

Rivas v 1189 Sheridan Realty Corp.

2022 NY Slip Op 35025(U)

September 20, 2022

Supreme Court, Bronx County

Docket Number: Index No. 23772/2020E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 1

DAVID RIVAS,

Index No.: 23772/2020E

Plaintiff,

- against -

DECISION and ORDER

1189 SHERIDAN REALTY CORP., and
LANGSAM PROPERTY SERVICES CORP.,

Defendants.

| | PAPERS NUMBERED |
|--|-----------------|
| Plaintiff's Notice of Motion, Affirmation in Support, Statement of Material Facts, Memorandum of Law in Support, Exhibits | 1, 2, 3, 4, 5 |
| Defendants' Notice of Cross-Motion, Affirmation in Opposition, Affirmation in Support, Statement of Material Facts, Exhibits | 6, 7, 8, 9, 10 |
| Plaintiff's Affirmation in Further Support/Opposition, Counter Statement of Facts, Memorandum of Law in Further Support/Opposition, Exhibits | 11, 12, 13, 14 |
| Defendants' Reply Affirmation | 15 |

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

The issue raised in Plaintiff's summary judgment motion is whether he established his entitlement to judgment concerning liability as to the Labor Law §§240(1), 241(6), and 200 claims. In addition, the issue in Defendants' cross-motion is whether they established their entitlement to dismissal of the complaint. This court holds the accident falls within the protective purview of Labor Law §§240(1) and 241(6). However, Plaintiff failed to demonstrate his *prima facie* burden that Defendants violated Labor Law §200.

According to Plaintiff, on the day of the accident he was employed by non-party, Applied Plumbing Systems, ("Applied") as a plumber. He testified that Applied was hired by Defendants to repair a broken pipe in an apartment building located in the Bronx, and that he was assigned to perform the repair. He further testified the sole means of access to the subject apartment where the broken pipe was located was by way of a permanent staircase. He alleged that in order to

complete the repair, he was required to traverse the staircase between the subject apartment and the apartment below it. He claims the accident occurred after he completed the repair work and as he was descending the staircase when he was caused to slip and fall on water resulting in injury.

This court finds Plaintiff established his *prima facie* burden that Defendants violated Labor Law §240(1). Defendants' contention, in opposition, that the Labor Law §§240(1) and 241(6) claims should be dismissed as Plaintiff completed the repair work at the time of the accident is unavailing.

Defendants' reliance upon the Court of Appeals case *Beehner v. Eckerd Corp.*, 3 N.Y.3d 751, 821 N.E.2d 941, 788 N.Y.S.2d 637 (2004) is misplaced and distinguishable based on subsequent case law emanating from the Appellate Division, First Department. In *Alarcon*, the Appellate Division, First Department, held that a worker who was injured on a staircase that did not have any guardrails was entitled to Labor Law §240(1) protections, although his injury occurred after he was terminated on the jobsite and while he leaving the building and the alleged condition was not directly related to his assignment. *See Alarcon v. UCAN White Plains Hous. Dev. Fund Corp.*, 100 A.D.3d 431, 954 N.Y.S.2d 13 (1st Dep't 2012).

Similarly, in *Amante*, the Appellate Division, First Department, held that a worker who was injured when he fell into an excavated hole at a work site was entitled to Labor Law §240(1) protections although the worker had arrived early for work that day and was not yet performing his tasks. *See Amante v. Pavarini McGovern, Inc.*, 127 A.D.3d 516, 8 N.Y.S.3d 54 (1st Dep't 2015). Likewise, in *Morales*, the Appellate Division, First Department, held that Labor Law §240(1) applied even though Plaintiff at the time of the accident was on a lunch break. *See Morales v. Spring Scaffolding, Inc.*, 24 A.D.3d 42, 802 N.Y.S.2d 41 (1st Dep't 2005).

Therefore, considering that this court should construe Labor Law §240(1) with a commonsense approach to the realities of the workplace at issue and considering the primary purpose of the statute is to protect workers from elevated risks, liability must attach here since it was uncontroverted that the subject permanent staircase, which was the sole means of access failed to provide Plaintiff with adequate protection from reasonably preventable, gravity-related injury. *See Hoyos v. NY-1095 Ave. of the Ams., LLC*, 156 A.D.3d 491, 67 N.Y.S.3d 597 (1st Dep't 2017).

Further, it does not avail Defendants to argue that the permanent staircase where the accident occurred does not constitute a safety device under Labor Law §240(1). It was undisputed that the subject permanent staircase was the sole means of access to and from Plaintiff's work area, thus, entitling him to Labor Law §240(1) protections as a permanent staircase could be a safety device within the meaning of Labor Law §240(1) if it provides the sole means of access to and from a work area. *See Ramirez v. Shoats*, 78 A.D.3d 515, 911 N.Y.S.2d 310 (1st Dep't 2010); *see also Gory v. Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 113 A.D.3d 550, 979 N.Y.S.2d 314 (1st Dept 2014); *see also Conlon v. Carnegie Hall Socy., Inc.*, 159 A.D.3d 655, 70 N.Y.S.3d 833 (1st Dep't 2018).

Moreover, Plaintiff cites Industrial Codes 12 NYCRR §23-1.7(d) in support of the Labor Law §241(6) claim abandoning all other predicates not raised in his legal arguments. *Burgos v. Premier Props. Inc.*, 145 A.D.3d 506, 42 N.Y.S.3d 161 (1st Dep't 2016); *see also 87 Chambers, LLC v. 77 Reade, LLC*, 122 A.D.3d 540, 998 N.Y.S.2d 15 (1st Dep't 2014). This court finds Plaintiff established his *prima facie* burden of a Labor Law §241(6) violation premised upon Industrial Code 12 NYCRR §23-1.7(d) as his uncontroverted testimony demonstrated that he slipped and fell on water. *See Luciano v. NY City Hous. Auth.*, 157 A.D.3d 617, 67 N.Y.S.3d

456 (1st Dep't 2018). In opposition, Defendants failed to raise triable issues of fact as their argument concerning the applicability of Labor Law §241(6) was already rejected.

Lastly, with respect to the Labor Law §200 claim Plaintiff failed to establish his *prima facie* burden. It was undisputed Defendants did not supervise or control the injury-producing work. Further, Plaintiff did not proffer any evidence that Defendants had actual notice of the water conditions in the staircase, nor did he establish that the water was visible and apparent for a sufficient length of time prior to the accident to charge Defendants with constructive notice. *See Gordon v. Am. Museum of Natural History*, 67 N.Y.2d 836, 492 N.E.2d 774, 501 N.Y.S.2d 646 (1986).

Accordingly, it is

ORDERED, that Plaintiff's summary judgment is granted in part to the extent it sought judgment on liability as to the Labor Law §§240(1) and 241(6) claims.

ORDERED, that Defendants' cross-motion is granted in part to the extent it sought dismissal of the Labor Law §200 claim.

This constitutes the decision and order of the court.

Dated: **9/20/2022**


Hon. _____
LUCINDO SUAREZ, J.S.C.
LUCINDO SUAREZ, J.S.C.