Szafranski v City of New York
2021 NY Slip Op 30818(U)
March 15, 2021
Supreme Court, Kings County
Docket Number: 506058/2017
Judge: Debra Silber

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

---x

GRZEGORZ SZAFRANSKI and EWELINA SZAFRANSKI,

Plaintiff(s),

-against-

THE CITY OF NEW YORK, DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK and THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY,

Defendant(s).

---x

DECISION / ORDER

Index No. 506058/2017
Motion Seq. No. 5
Date Submitted: 3/15/21

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of defendants' motion for summary judgment

Papers	**NYSCEF Doc.**
Notice of Motion, Affirmations, Affidavits and Exhibits Annexed.....	69-84
Affirmation in Opposition and Exhibits Annexed.....	102
Reply Affirmation.....	110

Upon the foregoing cited papers, the Decision/Order on these motions is as follows:

Upon the foregoing papers, defendants move, (Mot. Seq. # 5) pursuant to CPLR 3212, for an order granting them summary judgment dismissing plaintiffs' complaint, which includes claims for common-law negligence and Labor Law §§ 200, 240 (1), and 241 (6). As the co-plaintiff's claims are derivative, the court will only refer to "plaintiff" in this decision. Plaintiff does not oppose the branches of the motion which seek to dismiss plaintiff's claims under the common law, or under Labor Law §§ 200 or 241 (6). Therefore, this decision is solely addressed to plaintiff's claim under Labor Law § 240 (1).

Background

This personal injury action stems from an accident which occurred on October 1, 2016 during construction work at PS 216, located at 350 Avenue X, Brooklyn, New

York. Plaintiff testified at his deposition that at the time of the accident, he and a coworker named Lee were moving a large cart filled with heavy debris. They intended to move it up a ramp from the basement of the premises to the street. It was a permanent cement and metal ramp, not a temporary structure. Plaintiff does not claim there was anything wrong with the ramp [EBT Pages 25 and 32]. However, there was no handle on the cart. Plaintiff was walking backwards and "pulling" on the lip of the cart, while Lee was on the other side of the cart "pushing" it. They arrived at the bottom of the ramp, and plaintiff walked up the ramp about ten inches, still facing the cart. Lee pushed, and plaintiff fell backwards, falling onto his side. At the time of the accident, plaintiff testified that none of the wheels on the cart were on the ramp [EBT Page 42].

Plaintiff subsequently commenced this personal injury action, alleging violations of Labor Law §§ 200, 240 (1), 241 (6), as well as common-law negligence. Defendants interposed an answer to the complaint and the parties engaged in discovery. The Note of Issue was filed, and this summary judgment motion followed.

It is well settled that "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 demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v Buitriago*, 107 AD3d 977 [2013]). Failure to make such a showing requires the denial of the motion, regardless of the sufficiency of the papers in opposition (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324; *see also, Smalls v AJI Indus. Inc.,* 10 NY3d 733, 735 [2008]). Once a prima facie demonstration has been made, however, the burden shifts to the party opposing the motion to produce

evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendants provide an affirmation in support which is 90 pages long. While it was submitted before the Uniform Rules were changed to put a limit on papers, it is too long under any analysis. Counsel avers (¶ 115) that "Inasmuch as plaintiff's injuries are not attributable to the elevation differential between the ramp's surface and the ground below, plaintiff does not possess a viable Labor Law § 240 (1) claim. Since plaintiff did not sustain injuries as a result of an elevation-related risk as contemplated by Labor Law § 240 (1), defendants' motion for summary judgment must be granted." Defendants' counsel then provides an 89-page long memo of law.

As stated above, In opposition to the motion, plaintiff opposes only the branch of the motion which is addressed to plaintiff's claim under Labor Law § 240 (1), and counsel's affirmation is silent (E-File Doc 102) with regard to plaintiff's other claims. Therefore, those branches of the defendants' motion are granted without opposition, and plaintiff's claims for common-law negligence, and for violations of Labor Law §§ 200 and 241 (6), are dismissed.

With regard to plaintiff's Labor Law 240 (1) claim, the court finds that this statute does not apply to the plaintiff's accident. In a similar case, the Appellate Division stated "the accident was not caused by the effects of gravity. To the contrary, the cart rolled over plaintiff's foot while his co-workers were pushing it back up the ramp, that is, while the cart was ascending" (see *Sinkaus v Regional Scaffolding & Hoisting Co., Inc.*, 71 AD3d 478, 479 [1st Dept 2010]).

Labor Law § 240 (1) provides in relevant part: "All contractors and owners and their agents . . . in the . . . demolition [or] altering . . . 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." Section 240 (1) imposes absolute liability on owners, contractors and their agents for injury proximately caused by a breach of the statutory duty (*Gordon v Eastern Ry. Supply*, 82 NY2d 555, 559, 626 NE2d 912, 606 NYS2d 127 [1993]). The hazards that warrant the protection contemplated by the statute are "those related to the effects of gravity where protective devices are called for . . . because of a difference between the elevation level of the required work and a lower level" (see (*Torkel v NYU Hosps. Ctr.*, 63 AD3d 587, 3 [1st Dept 2009]; *Rocovich v Consolidated Edison Co*., 78 NY2d 509, 514, 583 NE2d 932, 577 NYS2d 219 [1991]).

Here, there is no evidence that the ramp was defective. There is no evidence that defendants' failure to equip this ramp with handrails, curbs, cleats, or other safety devices was the proximate cause of plaintiff's injuries. There is no evidence that the ramp was being used as a safety device. It was some sixty feet long and went from the basement to the ground floor exit and was used, among other things, to remove garbage from the school basement. Second, plaintiff was not injured by a falling object. Third, he was not injured by the effects of gravity, nor was there a height differential between the elevation level of the work and a lower level. Finally, he has not submitted any evidence that he should have been provided with scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, or any other devices “which shall

be so constructed, placed and operated as to give proper protection to a person so employed" (*see Arrasti v HRH Constr. LLC*, 60 AD3d 582, 583 [1st Dept 2009]). Neither side has provided any expert's report.

In conclusion, defendants are entitled to dismissal of the plaintiff's Labor Law § 240 (1) claim. Plaintiff's testimony establishes that he was not exposed to the type of elevation-related hazard contemplated by the statute. At the time he fell, he was about ten inches from the ground, standing on the ramp, while his co-worker was standing on the ground and pushing the ramp towards plaintiff. He was in the process of "lifting" the edge so the cart's wheels would come up the ramp. He lost his balance. The height differential of 10 inches did not constitute a physically significant elevation differential covered by the statute (*see Sawczyszyn v New York Univ.*, 158 AD3d 510, 511, 73 NYS3d 131 [1st Dept 2018]; *Torkel v NYU Hosps. Ctr.*, 63 AD3d 587, 590, 883 NYS2d 8 [1st Dept 2009]). Also, as the ramp was serving as a passageway, as opposed to the "functional equivalent" of a safety device enumerated under the statute, it does not fall within the purview of the statute (*see Jackson v Hunter Roberts Constr. Group, LLC*, 161 AD3d 666, 667 [1st Dept 2018]; *Gomez v City of New York*, 63 AD3d 511, 512, 881 NYS2d 65 [1st Dept 2009]; *Carrera v Westchester Triangle Hous. Dev. Fund Corp.*, 116 AD3d 585, 585, 984 NYS2d 339 [1st Dept 2014]; *Ghany v BC Tile Contrs., Inc.*, 95 AD3d 768, 945 NYS2d 657 [1st Dept 2012]).

For the reasons stated above, the branches of the defendants' motion for summary judgment dismissing plaintiff's claims for common law negligence, and for violations of Labor Law §§ 200 and 241 (6) are granted without opposition, and those claims are dismissed. The branch of defendants' motion for summary judgment

dismissing plaintiff's Labor Law § 240 (1) claim is also granted, for the reasons stated above, and the complaint is dismissed.

The foregoing constitutes the decision and order of the court.

Dated: March 15, 2021

ENTER:

Hon. Debra Silber, J.S.C.