

Paiba v 56-11 94th St. Co., LLC

2022 NY Slip Op 34615(U)

December 21, 2022

Supreme Court, Queens County

Docket Number: Index No. 704365/2019

Judge: Mojgan C. Lancman

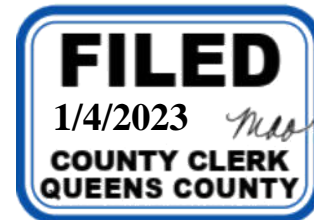
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN



-----x
CARLOS PAIBA,

IAS Part 20

Plaintiff,

Index No.: 704365/2019

-against-

Motion Seq. No.: 3

56-11 94th STREET COMPANY, LLC and
GINSBERG HOLDINGS, L.P.,

Motion Date: 6.15.2022

Defendants.

Motion Cal. No.: 19

-----x

The e-filed papers bearing NYSCEF document numbers 53-79 were read on the motion made by the plaintiff, Carlos Paiba (the "Plaintiff"), for an Order granting partial summary judgment against the defendants 56-11 94th Street Company, LLC ("56-11 LLC") and Ginsberg Holdings, L.P., ("Ginsburg") (collectively, the "Defendants").

The Plaintiff commenced this action seeking to recover damages for personal injuries allegedly sustained in an accident (the "Accident"). Presently before the Court is the Plaintiff's motion: (1) for partial summary disposition against the Defendants on the basis Labor Law § 240 [1]; and (2) to dismiss the Defendants' affirmative defense of comparative negligence and assumption of risk. For the following reasons, the motion is denied.

I. Factual Background

The Accident occurred on March 6, 2019 in an apartment located at 56-11 94th Street in Queens (the "Premises"). The Plaintiff was employed by Algin Management ("Algin"), a non-party, at that time.

On March 6, 2019, the Plaintiff was assigned by Algin to a repair a hole in the ceiling of an apartment at the Premises. The hole had been created by a plumber to repair a leak.

The work required the Plaintiff to utilize a ladder. The ladder that was utilized was of the A-frame variety. It was made of wood with metal braces and was comprised of 12 steps. There is no dispute that the Plaintiff did not own the ladder. As to who selected the ladder, there are factual disputes. The Plaintiff contends that the ladder was provided to him by the superintendent of the Premises, Peter Berisha ("Berisha"), who is employed by Algin. For his part, Berisha contends that the Plaintiff selected the ladder.

The Plaintiff utilized the ladder without incident for 2.5 hours on the morning of the Accident. He then took a lunch break and returned to work at 1:00 p.m. Upon his return, he began the sanding phase of the work. The Accident occurred less than three minutes after he began sanding. The Plaintiff testified as follows with respect to the Accident:

- Q. So you went up the ladder with a piece of sandpaper in your hand?
A. Yes, I went up with three 10 pieces, sandpaper and a sponge...
- Q. When you walked up the ladder to do this, did you once again stand on the ninth step?
A. Correct.
- Q. Did you use one hand to apply 20 the sandpaper or two hands to apply the sandpaper?
A. One hand.
- Q. Did you apply the sandpaper with your right hand or your left hand?
A. Right hand.
- Q. When you were sanding the ceiling with your right hand where was your left hand?
A. Holding the ladder.
- Q. Were you able to complete the job of sanding the ceiling before your accident occurred?
A. No.
- Q. Were you in the process of sanding the ceiling when your accident occurred?*
A. Correct.
- Q. While you were sanding the ceiling did you go up and down the ladder or did you stay on the ladder the entire time?
A. I stayed on the ladder the whole time.
- Q. Would you say that it was for more than three minutes or less than three minutes that you were sanding the ceiling [before the Accident occurred]?
Q. Less than three minutes.
- Q. Now, did you have to move the ladder at all in order to position yourself to perform the sanding?
A. No.
- Q. And am I correct you were the person who set up the ladder, correct?
Q. Yes.
- Q. And the floor surface that the ladder was on, was it a carpet, tile or wood floor?
A. Concrete.
- Q. You were looking up at the ceiling with your left hand on the ladder and your right hand applying sandpaper to the ceiling right before the accident happened?*
A. Correct.
- Q. What happened at that time?*
A. The ladder started moving a lot side to side.
- Q. What caused the ladder to start moving to side to side?*
A. The sanding, because of the sanding that I was doing. The strength I

was using.

Q. So because of the force of your hand sanding the ceiling, the ladder started to move, is that what you're saying?

A. Yes.

Q. And when the ladder moved side to side, what, if anything, occurred?

A. It collapsed to the left side. And what I remember is that the ladder fell on the right side of my abdomen.

Q. When you say the ladder collapsed, was the ladder still in an A-frame position or did it close or something else?

A. It was in A-frame.

Q. Did it maintain its position in that A-form?

A. Yes, sir.

Q. So you're applying force to the ceiling and the ladder moved to your left?

A. Yes, it fell.

Q. The ladder fell to the left from your perspective?

A. Yes.

Q. How did your body move; did it move backwards, forward, to the left, to the right or something else?

A. To the left side, and the ladder fell together with me.

Q. Your body fell in the same direction that the ladder was falling?

A. Yes.

[Emphasis added]

II. Discussion

Labor Law § 240 [1] provides that:

All contractors and owners and their agents ... in the erection, demolition, repairing, altering, painting, cleaning or pointing 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.

“[A]n accident alone is insufficient to establish a violation of Labor Law § 240 [1] or causation” (*Cutaia v Board of Managers of 160/170 Varick Street*, 38 NY2d 1037, 1038 [2022] [internal quotation marks and citations omitted]).

“In order to establish his entitlement to judgment on liability as a matter of law, plaintiff [is] required to show that the statute was violated and the violation proximately caused his injury” (*Bonzar v American Multi-Cinema, Inc.*, 158 AD3d 1114, 1115 [4th Dept 2018] [internal quotation marks and citations omitted]).

A violation of Labor Law § 240 [1] “creates absolute liability” (*Zimmer v Chemung Cty. Performing Arts*, 65 NY2d 513, 522 [1985]). Contributory negligence was not a defense to a cause of action predicated upon Labor Law § 240 [1] (*see id.*). As the result of the imposition of “absolute liability,” Labor Law § 240 [1] prevents “owners and contractors [from] diminish[ing] their obligations under that statute and ... set[ting] their own standard of care for the protection of workers at the worksite” (*see id at 524*).

“[W]ith regard to accidents involving ladders, liability will be imposed when the evidence shows that the subject ladder ... was inadequately secured and that ... the failure to secure the ladder was a substantial factor in causing the plaintiff’s injuries” (*see Von Hegel v Brixmor Sunshine Square, LLC*, 180 AD3d 727, 729 [2d Dept 2020] [internal quotation marks omitted]).

When a ladder collapses for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute, the presumption is that the ladder did not afford proper protection is created (*see Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 289 [2003]).

However, it is settled law that where a plaintiff’s actions are the sole proximate cause of his or her injuries, liability under Labor Law § 240 [1] does not attach (*see Robinson v East Med. Ctr., LP*, 6 NY3d 550 [2006]).

The record and the foregoing legal principles require denial of the Plaintiff’s motion. As explained below, “[t]here is a plausible view of the evidence—enough to raise a fact question—that there was no statutory violation and that plaintiff’s own acts or omissions were the sole cause of the accident” (*Bonczar v American Multi-Cinema, Inc.*, 158 AD3d 1114, 1115) [internal brackets, quotation marks and citations omitted].

The Plaintiff admitted that the ladder moved because of the force that he was applying to sand the ceiling. Furthermore, the ladder was utilized without incident on the date of the Accident for hours before the Accident took place. Thus, based on his testimony, there is an issue of fact as to whether the ladder fell due to the Plaintiff’s actions (*see id.*)

Furthermore, contrary to the Plaintiff’s contention on this motion, his deposition testimony reveals that the ladder did not collapse. Rather, it fell to his left and was still in an A form after the Accident. The Plaintiff further conceded that his body and ladder fell in the same direction. Thus, there is an issue of fact as to whether the Plaintiff’s actions caused the ladder to fall (*Bonczar v American Multi-Cinema, Inc.*, 158 AD3d 1114).

The conclusory and speculative affidavit submitted by the Plaintiff’s liability expert fails to eliminate all issues of fact.

In sum, there are triable issues of fact as to whether the Plaintiff’s acts and omissions were the sole proximate cause of the Accident (*see Rosa v 47 E. 34th St. [NY], L.P.*, 208 AD3d 1075 [1st Dept 2022]; *Bonczar v American Multi-Cinema, Inc.*, 158 AD3d 1114). In light of this determination, it is unnecessary to consider the parties’ remaining contentions.

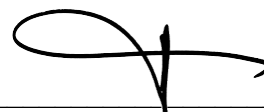
III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Plaintiff's motion is denied.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
December 21, 2022



MOJGAN C. LANCMAN, J.S.C.

