

Rogers v County of Westchester
2022 NY Slip Op 35222(U)
December 19, 2022
Supreme Court, Westchester County
Docket Number: Index No. 63732/2020
Judge: Joan B. Lefkowitz
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SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for
appeals as of right (CPLR 5513[a]), you are
advised to serve a copy of this order, with
notice of entry, upon all parties.

-----X
CHRISTOPHER ROGERS,

Plaintiff,

-against-

COUNTY OF WESTCHESTER, SOMERS
CENTRAL SCHOOL DISTRICT, BARRETT
ROOFS, INC. and TRITON CONSTRUCTION
COMPANY, LLC,

Defendants.
-----X

BARRETT ROOFS, INC.,

Third-Party Plaintiff,

-against-

NYC DAYLIGHTING, INC.,

Third-Party Defendant.
-----X

SOMERS CENTRAL SCHOOL DISTRICT,

Second Third-Party Plaintiff,

-against-

NYC DAYLIGHTING, INC.,

Second Third-Party Defendant.
-----X

The following papers (NYSCEF Doc Nos. 146-168; 173-180) were read on the
motion by the plaintiff, Christopher Rogers, for an order, pursuant to CPLR 3212, granting

partial summary judgment on the issue of liability on the Labor Law § 240 (1) claim against the defendants, Somers Central School District and Barrett Roofs, Inc.

Motion Sequence No. 06

Notice of Motion-Statement of Facts-Affirmation-Exhibits (1-19)-Memorandum of Law
Aff. in Opposition (by Somers Central & Triton Construction)- Counterstatement of Facts
Aff. in Opposition (by Barrett Roofs)-Counter-Affirmation of Facts-Exhibits (A-C)
Reply Memorandum of Law

Upon reading the foregoing papers, the motion is determined as follows:

Plaintiff sues to recover monetary damages for personal injuries allegedly sustained on August 16, 2019, when he fell from an unsecured ladder which collapsed at an elevated height of approximately fifteen (15) feet during the course of his employment with the third-party/second third-party defendant, NYC Daylighting, Inc. (NYC Daylighting). Plaintiff alleges he fell from the ladder while performing construction/alteration-related work at premises located at 110 Primrose Street, Lincolndale, New York, more commonly known as Primrose Elementary School (Primrose Elementary or work site). Plaintiff alleges, inter alia, that the ladder lacked rubber feet, was improperly set up, was not tied to the building, and that he was not provided with safety equipment.

Defendant Somers Central School District (Somers Central) owns Primrose Elementary. Somers Central hired defendant Barrett Roofs, Inc. (Barrett) as the prime roofing contractor to perform a roof replacement at Primrose Elementary. Barrett, in turn, retained NYC Daylighting to remove existing skylight windows and install new windows on the roof. Barrett was responsible for implementing, providing safety equipment and supervising safety at the work site. Defendant Triton Construction Company, LLC (Triton) served as construction manager for the job, acting as liaison between the owner, the architect, and the prime contractor. Plaintiff's complaint alleges causes of action sounding in common law negligence as well as violations of the Labor Law.

Following the completion of discovery, plaintiff moves for an order, pursuant to CPLR 3212, granting partial summary judgment on the issue of liability on his Labor Law § 240 (1) claim against defendants Somers Central and Barrett. Somers Central and Triton and Barrett (collectively, defendants) oppose the motion.

In support of his motion, plaintiff proffers, among other things, the relevant pleadings, deposition transcripts and construction contracts related to the work site. Based thereon, plaintiff contends that the competent evidence demonstrates that Somers Central, as property owner, and Barrett, as contractor and agent of the owner, violated Labor Law § 240 (1) by providing a defective ladder and by failing to provide adequate safety devices to afford plaintiff proper protection for work which was being performed at an elevated height and that these failures proximately caused plaintiff's injuries.

In opposition, defendants each contend, among other things, that plaintiff's motion should be denied for plaintiff's failure to eliminate all triable issues of fact as to how the accident occurred. Specifically, defendants assert that because the accident was not witnessed by anyone other than the plaintiff, the court should not accept the plaintiff's version of how the accident happened. Rather, defendants submit that a jury should assess the credibility of plaintiff's account of the accident. In addition, defendant Barrett also argues that it is not a proper Labor Law defendant.

In reply, plaintiff asserts, among other things, that the fact that his accident was not witnessed is not a basis to preclude the award of summary judgment in his favor. Plaintiff contends that defendants fail to offer sufficient evidence in opposition which raises an issue of fact as to how the accident unfolded according to the plaintiff. Plaintiff also argues that Barrett is a proper Labor Law defendant. Consequently, plaintiff submits that his motion should be granted.

On a motion for summary judgment the court's function is to determine whether triable issues of fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see* CPLR 3212 [b]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). In determining the motion, the court must view the evidence in a light most favorable to the nonmovant and is obliged to draw all reasonable inferences in the nonmovant's favor (*see Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]; *Stukas v Streiter*, 83 AD3d 18, 22 [2d Dept 2011]). Such a motion may be granted only if the movant tenders sufficient evidence in admissible form demonstrating the absence of triable issues of material fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If the movant satisfies its prima facie burden, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form establishing the existence of material issues of fact requiring a trial (*see Zuckerman*, 49 NY2d at 562).

"Labor Law § 240 (1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites" (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]; *see also Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993] ["[i]t is by now well established that the duty imposed by Labor Law § 240(1) is nondelegable and that an owner or contractor who breaches that duty may be held liable in damages regardless of whether it has actually exercised supervision or control over the work."]). The Court of Appeals has explained that "the statute is to be construed as liberally as may be for the accomplishment of the purpose for which it was framed" (*Ross*, 81 NY2d at 500 [internal quotation marks and ellipses omitted]).

"To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries" (*Morocho v Plainview-Old Bethpage Cent. Sch. Dist.*, 116 AD3d 935, 936 [2d Dept 2014]). "A plaintiff's comparative negligence is not a defense to

a cause of action under Labor Law § 240(1). However, where a plaintiff's actions are the sole proximate cause of his or her injuries, liability under Labor Law § 240(1) does not attach" (*Debenedetto v Chetrit*, 190 AD3d 933, 935-936 [2d Dept 2021] [internal citations omitted]). "A fall from a ladder, by itself, is not sufficient to impose liability under Labor Law § 240(1). There must be evidence that the subject ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor in causing the plaintiff's injuries" (*Melchor v Singh*, 90 AD3d 866, 868 [2d Dept 2011] [internal citation omitted]; see *Medina-Arana v Henry St. Prop. Holdings, LLC*, 186 AD3d 1666, 1667 [2d Dept 2020]).

Here, plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability on his Labor Law § 240 (1) claim against defendants Somers Central and Barrett. The evidence tendered including, plaintiff's deposition testimony, demonstrates that plaintiff fell when an improperly placed extension ladder, which had no rubber on its feet, and which had been supplied by Barrett, "slid out" from under him while he was descending from the roof (see *Melchor*, 90 AD3d at 868-869; *Blair v Cristani*, 296 AD2d 471, 472 [2d Dept 2002]). Accordingly, the burden of going forward shifted to the opponents of the motion to raise a triable issue of fact (see *Zuckerman*, 49 NY2d at 562).

In opposition, defendants failed to raise a triable issue of fact (see CPLR 3212 [b]). Contrary to their contentions, "[t]he fact that the plaintiff may have been the sole witness to the accident does not preclude an award of summary judgment in his favor" (*Melchor*, 90 AD3d at 869; see *Kirbis v LPCiminelli, Inc.*, 90 AD3d 1581, 1583 [4th Dept 2011]). Defendants failed to proffer competent evidence sufficient to raise a factual question on whether "the plaintiff may not have fallen from the ladder, that the ladder was not defective, or that the ladder did not move" (*Melchor*, 90 AD3d at 869). Contrary to their contentions, the deposition testimony of Brian Wynne, a property manager for Barrett, was insufficient to create an issue of fact on whether the plaintiff fell from the ladder. Moreover, defendant Barrett failed to raise an issue of fact in opposition to plaintiff's prima facie showing that Barrett is a proper Labor Law defendant. As the plaintiff established in his moving papers, Barrett, as an agent of the property owner, who exercised supervisory control and authority over the work being performed at the site, is a proper defendant under the Labor Law (see *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 293 [2003]; *Perez v 347 Lorimer, LLC*, 84 AD3d 911, 912 [2d Dept 2011]). Last, in the absence of a formal cross motion, the court declines to exercise its discretion and search the record and award summary judgment to nonmovant, Triton, as requested in footnote no. 1 of the opposing papers submitted by defendants Somers Central and Triton (see Affirmation in Opposition at p. 2, NYSCEF Doc No. 173; see *Costello v Hapco Realty*, 305 AD2d 445, 446 [2d Dept 2003]). To the extent not specifically addressed herein, the court finds the remaining arguments of defendants unavailing. Accordingly, the motion by plaintiff is granted.

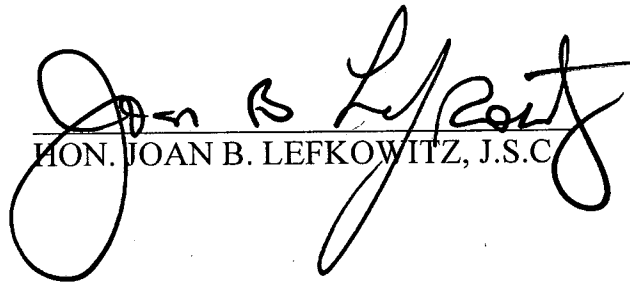
Based on the foregoing, it is hereby:

ORDERED the motion is granted; and it is further

ORDERED the matter shall be scheduled for a settlement conference on a date and time as set by the clerk.

ENTER,

Dated: White Plains, New York
December 19, 2022



HON. JOAN B. LEFKOWITZ, J.S.C.

To:

Counsel of record via NYSCEF