SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42
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KYLE LAVERTY

Plaintiff

v

1790 BROADWAY ASSOCIATES, LLC, IONIAN MANAGEMENT, INC., GOODHOPE MANAGEMENT CORP.

Defendant.
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Index No.153345/2015

DECISION AND ORDER

MOT SEQ 001, 002

NANCY M. BANNON, J.:

I. INTRODUCTION

In this action to recover damages for personal injuries arising from an accident at a construction site, the defendant owner 1790 Broadway Associates, LLC, and the defendant managing agent Goodhope Management Corp. (together the Broadway defendants), move pursuant to CPLR 3212 for summary judgment dismissing the complaint as against them. (SEQ. 001). The plaintiff, Kyle Laverty, opposes the motion and separately moves for summary judgment on the issue of liability on the complaint. (SEQ. 002)

The Broadway defendants' motion is granted to the extent that the court dismisses the cause of action to recover for violation of Labor Law § 241(6) insofar as it is predicated on alleged violations of 12 NYCRR 23-1.7(b), 12 NYCRR 23-1.15, 12 NYCRR 23-1.22(b)(4), 12 NYCRR 23-1.33, and 12 NYCRR 23-3.3(*l*),

and that motion is otherwise denied. The plaintiff's motion is granted to the extent that he is awarded summary judgment on the issue of liability on the cause of action to recover for violation of Labor Law § 240(1) as against the Broadway defendants, and that motion is otherwise denied.

II. BACKGROUND

Kyle Laverty, a journeyman elevator modernization mechanic, was injured on May 8, 2014, in the course of undertaking demolition work, when he slipped and fell from permanent metal ladder rungs embedded in a wall at 1790 Broadway in Manhattan. He alleges that the rungs were the only way to access the high-rise motor room (the motor room) where he was performing his work. He asserts causes of action alleging that the defendants are liable for common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6).

It is undisputed that the motor room is located on the 21st floor of the building, and can be accessed only by taking the elevator to the 20th floor, walking up one flight of stairs to the 21st floor, proceeding up two concrete steps into the pump room, and climbing up four rungs embedded in the wall. The plaintiff testified at his deposition that he and a coworker began working at the premises approximately two weeks before the subject accident, and that the work entailed the dismantling of

three large gearless traction machines in the motor room as part of a modernization project. As the machines were dismantled, the plaintiff and his coworker used a series of chain falls to lower the dismantled equipment. According to the plaintiff, the floor in the motor room was slippery, and he walked up and down the subject rungs two to four times per day. The plaintiff averred that, on the date of the accident, he needed to retrieve some materials, and thus "went down and grabbed the left handrail and started to walk down" the rungs but that, as he took the first step, he slipped on thick grease that had accumulated on the rungs and had emanated from the elevator equipment. As the plaintiff explained it, as he slipped, he put both of his hands out and was able to grab the handrail to his left, but since there was no handrail on his right side, he fell down the rungs sideways on his back.

III. DISCUSSION

A. LABOR LAW § 240(1)

"Labor Law § 240(1) imposes on owners, general contractors and their agents a nondelegable duty to provide safety devices to protect against elevation-related hazards on construction sites, and they will be absolutely liable for any violation that results in injury regardless of whether they supervised or controlled the work." Ragubir v Gibraltar Mgt. Co., Inc., 146 AD3d 563, 564

(1st Dept. 2017). The statute "imposes absolute liability on building owners and contractors whose failure to provide proper protection to workers employed on a construction site proximately causes injury to a worker." Wilinski v 334 E. 92nd Hous. Dev. Fund Corp., 18 NY3d 1, 6 (2011) (internal quotation marks and citation omitted). To establish liability, the plaintiff must prove a violation of the statute and that the violation was a proximate cause of his or her injuries. See Blake v Neighborhood Hous. Servs. of N.Y. City, 1 NY3d 280 (2003). "'The plaintiff need not demonstrate that the [safety device] was defective or failed to comply with applicable safety regulations,' but only that it 'proved inadequate to shield [plaintiff] from harm directly flowing from the application of the force of gravity to an object or person.'" Soriano v St. Mary's Indian Orthodox Church of Rockland, Inc., 118 AD3d 524, 526 (1st Dept. 2014), quoting Williams v 520 Madison Partnership, 38 AD3d 464, 465 (1st Dept. 2007).

A permanently affixed ladder that provides the sole access to an elevated work site is a "device" within the meaning of Labor Law § 240(1). See Gory v Neighborhood Partnership Hous. Dev. Fund Co., Inc., 113 AD3d 550 (1st Dept. 2014); Priestly v Montefiore Med. Center/Einstein Med. Ctr., 10 AD3d 493 (1st Dept. 2004); Crimi v Neves Assoc., 306 AD2d 152 (1st Dept. 2003); Nunez v Bertelsman Prop., 304 AD2d 487 (1st Dept. 2003); Brennan v RCP

Assoc., 257 AD2d 389 (1st Dept. 1999); Spiteri v Chatwal Hotels, 247 AD2d 297 (1st Dept. 1998). Contrary to the Broadway defendants' contention, the fact that the plaintiff was exposed to an elevation-related risk only in the course of exiting from the work site does not remove the incident from the protections of Labor Law § 240(1). See Oprea v New York City Hous. Auth., 226 AD2d 310 (1st Dept. 1996).

