

Gonzalez v Tishman Speyer Props., L.P.

2022 NY Slip Op 34913(U)

May 17, 2022

Supreme Court, Kings County

Docket Number: Index No. 515661/2019

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of May 2022.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

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GABRIEL GONZALEZ

Index No. 515661/2019

Plaintiff,

-against-

DECISION AND ORDER

TISHMAN SPEYER PROPERTIES, L.P. TISHMAN
SPEYER PROPERTIES, INC., and RCPI LANDMARK
PROPERTIES, LLC

Motions Sequence #1

Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	24-38,
Opposing Affidavits (Affirmations).....	43
Reply Affidavits (Affirmations)	47-48

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After a review of the papers and oral argument, the Court finds as follows:

Plaintiff Gabriel Gonzalez (hereinafter the "Plaintiff") alleges causes of action pursuant to New York State Labor Law 200, 240, and 241(6) and common law negligence as against Defendants Tishman Speyer Properties, L.P., Tishman Speyer Properties, Inc. and RCPI Landmark Properties, LLC (hereinafter the "Defendants"). Plaintiff alleges in his Verified Bill of Particulars that on June 5, 2019, he suffered injuries after falling from a ladder while at work at 30 Rockefeller Plaza, New York, New York (the "Premises").

The Plaintiff now moves (motion sequence #1) for an order pursuant to CPLR 3212 granting summary judgment against the Defendants on the issue of liability pursuant to Labor Law

240(1). The Plaintiff contends that he was injured while working at the Premises in the employ of non-party Optec Communications, Inc. Specifically, the Plaintiff contends that at the time of the alleged incident the ladder he was working on shifted as he was pulling cable through ductwork causing him to fall. The Plaintiff argues that the Defendants, as owners and managers of the Premises, are liable because he was not provided with safety device that ensured that the ladder remained steady and stable for the work he was performing.

The Defendants oppose the motion. In opposition to the Plaintiff's motion, the Defendants argue that the Plaintiff has failed to meet his *prima facie* burden. Specifically, the Defendants argue that the Plaintiff has failed to present evidence that the ladder at issue was defective. What is more, the Defendants argue that the Plaintiff has also failed to indicate what other safety device(s) would have prevented the alleged fall.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 131 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action."

Garnham & Han Real Estate Brokers v. Oppenheimer, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. 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, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994].

Labor Law § 240(1)

Labor Law 240 (1) is designed to protect employees on construction sites from elevation-related risks. This section provides that:

All contractors and owners and their agents ... who contract for but do not direct or control the work, 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.

“Labor Law 240(1) provides exceptional protection for workers against the special hazards that arise when the work site itself is either elevated or positioned below the level where materials are being hoisted.” *Walker v. City of New York*, 72 AD3d 936, 937, 899 N.Y.S.2d 322, 323 [2d Dept 2010]. In order to prevail on a Labor Law 240 (1) cause of action, “[a] plaintiff must establish that the statute was violated and that the violation was a proximate cause of his [or her] injuries.” *Delahaye v. Saint Anns School*, 40 AD3d 679, 682, 836 N.Y.S.2d 233 [2d Dept 2007]; see *Berg v. Albany Ladder Co., Inc.*, 10 NY3d 902, 904, 861 N.Y.S.2d 607 [2008]; *Robinson v. East Med. Ctr., L.P.*, 6 NY3d 550, 814 N.Y.S.2d 589 [2006]. “Liability may, therefore, be imposed under the statute only where the “plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential.” *Nicometi v. Vineyards of Fredonia, LLC*, 25 NY3d 90, 97, 30 N.E.3d 154, 158 [2015].

Turning to the merits of the Plaintiff's motion, the Court finds that the Plaintiff has met his *prima facie* burden. The Plaintiff contends that the ladder that was provided to him was inadequate for the work he was required to perform, and proper equipment was not provided to him. During his deposition, the Plaintiff testified that he and a coworker were at the "Global Control Plant" "...installing category six cables for new meters that had been installed." (See Plaintiff's Affidavit in Support, Plaintiff's Deposition, Page 22). When asked what equipment Plaintiff required in order to do the job, he stated "[a] snake, ladder, and handy tools, electrical tape, Velcro, a channel lock." (*Id.* Page 23). "[T]he ladder and the hardware was provided by Optec, Voice 2000, but our physical tools, as far as the pliers, screw drivers, that was supplied by me." (*Id.* Page 23-24). Plaintiff confirmed that he was using an "eight-foot A-frame ladder" provided by Optec. (*Id.* Page 24, 27). Just before the accident, Plaintiff states that he was "...starting to pull the cable through the conduit with the drag attached, the drag wire attached to the cable." (*Id.* Page 30). "The conduit could have been close to 150 feet, but we had junction boxes installed around every five to ten feet." (*Id.*). Plaintiff confirmed that the conduit hung from the ceiling "[a]pproximately like eight, eight to nine feet." (*Id.* Page 31). "The ladder was in line with the conduit. I was on the sixth foot. The conduit is around eight to nine feet, so it was in good reach." (*Id.* Page 33-34). When asked how the accident occurred, the Plaintiff states that "...as I was pulling the cable, it started -- the cable started getting a little tight, so the ladder wound up shifting. So when the ladder shifted towards the left, I pulled the cable, and the ladder just completely flew towards the left, and the only thing I had to hold onto was the drag cable, and that snapped, and that's when I proceeded to fall down." (*Id.* Page 35-36). When asked what part of his body hit the ground first he stated "my left wrist hit the ground first." (*Id.* Page 37). He also stated that "[i]t started off with like my back.

I fell -- first my butt hit the ground. My wrist hit the ground, and then my butt, and then I laid on my back.” (*Id.* Page 37-38).

In opposition to the motion, Defendants contend that Plaintiff has not met his *prima facie* burden because he has not provided any evidence that the ladder was defective. Additionally, Defendants rely on the post-incident interview between Plaintiff and his employer. Specifically, Defendants assert that Plaintiff stated that “[he] basically, like slipped, and that caused me to fall down.” (*See* OPTEC Interview, NYSCEF Doc. 38, Page 3). When asked if he was “basically off balance” Defendant confirms “[y]ea. Off balance at first, and then it cause me to, like, catch balance again, because I was, you know, up with my two hands like that for the pull. So that basically cause me to lose balance.” Plaintiff argues that it is irrelevant that he did not mention the ladder shifting in the Optec interview because his employer did not ask whether the ladder had shifted. Plaintiff relies on his sworn deposition during which, he contends, he was able to explain and include the full details and description of the accident. As such, Plaintiff states in his deposition that “[t]he ladder shifted toward the left, so I tried to balance. I tried to balance it. I tried to balance myself with the ladder.” (*See* Plaintiff’s Affidavit in Support, Plaintiff’s Deposition, Page 81).

These statements, taken together, are not contradictory and therefore are sufficient for the Plaintiff to meet his *prima facie* burden since the evidence supports the Plaintiff’s position that the ladder was not secured and that “the failure to secure the ladder, was a substantial factor in causing the plaintiff’s injuries.” *Melchor v. Singh*, 90 AD3d 866, 868, 935 N.Y.S.2d 106, 109 [2d Dept 2011]. Even though Defendants argue that there are material facts that are in dispute, the undisputed facts establish that Defendants violated Labor Law 240(1) by failing to provide an adequate safety device for the work intended. The ladder was not properly secured against movement or slippage and the ladder did not remain steady and erect. The nature of the work

required further protection. *See Ping Lin v. 100 Wall St. Prop. L.L.C.*, 193 AD3d 650, 148 N.Y.S.3d 71 [1st Dept 2021]; *Montalvo v. J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174-175, 780 N.Y.S.2d 558 [1st Dept 2004]; *Ausby v. 365 W. End LLC*, 135 AD3d 481, 22 N.Y.S.3d 824 [1st Dept 2016]. Defendants failed to provide proper safety devices and guard against Plaintiff's risk of falling from a ladder while pulling conduit from a hanging ceiling with both hands. *See Ping Lin v. 100 Wall St. Prop. L.L.C.*, 193 AD3d 650, 148 N.Y.S.3d 71 [1st Dept 2021]; *Caceres v. Standard Realty Assoc., Inc.*, 131 AD3d 433, 434, 15 N.Y.S.3d 338 [1st Dept 2015], lv denied 26 NY3d 1021 [2015].

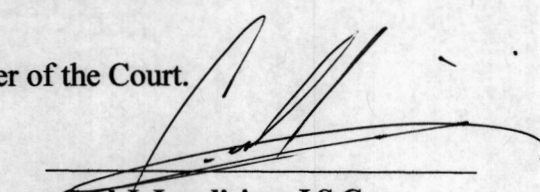
"A plaintiff is not required to demonstrate that a ladder is defective in order to establish *prima facie* entitlement to summary judgment under Labor Law § 240 (1)" *Ping Lin v. 100 Wall St. Prop. L.L.C.*, 193 AD3d 650, 148 N.Y.S.3d 71 [1st Dept 2021]; *see Pierrakeas v. 137 E. 38th St. LLC*, 177 AD3d 574, 574-575, 114 N.Y.S.3d 318 [1st Dept 2019]; *Fletcher v. Brookfield Props.*, 145 AD3d 434, 434, 41 N.Y.S.3d 700 [1st Dept 2016]; *Montalvo v. J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174, 780 N.Y.S.2d 558 [1st Dept 2004]. Further, the issue of Plaintiff's comparative fault is academic in relation to a Labor Law 240(1) claim. *See Rapalo v. MJRB Kings Highway Realty, LLC*, 163 AD3d 1023, 1024, 82 N.Y.S.3d 63, 65 [2d Dept 2018]; *Melchor v. Singh*, 90 AD3d 866, 869, 935 N.Y.S.2d 106, 110 [2d Dept 2011]. Accordingly, the Plaintiff's motion is granted.

Based upon the foregoing, it is hereby Ordered that:

The Plaintiff's motion (motion sequence #1) for partial summary judgment on the issue of liability under 240(1) of the Labor Law is granted.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.