McAllister v Advanced Web Tech., Inc.
2024 NY Slip Op 35167(U)
August 28, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 605227/2023
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 605227/2023
CAL. No. 202400441OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

P R E S E N T :

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 5/1/24
ADJ. DATE 6/5/24
Mot. Seq. # 001 MotD

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RYAN MCALLISTER,

Plaintiff,

- against -

ADVANCED WEB TECHNOLOGIES, INC., CITATION HEALTH CARE LABELS, LLC, REP D-2017, LLC and REP D-2017, LLC, c/o RECHLER EQUITY PARTNERS, LLC,

Defendants.

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Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, filed March 29, 2024; Notice of Cross-Motion and supporting papers __; Answering Affidavits and supporting papers by defendants Advanced Web Technologies, Inc. and Citation Health Care Labels, LLC, filed June 3, 2024; Replying Affidavits and supporting papers by plaintiff, filed June 4, 2024; Other __; it is

ORDERED that plaintiff's motion for, *inter alia*, summary judgment on the issue of defendants' liability with respect to his claim under Labor Law § 240 (1) is granted to the extent set forth herein, and is otherwise denied.

Plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained on November 3, 2021 as the result of a fall. His accident allegedly occurred at the premises located at 55 Engineers Road, Hauppauge, New York, where he fell from the top of a ladder while

performing plumbing work. Plaintiff alleges that defendants were negligent, and that they violated Labor Law §§ 240 (1), 241 (6) and 200.

Plaintiff now moves for an Order granting summary judgment on the issue of defendants' liability with respect to his claim under Labor Law § 240 (1), and setting this matter down for a trial on damages. In support of the motion, plaintiff submits, among other things, his affirmation, as well as a video recording of the accident. Defendants Advanced Web Technologies, Inc. and Citation Health Care Labels, LLC oppose the motion, arguing that plaintiff's conduct was the sole proximate cause of his injuries. Advanced Web Technologies, Inc. and Citation Health Care Labels, LLC filed untimely papers in opposition and provided no excuse therefor. However, plaintiff having had the opportunity to file a reply, and there being no other prejudice resulting from the consideration of the papers, the Court will consider them in determination of the motion (*see* ***Lawrence v Celtic Holdings, LLC***, 85 AD3d 874, 925 NYS2d 172 [2d Dept 2011]; ***Kavakis v Total Care Sys.***, 209 AD2d 480, 619 NYS2d 634 [2d Dept 1994]). Defendants REP D-2017, LLC and REP D-2017, LLC c/o Rechler Equity Partners, LLC did not oppose the motion.

Plaintiff averred that on November 3, 2021, he was assigned by his employer, Hartcom Plumbing and Heating ("Hartcom"), to install a water line at the premises known as 55 Engineers Road in Hauppauge, New York. He averred that the water line was to be installed in a drop ceiling that was 8 feet above the ground. He stated that he was provided with an extension ladder to reach the work area, but that he was not provided with any device to secure the top or bottom of the ladder, nor was he provided with a safety harness or tether to protect against a fall. He averred that he was working while standing on the ladder, and that he was approximately 7 to 8 feet above the ground when the ladder unexpectedly "slipped backwards," causing him to fall.

Defendant's witness, Frederick Youngs, testified that he was employed by Citation Health Care Labels, which was a tenant at the subject premises, and that the company was a wholly-owned subsidiary of Advanced Web Technologies. He stated that the entities leased the property from Rechler Equity Partners, and that the two entities were the only businesses occupying the premises at the time of plaintiff's accident. Youngs testified that Advanced Web Technologies hired Hartcom to perform plumbing work on November 3, 2021. He further testified that on that date, plaintiff was seen on surveillance video falling from the top of a ladder while working within the drop ceiling at the premises.

On a motion for summary judgment, the movant has the burden to show that it is entitled to judgment as a matter of law and that there are no disputed issues of material fact (CPLR 3212; ***Matter of New York City Asbestos Litig.***, 33 NY3d 20, 99 NYS3d 734 [2019]). If the movant meets its burden, then the non-movant must show that there is a material issue of fact to be resolved at trial (***Matter of Eighth Jud. Dist. Asbestos Litig.***, 33 NY3d 488, 105 NYS3d 353 [2019]). If the movant does not meet its burden, then the motion must be denied without consideration of any opposing papers (***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13 [2012]). On summary judgment, the Court must view the evidence in the light most favorable to the non-moving party (*id.*).

