

<b>Arevalo v 123 on the Park LLC</b>
2016 NY Slip Op 30323(U)
February 24, 2016
Supreme Court, New York County
Docket Number: 159632/2013
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
BYRON AREVALO,

Plaintiff,

Index No. 159632/2013

-against-

**DECISION/ORDER**

123 ON THE PARK LLC,

Defendant.

-----X  
**HON. CYNTHIA S. 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.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Byron Arevalo commenced the instant action against defendant 123 on the Park LLC to recover for injuries he allegedly sustained when he fell from a ladder while performing construction work at a building located at 123 Parkside Avenue, Brooklyn, New York (hereinafter the "premises" or the "building") on July 1, 2013. He now moves for an order pursuant to CPLR § 3212 granting him partial summary judgment against defendant on the issue of liability pursuant to Labor Law § 240(1). For the reasons set forth below, plaintiff's motion is granted.

The relevant facts are as follows. Defendant, the owner of the premises, retained Velocity Builders Group, Inc. to perform renovations in the building, which was being converted from commercial to residential use. Bosny Construction Corp. was hired as a subcontractor to install metal frames and sheetrock to create interior walls. Plaintiff was an employee of Bosny Construction Corp. on the date of his accident. In his affidavit, plaintiff testified that on the date

of his accident, he was instructed by his supervisor, Adrian, to work on the building's seventh floor to install sheetrock on the framing for a corridor. This job entailed climbing a ladder in order to install sheetrock above a door opening. Plaintiff was provided with a 6-foot A-frame ladder to use for the job and opened and positioned the ladder such that the front legs of the ladder were through the door opening and the back legs of the ladder were in the corridor. It is undisputed that the ladder was unsecured and that plaintiff was not provided with any safety lines or harnesses to support him while he worked. While plaintiff was standing with one foot on the second rung from the top of the ladder and the other foot on the third rung from the top of the ladder, and attaching the sheetrock to the framing with a drill, he felt the ladder move toward the left. The ladder then fell to the left side. As the ladder fell, plaintiff tried to grab onto the metal framing and cut his hand doing so. Plaintiff fell to the floor, with his neck hitting the wall and the rest of his body hitting the ground on his left side. Plaintiff allegedly sustained injuries to his left hand, left shoulder, neck and back.

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 (1<sup>st</sup> 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.*

Plaintiff has established his *prima facie* right to partial summary judgment on the issue of defendant's liability pursuant to 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). Liability under this provision is contingent upon the existence of a hazard contemplated in § 240(1) and a failure to use, or the inadequacy of, a safety device of the kind enumerated in the statute. *Narducci v. Manhasset Bay Associates*, 96 N.Y.2d 259 (2001). "Where a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240(1)." *Kijak v. 330 Madison Ave. Corp.*, 251 A.D.2d 152, 153 (1<sup>st</sup> Dept 1998) (citing *Schultze v. 585 W. 214<sup>th</sup> St. Owners Corp.*, 228 A.D.2d 381 (1<sup>st</sup> Dept 1996)). Further, "[i]t is sufficient for purposes of liability under section 240(1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent." *Orellano v. 29 E. 37<sup>th</sup> St. Realty Corp.*, 292 A.D.2d 289, 291 (1<sup>st</sup> Dept 2002).

In the present case, plaintiff has established his *prima facie* right to partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) as plaintiff has shown that he fell from a ladder that was not secured and that defendant failed to provide any adequate safety device to prevent plaintiff from falling to the ground after the ladder he was standing on tipped

over in violation of Labor Law §240(1). Here, plaintiff's injury clearly occurred due to a gravity-related hazard as the accident flowed directly from the application of the force of gravity onto the tipping ladder on which the plaintiff was standing. There is no explanation for the accident other than the fact that the ladder was improperly secured, thus causing it to tip over and causing plaintiff to fall and become injured. The fact that the ladder tipped over and caused plaintiff to fall to the ground below is proof that there was a failure to provide adequate safety devices to protect plaintiff from such a fall pursuant to Labor Law § 240(1).

In response, defendant has failed to raise an issue of fact sufficient to defeat plaintiff's *prima facie* showing of entitlement to partial summary judgment. Defendant's argument that there is a question of fact as to whether plaintiff was the sole proximate cause of the accident based on the undisputed facts that plaintiff himself erected the ladder and that the floor on which the ladder was placed was level and without holes is without merit. The specific argument that the manner in which plaintiff set up and stood on the ladder was the sole proximate cause of the accident is unavailing "where there is no dispute that the ladder was unsecured and no other safety devices were provided." *Vega v. Rotner Mgt. Corp.*, 40 A.D.3d 473, 474 (1<sup>st</sup> Dept 2007). "It is sufficient for purposes of liability under section § 240(1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent," "[r]egardless of the precise reason for his fall." *Orellano*, 292 A.D.2d at 290-91 (granting motion for summary judgment where there were no defects in the floor on which the ladder was placed and where plaintiff gave several explanations as to the cause of his fall from the ladder, including that "he may have simply lost his balance").

In addition, defendant has failed to raise an issue of fact based on its argument that plaintiff has not provided any evidence that the ladder he was using at the time of his accident

was defective. It is well settled that a plaintiff is not required to show that a ladder was defective in some way as part of his *prima facie* case for summary judgment. See *McCarthy v. Turner Constr. Inc.*, 52 A.D.3d 333 (1<sup>st</sup> Dept 2008). Defendant has also failed to raise an issue of fact based on its argument that the ladder was not defective because there is no evidence that it collapsed, bended or twisted in any way. Evidence that the ladder was structurally sound and not defective is not relevant to the issue of whether it was properly placed or safe. See *Evans v. Syracuse Model Neighborhood Corp.*, 53 A.D.3d 1135 (4<sup>th</sup> Dept 2008).

Defendant's argument that the instant motion should be denied because plaintiff has failed to submit expert testimony that safety devices, such as a safety belt, were necessary is without merit as there is no requirement that a plaintiff present expert testimony showing the necessity of specific safety devices to establish liability pursuant to Labor Law § 240(1). See *Ortega v. City of New York*, 95 A.D.3d 125, 128 (1<sup>st</sup> Dept 2012).

Defendant's argument that plaintiff has failed to provide any evidence that the ladder needed to be secured in any manner or cite any statutes or rules requiring ladders to be secured is without merit. Again, "[i]t is sufficient for purposes of liability under section § 240(1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent," and a plaintiff need not show that the defendant violated a statute or rule. See *Orellano*, 292 A.D.2d at 290-91.

Accordingly, plaintiff's motion for an order pursuant to CPLR § 3212 for partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) is granted. This constitutes the decision and order of the court.

Dated: 2/24/16

Enter: \_\_\_\_\_

CR  
J.S.C.  
**CYNTHIA S. KERN**  
J.S.C.