Supreme Court of the State of New York
County of Kings

Part LL1

HENRY LEE,

Plaintiff,

against

THE MOUNT SINAI HOSPITAL, HUNTER ROBERTS CONSTRUCTION GROUP, LLC, AND MOUNT SINAI SYSTEM, INC.,

Defendants.

THE MOUNT SINAI HOSPITAL AND MOUNT SINAI SYSTEM, INC.,

Third-Party Plaintiff,

against

ABA CONSTRUCTION CORP.,

Third-Party Defendants.

Index Number 500183/2022
Seqs. 002, 003, 004

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1–3
Order to Show Cause and Affidavits Annexed.	
Answering Affidavits	4–5
Replying Affidavits	6–7
Exhibits	Var.
Other	

Upon the foregoing papers, plaintiff's motions for partial summary judgment (Seq. 002) and to sever the third-party action (Seq. 004) and defendants' cross-motion for summary judgment (Seq. 003) are decided as follows:

Procedural History and Factual Background

Plaintiff commenced this action for injuries he claims to have sustained when he fell from a ladder after that ladder was struck by a falling cinderblock. Plaintiff was installing a water cooler AC system in the C3 level sub-basement of the defendant hospital (Lee EBT at 67, 74–75; John Barton, representative of Mount Sinai, EBT at 20–21). Plaintiff testified as follows:

plaintiff was working on a 10-foot A-frame metal ladder, which belonged to the hospital and which the plaintiff was permitted to use (Lee EBT at 82–83, 91, 102–104). While using a "chipping gun" on the wall from the seventh rung of the ladder, approximately three rungs from the top, plaintiff was struck in the right shoulder by a piece of a cinderblock that fell from the sub-basement level above him (*id.* at 149–151, 161). There was no ceiling/floor between the three sub-basement levels, only a network of catwalks, ducts, and machinery (*id.* at 151–153). The cinderblock was not from a part of the wall he was drilling but rather was among materials "left . . . there" by previous workers on the catwalk above the sub-basement level where he was working (*id.* at 153).

The force of the cinderblock's impact "shocked [plaintiff's] body" and the ladder (*id.* at 158–159). Plaintiff dropped the drill he was holding, and his left hand grabbed the top of the ladder for stability (*id.* at 160). When he braced himself against the ladder, the ladder fell down with the plaintiff (*id.*).

Plaintiff was working with his then-co-worker, Stanley Bodd, at the time (Bodd EBT at 13–14). Plaintiff and Mr. Bodd were working on opposite sides of the wall at the time of accident (*id.* at 37). For that reason, Mr. Bodd heard plaintiff's accident but did not witness it (*id.* at 40).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). "The fact that the accident was

unwitnessed does not [alone] preclude granting summary judgment to the plaintiff" (*Inga v EBS N. Hills, LLC*, 69 AD3d 568, 569 [2d Dept 2010]).

Labor Law § 240 (1)

"Liability under Labor Law § 240 (1) [is] 'absolute' in the sense that owners or contractors not actually involved in construction can be held liable, regardless of whether they exercise supervision or control over the work (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.,* 46 NY2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.,* 81 N.Y.2d 494, 500 (1993)]). That "liability is contingent on a statutory violation and proximate cause" (*id.* at 287).

It is undisputed that the plaintiff was engaged in covered work at the time of the accident. Plaintiff testified that, while performing that work, he was struck by a falling cinderblock, braced himself against the ladder, and then fell to the ground. Plaintiff's testimony is sufficient to make out his prima facie entitlement to summary judgment under Labor Law § 240 (1).

In opposition, defendants advance two arguments. First, defendants argue that the cinderblock was unrelated to the plaintiff's work, was apparently left behind by another sub-contractor, and therefore did not need to be secured for the purpose of the plaintiff's undertaking. Second, defendants argue that the ladder falling over was a "subsequent effect" of plaintiff's fall, and not a "preceding cause" (citing *Durkin v Long Is. Power Auth.*, 37 AD3d 400 [2d Dept 2007]; *Costello v Hapco Realty*, 305 AD2d 445 [2d Dept 2003]).

Ultimately, a ladder must be so placed or braced that it prevents the user from suffering a gravity-related harm. Here, it is undisputed that the plaintiff "brace[d] for impact" against the ladder when the cinderblock fell and struck him (Lee EBT at 160). Irrespective of the provenance of the cinderblock, the plaintiff was entitled to safety devices under the Labor Law

that would prevent him from suffering gravity-related harm, and that includes a ladder that was adequately placed, braced, or otherwise secured to prevent it from falling over when a worker foreseeably braced himself against it. The failure of the ladder to hold the plaintiff constitutes a violation of Labor Law § 240 (1) (*see Gonzalez v. AMCC Corp.*, 931 NYS2d 415 [2d Dept 2011] ["the fact that the ladder may have had a brace in the middle to keep it open was immaterial" to whether or not the ladder was secured "as the ladder was not secured to something stable and was not chocked or wedged in place"]). Moreover, defendants have not furnished evidence showing that the plaintiff was the sole proximate cause of the accident.

Therefore, plaintiff's motion for summary judgment on Labor Law § 240 (1) is granted.

Labor Law § 241 (6)

To prevail on a cause of action pursuant to Labor Law § 241 (6), plaintiff must show that he was (1) on a job site, (2) engaged in qualifying work, and (3) suffered an injury (4) the proximate cause of which was a violation of an Industrial Code provision (*Moscati v Consolidated Edison Co. of N.Y., Inc.*, 168 AD3d 717, 718 [2d Dept 2019]).

Defendants move for summary judgment under Labor Law § 241 (6) on the grounds that none of the Industrial Code provisions relied upon by the plaintiff apply to the facts of this case (12 NYCRR §§ 23-1.5, 1.7 [a–b, e–f], 2.1 [a–b], 1.21 [a–d], 1.30, 3.3, and 5.1). As to Rules 23-1.5, 1.7 (b, e–f), 2.1 (a–b), 1.30, 3.3, and 5.1, inapplicability is evident on their face. While there is closer affinity between Rules 23-1.7 (a) (fall protection in areas ordinarily exposed to falling hazards) and 1.21 (a–d) (various regulations about ladders) and the facts of this case as presented, defendants have advanced arguments that meet their prima facie burden of demonstrating why these code provisions do not apply here. The plaintiff does not offer any opposition to this portion of the defendants' cross-motion.

Therefore, defendants' motion is granted as to Labor Law § 241 (6).

Labor Law § 200

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). The parties proceed under the presumption that this action involves a dangerous premises condition and not unsafe means and manner of performing work. "Where a premises condition is at issue [in assessing Labor Law § 200 liability], property owners may be held liable for a violation of Labor Law § 200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident" (*Ortega*, 57 AD3d at 61–62).

Defendants argue that they did not have notice of the cinderblock, and therefore cannot be liable for it under Labor Law § 200. In essence, defendants deny notice, both actual and constructive, through the testimony and affidavit of John Barton, the facilities manager for the Mount Sinai entities involved in this action (primarily Barton Aff. at ¶ 10). The plaintiff does not offer any opposition to this portion of the defendants' cross-motion. Defendants are therefore granted summary judgment as to plaintiff's claim under Labor Law § 200.

Severance

CPLR 603 provides that the court may order a severance of claims or a separate trial of any claim or issue in furtherance of convenience or to avoid prejudice. Severance is disfavored "where complex issues are intertwined," as "fragmentation increases litigation and places unnecessary burden on court facilities" (*Shanley v Callanan Industries, Inc.*, 54 NY2d 52, 57

[1981]). Here, the third-party action is predicated on the same facts as the primary action. Moreover, the instant action is scheduled for its first pre-trial conference in the Jury Coordinating Part January 3, 2024. Irrespective of the timeliness of the third-party action (which is a separate issue that the court does not reach here), the plaintiff has not yet been prejudiced by the impleader action and his motion for severance is, therefore, denied.

Conclusion

Plaintiff's motion for summary judgment on Labor Law § 240 (1) (Seq. 002) is granted.

Defendants' cross-motion for summary judgment (Seq. 003) is granted only to the extent that plaintiff's Labor Law §§ 200 and 241 (6) claims are dismissed; the motion is otherwise denied.

Plaintiff's motion to sever the third-party action (Seq. 004) is denied.

This constitutes the decision and order of the court.

December 12, 2023
DATE

DEVIN P. COHEN
Justice of the Supreme Court