

**Qiu-Chai Jiang v 126 Merrick Realty LLC**

2014 NY Slip Op 33996(U)

September 15, 2014

Supreme Court, New York County

Docket Number: 114573/11

Judge: Donna M. Mills

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----  
**QIU-CHAI JIANG,**

**INDEX NO.  
114573/11**

**Plaintiff,**

**- against -**

**126 MERRICK REALTY LLC, et al.,  
Defendants.**

**DECISION/ORDER**

-----  
**P & T LINDEN, LLC,**

**Third-Party Plaintiff,**

**- against -**

**RONG HANG METAL WORK, INC.,**

**Third-Party Defendant.**

**FILED**

**SEP 19 2014**

**COUNTY CLERK'S OFFICE  
NEW YORK**

**Donna M. Mills, J.:**

In this labor law action, plaintiff Qiu-Chai Jiang, moves for an order pursuant to CPLR § 3212 granting partial summary judgment against the defendant P & T Linden LLC ("P & T Linden") pursuant to Labor Law § 240(1) on the issue of liability. P & T Linden opposes the motion on the grounds that the motion is premature and that there are triable issues of fact.

This is an action to recover damages for injuries sustained by the plaintiff on May 4, 2011 at approximately 11:00 A.M., while in the course of his employment as a laborer at a building site located at 114-04 Sutphin Blvd., Jamaica, New York. P & T Linden is the owner of the subject property. At the time of his accident, plaintiff testified at his deposition that he was performing work at the subject premises for his employer Rong Hang Metal Work, Inc. The work involved replacing a metal gate located at the premises. Upon arriving at the location, plaintiff testified that to perform the work, he used a six foot A-frame ladder;

that there were no other elevating devices available for use at the work site that were suitable for performing the job in question; that no one was holding the ladder at the time of the occurrence; that no fall protection equipment of any kind had been provided to the plaintiff, and that the ladder upon which he was standing suddenly fell over causing him to fall to the floor below.

The deposition testimony of plaintiff's co-worker Guo Qi Zheng was held on July 10, 2014. Mr. Zheng was working alongside plaintiff on the date of the accident. Mr. Zheng's testimony corroborated the plaintiff's description of the incident.

Plaintiff maintains that the instant motion should be granted on the grounds that P & T Linden is liable due to the violation of Labor Law § 240(1) in conjunction with its status as the admitted owner of the premises in question.

CPLR§ 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (*Vamattam v Thomas*, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial,

the case should be summarily decided (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

Labor Law § 240(1) requires contractors, owners and their agents to provide safety devices, such as hoists, that are “so constructed, placed and operated as to give proper protection to a person ... employed” as a laborer “in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.” Liability under the statute extends to cases involving falling objects and falling workers, and “requires a showing that safety devices like those enumerated in the statute were absent, inadequate or defective, and that this was a proximate cause of the object's fall, i.e., for the gravity-related injury” (*Jock v. Landmark Healthcare Facilities, LLC*, 62 A.D.3d 1070, 1071, 879 N.Y.S.2d 227 [2009]; see *Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 603–604, 895 N.Y.S.2d 279, 922 N.E.2d 865 [2009]; *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500–501, 601 N.Y.S.2d 49, 618 N.E.2d 82 [1993] ).

In evaluating a claim under Labor Law § 240(1), “the single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). Here, plaintiff established prima facie entitlement to judgment as a matter of law through his testimony and his co-worker's testimony, that when the ladder on which he was working shifted, he fell, causing him to sustain injury.

To rebut plaintiff's prima facie case, defendant asserts that plaintiff may have been the sole proximate cause of his injury. Defendant contends that this motion is premature as discovery is not complete, and would like to depose the owner of plaintiff's former employer to explore this theory. Defendant has adduced no evidence to support their argument that plaintiff's conduct may be the sole proximate cause of his accident.

Contrary to the defendant's contention, the plaintiff's motion is not premature.

The defendant failed to demonstrate how further discovery may reveal or lead to relevant evidence or that facts essential to oppose the motion were exclusively within the knowledge or control of the plaintiff ( see *Sealy v. Clifton, LLC*, 106 A.D.3d 981, 983, 966 N.Y.S.2d 454; *Norero v. 99-105 Third Ave. Realty, LLC*, 96 A.D.3d 727, 728, 945 N.Y.S.2d 720). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion ( see *Cajas-Romero v. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559; *Buchinger v. Jazz Leasing Corp.*, 95 A.D.3d 1053, 944 N.Y.S.2d 316; *Seawright v. Port Auth. of N.Y. & N.J.*, 90 A.D.3d 1017, 937 N.Y.S.2d 234).

For the foregoing reasons, it is hereby

ORDERED that plaintiff Qiu-Chai Jiang's motion, pursuant to CPLR 3212, for partial summary judgment in his favor on the Labor Law § 240(1) cause of action against defendant P & T Linden, LLC is granted; and it is further

ORDERED that remainder of the action shall continue.

Dated: 9/15/14

So Ordered  
  
 \_\_\_\_\_

Donna M. Mills, J.S.C.  
**DONNA M. MILLS, J.S.C.**

**FILED**  
 SEP 19 2014  
 COUNTY CLERK'S OFFICE  
 NEW YORK