Banas v Lo-Bro Assoc.
2018 NY Slip Op 31471(U)
July 3, 2018
Supreme Court, New York County
Docket Number: 158196/2012
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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WOJCIECH BANAS,

Plaintiff,

-against-

LO-BRO ASSOCIATES, N.Y. AYNILIAN CO., INC., D.P.M. PROPERTY CO., 521 BROADWAY CORP., and 521 BROADWAY CORP d/b/a N.Y. FABRIC WAREHOUSE

Defendants.

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DECISION & ORDER
Index No. 158196/2012

Motion Seq: 004

ARLENE P. BLUTH, JSC

Plaintiff's motion for partial summary judgment on the issue of liability pursuant to Labor Law § 240(1) against defendant Lo-Bro Associates is granted.

Background

This action arises out of injuries Wojciech Banas ("Plaintiff") suffered on November 22, 2009 while repairing an awning at the building located at 406 Broadway, owned by defendant Lo-Bro Associates ("Lo-Bro"). Plaintiff is a self-employed handyman and had been hired by defendant N.Y. Fabric Warehouse ("Warehouse") to repair the awning on the outside of the building. Plaintiff planned to install new brackets and supports to the wall for the awning and had performed these types of services many times before. Plaintiff's accident occurred on his second day at the job site. Plaintiff used a ten or twelve-foot aluminum A-frame ladder provided by Warehouse (NYSCEF Doc. No. 75 at ¶17).

Plaintiff climbed the ladder with a tool belt containing a screw gun and wrenches. The ladder was positioned on the sidewalk to the left of Warehouse and Plaintiff climbed up to the sixth or seventh step of the ladder (NYSCEF Doc. No. 75 at ¶17). Plaintiff held a wrench in his right hand and a screw or bolt in his left hand and reached above his head (*id* at ¶18). Plaintiff

and the ladder then fell to the sidewalk. At this time, there were no scaffolds available to use and no one was holding the ladder (NYSCEF Doc. No. 75 at ¶19).

Plaintiff claims he is entitled to summary judgment against Lo-Bro as a matter of law. In opposition, Lo-Bro claims that summary judgment should not be granted for two reasons. First, Plaintiff failed to establish a prima facie case by not proving that he was provided with a defective safety device. Lo-Bro Claims that an issue of fact exists as to whether a defective ladder was the cause of the fall because Plaintiff had previously climbed and worked on the ladder various times without falling (NYSCEF Doc. No. 87 at ¶6). Second, Lo-Bro contends that summary judgment should not be granted because Plaintiff is not among the class of persons for whom the Labor Law was enacted to protect. Lo-Bro argues Labor Law § 240(1) only protects those working at a construction site and that Plaintiff was not at a construction site nor was he performing any of the activities stated in the statute.

Discussion

To be entitled to summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*).

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed

on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"Where a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240(1)" (*Hernandez v Bethel United Methodist Church of NY*, 49 AD3d 251, 252, 853 NYS2d 305 [1st Dept 2008] [internal quotations and citation omitted] [holding that plaintiff satisfied his prima facie burden by establishing that while using the ladder, it began to shake and wobble]).

The Court finds that partial summary judgment as to Lo-Bro's liability under Labor Law § 240(1) is appropriate because Plaintiff fell from a ladder that was not properly secured. As the owner of the building, Lo-Bro has the responsibility to provide the worker with proper protection under the Labor Law. According to Plaintiff, he was not provided with any protection and Lo-Bro does not contest that claim.

The Court finds that summary judgment is appropriate even if Plaintiff did not establish that he was provided with a defective safety device. Plaintiff failing to prove that the ladder was defective is unrelated to a cause of action under Labor Law § 240(1) (*see Concepcion v 333 Seventh LLC*, 2018 NY Slip Op 04422 [1st Dept 2018] [holding that plaintiff failing to ensure a ladder was properly set up "would, at most, constitute comparative negligence, a defense inapplicable to a Labor law § 240(1) cause of action"]. The Court finds that any issue regarding Plaintiff's actions on the ladder is not a material issue of fact and does not preclude summary

judgment because the ladder did not prevent Plaintiff from falling (*see Yu Xiu Deng v A.J. Cont. Co., Inc.*, 255 AD2d 202, 202, 680 NYSD2d 223, 223 [1st Dept 1998] [holding that whether the ladder fell because plaintiff tipped it over or not is not a material issue of fact]). Additionally, the fact that Plaintiff is the sole witness to the accident does not prevent summary judgment because both Plaintiff and Lo-Bro agree that Plaintiff fell while working on the ladder (*see Concepcion*, 2018 NY Slip Op 04422 [holding that a plaintiff's status as the sole witness to his accident does not preclude summary judgment]).

The Court also finds that Plaintiff is among the class of persons the Labor Law statute protects. Plaintiff was hired by the defendants to perform repairs on the awning located on the outside of the building and performed work to install brackets to ensure that the awning did not fall off the building wall. Those tasks constitute a repair and not minor maintenance (*see Clemente v Grow Tunneling Corp.*, 235 AD2d 331, 331 [1st Dept 1997] [holding that doing work on a fixture of a building constitutes repairs and is within the scope of Labor Law § 240[1]]). Labor Law § 240(1) is applicable in this case because the awning was attached to the front of the building; this it is a fixture, and Plaintiff was doing repair work as described in the statute.

Furthermore, a plaintiff does not need to be at a construction site during the injury to be protected by Labor Law § 240(1) (*see Izrailev v Ficarra Furniture of Long Island*, 70 Ny2d 813, 814 [1998] [holding that a cause of action pursuant to a violation of Labor Law §240[1] was appropriate even though the plaintiff's injury did not occur at a construction site]). Whether the worksite is considered a "construction site" is irrelevant because Plaintiff was doing work within the scope of the statute. Because Plaintiff fell from the six or seventh step of an A-frame ladder while performing awning repair work, he is entitled to summary judgment on the issue of

liability under Labor Law § 240(1).

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim is granted.

This is the Decision and Order of the Court.

Dated: July 3, 2018
New York, New York

ARLENE P. BLUTH, JSC

ARLENE P. BLUTH J.S.C. ARLENE P. BLUTH J.S.C.