

Jones v City of New York
2016 NY Slip Op 30495(U)
March 14, 2016
Supreme Court, Queens County
Docket Number: 5395/09
Judge: Howard G. Lane
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE**
Justice

IAS PART 6

BOBBY JONES and DARLENE JONES,

Index No. 5395/09

Plaintiffs,

Motion
Date January 25, 2016

-against-

Motion
Cal. No. 109

THE CITY OF NEW YORK, et al.,

Motion
Seq. No. 3

Defendants.

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Upon the foregoing papers it is ordered that this motion by plaintiffs, Bobby Jones and Darlene Jones for summary judgment on the issue of liability pursuant to CPLR 3212 is hereby denied.

Plaintiff, Bobby Jones, maintains that: on September 18, 2008, while working as a union ironworker at a construction site, he was climbing a "ship's ladder" located on the roof of a school building so that he could install a missing bolt on the ladder. Mr. Jones alleges that when he grabbed the topmost rung of the ladder, the rung came loose, causing him to fall to the roof below. Plaintiff further maintains that he was caused to sustain serious personal injuries as a result of defendants' negligence. Plaintiff commenced this action alleging liability against defendants pursuant to Labor Law §§ 200, 240(1), and 241(6) and common law negligence. Plaintiff, Darlene Jones, sues derivatively for loss of services, support etc. It is undisputed that defendant New York City School Construction Authority ("SCA") is the owner of the construction site where the accident occurred and defendant, Leon D. Dematteis Construction Corporation was the general contractor hired by SCA to oversee and manage the school construction project.

The proponent of a motion for summary judgment carries the

initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]). Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see, Zuckerman v. City of New York, 49 NY2d 557 [1980]). It is well settled that on a motion for summary judgment, the court's function is issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395 [1957]; Pizzi by Pizzi v. Bradley's Div. of Stop & Shop, Inc., 172 AD2d 504, 505 [2d Dept 1991]). However, the alleged factual issues must be genuine and not feigned (Gervasio v. DiNapoli, 134 AD2d 235 [2d Dept 1987]).

Plaintiff's Labor Law § 240(1) claim.

Plaintiffs established a prima facie case that there are no triable issues of fact regarding Labor Law 240(1). Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with appropriate safety devices to protect against "such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (Ross v. Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]; see, Rocovich v. Consolidated Edison Co., 78 NY2d 509, 514 [1991]; Gasques v. State of New York, 59 AD3d 666 [2009]; Rau v. Bagels N Brunch, Inc., 57 AD3d 866 [2008]). The duty to provide scaffolding, ladders, and similar safety devices is non-delegable, as the purpose of the section is to protect workers by placing the ultimate responsibility on the owners and contractors (see, Gordon v. Eastern Ry. Supply, Inc., 82 NY2d 555, 559 [1993]; Ortega v. Puccia, 57 AD3d 54 [2008]; Riccio v. NHT Owners, LLC, 51 AD3d 897 [2008]). In order to prevail on a cause of action pursuant to Labor Law § 240(1), the plaintiff must establish that the statute was violated and that said violation was the proximate cause of his or her injuries (see, Chlebowski v. Esber, 58 AD3d 662 [2009]; Rakowicz v. Fashion Inst. of Tech., 56 AD3d 747 [2008]; Rudnik v. Brogor Realty Corp., 45 AD3d 828 [2007]).

"Labor Law 240(1) evinces a clear legislative intent to provide exceptional protection for workers against the special hazards that arise when the work site is either itself elevated or is positioned below the level where materials or loads are hoisted or secured" (Orner v. Port Authority, 293 AD2d 517 [2d Dept 2002]). The statute will be applicable wherever there is a significant risk posed by the elevation at which material or loads must be positioned or secured (Salinas v. Barney Skansa Construction Co., 2 AD3d 619 [2d Dept 2003]).

Plaintiffs establish that there are no triable issues of fact. In support of the motion, plaintiffs submit, inter alia, the examination before trial transcript testimony of plaintiff, Bobby Jones himself, wherein he testifies, inter alia that: he fell when the ladder he was using collapsed, causing him to fall, the rung of the "ship's ladder" broke and came loose; and the examination before trial transcript testimony of William Langer, the site superintendent, who testified, inter alia that: plaintiff should have been given another safety device, such as an A-frame ladder, a Baker's scaffold, of a scissors lift, to safely access the top of the ship's ladder so that he could put in the missing bolt. Plaintiffs established that the statute was violated and that said violation was the proximate cause of plaintiff, Bobby Jones' injuries (see, Chlebowski v. Esber, supra; Rakowicz v. Fashion Inst. of Tech., supra; Rudnik v. Brogor Realty Corp., supra).

In opposition, defendants raise triable issues of fact regarding a claim under Labor Law § 240(1). It is well-established law that liability pursuant to the Labor Law will not be imposed where the worker's actions are the sole proximate cause of his injuries (see, Blake v. Neighborhood Housing Services of New York City, Inc., 1 NY3d 280[2003]; Weininger v. Hagedorn & Company, 91 NY2d 958 [1998][holding that Labor Law § 240[1] liability does not attach if the plaintiff's actions were the sole proximate cause of his injuries). Defendants presented evidence that plaintiff's actions were the sole proximate cause of his accident. Defendants present proof via inter alia, plaintiff's own examination before trial transcript testimony that: plaintiff was in charge of making repairs to the very ladder which he fell from, he was aware that the ship ladders on the roof were missing bolts and had hardware that required tightening, as part of the punch list work he was completing, he knew, and could see, that a missing nut had to be replaced on the subject ship ladder, and despite the fact that he knew the ship ladder was in an unfinished condition and needed repairs, he illogically made the decision to climb up the ladder to try to repair it. Defendants further maintain that ladders and lifts were available on the jobsite and plaintiff had used them on prior occasions, but he chose not to use them.

The Court finds that there are issues of fact as to whether plaintiff's actions were the sole proximate cause of his accident.

As the Court finds that there are triable issues of fact as

to whether defendants are liable under Labor Law § 240(1), summary judgment is denied on this branch of the motion.

Plaintiff's Labor Law § 241(6) claim.

Labor Law § 241(6) imposes a nondelegable duty upon owners and contractors to provide necessary equipment to maintain a safe working environment, provided there is a specific statutory violation causing plaintiff's injury (see, Toefer v. Long Island R.R., 4 NY3d 399 [NY 2005]; Bland v. Manocherian, 66 NY2d 452 [1985]; Kollmer v. Slater Electric, Inc., 122 AD2d 117 [2d Dept 1986]). The Court of Appeals has held that the standard of liability under this section requires that the regulation alleged to have been breached be a "specific positive command" rather than a "reiteration of common law standards which would merely incorporate into the State Industrial Code a general duty of care" (Rizzuto v. LA Wenger Contracting, 91 NY2d 343 [NY 1998]). In order to support a Labor Law § 241(6) cause of action, such a regulation cannot merely establish only "general safety standards", but rather must establish "concrete specifications" (see, Mancini v. Pedra Construction, 293 AD2d 453 [2d Dept 2002]; Williams v. Whitehaven Memorial Park, 227 AD2d 923 [4th Dept 1996]).

Plaintiffs have established a prima facie case that there are no triable issues of fact regarding a violation of Labor Law § 241(6). Plaintiffs have established a prima facie case that there was a violation of Industrial Code Sections § 23-1.21(b)(1) and 23-1.21(b)(3)(iv). Plaintiffs established that Section 23-1.21(b)(3) of the Industrial Code entitled "Ladders and Ladderways" which section provides in relevant part: (3) Maintenance and replacement. All ladders shall be maintained in good condition. A ladder shall not be used if any of the following conditions exist: (i) If it has a broken member or part . . . (iv) If it has any flaw or defect of material that may cause ladder failure. Plaintiffs established that the ladder had a broken rung or part, specifically, that the top rung broke, and such rung was the result of a "flaw or defect of material."

In opposition, defendants raise a triable issue of fact. Defendants establish that any violation of section 1.21 was not the proximate cause of plaintiff's accident and plaintiff's own actions in climbing a ladder which he knew was unfinished, was the sole proximate cause of his accident, and as such, plaintiffs cannot rely upon section 1.21(b) to support a Labor Law § 241(6) cause of action.

The Court finds that there are issues of fact as to whether plaintiff's actions were the sole proximate cause of his

accident.

Accordingly, that branch of plaintiffs' motion for summary judgment on plaintiffs' Labor Law § 241(6) claim is denied.

This constitutes the decision and order of the Court.

Dated: March 14, 2016

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Howard G. Lane, J.S.C.