Szczechla v City of New York
2017 NY Slip Op 30379(U)
January 6, 2017
Supreme Court, Bronx County
Docket Number: 301535/12
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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DARIUSZ SZCZECHLA,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY, THE COMPTROLLER OF THE CITY OF NEW YORK AND CHINA CONSTRUCTION AMERICA, INC.

Defendants.

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Index No. 301535/12
Motion Calendar No. 23
Motion Date: 10/17/16

DECISION/ ORDER
Present:
Hon. Wilma Guzman
Justice Supreme Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to dismiss the plaintiff's complaint:

Papers	**Numbered**
Notice of Motion, Affirmation in Support, Exhibits Thereto	**1**
Affirmation in Opposition	**2**
Reply Affirmation	**3**

Motions decided as follows: Upon deliberation of the application duly made by plaintiff herein, by **NOTICE OF MOTION**, and all the papers in connection therewith, for an Order, pursuant to CPLR §3212, for partial summary judgement against defendants THE NEW YORK CITY HOUSING AUTHORITY (hereinafter "NYCHA") and CHINA CONSTRUCTION AMERICA, INC. (hereinafter "China") based on their violation of New York State Labor Law §240(1), is heretofore granted.

It should be noted from the outset that defendants assertion that plaintiff's application was defective for not including all of the pleadings and contracts in the underlying papers was remedied by plaintiff as he attached them to his Reply. There would be no resulting prejudice for this Court to consider same in its determination.

This action involves injuries allegedly sustained by the plaintiff as a result of a July 24, 2010 worksite accident that occurred at the premises located at 1725 Randall Avenue, Building 8, Bronx, New York (hereinafter "the premises"). The premises was owned by NYCHA. It appears that NYCHA contracted with China to perform work being done at the premises. China thereafter contracted with Whitestone Construction Corp., (hereinafter "Whitestone") to perform work at the premises. On the day in question. Plaintiff, an employee of Whitestone, was working on the roof of the premises installing a fence around the

top of the elevator bulkhead that would act as fall protection for workers when they replaced the roof of the bulkhead. The top of the elevator bulkhead was approximately sixteen (16) feet above the main roof. In order to reach the elevator bulkhead, plaintiff stood on an extension ladder that was extended out approximately fifteen (15) feet. At the time of the accident, plaintiff was standing on the tenth (10th) rung of the ladder, at a height approximately ten (10) feet from the bottom of the ladder. Plaintiff's colleague, Krzysztof Skorupa, was holding the ladder. At the time of the accident, plaintiff was attaching a pipe to the wall of the elevator bulkhead, which was part of a fence he was installing. Plaintiff alleges that when he was installing the pipe in place, the ladder shiftet to the right, causing him and the ladder to fall approximately ten (10) feet. Plaintiff was not provided with any safety devices to prevent his fall, the ladder was not tied off and no scaffold was provided.

A party seeking summary judgement must demonstrate, *prima facie*, entitlement to judgement as a matter of law by presenting sufficient evidence to negate any material issue of fact. *See* Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851. If the movement meets this burden, the opponent must rebut the *prima facie* showing by submitting admissible evidence demonstrating the existence of factual issues requiring a trial. *See* Zuckerman v. City of New York, 49 NY.2d 557. Otherwise, the motion must be denied, regardless of the sufficiency of the opposition. *Winegrad*, 64 N.Y.2d at 853.

Plaintiff's application for summary judgement on his Labor Law§ 240(1) claim is heretofore granted. Labor Law §240 reads, in pertinent part:

> "All contractors and owners and their agents, except owners of one and two family dwelling who contract for but do not direct or 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, pullys braces, irons, ropes, and other devices which shall so be so constructed, placed and operated as to give proper protection to a person so employed."

Labor Law § 240(1) applies in all cases in which the work involves risks related to differences in elevation. *See* Becerra v. City of New York, 261 A.D.2d 188 (1st Dept. 1999). Furthermore, Labor Law §240(1) mandates that defendants be held strictly liable to workers who sustain injuries proximately caused by failures on the part of owners and general contractors to provide or erect proper ladders, scaffolds and other safety devices necessary to give proper protection to a worker. *See* Zimmer v. Chemung County Performing Arts, Inc., 65 N.Y.2d 513 (1985). Moreover, the implications of strict liability provide that any fault, negligence or carelessness on the part of the plaintiff, which may have contributed to his injuries, are not to be considered. *See* Bland v. Manocherian, 66 N.Y.2d 452 (1985).

Plaintiff's application for summary judgement pursuant to Labor Law §240(1) as against NYCHA must be granted. Plaintiff has made a *prima facie* showing of entitlement to summary judgement against NYCHA by demonstrating that he was injured when falling approximately ten (10) feet off a ladder. Plaintiff has demonstrated that NYCHA was the owner of the premises. Moreover, plaintiff and his co-

worker testified that no safety devices were provided to plaintiff and that the ladder was not tied off while plaintiff was working on the ladder. Moreover, there is no evidence in the record that any safety harness was provided or made available to plaintiff to ensure this type of fall from elevation did not occur. *See* Perez v. NYC Partnership Housing Development Fund Co., Inc., 55 A.D.3d 419 (1st Dept. 2008). The fact that plaintiff may have contributed to the accident by missing a step on the ladder is of no consequence in determining whether NYCHA is strictly liable for plaintiff's injuries as a result of the fall pursuant to Labor Law §240(1). As NYCHA has failed to raise any material issues of fact, plaintiff's application as to NYCHA mis heretofore granted.

Furthermore, plaintiff's application for summary judgement pursuant to Labor Law §240(1) as against China must also be granted. Plaintiff has made a *prima facie* showing of entitlement to summary judgement against China by demonstrating that China was acting as NYCHA's statutory agent for the purposes of liability under Labor Law §240(1). *See* Walls v. Turner Constr. Co., 4 N.Y.3d 861 (2005). More specifically, plaintiff has demonstrated through the testimony Lawrence Schucker, the Construction Field Supervisor of NYCHA, that: (1) there were no other construction managers or general contractors; (2) that China had the authority to hire subcontractors; (3) that China did hire subcontractors in relation to the work being performed at the premises; (4) that China was the supervisor of the worksite; (5) that China was charged with maintaining a safe worksite; (6) that China would perform several daily inspections of the worksite; and (7) if any unsafe practices were noted China would advise the subcontractor and not NYCHA. Furthermore, the contract for services between China and NYCHA (hereinafter referred to as "the contract" which affixed as Exhibit "C" to plaintiff's Reply) provides, that China's:

> "Services shall include, without limitations, investigations, planning, pre-construction, construction, construction management, supervision and coordination of all work necessary and required for the Project, to effectuate its timely completion, in compliance with the Contract Documents and all applicable Laws."

Furthermore, the contract provides that China:

> "shall provide, to the satisfaction of NYCHA, all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents and to goof construction practice. The services to be provided by [China] shall include without limitation to the services set forth in this Article 11, as directed by NYCHA."

Moreover; pursuant to the contract, the services China was required to provide include, but are not limited to: inspecting work; co-ordinating the construction schedules of various trades; review and evaluate the means and methods of construction of the subcontractors and direct changes as necessary; and to take precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the work.

In addition to making a *prima facie* showing that China acted as the statutory agent of NYCHA, plaintiff has also made a *prima facie* showing of entitlement to summary judgement against China by demonstrating that he was injured when falling approximately ten (10) feet off a ladder and as previously discussed, that no safety devises or harnesses was provided or made available to plaintiff to ensure this type of fall or injury from elevation did not occur. *See* Perez v. NYC Partnership Housing Development Fund Co., Inc., 55 A.D.3d 419 (1st Dept. 2008). The fact that plaintiff may have contributed to the accident by missing a step on the ladder is of no consequence in determining whether China is strictly liable for plaintiff's injuries as a result of the fall pursuant to Labor Law §240(1). As China has failed to raise any material issues of fact, plaintiff's application as to China must heretofore be granted.

Accordingly, it is:

ORDERED that the motion by plaintiff for an Order, pursuant to CPLR §3212, for partial summary judgement against defendants, THE NEW YORK CITY HOUSING AUTHORITY and CHINA CONSTRUCTION AMERICA, INC., based on their violation of New York State Labor Law §240(1), is heretofore granted. It is further

ORDERED that the upon the completion of discovery and the payment of appropriate fees, plaintiff may file the Note of Issue and proceed on damages. It is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The forgoing constitutes the Decision and Order of the Court.

Dated: 1/6/17

HON. WILMA GUZMAN
J.S.C.