

Valvano v Genting N.Y. LLC
2025 NY Slip Op 35322(U)
March 6, 2025
Supreme Court, Queens County
Docket Number: Index No. 704383/21
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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CHARLES VALVANO, Index No. 704383/21

Plaintiff, Motion

Date: May 13, 2024

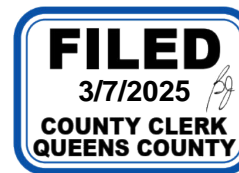
-against-

M# 2

GENTING NEW YORK LLC D/B/A RESORTS
WORLD CASINO NEW YORK CITY, et al.,

Defendants.

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The following papers numbered EF 35-65 read on this motion by the defendants for summary judgment dismissing the complaint.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits...	EF 35-52
Affirmation in Opposition - Exhibits.....	EF 55-62
Replying Affirmation	EF 63-65

Upon the foregoing papers, it is ordered that this motion by defendants is decided as follows:

Plaintiff allegedly sustained serious injuries while he was performing work as a roofer for Titan Roofing, Inc. ("Titan"), a subcontractor at a construction project located at 110-00 Rockaway Boulevard in Queens County on January 8, 2020. Defendant Genting New York LLC d/b/a ("Genting") was the owner of the project, and defendant Plaza Construction LLC ("Plaza") was the construction manager. Titan had a subcontract with Plaza which required them to install roofs to the buildings being built at the project. According to plaintiff, on the day of the incident, he was adding layers of insulation to the roof. Plaintiff's accident allegedly occurred when he slipped while he was on the part of the roof topped with Sopra layer that overhung the edge of the insulation layers in combination with ice. Plaintiff alleges that as he slipped on the ice, he fell onto the lower level of the roof which was still being completed. Plaintiff commenced the instant action to recover damages for negligence as well as violations of Labor Law §§ 200 240(1) and 241(6). Defendants now move for summary judgment.

The 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. (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993].) Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. (*Peerless Ins. Co. v Allied Bldg. Prods. Corp.*, 15 AD3d 373, 374 [2d Dept 2005].)

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 or 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." (see *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280 [2003].) The hazards contemplated by Labor Law § 240(1) are those "related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned and the higher level of the materials or load being hoisted or secured." (*Lombardi v City of New York*, 175 AD3d 1521, 1523-1524 [2d Dept 2019]; see *Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]; *Keen v Tishman Constr. Corp. of N.Y.*, 233 AD3d 1001, 1002 [2d Dept 2024].) The statute requires a liberal construction in order to accomplish its intended purpose of protecting workers. (*Goodwin v Dix Hills Jewish Ctr.*, 144 AD3d 744, 746 [2d Dept 2016]; *Aguilar v Henry Mar. Serv., Inc.*, 12 AD3d 542, 544 [2d Dept 2004].)

In the case at bar, there are factual issues as to whether plaintiff was provided with proper protection to prevent his accident. Further, there are factual issues as to whether plaintiff was exposed to an elevation-related hazard at the time of his fall. Plaintiff testified at his deposition that the elevation differential when he fell was 12-15 inches. Indeed, there is "no bright line minimum height differential that determines whether an elevation hazard exists." (*Auriemma v*

Biltmore Theatre, LLC, 82 AD3d 1, 9 [1st Dept 2011]; see *Brown v 44 St. Dev., LLC*, 137 AD3d 703, 704 [1st Dept 2016]; *Amo v Little Rapids Corp.*, 301 AD2d 698, 701 [3d Dept 2003].) The court cannot conclude, contrary to defendants' arguments, as a matter of law, that the elevation differential herein was de minimis so as to preclude the application of Labor Law § 240(1).

The court will now address the branch of the motion by defendants for summary judgment dismissing the Labor Law § 241(6) cause of action. "Labor Law § 241 (6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. To establish liability under Labor Law § 241 (6), a plaintiff or claimant must demonstrate that [their] injuries were proximately caused by a violation of an Industrial Code provision that is applicable under the circumstances of the case." (*Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733, 737 [2d Dept 2023], quoting *Guaman v 178 Ct. St., LLC*, 200 AD3d 655, 657-658 [2d Dept 2021].)

Plaintiff only opposes the branch of the motion dismissing the Labor Law § 241(6) claim as it is based on Sections 23-1.7(d), 23-1.7(e)(1) and 23-1.30 of the Industrial Code. Thus, plaintiff has abandoned the claims as to the other alleged violations. (see *Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 474 [1st Dept 2012].)

Section 23-1.7(d) provides that "[e]mployers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform, or other elevated working surface which is in a slippery condition. Ice, snow, water, grease, and any other foreign substance which may cause slippery footing shall be removed, sanded, or covered to provide safe footing." The evidence presented raises issues as to whether the plaintiff's accident was caused by a fall on the ice. Indeed, there are factual issues as to whether "someone within the chain of the construction project was negligent in not exercising reasonable care, or acting within a reasonable time, to prevent or remediate the hazard, and that plaintiff's slipping, falling and subsequent injury proximately resulted from such negligence." (*Bocanegra v Chest Realty Corp.*, 169 AD3d 750, 751-752 [2d Dept 2019].)

