Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE SIMEON GOLAR Justice — IA Part 24

RUBIN REINOSO,

Plaintiff,

-against-

ORNSTEIN LAYTON MANAGEMENT, INC., et al.,

Defendants.

Index Number 31159 2002

Motion Date February 10, 2004

Motion Cal. Number 35

The following papers numbered 1 to 15 read on this motion by plaintiff for summary judgment on his Labor Law § 240 claim against defendants 01 Miller Place, LLC ("01 Miller Place") and R.N.A. Ventures, Inc. ("RNA Ventures"); and on this cross motion by defendant 01 Miller Place for summary judgment dismissing the complaint.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross Motion - Affidavits - Exhibits ...	5-8
Answering Affidavits - Exhibits	9-13
Reply Affidavits	14-15

Upon the foregoing papers it is ordered that the motion is granted and the cross motion is denied.

This is an action for personal injuries sustained by plaintiff on October 5, 2002 while working at a construction site where new homes were being built. The site is owned by 01 Miller Place which hired RNA Ventures to perform framing and carpentry work. RNA Ventures, in turn, subcontracted with plaintiff's employer, non-party F.A.L. Construction Corp. ("FAL Construction"), to perform some of the work.

On Friday, the day before the accident, plaintiff and co-workers from FAL Construction were working on the second floor

of a two-story house installing four by eight plywood sheets over beams, which when completed would form the permanent floor. The plywood sheets were installed with glue and then secured with nails using a gas powered hammer. The flooring for the first story of the house had not yet been installed.

Saturday morning, plaintiff and his co-workers returned to finish installing the floor and to start working on the roof. Immediately before his accident, plaintiff had to walk across the floor which had been installed on Friday, to retrieve a tube of glue to resume his work. As he was walking near an opening in the floor where the staircase was to be installed, plaintiff stepped on a plywood sheet, which unbeknownst to him had not been secured with nails. The plywood sheet hit him, causing him to lose his equilibrium and fall through the staircase opening down to the basement.

Plaintiff commenced this action against defendants for common-law negligence and violations of Labor Laws §§ 240, 241(6) and 200. In their respective answers, 01 Miller Place and RNA Ventures deny liability, interpose several affirmative defenses and each assert a cross claim against the other for indemnification or contribution. Plaintiff now moves for summary judgment on the issue of liability on his Labor Law § 240 claim against 01 Miller Place and RNA Ventures. 01 Miller Place cross-moves for summary judgment dismissing the complaint.

Labor Law § 240(1) 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 or alteration of a building. (See, Ross v Curtis-Palmer Hydro Elec. Co., 81 NY2d 494; Cannon v Putnam, 76 NY2d 644.) "In order to prevail on a claim pursuant to Labor Law § 240(1), a plaintiff must establish that the statute was violated, and that this violation was a proximate cause of his injuries." (Zgoba v Easy Shopping Corp., 246 AD2d 539, 541; Sprague v Peckham Materials Corp., 240 AD2d 392, 293; see, Gordon v Eastern Ry. Supply, Inc., 82 NY2d 555; Bland v Manocherian, 66 NY2d 452.) Where there are factual questions as to whether a plaintiff's own actions were the sole proximate cause of the accident, summary judgment must be denied. (See, Weininger v Hagedorn & Co., 91 NY2d 958.)

The plywood sheets on the second story of the house upon which plaintiff was working were intended to provide him with support and footing two stories above the ground level. (See, Felker v Corning, Inc., 90 NY2d 219; Serpe v Eyris Prods., Inc., 243 AD2d 375; Carpio v Tishman Constr. Corp., 240 AD2d 234; Fuller

v Catalfamo, 223 AD2d 850; Serino v Miller Brewing Co., 167 AD2d 917, lv dismissed 78 NY2d 1008.) Thus, the plywood sheets served, conceptually and functionally as an elevated platform or scaffold. (See, John v Baharestani, 281 AD2d 114; Becerra v City of New York, 261 AD2d 188; Torino v KLM Constr., Inc., 257 AD2d 541.) Therefore, Labor Law § 240(1) required the floor be constructed so as to provide proper protection. However, based on the evidence before the court, the movement of the plywood sheet, in and of itself, was not the proximate cause of plaintiff's accident. (Cf., D'Egidio v Frontier Ins. Co., 270 AD2d 763, lv denied 95 NY2d 765; Robertti v Chang, 227 AD2d 542, lv dismissed 88 NY2d 1064.) Nevertheless, it is clear that plaintiff was exposed to an elevated risk for which protection was required. (See, John v Baharestani, supra; Carpio v Tishman Constr. Corp. of N.Y., supra; Schneider v Hanover E. Estates, 237 AD2d 274.)

It is undisputed that plaintiff fell through an unprotected unguarded hole in the floor and that he was not provided with any safety devices to help prevent or break his fall. (See, Segarra v All Boroughs Demolition & Removal, 284 AD2d 321; see also, Skinner v Oneida-Herkimer Solid Waste Mgt. Auth., 275 AD2d 890; Serpe v Eyris Prods., Inc., supra; Carpio v Tishman Constr. Corp. of N.Y., supra.) The contractor's failure to provide any safety device to plaintiff to protect him from the risk of falling through the unprotected and unguarded cutout for the staircase leads to liability under Labor Law § 240(1). (Felkner v Corning, Inc., supra; Segarra v All Boroughs Demolition & Removal, supra; Zimmer v Chemung County Perf. Arts., 65 NY2d 513; Serpe v Eyris Prods., Inc., supra.) Consequently, plaintiff has met his burden of establishing there was a violation of the statute and that such violation was a proximate cause of his injury.

In opposition, defendants have failed to raise an issue of fact or submit sufficient evidence to rebut plaintiff's prima facie showing. Rejected is the argument in opposition that plaintiff's negligence was the sole proximate cause of the accident. The fact that plaintiff was installing the floor is of no moment. It is settled that liability imposed under section 240(1) is absolute with regard to owners and general contractors, thereby rendering any alleged negligence or carelessness on the part of plaintiff irrelevant. (See, Crawford v Leimzider, 100 AD2d 568; see also, Brown v Two Exch. Plaza Partners, 76 NY2d 172; Justyk v Treibacher Schleifmittel Corp., 4 AD3d 882; DiVincenzo v Tripart Dev., Inc., 272 AD2d 904; Kyle v City of New York, 268 AD2d 192, lv denied, 97 NY2d 608; Angeles v Goldhirsch, 268 AD2d 217; Torrillo v Kiperman, 183 AD2d 821; Brown v Petracca & Son, Inc., 124 AD2d 772; Hauff v CLXXXII Via Magna Corp., 118 AD2d 485.) In any event, no evidence has been proffered that

would even remotely establish that the accident was "caused exclusively by plaintiff's own willful or intentional acts" (Kyle v City of N.Y., supra, at 196), or that he otherwise misused or engaged in the type of gratuitous, unnecessary or extraordinary conduct necessary to support the defendant's sole proximate cause argument. (Cf., Blake v Neighborhood Hous. Serv. of New York City, 1 NY3d 280; Weininger v Hagedorn & Co., supra; Meade v Rock-McGraw, Inc., 307 AD2d 156; Dasilva v A.J. Contr. Co., 262 AD2d 214; George v State of New York, 251 AD2d 541, lv denied 92 NY2d 815.)

Hence, 01 Miller Place as owner of the property and RNA Ventures as the general contractor are absolutely liable for plaintiff's injuries under Labor Law § 240(1). Accordingly, plaintiff's motion for summary judgment is granted.

Having granted plaintiff summary judgment on his Labor Law § 240(1) claim, the court need not consider the arguments of 01 Miller Place addressing the validity of other theories of liability in plaintiff's complaint. Assuming arguendo that 01 Miller Place is entitled to summary judgment dismissing the other claims, it would not change the extent of this defendant's ultimate liability or plaintiff's damages. (See, Torino v KLM Constr., Inc., supra; Covey v Iroquois Gas Transmission Sys., 218 AD2d 197, affd 89 NY2d 952.)

To summarize, plaintiff's motion for summary judgment on the issue of liability on his Labor Law § 240(1) claim against 01 Miller Place and RNA Ventures is granted. The cross motion by 01 Miller Place is denied.

Dated: MAY 19 2004

J.S.C.