

Hirrel v 384 Bridge St. LLC

2015 NY Slip Op 31978(U)

October 23, 2015

Supreme Court, New York County

Docket Number: 156040/13

Judge: Cynthia S. Kern

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

-----X
SEAN HIRREL,

Plaintiff,

Index No. 156040/13

-against-

DECISION/ORDER

384 BRIDGE STREET LLC and CAULDWELL-
WINGATE COMPANY, LLC,

Defendants.

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

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff Sean Hirrel commenced the instant action against defendants 384 Bridge Street LLC (“384 Bridge”) and Cauldwell-Wingate Company, LLC (“Cauldwell”) seeking to recover for injuries he allegedly sustained while working at a construction site. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting him summary judgment on his cause of action alleging a violation of New York Labor Law (“Labor Law”) § 240(1). For the reasons set forth below, plaintiff’s motion is granted.

The relevant facts are as follows. On or about February 15, 2013, plaintiff, employed by Pinnacle Industries II (“Pinnacle”), was performing iron work at a construction site (the “Project”) on the 30th floor of a building located at 388 Bridge Street, Brooklyn, New York (the “subject premises”). Plaintiff alleges that on that date, he was injured when an unsecured cast

iron pipe fell approximately ten to fifteen feet and struck plaintiff in the neck/shoulder area (the “accident”). Specifically, plaintiff testified that at the time of the accident, he was crouched down tying rebar in the corner of a shear wall, that there was a gap in the deck directly above where plaintiff was working and that the pipe at issue was sticking out of said deck. It is undisputed that the pipe was secured to the wall with nails. Plaintiff further testified that when his coworker, who was working on the 31st floor of the subject premises, accidentally tripped and stepped on the pipe, it fell to the floor below striking plaintiff in the neck/shoulder. Defendant Caldwell was the construction manager on the Project and defendant 384 Bridge was the owner of the Project. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting him summary judgment on his cause of action alleging a violation of Labor Law § 240(1).

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. Consolidated Edison*, 78 N.Y.2d 509, 514 (1991). “[N]ot every object that falls on a worker[] gives rise to the extraordinary protections of Labor Law § 240(1).” *Narducci v. Manhasset Bay Associates*, 96 N.Y.2d 259, 267 (2001) Indeed, “[i]n order to prevail on

summary judgment in a section 240(1) 'falling object' case, the injured worker must demonstrate the existence of a hazard contemplated under that statute 'and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein.'" *Fabrizi v. 1095 Ave. of Americas, LLC*, 22 N.Y.3d 658 (2014) (citing *Narducci*, 96 N.Y.2d at 267). "With respect to falling objects, Labor Law § 240(1) applies where the falling of an object is related to 'a significant risk inherent in...the relative elevation...at which materials or loads must be positioned or secured.'" *Narducci*, 96 N.Y.2d at 268. "Thus, for section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, *because of* the absence or inadequacy of a safety device of the kind enumerated in the statute." *Id.* Owners and contractors are subject to absolute liability under Labor Law § 240(1), regardless of the injured worker's contributory negligence. *See Bland v. Manocherian*, 66 N.Y.2d 452 (1985). Only if the plaintiff was the sole proximate cause of his injuries would liability under this section not attach. *See Robinson v. East Medical Center, LP*, 6 N.Y.3d 550 (2006).

In the instant action, plaintiff has established his prima facie right to summary judgment on his Labor Law § 240(1) claim against defendants as he has shown that his accident occurred due to defendants' failure to provide an adequate safety device to prevent the pipe from falling on plaintiff and injuring him after being stepped on by plaintiff's co-worker, in violation of Labor Law §240(1). As an initial matter, the plaintiff's accident clearly occurred due to a gravity-related hazard as the accident flowed directly from the application of the force of gravity onto the pipe when it was stepped on by plaintiff's coworker and became detached from the wall of the subject premises. Further, a pipe or similar object falling through an opening in a construction

site is the kind of foreseeable "elevation risk" within the contemplation of Labor Law § 240(1). See *Hill v. Acies Group, LLC*, 122 A.D.3d 428 (1st Dept 2014); see also *Mercado v. Caithness Long Is. LLC*, 104 A.D.3d 576 (1st Dept 2013). The fact that the pipe became unsecured from the wall of the subject premises and fell to the ground below injuring plaintiff is proof that there was a failure to provide adequate safety devices to protect the plaintiff pursuant to Labor Law § 240(1).

In response, defendants have failed to raise an issue of fact sufficient to defeat plaintiff's motion for summary judgment. Their assertion that summary judgment should be denied on the ground that issues of fact exist as to whether the lack of a safety device of the kind enumerated in Labor Law § 240(1) or the presence of a defective device proximately caused plaintiff's injuries is without merit. Specifically, defendants assert that they did not fail to provide an adequate safety device to prevent plaintiff's injuries because the pipe at issue was adequately secured to the wall of the subject premises and that it only became unsecured when plaintiff's coworker accidentally stepped on it. As an initial matter, to the extent defendants assert that they provided an adequate safety device to prevent plaintiff's injuries in that they secured the pipe to the subject premises using nails, such assertion is without merit. The court finds that to the extent said nails can be considered a safety device contemplated under the statute, they were inadequate as it is undisputed that the pipe became unsecured from the subject premises when plaintiff's coworker accidentally stepped on it, which was foreseeable. Further, it is undisputed that defendants did not provide any netting or fall protection underneath the gap in the 31st floor to prevent objects from falling through to the ground below, which would have prevented plaintiff's injuries. Moreover, defendants' assertion that plaintiff's coworker, and not the defendants, was

the proximate cause of plaintiff's accident because the pipe would not have fallen if plaintiff's coworker did not trip and step on the pipe is without merit. Even if plaintiff's coworker was a proximate cause of plaintiff's accident, it well-settled that there can be multiple proximate causes for a workplace accident. *See Pardo v. Bialystoker Ctr. & Bikur Cholim*, 308 A.D.2d 384 (1st Dept 2003).

Finally, defendant's reliance on *Narducci* for the proposition that plaintiff is not entitled to summary judgment on its cause of action pursuant to Labor Law § 240(1) on the ground that the pipe at issue was not being hoisted or secured at the time it fell is without merit. Although the Court of Appeals in *Narducci* did not find defendants liable under the statute on the ground that the glass window that fell on the plaintiff "was not a material being hoisted or a load that required securing for the purposes of the undertaking at the time it fell," the court also noted that no one had been working on the window from which the glass fell and there was no evidence that anyone worked on that window during the project. *Narducci*, 96 N.Y.2d at 268. Indeed, the court noted that "[t]he glass that fell was part of the preexisting building structure as it appeared before work began." *Id.* Unlike in *Narducci*, here, it is undisputed that the pipe was secured during the Project by defendants and that it was not part of the existing building structure before the Project began.

Accordingly, plaintiff's motion for an Order pursuant to CPLR § 3212 granting him summary judgment on his cause of action alleging a violation of Labor Law § 240(1) is granted. This constitutes the decision and order of the court.

Date: 10/23/15

Enter: _____

CK

J.S.C.

CYNTHIA S. KERN
J.S.C.