

Yong Qiao Zhao v A.T.C. Constr. Group Corp.

2019 NY Slip Op 30390(U)

February 14, 2019

Supreme Court, Kings County

Docket Number: 511746/2014

Judge: Carolyn E. Wade

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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 14th day of February 2019

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
YONG QIAO ZHAO,

Plaintiff,

Index No. 511746/2014

-against-

DECISION and ORDER

A.T.C. CONSTRUCTION GROUP CORP., 237 HENRY STREET REALTY LLC and TIEN-YI CHEN,

Defendants.
-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's and Defendants' Motions:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1-2</u>
Cross-Motion and Affidavits/Affirmations.....	<u>3</u>
Answering Affidavits/Affirmations.....	<u>4-6</u>
Reply Affidavits/Affirmations.....	<u>7</u>
Memorandum of Law.....	_____

Upon the foregoing cited papers, and after oral argument, 1) defendant 237 HENRY STREET REALTY LLC's move for an Order granting it summary judgment, dismissing plaintiff's negligence and Labor Law sections 200, 240(1), and 241(6) claims, and all cross-claims, *inter alia*; 2) Plaintiff YONG QIAO ZHAO moves for an Order granting summary

judgment on liability, as to his Labor Law §240(1) claim against defendants 237 HENRY STREET REALTY LLC and A.T.C. CONSTRUCTION GROUP CORP.; and 3) A.T.C. CONSTRUCTION GROUP moves for an Order granting it summary judgment on the plaintiff's common-law negligence, Labor Law §§ 200, 240(1), and 241(6) claims, *inter alia*.

The underlying action was commenced by plaintiff YONG QIAO ZHAO ("Plaintiff"), who alleges that he was injured on August 7, 2014, when he fell from a ladder on a roadway in front of premises located at 237 Henry Street, New York, New York, while disposing debris into a dumpster. At the time of the accident, A.T.C. CONSTRUCTION GROUP CORP. ("A.T.C.") was performing work at 237 Henry Street for co-defendant 237 HENRY STREET REALTY LLC; however, Plaintiff was not involved with that project. Plaintiff was a subcontractor for A.T.C. at an unrelated project located at 225 Rector Place, New York, New York. Plaintiff traveled from his work site to the roadway in front of 237 Henry Street to unload debris from his project into the dumpster

237 HENRY STREET REALTY LLC's Motion for Summary Judgment (sequence #5)

Labor Law §240(1), in pertinent part, provides:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct and control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected **for the performance of such labor**, scaffolding, hoists, stays, ladders,

slings, hangers, blocks, pulleys, braces, irons, ropes, or other devices which shall be so constructed, placed and operated as to give proper protection to **a person so employed** [emphasis added].

In the instant case, Plaintiff was not performing work at 237 Henry Street, New York, New York. Rather, his disposal of debris in a dumpster on the public roadway in front of the property, was pursuant to his work on an unrelated project for A.T.C. at 225 Rector Place, New York, New York. Consequently, Plaintiff is not within the class of persons entitled to protection under Labor Law §240(1).

This Court further notes that Plaintiff has not opposed the branches of 237 HENRY STREET REALTY LLC's application which seek dismissal of his common law negligence, Labor Law §§ 200, 241(6) claims.

Accordingly, 237 HENRY STREET REALTY LLC's Motion for Summary Judgment is **GRANTED**. Since this action is dismissed against the movant, the remaining branches of its application for contractual/common law indemnification and contribution are denied as moot.

***Plaintiff's Motion for Summary Judgment (sequence #4), and
ATC's Cross-Motion for Summary Judgment (sequence #6)***

Labor Law § 240(1) generally requires owners and contractors engaged "in the erection, demolition, repairing, altering, painting, cleaning, or pointing of a building or structure" to "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" performing 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” *Nicometi v. Vineyards of Fredonia*, 25 NY3d 90 [2015]. “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” [emphasis added] *Id.*

Consistent with this Court’s above ruling, the branch of Plaintiff’s motion (sequence #4) which seeks summary judgment against 237 HENRY STREET REALTY LLC pursuant to Labor Law §240(1) is **DENIED**.

With respect to the branch of Plaintiff’s Motion which seeks summary judgment against A.T.C. under Labor Law §240(1), this Court finds that there are several triable issues of material fact, including whether A.T.C. should have been provided a baker scaffold, as opined by Plaintiff’s expert, Nicholas Bellizzi, P.E. Moreover, there is a question of fact as to whether Plaintiff was the sole proximate cause of his accident, as it is undisputed that he was wearing flip flops, rather than his construction boots while on the ladder. Consequently, Plaintiff’s Motion for Summary Judgment against A.T.C. is **DENIED**.

Turning to A.T.C.’s cross-motion for summary judgment, this Court denies the branch of its motion which seeks dismissal of Plaintiff’s Labor Law §240(1) claim, as there are triable issues of material fact, as noted above. As to the remaining branches of A.T.C.’s application, which seeks summary judgment on the common law negligence, Labor Law §§ 200, and 241(6) claims, this Court notes that Plaintiff has neither submitted written opposition nor moved for summary judgment on those grounds. Thus, those branches of A.T.C.’s application are **GRANTED**, and the common law negligence, Labor Law §§ 200, and 241(6) claims are hereby dismissed against it.

Accordingly, based upon the above, 237 HENRY STREET REALTY LLC's Motion for Summary Judgment (sequence #5) is **GRANTED**. Plaintiff's claims and any cross-claims are hereby dismissed against it. Consequently, the branches of its application for contractual/common law indemnification and contribution are rendered moot.

Plaintiff's Motion for Summary Judgment (sequence #4) is **DENIED**.

A.T.C.'s Cross-Motion for Summary Judgment (sequence #6) is **GRANTED solely to the extent** that Plaintiff's common law negligence, Labor Law §§ 200, and 241(6) claims are hereby dismissed against it. Triable issues of material fact remain as to whether A.T.C. is liable under Labor Law §240(1).

This constitutes the Decision and Order of the court.

KINGS COUNTY CLERK
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HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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