

Zherka v Hudson Meridian Constr. Group LLC

2021 NY Slip Op 34127(U)

August 31, 2021

Supreme Court, Bronx County

Docket Number: Index No. 27365/2018E

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

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

Mtn. Seq. # 3

ILIR ZHERKA,

Index No.: 27365/2018E

Plaintiff,

- against -

DECISION and ORDER

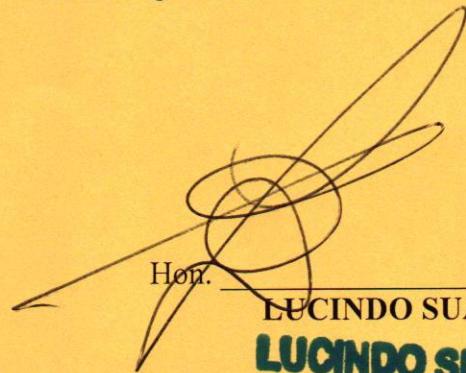
HUDSON MERIDIAN CONSTRUCTION GROUP
LLC and RXR SOYA EXALTA OWNER LLC,

Defendants.

	<u>PAPERS NUMBERED</u>
Plaintiff's Notice of Motion, Affirmation in Support, Statement of Undisputed Material Facts, Memorandum of Law in Support, Exhibits	1, 2, 3, 4, 5
Defendants' Affirmation in Opposition, Counter Statement of Material Facts, Exhibit	6, 7, 8
Plaintiff's Reply Affirmation	9

Upon the enumerated papers, Plaintiff's summary judgment motion seeking judgment as to liability on his Labor Law §§240(1) and 200 claims is granted, in accordance with the annexed decision and order.

Dated: 8/31/2021



Hon.

LUCINDO SUAREZ, J.S.C.

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HUDSON MERIDIAN CONSTRUCTION GROUP
LLC and RXR SOYA EXALTA OWNER LLC,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff’s summary judgment motion is whether he is entitled to judgment as to liability on his Labor Law §§240(1) and 200 claims. This court finds that he established his *prima facie* burden with respect to liability on his Labor Law §§240(1) and 200 claims and Defendants failed to elicit any triable issues of fact to preclude his entitlement to judgment.

According to Plaintiff, on the day of his accident he was employed as a project manager by non-party Master’s Architectural Metal (“Master”). Master was hired as a subcontractor to erect the steel framing of an elevator shaft. The steel framing was composed of heavy vertical and horizontal steel beams each weighing approximately 800-1000 pounds. Plaintiff testified that as the project manager, he was tasked with supervising the miscellaneous metal laborers as they erected a steel beam within the elevator shaft.

He testified that in order for the workers to lift and move the steel beams they first laid them on the ground. Workers would then attach three or four straps to a forklift and tie the straps around the middle and ends of the steel beams. This enabled the workers to move the steel beams to its desired position. Plaintiff claims that his accident occurred as workers placed a steel

beam in a vertical position within the elevator shaft. As the workers began to drill the steel beam into place, the straps failed causing it to swing into Plaintiff's left leg and causing the top portion of the steel beam to land on top of him, thereby, rendering him injured.

Labor Law §240(1)

Plaintiff seeks summary judgment on his Labor Law §240(1) claim. 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 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).

Plaintiff argues that he is entitled to judgment with respect to his Labor Law §240(1) claim because: (1) he was a protected worker engaged in a protected activity as defined by Labor Law §240(1); (2) he was struck by a falling object (i.e., the steel beam) that was improperly secured; and (3) that his injuries were proximately caused by Defendants' failure to provide him with adequate safety devices in order to protect him from a gravity-related injury. In opposition, Defendants contend that liability under Labor Law §240(1) should not attach because Plaintiff was the sole proximate cause of his injury and/or that he was a recalcitrant worker.

This court finds that Plaintiff demonstrated his *prima facie* burden of a Labor Law §240(1) violation in that he was struck by an unsecured falling object (i.e., the steel beam),

which proximately caused his injuries. Defendants in opposition failed to rebut Plaintiff's *prima facie* showing. Their sole proximate cause arguments are unpersuasive as their reliance upon Mr. Greg McCord's deposition testimony failed to raise any triable issues of fact. Although Mr. McCord testified that he informed Plaintiff that he did not have the proper rigging equipment to perform his injury-producing work he also admitted that he did not tell Plaintiff not to perform the work, effectively undermining Defendants' sole proximate cause defense.

Moreover, Defendants' recalcitrant worker defense must fail as they did not demonstrate that Plaintiff "had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured." *See Kosavick v. Tishman Constr. Corp. of NY*, 50 A.D.3d 287, 855 N.Y.S.2d 433 (1st Dep't 2008).

Therefore, this court finds that Plaintiff demonstrated his *prima facie* burden of a Labor Law §240(1) violation and Defendants failed to raise any triable issues of fact to preclude his entitlement to judgment.

Labor Law §200

Plaintiff seeks summary judgment on his Labor Law §200 claim against Defendant Hudson Meridian Construction Group LLC ("Hudson"). Labor Law §200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work. *Licata v. AB Green Gansevoort, LLC*, 158 A.D.3d 487, 71 N.Y.S.3d 31 (1st Dep't 2018). Where an existing defect or dangerous condition causes injury, liability under Labor Law §200 attaches if the owner or general contractor created the condition or had actual or constructive notice of it. *Id.* In addition, under Labor Law §200, liability for a dangerous condition may arise from the methods employed by a subcontractor, over which the

owner or general contractor exercises supervision and/or control. *Makarius v. Port Auth. of NY & New Jersey*, 76 A.D.3d 805, 907 N.Y.S.2d 658 (1st Dep't 2010).

Plaintiff claims that Hudson violated Labor Law §200 as: (1) it had the authority to control the activity which proximately caused his accident; and (2) it possessed actual and constructive notice of the dangerous condition that led to his accident due to its contractual responsibilities and considering that it affirmatively coordinated with Plaintiff's employer on the method used to lift the subject steel beam that caused Plaintiff's accident. In opposition, Defendants contend that they did not violate Labor Law §200 as Plaintiff was the sole proximate cause of his accident.

This court finds that Plaintiff established his *prima facie* burden that Hudson violated Labor Law §200 as it was not disputed that Hudson's superintendent, Mr. McCord, possessed actual knowledge of the dangerous conditions that led to Plaintiff's injuries. Specifically, Mr. McCord testified at his deposition that he personally informed Plaintiff that he did not have the proper rigging equipment to perform his injury-producing work, thus, evincing Hudson's actual knowledge of the dangerous conditions that led to Plaintiff's injuries.

Therefore, this court finds that Plaintiff showed his *prima facie* burden of a Labor Law §200 violation and Defendants failed to raise any triable issues of fact to preclude his entitlement to judgment.

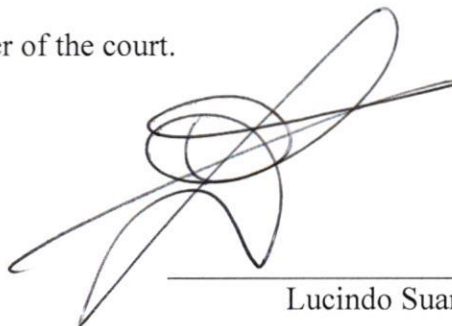
Accordingly, it is

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

ORDERED, that Plaintiff's summary judgment motion seeking judgment as to liability on his Labor Law §200 claim against Hudson is granted.

This constitutes the decision and order of the court.

Dated: August 31, 2021

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

Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.