

Cun-En Lin v Holy Family Monuments

2004 NY Slip Op 30068(U)

February 24, 2004

Supreme Court, Kings County

Docket Number: 0019600/9600

Judge: Herbert Kramer

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MEMORANDUM

SUPREME COURT KINGS COUNTY
CUN-EN LIN, TING HE AND MEI ZHENG ZHU

CIVIL TERM PART 13

DATED: Feb. 24, 2004

Plaintiffs,

BY: H. KRAMER J.

-against-

INDEX NO. 19600/02

**HOLY FAMILY MONUMENTS and JOSEPH
AURICCHIO,**

Defendants.

The following papers have been read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed) _____	_____
Opposing Affidavits (Affirmations) _____	_____
Reply Affidavits (Affirmations) _____	_____
_____ (Affirmation) _____	_____
Other Papers _____	_____

Plaintiff Lin, who was sitting on the platform of a gantry crane while reinforcing its support rods, was injured when the crane collapsed, causing him to fall to the ground. Defendant moves to dismiss plaintiff's claims under sections 200; 240(1) and 241(6) of the Labor Law claiming that plaintiff has failed to make out a prima facie case under any of these provisions. Plaintiff cross-moves for summary judgment on the section 240(1) claim and moves for consolidation of the instant action with a related action under index number 32871/03.

With respect to the section 240(1) claim, defendant argues that the gantry crane is not a "structure" within the meaning of that term within this provision. This Court disagrees.

A gantry "is a crane-like structure," Wong v. New York Times, 297 A.D.2d 544 (1st Dept. 2002), which looks like a table on wheels, fitted with a lifting device that is suspended from the center of this "table". It moves along on tracks and is used to haul heavy objects like presses or as in this case, stone monuments. "A structure includes

'any production or piece of work artificially built up or composed of parts joined together in some definite manner' . . . The crane fits squarely within that definition."

Cornacchione v. Clark Concrete Co., Inc., 278 A.D.2d 800(4th Dept. 2000)(reinstating the 240(1) claim of a plaintiff who was injured while engaged in painting the name of a company on the boom of a crane). See also Struble v. John Arborio, Inc., 74 A.D.2d 55 (3 Dept. 1980) (worker fell from an elevated catwalk while dismantling a crane).

Additionally, here, plaintiff Lin was working while perched atop the gantry crane some twelve feet or more off the ground.¹ The crane itself was the scaffold and "the scaffold . . . was inadequate in and of itself to protect [him] against hazards encountered while [adjusting] that same scaffold,' and additional safety devices were necessary to satisfy Labor Law §240(1)." Lightfoot v. State, 245 A.D.2d 488(2d Dept. 1997)(plaintiff fell from atop a truck which was used as a platform to paint bridges when the safety guardrail on the truck collapsed). See also, Clute v. Ellis Hospital, 184 A.D.2d 942(3d Dept. 1992)(roof deck on which worker was pouring concrete collapsed; deck was functioning as scaffold which should have been spot welded but was not).

It is undisputed that plaintiff Lin fell from an elevated height while repairing the gantry crane. Since a gantry crane is a structure for section 240(1) purposes and the absence of a safe perch for plaintiff to have worked while reinforcing the crane was the proximate cause of his injury, plaintiff Lin's motion for partial summary judgment on the section 240(1) claim is granted.

As to the Labor Law section 200 and 241(6) claims, "[o]n a motion for summary judgment, it was incumbent on defendants to first present evidence demonstrating that plaintiffs have no cause of action before plaintiffs are called upon to present evidence raising a question of fact . . . [Here, as to the section 200 claim, a]lthough defendants demonstrated that they did not exercise any supervisory control over the work performed, they failed to submit evidence showing that they did not have actual or

¹ While plaintiff Lin's testimony regarding where he was perched is not a model of clarity, primarily because of a language difficulty, for the purpose of this motion, this Court finds after carefully reviewing Lin's testimony, that he was sitting on top of the gantry crane while he was making the repairs.

constructive notice of the unsafe condition.” Mascellino v. Buffalo General Hospital, 123 A.D.2d 507 (4th Dept. 1986). Indeed, defendant, Joseph Auricchio testified that he hired plaintiffs to reinforce the rods of the crane because “you could see [the crane] was weak , it needed to be strengthened.”

Plaintiffs rely upon more than one section of the Industrial Code to support their 241(6) claim. Defendants discussed only one of those sections in detail. They then made a general assertion that the remaining sections were not sufficiently specific to support a 241(6) claim. As such, defendants have not demonstrated the inapplicability of the remaining sections and consequently have not met their burden of coming forward so as to trigger plaintiff’s obligation to demonstrate the viability of the claim. Contrary to defendants’ contentions that the remaining sections state only general propositions of law, this Court notes that section 23-1.5 of the Industrial Code cited by plaintiff in his complaint and specifically subdivision (c) (1) of that provision which applies to the facts here in issue is “ sufficiently specific to constitute a predicate for the imposition of liability pursuant to Labor Law section 241(6).” Gonzalez v. United Parcel Service, 249 A.D.2d 210(1st Dept. 1998). Accordingly, defendants’ motion to dismiss plaintiffs’ claims under §§ 200 and 241(6) of the Labor Law is denied.

In sum, plaintiff Lin’s motion for summary judgment on the section 240(1) claim is granted and the defendants’ motion for summary judgment is denied in its entirety. Plaintiffs motion for consolidation is granted. Plaintiff is directed to submit an order with regard to the consolidation motion.

This constitutes the decision and order of the Court.



J.S.C.

HON. JUSTICE HERBERT KRAMER