Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LUTHER V. DYE IA Part 7
Justice

LUIS COQUE x

- against -

WILDFLOWER ESTATES DEVELOPERS, INC., et al.
x

Index Number 18365 2001

Motion Date February 25, 2003

Motion Cal. Number 12

The following papers numbered 1 to 4 read on this motion by plaintiff for summary judgment on the issue of liability on his Labor Law § 240(1) claim against defendants Wildflower Estates Developers, Inc. ("Wildflower Estates") and Classic Construction.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1 - 4

Upon the foregoing papers it is ordered that the motion is granted.

This is an action for personal injuries allegedly sustained by plaintiff on July 10, 2001 when he was hit by a falling object which caused him to fall from an elevated work area while working at a construction site where several row houses were being built in Whitestone, Queens. The construction of the houses proceeded pursuant to separate contracts between the owner of the site, Wildflower Estates, and various individual contractors. These contracts were entered into between Wildflower Estates and the various contractors, rather than between a general contractor and the contractors, and, therefore, constitute separate prime contracts (see, Russin v Picciano & Son, 54 NY2d 311). The roofing contract was awarded to Classic Construction and the carpentry contract was awarded to third-party defendant City Wide Building Corp. ("City Wide").

Plaintiff commenced this action against the defendants alleging violations of Labor Law §§ 240(1), 241(6) and 200, as well as for common-law negligence. Plaintiff has certified that the action is ready for trial and has filed the note of issue. Plaintiff now seeks summary judgment on the issue of liability on

his Labor Law § 240(1) cause of action against Wildflower Estates and Classic Construction. No opposition has been submitted.

Plaintiff argues that he is entitled to summary judgment against Wildflower Estates and Classic Construction on his Labor Law § 240(1) because the makeshift scaffold/platform did not protect him from falling. Plaintiff also argues that safety devices were not provided to protect him from the roofing shingles which fell through the skylight opening. In support of his motion, plaintiff has submitted, inter alia, the pleadings, a transcript of his deposition, the deposition transcript of a co-worker, Segundo Lucero, and that of Robert J. Nocella, Jr. ("Nocella"), the owner of Classic Construction.

At the time of the accident, plaintiff was working for City Wide as a carpenter, and was assigned to erect the interior stairs between the second and third floors of one of the houses. Plaintiff was standing on what has been described as a makeshift scaffold or platform consisting of two pieces of wood resting on the wooden beams that made up the frame of the stairwell. Directly above the area where the makeshift scaffold/platform was placed, was an opening in the roof for the installation of a skylight.

During his deposition, plaintiff testified that he was standing on the makeshift scaffold/platform for approximately thirty minutes when he was suddenly struck by a bag of roofing shingles that had fallen through the skylight opening. The makeshift scaffold/platform broke as a result of the impact causing plaintiff to fall approximately 25 feet to the basement floor.

Lucero testified that immediately prior to the accident he was approximately five feet from plaintiff cutting wood which was to be used on the stairs being erected. Lucero testified that he heard a noise, saw that the plaintiff was no longer standing on the makeshift scaffold/platform, looked down through the open stairwell and saw plaintiff and the broken wooden boards lying on the basement floor. Lucero testified he went down to the basement and saw the package of roofing shingles laying next to the plaintiff's body. Lucero stated he also saw another package of the same roofing shingles laying across the skylight opening and, upon going up on the roof 30 minutes later, observed many of the same packages stacked on the sloped portion of the roof, none of which were secured in any way to the roof. Moreover, Lucero's testimony corroborates that no safety devices were provided to protect from objects falling from the work site on the roof.

Labor Law § 240(1) prescribes safety precautions to protect laborers from unique gravity-related hazards such as falling from

an elevated height or being struck by a falling object where the work site is positioned below the level where materials or loads are being hoisted or secured (see, Narducci v Manhasset Bay Assocs., 96 NY2d 259; Misseritti v Mark IV Constr. Co., Inc., 86 NY2d 487; Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494; Rocovich v Consolidated Edison Co., 78 NY2d 509). This section of the Labor Law statute imposes a nondelegable duty upon owners and general contractors to provide protective equipment, devices and other adequate and reasonable protection to persons employed in the construction of a building (see, Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494; Cannon v Putnam, 76 NY2d 644).

An owner, general contractor or agent will be held strictly liable, without regard to plaintiff's own negligence, where a violation of this section of the Labor Law statute is the proximate cause of a plaintiff's injuries (Ross v Curtis-Palmer Hydro-Elec. Co., supra; Rocovich v Consolidated Edison Co., supra; Zimmer v Chemung County Perf. Arts, Inc., 65 NY2d 513). Moreover, an owner or general contractor may be held liable in damages regardless of whether it has actually exercised supervision or control over the work (Ross v Curtis-Palmer Hydro-Elec. Co., supra; Rocovich v Consolidated Edison Co., supra).

Falling from an elevated height poses a different hazard from being hit by a falling object, and involves different construction practices, therefore, "the hazard from one type of activity cannot be 'transferred' to create liability for a different type of accident" (Narducci v Manhasset Bay Assocs., supra, at 268; see, Nieves v Five Boro Air Conditioning & Refrig. Corp., 93 NY2d 914). Here, however, plaintiff was directed to perform a task which exposed him to both an elevation-related hazard and the risk of being hit by a falling object.

The elevation-related risk was created by the need to elevate plaintiff to a height above the three-story stairwell which was open from the basement to the third floor of the house. The makeshift scaffold/platform falls within the category of enumerated safety devices provided to protect plaintiff from the risk of falling through the stairwell. The undisputed fact that this safety device collapsed causing plaintiff to fall through the open stairwell "constitutes a prima facie showing that the statute was violated and that the violation was a proximate cause of the worker's injuries, thereby establishing plaintiff's entitlement to judgment as a matter of law on the issue of liability" (Dos Santos v State of New York, 300 AD2d 434; see, Saeed v NY/Enterprise City Home Hous. Dev. Fund Corp., ___ AD2d ___, 755 NYS2d 428; La Lima v Epstein, 143 AD2d 886).

Moreover, the other height-related risk was created by plaintiff's having to place the makeshift scaffold/platform under the skylight opening in the roof. The failure to provide any safety device to protect plaintiff from the risk of objects falling through the opening from the work area on the roof to the work area below also leads to liability under Labor Law § 240(1) (see, Orner v Port Auth. of N.Y. & N.J., 293 AD2d 517; Outar v City of New York, 286 AD2d 671; see generally, Felkner v Corning, Inc., 90 NY2d 219; Zimmer v Chemung County Perf. Arts, supra [failure to provide any safety device at all constitutes a violation of § 240(1) as a matter of law]).

As Wildflower Estates admits in its answer that it is the owner of the site, plaintiff has met his burden of establishing a prima facie case against Wildflower Estates under Labor Law § 240(1). However, since Classic Construction is a prime contractor, it cannot be held liable under § 240(1) unless it has been "delegated the authority to supervise and control that portion of the project on which the injury occurs" (Kenny v George A. Fuller Co., 87 AD2d 183, 187-188, appeal denied 58 NY2d 603; see, Russin v Picciano & Son, Inc., supra).

Here, it is not disputed, indeed, Nocella conceded during his deposition that Classic Construction was responsible for arranging for the delivery and storage of the roofing shingles at issue herein. Additionally, Nocella testified that he subcontracted a portion of the roofing job to second third-party defendant Brothers Home Renovation, Inc. Therefore, Classic Contractors was a statutory agent under § 240(1) and was delegated the authority to supervise and control the area and the activity which precipitated plaintiff's accident and resulting injuries (see, Russin v Picciano & Son, supra; Kenny v George A. Fuller Co., supra).

Hence, plaintiff has also met his burden and established a prima facie case against Classic Construction. Accordingly, plaintiff is entitled to summary judgment on the issue of liability against Wildflower Estates and Classic Construction on his Labor Law § 240(1) cause of action.

Dated: June 9, 2003

J.S.C.