

Yun-Shou Gao v City of New York

2007 NY Slip Op 31437(U)

May 25, 2007

Supreme Court, New York County

Docket Number: 0119135/2003

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Rakower
Justice

PART 5

Index Number : 119135/2003

GAO, YUN-SHOU

vs

CITY OF NEW YORK

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1

Answering Affidavits — Exhibits _____

2

Replying Affidavits _____

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

FILED

JUN 01 2007

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 5/25/07

EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X

YUN-SHOU GAO and YU-FANG GAO,

Plaintiffs,

Index No.
119135/03

- against -

Decision and
Order

THE CITY OF NEW YORK and THE NEW YORK
CITY HEALTH AND HOSPITALS CORP.,

Defendants.

-----X

HON. EILEEN A. RAKOWER

Plaintiffs bring this action for personal injuries allegedly sustained when plaintiff Yun-Shou Gao ("plaintiff") fell from a ladder while installing a light fixture at Bellevue Hospital located in New York, New York on September 5, 2002. Plaintiffs now move for summary judgment pursuant to CPLR 3212 based on §240(1) of the Labor Law of the State of New York. Defendants The City of New York and the New York City Health and Hospitals Corp. ("City") oppose plaintiffs' motion.

Plaintiffs, in support of their motion, claim that the City is strictly liable for plaintiff's accident because it is the owner and/or operator of the premises in question and plaintiff was working on a ladder which was not properly secured.

City, in opposition, argues that there is an inconsistency between plaintiff's testimony in his deposition and his testimony at his 50-h hearing as to how he fell off the ladder. Thus, City argues, it is possible that a jury could find that plaintiff was the sole proximate cause of the fall.

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Labor Law §240(1) states, in relevant part:

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All contractors and owners and their agents...shall furnish or

erect...scaffolding, hoists, stays, ladders...and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

The court in *Ross v. Curtis-Palmer hydro Electric Co.*, 81 N.Y.2d 49 (1993), found that:

It is by now well established that the duty imposed by Labor Law §240(1) is nondelegable and that an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work.

Orellano v. 29 East 37th Street Realty Corp. et al, 292 A.D.2d 289 (1st Dept. 2002) recites facts remarkably similar to the instant case. In that case the plaintiff fell from an A-frame ladder while installing a light fixture in the ceiling. Plaintiff gave several different explanations for the cause of his fall. The lower court denied plaintiff's motion for summary judgment on the grounds that because of the discrepancies in his explanation of the fall, it was possible for a jury to find that his own negligence may have been the sole proximate cause of his injury. The court reversed the lower court's ruling and held that:

Regardless of the precise reason for his fall or whether Orellano acted negligently, or whether defendants were in complete compliance with the Industrial Code, Orellano is entitled to summary judgment on the Labor Law §240(1) claim. *Id.* at 290.

Regarding the issue of whether plaintiff was the sole proximate cause of his injury, the court found:

Where the owner or contractor has failed to provide adequate safety devices to protect workers from elevation-related injuries and that failure is a cause of plaintiff's injury, "negligence, if any, of the injured worker is of no consequence." (quoting *Rocovich v. Consolidated Edison Co.*, 78 N.Y.2d 509, 513). *Id.* at 291.

Further, the court reasoned that:

Possible discrepancies in Mr. Orellano's description of how or why he fell off the ladder are irrelevant since there is no dispute that his injuries were caused by his fall. *Id.* at 291.

Finally, the court stated that:

Scala's contention that plaintiff was required to show that the ladder from which he fell was defective in some manner or that defendants violated some rule of the Industrial Code is not the law. It is sufficient for purposes of liability under section 240(1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent. *Id.* at 291.

Plaintiff submitted deposition testimony that he was injured when he fell from an unsecured ladder while working at a City owned building. Plaintiff's deposition testimony establishes that the ladder was "moving" and that it was "not steady." Further, plaintiff submits photographs of the ladder showing that it is self-standing and unsecured.

Wherefore it is Hereby

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability, and it is further

ORDERED that the assessment of damages as against defendant the City of New York and the New York City Health and Hospitals Corporation is directed to be held at the time of trial, and it is further

ORDERED that the clerk shall enter judgment accordingly.

DATED: May 25, 2007

FILED

JUN 01 2007

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EILEEN A. RAKOWER, J.S.C.