Dorador v Trump Palace Condominium
2014 NY Slip Op 31154(U)
April 29, 2014
Supreme Court, New York County
Docket Number: 101992/2009
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

IVAN DORADOR,

Plaintiff,

-against-

TRUMP PALACE CONDOMINIUM,

Defendant.

INDEX NO. 101992/2009
MOTION DATE 03-19-2014
MOTION SEQ. NO. 007
MOTION CAL. NO.

TRUMP PALACE CONDOMINIUM

Third-Party Plaintiff,

-against-

AZTEC METAL MAINTENANCE CORP. and
SIGNATURE METAL AND MARBLE MAINTENANCE, LLC.,

Third-Party Defendants.

THIRD-PARTY INDEX# INDEX NO. 590446/2009

TRUMP PALACE CONDOMINIUM

Second Third-Party Plaintiff,

-against-

R&J COMPANY, LLC and THE GREAT ATLANTIC & PACIFIC
TEA COMPANY, INC., t/a THE FOOD EMPORIUM, INC.,

Second Third-Party Defendants.

SECOND THIRD-PARTY INDEX# INDEX NO. 590297/2010

The following papers, numbered 1 to 9 were read on this motion for Partial Summary Judgment.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-4,
Answering Affidavits — Exhibits	5-6, 7-8
Replying Affidavits	9

Cross-Motion: X Yes ☐ No

Upon a reading of the foregoing cited papers, plaintiff's motion for partial Summary Judgment on the issue of liability under Labor Law §240(1) is granted. Defendant-Trump's motion for summary judgment on the issue of liability under Labor Law §240(1) is denied. Defendant-Trump's motion for summary judgment on the issue of liability under Labor Law §200 and §241(6) is granted.

[* 2]

Plaintiff brings this action to recover for personal injuries sustained on April 2, 2007 at 200 East 69th Street, New York, New York (herein Premises), while in the course of his employment with Aztec Metal Maintenance Corp. Cleaning (herein Aztec). Plaintiff was aboard a six-foot aluminum rolling scaffold when the wooden board that made up the floor of the scaffold slid backwards causing plaintiff to fall to the ground and sustain injuries.

In February of 2009, plaintiff brought an action against Trump Palace Condominium (herein Trump), the owner of the Premises, under New York Labor Law sections 200, 240(1), and 241(6). Trump commenced a Third-Party action against plaintiff's employer Aztec, and against Signature Metal and Marble Maintenance, LLC, who Trump alleges is the successor-in-interest to Aztec and assumed all of the liabilities of Aztec. Trump commenced a Second Third-Party action against R&J Company, LLC, the owner of a commercial unit at the Premises, and The Great Atlantic & Pacific Tea Company, Inc (A&P). Trump seeks contribution and indemnification in both Third- Party actions.

On December 12, 2010 A&P filed for Bankruptcy and on January 3, 2011 an order was issued staying this action due to the bankruptcy proceedings. On February 27, 2012, A&P obtained a limited discharge and permanent injunction from the Bankruptcy Court. In an Order dated April 28, 2014, this court severed the Second Third-Party action against A&P.

Plaintiff now moves for partial summary judgment pursuant to CPLR §3212 on the issue of liability against Trump on the Labor Law §240(1) claim. Trump opposes the motion and Cross-Motions for summary judgment on the Labor Law §200, §240(1), and §241(6) claims on the issue of liability. Plaintiff makes no argument opposing Trump's motion as to the §241(6) claim and concedes the §200 claim. At issue is liability under Labor Law §240(1).

In support this motion, plaintiff annexes the pleadings, the Worker Compensation Board' injury report taken on April 10, 2007, plaintiff's EBT, the EBT of the Premises' property manager at the time of the incident, William Fitcher, the Premises' Condominium Offering Plan, and the contract between Trump and Aztec.

Plaintiff argues that at the time of the incident, Trump violated Labor Law §240(1) because plaintiff was working from an elevated height from a scaffold and was not provided safety equipment to prevent the slipping of the scaffold or to prevent plaintiff's fall. Plaintiff contends the scaffold owned by Aztec was improperly secured, causing the plaintiff's fall. Plaintiff alleges that because of these circumstances, it is a protected person under Labor Law §240(1) and that Trump and Aztec are strictly liable as owner of the Premises and contractor for the owner.

[* 3]

In opposition to this motion and in support of its Cross-Motion, Trump annexes an agreement between Trump and A&P, the bill of sale and an assumption and agreement between Aztec Metal Maintenance Corp. and Signature Metal and Marble Maintenance, LLC. Trump argues plaintiff was engaged in routine maintenance, not in "cleaning," at the time of the incident and is therefore not covered under Labor Law §240(1). Trump alleges that plaintiff's work at the time of the incident did not require specialized equipment, nor was it related to any construction, renovation, or repair project. Trump contends that plaintiff's fall from approximately six to seven feet off of the ground is not a significant elevation risk under Labor Law §240(1).

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact.(Klein V. City of New York, 89 NY2d 833; Ayotte V. Gervasio, 81 NY2d 1062, Alvarez v. Prospect Hospital, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues(Kaufman V. Silver, 90 NY2d 204; Amatulli V. Delhi Constr. Corp.,77 NY2d 525; Iselin & Co. V. Mann Judd Landau, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party(SSBS Realty Corp. V. Public Service Mut. Ins. Co., 253 AD2d 583; Martin V. Briggs, 235 192).

Labor Law §240(1) provides in part that all contractors, owners, and their agents that contract for work in the cleaning of a building or structure shall furnish scaffolding and other devices that shall be constructed, placed, and operated in order to give proper protection to employee undertaking such work. Labor Law §240(1) imposes strict liability on "owners, contractors, and their agents" when they fail to provide adequate safety equipment and that failure causes a worker's injury in a gravity-related accident (Fabrizi v. 1095 Ave. Of the Ams., L.L.C., 2014 NY Slip Op 1206, 2014 N.Y. Lexis 204 *10 [2014]). Labor Law §240(1) "is to be construed as liberally as may be for the accomplishment of the purpose for which is was thus framed" (Rocovich v. Consolidated Edison Co., 78 N.Y.2d 509, 577 N.Y.S.2d 219, 583 N.E.2d 932 at 934 [1991] citing to, Quigley v. Thatcher, 207 N.Y. 66, 100 N.E. 596 [1912]). "The intent of the statute [Labor Law §240(1)] was to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts" (Prats v. Port Auth. Of N.Y. & N.J., 100 N.Y.2d 878 at 882, 800 N.E.2d 351, 768 N.Y.S.2d 178 [2003]).

Labor Law §240(1) applies to commercial cleaning that is not part of construction, demolition, or repair (Broggy v Rockefeller Group, Inc., 8 N.Y.3d 675, 870 N.E.2d 1144, 839 N.Y.S.2d 714 [2007]). "Cleaning is separately listed as a covered activity and had been "expressly afforded protection under section 240 (1) whether or not incidental to any other enumerated activity" (Soto v. J. Crew Inc., 21 N.Y.3d 562 at 568, 998 N.E.2d 1045, 976 N.Y.S.2d 421 [2013]), citing to Bauer v Female Academy of Sacred Heart, 97 N.Y.2d 445, 767 N.E.2d 1136, 741

N.Y.S.2d 491 [2002]). An activity cannot be characterized as cleaning under Labor Law §240(1) if the task: "(1) is routine, in the sense that it is the type of job that occurs on a daily, weekly or other relatively-frequent and recurring basis as part of the ordinary maintenance and care of commercial premises; (2) requires neither specialized equipment or expertise, nor the unusual deployment of labor; (3) generally involves insignificant elevation risks comparable to those inherent in typical domestic or household cleaning; and (4) in light of the core purpose of Labor Law § 240 (1) to protect construction workers, is unrelated to any ongoing construction, renovation, painting, alteration or repair project" (Id. At 568). "The presence or absence of any one is not necessarily dispositive if, viewed in totality, the remaining considerations militate in favor of placing the task in one category or the other" (Id. at 569).

Here, plaintiff was engaged in refinishing the brass metal bands on the exterior of the Premises, not maintenance of the brass metal bands. At the time of his fall, plaintiff was masking the windows before applying the chemicals used to remove the lacquer. Both Plaintiff and Fitcher's EBTs establish that Aztec performed monthly and quarterly maintenance on the brass metal bands. Plaintiff testified that on the date of the accident, the Aztec employees were not there for monthly or quarterly maintenance, rather "something totally different" that included taking "off the lacquer and polish it, clean the metal, and then recoat it again" (Plaintiff's EBT 86-87).

Plaintiff was required to use a scaffold due to the elevation of the brass metal bands he was going to refinish. Plaintiff asserts that he received various trainings on how to build and operate scaffolds and that as part of his union membership, he is required to attend new scaffold trainings every four years. (Plaintiff's EBT 72-73).

The core purpose of Labor Law § 240(1) is to protect workers from specialized hazards presented by gravity-related risks, even while performing duties ancillary to those acts. At the time of the accident, the scaffold was approximately six to seven feet off of the ground and plaintiff was masking the windows prior to commencing the refinishing of the bass metal bands. Reviewing all of the these factors, this court holds that plaintiff's activities on April 2, 2007 constitutes "cleaning" under New York Labor Law §240(1).

Accordingly, it is ORDERED that plaintiff's motion for partial Summary Judgment on the issue of liability under Labor Law § 240(1) is granted, and it is further,

ORDERED, that plaintiff is granted Judgment on liability on the Labor Law §240(1) Cause of Action, and it is further,

ORDERED, that Trump's Cross-Motion on the issue of liability under Labor Law § 240(1) is denied, and it is further,

ORDERED, that Trump's Cross-Motion on the issue of liability under Labor Law §200 and §241(6) is granted, and it is further,

ORDERED, that the Causes of Action on Labor Law §200 and §241(6) are Severed and Dismissed, and it is further,

ORDERED that the clerk of Court enter judgment accordingly.

MANUEL J. MENDEZ
J.S.C.

Enter:

Dated: April 29, 2014

MANUEL J. MENDEZ
J.S.C.

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE