

<b>Rios v WVF Paramount 545 Property, LLP</b>
2006 NY Slip Op 30303(U)
April 3, 2006
Supreme Court, New York County
Docket Number: 0402453/2004
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

FELIX RIOS,  
  
Plaintiff,  
  
- v -  
  
WVF PARAMOUNT 545 PROPERTY, LLP, and  
745 ASSOCIATES LLC,  
  
Defendants.

Index No.: 402453/04  
Motion Date: 12/9/05  
Motion Seq. No.: 02  
Motion Cal. No.: 86

745 ASSOCIATES LLC,  
Third-Party Plaintiff,  
  
- v -  
  
URBAN RETAIL PROPERTIES CO.,  
  
Third-Party Defendant.

Third-Party  
Index No.: 591088/04

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

The following papers, numbered 1 to 3 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits  
Answering Affidavits - Exhibits  
Replying Affidavits - Exhibits

**FILED**

PAPERS NUMBERED

1 - 3

5

6 - 8

APR 25 2006

Cross-Motion:  Yes  No

NEW YORK COUNTY CLERK'S OFFICE

Upon the foregoing papers,

Defendant moves for summary judgment dismissing the plaintiff's third and fourth causes of action under Labor Law Sections 240 and 241 (6). Plaintiff cross-moves for summary judgment on liability on the Labor Law 240 (1) cause of action. Plaintiff's action is based upon personal injuries suffered on

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

January 9, 2002, at defendants' premises while plaintiff was performing work on the 12<sup>th</sup> Floor of the building. Plaintiff was employed by third-party defendant Urban Retail.

Plaintiff's complaint seeks damages for common law negligence and under Labor Law Sections 200, 240 and 241 (6). The court shall grant plaintiff's cross-motion with respect to the cause of action under Labor Law 240 (1) and grant defendants' motion to dismiss with respect to the fourth cause of action under Labor Law 241 (6). Pursuant to CPLR 3212 (b) the court has searched the record and will grant defendant summary judgment on plaintiff's common law negligence and Labor Law 200 claims as plaintiff presents no opposition to dismissal of those claims and no evidence has been presented to sustain those claims.

The sole evidence adduced to the parties' papers on this motion consist of the deposition testimony and affidavit of the plaintiff. The court's consideration of these motions must therefore be based solely thereupon. It is uncontroverted therefore that the plaintiff received an assignment "to go fix something with an electrical problem on the 12<sup>th</sup> floor."

(Deposition Transcript of Plaintiff Felix Rios at 19, [hereinafter Dep Tran at \_\_]). Arriving at the 12<sup>th</sup> Floor the plaintiff observed that there was no lighting on the floor and identified that the problem was there were fixtures that were out. Dep Tran at 23-24. Plaintiff noticed there was no power

going to the fixtures and went back to the basement to retrieve tools and a ladder. Dep Tran at 29. Upon returning to the 12<sup>th</sup> Floor, the plaintiff opened up a "A"-frame ladder, removed the cover of a fixture, placed the fixture on the floor, proceeded back up the ladder and "was just starting to cut the wires when the ladder just jerked." Dep Tran at 31-33. Plaintiff was standing on the second or third step of the five-step ladder at the time of the fall.

The sole issue of the applications before this court is whether the circumstances of the accident as set forth in plaintiff's deposition testimony satisfy plaintiff's burden of demonstrating liability under Labor Law 240 (1). Plaintiff was the only witness to the accident. Defendant argues that the work plaintiff was engaged in was merely routine maintenance. The court agrees that if the plaintiff were merely engaged in replacing a light bulb the statute would not be applicable. See Haghghi v Bailer, 240 AD2d 368 (2d Dept 1997) ("the activity in which the injured plaintiff was engaged at the time he fell, whether consisting of changing light bulbs or tightening and taping a loose wire nut, constituted mere routine maintenance in a nonconstruction, nonrenovation context and thus failed to support a claim pursuant to Labor Law § 240").

However, the facts presented in this case are sufficiently distinct from the maintenance context to warrant granting the

plaintiff summary judgment on liability in view of the defendant's failure to raise any issue of fact as to the provision of adequate safety devices. The narrow, but important distinction recognized by the First Department is that "[c]ase law indicates that replacement of parts that wear out routinely should be considered maintenance, outside the purview of Labor Law § 240 (1), as opposed to replacement of non-functioning components of a building or structure." Jehle v Adams Hotel Associates, 264 AD2d 354, 355 (1<sup>st</sup> Dept 1999) (citations omitted). In this case, contrary to defendants' assertions, plaintiff's testimony indicates that plaintiff was engaged in attempting to replace the wiring of the fixture at the time of the accident. This activity, pursuant to caselaw, is governed by Labor Law 240 (1) unlike the simple repair task of replacing a light bulb.

As stated by the Second Department "the act of taking down a light fixture and replacing it with another fixture cannot be considered routine maintenance, such as changing a light bulb, so as to disqualify the plaintiff from the statutory protection provided to a worker who is engaged in the repairing [or] altering, . . . of a building or structure." Purdie v Crestwood Lake Heights Section 4 Corp., 229 AD2d 523, 525 (2d Dept 1996). The First Department reached a similar conclusion in reviewing a

summary judgment motion based upon facts almost identical to those present in this case stating that

Plaintiff fell and was injured when the ladder on which he was standing while repairing a fluorescent light fixture collapsed. The repair work consisted of replacing the ballast and sockets, disconnecting the wires, stripping them and reconnecting them. Such repairs, which entailed much more than merely changing a lightbulb, constituted "repair[s]" within the meaning of Labor Law § 240 (1) and 12 NYCRR 23-1.4 (b) (13), and are thus protected under Labor Law § 241 (6) as well as section 240 (1).

Piccione v 1165 Park Ave., Inc., 258 AD2d 357, 358 (1<sup>st</sup> Dept 1999) (citations omitted). Similarly, in Greenidge v Anchor Constr., Inc., (303 AD2d 179 [1<sup>st</sup> Dept 2003]) the Court held that "[t]he uncontradicted proof demonstrated that plaintiff, while installing an electrical fixture on the ceiling of defendant Anchor's premises, fell when the ladder upon which he was standing slipped. Inasmuch as it is plain that the ladder was inadequate to protect plaintiff from the risks to which he was exposed by reason of the particular elevated work he was performing and that plaintiff was not furnished any other safety device, the grant of summary judgment as to liability upon plaintiff's Labor Law § 240 (1) claim was proper." The recent Court of Appeals decision in Munoz v DJZ Realty, LLC. (5 NY3d 747 [2005]), cited by the defendants, is not contrary to the holdings cited. The Court in that case merely held that the changing of a billboard is more analogous to a decorative modification as opposed to the act of altering the structure of the billboard

itself. Id. at 748. Similarly, merely changing a light bulb is maintenance while the changing of a fixture constitutes an alteration within the coverage of the statute.

In this action, the uncontradicted proof is that the ladder collapsed as the plaintiff was attempting to repair a light fixture. Plaintiff states that the ladder was "locked" in place before its use. Defendants raise no issue of fact with respect to the condition of the ladder or the adequacy of any safety devices. In the absence of such proof, the plaintiff's deposition must be considered uncontested and is sufficient to establish plaintiff's prima facie case for defendants' liability under Labor Labor Law 240 (1) based upon plaintiff's testimony that the ladder collapsed beneath him. The Court of Appeals has held that

In cases involving ladders or scaffolds that collapse or malfunction for no apparent reason, we have continued to aid plaintiffs with a presumption that the ladder or scaffolding device was not good enough to afford proper protection. Once the plaintiff makes a prima facie showing the burden then shifts to the defendant, who may defeat plaintiff's motion for summary judgment only if there is a plausible view of the evidence--enough to raise a fact question--that there was no statutory violation and that plaintiff's own acts or omissions were the sole cause of the accident. If defendant's assertions in response fail to raise a fact question as to these issues, the plaintiff must be accorded summary judgment.

Blake v Neighborhood Housing Services of New York City, Inc., 1 NY3d 280, 289 n. 8 (2003). The defendant here has failed to rebut the presumption.

Based upon the deposition testimony of the plaintiff and the Appellate Division holdings in Purdie, Piccione, and Greenidge, the Court shall grant plaintiff's cross-motion for summary judgment on liability on plaintiff's third cause of action under Labor Law 240 (1).

Accordingly, it is

ORDERED that plaintiff's cross-motion for summary judgment on liability on the third cause of action in the complaint under Labor Law 240 (1) is GRANTED; and it is further

ORDERED that defendant's motion to dismiss plaintiff's claims for common law negligence and under Labor Law Sections 200 and 241 (6) is GRANTED; and it is further

ORDERED that the parties are directed to attend a status conference on April 25, 2006, at 2:30 P.M., at the Courthouse, IAS Part 59, Room 1254, 111 Centre Street, New York.

This is the decision and order of the court.

Dated: April 3, 2006

ENTER:

Debra A. James  
**DEBRA A. JAMES** J.S.C.  
J.S.C.

**FILED**  
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