

Pieretti v E. Daskal Corp.

2022 NY Slip Op 34920(U)

October 21, 2022

Supreme Court, Kings County

Docket Number: Index No. 521736/17

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 521736/17
Motion Date: 6-27-22
Mot. Seq. No.: 4, 5

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EMBERSON PIERETTI,

Plaintiff,

-against-

DECISION/ORDER

E. DASKAL CORP.,

Defendant.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 82-101, 110-122, the motions are decided as follows:

In this action to recover damages for personal injuries, the plaintiff, EMBERSON PIERETTI, moves for an Order pursuant to CPLR § 3212, granting him partial summary judgment on the issue of liability under Labor Law § 240(1) against the defendant, E. DASKAL CORP (“Daskal”) (Mot. Seq. #4). Daskal opposes the motion and cross-moves for an Order: (a) pursuant to CPLR 3212, granting summary judgment dismissing the complaint on the ground that the defendant did not owe or breach a duty of care under Labor Law or negligence principles; or (b) denying plaintiffs pending motion for partial summary judgment on Labor Law 240(1); and (c) for such other and further relief as the Court deem just and proper. The motion and cross-motion are consolidated for disposition.

Background:

This action arises out of an accident that occurred on July 6, 2017, during the rehabilitation of a bridge that was taking place on a highway overpass located on Route 304, at or about its intersection with I-287, in Bardonia, New York [Ziegler Dep. 14-16; Petchak Dep. 12-13, 27, 47]. Daskal was under contract with the New York State Thruway Authority to supervise the work [Ziegler Dep. 14-16; Román Aff., Exhibit 14, p. 13], and had retained plaintiff’s employer, Advance Coatings LLC (“Advance”) to perform sandblasting and painting work on the project. The plaintiff, Emberson Pieretti was employed by Advance as a helper/apprentice [Petchak Dep. 17; Plaintiff Dep. 31, 36-37].

The accident occurred on a grassy, sloped embankment that was used by Advance as a staging area for its bridge painting work [Petchak Dep. 21-22, 31, 48-49; Plaintiff Dep. 61]. At

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the time of the accident, Mr. Pieretti and William Reyes, another Advance worker, were attempting to move a heavy, wheeled compressor [Plaintiff Dep. 64; Reyes Dep. 36-37, 54]. Immediately prior to the accident, the compressor was situated at or near the top of the embankment. The compressor had no brakes and was not secured against movement by any mechanical means. When Mr. Pieretti and Mr. Reyes began moving the compressor, they did so by hand.

Notably, the compressor normally was moved by hitching it to a tow vehicle, such as a pickup truck [Reyes Dep. 14-15; Petchak Dep. 58]. The hitch of the compressor that Mr. Pieretti and Mr. Reyes were attempting to move was facing in the direction of an adjacent parking lot when they started trying to move it [Reyes Dep. 33-34; Plaintiff Dep. 66]. When the two began moving the compressor, they intended to turn it around so that the hitch faced in the opposite direction [Reyes Dep. 20, 23, 34- 35].

While moving the compressor, Mr. Pieretti was facing the compressor, and Mr. Reyes was on the opposite side, at the back of the compressor, pushing it [Plaintiff Dep. 67, 71, 74, 76; Reyes Dep. 20-21, 43-44]. After the two succeeded in turning the rear wheels of the compressor from their initial sideways position, across the slope, to a position facing down the slope, the compressor began rolling down the slope at which point Mr. Pieretti and Mr. Reyes lost control of it [Plaintiff Dep. 71-72; Reyes Dep. 22, 50]. The compressor eventually rolled down to the bottom of the slope, taking Mr. Pieretti along with it, ultimately pinning him against a box truck parked near the bottom of the slope [Plaintiff Dep. 71-72, 74, 77; Reyes Dep. 21-22; Petchak Dep. 32, 37, 76]. Mr. Pieretti's coworkers extricated him from between the truck and the compressor by moving the compressor at which point he was removed from the scene via ambulance [Plaintiff Dep. 84-86; Reyes Dep. 22-23; Petchak Dep. 32, 40, 74- 76].

Discussion:

Labor Law § 240(1) provides in relevant part:

“All contractors and owners and their agents, except owners of one and two-family dwellings 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.”

“[T]o 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 (*Guaman v. 178 Ct. St., LLC*, 200 A.D.3d at 657, 159 N.Y.S.3d 454 [internal quotation marks omitted]; see *Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 N.Y.3d 280, 287, 771 N.Y.S.2d 484, 803 N.E.2d 757). “Although comparative fault is not a defense to the strict liability of the statute, where the plaintiff is the sole proximate cause of his or her own injuries, there can be no liability under Labor Law § 240(1)” (*Lojano v. Soiefer Bros. Realty Corp.*, 187 A.D.3d 1160, 1162, 134 N.Y.S.3d 363; see *Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 39, 790 N.Y.S.2d 74, 823 N.E.2d 439; *Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 N.Y.3d at 289, 771 N.Y.S.2d 484, 803 N.E.2d 757).

It has been consistently held that “Labor Law § 240(1) provides exceptional protection for workers against the special hazards that arise when the work site itself is either elevated or is positioned below the level where materials or load are being hoisted or secured” (*Natale v. City of New York*, 33 A.D.3d 772, 773–774, 822 N.Y.S.2d 771; see *Narducci v. Manhasset Bay Assoc.*, 96 N.Y.2d 259, 267–268, 727 N.Y.S.2d 37, 750 N.E.2d 1085). “These special hazards do not encompass any and all perils that may be connected in some tangential way with the effects of gravity. Rather, they are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (*Gonzalez v. Turner Constr. Co.*, 29 A.D.3d 630, 631, 815 N.Y.S.2d 179; *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 501, 81 N.Y.2d 494, 618 N.E.2d 82, *Narducci v. Manhasset Bay Assoc.*, 96 N.Y.2d 259, 267, 727 N.Y.S.2d 37, 750 N.E.2d 1085).

While the bulk of the cases decided under Labor Law 240(1) involved a worker who was injured as a result of falling from a height or who was struck by a falling object that was improperly hoisted or inadequately secured, it is now clear that liability under the statute is not limited to these circumstances. In *Ross, supra.*, the Court of Appeals has stated that the ultimate purpose of Labor Law 240(1) is to “prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker *from harm*

directly flowing from the application of the force of gravity to an object or person” (Ross, 81 N.Y.2d at 501, 601 N.Y.S.2d 49, 618 N.E.2d 82 [*emphasis added*]). Focusing on this language, in *Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 604, 922 N.E.2d 865, 868, rejected defendants’ contention that an accident had to involve a worker who was injured as a result of falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured to implicate 240(1). In *Runner*, plaintiff and several coworkers had been directed to move a large reel of wire, weighing some 800 pounds, down a set of about four stairs. To prevent the reel from rolling freely down the flight and causing damage, the workers were instructed to tie one end of a 10-foot length of rope to the reel and then to wrap the rope around a metal bar placed horizontally across a door jamb on the same level as the reel. The loose end of the rope was then held by plaintiff and two coworkers while two other coworkers began to push the reel down the stairs. As the reel descended, it pulled plaintiff and his fellow workers, who were essentially acting as counterweights, toward the metal bar. The expedient of wrapping the rope around the bar proved ineffective to regulate the rate of the reel’s descent and plaintiff was drawn horizontally into the bar, injuring his hands as they jammed against it. Experts testified that a pulley or hoist should have been used to move the reel safely down the stairs and that the jerry-rigged device actually employed had not been adequate to that task (*Runner*, 13 N.Y.3d at 602, 922 N.E.2d at 866).

In holding that section 240(1) applied in these circumstances, that Court stated:

Manifestly, the applicability of the statute in a falling object case such as the one before us does not under this essential formulation depend upon whether the object has hit the worker. The relevant inquiry—one which may be answered in the affirmative even in situations where the object does not fall on the worker—is **rather whether the harm flows directly from the application of the force of gravity to the object.**

(*Runner*, 13 N.Y.3d at 604, 922 N.E.2d at 868 [*emphasis added*]).

The Court went on to hold that “the harm to plaintiff was the direct consequence of the application of the force of gravity to the reel and that the injury to plaintiff was every bit as direct a consequence of the descent of the reel as would have been an injury to a worker positioned in the descending reel’s path” (*id.*). The Court ultimately held that “[t]he latter worker would

certainly be entitled to recover under section 240(1) and there appears no sensible basis to deny plaintiff the same legal recourse” (*id.*).

This case cannot be meaningfully distinguished from *Runner*. Here, as in *Runner*, the harm to the plaintiff was also undeniably the direct consequence of the application of the force of gravity to an object, i.e. - the compressor. The injuries to the plaintiff were very bit as a direct consequence of the decent of the compressor as would have been an injury to a worker positioned in path of the compressor as it was descending down the embankment. Accordingly, the Court hold that the plaintiff is entitled to recover under section 240(1) and there is no sensible basis to deny plaintiff this relief.

The Court rejects defendant’s contention that triable issues of fact exist as to whether the accident was solely due to plaintiff’s own negligence. A plaintiff is the sole proximate cause of his or her own injuries and a defendant has no liability under Labor Law § 240(1) when the plaintiff: (1) had adequate safety devices available, (2) knew both that the safety devices were available and that he or she was expected to use them, (3) chose for no good reason not to do so, and (4) would not have been injured had he or she not made that choice (*see Biaca-Neto v. Bos. Rd. II Hous. Dev. Fund Corp.*, 34 N.Y.3d 1166, 121 N.Y.S.3d 753, 144 N.E.3d 363). The record is quite clear that at the time of the occurrence, the plaintiff was taking direction from Mr. Reyes, his superior, who decided how to move the compressor. Under these circumstances, it cannot be said the plaintiff knew he was expected to use other devises to move the compressor and chose for no good reason not to do so.

The Court has considered the defendant’s remaining arguments in opposition to plaintiff’s motion and in support of the cross-motion and find them to be unavailing.

Turning to the cross-motion, to extent that the defendant seeks an order dismissing plaintiffs claim pursuant to Labor Law § 240(1), the cross-motion is DENIED. The remainder of the cross-motion is denied as untimely.

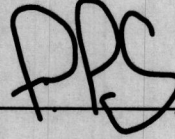
For the above reasons, it is hereby

ORDERED that plaintiff’s motion for summary judgment against the defendant on its cause of action under Labor Law § 240(1) is **GRANTED**; and it is further

ORDERED that the defendant's cross-motion is in all respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: October 21, 2022



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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