 20, 2014 order imposing \$50
penalty is granted + that portion of the order
imposing sanction is vacated.

63074 ELt

Ra059

12/5
DWA

Edward L. Thornton - ID #018281977
METHFESSEL & WERBEL, ESQS.
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Attorneys for Dennis DeSimone
Our File No. 63074 ELT



METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO.: GLO-L-956-05/
SUPREME COURT #071881

Civil Action

ORDER

THIS MATTER having been brought before the court on the cross-motion of Methfessel & Werbel, attorneys for defendant Dennis DeSimone, for an order for costs, fees and other relief, and the court having considered the matter and for good cause shown;

IT IS on this 8 day of Dec 2014;

ORDERED that sanctions be and are hereby imposed upon plaintiff in the amount of \$ _____; and it is further

Denied w/o prejudice

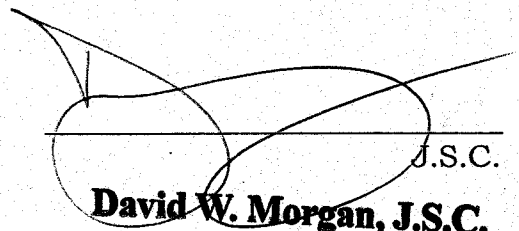
ORDERED that attorney's fees and costs in the amount of \$_____ are hereby awarded to defendant Dennis DeSimone; and it is further

ORDERED that the clerk of the court is not to accept any further submission of the pro se plaintiff for filing without the submission being reviewed by the Assignment Judge or the Assignment Judge's designee for basic merit; and it is further

ORDERED that if any further submission is accepted by the clerk for filing, the pro se plaintiff shall submit with the filing a check payable to the "Clerk of the Superior Court" in the amount of \$2,500.00 in anticipation of attorney's fees in opposing the motion; and it is further

ORDERED that a copy of this order be served on all counsel within 7 days of the date hereof.

☒ Opposed
☐ Unopposed


J.S.C.
David W. Morgan, J.S.C.
Determination Attached

Court forwards this matter
to Assignment Judge to determine
if further motions by plaintiff
should be accepted for filing

Reasons: The application for fees/sanctions does not yet comply with the procedures and requirements of R. 1:4-8 and must be denied, but without prejudice since the application can be made once all conditions of the Rule have been satisfied. Specifically,

1. Motion for sanctions must be made by motion made separately from other applications. Here the motion was made as cross motion to plaintiff's motion and not by separate motion.
2. The notice required under the Rule among other things requires the sender to include a demand that the paper be withdrawn and that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand. If the subject of the application for sanctions is a motion whose return date precedes the expiration of the 28 day period, the demand shall give the movant the option of either consenting to an adjournment of the return date or waiving the balance of the 28 day period remaining. The technical language does not appear in the November 4, 2014 notice sent to plaintiff.
3. No motion for R. 1:4-8 relief shall be filed if the paper objected to has been withdrawn or corrected within 28 days of service of the notice and demand. While plaintiff's motion was not withdrawn, the notice did not reference the "waiver" language referenced in para. 2 above. The return date of the motion was December 5, 2014, and the letter of November 4, 2014 would provide 30 days, but it is not clear from the record when the notice was actually served to compute the 28 day time period (i.e., "not withdrawn within 28 days of service of the written demand").
4. A motion for sanctions shall be filed with the court "no later than 20 days following the entry of "final judgment", which in this case would be substituted by the post-judgment order denying plaintiff's motion. That post-judgment order is being entered Dec. 8, 2014, hence the motion must be filed in 20 days from that date. The cross-motion for R. 1:4-8 sanctions was filed Nov. 26, 2014 and does not comply with the time requirements of the Rule.

Based on all of the above, the application for sanctions must be denied, but without prejudice to re-application within the time requirements of the Rule.

DAVID W. MORGAN, JSC

FILED**MAR 20 2015****SUPERIOR COURT OF NEW JERSEY
COUNTY OF GLOUCESTER****Docket No.: GLO-L-956-05**

Metodi Donchev, Faith Doncheva (his wife),
Anton Donchev (his son), Rocitsa Doncheva
(his daughter)

v.

Dennis DeSimone (THE HOMEOWNER), Jane Doe
DeSimone (Dennis DeSimone's wife), John Doe
Responsible Party Jointly Severally and on the Alternative

**CIVIL ACTION
ORDER**

This court having come before the court on plaintiffs motion to amend orders date December 8, 2014 November 5, 2012 and the post jury trial and the 2011 jury trial orders regarding plaintiff wrongful death and survivorship claims, and this court having considered the matter, the motion and the submissions of the parties, and for Good Cause shown it is on the 20 day of March, 2015 ordered:

PERSUANT to R 4:50, R 4:37-2(b), R 1:7-4 this court GRANTS PLAINTIFFS motion to amend plaintiffs 2008 complaint and to amend the above orders as follow:

IT IS HEREBY ORDERED THAT the judgment entered on June 8, 2011 in accordance with the jury verdict of July 7, 2011 against the Homeowner Dennis DeSimone, shall be in full force and effect;

IT IS FURTHER ORDERED THAT the clerk of the court shall amend the June 8, 2011 judgment to add cost and interest to date and to amend the judgment clerically to include the following wording :

" This judgment is entered against Dennis DeSimone, in his capacity as homeowner of 149 Breakneck Road, Sewell, NJ for the amount determined by the jury, in favor of plaintiffs , to compensate plaintiffs for damages up until the date of plaintiffs death that resulted from Plaintiff Metodi Donchev's fall through the detached garage roof at 149 Breakneck Road , Sewell NJ on June 16, 2003."

IT IS FURTHER ORDERED that pursuant to R 4:37-2(b) all of plaintiffs claims against the homeowner of the property where the plaintiff fell through the roof as written in the plaintiffs 2005 and 2008 amended complaints and the June 8, 2011 judgment entered in accordance with the jury verdict are **HERE-BY** re-instated;

IT IS FURTHER ORDER that pursuant to rule 4:46-3(b) and 4:37-2(b) the plaintiffs wife and two childrens claim for damages under the Wrongful Death and Survivorship Act, shall proceed to a jury trial on the _____ day of _____, 2015.

Submitted: January 8, 2015

() unopposed

(☒) opposed**(J.S.C.) Judge David Morgan**

IT IS ORDERED THAT plaintiffs motion to amend the complaint to include count seven for punitive damages against the homeowner is granted, the issue of punitive damages shall be decided by the jury when the issue for damages after the date of death is decided ;

IT IS FURTHER ORDERED, *denied* in this supplemental agreement for additur, IF agreed by the parties signature on this supplemental order, that in Lieu of another jury trial to determine the damages from after the date of death, if defendant and plaintiffs agree that plaintiffs will accept the amount of _____ that will be written in a second judgment, in favor of the plaintiffs wife and two children against Defendant Dennis DeSimone; to fairly compensate the plaintiffs wife and two children for the damages after the date of plaintiffs death, and cost and interest shall be applied to the second judgment the same as written above for the first judgment for the damages already awarded by the jury for the damages up until the date of death.

If this supplemental agreement is not signed and submitted to the court at least 10 days prior to the scheduled hearing date, this supplemental agreement will not be approved and the jury will decided the damages.

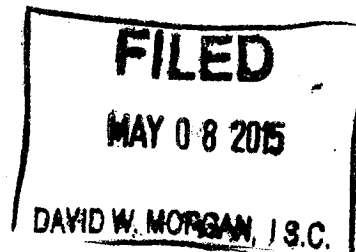
Dennis DeSimone

Faith Doncheva

Anton Donchev

Rocitsa Doncheva

Judge David Morgan



BY THE COURT

METODI CONCHEV and FAITH
DONCHEV, his wife

Plaintiff,

v.

DENNIS DESIMONE, et al.

Defendant

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: GLOUCESTER COUNTY
: DOCKET NO. L-956-05

: *Civil Action*

ORDER

This matter having come before the court on Defendant DENNIS DESIMONE's Motion to Impose Sanctions and Awarding Defendant costs, fees and other relief;

It is on this 8th day of MAY, 2015;

ORDERED that Defendant's request for attorney's fees and costs is GRANTED.

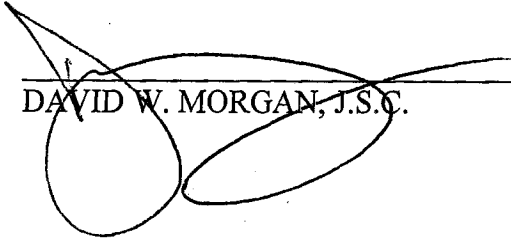
Attorney's fees and costs shall be awarded to Defendant Dennis DeSimone for any fees and costs incurred (1) in opposing Plaintiff's frivolous application, and (2) the imposition to file this current motion, pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1. Defendant shall submit a certification of costs and fees to this Court, and to the Plaintiff, within twelve (12) days, proceeded by 5 days to allow Plaintiff time to rebut the certification;

FURTHER, it is hereby **ORDERED** if Plaintiff shall be undeterred from the imposition of this sanction, harsher sanctions and penalties shall be incurred, including a sanction that any further pleadings filed by Plaintiff shall be accepted at the discretion of the Assignment Judge, Georgia M. Curio, A.J.S.C.;

FURTHER, it is hereby **ORDERED** that the Court will not impose an independent sanction requiring Plaintiff to pay a penalty to the Court, pursuant to R. 1:4-8(d), at this juncture;

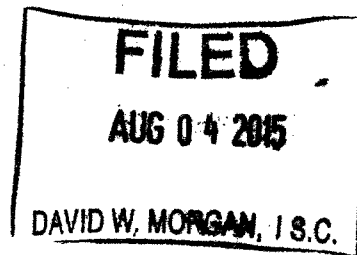
FURTHER, it is hereby **ORDERED** that Defendant's request for any further submission to only be accepted only if, Plaintiff submits with such a filing, a check in the amount of \$2,500.00 in anticipation of attorney's fees for imposing such a filing is **DENIED**.

FURTHER, it is hereby **ORDERED** that Defendant's request for Plaintiff to undergo a mental status examination is **DENIED**.



DAVID W. MORGAN, J.S.C.

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mailbox@methwerb.com
Attorneys for Dennis DeSimone
Our File No. 63074 ELT



METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: GLOUCESTER
COUNTY
DOCKET NO. GLO-L-956-05

Civil Action

ORDER ENTERING JUDGMENT

THIS MATTER having been brought before the Court by the law
firm of Methfessel & Werbel, attorneys for defendant Dennis DeSimone,
for an order entering judgment against the pro se plaintiff, Faith

Donchev, and the Court having considered the matter and for good cause shown;

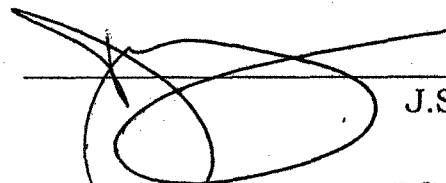
IT IS on this 4 day of Aug 2015;

ORDERED that judgment shall be and is hereby entered in favor of defendant, Dennis DeSimone, and against the pro se plaintiff, Faith Donchev, in the total amount of \$1,201.50, representing the attorney's fees and costs incurred in opposing the pro se plaintiff's most recent frivolous application, and the imposition to file defendant's subsequent motion seeking fees and costs; and it is further

ORDERED that a copy of this order be served on all counsel within 7 days of the date hereof. Reasons on Record 8/4/15

() Opposed
(x) Unopposed

Reasons


J.S.C.
David W. Morgan, J.S.C.

Attn: Jen

732-248-2355

Metodi Donchev, Faith Doncheva (his wife),
Rocitsa Doncheva(His Daughter) and Anton
Donchev (His son)

Plaintiffs
v.

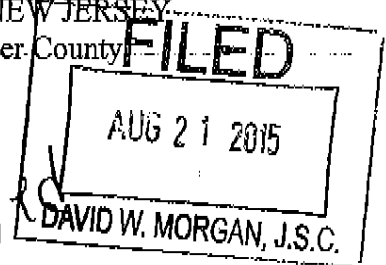
Dennis DeSimone (Homeowner), Jane Doe
DeSimone (His wife), John Does Responsible
Party Jointly, Severally, and in the Alternative
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION Gloucester County

Docket: GLO-L-956-05

ORDER

Denied



THIS MATTER having come before the Court on this 21 Day of Aug, 2015

and having considered the matter and for good cause shown plaintiffs motions must be granted;

This Court having considered Rule 4:37-2(b) and RULE 4:46 the standards that the September 2012

Appellate Opinion in this case has written that the trial court must follow and this Court having

considered the complaint, facts, discovery and evidence in this case including the following:

- (1) the July 29,2010 court order that re-instated plaintiffs wrongful death and Survivorship claims by rule 4:37-2(b) and the plaintiffs and his doctor reports, testimony, death cert. and affidavit
- (2) the amended 2008 complaint against Defendants Dennis DeSimone in his capacity as homeowner of the property where the plaintiff fell through the homeowners detached garage roof on Jun 16, 2003, and against his wife and the responsible party;
- (3) WC law 34:15-40: the plaintiff employee and his descendants right to sue the negligent third party, the homeowner in this case, shall not be barred by the plaintiff employee and his descendants right to compensation from the plaintiffs' employer DND Inc. or DND Inc. Worker Compensation Carrier nor shall any compensation received from his employer be a measurement of damages,
- (4) all of the pages of the construction permit including the Homeowner Certification in Lieu of Oath where the homeowner in writing asserted to the authorities that he assumed all responsibility for the construction at his home, for the condition of his property prior to, during and after the work performed and signed that all construction would be done by him in his capacity as homeowner or by contractors or others under his supervision in his capacity as homeowner, in accordance with all applicable laws, thereby in his capacity as homeowner he acted as the General Contractor even though he claimed he hired DND Inc. as a contractor there was no evidence that DND Inc. acted independently or was the responsible party in charge of the work or for safety on the premises, the homeowner signed that he in his capacity as homeowner was the responsible party in charge of the work in his capacity as homeowner.

Denied

- (4) This court also considering the July 7, 2011 Jury Verdict in plaintiffs favor that unanimously determined that the homeowner was 100% individually negligent, that the plaintiff was not negligent at all and that determined the amount to compensate up until, the date of plaintiffs death to the plaintiff Metodi Donchev was 375,600. and to his wife was 150,000. and income of 5995. plus cost and interest; and this court stated during trial that if the jury decided in plaintiffs favor on the issue of negligence, as the jury unanimously did, then plaintiffs could make application to have the jury determined the damages after the date of death also;
- (5) The Construction codes for permit NJAC 5:23-2.14 and for re-roofing 1510.2;
- (6) The Worker Compensation Law 34:15-40 and the Lyons V. Barrett, Costa v. Gaccione and Ortiz, and Carmerotta v. Carmerotta case laws referred to in plaintiffs argument;
- (7) The September 2012 Appellate Opinion where the appellate court wrote that the standard the court must rule by, Rule 4:46, provides when there are genuine issues of material fact in dispute then summary judgment MUST be denied; the opinion also has written that plaintiffs will overcome the Independent contractor exception to the recognized homeowner non delegable duty of a homeowner for safety on his property when he hires a contractor IF THE PLAINTIFFS SHOWED (as plaintiffs have shown) that (1) the homeowner exercised control or (2) negligently hired or (3) the work constituted a nuisance perse; as the plaintiffs have done;
- (8) This court having considered that the Appellate Opinion has written that the subject matter that they consider was regarding a subject matter for Dennis DeSimone in his capacity as President of DND Inc., however all parties acknowledged and the complaint documents the defendant in this case was Dennis DeSimone who was sued for his own individual act of negligence, in his capacity as homeowner; the defendant was not the President of DND Inc..

This court on May 8, 2015 again agreed with plaintiff argument, and this court having considered the pleadings, evidence, affidavits in the record and the testimony at trial, the jury verdict in the plaintiffs favor and the facts in this case, this court again determines that there were genuine issues of material fact in dispute that precluded and still preclude granting Summary Judgment to the Homeowner of the property where the plaintiff fell through the roof.

This court again finds that the jury verdict is supported by the evidence and that there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all of plaintiffs claims including the Plaintiffs Wrongful Death and Survivorship claims. Rule 4:37-2(b) provides that only after the presentation of all the evidence on the parties claims may the defendant move to dismiss plaintiff claims:

Denied

Rule 4:37-2(b) provides if there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor, as it already has done, then the court SHALL DENY involuntary dismissal of plaintiffs claims; therefore the court must re-instate all of plaintiffs claims against the homeowner.

On July 7, 2011 the jury decided unanimously in plaintiffs favor on all of the issues they decided.

On July 29, 2010 this court found the plaintiffs doctor was qualified to testify in this case at a 104 hearing and ordered that he would testify at trial and ordered that the plaintiffs wrongful death and survivorship claims are re-instated and shall proceed to a jury trial, because there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all of the plaintiffs claims; the defendant did not appeal the July 29, 2010 order and admitted to the jury that the plaintiff fell through his detached garage roof, sustained multiple injuries, infection and an abscess and that the ultimate infection took the plaintiffs life. Based on the facts, the law, Rule 4:37-2(b) and 4:46, the discovery and evidence in this case and the unanimous jury verdict in plaintiffs favor;

IT IS ORDERED THAT all of the post jury trial orders are amended as follows :

IT IS ORDERED that all of plaintiffs claims including the Wrongful Death and Survivorship claims against the homeowner of the property where the plaintiff fell through the roof on June 16, 2003 and the July 8, 2011 judgment that was entered in accordance with the July 7, 2011 jury verdict against the Defendant, the Homeowner of 149 Breakneck Road, are re-instated, and the June 8, 2011 judgment that was entered in accordance with the July 7, 2011 jury verdict shall be amended to include the following words: "this judgment is against the homeowner of 149 Breakneck Road, Sewell, NJ to compensate for damages sustained up until the date of plaintiffs death, that the jury determined resulted from his fall through defendants detached garage roof on June 16, 2003;" "the cost and interest to the date of this order shall be added to the judgment and shall continue to accrue until payment of the judgment."

IT IS ORDERED THAT plaintiff claims for damages from their Wrongful Death and Survivorship Claims, (that are separable from the damages up until the date of his death) shall proceed to a jury trial to determine the amount of damages after the date of death on the ____ day of ____ 2015.

Denied

IT IS FURTHER THAT plaintiffs motions and complaints are supported by the evidence, discovery and good faith arguments that have a basis in fact and law and are not frivolous, the plaintiffs were the prevailing party against the homeowner at the jury trial, therefore the defendants homeowners motions seeking cost and interest or any orders finding that plaintiffs actions frivolous are hereby denied and vacated; the court cannot find that the plaintiffs arguments or complaint is not supported by a good faith argument and cannot find that based on the pleadings, discovery and evidence in this case, the court has not and cannot find that there is no basis in fact or law for plaintiffs claims or motions.

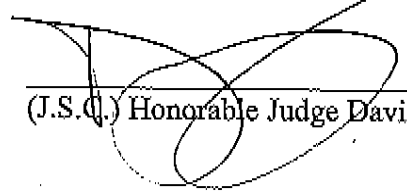
IT IS ORDERED THAT since this court has found that the defendant the homeowner signed the *Homeowner Certification in Lieu of Oath* asserting to the authorities that the construction at his home would be done by him or contractors or others under his supervision in his capacity as homeowner in accordance with the applicable laws and signed that he as homeowner was **THE RESPONSIBLE PARTY IN CHARGE OF THE WORK** and this court has found that he did not have the proper construction permit in writing prior to commencing the re-roofing as required by NJAC 5:23-2.14 that would have lead to inspections by the qualified building inspector and discovered the hazard that caused the roof collapse and protected the plaintiffs from from injury and death, therefore as the Judges notes in the punitive damages charge 8.60 instructs, this court **MUST** consider awarding punitive damages not only as a punishment to the defendant but also to deter others from following in the defendants step; this court **MUST** considered not only the fact of not having the proper permit but also the defendants homeowners actions afterward including that the defendant attempted to conceal the fact from the jury and the plaintiffs, then after this court denied defendant motion to strike the permit or at least the date of the permit, and found that the construction permit is one piece of evidence that precluded granting summary judgment to the homeowner, **AFTER** that and after the jury decided the homeowner was 100% negligent, the defendants counsel then did not supply the construction permit or homeowner certification to the Appellate Court on appeal as required by Rule 2:6-1, in order

Denied

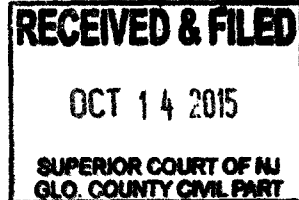
for a fair and just appellate opinion to be made; therefore due to the act of assuming all responsibility in his capacity as homeowner then commencing construction unlawfully without a proper permit or complying with the code requirements for re-roofing then the additional acts of attempting to deny the statutory duty and responsibility he certified he assumed in writing and attempting to conceal the permit and homeowners certification from the plaintiffs, the jury, the court and the Appellate Court, **IT IS ORDERED** that on the date of the above assigned jury trial, this court will permit the jury to consider Punitive Damages, not only as a punishment to the defendant but also to deter others from following the homeowners steps of after assuming all responsibility as a homeowner, attempting to deny the responsibility that he certified in writing was his in his capacity as homeowner, then commencing the re-roofing unlawfully without the proper permit and without complying with the re-roofing codes that would have insured safety which is the intent of the construction codes; then attempting to conceal the facts, the permit and the homeowners certification in lieu of oath from the plaintiffs, the jury, the court and from the Appellate court.

THIS ORDER IS based on the the facts in this case, the law and case laws referred to in plaintiffs pleadings, and is consistent with the September 2012 Interlocutory Appellate Opinion in this case that has written the standard rule 4:37-2(b) and rule 4:46 that the court must follow, when there are genuine issues of material fact in dispute, as there were in this case, regarding the negligence of the homeowner in his individual capacity as homeowner and proximate cause, then the court MUST deny summary judgment to the homeowner and SHALL DENY involuntary dismissal of plaintiffs claims.

THIS ORDER SHALL SUPERSEED AND AMEND ALL POST TRIAL ORDERS.


(J.S.C.) Honorable Judge David Morgan

() Opposed
(☒) Unopposed



PREPARED BY THE COURT

METODI DONCHEV and
FAITH DONCHEV

Plaintiffs,

v.

DENNIS DESIMONE

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

Docket No. GLO-L-956-05

CIVIL ACTION

ORDER

THIS MATTER having been brought before the Court by Methfessel & Werbel, attorneys for Defendant Dennis DeSimone, on a motion seeking to enforce litigant's rights; Plaintiff Faith Donchev (also known as Doncheva), appearing pro se; the Court having reviewed and considered all pleadings filed and all arguments of the parties; for good cause shown and for the reasons more fully stated on the record on October 13, 2015;

IT IS on this 14th day of October, 2015,

ORDERED as follows:

1. Defendant's Motion to Enforce Litigant's Rights is hereby granted.
2. Plaintiff Faith Donchev is enjoined from filing any future pleadings against Defendant Dennis DeSimone, D.N. DeSimone Construction Company, Inc., or any person or entity in any venue in the State of New Jersey related to any and all claims arising from Metodi Donchev's June 16, 2003 roofing accident without first submitting the pleading to the Assignment

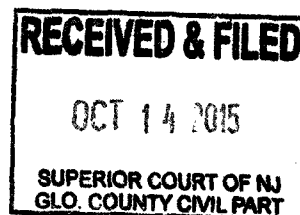
Judge or her designee, together with: (i) a certification that the pleading is made in good faith, without purpose to harass; that there is evidence to support the allegations made; that existing law supports the pleading; and that the subject matter has not been addressed in any prior litigation; and (ii) a copy of this Order.

3. Plaintiff's pending cross-motion to reconsider the \$50 sanction imposed upon Plaintiff by Judge David W. Morgan by order dated October 20, 2014 is moot, Judge Morgan having vacated the sanction by order dated December 5, 2014.
4. Any and all other cross-motions filed by Plaintiff (identified by Plaintiff as "Motion 1 – Motion to Enforce Plaintiff's Rights... For Reconsideration and Opposition to Defendant's Motions" and "Motion 2 – Motion for Judgment") are dismissed and/or denied. This Order constitutes a final and dispositive ruling on Plaintiff's pending cross-motions filed on September 8, 2015.

A copy of this Order shall be served upon all interested parties immediately.



HON. GEORGIA M. CURIO, A.J.S.C.



Metodi Donchev, Faith Doncheva
(his wife), Anton Donchev(his son)
and Rocitsa Doncheva(his daughter)
Plaintiffs

SUPERIOR COURT OF NEW JERSEY
Law Division Gloucester County
Docket No.: GLO-L 956-05

v.

Dennis DeSimone, Jane Doe DeSimone
(his wife), John Doe Responsible Party
Jointly, Severally and in the Alternative

JUDGMENT
In Plaintiffs favor against Defendants

THIS MATTER having come before the court on this 13th day of October, 2015
and the court having considered the plaintiffs motion, the pleadings, evidence in the record, the
construction permit and homeowner Certification and Lieu Oath, the July 7, 2011 jury verdict in
plaintiffs favor against the homeowner, the July 29, 2010 court order that the defendant did not appeal.
This court finds that the plaintiffs Employer DND incorporated and the President of DND Inc. are
not defendants in this case, therefore summary judgment cannot be granted or denied to DND Inc.
or to Dennis DeSimone in his capacity as President of DND Inc..
This court further finds that the defendants in this case were the homeowners of 149 Breakneck Road,
Sewell where the plaintiff fell through their detached garage roof on June 16, 2003 and a Worker
Compensation Bar is not applicable to the homeowners in this case.
This court further finds that on July 29, 2010 the court found that the plaintiffs doctor was qualified to
testify in this case and ordered that he would testify at trial and ordered that by rule 4:37-2(b) the court
could not dismiss plaintiffs Wrongful Death and Survivorship claims against the homeowner because
there is evidence and legitimate inferences therefrom that could sustain a judgment in plaintiff favor on
all of plaintiffs claims against the homeowner including plaintiffs Wrongful Death and Survivorship
claims and the defendant did not appeal the July 29, 2010 order.

gmc

This court finds that the plaintiffs employer was DND Inc. and the plaintiffs filed this complaint against the homeowners under the Worker Compensation Act 34:15-40.

This court finds that prior to the jury trial on July 7, 2011 the trial court found and this court still finds that there were genuine issues of material fact that preclude granting summary judgment to the homeowner and on July 7, 2011 the jury decided unanimously in plaintiffs favor that the homeowner was individually negligent, that the homeowners negligence was 100% the proximate cause of damages to the plaintiff, that the plaintiff was not negligent at all, the jury determined the amount of damages up until the date of his death and the amount of damages after the date of his death, that there is a basis for, remain to be decided by a jury as the plaintiffs demanded.

This Court finds that on June 8, 2011 this court entered the judgment in accordance with the amount that the jury determined in favor of the plaintiffs Metodi Donchev and Faith Doncheva against the homeowner Dennis DeSimone with cost and interest, the cost and interest remain to be calculated.

This court found after trial on September 6, 2011 that the jury verdict against the homeowner did not shock the conscience of the court and the court found that it is supported by the evidence.

This court finds that the court does not have authority to grant summary judgment to the homeowner because there were genuine issues of material fact that precluded summary judgment to the homeowner

This court finds that the court does not have the authority to vacate the jury verdict against the homeowner, it is supported by the evidence. There was evidence in this case that the homeowner did exercise control of the construction at his home and did have a duty of care to the plaintiff that he asserted was his in his capacity as homeowner that he signed to in the Homeowner Certification in Lieu of Oath that was part of the construction permit and testified to at trial..

This court finds that the 2012 Appellate Opinion was not based on the entire record in this case, was not supported by the facts and evidence that were discovered and the opinion was written as though the defendant in this case was Dennis DeSimone in his capacity as President of DND Inc, but the Dennis DeSimone was not sued in his capacity as President, therefore the opinion for the President of DND Inc. is irrelevant and does not affect the jury verdict against the homeowner in this case.

For the good cause shown it is ordered as follows:

IT IS ORDERED THAT the court does not have jurisdiction in this case to decided any matter regarding Dennis DeSimone in his capacity as President of DND Inc. or any matter concerning DND Inc. because they are not defendants in this case.

IT IS ORDERED THAT this court does not have authority to vacate the July 7, 2011 jury verdict against the homeowner that the court found on September 6, 2011 and again in this order finds is supported by the evidence, therefore the June 8, 2011 judgment is in full force and effect and shall be amended by the clerk of the court to include cost and interest to date and to include the wording that the judgment is against Dennis DeSimone in his capacity as Homeowner, for the damages up until the date of plaintiffs death sustained as a result of his fall through the detached garage roof at 149 Breakneck Road Sewell New Jersey on June 16, 2003.

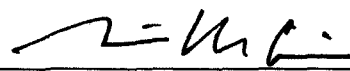
IT IS ORDERED that by rule 4:37-2(b) the court does not have authority to dismiss any of the plaintiffs claims against the homeowner and plaintiffs are entitled to a jury trial and verdict on all of the six count of their complaint because the court found on July 29, 2010 that there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all of their claims against the homeowner and the defendant never appealed that order, then on July 7, 2011 the jury decided unanimously in plaintiffs favor on all the genuine issues of material fact they decided on July 7, 2011. The jury found (1) that the homeowner Dennis DeSimone was individually negligent, (2) that his negligence was 100% the proximate cause of the plaintiffs fall and damages, (3) that the plaintiff was not negligent and (3) the jury determined the amount of damages up until the date of plaintiffs death , of 375,600. to Metodi Donchev, 150,000 to his wife Faith Doncheva 5995. for income loss, the cost and interest to date remain to be calculated and added to the judgment.

IT IS ORDERED that a date specific for trial shall be assigned to determine the amount of damages for after the date of plaintiff's death under the Wrongful Death and Survivorship Acts and plaintiffs doctors who was qualified to testify at the 104 hearing and did appear in person to testify on June 5 and 6, 2011 shall testify on the trial date set or his de bene esse video shall be viewed by the jury.

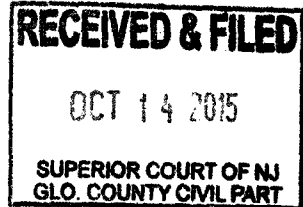
IT IS ORDERED that the clerk of the court shall add cost and interest to date of this order to the July 7, 2011 jury verdict for the damages up until the date of the plaintiffs death and interest shall continue to accrue at the legal rate permitted by the rules of the court or statute until the date of payment to the plaintiffs and payment of the judgment to the plaintiffs shall be made within 30 days of this order.

IT IS ORDERED that the court found on May 8, 2015 that plaintiffs arguments are made in good faith and this court finds that the plaintiffs good faith argument warrants reversal and or modification of post trial orders of this court, therefore the court must vacate any order for sanctions against the plaintiff or finding plaintiff actions or filings are frivolous.

Plaintiff's Motion is Denied


(SCAJ) Judge Curio

(☒) opposed
() unopposed



Metodi Donchev, Faith Doncheva (his wife),
Rocitsa Doncheva(His Daughter) and Anton
Donchev (His son)
Plaintiffs
v.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION Gloucester County

Docket: GLO-L-956-05

ORDER

Dennis DeSimone (Homeowner), Jane Doe
DeSimone (His wife), John Does Responsible
Party Jointly, Severally, and in the Alternative
Defendants

THIS MATTER having come before the Court on this 13th Day of October, 2015
and having considered the matter and for good cause shown ~~plaintiffs motions must be granted;~~ *jmc*
This Court having considered Rule 4:37-2(b) and RULE 4:46 the standards that the September 2012
Appellate Opinion in this case has written that the trial court must follow and this Court having
considered the complaint, facts, discovery and evidence in this case including the following:

- (1) the July 29, 2010 court order that re-instated plaintiffs wrongful death and Survivorship claims
by rule 4:37-2(b) and the plaintiffs and his doctor reports, testimony, death cert. and affidavit
- (2) the amended 2008 complaint against Defendants Dennis DeSimone in his capacity as
homeowner of the property where the plaintiff fell through the homeowners detached garage
roof on Jun 16, 2003, and against his wife and the responsible party;
- (3) WC law 34:15-40: the plaintiff employee and his descendants right to sue the negligent third
party, the homeowner in this case, shall not be barred by the plaintiff employee and his
descendants right to compensation from the plaintiffs' employer DND Inc. or DND Inc. Worker
Compensation Carrier nor shall any compensation received from his employer be a
measurement of damages,
- (4) all of the pages of the construction permit including the Homeowner Certification in Lieu of
Oath where the homeowner in writing asserted to the authorities that he assumed all
responsibility for the construction at his home, for the condition of his property prior to, during
and after the work performed and signed that all construction would be done by him in his
capacity as homeowner or by contractors or others under his supervision in his capacity as
homeowner, in accordance with all applicable laws, thereby in his capacity as homeowner he
acted as the General Contractor even though he claimed he hired DND Inc. as a contractor there
was no evidence that DND Inc. acted independently or was the responsible party in charge of
the work or for safety on the premises, the homeowner signed that he in his capacity as
homeowner was the responsible party in charge of the work in his capacity as homeowner.

jmc

- (4) This court also considering the July 7, 2011 Jury Verdict in plaintiffs favor that unanimously determined that the homeowner was 100% individually negligent, that the plaintiff was not negligent at all and that determined the amount to compensate up until, the date of plaintiffs death to the plaintiff Metodi Donchev was 375,600. and to his wife was 150,000. and income of 5995. plus cost and interest; and this court stated during trial that if the jury decided in plaintiffs favor on the issue of negligence, as the jury unanimously did, then plaintiffs could make application to have the jury determined the damages after the date of death also;
- (5) The Construction codes for permit NJAC 5:23-2.14 and for re-roofing 1510.2;
- (6) The Worker Compensation Law 34:15-40 and the Lyons V. Barrett, Costa v. Gaccione and Ortiz, and Carmerotta v. Carmerotta case laws referred to in plaintiffs argument;
- (7) The September 2012 Appellate Opinion where the appellate court wrote that the standard the court must rule by, Rule 4:46, provides when there are genuine issues of material fact in dispute then summary judgment MUST be denied; the opinion also has written that plaintiffs will overcome the Independent contractor exception to the recognized homeowner non delegable duty of a homeowner for safety on his property when he hires a contractor IF THE PLAINTIFFS SHOWED (as plaintiffs have shown) that (1) the homeowner exercised control or (2) negligently hired or (3) the work constituted a nuisance perse; as the plaintiffs have done;
- (8) This court having considered that the Appellate Opinion has written that the subject matter that they consider was regarding a subject matter for Dennis DeSimone in his capacity as President of DND Inc., however all parties acknowledged and the complaint documents the defendant in this case was Dennis DeSimone who was sued for his own individual act of negligence, in his capacity as homeowner; the defendant was not the President of DND Inc..

This court on May 8, 2015 again agreed with plaintiff argument, and this court having considered the pleadings, evidence, affidavits in the record and the testimony at trial, the jury verdict in the plaintiffs favor and the facts in this case, this court again determines that there were genuine issues of material fact in dispute that precluded and still preclude granting Summary Judgment to the Homeowner of the property where the plaintiff fell through the roof.

This court again finds that the jury verdict is supported by the evidence and that there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all of plaintiffs claims including the Plaintiffs Wrongful Death and Survivorship claims. Rule 4:37-2(b) provides that only after the presentation of all the evidence on the parties claims may the defendant move to dismiss plaintiff claims.

gmc

Rule 4:37-2(b) provides if there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor, as it already has done, then the court SHALL DENY involuntary dismissal of plaintiffs claims; therefore the court must re-instate all of plaintiffs claims against the homeowner.

On July 7, 2011 the jury decided unanimously in plaintiffs favor on all of the issues they decided.

On July 29, 2010 this court found the plaintiffs doctor was qualified to testify in this case at a 104 hearing and ordered that he would testify at trial and ordered that the plaintiffs wrongful death and survivorship claims are re-instated and shall proceed to a jury trial, because there is evidence and legitimate inferences therefrom that could lead to a judgment in plaintiffs favor on all of the plaintiffs claims; the defendant did not appeal the July 29, 2010 order and admitted to the jury that the plaintiff fell through his detached garage roof, sustained multiple injuries, infection and an abscess and that the ultimate infection took the plaintiffs life. Based on the facts, the law, Rule 4:37-2(b) and 4:46, the discovery and evidence in this case and the unanimous jury verdict in plaintiffs favor;

IT IS ORDERED THAT all of the post jury trial orders are amended as follows :

IT IS ORDERED that all of plaintiffs claims including the Wrongful Death and Survivorship claims against the homeowner of the property where the plaintiff fell through the roof on June 16, 2003 and the July 8, 2011 judgment that was entered in accordance with the July 7, 2011 jury verdict against the Defendant, the Homeowner of 149 Breakneck Road, are re-instated, and the June 8, 2011 judgment that was entered in accordance with the July 7, 2011 jury verdict shall be amended to include the following words: "this judgment is against the homeowner of 149 Breakneck Road, Sewell, NJ to compensate for damages sustained up until the date of plaintiffs death, that the jury determined resulted from his fall through defendants detached garage roof on June 16, 2003;" "the cost and interest to the date of this order shall be added to the judgment and shall continue to accrue until payment of the judgment."

IT IS ORDERED THAT plaintiff claims for damages from their Wrongful Death and Survivorship Claims, (that are separable from the damages up until the date of his death) shall proceed to a jury trial to determine the amount of damages after the date of death on the ____ day of _____ 2015.

JMC

IT IS FURTHER THAT plaintiffs motions and complaints are supported by the evidence , discovery and good faith arguments that have a basis in fact and law and are not frivolous, the plaintiffs were the prevailing party against the homeowner at the jury trial, therefore the defendants homeowners motions seeking cost and interest or any orders finding that plaintiffs actions frivolous are hereby denied and vacated; the court cannot find that the plaintiffs arguments or complaint is not supported by a good faith argument and cannot find that based on the pleadings, discovery and evidence in this case, the court has not and cannot find that there is no basis in fact or law for plaintiffs claims or motions.

IT IS ORDERED THAT since this court has found that the defendant the homeowner signed the *Homeowner Certification in Lieu of Oath* asserting to the authorities that the construction at his home would be done by him or contractors or others under his supervision in his capacity as homeowner in accordance with the applicable laws and signed that he as homeowner was **THE RESPONSIBLE PARTY IN CHARGE OF THE WORK** and this court has found that he did not have the proper construction permit in writing prior to commencing the re-roofing as required by NJAC 5:23-2.14 that would have lead to inspections by the qualified building inspector and discovered the hazard that caused the roof collapse and protected the plaintiffs from from injury and death, therefore as the Judges notes in the punitive damages charge 8.60 instructs, this court **MUST** consider awarding punitive damages not only as a punishment to the defendant but also to deter others from following in the defendants step; this court **MUST** considered not only the fact of not having the proper permit but also the defendants homeowners actions afterward including that the defendant attempted to conceal the fact from the jury and the plaintiffs, then after this court denied defendant motion to strike the permit or at least the date of the permit, and found that the construction permit is one piece of evidence that precluded granting summary judgment to the homeowner, **AFTER** that and after the jury decided the homeowner was 100% negligent, the defendants counsel then did not supply the construction permit or homeowner certification to the Appellate Court on appeal as required by Rule 2:6-1 , in order

For a fair and just appellate opinion to be made; therefore due to the act of assuming all responsibility in his capacity as homeowner then commencing construction unlawfully without a proper permit or complying with the code requirements for re-roofing then the additional acts of attempting to deny the statutory duty and responsibility he certified he assumed in writing and attempting to conceal the permit and homeowners certification from the plaintiffs, the jury, the court and the Appellate Court, **IT IS ORDERED** that on the date of the above assigned jury trial, this court will permit the jury to consider Punitive Damages, not only as a punishment to the defendant but also to deter others from following the homeowners steps of after assuming all responsibility as a homeowner, attempting to deny the responsibility that he certified in writing was his in his capacity as homeowner, then commencing the re-roofing unlawfully without the proper permit and without complying with the re-roofing codes that would have insured safety which is the intent of the construction codes; then attempting to conceal the facts, the permit and the homeowners certification in lieu of oath from the plaintiffs, the jury, the court and from the Appellate court.

THIS ORDER IS based on the the facts in this case, the law and case laws referred to in plaintiffs pleadings, and is consistent with the September 2012 Interlocutory Appellate Opinion in this case that has written the standard rule 4:37-2(b) and rule 4:46 that the court must follow, when there are genuine issues of material fact in dispute, as there were in this case, regarding the negligence of the homeowner in his individual capacity as homeowner and proximate cause, then the court MUST deny summary judgment to the homeowner and SHALL DENY involuntary dismissal of plaintiffs claims.

THIS ORDER SHALL SUPERSEED AND AMEND ALL POST TRIAL ORDERS.

Plaintiff's Motion is Denied



~~(J.S.C.) Honorable Judge David Morgan~~

☒ Opposed

☒ Unopposed

*was submitted originally
on Aug. 21, 2015 to be
Signed - was unopposed*

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1565-15T1

METODI DONCHEV and
FAITH DONCHEV,

Plaintiffs-Appellants,

v.

DENNIS DESIMONE,

Defendant-Respondent.

Argued June 7, 2017 – Decided July 5, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Law Division, Gloucester County,
Docket No. L-0956-05.

Faith Donchev, appellant, argued the cause pro
se.

Amanda J. Sawyer argued the cause for
respondent (Methfessel & Werbel, attorneys;
Edward L. Thornton, of counsel and on the
brief; Ms. Sawyer, on the brief).

PER CURIAM

Plaintiff Faith Donchev appeals from numerous Law Division
orders and a judgment that were entered after our decision in

Donchev v. DeSimone, No. A-0395-11 (App. Div. Sept. 24, 2012),
certif. denied, 213 N.J. 534 (2013). For the following reasons,
we affirm.

We are constrained to recite the tortured procedural history of this matter in order to place this appeal in perspective. This litigation arose from injuries plaintiff's husband, Metodi Donchev (Donchev),¹ sustained on June 16, 2003. Donchev was employed by D.N. DeSimone Construction Company, Inc. (DND) at the time of his injury. Defendant was president of DND, and hired the company to complete several projects at his home, including garage roof repairs. Donchev was injured when he fell through the garage roof. He filed a claim petition with the Division of Worker's Compensation (Division) seeking benefits for his injuries.

Donchev and plaintiff also filed a complaint against defendant individually, asserting landowner liability. Donchev subsequently died from causes that were in dispute. Thereafter, the complaint was amended to substitute his estate as a plaintiff and assert a wrongful death claim, which the trial court eventually dismissed. In addition, the estate filed a dependency claim

¹ Donchev is deceased. After his death, plaintiff amended the complaint to substitute his estate as a plaintiff and assert a wrongful death claim, which the court dismissed.

petition with the Division. The Division approved a settlement between DND and the estate.

Defendant filed two motions for summary judgment. In the first motion he argued there was no landowner liability, and in the second motion he argued that the New Jersey Workers' Compensation Law (WCL), N.J.S.A. 34:15-70 to -146, barred plaintiffs' claims. The trial court denied both motions and the matter proceeded to a jury trial. The court entered judgment against defendant after the jury rendered a verdict in plaintiffs' favor.

Plaintiff filed a post-trial motion to reinstate the wrongful death claim, and defendant filed a cross-motion for remittitur or, in the alternative, a new trial. The court denied all motions. Defendant then appealed from the two orders denying summary judgment, the final judgment, and the order denying his post-trial cross-motion. Plaintiff did not cross-appeal.

In Donchev, we reversed the jury award, finding that the court improperly denied summary judgment to defendant. Donchev, supra (slip op. at 9-12). We held that defendant was entitled to summary judgment as a matter of law because as a landowner, he neither owed nor breached a duty of care to Donchev, and as an employer, he was immune from suit pursuant to the WCL. Id. (slip

op. at 10). The trial court subsequently vacated the judgment against defendant.

Thereafter, beginning in October 2013, plaintiff embarked on an unrelenting campaign in the trial court to reinstate the jury verdict and all claims and for a trial on the wrongful death claim.² Plaintiff filed numerous motions seeking to re-litigate the matter on the basis that our prior opinion only applied to defendant as president of DND and defendant was liable as the homeowner.

The court denied all of plaintiff's motions. In particular, in a July 26, 2014 order, the court denied plaintiff's motion to reinstate the wrongful death claim and judgment and for a jury trial. The order warned plaintiff that "any refiling of a similar motion will be considered for possible sanctions and/or submission to . . . determine if future motions should be subject to review and [possible] rejection." In an October 20, 2014 order, the court denied plaintiff's motion to enter judgment and for reconsideration of a prior order; imposed a \$50 sanction; and notified plaintiff that any further frivolous motions "shall lead to further, harsher sanctions, including monetary sanctions and

² Plaintiff also made several unsuccessful applications with this court and our Supreme Court.

[p]laintiff to file any further pleadings at the discretion of the Assignment Judge, Georgia M. Curio."³

Undeterred by these orders, and ignoring defense counsel's repeated warnings that sanctions would be sought pursuant to Rule 1:4-8, plaintiff continued filing motions raising the same arguments. In a May 8, 2015 order, the court granted defendant's motion for counsel fees and costs, ordered defense counsel to submit a certification of services, permitted plaintiff to rebut the certification, and reiterated the warnings set forth in the October 20, 2014 order. Defense counsel submitted a certification of services, and plaintiff responded with yet more motions. On August 4, 2015, the court entered a judgment against plaintiff in the amount of \$1,201.50 for defendant's attorney's fees and costs in opposing her most recent "frivolous application."

Defendant subsequently filed a motion to enforce litigant's rights, seeking an order prohibiting the clerk from accepting any further applications from plaintiff and to close the docket. Defendant also sought an award of attorney's fees and costs. Plaintiff filed a cross-motion to reinstate all claims, which the court denied in an August 21, 2015 order. Plaintiff filed a motion

³ The court subsequently vacated the \$50 sanction.

for reconsideration of the August 4, 2015 judgment and the August 21, 2015 order.

In an October 13, 2015 oral opinion, Judge Curio gave a detailed procedural history and found as follows, in pertinent part:

This history and procedural path that this matter has taken demonstrates that there has been a constant attempt to re[-]litigate issues that have previously been litigated to a conclusion.

It's clear that the plaintiff disagrees with the legal conclusions of the Appellate Division by which the [t]rial [c]ourt is bound. However, to simply insist repeatedly that those issues be revisited is inappropriate and can't be allowed to go on forever.

Plaintiff in arguing has expressed and articulated a number of legal principles and concepts, but they're being discussed in a vacuum without any appropriate application of those concepts and principles to the legal issues at hand in this case.

Throughout the procedural history of this, we have [m]otions to [r]econsider prior [o]rders. We have [m]otions to reinstate the [j]ury verdict. we have [m]otions to [v]acate Appellate [o]rders. We have [m]otions seeking to affirm the [t]rial [c]ourt's original denial of the [s]ummary [j]udgment [m]otions. We have [m]otions for [n]ew [t]rial.

. . . .

Indeed, plaintiff's response to [defendant's motion to enforce litigant's rights] is indicative of all of the prior

history, because what has been submitted by plaintiff in response to this [m]otion . . . is more of the same . . . all again seeking to re[-]litigate the issues that had previously been before the [c]ourt. Litigated to the point of a [r]uling by the Appellate Division and Supreme Court having denied the [p]etition for [c]ertification and indeed even further subsequent motions before the Supreme Court.

There's no further litigation beyond the Appellate Division and the Supreme Court. The matters have been fully and finally adjudicated, and no effort, no degree of repetition can change that fact.

The case law allows the rare relief of enjoining a litigant's ability to file pleadings with the [c]ourt without review by the Assignment Judge. And I am satisfied given the procedural history that I've attempted to outline . . . that the circumstances presented here warrant the sort of rare relief that's being requested.

. . . .

First and foremost, the use of pleading to attempt to bring the issues to the [c]ourt again and again after they've been concluded renders those continuing efforts to be frivolous. And the [c]ourt has the authority, as the [c]ourt in Parish [v. Parish], 412 N.J. Super. 39 (App. Div. 2010)] said, "Courts have the inherent authority, if not the obligation, to control the filing of frivolous motions and to curtail harassing and vexatious litigation."

[Plaintiff's] persistent attempt to revisit over and over issues that have been fully and finally adjudicated is frivolous, is harassing, is vexatious and serves no purpose. It is a detriment to the court

system, and it is a continuing hardship visited upon the defendant who must answer, respond and address issues which have already been fully adjudicated.

. . . .

[T]he Court Rules simply do not allow incessant repetition until you get the answer that you want. It's simply not contemplated in the Rules. It is an abuse of the Rules and the process.

The judge entered two orders on October 14, 2015: (1) granting defendant's motion to enforce litigant's rights and enjoining plaintiff from filing any future pleadings without first submitting it to the Assignment Judge or her designee; and (2) denying plaintiff's cross-motion. This appeal followed.

For what we can discern from plaintiff's rambling merits brief, she reiterates the arguments made before the trial court and also argues that the court erred in imposing sanctions. We have considered these arguments in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons Judge Curio expressed in her comprehensive oral opinion.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION