

McGeean v Howard Hughes Corp.
2017 NY Slip Op 30443(U)
March 3, 2017
Supreme Court, New York County
Docket Number: 156388/13
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
JusticePART 13PATRICIA McGEEAN and CHARLES McGEEAN,
Plaintiffs,INDEX NO. 156388 /13

- Against-

MOTION DATE 01-11-2017MOTION SEQ. NO. 001THE HOWARD HUGHES CORPORATION,
SEAPORT MARKETPLACE LLC, SOUTH STREET
SEAPORT LIMITED PARTNERSHIP and NEW YORK
CITY ECONOMIC DEVELOPMENT CORPORATION,
Defendants.

MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1-2

Answering Affidavits — Exhibits _____

3-4

Replying Affidavits _____

5Cross-Motion: ☐ Yes ☒ No

Upon a reading of the foregoing cited papers, it is ordered that Plaintiffs' motion for partial summary judgment on liability under section 240(1) of the Labor Law against the defendants THE HOWARD HUGHES CORPORATION, SEAPORT MARKETPLACE LLC, and SOUTH STREET SEAPORT LIMITED PARTNERSHIP is granted.

Plaintiff, Patricia McGeean, a union stationary engineer in the Local 30 apprentice program, employed by GCA Services Group of North Carolina Inc., (GCA) , was injured when she fell from the top second or third rung of an unsecured 12 foot A-frame ladder, while cleaning the grates located in the ceiling level above the food court common area at defendants' premises. While she was cleaning the grates at the ceiling level of the food court common area the ladder started to wobble and fall, causing plaintiff to fall to the ground with the ladder sustaining injuries. This accident happened on plaintiff's third day of work.

Defendant South Street Seaport Limited Partnership is the owner of the retail shopping mall known as the South Street Seaport Mall. It operated, managed and maintained the premises as well as the common areas of the food court on the third floor. It entered into a contract with GCA to perform services at the mall including commercial cleaning services at the third floor food court.

At her deposition plaintiff stated that on her second day of work she was instructed to clean the grates which were 13-14 feet above the food court. Plaintiff was to reach the height of the grates by using a scissor lift but the lift was not working, the battery was dead, and to do the job she was given a 12 foot ladder instead. On that day the engineer (Ray) set the ladder up for her and left. The ladder was set up on a

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

marble floor and no one held the ladder for her. She worked on cleaning the grates for approximately three hours, going up and down and moving the ladder as necessary.

The following day (the day of the accident) plaintiff was again told to clean the grates above the food court. Again the scissor lift was not working and again the engineer (Ray) provided her with a ladder to do the work. Plaintiff set the ladder up on the marble floor and no one held the ladder for her. As plaintiff was working with her foot on the second or third top rung of the ladder it began to wobble and she felt like it was falling. She tried to adjust her weight, dropped a spray bottle she had in her hand, tried to grab the ladder top but couldn't. The ladder went down to the right and she came straight down with the ladder sustaining injuries.

Plaintiffs commenced an action against all the defendants asserting causes of action for violations of Labor Law Sections 200, 240(1) and 241(6). The causes of action were discontinued as against the defendant New York City Economic Development Corporation. Plaintiff now moves for partial summary judgment on liability for violating Labor Law Section 240(1) as against the remaining defendants. Plaintiffs allege that the defendants are absolutely liable under Labor Law 240(1) for their failure to provide her with all necessary and proper safety devices to protect her while she was working at an elevation, and that this failure to provide her with the proper safety devices was a proximate cause of plaintiff's accident.

Defendants oppose the motion providing the deposition testimony of Raphael Algarin, who does not contradict plaintiff's version of the events, except to deny giving plaintiff a ladder at any time for use in cleaning the grates. He denies knowing that the Genie lift was not working and stated at Page 64 Line 8-17 that cleaning the grates.. "is usually a task that could be done by one engineer [using] the Genie [scissor lift]". Mr. Algarin did not witness the accident nor does he know if anyone else witnessed the accident. Aside from Mr. Algarin's deposition defendants rely on the affirmation and arguments of their attorney.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact.(Klein V. City of New York, 89 NY2d 833; Ayotte V. Gervasio, 81 NY2d 1062, Alvarez v. Prospect Hospital, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues(Kaufman V. Silver, 90 NY2d 204; Amatulli V. Delhi Constr. Corp., 77 NY2d 525; Iselin & Co. V. Mann Judd Landau, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party(SSBS Realty Corp. V. Public Service Mut. Ins. Co., 253 AD2d 583; Martin V. Briggs, 235 192).

New York Labor Law § 240(1), also referred to as the scaffold law provides: "All contractors and owners and their agents, except owners of one and two-family dwellings 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, 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) imposes absolute liability on owners, contractors and their agents for injuries to workers engaged in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure, which result from falls from ladders, scaffolding or other similar elevation devices that do not provide proper protection against such falls. Where the owner or contractor has failed to provide adequate safety devices to protect workers from elevation related injuries, and that failure is a cause of a worker’s injury, negligence, if any, of the injured worker is of no consequence for purposes of Labor Law §240(1). 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” (see Orellano v. 29 East 37th Street Realty Corp., 292 A.D.2d 289, 740 N.Y.S.2d 16 [1st. Dept. 2002] granting plaintiff who fell from A-frame ladder with no apparent defects summary judgment on liability).

“Once it is determined that the owner or contractor failed to provide the necessary safety devices required to give a worker proper protection, absolute liability is unavoidable under section 240(1)”(Bland v. Manocherian, 66 N.Y.2d 452, 488 N.E.2d 810, 497 N.Y.S.2d 880 [1985]). “ The failure to properly secure a ladder so as to hold it steady and erect during its use constitutes a violation of Labor law section 240(1).” (Dasilva v. A.J. Contracting Co., 262 A.D.2d 214, 694 N.Y.S.2d 353 [1st. Dept. 1999]; Guzman v. Gumley-Haft, Inc., 274 A.D.2d 555, 712 N.Y.S.2d 45 [2nd. Dept. 2000] granting summary judgment to plaintiff who fell from unsecured A-frame ladder that tipped over causing him to fall; Velasco v. Green-Wood Cemetery, 8 A.D.3d 88, 779 N.Y.S.2d 459 [1st. Dept. 2004] granting summary judgment to plaintiff who fell when unsecured ladder slipped).

Defendant is required to present some evidence that the device furnished was adequate and properly placed and that the conduct of the worker may have been the sole proximate cause of her injuries. However, where the worker establishes that a violation of Labor Law §240(1) was a proximate cause of her injury she is not solely to blame for it. Where the safety device [i.e., the ladder] fails to perform its intended function of supporting the worker by tipping or wobbling causing plaintiff to fall, it has failed to give the plaintiff proper protection entitling her to summary judgment (see Woods v. Design Center, LLC., 42 A.D.3d 876, 839 N.Y.S.2d 880 [4th dept.] granting summary judgment to plaintiff who fell while descending from the second step of a three-step folding aluminum step ladder).

Defendants argue that plaintiff cannot be granted summary judgment because she was the sole witness to her accident. However, courts have granted summary judgment on liability on facts similar to this one where the plaintiff was the sole witness to the accident (see Orellano v. 29 East 37th Street Realty Corp., 292 A.D.2d 289 [1st. Dept. 2002], supra, granting summary judgment on liability where plaintiff was alone when the accident occurred). The fact that the plaintiff may have been the sole witness to the accident does not preclude an award of judgment in her favor (Melchor v. Singh, 90 A.D.3d 866, 935 N.Y.S.2d 106 [2nd. Dept. 2011]; Rivera v. Dafna Construction Co., Ltd., 27 A.D.3d, 545, 813 N.Y.S.2d 109 [2nd. Dept. 2006]; Yurkovich v. Kvarner Woodworking, 289 A.D.2d 183, 735 N.Y.S.2d 518 [1st. Dept. 2001]; Cruz v. Turner Construction Co., 279 A.D.2d 322, 720 N.Y.S.2d 10 [2001]).

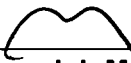
It is uncontroverted that plaintiff fell from an unsecured 12 foot A-frame ladder that tipped or wobbled while she was performing her work. The work she was performing could be done by one person if using a Genie [scissor] lift. However, because the Genie [scissor] lift was not working plaintiff was directed to do the work by herself, using a 12 foot unsecured A-frame ladder, and was not given any other protective devices. The device given plaintiff was not a proper protective device because it failed to perform its intended function of supporting her. The failure to provide plaintiff with a proper protective device is a violation of Labor Law § 240(1) entitling plaintiffs to summary judgment on liability against the defendants.

Plaintiff has shown her entitlement to judgment on liability as a matter of law on her Labor Law § 240(1) violation claim. Defendants have failed to rebut that prima facie showing by raising an issue of fact requiring a trial of these issues.

Accordingly, it is Ordered that the motion for partial summary judgment is granted, and it is further

ORDERED that plaintiff is granted summary judgment on liability against the defendants on their Labor Law § 240(1) cause of action.

Dated: March 3, 2017


MANUEL J. MENDEZ

 Manuel J. Mendez
 J.S.C.

Check one: FINAL DISPOSITION **X** NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE