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Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 17 NASSAU COUNTY

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

x

ALCIDES AMAYA and ALMA AMAYA,

Plaintiff(s),

-against-

LONG ISLAND UNIVERSITY AND MACCARONE PLUMBING INC.,

Defendant(s).

x

Index No. 14263//08

Motion Submitted: 8/27/10
Motion Sequence: 001, 002

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....XX
Answering Papers.....X
Reply.....X
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....XX

Plaintiffs move this Court for an order pursuant to CPLR § 3212 for summary judgment on the issue of the liability of defendant Long Island University ("L.I.U.") under § 240(1) of the Labor Law. LIU opposes the requested relief.

L.I.U. cross-moves this Court for an order granting summary judgment in its favor on the plaintiffs' first cause of action sounding in common law negligence. Plaintiff does not oppose LIU's cross-motion.

Plaintiff Alcides Amaya (the "plaintiff") alleges he was injured in a fall from a ladder while he was working at a building owned by L.I.U. L.I.U. had hired co-defendant

Maccarone Plumbing Inc.[1] as its contractor for a renovation of a particular building. The sub-contractor, M. Cary, Inc. ("M. Cary"), was to assist in the renovation of the building. Plaintiff was employed by M. Cary at the time of the accident on February 23, 2008. On that date, plaintiff was working on a twenty-four foot ladder when he fell from a height of approximately fifteen feet. Apparently, the ladder's footing slipped, causing the ladder to slide down the wall, taking plaintiff with it. Plaintiff contends that the ladder was not secured, and that no safety devices were supplied. As a result of this accident, plaintiff suffered various physical injuries.

According to the deposition testimony of L.I.U.'s project manager, Frank Casale, LIU had apparently delegated specific responsibility for the safety of various equipment to its contractors and sub-contractors, and only generally instructed those entities that their equipment "was to be safe." L.I.U. also did not supply any equipment to plaintiff. It is undisputed that the ladder in question was provided by plaintiff's employer, M. Cary.

Plaintiff alleges that, pursuant to Labor Law § 240(1), L.I.U., as owner of the building, is strictly liable for his injuries.

L.I.U. contends that the M. Cary employees, including the plaintiff, were not authorized by L.I.U. to perform work on February 23, 2008, or in areas where the incident occurred. Frank Casale testified that he had telephoned M. Cary's project manager, Frank Scurachio, to make sure that only the hand rail installation would be done on that particular date. According to L.I.U., there was not to be any other work going on in the vicinity of the handrail installation out of concern for the installers working below the ceiling area where plaintiff would be working. L.I.U. contends that, unbeknownst to Casale, Anthony Tropiano, plaintiff's supervisor with M. Cary, directed plaintiff to go to the subject building to remove fireproofing insulation from the ceiling.

L.I.U. contends that it did not know that plaintiff would be working in the building, and that plaintiff's work was unauthorized; thus, L.I.U. had no ability to insure proper steps were taken to protect plaintiff. L.I.U. contends that there are issues of fact to preclude granting plaintiffs' motion. L.I.U. admits, however, that the fireproofing material was required to be removed from the ceiling because, according to Casale, it was of the wrong type.

The legislative purpose of Labor Law § 240(1) (commonly referred to as "the Scaffold Law") is to protect workers by placing the ultimate and absolute responsibility for safety

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[1]The action against Maccarone Plumbing, Inc. was discontinued by stipulation dated January 5, 2010.

practices on the owner and general contractor (***Rocovich v. Consolidated Edison Co.***, 78 N.Y.2d 509, 583 N.E.2d 932, 577 N.Y.S.2d 219 [1991]). The duty is nondelegable and a violation imposes absolute liability upon owners and general contractors irrespective of whether they exercised supervision or control over the work (***Ross v. Curtis-Palmer Hydro-Electric Co.***, 81 N.Y.2d 494, 618 N.E.2d 82, 601 N.Y.S.2d 49 [1993]), and without regard for the negligence, if any, of the injured worker so long as the breach or violation was the proximate cause of the injury (***Zimmer v. Chemung County Performing Arts, Inc.***, 65 N.Y.2d 513, 482 N.E.2d 898, 493 N.Y.S.2d 102 [1985]).

Labor Law § 240(1) specifically imposes a non-delegable duty upon owners and contractors to provide elevation-related safety devices to workers at elevated work sites, in order to afford workers proper protection from the risks inherent in that type of work (*see* ***Ball v. Cascade Tissue Group-New York, Inc.***, 36 A.D.3d 1187, 828 N.Y.S.2d 686 (3d Dept., 2007); ***Beamon v. Agar Truck Sales, Inc.***, 24 A.D.3d 481, 808 N.Y.S.2d 232 (2d Dept., 2005); ***Palacios v. Lake Carmel Fire Department, Inc.***, 15 A.D.3d 461, 790 N.Y.S.2d 185 (2d Dept., 2005); ***Andino v. BFC Partners, L.P.***, 303 A.D.2d 338, 756 N.Y.S.2d 267 (2d Dept., 2003); ***Smith v. Xaverian High School***, 270 A.D.2d 246, 703 N.Y.S.2d 526 [2d Dept., 2000]).

Labor Law § 240(1) further requires that safety devices such as ladders be constructed, placed and operated as to give proper protection to a worker (***Klein v. City of New York***, 89 N.Y.2d 833, 675 N.E.2d 458, 652 N.Y.S.2d 723 [1996]), with the ultimate responsibility for safety practices at building construction jobs belonging to the owner and general contractor (***Zimmer v. Chemung County Performing Arts Inc., supra***).

While the Scaffold Law is to be construed liberally in order to accomplish the purpose for which it was framed, the Scaffold Law imposes absolute liability only after a violation of the statute has been established (***Narducci v. Manhasset Bay Associates***, 96 N.Y.2d 259, 750 N.E.2d 1085, 727 N.Y.S.2d 37 [2001]), and strict liability is contingent upon a finding that the law was violated, and that such violation was the proximate cause of the worker's injury (***Blake v. Neighborhood Housing Services of New York City, Inc.***, 1 N.Y.3d 280, 803 N.E.2d 757, 771 N.Y.S.2d 484 [2003]).

Absolute liability for injuries sustained by a worker is imposed upon an owner or contractor who has failed to provide any safety devices for workers at a building work site, and to see to their proper placement and operation, where the absence of such devices was the proximate cause of injury to the worker. In such cases, liability is mandated without regard to external consideration such as rules and regulations, contracts, or custom and usage (***Zimmer v. Chemung County Performing Arts, Inc., supra***).

The Court recognizes that a fall from a ladder, by itself, is not sufficient to establish a claim under Labor Law § 240 (1) (see ***Williams v. Dover Home Improvement Inc.***, 276 A.D.2d 626, 714 N.Y.S.2d 318 [2d Dept., 2000]) ; however, a plaintiff injured from a fall from a ladder is not under an obligation to show that the ladder was defective in some manner, or to prove that the floor was slippery to make out a Labor Law § 240 (1) violation; it is sufficient to show the absence of adequate safety devices that prevented the ladder from sliding, or protected the plaintiff from falling (***Mingo v. Lebedowicz,*** 57 A.D.3d 491, 493, 869 N.Y.S.2d 163 (2d Dept., 2008); ***Bonnano v. Port Authority of New York and New Jersey,*** 298 A.D.2d 269, 750 N.Y.S.2d 7 (1st Dept., 2002); ***Orellano v. 29 East 37th Street Realty Corp.***, 292 A.D.2d 289, 740 N.Y.S.2d 16 [1st Dept., 2002]).

Here, plaintiff was working on a twenty-four foot ladder, which was extended to a height of eighteen feet at the time of the accident. Plaintiff testified that he was at least fifteen feet off the ground. Furthermore, there were no safety devices provided, and M. Cary's supervisor, Anthony Tropiano, did not hold the ladder in place. According to plaintiff, Tropiano was outside smoking a cigarette when the accident occurred. Plaintiff further testified that he had been on the ladder for approximately twenty-five minutes before it slipped out from underneath him, making vertical gouge marks in the wall as it slid downward. Thus, plaintiff has established his entitlement to summary judgment as a matter of law (*see* ***Florestal v. City of New York***, 74 A.D.3d 875, 903 N.Y.S.2d 457 [2d Dept., 2010]).

Defendant L.I.U. has failed to raise a triable issue of fact. A property owner is liable, under the Scaffold Law, to a contractor's employee who is injured due to inadequate safety equipment and devices, even where the owner has no knowledge of plaintiff's work. As long as a violation of the statute proximately results in injury, the owner's lack of notice of the work does not negate its liability, since an owner's liability is an absolute or strict one (*see* ***Sanatass v. Consolidated Investing Co. Inc.***, 10 N.Y.3d 333, 887 N.E.2d 1125, 858 N.Y.S.2d 67 (2008); ***Blake v. Neighborhood Housing Services of N.Y., supra***).

In this case, L.I.U. may not escape strict liability as an owner based on its lack of notice regarding work ordered by M. Cary's supervisor (and plaintiff's direct supervisor), Anthony Tropiano.

M. Cary was an "authorized" subcontractor. M. Cary was authorized to do work on the site when the incident happened. Although the authorized work related to installation of the handrail, the removal of the incorrect fireproofing material had also been authorized by L.I.U., but not on the day of the accident. The reason for LIU's directive that only the handrail work be conducted on the date of the accident was based on L.I.U.'s concern for the handrail workers' safety, not plaintiff's. Plaintiff was directed to work by Tropiano, plaintiff's immediate supervisor. Plaintiff did just that; he worked, and allegedly injured

himself when the ladder slipped, causing him to fall from a height of fifteen feet.

The Court has examined the case law cited by L.I.U. as to L.I.U.'s alleged non-liability and finds them unavailing. L.I.U.'s reliance on ***Zuniga v. Stam Realty*** (169 Misc.2d 1004, 647 N.Y.S.2d 426 [Sup. Ct. Queens County 1996]) is misplaced. In that case, the plaintiff was injured while performing work that was completely unauthorized by the owner, and possibly while under the influence of alcohol.

The Court in ***Singh v. City of New York*** (NYLJ 10/24/95, Vol. 214, Number 79 [Sup. Ct. New York County]) denied plaintiff's summary judgment motion because it found that neither the owner nor the contractor knew that plaintiff was at the work site on a Sunday. In fact, the contractor in that case testified that the company was not authorized to work on the day of the accident.

Here, L.I.U. does not dispute that M. Cary had permission to perform work on the day of the accident, and that the job performed by plaintiff was authorized, just not on the same day that the handrailing was being installed. Furthermore, M. Cary does not dispute that it directed plaintiff to perform the work on the day of the accident. Plaintiff was not a trespasser, or volunteer, on the day of the accident, but an employee performing his assignment.

The Court now turns to L.I.U.'s unopposed motion for summary judgment on plaintiff's first cause of action for common law negligence. L.I.U.'s motion is granted. When a claim arises out of alleged defects or dangers in methods or materials of work, recovery against an owner cannot be had under the general workplace safety statute (***Labor Law § 200***) unless it is shown that the party to be charged had authority to supervise or control the performance of the work *(see* ***Ortega v. Puccia***, 57 A.D.3d 54, 866 N.Y.S.2d 323 (2d Dept., 2008); ***Perri v. Gilbert Johnson Enterprises, Ltd.***, 14 A.D.3d 681, 790 N.Y.S.2d 25 [2d Dept., 2005]). Based on the deposition testimony submitted by the parties, L.I.U. had no such authority, having delegated its authority to M. Cary. Thus, plaintiff's cause of action for common law negligence is deemed stricken upon service of a copy of this order on the parties herein.

Subject to the approval of the Justice there presiding and provided a Note of Issue has been filed at least ten (10) days prior thereto, this matter shall appear on the calendar of the Calendar Control Part ("CCP") for a hearing on the issue of damages on the 15th of December, 2010 at 9:30 a.m.

A copy of this order shall be served on the Calendar Clerk and accompany the Note of Issue when filed, accompanied by proof that a copy has been mailed to all parties within 15 days after entry.

The failure to file a Note of Issue or appear as directed may be deemed an abandonment of the claims giving rise to the hearing. The directive with respect to a hearing is subject to the right of the Justice presiding in CCP to refer the matter to a Justice as he or she deems appropriate.

The foregoing constitutes the Order of this Court.

Dated: November 16, 2010
Mineola, N.Y.

Karen V. Murphy
J. S. C.