Thus, the Broadway defendants failed to establish, prima facie, that Labor Law § 240(1) was not applicable to the accident or that they did not violate that statute. Conversely, the plaintiff established, prima facie, that those defendants violated Labor Law § 240(1) by failing to provide a safe and adequate stairway that prevented the risk of falling, and the Broadway defendants failed to raise a triable issue of fact in opposition to that showing. The plaintiff did not submit any proof as to the liability of the defendant Ionian Management, Inc. (Ionian).

B. LABOR LAW § 241(6)

Labor Law § 241(6) imposes a nondelegable duty upon general contractors "to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed." Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343, 348

(1998) (citation and internal quotation marks omitted); see Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494 (1993). To sustain a Labor Law § 241(6) cause of action, it must be shown that the defendant violated a specific, "concrete" implementing regulation of the Industrial Code, rather than generalized regulations for worker safety. Ross, supra, at 505. Labor Law § 241(6) requires a plaintiff to show that the safety measures actually employed on a job site were unreasonable or inadequate and that the violation of the particular Industrial Code provision was a proximate cause of his or her injuries. See Zimmer v Chemung County Performing Arts, 65 NY2d 513 (1985).

The Broadway defendants established, prima facie, that Industrial Code provisions 12 NYCRR 23-1.7(b), 12 NYCRR 23-1.15, 12 NYCRR 23-1.22(b)(4), 12 NYCRR 23-1.33, and 12 NYCRR 23-3.3(*1*) were either insufficiently specific, were inapplicable to this accident, or were not violated. In opposition to this showing, the plaintiff either did not oppose the motion or failed to raise a triable issue of fact.

The parties' submissions, however, reveal the existence of triable issues of fact in connection with the plaintiff's claims that the Broadway defendants violated 12 NYCRR 23-1.7(d) (slipping hazards), 12 NYCRR 23-1.7(e)(1), (2) (tripping and other hazards), 12 NYCRR 23-1.7(f) (provision of safe vertical passages), 12 NYCRR 23-1.21 (provision of proper ladderways), 12

NYCRR 23-2.7(a), (e) (provision during construction of properly spaced stairways with railings), and 12 NYCRR 23-3.3(f) (provision of safe access to floors where hand demolition work is being performed). Contrary to the Broadway defendants' contention, the plaintiff did not abandon his reliance on any Industrial Code provisions cited in his complaint and bill of particulars merely by failing to rely upon them in his motion for summary judgment. See Kempisty v 246 Spring St., LLC, 92 AD3d 474 (1st Dept. 2012).

As with the cause of action alleging a violation of Labor Law § 200, the plaintiff submits no proof as the alleged liability of Ionian pursuant to Labor Law § 241(6).

C. LABOR LAW § 200 AND COMMON-LAW NEGLIGENCE

"Labor Law § 200 is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work." Hartshorne v Pengat Tech. Inspections, Inc., 112 AD3d 888, 889 (2nd Dept. 2013); see Comes v New York State Elec. & Gas Corp., 82 NY2d 876 (1993). An owner or its agent may only be held liable under Labor Law § 200 and the common law for an allegedly dangerous condition upon which a plaintiff falls if it had control over the work site, created or had actual or constructive notice of the condition, and had the opportunity to remedy it. See Korostynskyy v 416 Kings Hway, LLC, 136 AD3d 758

(2nd Dept. 2016); Mendoza v Highpoint Assoc., IX, LLC, 83 AD3d 1 (1st Dept. 2011). Here, the parties' submissions reveal the existence of triable issues of fact as to whether any of the defendants created a dangerous condition by removing the right-side handrail, whether they otherwise had actual or constructive notice of that condition, and whether they had actual or constructive notice of the accumulation of grease on the rungs of the ladder.

IV. CONCLUSION

Accordingly, it is

ORDERED that the motion of the defendants 1790 Broadway Associates, LLC, and Goodhope Management Corp. for summary judgment dismissing the complaint as against them (SEQ 001) is granted only to the extent so much of the cause of action to recover for violation of Labor Law § 241(6), as is predicated upon 12 NYCRR 23-1.7 (b), 12 NYCRR 23-1.15, 12 NYCRR 23-1.22 (b) (4), 12 NYCRR 23-1.33, and 12 NYCRR 23-3.3(*1*) is dismissed, and the motion is otherwise denied; and it is further,

ORDERED that the plaintiff's motion for summary judgment (SEQ 002) is granted to the extent that he is awarded summary

judgment on the issue of liability on the cause of action to recover for violation of Labor Law § 240(1) as against the defendants 1790 Broadway Associates, LLC, and Goodhope Management Corp., and the motion is otherwise denied.

This constitutes the Decision and Order of the Court.

Dated: 10-27-17

ENTER: _____
J.S.C.

HON. NANCY M. BANNON