

Arrasti v HRH Constr. LLC

2008 NY Slip Op 32933(U)

October 8, 2008

Supreme Court, New York County

Docket Number: 101930/06

Judge: Marcy S. Friedman

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

MARCY S. FRIEDMAN, J.S.C.

PRESENT

PART 57

Index Number : 101930/2006

ARRASTI, ERNST

VS.

HRH CONSTRUCTION LLC

SEQUENCE NUMBER : # 001

SUMMARY JUDGMENT

Justice

INDEX NO.

101930-06

MOTION DATE

MOTION SEQ. NO.

#001

MOTION CAL. NO.

ad on this motion to/for

summary judgment

PAPERS NUMBERED

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

1

Answering Affidavits -- Exhibits

23

Replying Affidavits

4

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion and cross-motion

are

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION/ORDER.

FILED

OCT 28 2008

COUNTY CLERK'S OFFICE NEW YORK

Dated:

10/8/08

Marcy S. Friedman, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

_____ x
ERNST ARRASTI,

- against -

Plaintiff(s),

Index No.: 101930/06

HRH CONSTRUCTION LLC, UPPER EAST
LEASE ASSOCIATES, MARVIN WEINER, LTD.,
and THE RELATED COMPANIES,

Defendant(s)

FILED
DECISION ORDER
OCT 28 2008

CLERK'S OFFICE
157 YORK ST.

In this Labor Law action, plaintiff sues for damages resulting from a fall off a ramp on August 17, 2005, while working at a construction site in Manhattan. Plaintiff moves for summary judgment as to liability on his claims under Labor Law §§ 240(1), 241(6) and 200, and for common law negligence against defendants HRH Construction LLC (“HRH”), Upper East Lease Associates (“Upper East”), and The Related Companies (“Related”). Defendants cross-move for summary judgment dismissing plaintiff’s complaint.

The following relevant facts are undisputed: Upper East was the agent of the owner of the premises, and HRH Construction was the construction manager on the project. Plaintiff was employed as an iron worker by non-party Ecker Window Corp., which was hired to install external windows and window wall systems at the premises.

At the time of the accident, plaintiff was transporting boxes or crates of steel clips to the 20th floor of the building. Plaintiff loaded the crates onto an a-frame cart and took the cart onto a hoist to the 20th floor. (P.’s Dep. at 144, 153, 160.) The hoist stopped at a level higher than the floor and there was a platform at the level of the hoist with a ramp to the floor below. (See id. at

144, 164-165.) As plaintiff moved the cart down the ramp, the cart fell, causing plaintiff to fall off the ramp. (Id. at 165.) The parties dispute the height of the ramp from the floor to the hoist platform, and the height of the ramp at the location of plaintiff's fall.

The standards for summary judgment are well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action "sufficiently to warrant the court as a matter of law in directing judgment." (CPLR 3212[b]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980].) "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985].) Once such proof has been offered, to defeat summary judgment "the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd. [b])." (Zuckerman, 49 NY2d at 562.)

Labor Law § 240(1)

Labor Law § 240 (1) provides:

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.

"The purpose of the section is to protect workers by placing the 'ultimate responsibility' for worksite safety on the owner and general contractor, instead of the workers themselves."

(Gordon v Eastern Ry. Supply, Inc., 82 NY2d 555, 559 [1993]; Rocovich v Consolidated Edison Co., 78 NY2d 509 [1991].) "Thus, section 240(1) imposes absolute liability on owners, contractors and their agents for any breach of the statutory duty which has proximately caused

injury.” (Gordon, 82 NY2d at 559.)

While section 240(1) should be construed liberally so as to effectuate its purpose, it is well settled that the statute applies only to “elevation-related hazards.” (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 500 [1993]; Rocovich, 78 NY2d at 514.) The hazards contemplated by the statute “are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured.” (Rocovich, 78 NY2d at 514; Narducci v Manhasset Bay Assocs., 96 NY2d 259 [2001].) “The protections of Labor Law § 240(1) are not implicated simply because the injury is caused by the effects of gravity upon an object. * * * [T]his statutory provision ‘has historically been construed in the context of workers injured as a result of inadequate or missing safety equipment at elevated work sites.’ ” (Melo v Consolidated Edison Co., 92 NY2d 909, 911 [1998][internal citations omitted], affg 246 AD2d 459 [1st Dept].)

On this record, plaintiff makes a prima facie showing of entitlement to summary judgment on his Labor Law § 240(1) cause of action. Plaintiff’s uncontradicted testimony is that the ramp was used to transport materials to the 20th floor. His further undisputed testimony is that as he lowered the cart down the ramp, one of its wheels fell between two planks, turning and tipping the cart and the boxes on top of plaintiff, knocking plaintiff off the ramp and on to the ground. (Id. at 169, 165.) The ramp did not have safety railings, toe boards, or cleats. (Id. at 165; P.’s Aff. in Support, ¶ 9.) Thus, defendants’ failure to equip it with a handrail or other safety devices was a proximate cause of plaintiff’s injuries. (See Conklin v Triborough Bridge &

[* 5]
Tunnel Auth., 49 AD3d 320 [1st Dept 2008]; McCann v Central Synagogue, 280 AD2d 298 [1st Dept 2001]; Missico v Tops Markets, Inc., 305 AD2d 1052 [4th Dept 2003].)

In cross-moving to dismiss the complaint, defendants argue that the ramp was merely a passageway and therefore was not a safety device under section 240(1). In Conklin (49 AD3d 320, supra), its most recent decision on the subject, this Department held that a ramp “which provided the sole means of access” to a work area (the employer’s shanty) “presented a risk covered by Labor Law § 240.”

There is authority that distinguishes, for purposes of section 240(1) coverage, between a ramp or other structure that is merely a passageway and one that is used in the performance of work. (Compare Paul v Ryan Homes, 5 AD3d 58 [1st Dept 2004] [plank approximately 12" wide serving as “ramp between the garage floor and the threshold of the door to the house” – not covered under 240[1]]; DeStefano v Amtad New York, Inc., 269 AD2d 229 [1st Dept 2000] [ramp at construction site, positioned at the entrance of building and rising to height of 12" – not covered]; Ryan v Morse Diesel, Inc., 98 AD2d 615 [1st Dept 1983] [stairway that was “not a tool used in the performance of plaintiff’s work,” but was “a passageway from one place of work to another” – not covered]; Donohue v CIAM Assocs., 22 AD3d 710 [2d Dept 2005] [ramp that “was not being utilized in the performance of [plaintiff’s] work” – not covered]; with Conklin, 49 AD3d at 321 [finding § 240[1] liability where ramp that provided sole means of access to work shanty lacked handrails]; Missico, 305 AD2d at 1052 [ramp plaintiff used to raise a wheelbarrow filled with debris for disposal was a “tool used in the performance of the work” and thus covered under 240[1]] [internal quotation marks and citation omitted]; Megna v Tishman Constr. Corp., 306 AD2d 163 [1st Dept 2003] [temporary stairway “used to facilitate access to a

[* 6] .

different elevation level” covered under section 240(1)].)

Here, however, it is undisputed that the ramp was not only the sole means of access from the hoist to the floor below, but was being used for the performance of work – ie., to transport workers and their materials from the hoist to a lower height. On the above authority, the ramp presented a risk within the ambit of Labor Law § 240(1).

Defendants’ contention that plaintiff was the sole proximate cause of his injury is without merit. Defendants argue that plaintiff proceeded down the ramp after he observed that there was a gap between two planks of the ramp. However, the failure to provide adequate safety devices such as handrails was a proximate cause of plaintiff’s injury. (See Conklin, 49 AD3d at 321.) Accordingly, plaintiff cannot be solely to blame for it. (See Blake v Neighborhood Hous. Servs. of New York City, 1 NY3d 280, 290 [2003].)

Given the lack of any dispute as to the manner in which the accident occurred, the fact that the accident was unwitnessed is also not a bar to summary judgment. (See Klein v City of New York, 89 NY2d 833 [1996].)

Finally, the court rejects defendants’ contention that the height of the ramp is insufficient to support a section 240(1) violation. It is well settled that the extent of a height differential is not determinative as to whether a particular hazard is elevation-related. (See Rocovich, 78 NY2d at 514-15; Megna, 306 AD2d at 164 [shortness of plaintiff’s fall – sixteen inches according to defendant – “is irrelevant”]; Gettys v Port Auth. of New York and New Jersey, 248 AD2d 226 [1st Dept 1998]; Casabianca v Port Auth. of New York and New Jersey, 237 AD2d 112 [1st Dept 1997].)

Plaintiff contends that the ramp was two to four feet above the floor. Defendants,

extrapolating from plaintiff's expert's measurements, assert that the fall occurred from 13 inches above the floor. Even assuming arguendo that this calculation is supportable, it is not the shortness of the fall that is relevant but whether the ramp "was constructed and maintained with adequate safety devices." (See McCann, 280 AD2d at 299; Megna, 306 AD2d at 164.) As it is undisputed that the ramp did not contain a railing or curb and therefore "did not provide proper protection" to prevent plaintiff's fall (McCann, 280 AD2d at 299), plaintiff is entitled to summary judgment as to liability under Labor Law § 240(1).

In light of the court's holding, the court need not address the branches of the motion and cross-motion seeking relief on plaintiff's claims under Labor Law §§ 241(6) and 200, and for common law negligence.

Accordingly, it is hereby ORDERED that plaintiff is awarded judgment as to liability against defendants HRH Construction LLC, Upper East Lease Associates, and The Related Companies on his Labor Law § 240(1) cause of action; and it is further

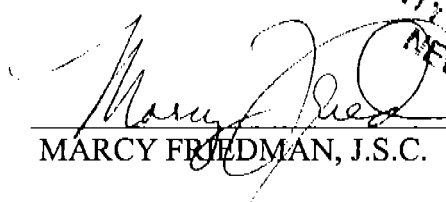
ORDERED that an assessment on damages shall be held at the time of trial, or after any other disposition of the underlying action, upon the filing of a note of issue and payment of the proper fees, if any; and it is further

ORDERED that, within 30 days from the date of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon the defendants, and all other parties or their attorneys, by ordinary first class mail, and shall file same, together with proof of service, with the Clerk of this Court and the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that defendants' motion for summary judgment is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
October 8, 2008



MARCY FRIEDMAN, J.S.C.

FILED
OCT 28 2008
COUNTY CLERK'S OFFICE
NEW YORK