

Wright v Plaza Constr. LLC

2020 NY Slip Op 35522(U)

December 21, 2020

Supreme Court, Bronx County

Docket Number: Index No. 24497/2019E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 2

BRYAN WRIGHT,

Index No.: 24497/2019E

Plaintiff,

- against -

DECISION and ORDER

PLAZA CONSTRUCTION LLC.,

Defendant.

PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff's summary judgment motion is whether he is entitled to judgment on liability as to his Labor Law §240(1) claim. This court finds in the affirmative.

According to Plaintiff, on the date of loss he was employed by non-party Capital Interiors as a laborer. Plaintiff testified that his task consisted of moving framing materials from outside of the building to the ground floor inside the building. Plaintiff further testified that as he was moving the framing materials with a coworker up a ramp, he was struck in the head while wearing his hardhat by a piece of scaffolding that fell from the eleventh or twelfth floor of the work site rendering him injured. After being struck on the head, Plaintiff testified that he picked up the metal piece of the scaffolding also known as a toe board¹ from the ground and described it as a foot long and weighing approximately five to ten pounds.

Labor Law §240(1), imposes absolute liability on building owners, contractors, and their agents whose failure to provide adequate protection to workers employed on a construction site

¹ More generally, a toe board is a small vertical barrier attached to a raised floor or raised platform. A toe board is like a tiny wall - usually between 4 and 12 inches - whose purpose is to prevent objects or people from falling over, or rolling over, the side of a raised platform. (See https://en.wikipedia.org/wiki/Toe_board last visited December 21, 2020)

proximately causes injury to a worker. *Santos v. Condo 124 LLC*, 161 A.D.3d 650, 78 N.Y.S.3d 113 (1st Dep't 2018). To establish liability under Labor Law §240(1), a plaintiff must show that the statute was violated, and that the violation was a proximate cause of the injury. *Id.* In addition, a plaintiff must demonstrate that his injury was attributed to a specific gravity-related injury such as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured. *See Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp.*, 18 N.Y.3d 1, 959 N.E.2d 488, 935 N.Y.S.2d 551 (2011).

Here, Plaintiff argues that because it was undisputed that the toe board was unsecured causing it to fall from a height namely the scaffolding located on the eleventh or twelfth floor of the work site he established his *prima facie* burden of a Labor Law §240(1) violation. Furthermore, Plaintiff argues that the toe board was itself a safety device that collapsed evidencing a Labor Law §240(1) violation.

In opposition, Defendant argues that the instant motion should be denied because the deposition transcripts that Plaintiff attached to his moving papers were unsigned. Moreover, Defendant contends that there are triable issues of fact that preclude Plaintiff's request for summary judgment on his Labor Law §240(1) claim. Defendant posits there are triable issues of fact as it claims that the toe board did not strike Plaintiff directly, but rather it bounced off a nearby overhead protection, before striking Plaintiff's hardhat. Thus, Defendant alleges that the fact the toe board struck the over protection constitutes an independent or intervening cause to Plaintiff's accident, therefore, it was a danger wholly unrelated to the protections afforded under Labor Law §240(1). In addition, Defendant contends that Plaintiff failed to demonstrate that the toe board was an object that was being hoisted or secured at the time that it fell and struck Plaintiff. Lastly, Defendant argues that Plaintiff failed to establish what safety device listed in

Labor Law §240(1) would have prevented his accident as Defendant did install overhead protection to prevent the very danger Plaintiff was exposed to.

This court finds Defendant's argument regarding Plaintiff's use of the unsigned deposition transcripts unavailing. The unsigned deposition transcript of Defendant's witness, Shawn Augustine, submitted by Plaintiff in support of his motion was admissible as said transcript was certified by the reporter and Defendant does not challenge its accuracy. *See Franco v. Rolling Frito-Lay Sales, Ltd.*, 103 A.D.3d 543, 962 N.Y.S.2d 54 (1st Dep't 2013); *see also* CPLR §3116(a). In addition, even if Plaintiff used his unsigned deposition transcript that was not certified by a reporter, it "was submitted by the party deponent himself and, therefore, was adopted as accurate by the deponent." *Id.*

This court further finds it was undisputed that the toe board was part and parcel of the scaffolding, which itself constituted a safety device under Labor Law §240(1) and by the toe board giving way, Plaintiff established a *prima facie* Labor Law §240(1) violation due to the scaffolding's malfunction, which proximately caused his injuries. *See Leveron v. Prana Growth Fund I, L.P.*, 181 A.D.3d 449, 121 N.Y.S.3d 242 (1st Dep't 2020); *see also Thompson v. St. Charles Condominiums*, 303 A.D.2d 152, 756 N.Y.S.2d 530 (1st Dep't 2003). This court further finds even if the toe board is not considered as part of the scaffolding, it nonetheless was an object that required securing for purposes of Labor Law §240(1), and Plaintiff was not obligated to demonstrate that the toe board was in the process of being secured at the precise time that it fell. *See Matthews v. 400 Fifth Realty LLC*, 111 A.D.3d 405, 974 N.Y.S.2d 370 (1st Dep't 2013); *see also Boyle v. 42nd St. Dev. Project, Inc.*, 38 A.D.3d 404, 835 N.Y.S.2d 7 (1st Dep't 2007). This court has considered the balance of Defendant's arguments and finds that they failed

to raise any triable issues of fact, which would preclude Plaintiff's request for judgment as to liability on his Labor Law §240(1) claim.

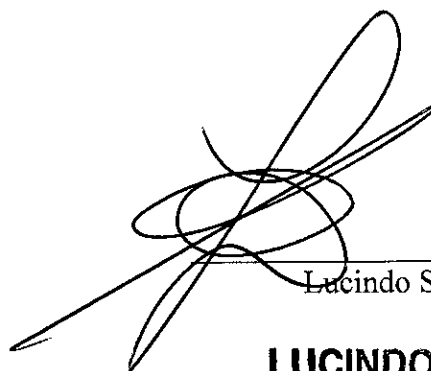
Accordingly, it is

ORDERED, that Plaintiff's motion for summary judgment seeking liability on his Labor Law §240(1) claim is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: December 21, 2020

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C