Section 23-1.7(e)(1), entitled, "Tripping and other hazards" provides that "[a]ll passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered." A "passageway" is commonly defined and understood to be "a

typically long narrow way connecting parts of a building..." (Quigley v Port Auth. of N.Y. & N.J., 168 AD3d 65, 67 [1st Dept 2018].)

The defendants established, prima facie, that § 23-1.7(e)(1) is inapplicable because the site where the plaintiff allegedly fell was not a passageway. (see *Fonck v City of New York*, 198 AD3d 874, 876 [2d Dept 2021]; *Amaya v Purves Holdings LLC*, 194 AD3d 536, 537 [1st Dept 2021]; *Gancarz v Brooklyn Pier 1 Residential Owner, L.P.*, 190 AD3d 955, 957 [2d Dept 2021]; *Conlon v Carnegie Hall Socy., Inc.*, 159 AD3d 655, 655-656 [1st Dept 2018].) Rather, plaintiff testified that he fell on the area of the roof that had been built up with insulation, on top of which was the sopra layer. Such location constitutes a "work area." Indeed, the area was not such a narrow one where plaintiff had to pass in order to get from one place to another. In addition, § 23-1.7(e)(1) refers to dirt, debris, other obstructions and sharp projections. It is meant to apply to construction materials. (see *Stewart v Brookfield Off. Props., Inc.*, 212 AD3d 746, 747 [2d Dept 2023].) Ice and the sopra layer do not fall into this category. Plaintiff fails to raise a factual issue as to this provision.

Section 23-1.30 provides that "[i]llumination sufficient for safe working conditions shall be provided wherever persons are required to work or pass in construction, demolition and excavation operations, but in no case shall such illumination be less than 10 foot candles in any area where persons are required to work." Here, plaintiff's accident occurred at 7:15 A.M., and according to annexed meteorological records certified by the United States Department of Commerce, sunrise on the morning of the accident was at 7:19 A.M. Plaintiff testified at his deposition that it was not "fully light yet." When asked if he had trouble seeing the ground with the way the lighting was, plaintiff replied that he "did have some trouble seeing the ground." Plaintiff also testified that on this project, no artificial lighting was used. Thus, there are factual issues as to whether plaintiff was provided with proper illumination at the time of his accident. (see *Verel v Ferguson Elec. Constr. Co., Inc.*, 41 AD3d 1154, 1157-1158 [4th dept 2007].)

Labor Law § 200 codifies the common law duty of an owner or contractor to provide employees with a safe place to work. (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993].) A cause of action sounding in violation of Labor Law § 200 or common-law negligence may arise from dangerous or defective conditions of the premises, or the manner in which the work is performed. (*Poulin v Ultimate Homes, Inc.*, 166 AD3d 667,

670 [2d Dept 2018].) To be held liable under Labor Law § 200 for injuries arising from the manner in which the work is performed, a defendant must have the authority to exercise supervision or control over the work. (*Dasilva v Nussdorf*, 146 AD3d 859, 860 [2d Dept 2017].) Where a plaintiff's injuries arise from a dangerous condition on the property, an owner may be liable under Labor Law § 200 if it either created or had notice of the dangerous condition. (*Salgado v Rubin*, 183 AD3d 617, 619 [2d Dept 2020]; *Dasilva v Nussdorf*, 146 AD3d at 860.)

At bar, plaintiff's accident was allegedly caused, at least in part, by a dangerous condition on the property, the ice. There are issues of fact as to whether defendants had notice of the ice on the roof. At his deposition, Leonard Dorman, the Safety Director of defendant Plaza, testified that its Safety Consultant, Total Safety, would walk the site to make sure things were safe and submit a daily log. Moreover, Titan's Job Supervisor, Alfred Lovett, testified at his deposition that he held "toolbox talks" every morning at the project with Titan personnel and warned that work areas could be icy. Further, Mr. Lovett stated that ice could reform within minutes even after it was removed. Moreover, Juan Garcia, a journeyman roofer employed by Titan, testified at his deposition that he saw plaintiff's fall and stated that the surface plaintiff fell on was "frosty."

Accordingly, the branch of the motion by defendants for summary judgment dismissing the causes of action pursuant to Labor Law §§ 200, 240(1) and common law negligence are denied.

The branch of the motion by defendants for summary judgment dismissing the causes of action pursuant to Labor Law § 241(6) is granted to the extent that the Labor Law § 241(6) cause of action as is predicated upon §§ 23-1.7(e)(1), 23-1.7(e)(2), 23-1.24, 23-2.1(b), 23-3.3 and 23-4.3 of the Industrial Code is dismissed.

The branch of the motion by defendants for summary judgment dismissing the causes of action pursuant to Labor Law § 241(6) as is predicated upon §§ 23-1.7(d) and 23-1.30 of the Industrial Code is denied.

Dated: March 6, 2025


CARMEN R. VELASQUEZ, J.S.C.

