

Paul v Samuels

2011 NY Slip Op 30513(U)

February 23, 2011

Supreme Court, Queens County

Docket Number: 26700/2008

Judge: Howard G. Lane

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IA Part 6

GEORGE PAUL x

Index
Number 26700 2008

- against -

Motion
Date September 21, 2010

PHILLIP SAMUELS

x

Motion
Cal. Number 25

Motion Seq. No. 1

The following papers numbered 1 to 12 read on this motion by the defendant and cross motion by the plaintiff for summary judgment.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross Motion - Affidavits - Exhibits	5-7
Answering Affidavits - Exhibits	8-10
Reply Affidavits	11-12

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff, on January 22, 2006, when he fell off a scaffold-like structure while at work at the defendant's premises, a two-story single family colonial house, located at 27 Glenmore Avenue in Hempstead, New York. The plaintiff and defendant's cousin nonparty

Carlton Cameron were hired by the defendant to help him install siding at the subject premises. The plaintiff claims that the incident occurred while he, the defendant, and Mr. Cameron were working together to install the siding on an extension to the defendant's house. As a result of the foregoing, the plaintiff's complaint alleges four causes of action, respectively, for common-law negligence, and violations of Labor Law §§ 200, 240 and 241.

The defendant moves for summary judgment dismissing the plaintiff's complaint against him on the grounds that (1) he may not be held liable for the plaintiff's injuries because he never supervised, directed or controlled the plaintiff's work and (2) he is exempt from the strict liability provisions of Labor Law §§ 240 and 241 because the premises at issue is a one-family home. The plaintiff cross-moves for an award of partial summary judgment in his favor and against the defendant on the issue of liability with respect to all causes of action asserted in the complaint.

In support of summary judgment, the defendant submits copies of the transcripts of the parties' examination before trial testimony, as well as the transcript of nonparty witness Carlton Cameron.

The plaintiff testified that he went to the defendant's premises to help the defendant install siding on his home. The only tool the plaintiff brought was a hammer. Prior to getting started on the first day of work, the plaintiff accompanied the defendant and Mr. Cameron to Home Depot, whereupon the defendant purchased two brackets for use in the defendant's assembly of the subject scaffold and the siding for the house. The defendant and Mr. Cameron constructed the scaffold. The plaintiff did not assist in its construction because he had arthritis and could not lift anything heavy. The scaffold was built using two aluminum ladders, set approximately 20 feet apart and laid against the house, which were topped with the two brackets purchased by the defendant. A third ladder was laid horizontally across the two ladders and topped with some planks. The plaintiff indicated that there was no catwalk so they improvised by using the planks. After the scaffold was constructed, the plaintiff and Mr. Cameron climbed onto the scaffold and began installing insulation on the house. The defendant assisted the men by measuring, cutting and handing the insulation up to them on the scaffold. Upon arriving at the defendant's premises for the second day of work, the defendant paid the plaintiff \$200 for the work he had completed thus far. According to the plaintiff, the work proceeded in the manner in which it had on the prior day. The defendant and Mr. Cameron reassembled the scaffold and the defendant assisted the plaintiff and Mr. Cameron while they were working on the installation of the siding. The defendant was on the ground cutting the siding based upon the measurements given to him by the plaintiff and Mr. Cameron, whereupon the defendant would go up the ladder and hand the pieces of siding to them on the scaffold. The plaintiff's accident occurred on the third day of work. The defendant and Mr. Cameron also assembled the scaffold on that day.

Immediately before the accident, the plaintiff and Mr. Cameron had just begun their work for the day and they were standing together on the scaffold. The plaintiff was just about to install the first piece of siding, when Mr. Cameron got off the ladder that was stretched across the scaffold, the ladder tilted, and the plaintiff fell to the ground. The plaintiff testified that he did not have a safety harness and that there was no netting beneath him while he worked. The plaintiff also indicated that he was unaware of whether the defendant and Mr. Cameron had tied rope onto the ladder to secure it in place as they had done on prior occasions. The plaintiff remained hospitalized for several weeks after the accident.

Upon examination before trial, the defendant acknowledged that he hired the plaintiff and Mr. Cameron to install siding on his house. However, contrary to the plaintiff's testimony, the defendant denied setting up the scaffold and indicated that the plaintiff and Mr. Cameron assembled it. The defendant also denied that he worked alongside the plaintiff and Mr. Cameron to cut siding and insulation. On the other hand, the defendant acknowledged that he climbed up to the scaffold to assist the plaintiff and Mr. Cameron by handing them something if they asked him to do so. Further, the defendant stated that he was aware of the way the scaffold was set-up and admitted to providing the planks and brackets for its construction. The defendant also admitted that there was no safety equipment such as ropes, harnesses, netting, or hard hats on the premises at the time of the accident. The defendant witnessed the accident and saw the plaintiff fall from the scaffold and onto the ground. The plaintiff fell head first from an elevation of approximately 11 feet.

In his examination before trial, Mr. Cameron testified that the defendant assisted him and the plaintiff by passing items to them while they worked on the scaffold. The ladders used to build the scaffold were provided by Mr. Cameron. However, the brackets and planks were provided by the defendant. Mr. Cameron did not witness the fall but saw the plaintiff lying on the ground and bleeding from his injuries.

It is well-settled that liability for negligence will attach pursuant to common law or under Labor Law § 200 if the plaintiff's injuries were sustained as a result of a dangerous condition at the work site and only if the owner, contractor or agent exercised supervision and control over the work performed at the site or had actual or constructive notice of the alleged dangerous condition (*see Pirotta v EklecCo.*, 292 AD2d 362 [2002]; *Kobeszko v Lyden Realty Investors*, 289 AD2d 535 [2001]; *Giambalvo v Chemical Bank*, 260 AD2d 432 [1999]). It is alleged that the dangerous condition consisted of a defective scaffold-like structure. Here, the defendant owner's admission that he provided planks and brackets for the construction of the subject make-shift scaffold, his concession that he was aware of the way the scaffold was set-up and constructed, his acknowledgment that he assisted the workers by climbing the scaffold to hand them things that they had requested, and his presence at the time and place of the accident fails to establish that the owner exercised

supervision and control over the work performed at the site. “Although property owners often have a general authority to oversee the progress of the work, mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law 200. A defendant had the authority to supervise or control the work for purposes of Labor Law 200 when that defendant bears the responsibility for the manner in which the work is performed.” (*Ortega v. Puccia*, 57 AD3d 54 [2d Dept 2008])(internal citations omitted). In the instant case, there is insufficient proof to establish that defendant had the authority to control the manner or method by which plaintiff performed his work. Additionally, no issue of fact has been raised as to whether the owner had actual or constructive notice of the allegedly dangerous condition. Accordingly, the defendant’s motion for summary judgment dismissing the plaintiff’s claims predicated upon common-law negligence and Labor Law § 200 is granted and the plaintiff’s cross motion for summary judgment in his favor on the issue of liability on his common-law negligence and Labor Law § 200 claims is denied.

The plaintiff has failed to establish his entitlement to an award of summary judgment in his favor and against the defendant on his Labor Law §§ 240 and 241 claims.

The purpose of Labor Law § 240(1) is to protect workers by placing responsibility for safety practices at construction sites on owners and general contractors, “those best suited to bear that responsibility” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]), instead of on the workers, who are not in a position to protect themselves (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 520 [1985]). This provision imposes absolute liability on owners, contractors and their agents for any breach of the statutory duty which has proximately caused injury (*see Striegel v Hillcrest Heights Dev. Corp.*, 100 NY2d 974 [2004]; *Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]; *Keaney v City of New York*, 24 AD3d 615 [2005]). Labor Law § 241(6) imposes a nondelegable duty on an owner of a premises to insure that the area where the work is to be performed is constructed, equipped, guarded, arranged, operated and conducted to provide reasonable and adequate protection and safety to the workers employed by him to carry out the work. The defendant contends that it cannot be held strictly liable for the plaintiff’s injuries because both statutes provide an exclusion from liability for owners of one-family dwellings “who contract for but do not *direct or control* the work” (Labor Law § 240[1]; § 241[6]). “The purpose of this statutory exemption...was to remove ‘the burden of strict liability from such owners when they have nothing whatsoever to do with the carrying out of the work’ (1980 NY Legis Ann, at 266). “The phrase ‘direct or control’ is construed strictly and refers to a situation where the owner supervises the method or manner of the work. Instructions about aesthetic design matters, or retention of the limited power of general supervision, do not constitute ‘direction or control’ as those terms are used in Labor law 240.” (*Decavallas v. Pappantoniou*, 300 AD2d 617 [2d Dept 2002] [internal citations omitted]). Thus, the

phrase ‘direct or control’ contemplates the situation in which the owner supervises the method and manner of the work, can order changes in the specifications, reviews the progress and details of the job with the general contractor and/or provides the equipment necessary to perform the work” (*Rimoldi v Schanzer*, 147 AD2d 541 [1989]).

“An overview of the case law discloses that it requires a significant degree of participation in the work by the owner before he or she will be deemed to have crossed the line from being a legitimately concerned homeowner to a de facto supervisor.” (*Lieberth v. Walden*, 223 AD2d 978 [3d Dept 1996]). Where the homeowner was at the worksite almost every day, inspected every window that was installed, climbed ladders as needed and voiced many complaints about how the work was performed, it was held that he did not exercise control of the work. (*Id.*) Additionally, the Appellate Division found the owner to be entitled to the exemption even though there was proof establishing that he “acted as his own general contractor, provided the plans, purchased the materials, hired the contractors, and visited the worksite.” (*Id.*)

Under the circumstances presented, the defendant’s role in the subject construction project and his act of providing siding, insulation, as well as several components of the scaffold from which the plaintiff fell, fails to demonstrate that the defendant sufficiently directed and/or controlled the work at issue such that his status as the owner of a one-family home and renders him exempt from strict liability in this case. Accordingly, the plaintiff’s cross motion for an award of summary judgment in his favor on his Labor Law §§ 240 and 241 claims is denied and the defendant’s motion for summary judgment dismissing the Labor Law §§ 240 and 241 claims against him is granted.

Dated: February 23, 2011

HOWARD G. LANE, J.S.C.