

Santamaria v New York Presbyt. Healthcare Sys., Inc.
2023 NY Slip Op 31683(U)
May 16, 2023
Supreme Court, New York County
Docket Number: Index No. 153823/2018
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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JOSEPH SANTAMARIA and CAROLYN SANTAMARIA,

Plaintiffs,

INDEX NO. 153823/2018

MOTION DATE 10/04/2022

MOTION SEQ. NO. 003

- v -

NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM,
INC., and TURNER CONSTRUCTION COMPANY,

**DECISION + ORDER ON
MOTION**

Defendants.

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NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC.,
and TURNER CONSTRUCTION COMPANY,

Third-Party
Index No. 595960/2018

Third-Party Plaintiffs,

-against-

B&G ELECTRICAL CONTRACTORS OF N.Y., INC.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 94, 95, 96, 97, 98, 99, and 102

were read on this motion for JUDGMENT - SUMMARY.

In this Labor Law action, plaintiffs move for summary judgment on their claims pursuant to Labor Law §§ 200 and 240(1), and for common law negligence. The motion is decided in accordance with the following memorandum.

Background

Plaintiff Joseph Santamaria (“Santamaria”) was employed by third-party defendant B&G Electrical Contractors of N.Y., Inc. (“B&G”), as an electrician on a jobsite located at 1283 York Avenue, New York, New York (Santamaria EBT tr, NYSCEF Doc. No. 77 at 8, 13; Rengstl EBT tr, NYSCEF Doc. No. 78 at 14-15). On February 28, 2018, he was to install electrical wires in

an in-wall conduit, approximately 11 to 12 feet above the floor, for which he was given an 8-foot A-frame ladder by his subforeman and instructed to use it to reach the conduit (Santamaria EBT tr, NYSCEF Doc. No. 77 at 17-19, 26-27). He testified that while he was taping together the wires in the conduit “the ladder shifted, it collapsed, [his] vest got hung up and [he] fell” (*id.* at 34). A contemporaneous accident report states that he was “found on the floor of the 9th floor treatment room. His ladder was laying on its side” (accident report, NYSCEF Doc. No. 81). Accompanying photographs also show the ladder laying on its side (*id.*). A later investigation report of defendant Turner Construction Company (“Turner”) states that Santamaria had “just finished taping electrical wires in the ceiling and was coming down the ladder when his safety vest ‘got caught’ on ‘something’ in the ceiling causing him to fall from the 3rd rung of the ladder” (Turner report, NYSCEF Doc. No. 81). Santamaria disputes that he was competent to provide the details listed in the report, as he was interviewed in the middle of being treated in the hospital following the accident (Santamaria EBT tr, NYSCEF Doc. No. 77 at 53-61). It is undisputed that the ladder was not secured to anything or being held by Santamaria’s working partner; nor was Santamaria provided with a safety harness or other safety device with which to tie-off and secure himself against the ladder collapsing (*id.* at 46, 61, 68).

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of N.Y.*, 49 NY2d 557, 562 [1980]). “Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once a movant has met this burden, “the burden shifts to the

opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial” (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). “[I]t is insufficient to merely set forth averments of factual or legal conclusions” (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014] [internal citation omitted]). Moreover, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assocs. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]). Therefore, if there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Discussion¹

Labor Law § 240 (1), also known as the Scaffold Law, provides, as relevant:

All contractors and owners and their agents . . . 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.

“Labor Law § 240 (1) was designed to prevent those types of accidents in which the scaffold . . . 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 v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). Importantly, Labor Law § 240 (1) “is designed to protect workers from gravity-related hazards . . . and must be liberally construed to

¹ Plaintiff seeks summary judgment on both his Labor Law § 240(1) claim and his claim for common law negligence and under Labor Law § 200. However, the moving papers only address the Labor Law § 240(1) claim. Accordingly, the court denies summary judgment on the claim for common law negligence and under Labor Law § 200.

accomplish the purpose for which it was framed” (*Valensisi v Greens at Half Hollow, LLC*, 33 AD3d 693, 695 [2d Dept 2006] [internal citations omitted]).

Not every worker who falls or is struck by a falling object at a construction site is afforded the protections of Labor Law § 240(1), and “a distinction must be made between those accidents caused by the failure to provide a safety device . . . and those caused by general hazards specific to a workplace” (*Makarius v Port Auth. of N.Y. & N. J.*, 76 AD3d 805, 807 [1st Dept 2010]). Instead, liability “is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001]). Therefore, to prevail on a section 240 (1) claim, a plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff’s injuries (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004]).

Here, Santamaria’s testimony and the contemporaneous documentary evidence establish *prima facie* entitlement to summary judgment, in that plaintiff was working at an elevated height, the safety device he was given proved to be inadequate to prevent his injuries, and the ladder wound up on its side on the floor. When a ladder collapses, it is *prima facie* evidence of a violation of the statute (*Kosavick v Tishman Const. Corp. of New York*, 50 AD3d 287, 288 [1st Dept 2008] [“once a plaintiff makes a *prima facie* showing that the ladder he was using collapsed, there is a presumption that the ladder was an inadequate safety device”]). To defeat the motion, defendants would have to show Santamaria “had adequate safety devices available; that he knew both that they were available and that he was expected to use them; that he chose for no good reason not to do so; and that had he not made that choice he would not have been injured” (*Cahill v Triborough Bridge and Tunnel Auth.*, 4 NY3d 35, 40 [2004]).

In opposition to the motion, defendants fail to show a triable issue of fact. They argue that a conflict exists between the version of the accident Santamaria testified to and the one included in the Turner report such that summary judgment is not appropriate. Leaving aside the issue of whether Santamaria was competent to give the information underlying the Turner report, it is irrelevant to the motion whether Santamaria's vest got caught on something before he fell from the ladder or while he was falling from it. It is undisputed that the ladder collapsed, and it "is sufficient for purposes of liability under section 240 (1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent" (*Orellano v 29 E. 37th St. Realty Corp.*, 292 AD2d 289, 291 [1st Dept 2002]). Defendants do not dispute that Santamaria "fell off the ladder, that the ladder was not secured and that there was no other safety device provided to plaintiff to prevent him from falling off the ladder," and, therefore, there is no issue of fact as to whether Santamaria was the sole proximate cause of his injuries (*White v 31-01 Steinway, LLC*, 165 AD3d 449, 452 [1st Dept 2018]).

Accordingly, it is

ORDERED that the plaintiffs' motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiffs, and against defendants, on the first cause of action as follows; and it is further

ORDERED that the defendants are found liable to plaintiff on so much of the first cause of action as seeks liability under Labor Law § 240(1), and the issue of the amount of a judgment to be entered thereon shall be determined at the trial herein; and it is further

ORDERED that this matter is respectfully referred to the Clerk of the Trial Assignment Part to be assigned for trial.

