Lajqi v City of New York
2021 NY Slip Op 30627(U)
March 3, 2021
Supreme Court, New York County
Docket Number: 156893/2015
Judge: J. Machelle Sweeting

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **IAS MOTION 62**

Justice

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BESIM LAJQI,

Plaintiff,

- v -

THE CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, URS CORPORATION, URS CORPORATION - NEW YORK

Defendant.

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INDEX NO. 156893/2015

MOTION DATE 08/17/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

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

Pending before the court is a motion filed by plaintiff seeking summary judgment on the issue of liability under Labor Law §240(1) against defendant Metropolitan Transportation Authority ("MTA"). Upon the forgoing documents, and upon oral arguments heard before this court on March 2, 2021, the motion is DENIED.

In the underlying action, plaintiff alleges that while he was climbing an approximate 20-25 foot straight ladder between two levels underneath Grand Central Terminal and carrying an approximate 50 pound fire extinguisher on one of his shoulders during said climb, plaintiff fell to the ground and sustained injuries.

The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept.

1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

Here, plaintiff argues that the ladder from which he fell was the sole means of access between two levels underneath Grand Central Terminal; that there was no other way for him to move the fire extinguishers between the two levels under the Grand Central Terminal; that he fell because the ladder "shook"; and that plaintiff was not provided with any fall protection even though the MTA's own job specifications for this project specifically require "fall protection for all workers exposed to any fall greater than 6-feet."

In opposition, the MTA argues that summary judgment should be denied because the ladder used by plaintiff was secured and without defect thereby creating an issue of fact as to whether the ladder constituted proper protection; and that a "rope pulley system" was provided to plaintiff for his use so that plaintiff could have and should have maintained three points of contact while climbing the ladder.

Section 240(1) of the Labor Law provides, in pertinent part:

> *All contractors and owner 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, clocks, 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.*

Here, plaintiff maintains that the ladder shook, causing him to fall. Yet, plaintiff ascended the ladder several times, both before and after the incident occurred. Moreover, the parties concede that the ladder was not defective. Importantly, there remains an issue of fact as to whether the ladder actually "shook." Other than plaintiff's own statement, the record is devoid of any evidence to support this. Rather, the evidence reflects that plaintiff ascended the ladder six times both before and after the incident; and that the ladder was secured by being tied off at the top and chocked/wedged into place at the bottom with a block that was bolted into the concrete floor. *See* Campise v. Cohen, 302 A.D.2d 332 (Sup. Ct. App. Div. 1st Dept. 2003) ("The court properly denied plaintiff summary judgment as to liability on his Labor Law 240(1) claim since the evidence submitted on the motion raises triable issues of fact as to whether plaintiff's fall and injury were attributable in some measure to the inadequacy of the ladder as a safety device for his work").

With regard to plaintiff's claim that there was no alternative to his using the ladder, this claim is contradicted by the record, which consists of the testimony of Mr. Cascarano and Mr. Simpson and the photographs, which indicate that a rope/pully system was in place, and that plaintiff was instructed on how to use this system but chose not to. Further, to the extent that the plaintiff claims that the pictures do not accurately portray the ladder used on the date of the incident; that plaintiff denies that a rope/pully system was on place, arguing that if such system was in place he would have used it; and that plaintiff denies he was instructed to use the system

and instructed to maintain points of contact when on a ladder, the court finds that these are all issues of fact that preclude summary judgment. *See* Meade v. Rock-McGraw, Inc., 307 A.D.2d 156 (Sup. Ct. App. Div. 1st Dept. 2003) (holding that: (1) genuine issue of material fact as to whether six-foot ladder provided to worker was proper safety device precluded summary judgment, and (2) owner and lessee made sufficient showing that worker's own conduct was the sole proximate cause of his injuries, precluding summary judgment on issue of liability under scaffold law); Miraglia v. H & L Holding Corp., 306 A.D.2d 58 (Sup. Ct. App. Div. 1st Dept. 2003) ("Plaintiff, while employed as a construction laborer, was injured when he fell from planks used to span a trench and provide access to foundation walls. While it is plain that the planks, which broke under plaintiff's weight, did not provide protection in accordance with the requirements of Labor Law § 240(1), plaintiff's motion for summary judgment as to liability upon his Labor Law § 240(1) claim was nonetheless properly denied […] Although plaintiff disputes whether use of the ladders constituted a practical alternative to use of the planking and denies having been instructed not to use the planking, resolution of the resulting credibility issues would be inappropriate on a motion for summary judgment").

For the reasons stated above and for those stated on the record on March 2, 2021, plaintiff's motion is DENIED.

3/3/2021
DATE

J. MACHELLE SWEETING, J.S.C.

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