

Galasso v Daikokuten, LLC

2007 NY Slip Op 30767(U)

March 26, 2007

Supreme Court, Suffolk County

Docket Number: 0002354/2005

Judge: Robert W. Doyle

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

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 12/18/06

ADJ. DATE 1/18/07

Mot. Seq. # 001 - MG

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IONATHON GALASSO,	:	MEYER, SUOZZI, ENGLISH & KLEIN	
	:	Attorneys for Plaintiff	
Plaintiff,	:	990 Stewart Avenue, P.O. Box 9194	
	:	Garden City, New York 11530	
- against -	:		
	:	CAMACHO MAURO MULHOLLAND	
DAIKOKUTEN, LLC,	:	Attorneys for Defendant	
	:	350 Fifth Avenue, Suite 5101	
Defendant.	:	New York, New York 10118	
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Upon the following papers numbered 1 to 17 read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers 1 - 9; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 10 - 12; Replying Affidavits and supporting papers 13 - 15; Other 16 - 17; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the cross motion (#003) 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.

The plaintiff commenced this action to recover damages pursuant to Labor Law §§ 240(1), 240(6), and 200, and common-law negligence, for injuries he allegedly sustained in a fall from a scaffold at a renovation site. The defendant, Daikokuten, LLC, was the owner of the real property undergoing renovation. The plaintiff's employer, non-party Lawrence James Electric, was the electrical subcontractor hired by the general contractor, non-party B & B Mechanical.

The plaintiff testified at his examination before trial that he was employed as an electrician's helper on the day of his accident. He had been employed for about four weeks at the subject renovation. This first two weeks he was involved in installing metal pipes and then running electrical wires through them. The third and four weeks, he assisted in installing outlet boxes and switches, and putting up light fixtures. During this time he utilized fiberglass extension ladders supplied by his employer. He did not use a scaffold during his work at this site and had never worked on a scaffold before his accident. As an

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apprentice, his boss sometimes assigned him a task and then left to do other things or to leave for the day. The plaintiff testified that on the day of his fall, it was late afternoon and his boss had directed him to clean up and then his boss left for the day. The general contractor, the general contractor's employees, and another trade, were still working. The general contractor directed him to go up on a scaffold to remove a pipe sticking out of the concrete wall.

The scaffold had been erected by the general contractor's workers three or four days prior. It was a two-level pipe scaffold with wooden planks and it had been used during application of stucco for the outside of the building. Plaintiff was standing on top of the scaffold and tapping the pipe with a lump hammer, when the wooden planks came out from under him and he fell fourteen feet, losing consciousness and sustaining the injuries complained of herein. He does not know how the planks gave way and was not instructed in proper use of the scaffold prior to using it.

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, such as ladders, 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]). 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]). In order to prevail upon 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 (*Bland v Manocherian*, 66 NY2d 452, 497 NYS2d 880 [1985]; *Sprague v Peckham Materials Corp.*, 240 AD2d 392, 658 NYS2d 97 [1997]).

Where, as here, the scaffold collapses or it otherwise fails to perform its function of safely supporting the worker and his material, a statutory violation, and thus prima facie entitlement to summary judgment, has been established (*Hanna v Gellman*, 29 AD3d 953, 815 NYS2d 713 [2006]; *O'Connor v Enright Marble & Tile Corp.*, 22 AD3d 548, 802 NYS2d 506 [2005]; *Morin v Machnick Bldrs., Ltd.*, 4 AD3d 668, 669-670, 772 NYS2d 388 [2004]). Here, the defendant does not dispute that violation of the statute was the proximate cause of plaintiff's fall. Instead, the defendant argues that the plaintiff was not a member of the protected class at the time of his fall. It argues that the plaintiff was acting as a volunteer when he climbed the scaffold and attempted to remove the pipe protruding from the wall.

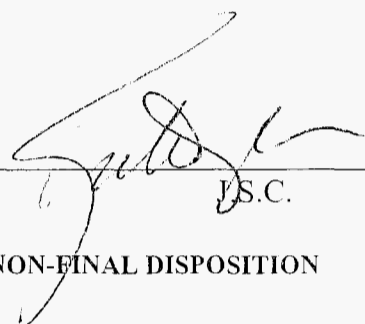
The gravamen of the defendant's opposition is the relationship between the general contractor and the plaintiff. The general contractor and the plaintiff were neighbors and it was the general contractor who had taken the plaintiff to Lawrence James Electric, where plaintiff became employed. The general contractor gave the plaintiff a ride to and from the renovation site daily. Therefore, the defendant argues that when the plaintiff climbed the scaffold to remove the pipe, and his own employer had left for the day, he was acting as a volunteer. The defendant concludes that since he was not performing a task assigned to him by his employer, but by the general contractor, the plaintiff was not

protected by the absolute liability imposed by Labor Law § 240(1).

However, "it is not necessary that an employee be actually working on his assigned duties at the time of the injury" to be entitled to the protection afforded by § 240(1) (*Boncore v Temple Beth Zion*, 299 AD2d 953, 751 NYS2d 337 [2002]). Here, the plaintiff was employed to work on the renovation, he was not an interloper, and the scaffold failed to protect him from a gravity related injury (*Roberts v Caldwell*, 23 AD3d 210, 806 NYS2d 8 [2005]; *Reinhart v Long Island Lighting Co.*, 91 AD2d 571, 457 NYS2d 57 [1982]). The Court is unpersuaded by the argument that the friendship between the general contractor and plaintiff changed the nature of the work or the protection afforded plaintiff. Accordingly, the Court finds that defendant failed to raise a triable issue of fact and, therefore, plaintiff's motion for summary judgment as to defendant's Labor Law § 240(1) liability, 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 26 2007



J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION