

Camacho v Ironclad Artists, Inc.
2018 NY Slip Op 32336(U)
September 14, 2018
Supreme Court, New York County
Docket Number: 161948/2014
Judge: Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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JOAQUIN ESCOBAR CAMACHO,

Plaintiff

Index No. 161948/2014

v

DECISION AND ORDER

IRONCLAD ARTISTS, INC. and BEGGARS
CAPITAL LLC,

Defendants.

and two third-party actions

MOT SEQ 003

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action seeking damages for personal injuries under Labor Law §§ 200, 240(1) and 241(6), the plaintiff moves pursuant to CPLR 3212 and Labor Law §§ 240(1) and 241(6) for summary judgment against the defendants Ironclad Artists, Inc. (Ironclad), and Beggars Capital, LLC (Beggars). The defendants and the third-party defendant, The Palombo Group Inc. (Palombo), oppose the motion. The motion is granted in part.

II. BACKGROUND

The plaintiff, Joaquin Escobar Camacho, alleges that, on September 15, 2014, he was injured when he fell from a scaffold he was standing on while performing sheetrock work on the ceiling

of the sub-basement of a Manhattan building. The plaintiff states that the scaffold tipped over at some point before, during, or after his fall. He commenced this action against the defendants, asserting that they violated Labor Law § 240(1) by failing to supply him with safety devices necessary to provide proper protection to workers from fall-related injuries, and that they violated Labor Law § 241(6) by providing the plaintiff with a scaffold without safety railings. Named as defendants are Ironclad, the cooperative corporation that owned the premises where the incident occurred, and Beggars, a shareholder in the building. Named as a third-party defendant in two third-party actions commenced by Ironclad and Beggars, respectively, is Palombo, the contractor for whom the plaintiff was working at the time of the accident.

III. DISCUSSION

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). The motion must be supported by evidence in admissible form (see Zuckerman v City of New York, 49 NY2d 557 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written

admissions. See CPLR 3212. The facts must be viewed in the light most favorable to the non-moving party. See Vega v Restani Constr. Corp., 18 NY3d 499 (2012); Garcia v J.C. Duggan, Inc., 180 AD2d 579 (1st Dept. 1992). Once the movant meets his burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. See Vega v Restani Constr. Corp., supra.

Labor Law § 240(1) provides that "[a]ll contractors and owners and their agents . . . 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]." The duty created by Labor Law § 240(1) is nondelegable, and an owner or contractor who breaches that duty may be held liable for damages "regardless of whether it has actually exercised supervision or control over the work." Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 500 (1993); see Cahill v Triborough Bridge and Tunnel Authority, 4 NY3d 35 (2004). Moreover, "where an accident is caused by violation of the statute, the plaintiff's own negligence does not furnish a defense." Cahill v Triborough Bridge and Tunnel Authority, supra at 39. However, there can be no liability under Labor Law § 240(1) where there is no violation and the worker's actions are

the sole proximate cause of the accident. Id.; see Barreto v Metropolitan Transp. Authority, 25 NY3d 426 (2015); Blake v Neighborhood Housing Services of New York City, Inc., 1 NY3d 280 (2003); Meade v Rock- McGraw, Inc., 307 AD2d 156 (1st Dept. 2003).

In order to prevail on his motion for summary judgment on his Labor Law § 240(1) claim, the plaintiff must demonstrate that there is no genuine issue of material fact that (i) there was a violation of the statute because the scaffold that the plaintiff was provided with lacked appropriate safety devices, or (ii) that any violation which occurred proximately caused the plaintiff's injury. The plaintiff establishes through his deposition testimony that the scaffold he was working on did not have any rails. The plaintiff further testified that one of the wheels on the scaffold was frozen in the brake position, and that he and his co-workers were instructed not to lock the wheels when performing sheetrock work because it would take too long. The plaintiff states that when he fell, he felt the scaffold was falling on its side and he fell backwards. The plaintiff's testimony shows, prima facie, that the scaffold's lack of safety devices sufficient to prevent him from falling off led to his injuries. Importantly, and contrary to the defendants' assertions, the plaintiff is not required to demonstrate that the scaffold was defective in a particular way in order to satisfy

his burden under Labor Law § 240(1). Hill v City of New York, 140 AD3d 568, 570 (1st Dept. 2016). Rather, it is sufficient for the purposes of Labor Law § 240(1) that adequate safety devices to prevent the scaffold from tipping over or to prevent the plaintiff from falling off the side of the scaffold were absent. Orellano v 29 E 37th St. Realty Corp., 292 AD2d 289, 291 (1st Dept. 2002). Furthermore, it is undisputed that the defendants, as owners of the subject premises at the time of the incident, are each subject to liability pursuant to the statute.

The plaintiff having shown, prima facie, that it is entitled to judgment as a matter of law upon its cause of action arising from Labor Law § 240(1), the burden shifts to the defendants to raise a triable issue of fact. The defendants submit the affidavit of Reynerio Jarquin, another worker who alleges that he witnessed the plaintiff's accident from an adjacent scaffold. Jarquin asserts that the brakes on all wheels of the scaffold from which the plaintiff fell were working properly, that two workers on the ground would typically ensure that the wheels were locked before handing sheetrock to the plaintiff, and that the plaintiff's fall occurred when he attempted to move the scaffold by pushing against the ceiling while the scaffold's wheels were still locked. Jarquin alleges that the scaffold tipped over and fell when the plaintiff tried to move it. Jarquin further recites that the plaintiff grabbed a pipe in the ceiling and hung

from it as the scaffold fell before dropping to the ground. Whether or not the plaintiff contributed to his injuries by pushing against the ceiling, which in any event would have been a part of his job in nailing sheetrock to the ceiling, is irrelevant, as this conduct could not have been the sole proximate cause of his accident. It is undisputed that the scaffold lacked side rails, and had no other protective device to protect the plaintiff from falling off the side. "A lack of certainty as to exactly what preceded plaintiff's fall to the floor below does not create a material issue of fact here as to proximate cause. It does not matter whether plaintiff's fall was the result of the scaffold falling over, or its tipping, or was due to plaintiff mis-stepping off its side. In any of those circumstances, either defective or inadequate protective devices constituted a proximate cause of the accident." Vergara v SS 133 West 21, LLC, 21 AD3d 279 (1st Dept. 2005); see Torres v Monroe College, 12 AD3d 261 (1st Dept. 2004); Crespo v Triad, Inc., 294 AD2d 145 (1st Dept. 2002); Moran v 200 Varick Street Associates, LLC, 80 AD3d 581 (2nd Dept. 2011).

Furthermore, the defense of the recalcitrant worker is not available to defendants. See Cahill v Triborough Bridge and Tunnel Authority, supra. Although the third-party defendant Palombo submits a "Group Health and Safety Program" booklet and a project meeting document purporting to pertain to work at the

subject premises, they have not put forth any evidence to suggest that the plaintiff was actually provided with or even notified of the existence of other safety devices or fall protection available for his use.

Since the plaintiff has established, prima facie, that his injuries were the direct consequence of using a scaffold that did not provide adequate protection from the class of injuries contemplated by Labor Law § 240(1), and the defendants have not come forward with evidence sufficient to raise a triable issue of fact, the plaintiff is entitled to summary judgment on the issue of liability. In light of the foregoing, the court need not address the plaintiff's Labor Law § 241(6) claim. See Howard v Turner Const. Co., 134 AD3d 523 (1st Dept. 2015); Jerez v Tishman Const. Corp. Of New York, 118 AD3d 617 (1st Dept. 2014).

IV. CONCLUSION

In light of the foregoing, it is

ORDERED the plaintiff's motion for summary judgment is granted with regard to liability on the plaintiff's cause of action arising from Labor Law § 240(1) as against the defendants, Ironclad Artists, Inc., and Beggars Capital LLC, and the motion is otherwise denied; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on

the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount of damages that the plaintiff is entitled to; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to

present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

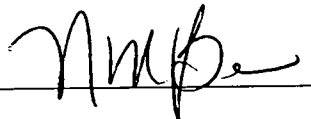
ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending

submission of the Report of the JHO/Special Referee and the determination of this court thereon.

This constitutes the Decision and Order of the court.

Dated: September 14, 2018

ENTER:  J.S.C.

HON. NANCY M. BANNON