Supreme Court of the State of New York
County of Kings

Index Number 520239/2022
Seqs. 006

Part LL1M

CARLOS ACHUCARRO,

Plaintiff,

against

BROCHO V.H. LLC & MEGA YORK CONSTRUCTION CORP.,

Defendants.

DECISION/ORDER

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 84–100, 102–103.

Based on the foregoing papers, plaintiff's[1] motion for summary judgment against Brocho V.H. LLC (Brocho) (Seq. 006) is decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on July 7, 2022, when he fell from a scaffold that moved while performing renovations at the premises located at 538 Johnson Avenue, Brooklyn, NY. It is undisputed that Brocho was the owner of the subject premises, and that Mega was the general contractor for the project. Defendant Mega York Construction Corp. (Mega) has neither answered nor appeared. The record does not indicate that plaintiff has sought to obtain a default judgment against Mega.

Plaintiff testified as follows: Plaintiff was the principal of non-party Pombero Drywall, and his company was retained by Mega to perform compound and painting work at the premises

[1] Plaintiff's surname was erroneously written as "Achurro" in the consolidation order dated September 8, 2023; the caption is hereby amended to reflect the caption of this order, which includes plaintiff's correct surname.

(Achucarro EBT at 16). On the date of his accident, plaintiff was instructed to paint the ceiling using a spray painting machine while standing on a scaffold owned by the owners of the building (*id.* at 20–21). Mega's representative instructed plaintiff and his company where to paint (*id.* at 33). The scaffold was approximately seven feet tall, and, upon inspection, plaintiff discovered that only two of the wheel locks worked (*id.* at 21–22). The plaintiff used the subject scaffold because "all of the scaffolds in the building were in the same condition" (*id.* at 23). Plaintiff told Mega that the scaffolds were "old," but plaintiff was told "that that is what they had to work with at the moment" (*id.*). As plaintiff was painting the ceiling on the date of the accident, the "scaffold moved forward and [plaintiff] fell back" (*id.* at 24–25). The plaintiff did not construct or adjust the scaffold; it was set-up prior to his work (*id.* at 26).

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)

Labor Law § 240 (1) imposes a non-delegable duty on owners and general contractors to provide safety devices necessary to protect workers from gravity-related risks, including falling from an elevated work surface (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]). A plaintiff can obtain summary judgment even when he is the sole witness to the accident if his testimony resolves all material questions of fact and is unrebutted by other admissible evidence (*see Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]).

Here, plaintiff's testimony is sufficient to establish that he was not provided with an adequate safety device and that, due to the statutory violation, he suffered harm. An owner is statutorily required to ensure that an individual performing qualified work has proper safety devices, including a scaffold (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003]). The owner can be liable even if it did not exercise supervision or control the work (*id.*). Therefore, Brocho is subject to liability under Labor Law § 240 (1).

In opposition, Brocho argues that plaintiff was the sole proximate cause of his accident. However, this argument is unavailing. Brocho does not contend that plaintiff provided or even assembled the subject scaffold. Plaintiff also testified that he was instructed on the means and methods of his work, including what scaffold to use, what paint machine to use, and where to paint. Plaintiff cannot, therefore, have been the sole proximate cause of his accident (*see e.g. Orellana v 7 West 34th Street, LLC*, 173 AD3d 886 [2d Dept 2019]). Furthermore, Brocho mistakenly asserts that plaintiff was the sole arbiter of how to perform the work at the premises—however, plaintiff testified Brocho owned the subject scaffolds and that, when plaintiff complained about them to Mega, plaintiff was told to use them since "that was what they had to work with at the moment" (Achucarro EBT at 23). Plaintiff's testimony is unrebutted as to this point. Finally, plaintiff's contention that he was not provided with a harness or other fall arrest equipment, like safety rails, while working at a height of seven feet constitutes a further statutory violation (*see Gallagher v New York Post*, 923 NE2d 1120 [2010]).

Conclusion

Plaintiff's motion for summary judgment against Brocho (Seq. 006) is granted.

This constitutes the decision and order of the court.

December 11, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court