

Hildwein v AMR Design & Fabrication, Inc.

2007 NY Slip Op 31725(U)

June 4, 2007

Supreme Court, Orange County

Docket Number: 0001814/2005

Judge: Lawrence I. Horowitz

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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JOHN P. HILDWEIN and ALISON HILDWEIN,

Plaintiffs,

Index No. 1814/2005
DECISION & ORDER

-against-

AMR DESIGN & FABRICATION, INC. and
LITTMAN INDUSTRIES, INC.,

Defendants.

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HOROWITZ, JSC

The plaintiffs, John P. Hildwein and Alison Hildwein (hereinafter "Hildwein"), move for an order pursuant to CPLR § 3212 granting them partial summary judgment on the issue of liability as it applies to plaintiff's claim under § 240 of the Labor Law. The defendant, AMR Design & Fabrication, Inc. cross-moves for an order granting it summary judgment dismissing Plaintiffs' causes of action pursuant to Labor Law §§240 and 241 and Littman Industries, Inc. cross-moves for an order granting it summary judgment dismissing the complaint as against it. Each Defendant also opposes the Plaintiffs motion¹.

The Plaintiffs initiated this action for personal injuries as a result of an incident that occurred on January 10, 2006. The Plaintiff avers that at the time of the incident, he was

¹In rendering the within Decision and Order the Court considered the following submissions: Notice of Motion with Affirmation of Sarah R. Dryer, Esq., Affidavit of John P. Hildwein, Exhibits A through H; Notice of Cross-Motion with Affirmation of H. Malcolm Stewart, Esq. And Exhibit A; Notice of Cross-Motion with Affirmation of Leonard Kessler, Esq., Affidavit of Angel Rivera, Exhibits A and B; Affirmation of Sarah R. Dreyer, Esq. In Opposition to Cross-Motions and in Further Support of Motion; Reply Affirmation of Leonard Kessler, Esq. In Further Support of Cross-Motion.

employed as an electrical contractor involved in electrical alteration to an existing building for the purpose of running power to a machine. According to Plaintiff, in order to perform the job, it was necessary for him to work at an elevated height, and therefore at the time of the incident, he was up approximately twenty (20) feet from the ground in a basket “lift for the purpose of determining the extent of the electrical alteration needing to be performed.” He was caused to fall from the left when the basket he was in separated from the forklift.

Section 240 of the Labor Law requires that owners and general contractors “in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, swings, hangers, blocks, pulleys, braces, irons, ropes and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.” Labor Law § 240(1). Violation of Labor Law § 240(1) mandates the imposition of liability regardless of negligence and is deemed to create a statutory cause of action unrelated to questions of negligence. *Id.* Labor Law § 240 imposes absolute liability on owners, contractors and agents for their failure to provide workers with safety devices that properly protect against elevation-related special hazards.

The purpose of the statute is to protect workers from injury, and it is without question that the “statute is to be interpreted liberally to accomplish its purpose”. Striegel v. Hillcrest Heights Development Corp., 100 N.Y.2d 974, 800 N.E.2d 1093, 768 N.Y.S.2d 727, 729 (2003), *citing*, Rocovich v. Consolidated Edison Co., 78 N.Y.2d 509, 512-514, 577 N.Y.S.2d 219, 583 N.E.2d 932 (1991). Nonetheless, “[t]he extraordinary protections of [the

statute] extend only to a narrow class of special hazards, and do ‘not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity’ ”. Nieves v Five Boro Air Conditioning & Refrig. Corp., 93 N.Y.2d 914, 916, 690 N.Y.S.2d 852, 712 N.E.2d 1219 (1999), *quoting*, Ross v Curtis-Palmer Hydro-Elec. Co., 81 N.Y.2d 494, 618 N.E.2d 82, 601 N.Y.S.2d 49 (1993).

Here the Plaintiff demonstrated that he was exposed to a gravity-related risk, that no safety devices were provided, and while he was so engaged, he fell to the ground, approximately twenty feet down. Nonetheless the Court is not convinced the Plaintiff was engaged in an “erection, demolition, repairing, altering, painting, cleaning or pointing of a building”. Simply, if Plaintiff was not acting within the scope of any of the enumerated protected activities, there can be no claim under Labor Law § 240.

Looking at the totality of the work performed, Plaintiff was not engaged in “the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure” at the time of the accident.

Clearly the job, as completed, did not encompass anything beyond a simple routine dropping of electrical power line from an existing conduit. Such activity is not akin to that in Joblon v. Solow, 91 N.Y.2d 457, 695 N.E.2d 237, 672 N.Y.S.2d 286 (1998), which encompassed a significant physical change to the configuration or composition of the building or structure. In Joblon v. Solow, the Court of Appeals held that while the “question was close...[b]ringing an electrical power supply capable of supporting the clock to the mail room, which required both extending the wiring within the utility room and chiseling a hole through a concrete wall so as to reach the mail room is more than a simple, routine activity and is significant enough to fall within the statute”. Id.

In the present action, Plaintiff points to the *possibility* that he may have needed to conduct alteration work as he was hired to perform any and all work necessary to supply power to this machine which *may* have included replacing conduit and drilling holes. Indeed, the record before the Court indicates that the job was completed without the need to drill any holes or attach any conduit, as the wire which was attached to an existing power source, which was open and fully accessible, was simply dropped through the air directly to the machine below. The Court of Appeals has encouraged the trial courts to refrain from isolating “the moment of injury” and to look at the entire project as a whole. Prats v. Port Auth. of N.Y. & N.J., 100 N.Y.2d 878, 768 N.Y.S.2d 178, 800 N.E.2d 351 (2003).

Thus, except in certain cases where the accident occurred during a separate phase easily distinguishable from other parts of the larger construction project, it is the larger construction project that the Court must consider. Id. In the instant action, at the moment of the accident, Plaintiff was not engaged in any alteration to the building, nor was his job part of a larger construction project that his work could in essence “piggy back” onto a protected activity. As Plaintiff was not so engaged, there can be no claim under Labor Law §240(1) or Labor Law §214(6).

More telling is Plaintiff’s continued references to the fact that he had not yet determined the extent of the work he was to perform at the site as the accident occurred prior to his completion of his assessment and prior to the commencement of the work. An injury that occurs during inspection and before an enumerated activity begin was not within the purview of section Labor Law § 240(1). Martinez v. City of New York, 93 N.Y.2d 322, 690 N.Y.S.2d 524, 712 N.E.2d 689 (1999)

Accordingly, upon all of the foregoing, Plaintiffs’ motion for summary judgment as

to liability on their Labor Law §240 claim is DENIED and Defendants' cross-motion to dismiss the Labor Law §240 and §241 claims are GRANTED.

All parties to this matter are to appear for a pre-trial conference on June 27, 2007 at 9:30 a.m., and are cautioned to prepare for such pre-trial conference pursuant to 22 NYCRR §202.26 and this part's own rules.

The foregoing constitutes the decision of this Court.

Dated: Goshen, New York
June 4, 2007

ENTER

HON. LAWRENCE I. HOROWITZ
SUPREME COURT JUSTICE