Hypolite v City of New York
2024 NY Slip Op 34081(U)
October 23, 2024
Supreme Court, Kings County
Docket Number: Index No. 511117/2019
Judge: Rupert V. Barry
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 13

HELENA HYPOLITE,

Plaintiff,

-against-

THE CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF TRANSPORTATION,

Defendants.

Cal. No.: 19 (MSQ No.: 3)

Index No.: 511117-2019

DECISION & ORDER

Recitation, as required by CPLR 2219(a), to be considered in review of papers reviewed in connection with Plaintiff's summary judgment motion: NYSCEF Doc. Nos.: 83-97; 99-110.

Upon due consideration of the papers filed in this matter, and after oral argument, the decision of this Court is as follows:

This matter arises from allegations by Plaintiff that she sustained injuries as a result of being pinned by a beam at the location of her employment. Plaintiff alleges that at the time of the accident, she was working on a beam some distance from a second beam that was being cut by another crew. Upon that second beam being cut, the beam Plaintiff was working on began to spin and subsequently pinned her arm, causing injuries. She alleges that Defendants violated Sections 200, 240(1), and 241(6) of the New York Labor Law. On May 31, 2024, Plaintiff filed the instant summary judgment motion as to liability on her labor law claims.

Labor Law § 200 is a codification of the common-law duty of an owner or employer to provide employees with a safe place to work (*Rizzuto v L.A. Wenger Contr. Co*., 91 NY2d 343, 352 [1998]). "Cases involving Labor Law § 200 fall into two broad categories, namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). When the manner and method of work is at issue in a Labor Law § 200

analysis, the issue is whether the defendant had the authority to supervise or control the work or activity bringing about the injury (*Bazdaric v Almah Partners LLC.*, 41 NY3d 310, 323 [2024]; *Paniflow v 66 E.83rd St. Owners Corp.,* 217 AD3d 875, 879 [2d Dept 2023]).

When a claim arises out of an alleged dangerous premises condition, a property owner or general contractor may be held liable under "'Labor Law § 200 when the owner or general contractor has control over the work site and either created the dangerous condition causing an injury or failed to remedy the dangerous or defective condition while having actual or constructive notice of it"' (*Titov v V&M Chelsea Prop., LLC.*, 230 AD3d 614, 618 [2d Dept 2024] [*citing Rodriguez v HY 38 Owner, LLC,* 192 AD3d 839, 841 [2d Dept 2021]).

To the extent that Plaintiff's claims are based on the manner and method in which the work was performed, Defendants established, *prima facie*, that it did not have the authority to supervise or control the manner of Plaintiff's work. In fact, Plaintiff testified at her 50-H hearing (50-H Tr pg 16: 21-25; pg 17: 2-4) that she only received directions regarding her work duties from her supervisor foreman. Neither Plaintiff nor the supervisor foreman were New York City employees. Both were employed by Halmar International, a contractor hired to work on the bridge. Plaintiff further stated that no one from Defendants' offices ever conducted meetings or gave her instructions regarding her work. As such, that branch of Plaintiff's motion seeking summary judgment as it relates to Labor Law § 200 is **denied**.

"The extraordinary protections of Labor Law § 240(1) extend only to a narrow class of special hazards, and do 'not encompass any and all perils that may be connected in some tangential way with the effects of gravity'" (*Nieves v Five Boro A.C. & Refrig. Corp.*, 93 NY2d 914, 915 - 916 [2009] [*citing Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]; *Sullivan v New York Athletic Club of City of N.Y.*, 162 AD3d 950, 953 [2d Dept 2018]). Whether a plaintiff

is entitled to recovery under Labor Law § 240 (1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991]). The core premise of the statute centers around whether a defendant's failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability (*Wilinski, v 334 E. 92nd Hous. Dev. Fund Corp*., 18 NY3d 1, 7 [2011]). Labor Law § 240(1) was designed to prevent those types of accidents in which a safety device proved inadequate to shield a worker from harm directly flowing from the application of the force of gravity to an object or person (*Runner v New York Stock Exch., Inc.,* 13 NY3d 599 [2009]).

Plaintiff failed to establish that she was exposed to the type of elevation risk contemplated within the ambit of Labor Law § 240(1). It appears that Plaintiff was injured as a result of a completely different beam being cut some distance away from the beam on which she was working, which in turn, may have caused the beam she was working on to spin towards her, pinning her down. Triable issues of fact exist, inter alia, as to how the alleged accident occurred, including whether Plaintiff's injuries resulted from the type of hazard contemplated by Labor Law § 240(1) or whether Plaintiff's injuries were caused when her beam spun due to the sudden release in the tension caused by the second beam and, thus, was "not the direct consequence of the application of the force of gravity to an object or person" (*Lima v HY 38 Owner, LLC.*, 208 AD3d 1181, 1183 [2d Dept 2022] [*internal citations omitted*]). As such, this branch of Plaintiff's motion seeking summary judgment as it relates to Labor Law § 240(1) is **denied**.

Finally, Plaintiff alleges violation of Labor Law § 241(6) predicated upon specific industrial codes, namely 12 NYCRR §§ 23-1.7(a), 23-3.3(g) and 23-3.3(h). Plaintiff again reiterated these three specific codes in her reply papers as the codes upon which that portion of her

reply was based (NYSCEF Doc. No.: 109, page 1 of 14). Although Plaintiff later lists an additional code not previously mentioned (§ 23-1.7(b)), she makes no argument for why it is applicable, and, therefore, it will not be discussed by the Court. This Court will only analyze and decide on the specific codes argued by Plaintiff.

The City Defendants demonstrated that the Industrial Code sections relied upon by Plaintiff are inapplicable to the facts here. Section 23-1.7 "Protection from general hazards" reads in pertinent part:

(a) Overhead hazards.

(1) Every place where persons are required to work or pass that is normally exposed to falling material or objects shall be provided with suitable overhead protection. …..

(2) Where persons are lawfully frequenting areas exposed to falling material or objects but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas.

Section 23-1.7 (a) (1) requires that the accident area must be normally exposed to falling objects. Here, the record contains no facts or testimony establishing that the accident area in which Plaintiff was working was one that was "normally" exposed to falling objects within the meaning of § 23-1.7 (a)(1). Accordingly, this provision is inapplicable to Plaintiff's accident. Similarly, section 23-1.7(a)(2) is also inapplicable as Plaintiff was required to work in the area in which the accident occurred.

Plaintiff also raises violations of 12 NYCRR §§ 23-3.3(g) and (h). These sections read in pertinent part:

Demolition by hand.

(g) Protection in other areas. Every floor or equivalent area within the building or other structure that is subject to the hazard of falling debris or materials from above shall be boarded up

to prevent the passage of any person through such area, or shall be fenced off by a substantial safety railing… .

(h) Demolition of structural steel by hand. Steel construction shall be demolished column length by column length and floor by floor. Every structural member which is being dismembered shall not be under any stress other than its own weight and such member shall be chained or lashed in place to prevent its uncontrolled swinging or dropping. …..

Although section 12 NYCRR 23-3.3 (g) requires that certain safety precautions be taken against falling debris in "other areas." Plaintiff here was not subject to falling debris from "other areas" (*Crichigno v Pacific Park 550 Vanderbilt, LLC*., 186 AD3d 664, 665 [2d Dept 2020]; *Salinas v Barney Skanska Constr. Co*., 2 AD3d 619 [2d Dept 2003]).

Plaintiff makes no argument in her motion with regards to 23-3.3(h). however, this code is also inapplicable to the facts herein. Therefore, this branch of Plaintiff's motion seeking summary judgment under Labor Law 241(6) is **denied**. Accordingly, it is

ORDERED, that the Plaintiff's motion for summary judgment on the issue of liability as to Labor Law §§ 200, 240(1) and 241(6) are DENIED. It is further

ORDERED, that all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

Dated: October 23, 2024

R V Barry
HON. RUPERT V. BARRY, J.S.C.