

Martucci v New York City Tr. Auth.

2007 NY Slip Op 33033(U)

September 12, 2007

Supreme Court, New York County

Docket Number: 0105217/2005

Judge: Donna Marie Mills

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT : DONNA M. MILLS
Justice

PART 21

MARTUCCI, THOMAS

INDEX No. 105217/05

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 002

NEW YORK CITY TRANSIT AUTHORITY, et al.,
Defendants.

MOTION CAL No. _____

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... _____

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: _____ YES _____ NO

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 9-12-07

[Signature]
J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21**

-----x
THOMAS MARTUCCI,

Index No.: 105217/05

Plaintiff,

-against-

SCHIAVONE CONSTRUCTION CO.,
METROPOLITAN TRANSPORTATION AUTHORITY
and NEW YORK CITY TRANSIT AUTHORITY,

Defendants.
-----x

Donna Mills, J.:

This is an action to recover damages sustained by a journeyman electrician when he fell from a ladder while working at a construction site located at a subway station on February 20, 2004. Plaintiff Thomas Martucci moves, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law § 240 (1) against defendants Schiavone Construction Company (Schiavone), Metropolitan Transportation Authority (MTA) and New York City Transit Authority (NYC Transit Authority) (collectively, defendants).

BACKGROUND

At the time of plaintiff's accident, a construction and rehabilitation project was underway at the Atlantic Avenue subway station, which extends under Flatbush Avenue in Brooklyn, New York (the project). The project site is owned by defendant MTA and operated by defendant NYC Transit Authority. Defendant Schiavone was hired by NYC Transit Authority as the general contractor for the project, which entailed the installation of new electrical HVAC and plumbing systems, as well as the installation of elevators and an escalator. Plaintiff was employed by Kleinberg Electric (Kleinberg), the subcontractor hired by Schiavone to perform

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

the electrical work on the project.

At his 50-H hearing, held on July 8, 2004, plaintiff testified that, on the day of his accident, he was told by his straw boss to go to an unfinished scrubber room and “rough it in,” which means to install lights, outlets and switches using conduit (Plaintiff’s Notice of Motion, Exhibit B, at 20). In order to do so, plaintiff had to climb a 12-foot fiberglass A-frame ladder (the ladder). Plaintiff had used the ladder, which had been provided to him by his foreman, as many as five or six times prior to the day of his accident.

Plaintiff stated that the concrete floor of the scrubber room, which contained a sink and a water basin, was covered with debris, such as wood and metal. As such, plaintiff had to move away the debris in order to place the ladder. In addition, the concrete floor upon which the plaintiff placed the ladder was not level, as it was rough, uneven and choppy. Plaintiff further noted that, after he placed the ladder, “[i]t was a little shaky” (*id.* at 37).

Plaintiff testified that, while he was standing on the tenth rung of the ladder, and while reaching for his tools in his pocket so that he could mark out the ceiling in preparation for drilling, the back legs of the ladder that he was standing on buckled inward, causing the ladder to collapse and plaintiff to fall into the sink and water basin and sustain injuries. Specifically, plaintiff stated that, as he was looking up at the ceiling, he “heard a crackling, like, a snapping and I started bearing off to the right and I just fell” (*id.* at 40-41).

Plaintiff also stated that he had noticed that during times that he had used the ladder prior to the time of his accident, he had noticed that it “swayed,” and that he mentioned that there was a problem with shaky ladders at the job site during a safety meeting (*id.* at 44-45).

Anthony Baratta, employed by Kleinberg as an apprentice electrician, stated in his

affidavit of March 14, 2007, that, on the day of plaintiff's accident, he had been assigned as an electrical helper to plaintiff and had witnessed plaintiff's accident. Baratta explained that he and plaintiff had cleared away debris from an area of the rough and uneven concrete floor of the scrubber room. As plaintiff was standing on about the tenth rung of the fully-opened ladder, without warning, "the ladder shifted and fell, causing Thomas to fall to his right and wind up in a sink located in [the] room" (Plaintiff's Notice of Motion, Exhibit F, March 14, 2007 Baratta Affidavit).

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Santiago v Filstein, 35 AD3d 184, 185-186 [1st Dept 2006], quoting Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (Mazurek v Metropolitan Museum of Art, 27 AD3d 227, 228 [1st Dept 2006]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]; DeRosa v City of New York, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]; Grossman v Amalgamated Housing Corporation, 298 AD2d 224, 226 [1st Dept 2002]).

Labor Law § 240 (1), also known as the Scaffold Law (Ryan v Morse Diesel, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant part:

All contractors and owners and their agents ... 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, 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.

“Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold ... or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (John v Baharestani, 281 AD2d 114, 118 [1st Dept 2001], quoting Ross v Curtis-Palmer Hydro-Electric Company, 81 NY2d 494, 501 [1993]). The Scaffold Law does not apply merely because work is performed at elevated heights, but also applies where the work itself involves risks related to differences in elevation (Binetti v MK West Street Company, 239 AD2d 214, 214-215 [1st Dept 1997]; see Ross v Curtis-Palmer Hydro-Electric Company, 81 NY2d at 500-501)).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated and that this violation was a proximate cause of the plaintiff’s injuries (Blake v Neighborhood Housing Services of New York City, 1 NY3d 280, 287 [2003]; Felker v Corning Inc., 90 NY2d 219, 224-225 [1997]; Torres v Monroe College, 12 AD3d 261, 262 [1st Dept 2004]).

