

Rattley v Chelsea 27th St. Apts., LLC

2007 NY Slip Op 32587(U)

August 16, 2007

Supreme Court, New York County

Docket Number: 0107112/2005

Judge: Milton A. Tingling

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SCANNED ON 8/21/2007

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

PRESENT: Hon Milton A. Tingling
Justice

PART 44

Darryl Rattley

INDEX NO. 107112/05

MOTION DATE _____

Chelsea 27th Street Apartments, LLC,
Gotham Construction Company &
Gotham Construction, LLC.

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for partial Summary Judgment

PAPERS NUMBERED

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

Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

FILED
AUG 21 2007

COURT CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this motion

Plaintiff, Darryl Rattley, is seeking partial summary judgment on the issue of liability pursuant to labor law §240(1) arguing the scaffold was defective and Plaintiff was not provided with any safety devices. Defendants, Chelsea 27th Street Apartments, LLC, Gotham Construction Company and Gotham Construction, LLC (“Gotham”), contend there is a triable issue of fact as to whether any of the defects in the scaffold were the proximate cause of the accident. Plaintiff’s motion for partial summary judgment on the issue of liability is granted.

At the time of the accident, Plaintiff was a bricklayer employed by DelSavio Construction Company. The site where Plaintiff was working was owned by co-defendant Chelsea 27th Street Apartments LLC and co-defendant Gotham Construction Company LLC was the contractor. While Plaintiff was working on the scaffold, the

Dated: 8/16/07

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

DO NOT POST REFERENCE

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

scaffold shifted causing plaintiff to fall ten feet to the ground. As a result of the accident, Plaintiff sustained personal injuries. The scaffold hung from the side of the building and the working platform of the scaffold consisted of planks. The back of the platform had a rail but there were no railings, barriers or other protective devices to the right or to the left of the platform.

Plaintiff contends the scaffold was defective in that it did not have side guardrails at both ends of the scaffold, it did not extend the complete length of the wall on the right side where Plaintiff fell from, and the scaffold was not tied off to the wall, thereby causing the scaffold to be unsteady and to move while Plaintiff was working on it. Plaintiff, in his deposition, testified he was never given any harness, safety device, safety belt, or any other fall protection. Gotham argues that there is no evidence that they were the "contractor" working at the site. Gotham further argues that Plaintiff "stepped off" the scaffold as opposed to falling off and thus a triable issue exists as to whether or not the defects in the scaffold were the proximate cause of Plaintiff's injuries. Gotham has not disputed Plaintiff's testimony regarding the various defects in the scaffold.

Section 240 (1) of the Labor Law states that all contractors and owners and their agents...who contract for but do not direct or control the work, in the erection...repairing, altering...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, slings, 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. It is undisputed that Plaintiff was employed as a Bricklayer at the construction site. Exhibit A of Plaintiff's reply affirmation entitled "Construction Agreement" lists Chelsea 27th

Street Apartments LLC as the owner of the site and Gotham Construction Company, LLC, as Contractor of the site. Plaintiff has established a prima facie showing that Gotham defendants are subject to liability pursuant to Labor Law 240(1).

As the uncontradicted evidence establishes that plaintiff was injured, at least in part, due to the failure of defendant to provide adequate safety devices to secure the ladder on which he was working, and since the risk created by such failure is one that it is covered by the statute (i.e., falling), plaintiffs have established a violation of Section 240(1) as a matter of law.” *Montalvo v. J. Petrocelli Const., Inc.*, 8 A.D.3d 173, 175 (1st Dept. 2004). As in the *Montalvo* case, there is uncontradicted evidence that the scaffold was defective, Plaintiff was never given any safety equipment, and Plaintiff suffered injuries as a result of his fall. By failing to provide adequate safety devices to secure the scaffold on which Plaintiff was working, Defendant’s created a risk of Plaintiff falling which is covered by the Labor Law Statute 240. Thus Plaintiff has established a violation of Section 240(1) as a matter of law.

It is well settled that the failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240(1). *See Schultze v. 585 West 214th Street Owners Corp.*, 228 A.D.2d 381 (1st Dept. 1996). Although Defendant claims Plaintiff “Stepped off” the scaffold, the scaffold was not secured in any manner prior to the accident. Furthermore, no safety harness or safety equipment was made available to Plaintiff before and during the accident. Thus defendant’s failure to properly secure the scaffold constitutes a violation of Labor Law S240(1).

