

Ruddock v 95 Maiden Lane L.L.C.

2008 NY Slip Op 33688(U)

January 4, 2008

Supreme Court, New York County

Docket Number: 107101/06

Judge: Barbara R. Kapnick

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X

LIMAN A. RUDDOCK,

Plaintiff,

DECISION/ORDER

Index No. 107101/06

Motion Seq. No. 001

-against-

95 MAIDEN LANE L.L.C., 2 GOLD L.L.C.,
ROCKROSE DEVELOPMENT CORP., ROCKROSE
CONSTRUCTION (95 MAIDEN-GC) L.L.C.,
and 2 GOLD GC L.L.C.,

Defendants.

-----X

BARBARA R. KAPNICK, J.:

Plaintiff Liman A. Ruddock seeks to recover damages for personal injuries he sustained on August 6, 2004 while dismantling a tower crane at a construction project located at 2 Gold Street, New York, New York. At the time of his accident, plaintiff was working on a platform nine stories from the ground and was passing components of the crane to another worker. There was an opening or hole in the floor of the platform for a stairwell permitting access to the platform via a ladder affixed to the frame of the tower crane.

Plaintiff claims to have slipped on a greasy substance on the platform, causing his right leg to fall through the unguarded hole in the platform, thereby injuring his right knee.

Defendants now move for summary judgment dismissing plaintiff's Complaint.

Labor Law § 240(1)

Defendants argue that plaintiff's claim pursuant to Labor Law § 240(1) must be dismissed on the grounds that: (i) plaintiff was not injured in a fall from a height or hit by some falling object; and (ii) plaintiff's injury was allegedly the result of a patch of grease on the surface of the platform and was not caused by "an elevation-related risk which called for any of the protective devices of the types listed in section 240(1)." Rocovich v. Consolidated Edison Co., 78 N.Y.2d 509, 515 (1991).

In Bond v. York Hunter Construction, Inc., 270 A.D.2d 112 (1st Dep't 2000), the Appellate Division, First Department found that "[t]he complaint was properly dismissed based on plaintiff's uncontradicted account of his injury -- in descending from the vehicle he had been operating to demolish an interior wall, he placed his foot on the vehicle's track, intending to use it as a step down, slipped on a spot of grease on the track, fell off the track, landed on debris, and twisted his ankle."

The Court concluded that the "fall did not result from the kind of gravity-related hazard that called for any protective devices of the types listed in Labor Law § 240(1), and thus the cause of action under that statute was correctly dismissed (citations omitted)." Bond v. York Hunter Construction, Inc., supra at 112.

In the instant case, plaintiff argues that although he slipped as a result of grease on the platform and his entire body did not fall off the platform or through the hole, his accident was a result of an elevation-related hazard within the meaning of section 240(1). See, Campisi v. Epos Contracting Corp., 299 A.D.2d 4 (1st Dep't 2002), in which the Court found that plaintiff's fall as far as his elbows through a gap in flooring of the building entrance on the first floor, was an elevation-related incident within the meaning of Labor Law § 240(1); and Carpio v. Tishman Construction Corp. of New York, 240 A.D.2d 234 (1st Dep't 1997), in which the Court found that Labor Law § 240(1) applied where plaintiff's foot backed into a hole in the concrete floor, causing his leg to fall three feet below the surface to his groin area.

Based on the papers submitted and the oral argument held on the record on October 31, 2007, this Court finds that plaintiff has met his burden of showing that his fall resulted from a gravity-related hazard within the meaning of section 240(1).

Defendants alternatively argue that plaintiff's conduct was the sole proximate cause of his injury because plaintiff failed to use a safety harness and lanyard that was provided to him.

Plaintiff does not deny that he declined to use safety devices which existed on the site and which were made available to him,¹ but argues that his own actions cannot be deemed the sole proximate cause of his injury, which plaintiff contends was also caused by the presence of grease on the platform.

It is not clear from the papers submitted whether or not plaintiff's injury could have been prevented even if plaintiff had used the available harness and lanyard. Therefore, this Court finds that there are triable issues of fact as to whether or not plaintiff's actions were the sole proximate cause of his injury.

Accordingly, that portion of defendants' motion seeking to dismiss his claim pursuant to Labor Law § 240(1) is denied.

Labor Law § 241(6)

Defendants argue that plaintiff has failed to state a cause of action under Labor Law § 241(6) because: (i) most of the regulations cited in plaintiff's Complaint and Bill of Particulars are inapplicable to the facts of this case; and (ii) the sole proximate cause of plaintiff's injury was plaintiff's own conduct

¹ This case is thus distinguishable from Figueiredo v. New Palace Painters Supply Co., Inc., 39 A.D.3d 363, 364 (1st Dep't 2007) in which the Court specifically noted that there was "no evidence that safety devices existed on the site and were made available to [plaintiff]."

in failing to use his safety line, rather than any violation of the Industrial Code.

Plaintiff, however, argues that the following portions of section 23-1.7 of the Industrial Code apply to the facts of this case:

(b) Falling hazards.

(1) Hazardous openings.

(i) Every hazardous opening into which a person may step or fall shall be guarded by a substantial cover fastened in place or by a safety railing constructed and installed in compliance with this Part (rule).

* * *

(d) Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.

This Court finds that there are triable issues of fact as to whether or not sections 23-1.7(b) and/or (d) of the Industrial Code were violated and whether said sections were a proximate cause of plaintiff's injury.

Therefore, that portion of the motion seeking to dismiss plaintiff's claim pursuant to Labor Law § 241(6) is denied.

Labor Law § 200/common law negligence

Finally, defendants move (i) to dismiss plaintiff's claims pursuant to Labor Law § 200 and for common law negligence on the

ground that they did not supervise or control plaintiff's work and/or have actual or constructive notice of the alleged condition, and (ii) to dismiss all claims against defendants Rockrose Development Corp., 95 Maiden Lane L.L.C. and Rockrose Construction (95 Maiden-GC) L.L.C. on the ground that there is no evidence that any of these entities was an owner or contractor or had any involvement with respect to the subject project.

These portions of the motion are granted without opposition and said claims are hereby dismissed. The Clerk may enter judgment dismissing plaintiff's Complaint against defendants Rockrose Development Corp., 95 Maiden Lane L.L.C. and Rockrose Construction (95 Maiden-GC) L.L.C. only with prejudice and without costs or disbursements. Plaintiff's claims pursuant to Labor Law §§ 240(1) and 241(6) against the co-defendants 2 Gold L.L.C. and 2 Gold GC L.L.C. are severed and continued.

FILED
JAN 09 2008
NEW YORK
COUNTY CLERKS OFFICE

A pretrial conference shall be held in IA Part 120 Centre Street, Room 341 on January 23, 2008 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: January 2 / , 2008


Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.