

Martinez v Bridge Land Vestry, LLC

2023 NY Slip Op 32466(U)

July 20, 2023

Supreme Court, New York County

Docket Number: Index No. 150479/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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BENJAMIN MARTINEZ,

Plaintiff,

- v -

BRIDGE LAND VESTRY, LLC, ROY ANDERSON
RELATED CONSTRUCTION HOLDINGS, LLC

Defendants.

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INDEX NO. 150479/2018

MOTION DATE 07/12/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 73, 74, 75, 78, 79, 81, 82, 83, 84, 86

were read on this motion to/for JUDGMENT - SUMMARY.

Defendants’ motion for summary judgment is granted in part and denied in part.

Background

In this Labor Law case, plaintiff was injured while he was on the job. There are two versions of how this accident occurred. In the first version, contained in an incident report signed by plaintiff, plaintiff was hurt while pulling a pallet jack loaded with materials when he struck a debris container (NYSCEF Doc. No. 83). At his deposition, however, plaintiff disavowed that version and instead testified that he was on a “ladder when the man came down with the pallet jack, he lost control of the pallet jack. He passed and touched my ladder. He moved my ladder and that’s why I fell to the side” (NYSCEF Doc. No. 82 at 74).

Defendants blame plaintiff for the accident. They contend that if plaintiff was on the ladder, then he was only on the ladder because he concocted a scheme to improve the lighting in his work area and was running an extension cord through a hole he drilled in the ceiling.

Defendants claim that if plaintiff used the A-frame ladder, he did it so he could drill the hole and did this without the knowledge of anyone, including his employer. They seek to dismiss plaintiff's claim based upon Labor Law §§ 240(1), 241(6) and 200. Defendants also stress that there are two differing versions of how the accident may have happened.

In opposition, plaintiff "takes no position" with respect to his Labor Law § 200 claim but opposes the remaining branches of defendants' motion. He claims that there is simply a factual dispute as to the manner in which the accident occurred and therefore the remaining branches of the motion should be denied.

Labor Law § 240(1)

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . 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 construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of 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" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

As an initial matter, the Court observes that there is a clear and obvious discrepancy about whether or not plaintiff was on the ladder when the injury occurred. Plaintiff testified at his

deposition that he was on the ladder when the accident happened but an incident report (which plaintiff signed) contends that plaintiff was the one pulling the pallet jack when he hit a debris container while walking backwards (*see* NYSCEF Doc. No. 83). At his deposition, when confronted with this incident report, plaintiff denied that this is how the accident happened (NYSCEF Doc. No. 82 at 73).

Of course, these two conflicting accounts requires the Court to deny this branch of the motion. The Court cannot find as a matter of law that plaintiff was not on the ladder and thereby conclude that a Labor Law § 240(1) claim is inapplicable here. A fact finder must assess how the accident occurred.

And to the extent that defendants argue that the 240(1) claim should be dismissed even if plaintiff was on the ladder, that argument is without merit. The Court observes that defendants strenuously argue that plaintiff's use of the ladder was unforeseeable and that plaintiff's decision to get on the ladder requires the Court to dismiss this cause of action. They emphasize that plaintiff's work did not require him to use a ladder.

However, the Court cannot reach that conclusion as a matter of law. Plaintiff insists that while working in a bathroom to replace the tile, he "passed my extension over the door. But, if I left my extension cord hanging there at the bottom, it will disturb the people who were bringing in material. So, my idea was to raise it up. And on the ceiling there was a piece of wire. I was going to tie it off there. And I was going to pass it through there and I was going to make a hole in the sheetrock in order for it to go to the bathroom where I was working at" (*id.* at 46-47). A fact finder must consider whether this decision absolves defendants of liability under Labor Law § 240(1). The Court is unable to simply credit defendants' version as plaintiff offered a plausible reason about why he had to drill a hole in the ceiling—to avoid disturbing other workers moving

materials. In other words, the Court finds that there is a material issue of fact regarding whether plaintiff's decision to get on the ladder was a logical part of his work (if he was on the ladder).

Defendant's insistence that plaintiff's decision to get on the ladder was not required misses the point. This is not a situation in which plaintiff ignored specific instructions from a supervisor (and therefore implicates the recalcitrant worker doctrine). Rather, a jury must evaluate if plaintiff's alleged solution to complete his work efficiently was reasonably foreseeable. After all, plaintiff insists he could not just leave the extension cord on the ground.

Similarly, defendants' claim that the runaway pallet jack that hit the ladder was an unforeseeable, intervening, and superseding event does not compel the Court to dismiss this cause of action. "[F]oreseeability and proximate cause are generally questions for the factfinder" (*Hain v Jamison*, 28 NY3d 524, 529, 46 NYS3d 502 [2016] [noting that proximate cause could be determined as a matter of law when only one conclusion can be drawn from the facts]). Here, more than one conclusion can be drawn from the facts and so the Court denies this branch of the motion. The purported facts and surrounding circumstances must be considered by the jury.

Labor Law § 241(6)

"The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6) . . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles" (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). "The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury" (*Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

The Court observes that plaintiff only addressed two Industrial Code sections in his opposition: 12 NYCRR § 23-1.5(c)(3) and § 1.21(b). Therefore, the remaining branches of plaintiff's cause of action based on this claim are severed and dismissed.

“Industrial Code (12 NYCRR) § 23–1.5(c)(3) provides, ‘All safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the job site if damaged’” (*Becerra v Promenade Apartments Inc.*, 126 AD3d 557, 558, 6 NYS3d 42 [1st Dept 2015]).

Defendants argue that there is no evidence that any of the equipment or safety devices were in disrepair or in a poor condition. They emphasize that no one testified that the pallet jack was broken or that the ladder had a defect.

Plaintiff failed to raise an issue of fact in response. His opposition on this Industrial Code section insists that “if the set of facts involving the pallet jack knocking the plaintiff into the debris container is the factual pattern set forth, the Court would need to analyze 1.5(c)(3) and whether or not the loss of control of the pallet jack was due to it being in disrepair or poor condition” (NYSCEF Doc. No. 81, ¶ 40). That does not raise sufficient opposition as plaintiff merely speculates about possible issues of fact. Plaintiff's testimony that a worker lost control of the pallet jack does not create an inference that the pallet jack was “in disrepair or in poor condition” and there is nothing else, such as the operator's testimony or an expert's report evaluating the pallet jack, to implicate this Industrial Code section.

The Court also severs and dismisses plaintiff's claim with respect to his Industrial Code 23-1.21 claim. This section concerns various requirements for ladders, including the ladder's strength and maintenance. Plaintiff's bill of particulars cites 23-1.21(b)(1) and 23- 1.21(b)(3)(i), 23-1.21(b)(4)(ii), 23-1.21(b)(4)(iv); 23-1.21(e) (NYSCEF Doc. No. 55, ¶ 14).

Defendants assert that these sections are inapplicable because there is no evidence that the ladder was defective or broken in any way. Defendants also claim that plaintiff was not on the ladder at all.

Plaintiff failed to raise an issue of fact in opposition. He offered a single paragraph on this point, arguing that “1.21(b) and its subsections may or may not be applicable to the case at bar depending on whether or not the plaintiff is found to be on the ladder at the time of the accident. We won't know the answer to that question until a jury has weighed the credibility of the witnesses and made a finding of fact as to how the accident unfolded” (NYSCEF Doc. No. 81, ¶ 41).

To be sure, plaintiff is correct that there are two different versions of the accident (one where plaintiff was operating the pallet jack and the other where he was on the ladder). But simply because he may have been on the ladder is not a basis, standing alone, to implicate the Industrial Code sections under 1.21(b). And plaintiff did not specifically address how any of these provisions should remain, such as pointing to evidence about issues with the integrity of the ladder. Plaintiff's deposition testimony mentions nothing about a defective ladder.

Therefore, all claims based on the Industrial Code Sections are severed and dismissed.

Labor Law § 200

The Court also severs and dismisses this cause of action as plaintiff failed to oppose this branch of defendants' motion. Plaintiff's assertion that he takes no position does not raise an issue of fact.

Summary

The Court recognizes that there are two versions of how this accident happened. There is the version that plaintiff offered at his deposition where he was on the ladder and fell when it

was hit by a runaway pallet jack. And there is the version contained in the incident report (which was signed by plaintiff) where he was injured while moving the pallet jack himself. This Court is unable to make any factual findings about how the accident occurred and therefore is unable to dismiss the Labor Law § 240(1) claim.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is granted in all respects except that the Labor Law § 240(1) claim remains.

7/20/2023

DATE



ARLENE P. BLUTH, 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