

Scala v Mamaroneck Union Free Sch. Dist.
2020 NY Slip Op 34989(U)
March 11, 2020
Supreme Court, Westchester County
Docket Number: Index No. 51692/2018
Judge: Terry Jane Ruderman
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
FRANK SCALA,

Plaintiff,

-against-

MAMARONECK UNION FREE SCHOOL DISTRICT,

Defendant.

-----X
RUDERMAN, J.

DECISION AND ORDER

Motion Sequence No. 1
Index No. 51692/2018

The following papers were considered in connection with plaintiff's motion for partial summary judgment on the issue of liability pursuant to Labor Law § 240 (1):

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - J	1
Affirmation in Opposition, Exhibits A - H ¹	2
Reply Affirmation	3

Plaintiff moves for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability on his claim pursuant to Labor Law § 240 (1) in this action. Plaintiff commenced this action to recover damages for injuries sustained on December 14, 2016 at a job site, after a closed and unsecured A-frame ladder on which he stood slid out from under him, causing him to fall. At the time, he was installing speakers for a security system in the Homocks

¹ Defendant's documents (NYSCEF Docs. No. 31-39), submitted both in opposition to plaintiff's motion and in support of its cross-motion, which has already been denied on grounds of untimeliness (*see* NYSCEF Doc. No. 43), are considered here only insofar as they apply to Motion Sequence 1. Defendant may not be granted any affirmative relief in the context of this motion.

Middle School in Mamaroneck, New York. His employer, non-party Maxim Networkx, had provided him with a four-foot A-frame ladder and a six-foot A-frame ladder; however, the ceiling of the area in which he was working at the time, which plaintiff needed to reach in order to correctly wire the system, is sixteen feet high. Plaintiff testified at his deposition that he was instructed by his boss to ask a custodian to borrow an appropriate-sized ladder, and he obtained the use of a 14-foot wooden A-frame ladder. However, when he brought that ladder to the room in which he was working, he discovered that the ladder could not be used in the open position in that spot, due to its configuration. He therefore closed the ladder leaned it against the wall, and ascended it in the closed position. After ascending a few steps and testing to check that it was stable, he continued to about six rungs up, to a point where he was able to reach the ceiling. He grabbed a ceiling tile and slid it to his right, found the part of the wiring that he needed, and then ascended to the eighth rung, so that the upper part of his body was above the original location of the ceiling tile. He cut the wire, and began pulling the cable to where the speaker was going to be placed. While he was moving the wire, the ladder slid out from under him, and he fell to the floor, landing on top of the ladder.

In moving for summary judgment on the issue of liability, plaintiff contends that the work he was performing falls within the categories of work listed in Labor Law § 240 (1), and that he was not provided with a device that gave him proper protection against the gravity-related risk of falling from a height.

In opposition, defendant Mamaroneck Union Free School District contends that plaintiff's deposition testimony and his 50-h hearing testimony contained inconsistencies or a lack of clarity as to whether it would have been possible to perform the work with the ladder in the open position; it adds that the photographic evidence it had submitted demonstrates that it

would have been possible for plaintiff to use the ladder in the opened position. It further argues that the work plaintiff was performing did not involve construction, excavation or demolition work, and did not involve making significant changes to the configuration or composition of the building, and accordingly was not protected by the statute.

Analysis

“Labor Law § 240(1) provides exceptional protection for workers against the special hazards that arise when either the work site itself is elevated or is positioned below the level where materials or load are being hoisted or secured” (*Gonzalez v Turner Constr. Co.*, 29 AD3d 630, 631 [2d Dept 2006]). The failure of an owner or an agent of the owner to furnish suitable devices to protect workers when elevation-related work is being performed results in absolute liability against that owner under the statute (*see Lombardi v Stout*, 80 N.Y.2d 290, 295 [1992]), and the duty to provide a suitable safety device under Labor Law § 240(1) is nondelegable (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 500 [1993]). “[L]iability under Labor Law § 240 (1) [is] ‘absolute’ in the sense that owners or contractors not actually involved in construction can be held liable, regardless of whether they exercise supervision or control over the work” (*Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 287 [2003] [citations omitted]). “[A]n owner no longer need be the employer of the worker or one directing his labor in order to be subject to liability” (*Haimes v New York Tel. Co.*, 46 NY2d 132, 136 [1978]).

“To recover on a cause of action pursuant to Labor Law § 240(1), a plaintiff must demonstrate that there was a violation of the statute, and that the violation was a proximate cause of the accident” (*Przyborowski v A & M Cook, LLC*, 120 AD3d 651, 653 [2d Dept. 2014]).

The work of installing a building-wide security system, as described by plaintiff, is

comparable to the work determined to constitute “altering” in *Joblon v Solow* (91 NY2d 457 [1998]). The work in *Joblon* involved

“extend[ing] the electrical wiring from an adjacent utility room through a concrete block wall separating the rooms. To do so, they had to tap an existing power source in the utility room, run wires encased in conduit to the site of the hole in the wall of the utility room, break through the wall separating the rooms with a hammer and chisel, and ultimately direct the wires through the wall”

(*id.* at 461-462; *see also Morales v D&A Food Serv.*, 10 NY3d 911 [2008]; *Weininger v Hagedorn & Co.*, 91 NY2d 958 [1998]; *Becker v ADN Design Corp.*, 51 AD3d 834 [2d Dept 2008]). Since plaintiff here was also required to drill holes and run wires through walls in the process of performing his job, his work constituted an alteration of the building, and therefore falls within Labor Law § 240 (1).

Review of plaintiff’s pre-trial testimony requires the rejection of defendant’s suggestion that plaintiff has been inconsistent or unclear as to whether he could have performed the work with the ladder in the open position. The photographs defendant submits, of an opened A-frame ladder in the vicinity of plaintiff’s accident, are accompanied only by an attorney’s affirmation, in which it is argued that plaintiff could have safely placed the ladder in the open position to perform his work. However, defendant has not provided an affidavit providing any information regarding whether the ladder portrayed in the photographs is the one provided to plaintiff, or even another ladder of the same size. Therefore, defendant has failed to create an issue of fact as to whether plaintiff could have ascended the borrowed ladder in the opened position and accessed the wires in the area of the ceiling that he needed to reach.

Numerous cases have held that where the physical characteristics of the job location prevent the plaintiff from properly opening an A-frame ladder in order to reach the necessary elevation, so that the worker’s only option is to use the ladder by leaning it against a wall in the

closed position, the property owner failed to provide the worker with a ladder that was adequate to perform the assigned task (*see e.g. Cutaia v Board of Mgrs. of the Varick St. Condominium*, 172 AD3d 424, 425 [1st Dept 2019]; *Howard v Turner Constr. Co.*, 134 AD3d 523, 524 [1st Dept 2015]). In *Preneta v North Castle, Inc.* (65 AD3d 1027, 1028 [2d Dept 2009]), the injured plaintiff was standing on a closed A-frame ladder, and the ladder slid out from under him, causing him to fall and sustain injuries, and the defendant was held liable under Labor Law § 240 (1) for failure to provide the injured plaintiff with proper protection, proximately causing his accident. Based upon the submissions, plaintiff has demonstrated that this rule applies to him, and that defendant property owner failed to provide plaintiff with a ladder that was adequate to perform the assigned task, which failure proximately caused plaintiff's accident.

Based upon the foregoing, it is hereby,

ORDERED that plaintiff's motion for partial summary judgment on the issue of defendant's liability under Labor Law § 240 (1) is granted; and it is further

ORDERED that the parties are directed to appear on Tuesday, May 5, 2020 at 9:15 a.m., in the Settlement Conference Part, room 1600 of the Westchester County Courthouse located at 111 Dr. Martin Luther King, Jr., Boulevard, White Plains, New York, 10601.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
March 11, 2020


HON. TERRY JANE RUDERMAN, J.S.C.