Miranda v Civic Ctr. Community Group Broadway LLC
2023 NY Slip Op 30286(U)
January 27, 2023
Supreme Court, New York County
Docket Number: Index No. 150093-2019
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

EDISON MIRANDA

INDEX NO. 150093-2019

MOT. DATE

- v -

MOT. SEQ. NO. 3

CIVIC CENTER COMMUNITY GROUP BROADWAY LLC et al

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This is an action for injuries sustained at a workplace allegedly arising from violations of the Labor Law. Specifically, plaintiff was injured when he fell off an unguarded edge of a makeshift staircase that was the only means of accessing an elevated work level. Plaintiff now moves for summary judgment on the issue of liability against defendants Civic Center Community Group Broadway and New Line Structures Inc. on his Labor Law § 240(1), deeming plaintiff free from comparative negligence as a matter of law and dismissing the comparative negligence defenses. Defendants oppose the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Labor Law § 240[1], which is known as the Scaffold Law, imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury (*Gordon v. Eastern Railway Supply, Inc.*, 82 NY2d 555 [1993]). The statute provides in pertinent part as follows:

Dated: 1/27/23

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☐ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☑ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

> All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a premises 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 protects workers from "extraordinary elevation risks" and not "the usual and ordinary dangers of a construction site" (*Rodriguez v. Margaret Tietz Center for Nursing Care, Inc.*, 84 NY2d 841 [1994]). "Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)" (*Narducci v. Manhasset Bay Associates*, 96 NY2d 259 [2001]).

Section 240[1] was designed to prevent 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 (*Runner v. New York Stock Exchange, Inc.*, 13 NY3d 5999 [2009] quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). The protective devices enumerated in Labor Law § 240 [1] must be used to prevent injuries from either "a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured" (*Rocovich v. Consolidated Edison Co.*, 78 NY2d 509 [1991]).

At the time of his accident, plaintiff was carrying wood beams and was in the process of building the makeshift staircase he fell from. No one else witnessed plaintiff fall. There is no dispute that defendants are proper statutory defendants, and that plaintiff was a covered worker engaged in protected work within the ambit of Section 240[1]. Defendants' sole argument in opposition to the motion is that there is an issue of fact as to whether Plaintiff was the sole proximate cause of his accident because of an alleged lack of evidence that an anchor to which plaintiff could have attached the harness he was wearing, a so-called Yo-Yo, was in use and thus not available to plaintiff at the time of the accident. However, plaintiff clearly testified that when when his accident occurred, the Yo-Yo was unavailable to him:

> Q. When you started your way up, before you fell, the Yo-Yo in Defendant's Exhibit B was positioned to keep you from falling as you were traversing this first flight, right?
>
> A. There was another person working here on this side (indicating) who also used this same Yo-Yo.
>
> Q. That was not the question.
>
> The question was, when you started to climb from the bottom up, this Yo-Yo that we see in Defendants' Exhibit B would be the Yo-Yo that you would have connected to your harness, if you were going to connect a Yo-Yo to your harness, right?
>
> A. I don't know if it is the same one.
>
> Q. What do you mean you don't know if it is the same one? Do you see any other Yo-Yos?
>
> A. It is just that this Yo-Yo, it wasn't used by us, it was also used by other workers doing a different type of work.
>
> Q. So you had to take turns using the Yo-Yo?

A. Technically, yes.

...

Q. Do you see a Yo-Yo here in Exhibit B?

A. Yes.

Q. Is that Yo-Yo position more or less over the landing in between form one, the lower form and the upper form?

A. Yes.

Q. You testified, if I understand you correctly, you testified earlier that you were instructed at one point or another by your supervisor or by someone to attach a harness to the Yo-Yo when climbing the form, right?

A. Yes.

...

A. ... Since this Yo-Yo was used both by me and the other workers, at the moment when I was carrying the plywood, it wasn't available. Since I am a worker who receives orders and the goal for them is for me to advance, for the job to advance if I want to keep my job, I need to make sure that I am making progress, that the job is progressing as much as I can.

Thus, plaintiff has come forward with sufficient evidence showing that he did not have an anchor to tie his harness to at the time he fell and has demonstrated a prima facie Section 240[1] violation. In turn, defendants have failed to raise a triable issue of fact. Defendants rely upon the testimony of their witness who was not present when plaintiff's accident occurred and otherwise does not refute plaintiff's testimony about whether the Yo-Yo was available to plaintiff. Defendant's witness merely testified that he was not told by the site safety manager or anyone else that at the time plaintiff fell, a different worker was tied off to the Yo-Yo. This testimony is insufficient to raise a triable issue of fact from which a jury could conclude that an adequate number of Yo-Yos were present at the worksite and that plaintiff's conduct was the sole cause of his accident. Indeed, defense counsel argues that "[p]laintiff and his direct supervisor were the only ones working on the staircase form" and "no one else should have been using ESCO's yoyo" without any evidentiary support. Further, contrary to defense counsel's contention, defendants have not identified any inconsistencies in plaintiff's testimony which would raise a triable issue of fact as to his credibility regarding how the accident occurred. Accordingly, plaintiff's motion is granted to the extent that he is entitled to partial summary judgment on liability for violation of Labor Law § 240(1).

As for the balance of plaintiff's motion, it is denied. It remains for a jury to determine whether plaintiff is free from comparative negligence. While he clearly testified that the Yo-Yo was in use at the time of his accident, and there is no evidence to refute this testimony, the record is unclear as to whether and for how long plaintiff waited or could/should have waited before proceeding to carry the wood beams without being tied to the Yo-Yo.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted to the extent that he is entitled to partial summary judgment on the issue of defendants' liability for violation of the Labor Law § 240(1); and it is further

ORDERED that the balance of plaintiff's motion is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 1/27/23
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.