Zalina v St. Mary's Episcopal Church

2025 NY Slip Op 33985(U)

October 6, 2025

Supreme Court, Kings County

Docket Number: Index No. 531152/2021

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 531152/2021
Seqs. 005

Part LL1

DECISION/ORDER

DIEGO DE LOS SANTOS ZALINA,

Plaintiff,

against

ST. MARY'S EPISCOPAL CHURCH, 230 CLASSON DEVELOPMENT LLC, MCGOWAN BUILDERS INC., AND PERCIBALLI INDUSTRIES INC.,

Defendants.

(And related third-party action.)

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered	
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed.	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	
Other	

Upon the foregoing papers, plaintiff's motion for summary judgment (Seq. 005) is decided as follows:

Procedural Posture & Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on November 15, 2021, when he fell from the top of an uncompleted staircase while working at 230 Classon Avenue, Brooklyn, NY (the premises). The premises was owned by defendant St. Mary's Episcopal Church (St. Mary's). Defendant 230 Classon Development, LLC (Classon) had a ground lease to operate the subject premises. Defendant McGowan Builders Inc. (McGowan) was retained as the construction manager at the premises. McGowan sub-contracted with plaintiff's employer, Source Construction Contracting Inc. (Source).

Plaintiff testified as follows: Plaintiff was performing construction work at the premises on the date of his fall, which included bending rebar on the upper landing of what would become a permanent staircase (Zalina EBT at 31). In connection with that work, he was provided with a

lifeline and a retractable 15-foot yo-yo. Plaintiff had to tie off to a "beam," because he was not directed to a different, safe anchorage point (*id.* at 44, 87, 89). Plaintiff was bending rebar, and the rebar snapped while he was bending it. Plaintiff contends that as a result of the snap, he was caused to fall off the edge of the landing and approximately ten feet to the floor below (*id.* at 83, 137). The 15-foot lanyard he was given was too long to stop him from falling to the ground (*id.* at 48, 94).

In an affidavit submitted in opposition to plaintiff's motion, Udiel Romero, plaintiff's foreman, claims that plaintiff said he was bending rebar that snapped and pushed him into a wall (Romero aff. at ¶ 3). Mr. Romero does not claim that the plaintiff said he did not fall. Mr. Romero said that plaintiff was provided with a harness, and a retractable lanyard, and that plaintiff was tied off to a secure anchorage point (Romero aff. at ¶ 3). Mr. Romero said he inspected plaintiff's safety equipment after the incident and found it to be in good condition. However, he does not contradict plaintiff's contentions about the lanyard's length and does not make any contentions of his own in that regard (Romero aff. at ¶ 5).

Mr. Romero was not an eyewitness to the occurrence. Instead, Mr. Romero relays a hearsay statement purportedly from plaintiff's co-worker, Pedro Danil Toj Chitic. However, Mr. Chitic is not a party. There is no affidavit from Mr. Chitic and no evidence that either party made efforts to obtain testimony from him.

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)

Liability under Labor Law § 240 (1) is "absolute" where the failure or absence of a safety device enumerated by the statute (*e.g.* a lanyard and anchorage point) is a 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)]).

Based on the admissible evidence in the record, plaintiff has made out his prima facie entitlement to summary judgment. The parties do not disagree that the plaintiff was bending rebar and that, when the rebar snapped, it caused the plaintiff to move. The parties also do not disagree that the plaintiff was provided with a harness. Even though plaintiff claims that the beam was not a proper place to tie off, there is no allegation that the anchorage point failed or was a proximate cause of his fall, and therefore this disagreement does not preclude summary judgment. The parties agree that plaintiff was provided with a lanyard, and Mr. Romero does not dispute the plaintiff's testimony that the lanyard was too long given the distance from the work area to the ground. Plaintiff's statements to Mr. Romero that he made contact with the wall, even if admissible as a party statement, are not materially inconsistent with plaintiff's testimony that he also fell. The only materially different account in the record is the inadmissible hearsay attributed to plaintiff's co-worker, and "hearsay . . . evidence alone is not sufficient to defeat" a motion for summary judgment (*Guanopatin v Flushing Acquisition Holdings, LLC*, 127 AD3d 812, 813 [2d Dept 2015]).

Therefore, plaintiff's motion for summary judgment is granted on his Labor Law § 240 (1) claim.

Conclusion

Plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim (Seq. 005) is granted.

This constitutes the decision and order of the court.

October 6, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court