

Pierrakeas v 137 E. 38th St. LLC
2018 NY Slip Op 32516(U)
October 2, 2018
Supreme Court, New York County
Docket Number: 157414/2014
Judge: James E. d'Auguste
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 55

-----X
 VASILIOS PIERRAKEAS,

Plaintiff,

-against-

137 EAST 38TH STREET LLC,

Defendants.
 -----X

DECISION AND ORDER

Index No. 157414/2014

Mot. Seq. No. 001

Hon. James E. d'Auguste

Plaintiff Vasilios Pierrakeas moves for partial summary judgment on his Labor Law § 240 (1) liability claim against defendant 137 East 38th Street LLC. For the reasons set forth herein, plaintiff's motion is granted.

Factual and Procedural Background

The facts, as relevant to this motion, are as follows. On February 3, 2014, plaintiff was sent by his employer All City Remodeling ("All City") to 137 East 38th Street, Apartment 9H, New York, NY to perform construction work. At the time of the accident, plaintiff had been assigned to perform crown molding installation work on an eight-to-ten-foot ceiling and had been doing so for several days. Plaintiff was assisted in his work by a carpenter helper named Enoc Galdamez ("Galdamez"), who was present at the time of the accident. In order to reach the ceiling, plaintiff utilized a defect-free, six-foot A-frame ladder provided by All City. The ladder was not tied down or secured while in use. Additionally, plaintiff was not able to hold onto the ladder, as he required both hands to perform crown molding installation.

At the time of the accident, plaintiff had placed the ladder sideways and immediately next to a stack of sheetrock on the floor approximately 12 inches high. Galdamez was performing

another task and was not securing the ladder. While descending the ladder, plaintiff mis-stepped from the ladder onto the stack of sheetrock, causing him to stumble. Plaintiff grabbed the ladder to stabilize himself, but the ladder shifted, causing him to fall to the ground. Plaintiff sustained several injuries from the fall, with the most severe damage inflicted to his left knee.

On July 29, 2014, plaintiff commenced this action against defendant alleging negligence and several violations of New York's labor law. Plaintiff further claims that said negligence resulted in both the injuries he sustained and an inability to attend to his usual vocation.

Plaintiff moves, pursuant to CPLR 3212, for an order granting partial summary judgement on the issue of liability under Labor Law § 240 (1) against defendant 137 East 38th Street LLC.

Discussion

To successfully assert a cause of action under Labor Law 240 (1), also known as the "Scaffold Law", a plaintiff must establish that he or she was injured during the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure. *Goodwin v. Dix Hills Jewish Ctr.*, 41 N.Y.S.3d 104 (2nd Dep't. 2016). Defendant correctly notes that not every fall gives rise to Labor Law 240 (1) liability. *Girodano v. Tishman Const. Corp.* 59 N.Y.S.3d 28 (1st Dep't. 2017). Plaintiff, however, has sufficiently established that he was engaged in a construction related task that posed an elevation related risk as envisioned in Labor Law 240(1), and thus entitled the protection provided by the statute. Additionally, prior case law has established that the installation and repair of crown molding qualifies as the "altering" of a building for the purposes of Labor Law 240(1). *Paszko v. Roman Catholic Church of St. Ignatius Loyola*, 2014 WL 12796790, at *3 (Sup. Ct., N.Y. County 2014) (Wright, J).

To be succeed on a motion for summary judgment, the moving party “must make a prima facie showing of entitlement to judgement as a matter of law, tendering sufficient evidence to demonstrate the absence of any materials issues of fact from the case.” *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). A plaintiff establishes a prima facie claim under Labor Law 240(1) by satisfying a two-part test: there must be a violation of the statute, and the violation must be a contributing cause of the accident. *Blake v. Neighborhood Housing Servs. of New York City, Inc.*, 1 N.Y.3d 280, 287 (2003). Once the plaintiff makes a prima facie showing of entitlement to judgment, the burden then shifts to the defendant, who may defeat plaintiff’s motion for summary judgment by submitting evidence sufficient to raise a triable issue of fact as to whether defendant violated the statute or establish that plaintiff’s own acts or omissions were the sole cause of the accident. *Morin v. Machnick Builders, Ltd.*, 772 N.Y.S.2d 388 (2004)

Defendant claims that plaintiff has failed to meet his burden of proof because an issue of material fact exists as to whether plaintiff was standing still on the ladder, as he alleges, or if he was descending the ladder, as defendant’s evidence suggests. However, defendant’s claims regarding the sufficiency of plaintiff’s evidence fall short. Plaintiff has established his prima facie entitlement to judgment as a matter of law on the cause of action alleging a violation of Labor Law 240 (1) by submitting evidence that the ladder was unsecured and shifted when he attempted to catch himself upon falling. CITE (NYSCEF Doc. No 23). It is well settled that failure to properly secure a ladder to ensure that it remains steady and erect while being used constitutes a violation of Labor Law 240(1). *Schultze v. 585 W. 214th St. Owners Corp.*, 228 A.D.2d 381 (1st Dep’t. 1996). Even viewing the facts most favorable to defendant, it is uncontested that defendant did not provide any protective devices to plaintiff as required by the statute.

The sole factual dispute that defendant alleges regards whether plaintiff fell in the manner he described. Defendant does not contest that it failed to provide adequate safety devices in violation of Labor Law 240(1), nor does the evidence support the argument that there are issues of fact as to whether the unsecured ladder was a proximate cause of plaintiff's injuries. Therefore, there are no triable issues of material fact sufficient to preclude partial summary judgment on plaintiff's Labor Law 240 (1) claim.

Finally, defendant argues that plaintiff's motion for partial summary judgment must fail because it was plaintiff's own actions in placing the ladder next to the sheetrock stack upon which he stumbled which were the sole proximate cause of his own injuries. Where a "plaintiff's actions [are] the sole proximate cause of his injuries, ... liability under Labor Law [Section] 240 (1) [does] not attach." *Weininger v. Hagedorn & Co.*, 91 N.Y.2d 958, 960 (1998).

Defendant contends that plaintiff had the option of moving the sheetrock and cleaning the area near the ladder or asking Galdamez to do so. According to defendant, the failure to pursue either option makes plaintiff the sole proximate cause of his accident. However, this analysis is flawed. The fact that plaintiff chose to place the ladder next to the stack of sheetrock upon which he later fell is not dispositive of his actions being the sole proximate cause of the accident.

The sole proximate cause defense under Labor Law 240 (1) arises where adequate safety devices are available at the job site, but the worker either does not use or misuses them. *Robinson v. East Med. Ctr., LP*, 6 N.Y.3d 550, 554 (2006). There is no evidence to suggest that the ladder that Plaintiff was utilizing at the time of the accident was itself in any way defective or improper for the task at hand. Similarly, there is no evidence that plaintiff misused the ladder that had been provided or chose to utilize the ladder instead of a safer alternative made available to him by his employer. In contrast to defendant's claims, the evidence submitted by defendant

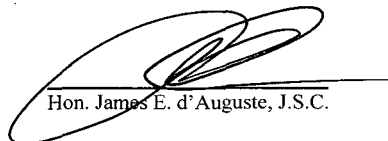
shows that plaintiff did his best to minimize the dangers by clearing the immediate area in which he needed to work. (NYSCEF Doc. No 46).

Based upon the evidence, a reasonable factfinder could determine that plaintiff's positioning of the ladder next to the pile of sheetrock was a contributing cause to his injuries. However, it is well settled that where an injury is caused by a violation of Labor Law 240 (1), plaintiff's own negligence does not furnish a defense. *Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35 (2004).

Conclusion

Based upon the foregoing, Plaintiff's motion for partial summary judgment as to his Labor Law § 240 (1) liability claims is granted. This constitutes the decision and order of this Court.

Dated: October 2, 2018



Hon. James E. d'Auguste, J.S.C.