

Guichay v Ruth

2007 NY Slip Op 31890(U)

June 25, 2007

Supreme Court, Suffolk County

Docket Number: 0011314/2005

Judge: Robert W. Doyle

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

P R E S E N T :

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 5-16-07
Mot. Seq. # 004 - MotD

-----X	
MARCELO GUICHAY,	:
	:
Plaintiff,	:
	:
- against -	:
	:
GARY RUTH, FARRELL BUILDING	:
COMPANY, INC., and FOURTEEN HILLS	:
BUILDING CORP.,	:
	:
Defendants.	:
-----X	
FARRELL BUILDING COMPANY,	:
	:
	:
Third-Party Plaintiff,	:
	:
- against -	:
	:
RIDGE RAISERS, INC.,	:
Third-Party Defendant.	:
-----X	

BRAGOLI & ASSOCIATES, P.C.
Attorneys for Plaintiff
99 Walt Whitman Road, Suite 100
Melville, New York 11747

MINTZER SAROWITZ ZERIS
LEDVA & MEYERS, LLP
Attorneys for Defts & Third-Party Pltfs
Farrell Building Company, Inc.
25 Newbridge Road - Suite 200
Hicksville, New York 11801

CHRISTOPHER P. DIGIULIO, ESQ.
Attorney for Defendant Gary Ruth
99 Wall Street, 13th Floor
New York, New York 10005

RIDGE RAISERS, INC.,
Non Appearing 3rd Party Defendant
24 Market Street
Centereach, New York 11720

Upon the following papers numbered 1 to 22 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 19 ; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 20 - 22 ; Replying Affidavits and supporting papers _____; Other _____; (~~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 him summary judgment or, alternatively, an order pursuant to CPLR 3126 striking defendants' answer, is granted to the extent that plaintiff is granted summary judgment as to defendants' liability pursuant to Labor Law §§ 240(1) and 241(6), and is otherwise denied.

The plaintiff commenced this action to recover damages pursuant to Labor Law §§ 240(1), 241(6), and 200, and common-law negligence, for injuries he sustained when the scaffold he was working on collapsed. Defendants Farrell Building Company, Inc. and Fourteen Hills Building Corp. were the general contractors for the construction of a single-family home. The plaintiff's employer, third-party defendant, Ridge Raisers, Inc., was the carpentry subcontractor for the outside of the home.

The plaintiff testified at his examination before trial that he had been working for Ridge Raisers for a few months, and at this particular home for a few weeks, prior to his accident. The home had two floors and to reach the areas on the exterior of the second floor, plaintiff's boss had some of his co-workers construct scaffolds. The scaffolds were made of wood already at the site. It would appear from the photos submitted and plaintiff's testimony, that the scaffolds were attached to the structure and/or were supported by ladders. On the day of his accident he was building the soffit on the second story. The plaintiff and two of his workers were working on a scaffold which was about 3 feet wide and 16 feet high, and which they reached by a ladder. At some point during his work, the scaffold detached from the frame or collapsed and the plaintiff fell to the ground, sustaining the injuries complained of herein.

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 scaffolds and 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]). An injured plaintiff's contributory negligence will not exonerate a defendant who has violated § 240(1) (*Raquet v Braun*, 90 NY2d 177, 184, 659 NYS2d 237 [1997]). Conversely, a defendant is not liable under § 240(1) where there is no evidence of a violation and the proof reveals that the plaintiff's own negligence was the sole proximate cause of the accident (*Robinson v East Med. Ctr.*, 6 NY3d 550, 814 NYS2d 589 [2006]; *Blake v Neighborhood Hous. Serv. of N.Y. City*, 1 NY3d 280, 290-291, 771 NYS2d 484 [2003]).

Where, as here, the scaffold collapses or 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]). "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. Servs. of N.Y. City*, *supra* at 289; *Squires v Robert Marini Bldrs.*, 293

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AD2d 808, 809, 739 NYS2d 777, *lv denied* 99 NY2d 502, 752 NYS2d 589 [2002]). Here, defendants have not met their burden and the plaintiff is granted summary judgment as to defendants' liability pursuant to Labor Law § 240(1).

Labor Law § 241(6) requires owners and general contractors to “provide reasonable and adequate protection and safety” for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor. As is the duty imposed by Labor Law § 240(1), the duty to comply with the Commissioner’s regulations imposed by § 241(6) is nondelegable (*Ross v Curtis-Palmer Hydro-Elec. Co., supra; Long v Forest-Fehlhaber*, 55 NY2d 154, 448 NYS2d 132 [1982]; *Allen v Cloutier Constr. Corp.*, 44 NY2d 290, 405 NYS2d 630 [1978]). Therefore, a plaintiff who asserts a viable claim under § 241(6) wherein the rule or regulation alleged to have been breached is a “specific positive command” and not merely “general safety standards” need not show that defendants exercised supervision or control over the work site or had actual or constructive notice in order to establish a right of recovery (*Ross v Curtis-Palmer Hydro-Elec. Co., supra; Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 670 NYS2d 816 [1998]).

The plaintiff’s motion for summary judgment pursuant to § 241(6) is confined to the violation of the Industrial Code at 12 NYCRR § 235.1(c), which provides:

Scaffold structure. (1) Except where otherwise specifically provided in this Subpart, all scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use (See Labor Law § 240(1), subdivision 3). Such maximum weight shall be constructed to mean the sum of both dead and live loads.

The referenced section, Labor Law § 240(1)(3) provides:

All scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use.

Therefore, the collapse of the inadequately constructed scaffold established a violation of both Labor Law §§ 240(1) and 241(6), and the plaintiff is also granted summary judgment as to defendants’ liability pursuant to Labor Law § 241(6).

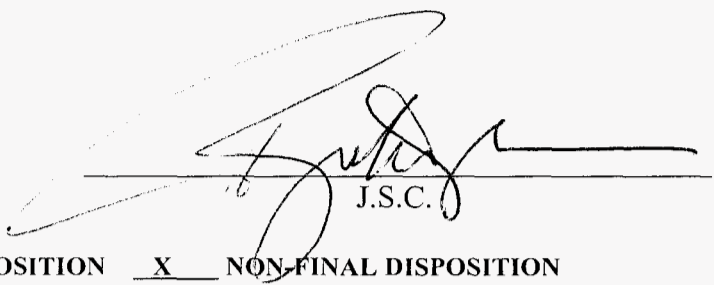
The protection provided by Labor Law § 200 codifies the common-law duty of an owner or general contractor to provide employees a safe place to work (*Jock v Fien*, 80 NY2d 965, 590 NYS2d 878 [1992]). It applies to owners, contractors, or their agents (*see, Russin v Louis N. Picciano & Son*, 54 NY2d 311, 445 NYS2d 127 [1981]) who exercised control or supervision over the work and either created an allegedly dangerous condition or had actual or constructive notice of it (*Lombardi v Stout*, 80 NY2d 290, 590 NYS2d 55 [1992]; *Yong Ju Kim v Herbert Constr. Co.*, 275 AD2d 709, 713 NYS2d 190 [2000]). Where, as here, the alleged dangerous condition arises from the method or material controlled by the subcontractor and the owner and general contractor exercised no supervision or control over the injured plaintiff’s work, no liability attaches under the common law or Labor Law § 200 (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877, 609 NYS2d 168 [1993]).

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Accordingly, summary judgment as to the plaintiff's Labor Law § 200 and common-law negligence causes of action is denied.

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: JUN 25 2007



J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION