

Rivera v 3111 LLC

2022 NY Slip Op 34422(U)

December 21, 2022

Supreme Court, Kings County

Docket Number: Index No. 512224/2017

Judge: Ingrid Joseph

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At IAS Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11201 on the 21st day of December 2022.

P R E S E N T: HON. JUSTICE INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 512224/2017

-----X
VICTOR RIVERA,

Plaintiff,

DECISION AND ORDER

-against-

3111 LLC, VISION CONTRACTING NY
CORP., SINGIA CONCEPT, INC., and
FENCO CONTRACTING, INC.,

Defendants.

-----X

3111 LLC,

Third-Party Plaintiff,

-against-

FENCO CONTRACTING CORP.,

Third-Party Defendant.

-----X

The following e-filed papers considered herein:

NYSCEF Nos:

Notice of Motion/Affidavit/Affirmation/Exhibits Annexed
Affirmations in Opposition
Reply

9 - 23; 29 - 36
28 - 39; 47 - 53
40 - 46

In this matter, plaintiff, Victor Rivera ("plaintiff"), moves by Notice of Motion (Motion Seq. 11) pursuant to CPLR § 3212 for summary judgment on the issue of liability on his Labor Law 240(1) and 241(6) claims against defendants 3111 LLC, Vision Contracting NY Corp.

("Vision Contracting"), Singia Concept, Inc. ("Singia"), and FENCO Contracting Corp. ("Fenco"). 3111 LLC cross moves for summary judgment, dismissing plaintiff's causes of action against it.

In the complaint, plaintiff alleges that he sustained serious bodily injuries on June 9, 2017 while working on an elevated, wooden platform in order to place block and the beams needed for a new construction project. Plaintiff claims that the platform on which he was working collapsed, causing him to fall onto the concrete foundation approximately ten feet below. It is undisputed that 3111 LLC is the owner of the premises, and Fenco was plaintiff's employer and the general contractor at the time of plaintiff's fall. It is further undisputed that the construction site had been excavated by previous contractor, Vision Contracting, which also poured the concrete foundation on which the elevated, wooden platform was positioned.

Plaintiff, as the proponent of the motion, is required to 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 on his claims against each defendant herein (*See Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558-559 [2d Dept 1994]).

Here, the court finds that plaintiff's motion is devoid of any arguments, or evidence, that relates to his claims against defendant Singia Concept Inc. Additionally, plaintiff acknowledges that he was employed by Fenco at the time of his accident and consequently, his sole remedy against Fenco is to seek recovery under the Workers' Compensation Law (see Workers' Compensation Law §§ 11, 29[6]; *Billy v. Consolidated Mach. Tool Corp.*, 51 NY2d 152, 156 [1980]). Furthermore, the court finds that Vision Contracting is not liable under Labor Sections

240(1) and 241(6), or any of the Industrial Code Sections asserted by plaintiff. Vision Contracting acquired the New York City Department of Buildings permit with the understanding that it would be completing the entire project. Vision Contracting also commenced working on the project by digging the hole for the foundation, performing concrete work, pouring walls and installing the footings. However, Vision Contracting has maintained that it ceased working on the project six months before plaintiff's accident in December 2016, when 3111 LLC engaged Fenco as general contractor. This version of events was corroborated by 3111 LLC's owner (Freddie Vera) during his deposition. Moreover, the evidence reveals that plaintiff received daily assignments and materials to complete such assignments from Fenco. In fact, plaintiff testified that he never heard of, or worked for, Vision Contracting. Thus, there is no showing that Vision Contracting was actively working on the site when the accident occurred and therefore, it did not possess authority to control or supervise the means and methods of plaintiff's work. Contrary to plaintiff's contention, the fact that 3111 LLC engaged Vision Contracting after plaintiff's incident to correct safety issues is insufficient to substantiate plaintiff's labor law claims against Vision Contracting.

Plaintiff is entitled to summary judgment on his Section 240(1) claim against 3111 LLC. Section 240(1), often called the "scaffold law," provides that all contractors and owners shall furnish or erect, or cause to be furnished or erected, 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 construction workers employed on the premises (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494 [1993]). The purpose of the statute is to protect workers and to impose the responsibility for safety practices on those best situated to bear that responsibility (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY2d at 500 citing *Zimmer v. Chemung County Performing Arts*, 65 NY2d 513, 520 [1985]). The duty imposed by Labor Law § 240 (1) is nondelegable and therefore, an owner or contractor who

breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work (Ross, at 500 citing *Haines v New York Tel. Co.*, 46 NY2d 132, 136-137 [1978]).

Here, plaintiff has established prima facie that a violation of the statute occurred and such violation proximately caused his injuries ” (*Reinoso v. Ornstein Layton Mgt., Inc.*, 19 AD3d 678, 678 [2005], *lv dismissed* 5 NY3d 849 [2005]). Plaintiff was working on a platform at a height of ten feet, a scenario specifically contemplated under Section 240(1). Moreover, plaintiff fell and suffered injuries when the plank on which he was standing collapsed (*Jablonski v. Everest Constr. & Trade Corp.*, 264 AD2d 381, 382 [1999])[a collapse alone establishes plaintiff’s prima facie case on the issue of liability under Section 240(1)], citing *Birbilis v. Rapp*, 205 AD2d 569, 570 [1994]; *Robertti v. Chang*, 227 AD2d 542 [1996]; *Ageitos v. Chatham Towers*, 256 AD2d 156 [1998]). 3111 LLC failed to raise a material issue of fact for trial.

Labor Law § 241 (6) imposes a “nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers” (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 878 [1993]; see *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348 [1998]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993]; *Dickson v Fantis Foods*, 235 AD2d 452 [1997]). In order to demonstrate entitlement to summary judgment on 241(6) claims, the plaintiff must allege a violation of a specific and applicable provision of the Industrial Code (see *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 504-505 [1993]; *D’Elia v. City of New York*, 81 AD3d 682, 684 [2d Dept 2011]), and establish that the regulation is applicable to the facts herein (see *Rau v. Bagels N Brunch, Inc.*, 57 AD3d 866, 868 [2d Dept 2008]).

Plaintiff has asserted that 3111 LLC violated Section 23-1.7 [f][planks must be arranged in a safe manner that protects against the hazards of gravity] Section 23-5.1 [b] [platforms must be sound, rigid, capable of supporting the maximum load intended to be upon it, and that the

plank is secured against movement] Section 23-5.1[c] [elevated planks must be able to support four times the maximum load intended], and Section 23-5.1[e][planks must be secured against movement]. In light of the underlying, undisputed facts in this matter, the court finds that the above sections are sufficiently specific and relevant to form the basis of plaintiff's claim against 3111 LLC under Section 241(6).


Accordingly, it is hereby

ORDERED that plaintiff's motion (Motion Sequence 11) is granted to the extent that plaintiff is awarded summary judgment against 3111 LLC on the issue of liability on his Labor Law §§ 240(1) and 241(6) claims. That branch of plaintiff's motion for summary judgment against defendants Singia Concept, Inc. and Fenco Contracting, Inc., and Vision Contracting NY Corp. is denied, and it is further

ORDERED that the motion (Motion Sequence 12) of defendant Fenco Contracting, Inc. for summary judgment, dismissing plaintiff's causes of action against it is granted.

This constitutes the decision, order and judgment of the court.

ENTER,


HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice