

Hernandez v Aspenly Co. LLC
2017 NY Slip Op 32861(U)
October 30, 2017
Supreme Court, Queens County
Docket Number: 7109/2015
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

FREDDY HERNANDEZ,

Index No.: 7109/2015

Plaintiff,

Motion Date: 10/18/17

- against -

Motion No.: 91

ASPENLY CO. LLC, RANDALL HOUSE OWNERS
CORP., SHOLOMO SOL KASSORLA and S.G.C.
CONTRACTING CORP.,

Motion Seq.: 4

Defendants.

- - - - - x

RANDALL HOUSE OWNERS CORP.,

Third-Party Plaintiff,

- against -

SOL KASSORAL,

Third-Party Defendant.

- - - - - x

SHOLOMO SOL KASSORLA i/s/h/a SOL
KASSORAL,

Fourth-Party Plaintiff,

- against -

S.G.C. CONTRACTING CORP.,

Fourth-Party Defendant.

- - - - - x

The following papers numbered 1 to 13 read on this motion by
plaintiff FREDDY HERNANDEZ for an Order pursuant to CPLR 3212,
granting plaintiff partial summary judgment as to liability on
the Labor Law § 240(1) claim:

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits-Memo. of Law.....	1 - 5
Sholomo Sol Kassorla i/s/h/a Sol Kassoral's Affirmation in Opposition-Exhibits.....	6 - 8
Randall House Owners Corp.'s Affirmation in Opposition- Exhibits.....	9 - 11
Affirmation in Reply.....	12 - 13

This personal injury action arises out of an incident that occurred on April 16, 2015 at the premises located at 63 East 9th Street, Apartment 3R, in New York County, New York. Plaintiff alleges that while working at a renovation project located on the third floor of the subject premises, he fell off a ladder.

Plaintiff now moves for summary judgment on the ground that defendants' violated Labor Law § 240(1) by failing to ensure that proper protection was afforded to plaintiff.

Plaintiff appeared for an examination before trial on May 8, 2017. He testified that the incident occurred on April 16, 2015 while he was working. He did not know the address where he was working, but he was working inside a building on the third floor. The owner of the company he was working for was Sal. He did not know the name of the company. He worked for Sal for about three weeks or a month prior to the incident. He was a helper in the performance of demolition work. He would remove walls, get rid of garbage, and clean. The incident occurred while he was performing demolition work with Segundo and Julio Gutierrez. He was performing demolition work for about two or three hours before the incident. He was demolishing a wall that had some sort of net or metal mesh inside. He used an eight to ten foot A-frame ladder. The ladder was already at the premises when he arrived. When the incident occurred, he was standing on the second rung from the top of the ladder, demolishing the wall. He placed the ladder in its position. The ladder was fully opened. The feet of the ladder were resting on the floor and no one was holding the ladder when the incident occurred. There was no debris under the feet of the ladder. The ladder was placed alongside the wall because that was the only way he could reach the area where he was working. Immediately before and at the time of the incident, he was cutting the mesh using shears. He was using the shears in his right hand. As he was cutting the mesh, the ladder moved and he lost his balance. After the ladder moved, he fell off the ladder. The ladder also fell.

Sholomo Sol Kassorla i/s/h/a Sol Kassoral appeared for an examination before trial on May 15, 2017. He testified that he is the president of S.G.C. Contracting Corp. (S.G.C.) S.G.C. was plaintiff's employer on the date of the incident. He is a shareholder in the cooperative building located at the subject premises. He resides in Apartment 3R. A gut renovation of Apartment 3R was being performed by S.G.C. S.G.C. provided six foot A-frame ladders for the job. The ceiling height in the apartment was eight feet. Someone five feet tall would not be able to stand upright on the second rung from the top of the ladder. The proper place to stand on the ladder to perform the demolition work would be the first or second rung of the ladder, which was no more than two feet off the ground. Standing any higher would make the ladder unstable. He has no personal knowledge regarding the circumstances of plaintiff's incident.

Segundo Gualan appeared for an examination before trial on July 27, 2017. He testified that he was another demolition worker in the apartment at the time of the incident. He was working in the bathroom while plaintiff was working in the kitchen. There were six foot A-frame ladders in the apartment. He did not use one of the ladders for the demolition work he did in the bathroom. He did not stand on anything to do the demolition work. The ceilings were eight feet tall. There was nothing wrong with the ladders in the apartment on the day of the incident. Plaintiff told him that he cut his hand. Plaintiff said nothing about the ladder falling. The next day, he finished demolishing the kitchen wall. He used one of the A-frame ladders to do so. He did not stand on the second to the top rung of the ladder.

In opposition, defendant/third-party plaintiff Randall House Owners Corp. (Randall House) submits a copy of a Worker's Compensation Questionnaire Form filled out by plaintiff and dated July 18, 2016. Plaintiff indicated that he "slipped walking down the staircase". Additionally, Randall House submits copies of medical records from Dr. Kumar Reddy, NY Ortho Sports Medicine & Trauma, P.C., and Dr. Kevin E. Wright. Dr. Reddy's report dated September 16, 2015 notes that plaintiff "stated that he slipped off the stairs". The records from NY Ortho Sports Medicine & Trauma, P.C. dated December 17, 2015 indicate that plaintiff "injured his hand with a cutting device, causing the ladder which he was on, to suddenly shift." Dr. Wright's report dated May 7, 2015, notes that plaintiff "was on a ladder and lost his balance."

The proponent of a summary judgment motion has the initial burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing an

entitlement to judgment as a matter of law (see Ayotte v Gervasio, 81 NY2d 1062 [1993]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]; Zuckerman v City of New York, 49 NY2d 557 [1980]). Once the requisite showing has been made, the burden shifts to the opposing party to produce admissible evidence sufficient to establish the existence of a triable issue of fact (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]).

Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with appropriate safety devices to protect against “such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]). To prevail on a Labor Law § 240(1) cause of action, a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the accident (see Blake v Neighborhood Hous. Servs. of New York City, Inc., 1 NY3d 280 [2003]). Although any purported contributory or comparative negligence of the plaintiff is not a defense in an action brought under the statute, a claim under Labor Law § 240(1) will not stand where the plaintiff’s own conduct was the sole proximate cause of his or her injuries (see Zimmer v Chemung County Performing Arts, 65 NY2d 513 [1985]; Plass v Solotoff, 5 AD3d 365 [2d Dept. 2004]).

Here, plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). Plaintiff, the sole witness to the incident, testified that his fall from the ladder occurred when the ladder moved and fell over (see Cano v Mid-Valley Oil Co., Inc., 151 AD3d 685 [2d Dept. 2017]; Casasola v State of New York, 129 AD3d 758 [2d Dept. 2015]; Diaz v 5-01-5-17 48th Avenue, LLC, 111 AD3d 661 [2d Dept. 2013]).

In opposition, however, defendants raised triable issues of fact as to whether, inter alia, plaintiff’s own carelessness or the manner in which he used the ladder was the sole proximate cause of his fall (see Degen v Uniondale Union Free School Dist., 114 AD3d 822 [2d Dept. 2014]; Robinson v Goldman Sachs Headquarters, LLC, 95 AD3d 1096 [2d Dept. 2012]; Destefano v City of New York, 39 AD3d 581 [2d Dept. 2007]). The Worker’s Compensation Questionnaire Form, medical records, and Mr. Gualan’s testimony do not indicate that the ladder fell over. Rather, the evidence submitted in opposition indicate that plaintiff fell because he merely lost his balance or slipped. As several versions of the incident have been presented, which

directly contradict plaintiff's deposition testimony and do not implicate the failure of the ladder as the cause of plaintiff's injuries, triable issues of fact preclude summary judgment. Robinson v Goldman Sachs Headquarters, LLC, 95 AD3d 1096 [2d Dept. 2012]; Albino v 221-223 W. 82 Owners Corp., 142 AD3d 799 [1st Dept. 2016]; Jones v West 56th St. Assoc., 33 AD3d 551 [1st Dept. 2006]).

Accordingly, for the reasons stated above, it is hereby

ORDERED, that plaintiff's summary judgment motion is denied.

Dated: Long Island City, NY
October 30, 2017

ROBERT J. McDONALD
J.S.C.