Weidtman v Tremont Renaissance Hous. Dev. Fund Co., Inc.
2022 NY Slip Op 34694(U)
March 23, 2022
Supreme Court, Bronx County
Docket Number: Index No. 20106/2018E
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 6

GREGORY WEIDTMAN,

Index No.: 20106/2018E

Plaintiff,

- against -

DECISION and ORDER

TREMONT RENAISSANCE HOUSING DEVELOPMENT FUND COMPANY, INC., TREMONT RENAISSANCE LLC, TREMONT RENAISSANCE AFFORDABLE LLC, MASTERMIND DEVELOPMENT LLC, KZA REALTY GROUP, JOY CONSTRUCTION CORPORATION, URBAN PRECAST LLC, and NEWBURGH IRON LLC,

Defendants.

and Third-Party actions.

	PAPERS NUMBERED
Plaintiff's Notice of Motion, Affirmation in Support, Statement of Material Facts[1], Exhibits	1, 2, 3, 4
Defendant/Third-Party Defendant/Second Third-Party Plaintiff Urban Precast LLC's Affirmation in Oppostion, Counter Statement of Material Facts, Expert Affidavit, Exhibits	5, 6, 7, 8
Second Third-Party Defendant NY Crane Hoist & Rigging LLC's Affirmation in Oppostion, Exhibits	9, 10
Defendants/Third-Party Plaintiffs Tremont Renaissance Housing Development Fund Company, Inc.'s, Tremont Renaissance LLC's, Tremont Renaissance Affordable LLC's, Mastermind Development LLC's, and Joy Construction Corporation's, Affirmation in Oppostion, Statement of Material Facts, Exhibits	11, 12, 13
Plaintiff's Reply Affirmations	14, 15, 16

Upon the enumerated papers; and due deliberation; this court finds:

The issue in Plaintiff's summary judgment motion is whether his fall from an unguarded edge of a building entitles him to the protections afforded under Labor Law §240(1). This court holds the accident comes within the protective purview of Labor Law §240(1).

[1] Although Plaintiff conceded that he inadvertently failed to include a Statement of Material Facts in his initial filing in contravention of 22 NYCRR §202.8-g, the parties stipulated on November 23, 2021, to accept Plaintiff's late filing of same. Therefore, in light of said stipulation any arguments pertaining to compliance with 22 NYCRR §202.8-g have been rendered moot and shall not be addressed herein.

Plaintiff established his *prima facie* burden of a Labor Law §240(1) violation as it was uncontroverted, he was not provided with a safety line and harness or some other enumerated safety device to prevent his fall from an unguarded elevated edge. *See Cashbamba v. 1056 Bedford LLC*, 168 A.D.3d 638, 92 N.Y.S.3d 37 (1st Dep't 2019); *see also John v. Baharestani*, 281 A.D.2d 114, 721 N.Y.S.2d 625 (1st Dep't 2001).

In oppostion, Defendant/Third-Party Defendant/Second Third-Party Plaintiff Urban Precast LLC, Second Third-Party Defendant NY Crane Hoist & Rigging LLC, and Defendants/Third-Party Plaintiffs Tremont Renaissance Housing Development Fund Company, Inc., Tremont Renaissance LLC, Tremont Renaissance Affordable LLC, Mastermind Development LLC, and Joy Construction Corporation (collectively "Defendants") failed to raise triable issues of fact to preclude Plaintiff's entitlement to summary judgment.

Defendants' arguments that Plaintiff was the sole proximate cause of the accident or that he was a recalcitrant worker are unavailing. They failed to proffer evidence that a safety line and harness or some other enumerated safety device was provided to Plaintiff, therefore, he cannot be solely to blame for his fall. *cf. Guaman v. City of NY*, 158 A.D.3d 492, 71 N.Y.S.3d 29 (1st Dep't 2018) [defendants established *prima facie* that plaintiff was the sole proximate cause of his accident with evidence that a harness and safety rope system was in place on the roof, that the decedent had been instructed to remain tied off at all times while on the roof and that he could not have reached the skylight through which he fell if he had remained tied off]. Likewise, their contention that Plaintiff was a recalcitrant worker fails as the evidence does not show Plaintiff was expected to, or instructed to, use a harness while signaling from the unguarded elevated edge. *See Augustyn v. City of NY*, 95 A.D.3d 683, 944 N.Y.S.2d 146 (1st Dep't 2012).

Furthermore, Defendants' contention that the Labor Law §240(1) claim should be dismissed because Plaintiff was working outside the scope of his duties as a crane operator is without merit. Plaintiff was not "plainly acting outside the scope of his employment" taking into consideration he was instructed by his Foreman, William King, as part of his training as a crane operator to act as signalman. *See DePalma v. Metro. Transp. Auth.,* 304 A.D.2d 461, 759 N.Y.S.2d 37 (1st Dep't 2003). Similarly, Defendants' claim that the instant motion is premature is unpersuasive as there was no evidence that the non-party depositions of Luis Soriano and Arturo Colonette may lead to relevant evidence as both of their statements appear to support Plaintiff's testimony as to the circumstances that led to the accident. *See DaSilva v. Haks Engrs.,* 125 A.D.3d 480, 4 N.Y.S.3d 162 (1st Dep't 2015).

Accordingly, it is

ORDERED, that Plaintiff's summary judgment motion seeking judgment as to liability on the Labor Law §240(1) claim is granted.

This constitutes the decision and order of the court.

Dated: March 23, 2022

Hon. LUCINDO SUAREZ, J.S.C.

LUCINDO SUAREZ, J.S.C.