Rubio v New York Proton Mgt., LLC
2020 NY Slip Op 30992(U)
April 15, 2020
Supreme Court, New York County
Docket Number: 155828/2017
Judge: Paul A. Goetz

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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MANUEL RUBIO, KAREN RUBIO,

Plaintiff,

- V -

NEW YORK PROTON MANAGEMENT, LLC,MM PROTON I, LLC,GILBANE BUILDING COMPANY

Defendant.

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INDEX NO. 155828/2017

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for JUDGMENT - SUMMARY.

In this Labor Law action plaintiff Manuel Rubio, an electrician, working on a construction project known as the New York Proton Therapy Project in Manhattan, alleges he was injured after he fell into a trench covered by a plywood floorboard on May 24, 2017. At the time of the accident, Rubio and his co-worker were stacking cable trays when, while attempting to cross the hallway where the trench was located in order to stack more trays, Rubio stepped on the floorboard which gave way causing him to fall into the trench below. The trench was approximately three feet deep and ran almost the entire length of the hallway on the floor where the accident occurred. The floorboard that gave way was three-quarter inches thick and approximately three feet long and four feet wide and was not fastened or secured in any manner. Plaintiffs now move pursuant to CPLR 3212 for summary judgment on their Labor Law § 240 and § 241(6) claims.

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]). As such, the statute applies to incidents involving a "falling worker" or a "falling object" (*Harris v. City of New York*, 83 A.D.3d 104, 108 [1st Dep't 2011] [internal quotation marks omitted]).

The statute "is to be construed as liberally as may be for the accomplishment of the purpose for which it was thus framed" (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 521 [1985], *rearg denied* 65 NY2d 1054 [1985] [internal quotation marks and citation omitted]). However, "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)" (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). "[T]he single decisive question is whether [a] plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Runner v NY Stock Exchange*, 13 NY3d 599, 603 [2009]). Therefore, in order 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 (*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]). Once a plaintiff establishes that a violation of the statute

proximately caused his or her injury, then an owner or contractor is subject to "absolute liability" (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011], citing *Misseritti v Mark IV Constr. Co.*, 86 NY2d 487, 490 [1995], *rearg denied* 87 NY2d 969 [1996]).

Plaintiffs established their prima facie entitlement to judgment as a matter of law on the issue of liability on their Labor Law § 240(1) claim. The evidence shows that the floorboard that caused plaintiff's fall was inadequate because it gave way while Rubio was walking on it, it was not secured, and it was not the heavy-duty one-inch form board plywood that defendants admitted should have been used. Affirmation of S. Wade Turnbull dated September 25, 2019, Exh. 5 (Conklin Dep. Tr. 62, 80-81, 85-86, 94). Further, defendants' argument that plaintiff was not exposed to an elevation-related risk that required the protections under Labor Law 240(1) is meritless as the First Department has repeatedly held that "section 240(1) is violated when workers fall through unprotected floor openings." *Alonzo v. Safe Harbors of the Hudson House Dev. Fund.*, 104 A.D.3d 446, 449-50 (1st Dep't 2013) (citing cases and holding that plaintiff established a prima facie violation of the statute by showing that the plywood board covering the hole was an inadequate safety device because it was not secured); *Carpio v. Tishman Constr. Corp.*, 240 A.D.2d 234 (1st Dep't 1997). In opposition, defendants have failed to raise an issue of fact as to the adequacy of the floorboard, and thus plaintiffs are entitled to summary judgment on this cause of action.

In light of the grant of partial summary judgment on the Labor Law § 240(1) claim, plaintiffs' arguments regarding the Labor Law § 241(6) claim are academic. *Bonaerge v. Leighton House Cond.*, 134 A.D.3d 648, 650 (1st Dep't 2015). Accordingly, it is

ORDERED that plaintiffs' motion is granted to the extent they seek an award of summary judgment on their Labor Law § 240(1) cause of action against defendants, and otherwise denied as academic.

4/15/20
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE