

Enright v Hampton Inns Mgt. LLC
2017 NY Slip Op 33463(U)
September 20, 2017
Supreme Court, Westchester County
Docket Number: Index No. 67232/2015
Judge: Joan B. Lefkowitz
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT : STATE OF NEW YORK
 IAS PART WESTCHESTER COUNTY
 PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

-----X
 BRENDAN ENRIGHT,

Plaintiff,

-against-

HAMPTON INNS MANAGEMENT LLC, 555
 STORAGE GROUP LLC, ALFRED WEISMAN REAL
 ESTATE, LLC, and MONTESANO BROTHER, INC,

Defendants.
 -----X

To commence the statutory time period for
 appeals as of right (CPLR 5513[a]), you are
 advised to serve a copy of this order, with
 notice of entry, upon all parties.

DECISION & ORDER

Index No: 62732/2015

Motion Return Date:

May 19, 2017

Motion Seq. #1 & #2

The following papers (e-filed documents 68-96) were read on (1) the **E-filed** motion by
 defendants, 555 STORAGE GROUP LLC, ALFRED WEISMAN REAL ESTATE, LLC, and
 MONTESANO BROTHER, INC.,¹ for an order granting summary judgment dismissing the
 complaint against them; and (2) the cross-motion by plaintiff for an order granting partial
 summary judgment on its Labor Law 240(1) and 241(6) claims and an order granting leave to
 amend its bill of particulars to add an allegation that defendants violated 12 NYCRR 23-
 2.1(a)(1).

Notice of Motion, Affirmation (Exhibits A-N)
 Memorandum of Law
 Notice of Cross-Motion, Affirmation
 Affirmation (Exhibits A-C)

Upon reading the foregoing papers it is

ORDERED the branch of the motion which seeks an order granting summary judgment
 dismissing the cause of action alleging a violation of Labor Law 240(1) is denied; and it is
 further

ORDERED the branch of the motion which seeks an order granting summary judgment
 dismissing the Labor Law 200 and common law negligence causes of action is denied; and it is
 further

ORDERED the branch of the motion which seeks an order granting summary judgment
 dismissing the Labor Law 241(6) cause of action is granted to the extent that the portion of the

¹ The action against the defendant, Hampton Inns Management, has been discontinued.

Labor Law 241(6) cause of action based on violations of the Industrial Code set forth in the bill of particulars is granted except for the claim that the defendants violated 23 NYCRR 23-1.7(e)(1) which is not dismissed; and it is further

ORDERED that the branch of the cross-motion which seeks an order granting partial summary judgment on the issue of liability on the Labor Law 240(1) and Labor Law 241(6) causes of action is denied; and it is further

ORDERED the branch of the cross-motion which seeks an order granting leave to amend the bill of particulars by including an allegation that defendants violated 23NYCRR 23-2.1(a)(1) is granted; and it is further

ORDERED the parties are directed to appear on October 17, 2017, at 9:15 a.m. in the Settlement Conference Part, Courtroom 1600, Westchester County Supreme Court, 111 Martin Luther King Boulevard, White Plains, New York, prepared to conduct a settlement conference.

Plaintiff sues claiming he suffered injuries when he and a coworker were carrying a six by six rebar pad down a dirt ramp constructed to bridge a two-foot high footing and he stumbled on a rebar and a concrete cover someone had put in the path of the ramp. The complaint alleges causes of action for common law negligence and violations of Labor Law 200, Labor Law 240(1), and Labor Law 241(6)

Following the completion of discovery defendants move for an order dismissing the complaint, and plaintiff cross-moves for an order granting partial summary judgment on his Labor Law 240(1) and Labor Law 241(6) causes of action and an order permitting him to supplement his bill of particulars by adding a claim that defendants violated 22 NYCRR 23-2.1(a)(1).

Labor Law 240(1)

“Pursuant to Labor Law § 240(1), owners and contractors engaged ‘in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure,’ except certain owners of one- and two-family dwellings, must ‘furnish or erect ... 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’ employed in the performance of such labor. Section 240(1) aims to protect workers and to impose the responsibility for safety practices on those best situated to bear that responsibility. To achieve that goal, the statute imposes absolute liability where the failure to provide proper protection is a proximate cause of a worker's injury. Nevertheless, it is settled that the extraordinary protections of the statute in the first instance apply only to a narrow class of dangers. More specifically, Labor Law § 240(1) relates only to special hazards presenting elevation-related risks. Liability may, therefore, be imposed under the statute only where the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically

significant elevation differential. Consequently, the protections of Labor Law § 240(1) do not encompass any and all perils that may be connected in some tangential way with the effects of gravity. Rather, liability remains contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein. Moreover, section 240(1) is not applicable unless the plaintiff's injuries result from the elevation-related risk and the inadequacy of the safety device" (*Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 96-97, *reargument denied*, 25 N.Y.3d 1195 [internal quotation marks and citations omitted]) (2015).

Here, plaintiff's alleged injuries were not the result of an elevation-related risk and the inadequacy of the ramp. Rather, plaintiff claims his injuries were caused, not by an elevation-related risk and the inadequacy of the ramp, but by someone putting a rebar and a cover in the traveled portion of the ramp's path. Thus, there is no liability under Section 240(1) of the Labor Law.

Labor Law 241(6)

The defendant established entitlement to judgment as a matter of law dismissing all claims predicated on violations Industrial Code, except the purported violation of 12 NYCRR 23-1.7(e)(2). Defendants failed to demonstrate that the materials plaintiff stumbled over were put there by his coworkers or that they were integral to the work plaintiff was performing (*White v Village of Port Chester* 92 AD3d 872 [2d Dept 2012]).

Labor Law 200 and Common Law Negligence

"Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work. When a worker at a job site is injured as a result of a dangerous or defective premises condition, a property owner's liability under Labor Law § 200 and for common-law negligence rests upon whether there is evidence that the property owner created the condition, or had actual or constructive notice of it and a reasonable amount of time within which to correct the condition. When a worker at a job site is injured as a result of dangerous or defective equipment used in the performance of work duties, the property owner's liability under Labor Law § 200 and for common-law negligence rests upon whether the property owner had the authority to supervise or control the means and methods of the work. Where * * * an accident is alleged to involve defects in both the premises and the equipment used at the work site, the property owner moving for summary judgment with respect to causes of action alleging a violation of Labor Law § 200 is obligated to address the proof applicable to both liability standards" (*Wadlowski v. Cohen*, 150 A.D.3d 930 [2d Dept 2017] [internal quotations and citations omitted])

Here, defendants failed to establish their entitlement to judgment as a matter of law since they failed to demonstrate that they neither created nor had actual or constructive notice of the materials laying within the traveled path of the ramp.

Cross-Motion for Summary Judgment

Plaintiff failed to demonstrate his entitlement to judgment as a matter of law on his Labor Law 240(1) and 241(6) causes of action.

Cross-Motion to Amend Bill of Particulars

“[L]eave to amend the pleadings to identify a specific, applicable Industrial Code provision “may properly be granted, even after the note of issue has been filed, where the plaintiff makes a showing of merit, and the amendment involves no new factual allegations, raises no new theories of liability, and causes no prejudice to the defendant” (*D’Elia v. City of New York*, 81 A.D.3d 682, 684 [2d Dept 2011]). Plaintiff is granted leave to amend his bill of particulars to add a violation of 12 NYCRR 23-2.1(a)(1) which requires that materials be stored in a location which does not obstruct a walkway or other thoroughfare since there is evidence in the record from which the jury could conclude that the ramp was designed as a walkway so workers could walk over the footing during construction.

ENTER,

Dated: White Plains, New York
September 20, 2017


HON JOAN B. LEFKOWITZ, J.S.C.