

Sinchi v HWA 1290 III LLC

2019 NY Slip Op 31096(U)

April 11, 2019

Supreme Court, New York County

Docket Number: 155217/2015

Judge: Debra A. James

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

INDEX NO. 155217/2015

MIGUEL SINCHI,

MOTION DATE 11/17/2017

Plaintiff,

MOTION SEQ. NO. 003

- v -

HWA 1290 III LLC, HWA 1290 IV LLC, HWA 1290 V LLC, and W5
GROUP LLC,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131

were read on this motion to/for JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is

ORDERED that plaintiff's branch of the motion for partial summary judgment as against defendants on the issue of liability under Labor Law § 240 (1) and the branch on the issue of liability under Labor Law § 241 (6) to the extent that it is based on 12 NYCRR 23-3.3 (b) (1) are granted, and the motion is otherwise denied; and it is further

ORDERED that the defendants' branch of the cross motion for summary judgment dismissing plaintiff's Labor Law § 241 (6) to the extent that it is based on 12 NYCRR 23-3.3 (b) (1) is granted, and the branches of the cross motion for summary judgment dismissing plaintiff's Labor Law §§ 240 (1) and 200

claims and Labor Law § 241 (6) claim to the extent that it is based on 12 NYCRR 23-3.3 (b) (3), (c) are denied.

DECISION

In this action for personal injuries asserting violations of the Labor Law, plaintiff Miguel Sinchi moves, pursuant to CPLR 3212, for partial summary judgment on the issue of liability under Labor Law §§ 240 (1) and 241 (6) against defendants HWA 1290 III LLC, HWA 1290 IV LLC, HWA 1290 V LLC, and W5 Group LLC. Defendants cross-move pursuant to CPLR 3212, for an order dismissing plaintiff's Labor Law §§ 240 (1), 241 (6), and 200 claims.

Background

Plaintiff was allegedly injured on April 29, 2015 while engaged in demolition work as a laborer for non-party Calvin Maintenance, Inc. (Calvin) on a construction project (the project) on the 28th floor of a building located at 190 6th Avenue in Manhattan. Defendants HWA 1290 III LLC, HWA 1290 IV LLC, HWA 1290 V LLC were the owners of the subject premises, and defendant W5 Group LLC was hired by the owners solely to perform demolition work. Calvin was the demolition subcontractor for the project, providing laborers for W5 Group LLC.

Plaintiff commenced this action on May 22, 2015 by filing a summons and complaint against defendants seeking recovery for

violations of Labor Law §§ 200, 240 (1), 241 (6), and for common-law negligence.

DISCUSSION

“The proponent of 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” (Santiago v Filstein, 35 AD3d 184, 185-186 [1st Dept 2006], quoting Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). The burden then shifts to the motion’s opponent “to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (Mazurek v Metropolitan Museum of Art, 27 AD3d 227, 228 [1st Dept 2006], citing Zuckerman v City of New York, 49 NY2d 557, 562 [1980]; see also DeRosa v City of New York, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable issue of fact, the motion for summary judgment must be denied (Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]; Grossman v Amalgamated Hous. Corp., 298 AD2d 224, 226 [1st Dept 2002]).

Labor Law § 240 (1) Claim

Plaintiff moves for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim against defendants. Defendants cross-move for summary judgment dismissing this claim as against them. Labor Law § 240 (1),

also known as the Scaffold Law (Ryan v Morse Diesel, 98 AD2d 615, 615 [1st Dept 1983]), provides, in relevant part:

"All contractors and owners and their agents . . . 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, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

"Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold . . . 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'" (John v Baharestani, 281 AD2d 114, 118 [1st Dept 2001], quoting Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]).

"Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, liability is 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" (Narducci v Manhasset Bay Assoc., 96 NY2d 259, 267 [2001]; see also Hill v Stahl, 49 AD3d 438, 442 [1st Dept 2008]; Buckley v

Columbia Grammar & Preparatory, 44 AD3d 263, 267 [1st Dept 2007]).

To prevail on a section 240 (1) claim, the plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries (see Blake v Neighborhood Hous. Servs. of N.Y. City, 1 NY3d 280, 287 [2003]; Felker v Corning Inc., 90 NY2d 219, 224-225 [1997]; Torres v Monroe Coll., 12 AD3d 261, 262 [1st Dept 2004]).

Plaintiff argues that he is entitled to summary judgment in his favor as to liability on the Labor Law § 240 (1) claim because he has sufficiently established that due to defendants' failure to provide bracing or shoring for the ceiling during demolition work, he was injured when the entire ceiling collapsed on him. In opposition to plaintiff's motion and in support of their cross motion, defendants assert that plaintiff has failed to establish entitlement to summary judgment because plaintiff admitted he was demolishing the ceiling at the time of the accident and to have protective devices would have prevented plaintiff from removing the ceiling.

Plaintiff is entitled to summary judgment on this claim. The ceiling was an object that required securing for the purposes of the undertaking in light of the foreseeable elevation risks of the work. There were no protective devices, such as braces, provided to secure the entire ceiling from

falling on plaintiff while he was working on demolishing only one section of the ceiling. Thus plaintiff's injuries were "the direct consequence of [defendants'] failure to provide adequate protection against [that] risk" (Runner v New York Stock Exch., Inc., 13 NY3d 599, 603 [2009]; see also Czajkowski v City of New York, 126 AD3d 543, 543 [1st Dept 2015] [finding that the plaintiff was entitled to summary judgment on Labor Law § 240 (1) claim because "plaintiff was not provided any safety device or brace to support the window" when he was injured when the unsecured top half of the window fell while he was working on removing the bottom half of the window]; Tylutki v Tishman Techs., 7 AD3d 696, 696 [2d Dept 2004] [finding that the plaintiff was entitled to summary judgment due to absence of safety devices enumerated in Labor Law § 240 (1) where the plaintiff was struck by a falling piece of sprinkler pipe after his co-worker hit it with a hammer, while engaged in demolition of a building]).

In Ragubir v Gibraltar Mgmt. Co. (146 AD3d 563, 564 1st Dept 2017)), the First Department affirmed plaintiff's entitlement to summary judgment where the plaintiff was injured when an unsecure roof collapsed on him despite defendant's testimony that "the object of the work was to get the entire roof on the ground as fast as possible. . ." Demolition was to occur in sections, thus the roof above plaintiff was not the

intended target of the demolition at the time it collapsed on him (id). Here, as in Ragubir, only a section of the ceiling was intended to come down not the entire ceiling as the entire ceiling was not plaintiff's intended target of demolition when the accident occurred.

Defendants' reliance on Wilinski v 334 E. 92nd Hous. Dev. Fund Corp. (18 NY3d 1 [2011]) is unavailing because Wilinski primarily concerns the issue of what constitutes an elevation-related hazard under Labor Law § 240 (1) holding that a falling object at the same level is not precluded as a violation of Labor Law § 240 (1). Wilinski observes that although an injury may have been caused by an elevation-related risk, it is still necessary that there be a "causal nexus between the worker's injury and a lack or failure" of a safety device as contemplated by the statute (Wilinski, 18 NY3d at 9). In the instant case, there is a causal nexus between plaintiff's injury and the lack or failure of the ceiling being braced or shored allowing the entire ceiling to collapse on plaintiff when he was working on only a section of the ceiling.

Importantly, Labor Law § 240 (1) "is designed to protect workers from gravity-related hazards . . . and must be liberally construed to accomplish the purpose for which it was framed [internal citations omitted]" (Valensisi v Greens at Half Hollow, LLC, 33 AD3d 693, 695 [2d Dept 2006]). Therefore,

defendants are not entitled to dismissal of the Labor Law § 240 (1) claim against them, but this branch of plaintiff's motion shall be granted.

Labor Law § 241 (6) Claim

Plaintiff moves for partial summary judgment in his favor as to liability on the Labor Law § 241 (6) claim against defendants. Defendants cross-move for summary judgment dismissing this claim as against them.

Labor Law § 241 (6) provides, in pertinent part, as follows:

"All contractors and owners and their agents . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

* * *

"(6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, [and] equipped . . . as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. . ."

Labor Law § 241 (6) imposes a nondelegable duty "on owners and contractors to 'provide reasonable and adequate protection and safety' to workers" (see Ross, 81 NY2d at 501-502). However, Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable, implementing regulation of the

Industrial Code, rather than a provision containing only generalized requirements for worker safety (id.).

Plaintiff alleges violations of Industrial Code provisions 12 NYCRR 23-3.3 (b) (1), (3), and (c) and moves for summary judgment. Defendants cross moves for summary judgment contending that the cited Industrial Code provisions are inapplicable or were not violated.

12 NYCRR 23-3.3 (b) (1), (3)

Section 23-3.3 (b) provides as follows:

"(1) The demolition of walls and partitions shall proceed in a systematic manner and all demolition work above each tier of floor beams shall be completed before any demolition work is performed on the supports of such floor beams.

* * *

"(3) Walls, chimneys and other parts of any building or other structure shall not be left unguarded in such condition that such parts may fall, collapse or be weakened by wind pressure or vibration.

(12 NYCRR 23-3.3 [b] [1], [3])). Sections 23-3.3 (b) (1) and 23-3.3 (b) (3) have been held to be sufficiently specific to serve as a predicate for a Labor Law § 241 (6) claim (see Ortega v Everest Realty LLC, 84 AD3d 542, 544 [1st Dept 2011]; Garcia v Neighborhood Partnership Hous. Dev. Fund Co., Inc., 113 AD3d 494, 496 [1st Dept 2014])).

Section 23-3.3 (b) (1) is not applicable because the record indicates that the demolition proceeded in a systematic manner.

Plaintiff, Calvin's foreman and W5 Group's supervisor testified that Calvin followed a set order in the demolition work, with the carpet being removed first, followed by the walls, and then followed by the ceiling. There is nothing in the record that indicates Calvin performed any work on the supports of the floor beams; nor is there anything in the record to suggest that the collapse of such beams was the proximate cause plaintiff's accident.

However, an issue of fact exists as to whether section 23-3.3 (b) (3) is applicable, that is, whether the hazard was a result of plaintiff's actual performance of the work or a structural instability caused by demolition. Plaintiff testified that he "pulled the hook a little bit," barely touching the ceiling, and the entire ceiling collapsed onto him injuring him. The record permits the inference that this weakened the structure, causing the entire ceiling to collapse. Calvin's foreman and W5 Group's supervisor testified that the entire ceiling was not supposed to collapse.

If the structure, here the ceiling, was weakened, then defendants violated this section because the ceiling was left "unguarded" during the demolition process as the ceiling was not braced or shored (see Ortega, 84 AD3d at 545). Defendants' reliance on Garcia v 225 E. 57th St. Owners, Inc. (96 AD3d 88 [1st Dept 2012]) and Smith v New York City Hous. Auth. (71 AD3d

985 [2d Dept 2010]) is misplaced because in those actions the record was clear that the hazard arose from the demolition work itself, not the structural instability caused by the progress of the demolition. Therefore, defendants are not entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-3.3 (b) (3) and plaintiff has not shown an undisputed violation.

12 NYCRR 23- 3.3 (c)

Section 23-3.3 (c) provides as follows:

"During hand demolition operations, continuing inspections shall be made by designated persons as the work progresses to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material. Persons shall not be suffered or permitted to work where such hazards exist until protection has been provided by shoring, bracing or other effective means."

(12 NYCRR 23-3.3 [c]).

Section 23-3.3 (c) has been held to be sufficiently specific to serve as a predicate for a Labor Law § 241 (6) claim (see Ortega, 84 AD3d at 545; Gawel v Consol. Edison Co. of New York, 237 AD2d 138, 138 [1st Dept 1997]). Plaintiff testified that the entire ceiling collapsed on him while he was working on only a section of the ceiling. Calvin's foreman and W5 Group's supervisor each testified that neither of them inspected the ceiling and no one was designated to inspect the ceiling. It is not clear from the record whether inspections would have revealed that the entire ceiling was at risk of falling while

plaintiff was working on demolishing it section by section. Thus, there is a question of fact as to whether plaintiff's injury was caused by a failure to shore, brace or conduct continuing inspections during the demolition process "to detect any hazards to any person resulting from weakened or deteriorated floors or walls or from loosened material" (12 NYCRR 23-3.3 [c]; see also Ortega, 84 AD3d at 545 [finding where an unshored aluminum 12-foot wall of the shed shook and fell onto plaintiff after he cut the wall during the demolition, an issue of fact existed as to defendants' failure to make any inspections of the demolition work for the purpose of "detect[ing] any hazards resulting from weakened or deteriorated floors or walls or from loosened material" pursuant to 12 NYCRR 23-3.3(c)). Therefore, defendants are not entitled to dismissal of that part of the Labor Law § 241 (6) claim predicated on an alleged violation of section 23-3.3 (c) and plaintiff has not shown a violation as a matter of law.

Since there are questions of fact regarding the applicable Industrial Code regulations, to the extent that the Labor Law § 241 (6) claim is based on 12 NYCRR 23-3.3 (b) (1), this branch of plaintiff's motion for partial summary judgment is denied and this branch of defendants' cross motion for summary judgment is granted.

Labor Law § 200

Defendants move for summary judgment dismissing plaintiff's Labor Law § 200 claim as against them. Defendants argue that plaintiff waived his Labor Law § 200 claim by not moving for summary judgment on it. Nonetheless, defendants have failed to come forward with prima facie evidence refuting plaintiff's Labor Law § 200 claim.

<u>4/11/2019</u> DATE					 DEBRA A. JAMES, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE