

**Durante v City of New York**

2024 NY Slip Op 34925(U)

November 15, 2024

Supreme Court, Bronx County

Docket Number: Index No. 32069/2019E

Judge: Elizabeth A. Taylor

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX : PART IA2

LLOYD DURANTE,
Plaintiff,

Index No. 32069/2019E
Hon. Elizabeth A. Taylor,
Justice Supreme Court

-against-

CITY OF NEW YORK, METROPOLITAN
TRANSPORTATION AUTHORITY,
MTA BRIDGES AND TUNNELS, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, and
TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY,

Defendants.

AND A THIRD-PARTY ACTION

The following papers were read on this motion (Seq. No. 3)

Table with 2 columns: Sequence, Doc. Nos.
Rows: Notice of Motion – Exhibits and Affidavits Annexed (112-126), Answering Affidavit and Exhibits, Memorandum of Law (132-134), Reply Affidavit (135)

Upon the foregoing papers, the above motion is decided in accordance with the
annexed decision and order.

Dated: NOV 15 2024

Hon. Elizabeth A. Taylor, J.S.C.

CHECK ONE... MOTION IS... CHECK IF APPROPRIATE...
CASE DISPOSED IN ITS ENTIRETY X CASE STILL ACTIVE
X GRANTED DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : PART IA2

-----X  
LLOYD DURANTE,

Plaintiff,

DECISION and ORDER  
Index No. 32069/2019E

-against-

CITY OF NEW YORK, METROPOLITAN  
TRANSPORTATION AUTHORITY,  
MTA BRIDGES AND TUNNELS, NEW YORK  
CITY DEPARTMENT OF TRANSPORTATION,  
and TRIBOROUGH BRIDGE AND TUNNEL  
AUTHORITY,

Defendants.

-----X  
AND A THIRD-PARTY ACTION

Elizabeth A. Taylor, J.

Plaintiff moves for an Order pursuant to CPLR 3212 for partial summary judgment against defendants MTA BRIDGES AND TUNNELS (hereinafter, "MTA"), and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY (hereinafter, "TRIBOROUGH" and collectively as "defendants") on plaintiffs' causes of action premised upon violation of Labor Law § 240(1).

Plaintiff was injured while performing construction work on the Henry Hudson Bridge on February 25, 2019. Plaintiff, a carpenter, was tasked with constructing a pedestrian walkway for workers which was attached to the bridge structure with metal brackets. Other workers had installed the metal brackets into the concrete sides of the bridge structure. Plaintiff was in the process of "planking" the walkway, meaning that he was laying wooden planks on top of the brackets to form the surface of the walkway. The walkway was approximately 30 feet above the ground below. The accident occurred when one of the bridge brackets that was installed in cement failed, causing plaintiff and the unsecured wooden planks to fall. Plaintiff fell approximately 8 to 10 feet before his safety line arrested his fall. He was dangling for approximately ten minutes until such time as he was able

to be rescued. Plaintiff alleges that he sustained serious and permanent personal injuries, including but not limited to, a three-level anterior cervical fusion with hardware, need for an electric bone growth stimulator and right shoulder arthroscopy.

MTA and TRIBOROUGH were the admitted owners of the Premises on the date of Plaintiff's accident. Following the accident plaintiff's employer Restani investigated and issued a "Near Miss" report. The report indicates that the "concrete gave way" and "support tie in was not sufficient."

#### ARGUMENT

Plaintiff argues that he is entitled to summary judgment under Labor Law § 240(1), which imposes liability on an owner or general contractor for failing to provide certain safety devices where the lack of those devices or a defect safety device causes a worker to be injured. Plaintiff contends that he was engaged in a protected activity at the time his accident occurred, and that he was injured as a result of a gravity-related risk. An owner is liable pursuant to Labor Law § 240(1), plaintiff argues, when a device or elevated work surface moves, slips, falls, or collapses. The collapse of the bridge bracket and plank underneath plaintiff, plaintiff maintains, is prima facie evidence of a violation of Labor Law § 240(1), entitling the plaintiff to the imposition of liability against the owner, general contractor, and managing agent, citing *Bras v. Atlas Construction Corp.*, 166 A.D.2d 401 (2d Dept. 1990) (a plank on a scaffold cracking, causing a worker to fall, is prima facie evidence of a violation of Labor Law §240(1)) and *Jablonski v. Everest Construction and Trade Corp.*, 264 A.D.2d 381 (2d Dept. 1999) (collapse of planking on sidewalk bridge entitles plaintiff to liability pursuant to Labor Law § 240(1)).

In opposition, defendants argue that plaintiff's accident does not give rise to the extraordinary protections of the Labor Law Section 240(1) because plaintiff was provided the proper, adequate protection to perform his job duties. Based on plaintiff's own testimony, he attended a safety meeting that very morning and was provided safety harness protection which served its purpose and arrested

plaintiff's fall. Defendants further argue that the subject incident falls under the usual and ordinary dangers of a construction site, as plaintiff was in the process of planking an elevated walkway.

#### DISCUSSION

Labor Law § 240(1) imposes a nondelegable duty upon owners and general contractors to provide safety devices to protect workers from elevation-related risks. (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 618 NE2d 82, 601 NYS2d 49 [1993]). Labor Law § 240(1) imposes upon owners, contractors and their agents a nondelegable duty that renders them liable regardless of whether they supervise or control the work. Where an accident is caused by a violation of the statute, a plaintiff's own negligence will not furnish a defense; however, where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability. Thus, in order to recover under Labor Law § 240(1), the plaintiff must establish that the statute was violated and that such violation was a proximate cause of his injury. (*Barreto v. Metropolitan Transp. Auth.*, 25 N.Y.3d 426, 430, 34 N.E.3d 815, 817, 13 N.Y.S.3d 305, 307 [2015].)

Labor Law § 240(1) "imposes absolute liability on building owners and contractors whose failure to provide proper protection to workers employed on a construction site proximately causes injury to a worker" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7, 959 N.E.2d 488, 935 N.Y.S.2d 551). "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" (*id.* at 7.) "The dispositive inquiry does not depend upon the precise characterization of the device employed or upon whether the injury resulted from a fall, either of the worker or of an object upon the worker. Rather, the single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603, 922 N.E.2d 865, 895 N.Y.S.2d 279; *Kandatyan v 400 Fifth Realty, LLC*, 2017 N.Y. App. Div. LEXIS 8064, \*3-4, 2017

NY Slip Op 07984, 1 [2d Dept. 2017] [worker pushing dolly up ramp, injured as object rolled backward, was within purview of Labor Law 240[1].)

Contrary to the defendants' arguments, the plaintiff's accident resulted from a gravity-related hazard. Notably, "there is no bright-line rule minimum height differential that determines whether an elevation hazard exists" (*Auriemma v Biltmore Theatre, LLC*, 82 AD3d 1, 9, 917 N.Y.S.2d 130 [1st Dept 2011]). Plaintiff was working approximately 30 feet above ground level and was therefore subjected to an elevation-related risk.

The fact that plaintiff fell, and that his fall was arrested by his safety lanyard, does not bar recovery under Labor Law 249(1). (*Fernandes v. The Equitable Life Assurance Society of the United States*, 4 A.D.3d 214, 215 (1st Dept. 2004) ("[i]t does not avail defendants that plaintiff did not actually fall off of the ladder but instead was injured in preventing himself from falling"); *Franklin v. Dormitory Authority*, 291 A.D.2d 854, 854 (4th Dept. 2002) (where plaintiff "fell backward but was prevented from falling to the ground because his left leg became entangled in the scaffolding ... Labor Law 240[1] applies to this accident because it was caused by the failure of a scaffold while plaintiff was working at a height"). Similarly, in *Arias v. 139 East 56'h Street Landlord, LLC*. (212 A.D.3d 517 [1st Dept. 2023]), the plaintiff was cutting a wooden beam with a chainsaw on a roof during the demolition of a building when the chainsaw got stuck, causing him to fall 10 to 15 feet below. The workers safety harness and retractable lanyard was tied off to an adjacent beam prevented him from hitting the floor. He suffered injuries to his right shoulder and back from the harness and lanyard catching him. The First Department overturned the motion court's denial of summary judgment holding, "the record establishes that the safety devices proved inadequate to shield the injured worker from harm directly flowing from the application of force of gravity (*Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993)). The fact that plaintiff sustained injuries to his right shoulder and back when his body was caused to be pulled back up abruptly by his safety harness and

lanyard demonstrates lack of adequate protection. (See, *Stigall v. State of New York*, 189 A.D.3d 469, 470, 136 N.Y.S.3d 275 [1st Dept. 2020])."


The record establishes that the safety devices "proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501, 618 NE2d 82, 601 NYS2d 49 [1993] [emphasis omitted]). This result obtains if the walkway under construction is deemed to be a scaffold which failed, or if the safety harness failed to provide adequate protection, or both. Plaintiff is accordingly entitled to partial summary judgment on his claims under Labor Law § 240(1). It is accordingly not necessary to consider the remaining claims or arguments.

Accordingly, it is hereby,

ORDERED that the motion is granted to the extent of granting plaintiff partial summary judgment in his favor as to liability against defendants MTA BRIDGES AND TUNNELS and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY under Labor Law § 240(1), and the Clerk shall enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: NOV 15 2024

  
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Hon. Elizabeth A. Taylor, J.S.C