

Linton v Jetblue Airways Corp.
2009 NY Slip Op 30567(U)
March 13, 2009
Supreme Court, New York County
Docket Number: 116024/06
Judge: Marcy S. Friedman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **Hon. Marcy S. Friedman**

PART 57

Index Number : 116024/2006

LINTON, MICHAEL

VS.

JETBLUE AIRWAYS CORPORATION

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

this motion is for summary judgment

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

1
2
3

Memo of Law M)

Cross-Motion: Yes No

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER.**

FILED

MAR 17 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/13/09

Marcy S. Friedman
Hon. 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

MICHAEL LINTON,

- against -

JETBLUE AIRWAYS CORPORATION and
TURNER CONSTRUCTION COMPANY,
Defendant(s).

DECISION/ORDER

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In this Labor Law action, plaintiff moves for summary judgment as to liability on his Labor Law § 240(1) cause of action against defendants Jetblue Airways Corporation and Turner Construction Company. Defendants cross-move for summary judgment dismissing plaintiff's claims against them under Labor Law §§ 241(6) and 200, and for common law negligence. Plaintiff, in his opposition to the cross-motion, withdraws his claims against defendants under section 200 and for common law negligence. Plaintiff also withdraws his section 241(6) claim to the extent that it is based upon Industrial Code (12 NYCRR) §§ 23-1.5, 23-1.15, 23-1.16, 23-1.17, 23-2.1, 23-2.2.¹ Thus, only plaintiff's section 240(1) claim remains for disposition.

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

¹ It is undisputed that plaintiff's claim under Labor Law § 241(6) continues to the extent that he relies upon Industrial Code § 23-8.1.

[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.)

It is further settled that Labor Law § 240(1) applies only to “elevation-related hazards.” (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 500 [1993]; Rocovich v Consolidated Edison Co., 78 NY2d 509, 514 [1991].) 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.” (Id. 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].) With respect to falling objects:

Labor Law § 240(1) applies where the falling of an object is related to a significant risk inherent in * * * the relative elevation * * * at which materials or loads must be positioned or secured. Thus, for section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute.

(Narducci, 96 NY2d at 267-268 [internal citations and quotation marks omitted][emphasis in original].)

It is undisputed that plaintiff, an ironworker, was struck by a 98-foot steel beam that he and a co-worker were installing at Terminal 5 at John F. Kennedy International Airport. The beam was being hoisted approximately 30 feet from ground level to the roof where plaintiff was working. (P.'s Dep. at 28, 36.) After the beam was lowered into place, he and his co-worker determined that it was backwards and could not be installed. A decision was made to hoist the beam back to the ground so that it could be put in the proper position. (Id. at 39-40.) As this hoisting was occurring, his co-worker's end of the beam, which was higher than plaintiff's end, got caught on lattice-work in a metal truss, causing plaintiff's end to rise approximately four to five feet. (Id. at 41-43.) The crane operator then swung the crane so that the beam could be lifted out of the truss. However, when the crane moved, the beam "popped out" and fell four or five feet, hitting plaintiff on the back. (Id. at 44-45.)

This testimony is sufficient to make a prima facie showing that hoist that was used to raise the beam failed to protect plaintiff from an elevation-related hazard, causing his injury. (See Brown v VJB Constr. Corp., 50 AD3d 373 [1st Dept 2008]; Gonzalez v Glenwood Mason Supply Co., 41 AD3d 338 [1st Dept 2007].)

In opposition, defendants argue that the accident was not caused by an elevation-related risk because plaintiff was struck laterally, rather than from above, and because the beam was positioned at the level on which plaintiff was working. (Aff. in Opp. ¶ 42.) This contention is unsupported by the evidence. Indeed, defendant does not dispute that the beam fell four to five feet before it hit plaintiff. (Id. ¶ 15.)² It is well settled that the extent of a height differential does

² While defendant cites plaintiff's testimony that the contact of the beam with his body "was like a rolling type motion" (P.'s Dep. at 48), defendant acknowledges that before the beam hit plaintiff it "fell 4-5 feet." (Aff. in Opp. ¶ 15.)

not necessarily determine liability. (Brown, 50 AD3d at 376.) Here, the protective device – i.e., the hoist – unquestionably failed, and the accident involved an elevation-related differential, as the beam was raised above plaintiff’s work level. Labor Law § 240(1) is thus applicable.

It is accordingly hereby ORDERED that plaintiff’s motion is granted to the extent that plaintiff Michael Linton is awarded judgment against defendants Jetblue Airways Corporation and Turner Construction Company as to liability on his Labor Law § 240(1) claim; 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 the note of issue and payment of the proper fees, if any; and it is further

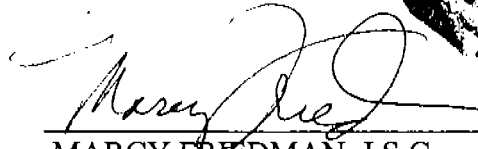
ORDERED that, within 30 days from the date of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon defendants, and shall file same, together with proof of service, with the Clerk of this Court and the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that defendants’ cross-motion for summary judgment is granted to the following extent: Plaintiff’s claims against defendants Jetblue Airways Corporation and Turner Construction Company under Labor Law § 200 and for common law negligence are dismissed; and plaintiff’s claims against said defendants under Labor Law § 241(6) are dismissed to the extent that plaintiff relies upon Industrial Code §§ 23-1.5, 23-1.15, 23-1.16, 23-1.17, 23-2.1, 23-2.2; and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff’s remaining claims are severed and shall continue.

This constitutes the decision and order of the court.

Dated: New York, New York
March 13, 2009


MARCY FRIEDMAN, J.S.C.

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