SHORT FORM ORDER

INDEX No. 05-3793
CAL. No. 06-02287-OT

SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 10/30/06
ADJ. DATE 12/1/06
Mot. Seq. # 001 - MG

JASON CONNOLLY, Plaintiff, - against - RACANELLI CONSTRUCTION COMPANY, INC., Defendant.	KAZMIERCZUK & McGRATH Attorneys for Plaintiff 111-02 Jamaica Avenue, Suite 2C Richmond Hill, New York 11418 RIVKIN RADLER LLP Attorneys for Defendant 926 Reckson Plaza Uniondale, New York 11556-0926

Upon the following papers numbered 1 to 20 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 8; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 9 - 11; Replying Affidavits and supporting papers 12 - 14; Other 15-18; 19-20; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by plaintiff for an order pursuant to CPLR 3212 granting summary judgment as to defendant's liability on his Labor Law § 240(1) claim, is granted.

Plaintiff commenced this action to recover damages pursuant to Labor Law §§ 240(1), 241(6), and 200, and common-law negligence, for injuries he allegedly sustained in a fall from a steel beam at a construction site. Defendant, Racanelli Construction Co., Inc., was the general contractor which hired plaintiff's employer, non-party Pre-Fab Construction, to construct a steel frame hangar at Gabreski Airport in Westhampton Beach.

Plaintiff testified at his examination before trial that he was employed as an apprentice ironworker for Pre-Fab Construction. The hangar under construction was 100 feet wide, 50 feet wide and 20 to 25 feet high. Plaintiff's foreman directed him to go up onto the steel beam at the peak of the roof to "bolt up" the beam. He was sitting on the beam with his feet on the brace. He had a ratchet in his hand and was attempting to tighten the bolt when his foot slipped and he fell 20 feet to the frozen ground below, sustaining the injuries complained of herein. He was not provided with a safety harness and lanyard, or any other safety devices, which would have prevented his fall.

Labor Law § 240(1), commonly known as the "scaffold law," creates a duty that is nondelegable, and owners or general contractors who breach that duty may be held liable in damages regardless of whether they actually exercised any supervision or control over the work (***Ross v Curtis-Palmer Hydro-Elec. Co.***, 81 NY2d 494, 601 NYS2d 49 [1993]). Specifically, Labor Law § 240(1) requires that safety devices, including safety lines, be so "constructed, placed and operated as to give proper protection to a worker" (***Klein v City of New York,*** 89 NY2d 833, 834, 652 NYS2d 723 [1996]; ***Lantry v Parkway Plaza,*** 284 AD2d 697, 726 NYS2d 755 [2001]). The legislative purpose behind § 240(1) is to protect workers by placing the ultimate responsibility for safety practices where such responsibility belongs, on the owner and general contractor instead of on workers, who are "scarcely in a position to protect themselves from accident" (***Rocovich v Consolidated Edison Co.,*** 78 NY2d 509, 577 NYS2d 219 [1991]). A violation of this duty will result in strict liability where the violation was the proximate cause of the accident (***Bland v Manocherian,*** 66 NY2d 452, 497 NYS2d 880 [1985]; ***Arey v M. Dunn,*** 29 AD3d 1137, 816 NYS2d 197 [2006]; ***Crespo v Triad, Inc.***, 294 AD2d 145, 742 NYS2d 25 [2002]).

Here, plaintiff established that he was not provided with any protective equipment, such as a safety harness and lanyard or yo-yo, and that such failure was a proximate cause of his fall (***De Rock v Pyramid Co. of Watertown,*** 190 AD2d 1092, 593 NYS2d 709, *lv dismissed* 81 NY2d 1007, 599 NYS2d 806 [1993]). "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" (***Blake v Neighborhood Hous. Serv. of N.Y. City,*** 1 NY3d 280, 290-291, 771 NYS2d 484 [2003]). Here, defendant's sole argument is that plaintiff is the only witness to his fall. However, the fact that an accident was unwitnessed does not preclude summary judgment (***Smith v Pergament Enters. of S.I.***, 271 AD2d 870, 872, 706 NYS2d 505 [2000]; ***Niles v Shue Roofing Co.***, 219 AD2d 785, 631 NYS2d 464 [1995]). Plaintiff's account of the accident was never challenged and defendant's opposition merely criticizes plaintiff's account as unwitnessed and unsubstantiated (***Niles v Shue Roofing Co.***, *supra*). Unlike the cases relied upon by defendant, there is no alternate theory for the cause of the accident contained in the submissions. Accordingly, the motion is granted.

Upon service of a copy of this order with notice of entry the Calendar Clerk of this Court is directed to place this action on the Calendar Control Part for the next available trial date.

Dated: MAR 0 5 2007

J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**