

Macias v New York City Hous. Auth.

2025 NY Slip Op 32262(U)

June 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 516203/2020

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of June, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
LUIS MACIAS,

Plaintiffs,

-against-

DECISION

Index No.: 516203/2020

Motion Seq. 3

NEW YORK CITY HOUSING AUTHORITY and NYCHA I
HOUSING DEVELOPMENT FUND JUDGMENT
CORPORATION,

Defendants.
-----X

The following e-filed papers read herein:

Notice of Motion/Affidavits Annexed

Exhibits Annexed/Reply.....

Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:

40-51; 79

53-78

In this action, Luis Macias (“Plaintiff”) moves (Motion Seq. 3) for partial summary judgment pursuant to CPLR 3212 as to liability against New York City Housing Authority (“Defendant”) on Plaintiff’s Labor Law 240(1) cause of action. Defendant has opposed the motion.

In his complaint, Plaintiff seeks to recover damages for alleged personal injuries sustained as a result of injuries he suffered on November 19, 2019, while he was performing brick and asbestos removal from a façade of a building located at 2115 Rockaway Parkway in Brooklyn, New York (“Subject Premises”), when the suspended scaffold on which the injured plaintiff was working allegedly collapsed. At the time of the incident, the Subject Premises was owned and operated by Defendant. Plaintiff was employed by non-party Zoria to perform construction related duties.

In support of his motion, Plaintiff argues that Defendant is liable under Labor Law 240(1) because the scaffold that Plaintiff was working on at the time of the accident was inadequate and/or defective and failed to protect him while working at an elevated height. In his EBT, Plaintiff testified that on the date of the accident he was assigned to perform the asbestos removal work on the external façade of the building on the eighth floor of building number 15 on a suspended

scaffold.¹ Plaintiff states that before conducting work, that he visually inspected the scaffold and did not notice anything unusual.² Plaintiff testified that while working on the suspended scaffold, he was wearing a harness which was connected to a lanyard that was connected to a life line made of rope attached to the roof of the building.³ Plaintiff asserts that as he and his coworker were using chipping guns to remove the brick from the façade, the metal cable on the right side of the scaffold completely snapped near the roof of the building and that the entire right side of the scaffold collapsed to a vertical position, dangling from the left metal cable. Plaintiff testified that he and his coworker fell, but were caught in a suspended and hanging position by their harnesses, lanyards, and lifelines.⁴ As a result of the accident, Plaintiff states he sustained injuries including inter alia ligamentous tears of his left shoulder, multiple herniations of the cervical spine and herniations and bulges of the lumbar spine. In support, Plaintiff submits photographs of the accident depicting the suspended scaffold resting in a vertical position, dangling from the metal cable on its left side at the top of the building, wherein Plaintiff and his coworker can be seen dangling from their life lines as well as a photograph of the frayed and broken metal cable.

Plaintiff's coworker, Christian Chimbo ("Chimbo") also testified that the accident occurred when a steel cord attached to the suspended scaffold broke, and that the scaffold collapsed. Chimbo asserts that he had also visually inspected the scaffold prior to beginning work on the day of the accident, and did not notice anything unusual.⁵

In opposition, Defendant argues that there are triable issues of fact as to whether Plaintiff's alleged injuries resulted from the alleged violation of Labor Law 240(1). In support, Defendant submits an Affirmation of radiologist Craig H. Sherman, M.D. ("Sherman"), who opines that upon review of Plaintiff's medical imaging studies, there are no signs of acute traumatic injury, and that the injuries Plaintiff claims to have sustained to his head, left shoulder, cervical spine, and lumbar spine, as a result of the alleged accident are preexisting and degenerative in nature. Sherman further opines that there is no causal connection between Plaintiff's claimed injuries and the alleged violation of Labor Law section 240(1).

¹ (Plaintiff Dep. Pg 52; lines 8-12; 56 lines 11-14).

² (Plaintiff Dep. Pg 57; lines 19-25; 58 lines 7-12).

³ (Plaintiff Dep. Pg 59; lines 7-9, 21-25; 60 lines 2-8, 24-25; 61 lines 2-10).

⁴ (Plaintiff Dep. Pg. 105 lines 6-10; 107 lines 3-6, 10-12; 115 lines 9-25; 116 lines 2-8; 117 lines 3-12; 118 lines 10-14).

⁵ (Chimbo Dep. Pg. 61-63; 93 lines 10-19; 161-162).

“‘[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue’” (*Rotuba Extruders, Inc v Ceppos*, 46 NY2d 223, 231 [1978], quoting *Moskowitz v Garlock*, 23 AD2d 943 [3rd Dept 1965]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ Med Center*, 64 NY2d 851 [1985]). When evaluating a motion for summary judgment, “facts must be viewed ‘in the light most favorable to the nonmoving party’” (*Vega v Restani Const Corp*, 18 NY3d 499, 503 [2012]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Const Corp*, 18 NY3d at 505).

“Labor Law § 240 (1) requires contractors to provide appropriate safety devices for the protection of workers engaging in labor that involves elevation related risks” (*Santiago v Hanley Group, Inc.*, 216 AD3d 833, 833-834 [2d Dept 2023]). Labor Law § 240(1) provides that:

“[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, 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 a person so employed”

“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” (*Lochlan v H&H Sons Home Improvement, Inc.*, 216 AD3d 630, 632 [2d Dept 2023]). Generally, “[w]hether a device provides proper protection is a question of fact, except when the device collapses, moves, falls or otherwise fails to support the plaintiff and his or her material” (*Zholanji v 52 Wooster Holdings, LLC*, 188 AD3d 1300, 1302 [2d Dept 2020], quoting *Melcor v Singh*, 90 AD3d 866, 868 [2d Dept 2011]). Indeed, “[t]he collapse of a scaffold or ladder for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute creates a presumption that the ladder or scaffold did not afford proper protection”

(*Yi Jiang Pai v Nelson Senior Hous. Dev. Fund Corp.*, 232 AD3d 822, 825 [2d Dept 2024], quoting *Valentin v Stathakos*, 228 AD3d 985, 989 [2d Dept 2024] [internal quotation marks omitted]).

Here, the court finds that Plaintiff has established his prima facie entitlement to partial summary judgment as a matter of law with respect to his Labor Law 240(1) cause of action. The injured Plaintiff's uncontroverted testimony at his deposition and his 50-H hearing established that he was subjected to the elevation-related risk of working on a suspended scaffold when a cable of the scaffold broke and the scaffold collapsed, causing him to fall (NYSCEF Doc No. 47 at 93, 99; NYSCEF Doc No. 49 at 161-162, 167, 186) (*see Amaro v New York City Sch. Constr. Auth.*, 229 AD3d 746, 748 [2d Dept 2024]; *Cruz v Roman Catholic Church of St. Gerard Magella*, 174 AD3d 782, 783 [2d Dept 2022] ["Thus, in the instant case, the collapse of the scaffold, for no apparent reason, gave rise to 'a prima facie showing that the statute was violated and that the violation was a proximate cause of the worker's injuries'"], quoting *Dos Santos v State of New York*, 300 AD2d 434, 434 [2d Dept 2002]).

"Once a plaintiff makes a prima facie showing, the burden then shifts to the defendant, who may defeat [the] plaintiff's motion for summary judgment only if there is a plausible view of the evidence – enough to raise a fact question – that there was no statutory violation and the plaintiff's own acts or omissions were the sole cause of the accident" (*Mora v 1-10 Bush Terminal Owner, L.P.*, 214 AD3d 785, 786 [2d Dept 2023]).

In opposition, Defendant contends merely that there remain issues of fact as to whether the injured plaintiff's alleged injuries were causally related to the accident. Contrary to Defendant's contentions, it has failed to raise a triable issue of fact rebutting Plaintiff's prima facie showing of liability under Labor Law 240(1). Defendant's arguments that Plaintiff's injuries were caused by pre-existing conditions rather than the subject accident pertains to the issue of damages, not liability. Furthermore, where, as here, there is no evidence contradicting Plaintiffs' allegation that the scaffold upon which the injured Plaintiff was working collapsed without reason, and where Defendant has failed to establish, or even allege, that there was no statutory violation or that injured plaintiff's own conduct was the proximate cause of his accident, Defendant has failed to raise a triable issue of fact in opposition to the Plaintiffs' prima facie showing of entitlement to judgment as a matter of law as to liability under Labor Law § 240 (1) (*see Sangare v 985 Bruckner Boulevard Housing Development Fund Corp.*, 212 AD3d 547, 547 [1st Dept 2023] ["Defendants' argument that all or some of the injuries pled were not caused by the subject accident is not an issue of

liability, but rather an issue of damages which remains unresolved. The dispute concerning damages does not raise credibility issues relative to the issue of liability where plaintiff gave no inconsistent version of how the accident occurred nor is there any evidence contradicting the allegation that the scaffold collapsed”], citing *Gramigna v Morse Diesel, Inc.*, 210 AD2d 115, 116 [1st Dept 1994] and *Doyle v Sithe/Independence Power Partners*, 296 AD2d 847, 847 [4th Dept 2002]). In any event, Dr. Sherman’s affirmation, which fails to address all of the injuries claimed by Plaintiffs in his Bills of Particulars, or any of the injured Plaintiff’s medical records pre-dating the accident, and lacks an explanation for the conclusion that the injuries are “related to chronic, long standing degenerative findings that were present prior to November 19, 2019 and were in no way caused by the alleged accident,” is without probative value and insufficient to raise a triable issue of fact regarding plaintiffs’ prima facie showing under Labor Law § 240 (1) (NYSCEF Doc No. 89 at 13; NYSCEF Doc No. 90 at 4-8; NYSCEF Doc No. 91 at 1-6; NYSCEF Doc No. 92 at 1-7; NYSCEF Doc No. 93 at 1-8) (*see e.g. Schuler v Kings Plaza Shopping Center and Marina, Inc.*, 294 AD2d 556, 558 [2d Dept 2002]; *Carringi v International Paper Co.*, 184 AD2d 137, 141 [3d Dept 1992])).

Accordingly, it is hereby,

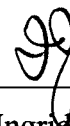
ORDERED that Plaintiffs’ motion seeking partial summary judgment as to liability under their Labor Law § 240 (1) claim is granted; and it is further,

ORDERED that the remainder of the action shall continue; and it is further,

ORDERED that plaintiffs shall serve a copy of this order, with notice of entry, upon defendants.

All arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this court, regardless of whether they are specifically discussed herein.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**