In the instant case, plaintiff correctly asserts that, as the ladder failed to remain stable and erect, and as no other safety devices were provided to him by defendants so as to protect him while subjected to an elevation-related risk, defendants are liable for his injuries under Labor Law § 240 (1). The collapse or malfunction of a safety device for no apparent reason creates a presumption in plaintiff’s favor that the device was not good enough to provide proper protection (Blake v Neighborhood Housing Services of New York City, 1 NY3d at 289 n 8; see Panek v

County of Albany, 99 NY2d 452, 458 [2003] [summary judgment appropriate to plaintiff where it was uncontroverted that a ladder collapsed beneath plaintiff, causing him to fall]; Loreto v 376 St. Johns Condominium, 15 AD3d 454, 455 [2d Dept 2005] [where it was uncontested that the plaintiff fell from an unsecured ladder which slipped out from underneath him, the Court properly determined that the plaintiff was entitled to summary judgment on the issue of liability on his cause of action to recover damages for a violation of Labor Law § 240 (1)]; Cosban v New York City Transit Authority, 227 AD2d 160, 161 [1st Dept 1996]; Aragon v 233 West 21st Street, 201 AD2d 353, 354 [1st Dept 1994]).

Defendants argue that plaintiff is not entitled to summary judgment on the issue of liability under Labor Law § 240 (1), as inconsistent statements in the record regarding how the accident occurred create an issue of fact as to whether the ladder was defective. To this effect, defendants set forth that plaintiff stated that his fall occurred as a result of his ladder's legs collapsing inward, and the apprentice Beratta stated that he witnessed plaintiff falling when the ladder shifted and then fell over.

However, it is not necessary for plaintiff to establish that the ladder was defective in order to establish a violation of Labor Law § 240 (1). "Where a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to insure that it remain stable and erect while being used, constitutes a violation of Labor Law § 240 (1)" (Montalvo v J. Petrocelli Construction, Inc., 8 AD3d 173, 174 [1st Dept 2004] [where plaintiff was injured as a result of unsteady ladder, plaintiff did not need to show that ladder was defective for the purposes of liability under Labor Law § 240 (1), only that adequate safety devices to prevent the ladder from slipping or to protect

the plaintiff from falling were absent], quoting Kijak v 330 Madison Avenue Corporation, 251 AD2d 152, 153 [1st Dept 1998]; Klein v City of New York, 89 NY2d 833, 835 [1996]; Hart v Turner Construction Company, 30 AD3d 213, 214 [1st Dept 2006] [plaintiff met his prima facie burden through testimony that while he performed his assigned work, the eight-foot ladder on which he was standing shifted, causing him to fall to the ground]; Peralta v American Telephone and Telegraph Company, 29 AD3d 493, 494 [1st Dept 2006] [unrefuted evidence that the unsecured ladder moved, combined with evidence that no other safety devices were provided, warranted a finding that the owners were liable under Labor Law § 240 (1)]; Chlap v 43rd Street-Second Avenue Corporation, 18 AD3d 598, 598 [2d Dept 2005]).

In addition, in its opposition to plaintiff's motion for summary judgment, defendants, citing Blake (1 NY3d 280, supra), also allege that Labor Law § 240 (1) does not apply to the facts of this case, as plaintiff was negligent in improperly placing the ladder on an uneven, rough concrete surface. However, it does not avail defendants to argue that the manner in which plaintiff set up the ladder was the sole proximate cause of the accident, where there is no dispute that the ladder was unsecured and no other safety devices were provided (see Orphanoudakis v Dormitory Authority of State of New York, 40 AD3d 502, 502 [1st Dept 2007]; Vega v Rotner Management Corporation, 40 AD3d 473, 474 [1st Dept 2007]). Where "the owner or contractor fails to provide adequate safety devices to protect workers from elevation-related injuries and that failure is a cause of plaintiff's injury, the negligence, if any, of the injured worker is of no consequence [internal quotation marks and citations omitted]" (Tavarez v Weissman, 297 AD2d 245, 247 [1st Dept 2002]).

Further, Labor Law § 240 (1) also requires that persons working at an elevation be

provided with appropriate safety equipment to secure them from falling (Felker v Corning, Inc., 90 NY2d at 229; Wasilewski v Museum of Modern Art, 260 AD2d 271, 271 [1st Dept 1999] [defendant liable under Labor Law § 240 (1) for failure to provide other safety devices, such as a safety belt, to a worker who fell from an unsecured ladder]; Peralta v American Telephone and Telegraph Company, 29 AD3d at 493). Here, testimony in the record indicates that plaintiff was not provided with a safety harness or other protective device to protect him while working on the ladder at issue.

Thus, plaintiff is entitled to partial summary judgment on the issue of liability under Labor Law § 240 (1) as against defendants.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that plaintiff Thomas Martucci's motion, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law § 240 (1) as against defendants Schiavone Construction Company, Metropolitan Transportation Company and New York City Transit Authority is granted; and it is further

ORDERED that the remainder of the action shall continue.

DATED: 9-27-07

ENTER:

J.S.C.
J.S.C.

FILED
SEP 27 2007
NEW YORK
COUNTY CLERK'S OFFICE