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| Nagy v Bedford Stuyvesant Restoration Corp. |
| 2024 NY Slip Op 32552(U) |
| July 3, 2024 |
| Supreme Court, Kings County |
| Docket Number: Index No. 532382/2022 |
| Judge: Devin P. Cohen |
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**Supreme Court of the State of New York
County of Kings**

Index Number 532382/2022
Seq. 003

Part LL1

DECISION/ORDER

TAMAS NAGY,

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

Plaintiff,

Papers Numbered

against

| | |
|---|------------|
| Notice of Motion and Affidavits Annexed | <u>1</u> |
| Order to Show Cause and Affidavits Annexed. . . . | <u>2</u> |
| Answering Affidavits | <u>3</u> |
| Replying Affidavits | <u>var</u> |
| Exhibits | <u>var</u> |
| Other | <u> </u> |

BEDFORD STUYVESANT RESTORATION CORPORATION,
CARE REALTY CORP., AND PROSPECT MANAGEMENT,

Defendants.

Upon the foregoing papers, plaintiff’s motion for summary judgment (Seq. 003) is decided as follows:

Introduction

Plaintiff commenced this action to recover for damages he contends he sustained on January 17, 2022, when he fell from an A-frame ladder while performing plaster renovations at an apartment building located at 45 West 35th Street, New York, New York.

At the time of the accident, plaintiff was employed as a painter by non-party GMG Home Services (Nagy EBT at 18). Care Realty Corp. and Prospect Management (collectively, the defendants) owned and managed the apartment building. Plaintiff discontinued his claims against Defendant Bedford Stuyvesant Restoration Corporation by a stipulation signed by all parties.

Plaintiff now moves for summary judgment (Seq. 003) on his Labor Law § 240 (1) claim.

Facts

Plaintiff contends that he was working on an A-frame ladder while performing renovation work when he and the ladder fell over. The accident was unwitnessed. Plaintiff is unsure who provided the ladder. Plaintiff testified he inspected the ladder just before his fall and that it was steady (Nagy EBT at 60). Plaintiff testified that the ladder was in a fully open position at the time of his accident and wobbled just before the fall (Nagy EBT at 57; Nagy Aff. at 2). Although plaintiff recounted that, “I have no idea what made me fall off [the ladder]” (Nagy EBT at 80-84), it is uncontroverted that plaintiff and the ladder fell together to the floor after the ladder wobbled.

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]).

Labor Law § 240 (1)

“The single decisive question [when assessing liability under Labor Law § 240 [1]] is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). Liability under the statute is “absolute” where the failure of a safety device enumerated by the statute (*e.g.* a ladder) is the proximate cause of the plaintiff’s injuries (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003]).

“The mere fact that a plaintiff fell from a ladder does not, in and of itself, establish that

proper protection was not provided” (*Delahaye v St. Anns School*, 40 AD3d 679, 682 [2d Dept 2007]). While it is the case that a plaintiff can obtain summary judgment when they are the sole witness to an accident (*see Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]), that scenario requires that the plaintiff’s testimony about the accident be sufficient to resolve all questions of fact, leaving only issues of law.

Plaintiff contends the statute was violated because the ladder, an enumerated safety device, wobbled suddenly causing him to fall. Plaintiff states that he set the ladder up and that all its features appeared to be in good order.

A collapse or malfunction of a ladder for no apparent reason creates a presumption that the ladder was defective or proper safety protection was not provided (*see Salinas v 64 Jefferson Apts., LLC*, 170 AD3d 1216 [2d Dept 2019]); and *see Blake*, 1 NY3d at 289 n. 8 [2003]).

In opposition, defendants contend plaintiff was the sole-proximate cause because plaintiff was overreaching or misusing the ladder. However, there is no evidence in the record to support defendants’ position.

Lastly, defendants served a subpoena on Gabor Pomazi, the president of non-party GMG, to take his deposition. The subpoena was issued on November 21, 2023, and served on December 29, 2023. The subpoena called for Mr. Pomazi to appear for a deposition on January 3, 2024. After receiving the subpoena, Mr. Pomazi contacted defendants advising that he wants to be represented by counsel at his deposition. Some efforts were made to schedule the deposition, but Mr. Pomazi has yet to retain an attorney.

That said, GMG is a non-party and defendants have given no indication that Mr. Pomazi is likely to have information which would materially change the outcome of the motion.

NAGY-V. BEDFORD STUYVESANT RESTORATION 532382/22

Conclusion

Accordingly, plaintiff's motion for summary judgement (Seq. 003) is granted.

July 3, 2024

DATE



DEVIN P. COHEN

Justice of the Supreme Court