

Yulfo v Bovis Lend Lease, Inc.
2011 NY Slip Op 32087(U)
July 27, 2011
Supreme Court, New York County
Docket Number: 112866/08
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JAFFE BARBARA JAFFE
J.S.C.
Justice

PART 5

Index Number : 112866/2008
YULFO, MARIA
VS.
BOVIS LEND LEASE
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT
CAL # 124

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for Summary judgment

PAPERS NUMBERED

1
2
3

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

JUL 29 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/27/11
JUL 27 2011

37
BARBARA JAFFE J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

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 5

-----X
MARIA YULFO,

Plaintiff,

-against-

Index No. 112866/08
Motion Date: 12/6/10
Motion Seq. No.: 001
Calendar No.: 124

DECISION & ORDER

BOVIS LEND LEASE, INC., BOVIS LEND LEASE
LMB, INC., LOWER MANHATTAN DEVELOPMENT
CORPORATION, NEW YORK STATE URBAN
DEVELOPMENT CORPORATION d/b/a EMPIRE
STATE DEVELOPMENT CORP., and THE CITY
OF NEW YORK,

Defendants.

-----X
BOVIS LEND LEASE LMB, INC., LOWER
MANHATTAN DEVELOPMENT CORPORATION
and EMPIRE STATE DEVELOPMENT
CORPORATION,

Third-Party Plaintiffs,

-against-

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THE JOHN GALT CORP.,

Third-Party Defendant.

-----X
BARBARA JAFFE, JSC:

For plaintiff:
Larry Dorman, Esq.
Larry Dorman, P.C.
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Astoria, NY 11106
718-274-2700

For Bovis, LMDC, NYSUDC:
Erica P. Anderson, Esq.
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By notice of motion dated December 6, 2010, plaintiff moves pursuant to CPLR 3212 for
an order granting her summary judgment on liability pursuant to Labor Law § 240(1) as against
Bovis Lend Lease, Inc., Bovis Lead Lease LMB, Inc. (collectively, Bovis), Lower Manhattan

Development Corporation (LMDC), and the New York State Urban Development Corporation d/b/a Empire State Development Corp. (NYSUDC) (collectively, defendants), who oppose.

I. BACKGROUND

On July 17, 2007, while working on the fifth floor of 130 Liberty Street, plaintiff allegedly sustained serious physical injuries when a scaffold collapsed and struck her on the back. Each scaffold had three ten-foot high levels. (Affirmation of Larry Dorman, Esq., dated Nov. 23, 2010 [Dorman Aff.]).

On or about September 16, 2008, plaintiff served on defendants a summons and complaint, alleging that she was seriously injured as a result of their negligence, recklessness, and carelessness. (*Id.*, Exh. A). On or about November 21, 2008, defendants served their answer. (*Id.*, Exh. B).

On or about June 12, 2009, plaintiff served defendants with a bill of particulars, and on or about May 6, 2010, a supplemental bill of particulars. (*Id.*, Exh. D). At a deposition held on November 23, 2010, plaintiff testified that while working on the fifth floor, she was struck on her back, left hand, and left shoulder when a scaffold collapsed on her. (*Id.*, Exh. E).

II. CONTENTIONS

Plaintiff contends that defendants were negligent in the care and maintenance of the premises and failed to provide safe work conditions, thereby leading to her injuries. (Dorman Aff.).

In opposition, defendants argue that plaintiff was not subjected to an elevated risk, as the scaffold was not being hoisted or secured at the time of the accident. (Affirmation of Erica P. Anderson, Esq., dated Jan. 21, 2011 [Anderson Aff.]).

In reply, plaintiff maintains that the collapse of scaffolding is *prima facie* evidence that defendants are liable for her injuries and that they violated Labor Law § 240(1). She also argues that they fail to raise any issue of fact. (Reply Affirmation, dated Feb. 9, 2011).

III. ANALYSIS

The proponent of a summary judgment motion must demonstrate, *prima facie*, entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If this burden is not met, summary judgment must be denied, regardless of the sufficiency of the opposition papers. (*Winegrad*, 64 NY2d 851, 853).

When the moving party has demonstrated entitlement to summary judgment, the burden of proof shifts to the opposing party, which must demonstrate by admissible evidence the existence of a factual issue requiring trial. (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman*, 49 NY2d 557, 562). The opposing party must “lay bare” its evidence (*Silbertstein, Awad & Miklos v Carson*, 304 AD2d 817, 818 [1st Dept 2003]); “unsubstantiated allegations or assertions are insufficient.” (*Zuckerman*, 49 NY2d 557, 562).

Pursuant to Labor Law § 240(1):

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repair, 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, hangars, 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 statute, which is liberally construed (*Koenig v Patrick Constr. Corp.*, 298 NY 313, 319 [1948]; *Quigley v Thatcher*, 207 NY 66, 68 [1912]), imposes absolute liability on building

owners and their agents for injuries occurring at the workplace (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]; *Zimmer v Chemung County Performing Arts, Inc.*, 65 NY2d 513 [1985]). “The policy purpose underlying Labor Law Section § 240 is to impose a “flat and unvarying” duty upon the owner and contractor despite any contributing culpability on the part of the worker.” (*Bland v Manocherian*, 66 NY2d 452, 461 [1985]; *Zimmer*, 65 NY2d 513, 521).

Moreover, Labor Law § 240(1) “was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person.” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009], quoting *Ross*, 81 NY2d at 501; see also *Arnaud v 140 Edgecomb LLC*, 83 AD3d 507, 508 [1st Dept 2011]). Additionally, there is no minimum height differential for a violation to occur, nor does it matter whether the injured party was on or under the device that caused the injury. (*Thompson v St. Charles Condominium*, 303 AD2d 152, 154 [1st Dept 2003]).

In order to establish defendants’ liability, whether or not the owner or general contractor was present or controlled the worksite, plaintiff need only prove that her injuries resulted from a statutory violation (*Rocovich v Consol. Edison Co.*, 78 NY2d 509 [1991]), and the collapse of a scaffold constitutes *prima facie* evidence of a violation of Labor Law § 240(1) (*Schron v New York Univ.*, 14 AD3d 468 [1st Dept 2005]; *Thompson*, 303 AD2d at 154; *Aragon v 233 West 21st St., Inc.*, 201 AD2d 353 [1st Dept 1994]).

Here, it is undisputed that plaintiff’s injury was a direct result of the collapsed scaffold. That plaintiff stood on the same level upon which the scaffold sat when it collapsed is immaterial, as it fell due to the force of gravity. (*Thompson*, 303 AD2d at 154).

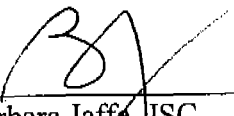
IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment against Bovis Lend Lease, Inc., Bovis Lend Lease LMB, Inc., Lower Manhattan Development Corporation, and the New York State Urban Development Corporation d/b/a Empire State Development Corp. is granted as to liability only; and it is further

ORDERED, that an assessment of damages against defendants is directed to be held at the time of trial.

ENTER:


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: July 27, 2011
New York, New York

' JUL 27 2011

FILED

JUL 29 2011

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