

Gomez v 565 W. 125th St. Hous. Dev. Fund Corp.

2015 NY Slip Op 31975(U)

October 23, 2015

Supreme Court, New York County

Docket Number: 150987/2013

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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MANUEL GOMEZ,

Plaintiff,

Index No. 150987/2013

-against-

DECISION/ORDER

565 WEST 125TH STREET HOUSING DEVELOPMENT
FUND CORPORATION, C.F.L. MANAGEMENT
COMPANY, LLC, LEONARDO JARAMILLO,
individually and d/b/a LJ CONSTRUCTIONS,
2000 LOCKS & GATES CORP. and IVEL RODRIGUEZ
d/b/a 2000 LOCKS & GATES,

Defendants.

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565 WEST 125TH STREET HOUSING DEVELOPMENT
FUND CORPORATION and C.F.L. MANAGEMENT
COMPANY, LLC,

Third-Party Plaintiffs,

-against-

2000 LOCKS & GATES CORP. and IVEL RODRIGUEZ
d/b/a 2000 LOCKS & GATES,

Third-Party Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Exhibits.....	<u>3</u>

Plaintiff commenced the instant action against defendants seeking to recover damages
stemming from injuries plaintiff allegedly sustained when he fell from an unsecured wooden

board at a construction site. Plaintiff now moves for an Order pursuant to CPLR § 3212 for partial summary judgment on the issue of liability pursuant to Labor Law § 240(1). Defendants 565 West 125th Street Housing Development Fund Corporation and C.F.L. Management Company, LLC, oppose the motion. For the reasons set forth below, plaintiff's motion is denied.

The relevant facts are as follows. Plaintiff Manuel Gomez was a laborer employed by defendant 2000 Locks & Gates Corp. who was contracted to construct and paint a platform on the first floor exterior of 565 West 125th Street. The apartment building at 565 West 125th Street is owned and managed by defendant 565 West 125th Street Housing Development Fund Corporation.

Plaintiff alleges that, on September 24, 2012, while he was constructing the platform with defendant Ivel Rodriguez and Manuel Reyes, whose whereabouts are unknown, he stepped onto an unsecured wooden board and then fell through the platform, which did not have a solid floor. Specifically, plaintiff testified as follows. Plaintiff, Ivel Rodriguez, and Manuel Reyes were constructing a platform on the first floor exterior of 565 West 125th Street, to be used as a holding area for residents' waste and recycling. A flight of stairs was located adjacent to the platform. The platform was to consist of a metal base and three metal panels. One of the metal panels had been placed in its permanent position on the base, but two of the panels had not yet been placed, leaving a large gap in the platform. There was no safety netting in place beneath the platform, and the laborers did not wear any safety equipment. A wooden board had been placed on the base to assist the laborers in measuring and positioning the remaining metal panels. The board was not secured to the base in any way. Plaintiff testified that he stepped onto the metal panel and then onto the board to retrieve a measuring tape left on the board. When he

stepped onto the board, he fell through the platform base ten to eleven feet to the ground, sustaining injuries.

In or around February 2013, plaintiff commenced the instant action alleging violations of Labor Law §§ 200, 240(1), and 241(6), and of Industrial Code §§ 23-1.5, 23-1.7, 23-1.15, 23-1.16, 23.17, 23-1.21, 23-1.32, and 23-1.33, among other administrative rules. Plaintiff now moves for summary judgment as to liability on his Labor Law § 240(1) claim.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Wayburn v. Madison Land Ltd. Partnership*, 282 A.D.2d 301 (1st Dept 2001). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a prima facie right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

Pursuant to Labor Law § 240(1),

All contractors and owners and their agents . . . who contract for but do not control the work, 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.

Labor Law § 240(1) was enacted to protect workers from hazards related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of materials or load being hoisted or secured. *See Rocovich v.*