"Labor Law § 240 (1) 'imposes a nondelegable duty upon owners and general contractors and their agents to provide safety devices necessary to protect workers from risks inherent in elevated work

sites'" (***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 632, 187 NYS3d 780 [2d Dept 2023] [internal quotations and citations omitted]). "The term 'owner' within the meaning of article 10 of the Labor Law encompasses a 'person who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for his benefit'" (***Zaher v Shopwell, Inc.***, 18 AD3d 339, 339-340, 795 NYS2d 223 [1st Dept 2005], quoting ***Copertino v Ward***, 100 AD2d 565, 566, 473 NYS2d 494 [2d Dept 1984]).

"Labor Law § 240 (1) requires that safety devices such as ladders be so constructed, placed and operated as to give proper protection to a worker" (***Iannaccone v United Nat. Foods, Inc.***, 219 AD3d 819, 820, 195 NYS3d 283 [2d Dept 2023] [internal quotations and citations omitted]). "To prevail on a cause of action alleging a violation of Labor Law § 240 (1), a plaintiff must show, prima facie, that the defendant violated the statute and that such violation was a proximate cause of his or her injuries" (***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 632, 187 NYS3d 780). "Where an accident is caused by a violation of Labor Law § 240 (1), the plaintiff's own negligence does not furnish a defense; however, there can be no liability under Labor Law § 240 (1) where the plaintiff's own actions are the sole proximate cause of the accident" (***Cioffi v Target Corp.***, 188 AD3d 788, 790-91, 134 NYS3d 408 [2d Dept 2020]). "A plaintiff is the sole proximate cause of his or her own injuries and a defendant has no liability under Labor Law § 240 (1) when the plaintiff: (1) had adequate safety devices available, (2) knew both that the safety devices were available and that he or she was expected to use them, (3) chose for no good reason not to do so, and (4) would not have been injured had he or she not made that choice" (*id*. at 791).

Here, plaintiff established his prima facie entitlement to summary judgment on the issue of defendants' liability with respect to his claim under Labor Law § 240 (1) through his affirmation, which established that at the time of the accident, he was working at the premises when the unsecured ladder that he was standing on slid, causing him to fall (*see* ***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 187 NYS3d 780; ***Cioffi v Target Corp.***, 188 AD3d 788, 134 NYS3d 408; ***DeSerio v City of New York***, 171 AD3d 867, 95 NYS3d 864 [2d Dept 2019]). It is undisputed that REP D-2017, LLC owned the premises where plaintiff fell. It is also undisputed that defendants Advanced Web Technologies, Inc. and Citation Health Care Labels, LLC leased and occupied the premises, and that they contracted with plaintiff's employer for the work that plaintiff was performing at the time of his accident (*see* ***Zaher v Shopwell, Inc.***, 18 AD3d 339, 795 NYS2d 223). Plaintiff averred that he was not provided with any safety devices to secure the base or the top of the ladder, nor any safety devices such as a harness or tether to protect against falls. As such, he has established that defendants failed to provide him with proper protection against the elevation-related risks posed by his work (*see* ***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 187 NYS3d 780; ***Cioffi v Target Corp.***, 188 AD3d 788, 134 NYS3d 408; ***DeSerio v City of New York***, 171 AD3d 867, 95 NYS3d 864).

In opposition, defendants failed to raise a triable issue of fact (*see id.*). Despite defendants' contentions, plaintiff's conduct was not the sole proximate cause of his accident (*see* ***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 187 NYS3d 780). Plaintiff averred that he was not provided any safety devices to secure the ladder (*c.f.* ***Blake v Neighborhood Hous. Services of New York City, Inc.***, 1 NY3d 280, 771 NYS2d 484 [2003] [defendants were not liable under Labor Law § 240 (1) for injury caused by fall from a ladder where plaintiff testified that the ladder was securely

placed and otherwise in good working order]). There is nothing in the record to indicate that the plaintiff was instructed to use different equipment, and there is no evidence to establish that defendants provided any safety devices to secure the ladder, or otherwise protect plaintiff from height-related dangers (*see* ***Lochan v H & H Sons Home Improvement, Inc.***, 216 AD3d 630, 187 NYS3d 780).

Accordingly, the branch of plaintiff's motion for summary judgment on the issue of defendants' liability with respect to his claim under Labor Law § 240 (1) is granted. To the extent that the motion seeks an Order setting this matter down for an immediate trial on damages, that branch of the motion is denied.

Dated: August 28, 2024

David T. Reilly, J.S.C.

_____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**