

Yarce v Zuric
2021 NY Slip Op 34303(U)
May 6, 2021
Supreme Court, Queens County
Docket Number: Index No. 715207/2018
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
Justice

IAS Part 12

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PATRICIA GARCIA YARCE,

Plaintiff(s),

-against-

HANA ZURIC and RESTORATION EXPERTS OF
NY, INC.,

Defendant(s).

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RESTORATION EXPERTS OF NY, INC.,

Third-Party Plaintiff,

-against-

G&C CLEANING SERVICES INC.,

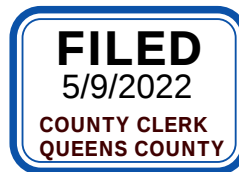
Third-Party Defendant.

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Number: 715207/2018

Motion Date:
April 12, 2022

Motion Seq. No.: 004



The following papers read on this motion by plaintiff for an order, pursuant to CPLR § 3212, extending plaintiff's deadline to move for summary judgment based on plaintiff's showing of good cause and granting summary judgment to plaintiff Patricia Garcia Yarce on her cause of action, pursuant to Labor Law § 240 [1].

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	E72-91
Affirmation In Support,.....	E93-97
Reply Affirmation.....	E101-102

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Plaintiff alleges that she was injured in the course of her employment when she fell through sheetrock under attic floor joists. Plaintiff commenced this action against defendants alleging, *inter alia*, violations of Labor Law §§ 200, 240 [1], and 241 [6].

Defendant Restoration was the general contractor for the "cleaning and remediation project" at the home, owned by defendant Hana Zuric, resulting from a blockage of the chimney. Now, plaintiff moves for summary judgment on her cause of action pursuant to Labor Law § 240 [1] against defendant Restoration Experts of NY, Inc. ("defendant Restoration") on the ground that said defendant failed to furnish any safety devices to protect plaintiff from the alleged collapse of sheetrock while she performed cleaning work.

Labor Law § 240 [1] "imposes on owners and general contractors a nondelegable duty, and absolute liability for injuries proximately caused by the failure to provide appropriate safety devices to workers who are subject to elevation-related risks" (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]). The protections of Labor Law § 240 [1] apply to workers engaged in the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure" (Labor Law § 240 [1]; *Dahar v Holland Ladder & Mfg. Co.*, 18 NY3d 521, 524 [2012]; *Prats v Port Auth. Of N.Y. & N.J.*, 100 NY2d 878, 880 [2003]). Labor Law § 240 [1] "imposes liability even on contractors and owners who had nothing to do with the plaintiff's accident; and where a violation of the statute has caused injury, any fault by the plaintiff contributing to that injury is irrelevant" (*Dahar v Holland Ladder & Mfg. Co.*, 18 NY3d at 524). Contrary to defendant's contention, liability under Labor Law § 240 [1] is not limited to cleaning related to construction, demolition or repair (*Dahar v Holland Ladder & Mfg. Co.*, 18 NY3d at 525; *Broggy v Rockefeller Group, Inc.*, 8 NY3d 675, 680 [2007]).

An activity is not cleaning under Labor Law § 240 [1] if it "(1) is routine, in the sense that it is the type of job that occurs on a daily, weekly or other relatively-frequent and recurring basis as part of the ordinary maintenance and care of commercial premises; (2) requires neither specialized equipment or expertise, nor the unusual deployment of labor; (3) generally involves insignificant elevation risks comparable to those inherent in typical domestic or household cleaning; and (4) in light of the core purpose of Labor Law § 240 [1] to protect construction workers, is unrelated to any ongoing construction, renovation, painting, alteration or repair project" (*Soto v J. Crew Inc.*, 21 NY3d 562, 568 [2013]; *Torres v St. Francis Coll.*, 129 AD3d 1058,

1060 [2d Dept 2015]; *Pena v Varet & Bogart, LLC*, 119 AD3d 916, 917 [2d Dept 2014]). Although the court must apply the factors in determining whether particular activity constitutes cleaning under Labor Law § 240 [1], the "presence or absence of any one is not necessarily dispositive if, viewed in totality, the remaining considerations militate in favor of placing the task in one category or the other" (*Soto v J. Crew Inc.*, 21 NY3d at 569; *Torres v St. Francis Coll.*, 129 AD3d at 1060; *Pena v Varet & Bogart, LLC*, 119 AD3d at 917).

Here, plaintiff demonstrated her prima facie entitlement of judgment as a matter of law on the issue of defendant Restoration's liability on the Labor Law § 240 [1] claim. According to the sworn affidavit of professional engineer, Thomas R. Parisi, P.E., plaintiff's fall through sheetrock, under the floor joists, which was inadequate to protect plaintiff's weight in the attic, and the absence of planks or boards to provide a surface on which plaintiff could "walk, stand or step to perform that work," while engaged in an activity enumerated under the statute creates a presumption that the sheetrock and/or that balancing on floor joists did not afford proper protection and was a proximate cause of her injuries. (See *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d at 289 n 8; *Bland v Manocherian*, 66 NY2d 452, 461 [1985]; *Bermejo v New York City Health & Hosps. Corp.*, 119 AD3d 500 [2d Dept 2014]; *Tapia v Mario Genovesi & Sons, Inc.*, 72 AD3d 800 [2d Dept 2010]; *Heffernan v Bais Corp.*, 294 AD2d 401, 403 [2d Dept 2002]; *Dos Santos v State of New York*, 300 AD2d 434, 434 [2d Dept 2002]; *Klapa v O&Y Liberty Plaza Co.*, 218 AD2d 635, 636 [1st Dept 1995]). Plaintiff avers that she was engaged in an activity protected under Labor Law § 240 [1], and was not performing work associated with normal wear and tear; neither was she engaged in regularly scheduled or routine maintenance. Plaintiff relies on defendants' witnesses, who described the plaintiff's activities as cleaning stemming from a chimney malfunction. Plaintiff further contends that, in addition to cleaning, plaintiff was involved in the "alteration" of the subject home as she was tasked to remove insulation in the attic space to which she was assigned.

In opposition, defendant Restoration failed to submit evidence in admissible form sufficient to rebut plaintiff's prima facie showing of entitlement to summary judgment on her Labor Law § 240 [1] cause of action. Defendant Restoration merely makes bare assertions through an attorney affirmation that plaintiff's activity amounted to nothing more than "cleaning a dirty house."

Accordingly, plaintiff's motion for summary judgment on the Labor Law § 240 [1] cause of action as against defendant Restoration, is granted.

All other requested relief not specifically addressed herein is denied.

This constitutes the decision and order of the court.

Dated: May 6, 2021



Denis J. Butler, J.S.C.

