

Triantafilkis v New York & Presbyt. Hosp.
2016 NY Slip Op 31674(U)
September 6, 2016
Supreme Court, New York County
Docket Number: 155341/2012
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : PART 55

-----X
 JOHN TRIANTAFILAKIS,

Plaintiff,

DECISION/ORDER
Index No. 155341/2012

-against-

THE NEW YORK AND PRESBYTERIAN HOSPITAL
 and THE TRUSTEES OF COLUMBIA UNIVERSITY
 IN THE CITY OF NEW YORK,

Defendants.

-----X
 HON. CYNTHIA KERN, J.:

Plaintiff John Triantafylakis commenced the instant action to recover for injuries he allegedly sustained when he fell off a ladder while he was working on a construction site. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting him partial summary judgment on his Labor Law § 240(1) claim against defendant The Trustees of Columbia University in the City of New York (“Columbia”). For the reasons set forth below, plaintiff’s motion is granted.

The relevant facts are as follows. This action arises out of the renovation of several new laboratory rooms (the “project”) on the first floor of New York and Presbyterian Hospital; which is located at 630 West 168th Street, New York, New York (the “premises”). Defendant Columbia was the owner of the premises. Columbia contracted with Hellman Construction Company (“Hellman”), plaintiff’s employer, to perform carpentry work in connection with the project. Plaintiff, a journeyman carpenter, was the shop steward at the project.

Plaintiff testified at his deposition that, on June 15, 2012, he was directed to install black irons as part of the installation of a drop ceiling, which required him to perform work at a height of approximately nine feet. To perform the work, plaintiff was provided a six-foot-high fiberglass ladder (the “ladder”). Plaintiff testified that the feet of the ladder were worn, that the brackets on the ladder were crooked and that

he was not provided with any devices to secure the ladder, nor was a second worker assigned to stabilize the ladder. He further testified that the only other ladder at the Project was a four-foot wooden ladder that was also defective and of inadequate height. According to plaintiff's deposition testimony, as he was standing on the third or fourth step of the ladder and reaching both of his hands above his head to fasten a clip with his pliers, the ladder suddenly shook and kicked out, causing him to lose his balance and fall with the ladder to the ground (the "accident"). There were no witnesses to the accident. Plaintiff further testified that he righted and positioned the ladder directly after the accident but realized that he was too injured to continue work. In contrast to plaintiff's deposition testimony, Pasquale Simone ("Simone"), a project superintendent for Hellman, states in his affidavit that he assigned plaintiff to tie up some telecommunication wires hanging from the ceiling, a task that allegedly required plaintiff to stand on the second step of the ladder. Simone further states that, based on his observation of the position of the ladder in relation to the wires after the accident, he believed that plaintiff did not position the ladder directly under the wires and then stood on the third step and "overstretched" to reach the wires, causing him to fall. He also stated his belief that plaintiff's overstressing was the cause of the accident in the incident report he completed a few days after the accident. Simone further states in his affidavit that the ladder was in good working condition and stable when he examined the ladder after the accident.

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, 302 (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. 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, 268 (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 (1st Dept 1998), citing *Schultze v. 585 W. 214th St. Owners Corp.*, 228 A.D.2d 381, 381 (1st 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. 37th St. Realty Corp.*, 292 A.D.2d 289, 291 (1st Dept 2002).

In the present case, plaintiff has established his *prima facie* entitlement to partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) as he has shown that he fell from a ladder that was not secured and that Columbia failed to provide any adequate safety device to prevent him from falling to the ground after the ladder he was standing on shook and 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 opposition, Columbia has failed to raise an issue of fact sufficient to defeat plaintiff's *prima facie* showing of entitlement to partial summary judgment. Columbia's argument that there is an issue of fact as to plaintiff's credibility based on discrepancies between plaintiff's deposition testimony and Simone's affidavit testimony regarding the work plaintiff was performing at the time of the accident, whether the ladder was defective and whether plaintiff told Simone before the accident that the ladder was defective is without merit. Conflicting testimony regarding an accident does not raise an issue of fact as to a plaintiff's credibility sufficient to defeat a plaintiff's *prima facie* showing of entitlement to summary judgment where the conflicting testimony is irrelevant "to the dispositive issue of whether defendants provided plaintiff with proper protection under the statute." See *Ortiz v. Burke Ave. Realty, Inc.*, 126 A.D.3d 577, 578 (1st Dept 2015). See also *Orellano*, 292 A.D.2d at 291 ("[P]ossible discrepancies in Mr. Orellano's description of how or why he fell off the ladder are irrelevant since there is no dispute that his injuries were caused by his fall"); *Fanning v. Rockefeller University*, 106 A.D.3d 484, 485 (1st Dept 2013) (holding that the defendants failed to raise an issue of fact by presenting conflicting evidence regarding the height and material of the ladder "since the statute was violated under either description" of the ladder). The discrepancies between plaintiff's deposition testimony and Simone's affidavit testimony are irrelevant to the dispositive issue of whether plaintiff was provided with adequate safety devices to protect him from falling pursuant to Labor Law § 240(1). As it is undisputed that plaintiff fell from a ladder that was not secured and that he was not provided with any safety device to prevent him from falling to the ground after the ladder he was standing on shook and tipped over, Columbia has failed to raise an issue of fact based on the discrepancies between plaintiff's deposition testimony and Simone's affidavit testimony.

Columbia's argument that there is an issue of fact as to whether the sole proximate cause of the accident was plaintiff's failure to properly position the ladder under the wires and consequent overstretching to reach the wires is also without merit. The 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 (1st 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. *See also Caceres v. Standard Realty Assoc., Inc.*, 131 A.D.3d 433, 434 (1st Dept 2015) (holding that defendants’ argument that plaintiff caused his own injuries “by allegedly placing himself in a position where he had to lean and reach around the side of the ladder to fix the wall stud” at most established comparative negligence, which is not a defense to a § 240(1) claim). Moreover, Simone’s affidavit testimony that he believed that plaintiff caused the accident by mispositioning the ladder and overstretching is merely speculative as he did not witness the accident and the only basis for this belief was his observation of the position of the ladder in relation to the wires after the accident. However, plaintiff testified that the ladder fell during the accident and that he righted and positioned the ladder after the accident.

To the extent that Columbia contends that there is an issue of fact as to whether the ladder was defective, such contention is unavailing. A plaintiff is not required to establish that a ladder was defective to make a *prima facie* showing of entitlement to summary judgment on a Labor Law § 240(1) claim. *Fanning*, 106 A.D.3d at 485 (1st Dept 2013). Moreover, evidence that the ladder was structurally sound and not defective is not relevant to the issue of whether it was properly secured or safe. *See Evans v. Syracuse Model Neighborhood Corp.*, 53 A.D.3d 1135, 1137 (4th Dept 2008).

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.

DATE:

9/6/16



 KERN, CYNTHIA S., JSC

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