

Yadaicela v New York City Sch. Constr. Auth.

2025 NY Slip Op 30803(U)

February 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 506719/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 506719/2022
Seqs. 002, 003

Part LL1

DECISION/ORDER

JULIO YADAICELA,

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>1-2</u>
Order to Show Cause and Affidavits Annexed.	<u>3-4</u>
Answering Affidavits	<u>5-6</u>
Replying Affidavits	<u>Var.</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY,

Defendants,

Upon the foregoing papers, plaintiff’s motion for summary judgment (Seq. 002) and defendants’ motion for summary judgment (Seq. 003) are decided as follows:

Procedural History & Factual Background

Plaintiff commenced this action for injuries he claims to have sustained on May 19, 2021 when he was struck in the head by falling wood planks while renovating P.S. 92, located at 601 Parkside Avenue, Brooklyn (the premises). The premises was owned by New York City School Construction Authority (NYCSCA).

The following facts are undisputed: Plaintiff was employed as a mason tender by AmCon Contracting Corp. (AmCon), the general contractor at the premises. Amcon was retained by NYCSCA. The premises was undergoing renovations, including pointing, which required the erection of exterior scaffolding around the building. The scaffold was a metal pipe scaffold that was approximately ten stories high, rising above the top of the building. The working area of the

scaffold was comprised of scaffold planks that were nailed in place on top of the frame.¹

Plaintiff testified as follows: The plaintiff was a mason tender (Yadaicela EBT at 51). There were approximately 50 AmCon workers present at the site for the duration of the project (*id.* at 66). Plaintiff recognized co-workers Freddi Penafiel, Vincente Marin, and Wilson Sanago. Plaintiff was wearing a helmet, goggles, mask, boots, and gloves at the time of the occurrence (*id.* at 19, 74). Gregorio Mendoza was the supervisor at the site who ran the toolbox talks (*id.* at 67). “Felix,” Gregorio’s uncle, was the shop steward for the Local 1 Union members and also gave instructions at the site (*id.* at 68). There were no site-safety managers on site (*id.* at 69). Sometimes, NYCSCA site safety managers would be present (*id.* at 69–70). All of the mason tenders “had problems” because the helpers at the top were “dropping . . . trash and things” on top of them at this site (*id.* at 101–102). Plaintiff observed other workers complain to Gregorio about the AmCon workers dropping debris on them (*id.* at 105). Gregorio responded that “[they] needed to work, [they] needed to speed up” and said that AmCon lost money on other jobs where helpers waited to move the planks until the work below was done (*id.* at 105).

On the date of his accident, plaintiff was performing pointing work, using a trowel and pallet to fill in cement that had been removed from between the bricks (*id.* at 63). Approximately three workers were removing planks at the time of plaintiff’s accident: “Vicente Marin, Felix, Ubelindo Ortiz” (*id.* at 107). Felix and Mr. Ortiz were standing one level below plaintiff to receive the planks (*id.* at 109). Mr. Marin was removing scaffold planks using a hammer and crowbar because they were nailed in place (*id.* at 109, 110). To perform this task,

¹ The record variously refers to the same pieces of wood as “planks,” “toeboards,” and “OSHA boards.” For consistency this opinion will use the industry standard term “scaffold planks” or simply “planks” (*see* A GUIDE TO SCAFFOLD USE IN THE CONSTRUCTION INDUSTRY, OSHA 3150 [2002] [<https://www.osha.gov/sites/default/files/publications/osha3150.pdf>]).

Mr. Marin was moving along the remaining planks and “jumping over the top of the other workers” (*id.* at 113). The planks were twelve inch-by-eight foot scaffold planks, and each plank weighed between thirty-five and forty pounds. At the time of the occurrence, Mr. Marin was removing two planks that were on top of each other and nailed together (*id.* at 116). While Mr. Marin was removing the last two planks, these planks fell and struck plaintiff in the head (*id.* at 115). The planks partially separated from the scaffold (*id.* at 115). Plaintiff was pushed forward into the wall and lost consciousness for approximately three seconds (*id.* at 118). AmCon’s accident report, which plaintiff testified was an accurate description of his accident, states that “a laborer was removing nails from a toeboard [sic], the plank fell and hit Julio’s hardhat back” (*id.* at 154).

Anant Niraula was project officer for Aecom, a consulting firm that provided staff to NYCSCA (Niraula EBT at 19). Mr. Niraula now works for NYCSCA (*id.*). Mr. Niraula would occasionally visit the site to “check [AmCon’s] progress and work” (*id.* at 30). Elias Stanpolis was the NYCSCA supervisor for the project where plaintiff’s accident occurred, but Mr. Stanpolis was “very [rarely]” on site (*id.* at 42). When Mr. Stanpolis was not present at the site, Mr. Niraula had authority to speak for NYCSCA (*id.* at 46). NYCSCA had a site-safety director named Garvey Compas who was only present at the site when called (*id.* at 95–96).

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)

Plaintiff seeks summary judgment on his Labor Law § 240 (1) claim; the defendant did not move on this issue. Liability under Labor Law § 240 (1) is “absolute” where the failure of a safety device enumerated by the statute is the proximate cause of the plaintiff’s accident (*Blake v. Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). To prevail on summary judgment in a “falling object” case, the plaintiff must demonstrate that the object was “being hoisted or secured” or “required securing for the purposes of the undertaking” at the time of the accident (*Mendez v Jackson Dev. Group, Ltd.*, 99 AD3d 677, 678 [2d Dept 2012], citing *Outar v City of New York*, 286 AD2d 671 [2d Dept 2001], *aff’d* 5 NY3d 731 [2005]).

In the instant action, plaintiff has made out his prima facie entitlement to summary judgment on this claim. Plaintiff testified that helpers were removing planks above him and the other mason tenders while they were performing their work. The planks were secured for the purpose of the pointing and masonry work being done below. Removing the planks prior to the completion of the work below undermined the very purpose of their securing and constitutes a violation of the statute.

In opposition, defendant fails to raise a triable issue of fact. First, defendant has not rebutted plaintiff’s testimony that the planks above him were being removed and that they fell, striking him. Plaintiff was, therefore, exposed to an elevation-related risk. Second, defendant does not deny that Mr. Marin was removing the planks or that plaintiff was struck by the planks. Instead, defendant argues that the planks were not objects that required securing for the

Instead, defendant argues that the planks were not objects that required securing for the undertaking. To this end, defendant attempts to analogize this case to *Henriquez v Grant*, where a plaintiff was denied summary judgment when “a plank of wood fell on his head as he and others were dismantling a scaffold at a worksite in Manhattan” because “plaintiff’s evidence was insufficient to establish that the plank fell because of the absence or inadequacy of a safety device” (186 AD3d 577 [2d Dept 2020]). However, *Henriquez* is distinguishable. In that case, the plaintiff was knocked unconscious and could only rely on what he heard “from others after he awoke at the hospital” (*id.* at 578). Additionally, the plaintiff in *Henriquez* was part of the crew dismantling the scaffold and the only work being performed was that disassembly. Here, by contrast, the plaintiff was performing on-going work unrelated to scaffold disassembly. When the scaffold planks were prematurely unsecured, they fell and struck the plaintiff. Additionally, plaintiff is independently aware of how the accident occurred. Defendant’s remaining contentions are without merit.

Therefore, plaintiff’s motion is granted as to his Labor Law § 240 (1) claim.

Labor Law § 241 (6) & § 200

The defendant seeks summary judgment on plaintiff’s Labor Law § 241 (6) and § 200 claims. The plaintiff filed an affirmation waiving opposition to defendant’s motion (Fein aff. to Seq. 003 at ¶ 2). Therefore, defendant’s motion is granted without opposition as to these claims.


Conclusion

Plaintiff’s motion for summary judgment (Seq. 002) is granted.

Defendants' motion is granted as to plaintiff's Labor Law §§ 241 (6) and 200 claims without opposition.

This constitutes the decision and order of the court.

February 25, 2025
DATE


DEVIN P. COHEN
Justice of the Supreme Court