

Colozzo v National Center Foundation, Inc.
2003 NY Slip Op 30052(U)
November 20, 2003
Supreme Court, New York County
Docket Number: 0600499/4992
Judge: Rosalyn H. Richter
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ROSALYN RICHTER
Justice

PART 24

Colozzo JSD

INDEX NO. 60499-02

MOTION DATE _____

- v -

National Cen Foundation Inc

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS **SCANNED**
NOV 24 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

Dated: 11/20/03

Rosalyn Richter
HON. ROSALYN RICHTER s.c.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 24:

..... X
JOSEPH COLOZZO and DIANE COLOZZO,

Plaintiffs,

-against-

DECISION and ORDER
Index No. 600499/02
Seq. No. 2

NATIONAL CENTER FOUNDATION, INC., n/k/a
MURRAY HILL PLACE, INC. and TISHMAN
CONSTRUCTION CORPORATION OF NEW YORK
..... X

Justice Rosalyn Richter:

This present action was commenced by plaintiff Joseph Colozzo (“Colozzo”), and his wife Diane Colozzo derivatively, for injuries he allegedly sustained on September 8, 1999 as a result of falling off a 10 foot ladder. The plaintiff brings the present motion for partial summary judgment on the issue of liability and for an immediate assessment of damages which precedes the liability trial as between defendants National Center Foundation, Inc. n/k/a Murray Hill Place, Inc. and Tishman Construction Corporation of New York.

In moving for partial summary judgment on his Labor Law § 240(1) claim, the plaintiff argues that the ladder failed to give him proper protection under the statute because it was not secured, held or locked into place, the ladder had no safety feet, and no one was holding the ladder at the bottom. The defendants argue that a factual issue exists as to whether the plaintiffs injuries arose from his misuse of the ladder, because he failed to open the closed A-frame ladder that was leaning against the wall.

Labor Law § 240(1) imposes absolute liability on owners and contractors for failing to provide proper protection to workers laboring under “unique gravity related hazards.” *Melo v. Consolidated Edison Co.*, 92 N.Y.2d 909 (1998), citing *Misseritti v. Mark IV Constr. Co.*, 86 N.Y.2d

487 (1995). To prevail on a § 240(1) action, the plaintiff is required to establish that the statute was violated and that the violation was a proximate cause of his injury. *Id.* Once the plaintiff has established that § 240(1) was violated and that the violation was a proximate cause of the plaintiffs injury, “summary judgment resolving the issue of liability in plaintiffs favor is an appropriate remedy.” *Linney v. Consistory of Bellevue Reformed Church*, 115 A.D.2d 209 (3d Dept. 1985).

The Court grants the plaintiffs motion for summary judgment. According to the plaintiffs deposition testimony, the plaintiff fell to the ground when the unsecured ladder he was descending moved. The plaintiffs testimony demonstrates as a matter of law that the ladder “was not so constructed, placed and operated as to give proper protection” to the plaintiff. *Smith v. Pergament Enterprises*, 271 A.D.2d 870 (3d Dept. 2000). There is no evidence that the ladder was anchored to anything, equipped with any securing device, or supported by a coworker. Such failure to secure a ladder to insure that it remains stable while the plaintiff is using it is a violation of Labor Law § 240(1). See *Wasilewski et al. v. Museum of Modern Art*, 260 A.D.2d 271 (1st Dept. 1999); *Devlin v. Sony Corp. of America et al.*, 237 A.D.2d 201 (1st Dept. 1997); *Schultze v. 585 West 214th Street Owners Corp. et al.*, 228 A.D.2d 381 (1st Dept. 1996).

The defendants’ contention that the plaintiff was negligent in using the closed ladder does not defeat plaintiffs summary judgment motion. The defendants do not challenge plaintiffs account of the fall, and there is no view of the evidence that supports a finding that the plaintiffs own conduct was the sole proximate cause of his injuries. *Hernandez v. 151 Sullivan Tenant Corp.*, 307 A.D.2d 207 (1st Dept. 2003) (Since plaintiff established the defendants’ actions were a proximate cause of the accident, plaintiffs act of failing to secure his safety harness would amount, at most, to contributory negligence, which is not a defense to a § 240 claim); *Smith*, 271 A.D.2d at 872.

The Court finds that the case of *Meade v. Rock-McGraw, Inc.*, 307 A.D.2d 156 (1st Dept. 2003), which the defendants rely on, is distinguishable from the circumstances in this case. In *Meade*, the Court denied the plaintiffs motion for summary judgment on his § 240 claim because the plaintiff chose to place a ladder against a wall in a closed position at a slight angle without speaking to his supervisor. Here, the plaintiff testified that his supervisor, Tommy Diccone, instructed him to descend the ladder, which was already placed in a closed position against the wall when Mr. Diccone issued this instruction. Mr. Diccone had the authority to supervise and control the work that the plaintiff was doing, and failed to direct someone to open and secure the ladder before the plaintiff descended or to provide any safety devices. Thus, the inadequate securing of a ladder was not due to the plaintiffs use of it. See *Schultze v. 585 West 214th Street Owners Corp.*, 228 A.D.2d 381 (1st Dept. 1996).

The defendants' reliance on the case of *Blake v. Neighborhood Housing Services of New York City, Inc.*, 301 A.D.2d 366 (1st Dept. 2003) is also misplaced. In *Blake*, the plaintiff testified that the ladder which he selected and erected for work was not defective before he used it and that he did not know what caused the ladder's sudden retraction. The Court held that this presented a factual issue as to whether the plaintiffs injury was caused by an inadequate ladder or was attributable to plaintiffs use of it. Here, the plaintiff testified that he had not used the ladder before the accident, that he was instructed to use the ladder which was already closed and positioned against the wall, and that the ladder shifted away from the wall as he descended it. Further, the plaintiff testified that the ladder was not secured to the first floor in any fashion. Under these circumstances, no factual issue exists as to the cause of the plaintiffs injury.

The Court denies plaintiff's request for an immediate assessment of damages to precede the

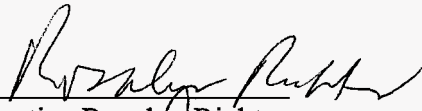
trial. The assessment of damages will be held in abeyance pending the outcome of the trial.

Accordingly, it is

ORDERED that the plaintiffs motion for partial summary judgment on his Labor Law § 240 (1) claim is granted.

This constitutes the decision and order of the Court.

November 20, 2003


Justice Rosalyn Richter