

Leshi v Megerian

2024 NY Slip Op 35068(U)

December 16, 2024

Supreme Court, Queens County

Docket Number: Index No. 726392/21

Judge: Timothy J. Dufficy

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X
ADI LESHI,

Plaintiff,

Index No. 726392/21

Mot. Date: 5/28/24

-against-

Mot. Seq. : 1 and 2

THOMAS MEGERIAN and ASTINE MEGERIAN,
-----X

The following papers were read on this motion by plaintiff for partial summary judgment as to liability on his Labor Law § 240 (1) claim, and, the separate motion by the defendants for summary judgment dismissing the complaint.

PAPERS
NUMBERED

Motion Sequence No. 1

Notice of Motion – Affidavits – Exhibits.....	EF 28-40
Answering Affidavits – Exhibits.....	EF 62-67
Reply Affidavits.....	EF 71

Motion Sequence No. 2

Notice of Motion – Affidavits – Exhibits.....	EF 44-57
Answering Affidavits – Exhibits.....	EF 59-61
Reply Affidavits.....	EF 68-70

As an initial matter the motion by plaintiff, designated as Motion Sequence No. 1, and, the separate motion by the defendants, designated as Motion Sequence No. 2, are consolidated for the purpose of a single order and are determined, as follows:

Upon the foregoing papers, it is ordered that the motion by plaintiff is denied; and, the motion by defendants is granted in part and denied in part.

This is an action is based on injuries that the plaintiff allegedly sustained while working on a residential property in Bayside. Plaintiff testified that the defendant Thomas Megerian (Megerian) hired him to fix a leak in the roof of Megerian’s rental property and his accident occurred when he was climbing up to the roof. Plaintiff further testified that he leaned a fifteen-foot metal ladder against the roof and began ascending the ladder with the materials he needed to make the repair and the plaintiff, the last thing

he remembers, prior to his accident, is that he climbed up approximately ten feet when he felt the ladder move to the left and right.

Plaintiff subsequently commenced this action against the defendants, asserting causes of action for common-law negligence and alleged violations of Labor Law §§ 200, 240 (1), and 241 (6).

Plaintiff moves for partial summary judgment as to liability on his Labor Law § 240 (1) claim; and the defendants move for summary judgment, *inter alia*, dismissing the complaint.

Plaintiff's motion

In support of his motion, the plaintiff submits, among other things, the pleadings, the transcripts from his deposition, the transcript from Megerian's deposition and the transcript from the deposition of non-party witness, Thomas Zmich, the tenant living at the rental property when the plaintiff's accident occurred. Based on these submissions, the plaintiff asserts that he is entitled to partial summary judgment as to liability on his Labor Law § 240 (1) claim, because his testimony demonstrates a *prima facie* statutory violation, since the ladder he was using was unsecured and failed to prevent his accident. Under Labor Law § 240 (1), [a]ll 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. (Labor Law § 240 [1]; see *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500 [1993]). Labor Law §' 240 (1) imposes on owners or general contractors and their agents a nondelegable duty, and absolute liability for injuries proximately caused by the failure to provide appropriate safety devices to workers who are subject to elevation-related risks (*Saint v Syracuse Supply Co.*, 25 NY3d 117, 124 [2015]). To prevail on a claim under Labor Law § 240 (1), a plaintiff must prove that the defendant violated the statute and that this violation was a proximate cause of his or her injuries (see *Jones v City of New York*, 166 AD3d 739, 740 [2d Dept 2018]). Moreover, a plaintiff must demonstrate that he was both permitted or suffered to work on a building or structure and that he was hired by someone, be it owner, contractor or their agent (*Mordkofsky v V.C.V. Dev. Corp.*, 76 NY2d 573, 576-577 [1990]).

Here, the plaintiff's submissions are insufficient to establish *prima facie* entitlement to partial summary judgment as to liability on his Labor Law § 240 (1) claim, as the deposition testimony fails to affirmatively demonstrate that the plaintiff was hired to perform the roof repair which allegedly led to his accident (*see Gibson v Worthington Div. of McGraw-Edison Co.*, 78 NY2d 1108, 1109-1110 [1991]; *Sowa v S.J.N.H. Realty Corp.*, 21 AD3d 893, 895 [2d Dept 2005]). The parties' testimony demonstrates that Megerian hired the plaintiff to cut open a portion of sheetrock inside Megerian's rental property in order to determine the source of the water leak, and that the plaintiff performed this work a day or two prior to his accident. However, the parties' testimony provides diverging accounts of what would happen next. Plaintiff testified that his scope of the work included returning to the property to perform the roof repair, because he was able to determine the source of the leak when he cut open the sheetrock. Conversely, Megerian testified that the plan was to cut open the sheetrock, wait for it to rain so he could accurately determine where the water was penetrating the roof, and then determine whether he would perform the repair himself or ask the plaintiff to do it. Megerian further testified that in either case, the plaintiff would then re-seal the sheetrock that was cut out. In addition, both Megerian and Zmich testified that they were not aware that the plaintiff had returned to the rental property on the date of his accident and were not aware that the plaintiff was doing any work on the roof until after the accident occurred. Plaintiff's motion is therefore denied, regardless of the sufficiency of the defendants' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Defendants' motion

In support of their separate motion, the defendants rely on, among other things, the pleadings, the transcripts from the depositions of the plaintiff, Megerian, and Zmich. Based on these submissions, the defendants assert that the complaint must be dismissed in its entirety, because the plaintiff's conduct was the sole proximate cause of his accident. Specifically, the defendants assert that the ladder that the plaintiff chose was inadequate, because the plaintiff testified that the ladder did not have rubber feet on it. Because the plaintiff provided his own tools and was the only one who determined where and how to set up the ladder, the defendants contend that this conduct renders the plaintiff the sole proximate cause of his accident. In the alternative, the defendants further argue that they are entitled to summary judgment dismissing the plaintiff's Labor Law § 200 and

common-law negligence claims, because the plaintiff's accident arose out of the manner in which the work is performed, and the defendants did not exercise any control or supervision over the means and methods of the plaintiff's work.

Labor Law §§ 240 (1) and 241 (6)

“[W]here a ‘plaintiff’s actions [are] the sole proximate cause of his injuries, . . . liability under Labor Law § 240 (1) [does] not attach’ ” (*Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006], quoting *Weininger v Hagedorn & Co.*, 91 NY2d 958, 960 [1998]). Thus, the protections of the Labor Law do not apply “if adequate safety devices are available at the job site, but the worker either does not use or misuses them” (*id.*; see *Gallagher v New York Post*, 14 NY3d 83, 88 [2010]).

Here, however, the defendants’ submissions are insufficient to establish *prima facie* entitlement to summary judgment dismissing the plaintiff’s Labor Law §§ 240 (1) and 241 (6) claims. Contrary to the defendants’ contention, the fact that the plaintiff knowingly used a metal ladder, which lacked adequate rubber feet, does not demonstrate that the plaintiff’s conduct was the sole proximate cause of his injuries. Rather, this goes to the plaintiff’s culpable conduct and comparative negligence, which does not provide a defense to statutory liability (see *Stolt v General Foods Corp.*, 81 NY2d 918, 920 [1993]; *Stankey v Tishman Const. Corp. of New York*, 131 AD3d 430, 430 [1st Dept 2015]).

Thus, the branch of the defendants’ motion summary judgment dismissing the plaintiff’s Labor Law §§ 240 (1) and 241 (6) claims is denied, regardless of the sufficiency of the plaintiff’s opposition papers (see *Winegrad*, 64 NY2d at 852).

Labor Law § 200 and common-law negligence

Labor Law § 200 is a codification of the common-law duty of owners, contractors, and their agents to provide workers with a safe place to work (*Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). 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 (*Torres v City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]).

Here, although the plaintiff’s bill of particulars alleges that his accident arose from both a defective premises condition and the manner in which the work is performed, the

Court agrees with the defendants' contention that the plaintiff's accident falls squarely within the "means and methods" category of claims. Under such circumstances, recovery against a property owner cannot be had unless it is shown that the [owner] had the authority to supervise or control the performance of the work (*Lazo v Ricci*, 178 AD3d 811, 813 [2d Dept 2019], quoting *Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). A defendant has the authority to supervise or control the work for purposes of Labor Law § 200 when that defendant bears the responsibility for the manner in which the work is performed (*Ortega*, 57 AD3d at 62).

The Court further finds that the defendants' submissions are sufficient to establish *prima facie* entitlement to summary judgment dismissing the plaintiff's Labor Law § 200 and common-law negligence claims (*see Rodriguez v Mendlovits*, 153 AD3d 566, 569 [2d Dept 2017]). The deposition testimony demonstrates that the defendants did not provide the plaintiff with any tools or safety equipment and that the plaintiff was solely responsible for how the metal ladder was set up and how his work was performed.

In opposition, the plaintiff asserts that the defendants failed to meet their *prima facie* burden with respect to the Labor Law § 200 and common-law negligence claims, because the defendants failed to submit evidence which shows that they lacked the authority to supervise or control the plaintiff's work. This argument is insufficient to preclude summary judgment in the defendants' favor. General supervisory authority at a work site is insufficient to impose liability under Labor Law § 200 (*see Messina v City of New York*, 147 AD3d 748, 749 [2d Dept 2017]), and the plaintiff did not submit any evidence which would demonstrate that the defendants had any involvement in the plaintiff's work (*see Rodriguez*, 153 AD3d at 569).

Accordingly, based upon the foregoing, it is

ORDERED that the motion by plaintiff is denied; and it is further

ORDERED that the motion by defendants is granted, in part, and denied, in part; in that: it is

ORDERED that the branch of defendants' motion for summary judgment dismissing the plaintiff's Labor Law § 200 and common-law negligence claims is granted; and it is further.

ORDERED that the branch of defendants' motion for summary judgment dismissing the plaintiff's Labor Law §§ 240 (1) and 241 (6) claims is denied; and it is further

ORDERED that all other relief not expressly granted herein is denied.

Dated: December 16, 2024



TIMOTHY J. DUFFICY, J.S.C.

