

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

D33140
G/prt

_____AD3d_____

Argued - November 14, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-02663

DECISION & ORDER

Daniel Vella, respondent, v One Bryant Park, LLC,
et al., appellants.

(Index No. 4158/09)

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),
for appellants.

Adams Law Firm, P.C. (Joshua Annenberg, New York, N.Y., of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Rockland County (Walsh II, J.), dated January 31, 2011, as denied those branches of their motion which were for summary judgment dismissing so much of the complaint as alleged a violation of Labor Law § 240(1) and so much of the complaint as alleged common-law negligence and a violation of Labor Law § 200 insofar as asserted against the defendant One Bryant Park, LLC.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the defendants' motion which was for summary judgment dismissing so much of the complaint as alleged a violation of Labor Law § 240(1), and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed insofar as appealed from, with costs to the plaintiff.

The plaintiff allegedly was injured while working as a site-safety observer in connection with the construction of a skyscraper owned by the defendant One Bryant Park, LLC (hereinafter OBP). He allegedly fell while descending the last step of a stairway which was twice the height of the other steps, and could not steady himself with the handrail since it did not extend

December 6, 2011

Page 1.

VELLA v ONE BRYANT PARK, LLC

to that last step.

The Supreme Court properly denied that branch of the defendants' motion which was for summary judgment dismissing so much of the complaint as alleged common-law negligence and a violation of Labor Law § 200 insofar as asserted against OBP. Labor Law § 200 codifies the common-law duty to maintain a safe work site (*see Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352). Where, as here, a plaintiff contends that an accident occurred because a dangerous condition existed on the premises, an owner moving for summary judgment dismissing causes of action alleging common-law negligence and a violation of Labor Law § 200 has the initial burden of making a prima facie showing that it neither created the dangerous condition nor had actual or constructive notice of its existence (*see Slikas v Cyclone Realty, LLC*, 78 AD3d 144, 149; *Chowdhury v Rodriguez*, 57 AD3d 121, 128). To provide constructive notice, the defect must be visible and apparent and exist for a sufficient length of time prior to the accident to permit the defendant to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837).

Here, the defendants failed to submit evidence sufficient to make a prima facie showing that OBP did not have actual or constructive notice of the allegedly dangerous condition. The plaintiff testified at his deposition that he reported the condition of the stairway at a site-safety meeting prior to his accident, and that his complaint was reflected in the notes from that meeting. OBP's construction representative testified, at his deposition, that he was given reports from the site-safety meetings. While the defendants contend that there is no evidence that these reports were the same as the meeting notes, on a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party (*see Schaffe v SimmsParris*, 82 AD3d 867; *Robinson v 206-16 Hollis Ave. Food Corp.*, 82 AD3d 735). In any event, the defendants failed to submit evidence sufficient to make a prima facie showing that the alleged dangerous condition did not exist for a sufficient length of time prior to the accident to permit OBP to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d at 837). Since the defendants failed to meet their prima facie burden, the burden did not shift to the plaintiff to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, this branch of the motion was properly denied, regardless of the sufficiency of the plaintiff's opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

The plaintiff correctly concedes that the Supreme Court should have granted that branch of the defendants' motion which was for summary judgment dismissing so much of the complaint as alleged a violation of Labor Law § 240(1) (*see Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603).

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court