

Kuras v Cornell Univ.
2014 NY Slip Op 30258(U)
January 22, 2014
Supreme Court, New York County
Docket Number: 108537/11
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

GREGORY KURAS,

Plaintiff,

INDEX NO. 108537/11

-against-

MOTION SEQ. NO. 001

CORNELL UNIVERSITY, TISHMAN
CONSTRUCTION CORPORATION, TISHMAN
CONSTRUCTION CORPORATION OF MANHATTAN
and TISHMAN CONSTRUCTION CORPORATION
OF NEW YORK.,

Defendants.

The following papers were read on this motion by plaintiff for summary judgment on Labor Law 240(1).

FILED

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits EXHIBITS .D 2014

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

**NEW YORK
COUNTY CLERK'S OFFICE**

Cross-Motion: Yes No

This is a personal injury action brought by Gregory Kuras (plaintiff) to recover damages for injuries allegedly sustained on November 4, 2010, when plaintiff was injured while climbing down a fixed six (6) foot wooden A-frame ladder at the construction site known as Weil Cornell Medical Center located at 1305 York Avenue, New York. Plaintiff was a union steamfitter employed by Fresh Meadow Mechanical, a subcontractor at the job site. He testified that he had previously used the same A-frame ladder in question before without an incident. Plaintiff stated that the floor area was in good condition and lighting was good on the date of his accident. Plaintiff further testified that he opened and placed the ladder securely, locked it into place, ascended the ladder and was replacing flexible duct work above, but as he descended the ladder, from the third to the second rung from the bottom, the ladder shifted without

warning, slipping from underneath him, causing him to fall and sustain injuries. Plaintiff was alone for "2 to 5 minutes" when he descended the ladder at the time of the accident (see plaintiff's deposition p. 45). Plaintiff asserts that the feet of the ladder were worn and did not have any rubber or other slip protection on them.

Plaintiff then commenced this action by the filing of the Summons and Verified Complaint on July 25, 2011 asserting claims against Tishman Construction Corporation of New York (Tishman), as the general contractor and Cornell University (Cornell), as the owner (collectively, defendants) for violations of Labor Law § 240(1). Defendants filed a Verified Answer to plaintiff's complaint, issue was joined, discovery in this matter is complete and the Note of Issue has been filed. There is no dispute that the defendants Cornell and Tishman are the owner and general manager, respectively, at the construction site. Defendants are in opposition to plaintiff's motion.

STANDARD

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Meridian Management Corp. v Cristi Cleaning Service Corp.*, 70 AD3d 508, 510 [1st Dept 2010], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (*Ostrov v Rozbruch*, 91 AD3d 147, 152 [1st Dept 2012], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212[b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of

the opposing papers (see *Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, “the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]).

When deciding a summary judgment motion, the Court’s role is solely to determine if any triable issues exist, not to determine the merits of any such issues (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]; CPLR 3212[b]).

DISCUSSION

Labor Law § 240(1) imposes absolute liability upon owners and general contractors who fail to fulfill their statutory obligation to furnish or erect safety devices adequate to give proper protection to a worker who sustains gravity-related injuries proximately caused by such failure (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]; *Bland v Manocherian*, 66 NY2d 452 [1985]). Specifically, Labor Law § 240(1), also known as the Scaffold Law, provides, in relevant part:

“All contractors and owners and their agents ... in the erection, demolition, repairing, 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, hangers, 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” (*id.*).

The statute was enacted 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 v Curtis–Palmer Hydro–Elec. Co.*, 81 NY2d 494, 501 [1993]). In order to accomplish its goal, the statute places responsibility for safety practices and safety devices on owners, contractors, and their agents, who are “best situated to bear that responsibility” (*Ross*, 81 NY2d at 500). The statute is to be liberally construed to achieve this purpose (*see Lombardi v Stout*, 80 NY2d 290, 296 [1992]).

For liability to attach under Labor Law § 240(1), “the owner or contractor must breach the statutory duty . . . to provide a worker with adequate safety devices, and this breach must proximately cause the worker’s injuries” (*Kerrigan v TDX Constr. Corp.*, 108 AD3d 468, 471 [1st Dept 2013], quoting *Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]). Thus, to prevail on this claim, plaintiff must show (1) a violation of the statute (i.e., that defendants breached their nondelegable duty to furnish or erect, or cause to be furnished or erected, safety devices in a manner that gave him proper protection from gravity-related risks); and (2) that the statutory violation was a contributing or proximate cause of the injuries sustained (*see Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]; *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-289 [2003]). Upon making such a showing, “[t]he burden then shifts to defendant[s] to establish that ‘there was no statutory violation and that plaintiff’s own acts and omissions were the sole cause of the accident’” (*Kosavick v Tishman Constr. Corp. of N.Y.*, 50 AD3d 287, 288 [1st Dept 2008], quoting *Blake*, 1 NY3d at 289 n. 8). “If defendant[s]’ assertions in response fail to raise a fact question as to these issues, the plaintiff must be accorded summary judgment” (*Blake*, 1 NY3d at 289 n.. 8). Contributory or comparative negligence is not a defense to absolute liability under the statute (*Jamison v GSL Enters.*, 274

AD2d 356 [1st Dept 2000]; *Johnson v Riggio Realty Corp.*, 153 AD2d 485 [1st Dept 1989]).

Labor Law § 240(1) imposes liability regardless of any contributory or comparative negligence on the part of plaintiff (see *Romanczuk v Metropolitan Ins. & Annuity Co.*, 72 AD3d 592 [1st Dept 2010]). Thus, where a violation of the statute is a contributing cause of an accident, any negligence on the part of the plaintiff cannot be deemed solely to blame for it, and cannot defeat the plaintiff's claim (*Blake*, 1 NY3d 280, 290; *Ernish v City of New York*, 2 AD3d 256, 257 [1st Dept 2003]).

Plaintiff argues in support of his motion that he has established that he was subjected to an elevation-related risk while working and that the fixed ladder that he was using was itself unsafe and failed while he descended from the third rung from the bottom. Defendants proffer in opposition that plaintiff was the sole proximate cause of his injuries because: (1) the fixed ladder was not the proper tool for elevation as there were man lifts available and an 8 foot ladder available for plaintiff's use; (2) There is no evidence that the ladder failed; and (3) plaintiff violated existing safety rules not use a ladder alone, without someone holding the ladder as he used it. Thus, defendants assert that plaintiff had a proper elevation and fall protection system available, which he improperly used, and therefore they are not liable.

The Court finds that there are triable issues of fact as to whether there was a proper fall protection system in place for the ladder, and whether plaintiff was the sole proximate cause of his accident by failing to use the fall protection system properly. As such, plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim is denied.

CONCLUSION

Accordingly, it is

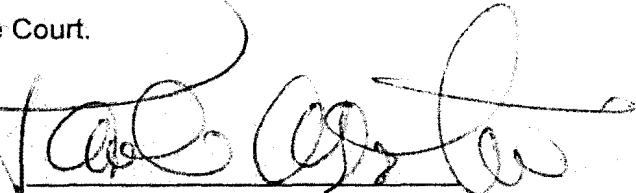
ORDERED that plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim is denied; and it is further,

ORDERED that defendants are directed to serve a copy of this Order with Notice of

Entry upon the plaintiff.

This constitutes the Decision and Order of the Court.

Dated: 1/22/14


PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

FILED
JAN 30 2014
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