

Hoyos v NY-1095 Ave. of the Ams., LLC

2016 NY Slip Op 30510(U)

March 22, 2016

Supreme Court, New York County

Docket Number: 109409/2009

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

EA
3/24/16
E

PRESENT: DEBRA A. JAMES
Justice

PART 59

Index Number : 109409/2009
HOYOS, WILLIAM FABIAN
VS.
NY-1095 AVENUE OF AMERICAS
SEQUENCE NUMBER : 004
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is resolved in accordance with the attached Memorandum Decision and Order.

MOTION CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

MAR 24 2016

COUNTY CLERK'S OFFICE
NEW YORK

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24
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Dated: MAR 22 2016

Debra A. James, J.S.C.
DEBRA A. JAMES

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

-----x

WILLIAM FABIAN HOYOS,

Plaintiff,

Index No.: ~~15105772013~~

109409/09

-against-

DECISION AND ORDER

NY-1095 AVENUE OF THE AMERICAS, LLC
STRUCTURE TONE, INC.,

Defendants.

-----x
350 BLEECKER STREET APARTMENT CORP.,
TUDOR REALTY SERVICES CORP.,

Motion Seq. Nos. 4 & 5

Third Party Index 100.
590865/10

Third-Party Plaintiffs,

-against-

B&H RESTORATION, INC.,

FILED
MAR 24 2016
COUNTY CLERK'S OFFICE
NEW YORK

Third-Party Defendant.

-----x

DEBRA A. JAMES, J.S.C.:

Motion sequence numbers 004 and 005 are hereby consolidated disposition.

Plaintiff, a painter construction worker alleges that he suffered injuries when he fell from a loading dock as he was entering the construction work site and seeks damages arising out of such injuries pursuant to Labor Law §§ 240(1), 241(6), and 200.

Defendant Structure Tone, the general contractor of the construction work site, moves for summary judgment, under CPLR

3212, dismissing all claims by plaintiff against it (motion sequence number 004).

Defendant NY-1095 Avenue of the Americas LLC (NY-1095), owner of the construction work site, separately moves for summary judgment, under CPLR 3212, dismissing all claims by plaintiff and cross claims against it (motion sequence number 005). Plaintiff cross moves, under CPLR 3212, for partial summary judgment as to liability on his Labor Law § 240(1), opposes the defendants' motions as to Labor Law § 200 and concedes that there is no liability against either defendant pursuant to Labor Law § 241(6).

NY-1095 was the fee owner of the building known as 1095 Avenue of the Americas, a 40 plus story commercial office building (building). Non-party Metropolitan Life Insurance Company (Met Life) leased multiple floors in the building. Met Life hired co-defendant Structure Tone, Inc. (Structure Tone), as general contractor, to renovate those floors. Structure Tone thereafter hired non-party Cosmopolitan Painting Corp., plaintiff's employer, as subcontractor to perform the painting work on those floors.

Plaintiff William Fabian Hoyos (Hoyos) alleges that on October 20, 2009, he was injured when, as he entered the loading

dock to the building to sign in and begin work, he stepped back to allow another person to pass and fell backwards off the loading dock approximately three feet to the ground.

Defendants Structure Tone and NY-1095 each argue that plaintiff is not a covered worker under the Labor Law because he was not carrying out construction work at the time of his accident.

"Summary judgment must be granted if the proponent makes 'a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut that showing" (Brandy B. v Eden Cent. School Dist., 15 NY3d 297, 302 [2010], quoting Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a prima facie showing, the court must deny the motion, "'regardless of the sufficiency of the opposing papers'" (Smalls v A.I. Indus., Inc., 10 NY3d 733, 735 [2008], quoting Alvarez, 68 NY2d at 324).

I. Labor Law § 240 (1)

Labor Law § 240 (1) provides, in relevant part:

All contractors and owners and their agents
... 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.

The Court of Appeals has held that this duty to provide safety devices is nondelegable (Gordon v Eastern Ry. Supply, 82 NY2d 555, 559 [1993]), and that absolute liability is imposed where a breach has proximately caused a plaintiff's injury (Bland v Manocherian, 66 NY2d 452, 459 [1985]). A statutory violation is present where an owner or general contractor fails to provide a worker engaged in section 240 activity with "adequate protection against a risk arising from a physically significant elevation differential" (Runner v New York Stock Exch., Inc., 13 NY3d 599, 603 [2009]). Where a violation has proximately caused a plaintiff's injuries, owners and general contractors are absolutely liable "even if they do not have a continuing duty to supervise the use of safety equipment" (Matter of East 51st St. Crane Collapse Litig., 89 AD3d 426, 428 [1st Dept 2011] [citation omitted]).

Defendants each argue that plaintiff was not protected under the Labor Law § 240(1) because at the time of his accident he was not engaged in construction activity. This court concurs with plaintiff that he was protected under such statute, as under the

applicable decisional law the fact that he was entering the workplace at the time of his injuries did not remove him from protection by the same rationale that "the fact that plaintiff was in the process of exiting the job site did not remove him from the protections of Labor Law § 240(1)" (Alarcon v UCAN White Plains Hous. Dev. Fund Corp., 100 AD3d 431 [1st Dept 2012]). See also Oprea v New York City Housing Authority, 226 AD2d 310 (1st Dept 1996) (the fact that the worker was using the safety device to access the worksite as opposed to carrying out his work on such device did not preclude liability pursuant to Labor Law § 204[1]).

The decisional law is also clear that under Labor Law § 240(1), the loading dock constituted a safety device, as "[plaintiff's] injuries were gravity-related, and the elevated platform served as a device designed to protect a worker from gravity-related hazards" (Cassidy v Highrise Hoisting & Scaffolding, Inc., 89 AD3d 510, 511 [1st Dept 2011]).

II. Labor Law § 200

With respect to defendants' motion as to plaintiff's Labor Law 200 and common law negligence claims, the court shall deny summary judgment dismissing such claims. Whether defendants had the requisite notice of the dangerous condition in the form of

the absence of guard rails on the loading dock is an issue of fact (Burton v CW Equities, LLC, 87 AD3d 462 [1st Dept 2012]).

Accordingly, it is

ORDERED that the motion of defendant NY-1095 Avenue of the Americas, LLC pursuant to CPLR 3212 for summary judgment dismissing plaintiff's claim under Labor Law § 241(6) is granted without opposition, and is denied as to summary judgment dismissing plaintiff's claims under Labor Law § 200; and it is further

ORDERED that the motion of defendant Structure Tone, Inc. pursuant to CPLR 3212 for summary judgment dismissing plaintiff's claim under Labor Law § 241(6) is granted without opposition, and denied to the extent that it seeks summary judgment dismissing plaintiff's claims pursuant to Labor Law § 200; and it is further

ORDERED that plaintiff's cross motion for summary judgment pursuant to CPLR 3212 as to liability under (a) Labor Law § 240 (1) is granted.

Dated: March 22, 2016

ENTER

FILED

MAR 24 2016

**COUNTY CLERK'S OFFICE
NEW YORK**

[Handwritten Signature]

DEBRA A. JAMES

J.S.C.