

Mathison v Langan
2025 NY Slip Op 35557(U)
January 3, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611313/22
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

X
ERIC MATHISON,

Plaintiff,

-against-

Index No.: 611313/22

Motion Sequence...01

Motion Date...10/4/24

XXX

PATRICK D. LANGAN and LORELEI LANGAN,

Defendants.

X

Papers Submitted:

Notice of MotionX

Memo of Law in Support.....X

Affirmation in Opposition.....X

Memo of Law in Opposition.....X

Reply Memo of Law.....X

Upon the foregoing papers, the motion by the Defendants, PATRICK D. LANGAN (“Patrick”) and LORELEI LANGAN (“Lorelei”) (or collectively the “Langan Defendants”, seeking an Order pursuant to CPLR § 3212, granting summary judgment in their favor dismissing the Plaintiffs’ complaint, is decided as hereinafter provided.

This negligence action arises out of a residential construction site accident that occurred on October 29, 2020 at the home of the Langan Defendants located at 156 Primrose Road, Williston Park, New York. The Plaintiff, ERIC MATHISON (“Mathison”) was the owner of Gold Star Builders, Inc. (“Gold Star”). On the date of the accident, Mathison decided to place his own ladder down a narrow window well adjacent to a loose

“rats nest” of coil wiring that was at the bottom of the well in order to gain access to the Defendants’ basement. After safely entering and exiting the basement via the ladder a few times, the accident occurred when Mathison’s foot got caught in the coil wiring causing him to fall from the third rung of the ladder allegedly resulting in injuries.

As of October 2020, Mathison had been working in the construction and building industry for 25 years. Gold Star performed construction and home renovations, and also acted as a general contractor. On or about August 18, 2020, the Langan Defendants hired Gold Star to build a single-story extension onto the rear of their home. Gold Star acted as both a general contractor and an independent contractor for the project. As the GC, Gold Star hired subcontractors to perform excavation, masonry, roofing, siding, plumbing, electrical, heating and air conditioning installation, insulation, sheetrock and spackling. As an independent contractor, Gold Star performed the trim and finish carpentry at the end of the job, all of which Mathison did himself. For the project at the Defendants’ home, Mathison was the foreman, and as such, he was responsible for supervising the work performed by all of the subcontractors to ensure the work was being performed properly and according to the contract.

By the date of the accident, Mathison had been working at the Defendants’ residence for over two months. As of that date, the foundation had been completed, the framing was done and the roof was on. The doors and windows had not yet been installed and the electrical work and plumbing work had not yet begun.

The basement of the extension had an egress window that opened into a concrete well. On the date of the accident, the egress was completed, but the window had

not yet been hung. The well was approximately six to eight feet deep and had a dirt floor. Mathison was at the site on the date of the accident to remove the remnants of an old brick stoop that was discovered during excavation. Mathison arrived at the site between 8:00 a.m. and 8:30 a.m. and set up the tools he needed to remove the bricks. When he was ready to start removal of the bricks, Mathison elected to gain access to the basement via the egress window, and decided, on his own, not to access the basement through the interior staircase in the kitchen. In order to climb into and out of the well, Mathison then elected to place his own Werner 24-foot extension ladder into the well by putting the legs of the ladder on the dirt floor of the well and leaning it up against the side wall of the well. At his deposition, Mathison acknowledged that the “wire went up and over the top of the back of the window well and it ended up being a big ball of wire down there” – which was prior to utilizing the ladder for ingress and egress. Specifically, Mathison testified that the large, tangled “rats nest” of wire was “hanging loose” in the well approximately “three or four feet up from the bottom” and that he placed the legs of the ladder so that the wire hung “to the left of the ladder going down”. (*See* Mathison EBT Transcript, Exhibit “D” to Motion, at pp. 84, 92-94, 101).

Mathison testified that he did not take any steps to remove the loose ball of wire from the well before or after placing the ladder because he did not perceive it to be a danger (*Id.* at pp. 101-102). After setting up the ladder, Mathison made three or four trips up and down the ladder without incident, then went to his truck to get a bottle of water. As he was descending down the ladder this next time, with his feet on the third rung from the

bottom, his left foot caught in the wire, causing him to lose his balance and fall backwards off the ladder resulting in the injuries he now claims to his back. (*Id.* at pp. 105-106).

It is undisputed that Mathison was aware of the unsecured “rats nest” of wire prior to beginning work on the morning of the accident. It is undisputed that Mathison never informed the Langan Defendants of the coil wiring, nor made any request that the unsecured wiring be removed/disposed of. It is also undisputed that Mathison had other means of ingress and egress into the Defendants’ basement, yet he elected not to utilize those other means due to cleanliness and COVID concerns. It is further undisputed that the Defendants never directed Plaintiff to utilize the window well for ingress and egress nor were they aware of Plaintiff’s decision to do so with an extension ladder until after the Plaintiff’s accident.

Legal Analysis

A Court may grant summary judgment where there is no genuine issue of a material fact, and the moving party is, therefore, entitled to summary judgment as a matter of law. (*See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986])

A landowner has a duty to maintain his/her property in a reasonably safe condition to prevent foreseeable injuries (*Basso v. Miller*, 40 N.Y.2d 233, 241 [1976]). Whether a dangerous condition exists on property so as to create liability on the part of a landowner depends on the particular circumstances of each case and is generally a question of fact for the jury (*Quintero v. Wilner*, 74 A.D.3d 1042, 1043 [2d Dept. 2010]). In order to establish that a defendant’s breach of his or her duty of care proximately caused a plaintiff’s injury, the plaintiff must prove that the defendant’s negligence was a “substantial

cause” of the events causing injury (*Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]).

“Where the sole legal cause of a plaintiff’s injuries is his own reckless conduct, which showed a reckless disregard for an obvious hazard, a defendant is not liable in negligence.” (*Brown v Metropolitan Transit Auth.*, 281 AD2d 159 [1st Dept. 2001]). In determining whether a plaintiff was the sole proximate cause of his or her injury, factors to consider are one’s familiarity with an area or situation, the conspicuousness of the risk, and knowledge of the risk – a determination which depends on whether the plaintiff was aware of the danger and chose to disregard it (*Skibinski v Salvation Army*, 307 AD2d 427 [3d Dept. 2003]). To establish that a plaintiff was the sole proximate cause of his injuries, the defendants must show that the plaintiff engaged in reckless, unforeseeable or extraordinary conduct and that such conduct constituted a superseding cause of the accident [*Alvarez v Colgate Scaffolding & Equip. Corp.*, 68 AD3d 583 [1st Dept. 2009)]

In this case, the Defendants established their prima facie entitlement to judgment as a matter of law by demonstrating, through Plaintiff’s own sworn testimony, the Plaintiff’s reckless disregard of the obvious hazard presented by climbing up and down a ladder he placed right next to an unsecured “rats nest” of wire was the sole proximate cause of this accident. The Defendants have shown that the Plaintiff was aware, or should have been aware, of the risks presented by setting up a 24-foot extension ladder down a narrow window well and placing the legs of the ladder on a dirt floor with unsecured wiring hanging adjacent to where Plaintiff elected to place the ladder. This conduct cannot, as a matter of law, be foreseeable by the Defendants who had no reason to believe that the

Plaintiff would unilaterally decide to use such an unsafe method for ingress and egress rather than just utilizing the interior staircase of the home to access the basement.

In opposition, the Plaintiff failed to raise an issue of fact. The Plaintiff argues that the contract between Gold Star and the Defendants provided that Mathison was not required to remove debris or hazardous materials from the premises, and the Defendants were required to provide Mathison with a safe place to work and safe ingress and egress. However, this is insufficient to raise an issue of fact as there were other safe means to access the basement which the Plaintiff elected not to utilize. Moreover, it is undisputed that the Plaintiff never asked the Defendants to remove the loose wire nor were the Defendants even made aware that such wiring was hanging at the bottom of the well. In any event, the undisputed facts show that the Plaintiff's own reckless conduct was the sole proximate cause of his injuries and, as such, liability cannot attach.

Accordingly, it is hereby

ORDERED, that the Defendants' motion for summary judgment is **GRANTED** and the Plaintiff's Complaint is hereby **DISMISSED**.

This constitutes the decision and Order of the Court.

DATED: Mineola, New York
January 3, 2025



Hon. Randy Sue Marber, J.S.C.

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ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE