

Haskins v Metropolitan Transp. Auth.

2023 NY Slip Op 30264(U)

January 26, 2023

Supreme Court, New York County

Docket Number: Index No. 151643/2020

Judge: Sabrina Kraus

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

DARREN T. HASKINS,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY,
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,
ENTECH ENGINEERING, P.C.,

Defendant.

-----X

METROPOLITAN TRANSPORTATION AUTHORITY,
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

Third-Party Plaintiffs,

-against-

ENTECH ENGINEERING, P.C.,

Third-Party Defendant.

-----X

ENTECH ENGINEERING, P.C.,

Second Third-Party Plaintiff,

-against-

RESTANI CONSTRUCTION CORP.,

Second Third-Party Defendant.

-----X

INDEX NO. 151643/2020
MOTION DATE 12/23/2022
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

Third-Party
Index No. 595834/2020

The following e-filed documents, listed by NYSCEF document number (Motion 006) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 174, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 202, 203, 204, 205, 206 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

BACKGROUND

Plaintiff commenced this action seeking damages for injuries allegedly suffered on October 15, 2019, when he fell into a hole that was 2'-2' 1/2 feet deep while working on the Henry Hudson Bridge (HHB) in the course of his employment with second third-party defendant, Restani Construction Corp. (Restani).

Plaintiff now moves for an order for partial summary judgment on his Labor Law Sections 240(1) and 241(6) claims.

Plaintiff's motion is granted as set forth below.

ALLEGED FACTS

Plaintiff, a NY union carpenter in his early 50's, began working full-time with Restani Construction ("Restani") in the spring of 2018. The date of Plaintiff's accident was the first time he was working the night shift at the HHB and he was working that night on Kevin Galladay's (Gallady) crew which consisted of five workers. The night shift hours were from 3:30 p.m. to 11:00 p.m.. The crew's assignment on that date was to make a pedestrian walkway. The area where the crew was assigned to work was underneath the bridge, and off to the side.

Plaintiff was given lanyards and tie-offs and a safety vest. Plaintiff was wearing his lanyard since he had to hook in to do that work to install the walkway because there was a 25-foot drop. The wood and other materials for the job were scattered around the work site area.

It was evening, the area was dark and was lit by a dome light under the bridge. The dome light was the only light they had and that the lighting conditions at the site that evening were not good. There was a light pole that Gallady, the foreman, was unable to get lit either because it was out of fuel or because of the generator and that the safety people knew about the

problem with the broken light. Galladay and the workers did not complain about the poor lighting condition at the site that evening because there was no one around to complain to.

The accident occurred at approximately 10:00 p.m. Plaintiff and Gallady were walking to get plywood to finish the sidewall to the walkway. The plywood was about 30-35 yards from where they were working, and they had made several trips already to get the plywood. Plaintiff had not observed the area where his accident occurred during these trips. The path to reach the materials was about 3 to 5-feet wide and about 15' long.

Galladay and Plaintiff were cutting plywood at the workstation and bringing it over to the area where they were erecting the pedestrian walkway. The plywood sheets they were carrying were four-foot by eight-foot. Plaintiff picked up a 50-lb piece of plywood, carrying it on his left side and while walking, fell into a hole approximately two and a half feet deep. Some of the plywood he was carrying was on top of him. The area with the hole was covered with a thin black plastic material intended to act as a moisture barrier.

Plaintiff testified that the black plastic covered the hole completely and that if the plastic wasn't there, he would have been able to see the hole. Plaintiff did not know who put down that black plastic waterproofing material. After he fell in the hole, the other workers came to his aid and helped him up and over to the side. The accident was witnessed by all his co-workers and his foreman. The workers also discovered another hole on the other side of the pathway.

Galladay testified that he believed the holes were dug by other workers so they could put anchors into the ground to hold the heavy load-bearing wall that the end of the bridge or roadway sits on. Both Galladay and Plaintiff testified that it is standard practice for the workers who created the holes to put down plywood or erect a barrier around it to make sure that no one fell into the hole.

DISCUSSION

To prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). “[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]). “On a motion for summary judgment, the court’s function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact” (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] [“The court’s role, in passing on a motion for summary judgment, is solely to determine if any triable issues exist, not to determine the merits of any such issues”], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

Plaintiff Is Entitled to The Protection Afforded Under Labor Law §240(1)

Plaintiff sufficiently established his *prima facie* entitlement to summary judgment on his Labor Law §240(1) claim against the defendant Triborough Bridge and Tunnel Authority (TBTA), owner of the HHB.

TBTA's failure to provide protective devices, such as a cover or barricade around the hole at the HHB site constituted a violation of Labor Law §240(1) and was the proximate cause of his injuries. The case *Carpio v. Tishman Constr. Corp.*, 240 A.D.2d 234 (1st Dep't 1997) is wholly analogous to this case. In *Carpio*, supra, the plaintiff was given the task of painting the ceiling of the third floor. As he was looking up at the ceiling while using the roller, plaintiff's foot backed into a hole in the floor, causing his leg to fall three feet below the surface to his groin area. The hole was 10 to 14 inches wide, was not covered or protected, and was created to permit the extension of piping to the floor below. There was at least one other similar hole on the third floor.

The First Department held that section 240 (1) applied, noting that:

Plaintiff, whose attention was focused toward the ceiling at the time he stepped into the uncovered hole, was entitled under the statute to protection "against the known hazards of the occupation", and this he did not receive. Here, the risk of injury existed because of the "difference between the elevation level of the required work" (the third floor), and "a lower level" (the bottom of the piping shaft), and common sense alone tells us that this accident was gravity-related. Plaintiff's partial fall through a hole at a construction site can hardly be characterized as only tangentially related to the effects of gravity.

The case of *Sunun v Klein*, 188 A.D.3d 507, 508 (1st Dep't 2020) is also on point. In *Sunun*, the plaintiff was injured when he stepped on an area of ground that had been excavated to create a trench, and then backfilled with soil. Plaintiff's leg sank into the ground above his knee. The motion court denied plaintiff's motion for summary judgment. On appeal, the First Department modified the order and granted plaintiff summary judgment on his §240(1) claim. The First Department held:

It is undisputed that no safety devices were provided to plaintiff to protect him against the gravity-related risk of descending a significant distance into the trench. Thus, plaintiff established prima facie his entitlement to partial summary judgment on the Labor Law § 240(1) claim. The elevation differential between the ground level and the lower level to which plaintiff's foot and leg sank is analogous to the risk that a worker standing on a

platform on a body of water would fall into the water, which we have found to be covered by Labor Law § 240 (188 A.D.3d at 509).

The case of *Favaloro v Port Auth. of N Y & N J.*, 191 A.D.3d 524 (1st Dep't 2021) the plaintiff was injured while walking at below-grade level when he stepped on a piece of unsecured plywood that was partially covering a concrete hole, causing the plywood to fly up and plaintiff's right leg to fall into the hole up to his hip. The motion court granted plaintiff's motion for summary judgment on his Labor Law §240(1) claim, which was affirmed by the First Department. In so doing, the First Department held "(c)ontrary to defendants' contention, the facts that plaintiffs fall occurred below grade and that plaintiff did not fall all the way through the hole do not take his fall out of the ambit of Labor Law § 240(1). Rather, Supreme Court correctly determined that plaintiff's accident arose from a gravity-related risk against which defendants failed to adequately protect him (191 A.D.3d at 524)."

Plaintiff's accident arose from a gravity-related risk against which defendant owner TBTA failed to adequately protect him, thus demonstrating that plaintiff's injuries were proximately caused by TBTA's failure to comply with Labor Law §240(1).

Plaintiff thus established a *prima facie* right to summary judgment. Defendants have failed to raise a question of fact requiring a trial or that the motion is premature.

The court finds no merit to defendant's argument that further discovery is required prior to the determination of this motion. Plaintiff was deposed on November 18, 2021, and January 13, 2022, and defendants' MTA and TBTA were deposed on February 3, 2022.

Gallady's non-party deposition was held on June 29, 2022. In addition, defendants' claim that discovery is outstanding, is primarily made in reference to their third-party and second-third-party actions. Defendants do not allege that any of the additional discovery in the third-party actions is within the exclusive control of the plaintiff.

"A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence." *Bailey v. New York City Transit Authority*, 270 AD2d 156 (1st Dep't 2000).

Defendants have failed to demonstrate how further discovery may reveal or lead to relevant evidence on this issue.

Based on the foregoing, plaintiff is entitled to summary judgment as to liability and the court need not address the remaining additional claims upon which plaintiff seeks to establish liability on this motion.

WHEREFORE it is hereby:


ORDERED that plaintiff's motion for partial summary judgment as to liability is granted; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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1/26/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE