

Iqbal v City of New York

2022 NY Slip Op 34596(U)

March 10, 2022

Supreme Court, Queens County

Docket Number: Index No. 717900/2018

Judge: Maurice E. Muir

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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



QAISER IQBAL,

Plaintiff,

-against-

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

Defendants.

IAS Part - 42

Index No.: 717900/2018

Motion Date: 3/31/22

Motion Cal. No.: 30

Motion Seq. No.: 4

The following electronically filed (“EF”) documents read on this motion by Qaiser Iqbal (“Mr. Iqbal” or ‘plaintiff’) seeks an order: 1) pursuant to CPLR § 3212 and Labor Law §241(6), granting plaintiff partial summary judgment against the City of New York (“the City”) and New York City School Construction Authority (“SCA”) (collectively, the “defendants”) based upon the violation of 12 NYCRR 23-1.8(a); and 2) dismissing all affirmative defenses predicated upon Plaintiff’s alleged comparative fault and/or culpable conduct; and 3) granting such other and further relief as to this Court may seem just and proper.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	EF 52 - 68
Answering Affidavits - Exhibits	EF 70 - 71
Reply Affidavits	EF 72 - 73

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

This is an action to recover damages for personal injuries the plaintiff allegedly sustained while working at a construction at P.S. 354, located at 126-10 Bedell Street, in the County of

Queens, City and State of New York (“subject premises”), which is owned by the City of New York. The plaintiff alleges that on August 28, 2017, he was performing work on behalf of Pro-Metal Construction, Inc., who had been retained by the City of New York to do construction work at the subject premises. The plaintiff alleges that while grinding a piece of metal, a piece of the grinding brush went into his eye causing him injury. As a result, on November 21, 2018, the plaintiff commenced the instant action based upon violation of Labor Law §§ 240 and 241(6); and on December 28, 2018, issue was joined. Now, the plaintiff moves for partial summary judgment in his favor on his claim under Labor Law § 241(6), predicated on a violation of the New York State Industrial Code (12 NYCRR § 23-1.8(a) (“Eye protection”).

In support of the instant motion, the plaintiff argues that he is entitled to partial summary judgment on his Labor Law § 241(6) cause of action because, “. . . he suffered a severe eye injury due to a failure to provide eye protection thereby allowing a two to three inch long piece of wire to enter his eye after it broke off from the wire wheel brush of a grinder he was using to grind rust from a metal beam.” As a result, the plaintiff contends that the defendants violated New York State Industrial Code (12 NYCRR § 23-1.8(a), which mandates that “[a]pproved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons while employed in welding, burning or cutting operations or in chipping, cutting or grinding any material from which particles may fly, or while engaged in any other operation which may endanger the eyes. In opposition, the defendants argue that “. . . the plaintiff cannot demonstrate as a matter of law that Industrial Codes §§ 23-1.8(a) was violated as the plaintiff himself admitted that eye protection had been provided at this work site by his employer (he had used it the week prior to his accident). He claims that he did not find any on the day of the accident but he admittedly never looked for any after he was given the work assignment to use a grinder that day even though he knew that it was necessary to wear them for this task. Thus, there are questions of fact as to whether the plaintiff himself failed to avail himself of a safety device at this site.”

It is well settled law that Labor Law § 241(6) imposes a nondelegable duty on owners, contractors and their agents to provide reasonable and adequate protection and safety to persons employed in construction, excavation or demolition work, and to comply with the safety rules and regulations promulgated by the Commissioner of the Department of Labor. (*see Misicki v. Caradonna*, 12 NY3d 511, 515 [2009], quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81

NY2d 494, 501-502 [1993]; *see also Rizzuto v. L.A. Wenger Contr. Co.*, 91 NY2d 348 [1998]; *Moscato v. Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717 [2d Dept 2019]; *Seals v. Trident Structural Corp.*, 142 AD3d 1152 [2d Dept 2016]; *Norero v. 99-105 Third Ave. Realty, LLC*, 96 AD3d 727 [2d Dept 2012]). The ultimate responsibility for safety practices at building construction sites lies with the owner and general contractor. (*see Allen v. Cloutier Constr. Corp.* 44 NY2d 290 [1978]; *Chowdhury v. Rodriguez*, 57 AD3d 121 [2d Dept 2008]). “In order to recover damages on a cause of action alleging a violation of Labor Law § 241(6), a plaintiff must establish the violation of an Industrial Code provision, which sets forth specific safety standards” (*La Veglia v. St. Francis Hosp.*, 78 AD3d 1123, 1125 [2d Dept 2010], quoting *Hricus v. Aurora Contrs., Inc.*, 63 AD3d 1004, 1005 [2d Dept 2009]). Plaintiff’s Labor Law § 241(6) claim is predicated on a violation of the New York State Industrial Code 12 NYCRR § 23-1.8(a) (“Eye protection”).

The New York State Industrial Code 12 NYCRR § 23-1.8(a) provides that “[a]pproved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons while employed in welding, burning or cutting operations or in chipping, cutting or grinding any material from which particles may fly, or while engaged in any other operation which may endanger the eyes.” (*see McByrne v. Ambassador Constr. Co., Inc.*, 290 AD2d 243, 243-44 [1st Dept 2002] (*emphasis added*); *Guryev v. Tomchinsky*, 87 AD3d 612, *affd* 20 NY3d 194 [2011]; *Pedras v. Authentic Renaissance Modeling & Contr., Inc.*, 16 AD3d 567 [2d Dept 2005]; *Cappiello v. Telehouse Intl. Corp. of Am.*, 193 AD2d 478, 479 [1st Dept 1993]; *see also Montenegro v. P12, LLC*, 130 AD3d 695 [2d Dept 2015]). It is well established that, because the determination of legal causation turns upon whether the injury was a foreseeable result of a defendant’s conduct, the issue is generally for the fact finder to resolve (*Kriz v. Schum*, 75 NY2d 25, 34). A plaintiff need only show that his injury was substantially caused by the defendant’s negligent conduct (*Kush v. City of Buffalo*, 59 NY2d 26, 32-33 [1983]) and “need not demonstrate . . . that the precise manner in which the accident happened. . . was foreseeable” (*Derdiarian v. Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]).

Here, the court finds that the plaintiff testified that debris flew into his eye while he was grinding rust from a metal beam without wearing protective goggles established a *prima facie* defendants’ liability under Labor Law § 241(6), predicated on a violation of Industrial Code (12 NYCRR) § 23-1.8 (a) (“Eye protection”). (*see Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d

494 [1993]; *Brundo v. 10-12 Cooper Square, Inc.*, 140 AD3d 535 [1st Dept 2016]). Contrary to the defendants' contentions, the plaintiff is not required to show freedom from comparative fault in order to establish his *prima facie* entitlement to judgment as a matter of law on the issue of a defendants' liability. (see *Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Quizhpi v. South Queens Boys & Girls Club, Inc.*, 166 AD3d 683 [2d Dept 2018]; *Moscato v. Consolidated Edison Company of New York, Inc.*, 168 AD3d 717 [2d Dept 2019]; *Wein v. East Side 11th & 28th, LLC*, 186 AD3d 1579 [2 Dept 2020]). It is well settled that comparative negligence is not a defense to a negligence cause of action, it is only an affirmative defense which, if proven by the defendant, will reduce the amount of damages awarded to plaintiff.

However, that branch of the plaintiff's motion to strike the defendants' affirmative defenses is denied. "CPLR § 3211(b) provides that '[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.'" When moving to dismiss, the plaintiff bears the burden of demonstrating that the affirmative defenses 'are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense'" (*Shah v. Mitra*, 171 AD3d 971 [2d Dept 2019], quoting *Bank of Am., N.A. v. 414 Midland Ave. Assoc., LLC*, 78 AD3d 746, 748 [2d Dept 2010]; see also *Lewis v. U.S. Bank National Association*, 186 AD3d 694 [2d Dept 2020]). Additionally, on a motion pursuant to CPLR § 3211(b), the court should apply the same standard it applies to a motion to dismiss pursuant to CPLR § 3211(a)(7), and the factual assertions of the defense will be accepted as true. "Moreover, if there is any doubt as to the availability of a defense, it should not be dismissed." (*Shah v. Mitra*, 171 AD3d 971 [2d Dept 2019], quoting *Wells Fargo Bank, N.A. v. Rios*, 160 AD3d 912, 913 [2d Dept 2018]). Here, the court finds that the defendants' affirmative defenses (comparative negligence, culpable conduct, etc.) do not lack merit, especially in light of the fact that the plaintiff admitted that his employers had provided him with eye protection at this work sit; and he had used the eye protection a week prior to his accident. Notwithstanding the same, there is no evidence that the defendants had provided the plaintiff with eye protection on the day in question.

Accordingly, it is hereby

ORDERED, that branch of plaintiff's motion for summary judgment against defendants on the issue of liability, pursuant to Labor Law § 241(6), is granted; and it is further,

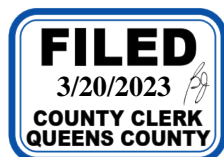
ORDERED that branch of plaintiff's motion to strike the defendants' affirmative defenses, pursuant to CPLR § 3211(b), is denied, in its entirety; and it is further,

ORDERED that any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon all parties on or before April 25, 2023.

The foregoing constitutes the Decision and Order of the court.

Dated: March 10, 2022
Long Island City, New York



A handwritten signature in black ink that reads "Maurice E. Muir". The signature is written in a cursive style and is positioned above a horizontal line.

MAURICE E. MUIR, J.S.C.