

Padilla v 47 Dean St. Holdings, LLC

2014 NY Slip Op 31059(U)

April 25, 2014

Sup Ct, New York County

Docket Number: 105180/09

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

SAGRADO PADILLA,
Plaintiff,

- v -

47 DEAN STREET HOLDINGS, LLC and ERIN
CONSTRUCTION & DEVELOPMENT CO., INC.,
Defendants.

Index No.: 105180/09

Motion Date: 05/24/13

Motion Seq. No.: 02

Motion Cal. No.: _____

The following papers, numbered 1 to 5 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits
Answering Affidavits - Exhibits
Replying Affidavits - Exhibits

FILED

PAPERS NUMBERED

1, 2

3, 4

5

APR 28 2014

Cross-Motion: Yes No

COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers,

Motion Sequence Nos. 2 and 3 are consolidated herein for purposes of decision. Plaintiff moves for partial summary judgment upon the cause of action for violation of Labor Law 240 (1) (Motion Sequence No. 2). Defendants move for summary judgment dismissing plaintiff's causes of action for negligence and violation of Labor Law Sections 200 and 241(6) (Motion Sequence No. 3).

Defendant 47 Dean Street was the owner of the premises and Erin Construction was the general contractor. Plaintiff was

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

employed by non-party subcontractor Tri-State Renovations, Inc.

Plaintiff's affidavit in support of the motion states that on the date of the accident plaintiff was laying concrete cement blocks to build a wall for a shaftway inside defendants' building. Plaintiff was working on the third floor and was standing atop a pipe metal scaffold. The accident occurred when the wall plaintiff was constructing collapsed causing plaintiff to lose his balance and fall from the scaffold because of a load of cement he had on his shoulder that he was attempting to apply to the wall. Plaintiff fell through an opening in the shaftway from a height of between 10 to 40 feet and landed in the basement floor below.

Plaintiff's uncontroverted deposition testimony is that the scaffold had no safety railings and he was not provided with a harness or any other safety equipment to protect against height-related hazards. Although the project manager for Erin stated that he required workers to wear harnesses, he also stated that Erin did not provides harnesses or other safety devices. As the Court has stated in a case with analogous facts

Labor Law § 240 (1) imposes a nondelegable duty upon the owner and contractor to supply necessary safety devices for workers at an elevation, to protect them from falling. A violation of this duty results in absolute liability where the violation was the proximate cause of the accident. Plaintiffs made a prima facie showing that plaintiff [] was not provided with the adequate protection required, and nothing in defendants' submissions created material issues of fact in this regard. There is no dispute that the six-foot-high,

manually propelled scaffold, which plaintiff was directed to use in order to plaster a 15-foot-high ceiling, had no side rails, and no other protective device was provided to protect him from falling off the sides. There is no issue of fact as to whether the defect or insufficiency in the provided protective devices constituted a proximate cause of plaintiff's accident. A lack of certainty as to exactly what preceded plaintiff's fall to the floor below does not create a material issue of fact here as to proximate cause. It does not matter whether plaintiff's fall was the result of the scaffold falling over, or its tipping, or was due to plaintiff misstepping off its side. In any of those circumstances, either defective or inadequate protective devices constituted a proximate cause of the accident.

Vergara v SS 133 W. 21, LLC, 21 AD3d 279 (1st Dept 2005)

(citations omitted, emphasis added); see John v Baharestani, 281 AD2d 114, 118 (1st Dept 2001) ("plaintiff, in trying to throw a plank onto the forklift, lost his balance and fell three stories to the ground . . . defendants . . . [are] liable under Labor Law §240 (1) because plaintiff's injuries arose out of a fall from an unprotected and unguarded opening in the building").

Plaintiff has therefore established defendants' prima facie violation of Labor Law 240 (1) based upon the failure to provide safety devices to protect against elevation-related hazards. Defendants' argument, that plaintiff was the sole proximate cause of the accident because he leaned over to apply cement to the wall is based on mere speculation in their attorney's affidavit and in any event is insufficient to raise an issue of fact where there was an absence of safety devices. See Valensisi v Greens at Half Hollow, LLC, 33 AD3d 693, 696 (2d Dept 2006) ("where, as

here, a violation of Labor Law § 240 (1) is a proximate cause of an accident, the worker's conduct cannot be deemed solely to blame for it"); Ramirez v Metro. Transp. Auth., 106 AD3d 799, 800 (2d Dept 2013). Thus the court shall grant plaintiff's motion for summary judgment on the cause of action for violation of Labor Law 240 (1).

With respect to defendants' motion for summary judgment as to plaintiff's negligence and Labor Law 200 & 241(6) claims, the court shall deny summary judgment except as to the Labor Law 200 and negligence claims against 47 Dean Street. Defendants have failed to carry their burden of showing prima facie that Industrial Code §23-1.7 (b) (1) concerning hazardous openings was complied with. See Reavely v Yonkers Raceway Programs, Inc., 88 AD3d 561, 565 (1st Dept 2011) (claim of worker injured while responding to the sensation of actually falling into the trench with no railing not subject to summary dismissal because Industrial Code §23-1.7(b) requires that every hazardous opening be covered or have a safety railing).

With respect to the Labor Law 200 and the negligence claim as against Erin Construction, the law is that "A defendant has 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. The right to generally supervise the work, stop the contractor's work if a

safety violation is noted, or to ensure compliance with safety regulations and contract specifications is insufficient to impose liability under Labor Law §200 or for common-law negligence."

Torres v Perry St. Dev. Corp., 104 AD3d 672, 676 [2d Dept 2013].

Here, the testimony of Erin's deponent was that not only was he in charge of safety at the site and had the authority to correct any unsafe practices, he was aware of how the work was being performed and also held meetings detailing the methods of the work. Thus there are issues of fact precluding summary disposition as concerns whether Erin exercised sufficient control over plaintiff's work for purposes of Labor Law 200 liability.

With respect to 47 Dean Street, however, there is no evidence that it exercised the necessary control for liability to be imposed under Labor Law 200 or in negligence and therefore those claims shall be dismissed against that entity.

Accordingly, it is

ORDERED that plaintiff's motion for partial summary judgment against the defendants on the claim for violations of Labor Law 240 (1) is GRANTED; and it is further

ORDERED that the parties are directed to attend any previously scheduled conferences in the Mediation Part and if the case is not settled within the Part the parties are directed to appear for a pre-trial conference in IAS Part 59, Room 103, 71

Thomas Street, New York, NY 10013 on June 17, 2014 at 2:30 P.M.
to schedule a date for trial of this action.

This is the decision and order of the court.

Dated: April 25, 2014

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

FILED

APR 28 2014

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NEW YORK