

Romero v Verizon New York Inc.

2012 NY Slip Op 32600(U)

October 12, 2012

Supreme Court, New York County

Docket Number: 113600/2008

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Saliann Scarpulla
Justice

PART 19

Index Number : 113600/2008
ROMERO, RUTH
vs
VERIZON NEW YORK
Sequence Number : 005
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is determined in
accordance with the accompanying decision/order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
OCT 15 2012
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/12/12

Saliann Scarpulla
J.S.C.

SALIANN SCARPULLA
 NON-FINAL DISPOSITION

- 1. CHECK ONE: CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X

RUTH ROMERO,

Plaintiff,

Index No.: 113600/08

-against-

VERIZON NEW YORK INC.,

Defendant.

DECISION AND ORDER

-----X

VERIZON NEW YORK INC.,

Third-Party Plaintiff,

-against-

DYNASERV INDUSTRIES, INC.,

Third-Party Defendant.

-----X

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Papers considered in review of the motion and cross motions:

Notice of Motion	1
Notice of Cross Motion	2
Notice of Cross Motion	3
Affs in Opp	4-9

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant Verizon New York Inc. ("Verizon") moves for summary judgment dismissing the complaint, third-party defendant Dynaserv Industries, Inc. ("Dynaserv") cross-moves for summary judgment

dismissing the complaint, and plaintiff Ruth Romero (“Romero”) cross-moves for partial summary judgment on the issue of liability under Labor Law §240(1).¹

On January 30, 2008, Romero, a Dynaserv employee, fell from a ladder while performing work at Verizon’s premises located at 228 East 56th Street in Manhattan. Dynaserv was under contract with Verizon to perform certain janitorial type work at Verizon’s premises. Romero commenced this action seeking to recover damages for the injuries she sustained as the result of her fall, alleging violations of Labor Law §§200, 240(1) and 241(6) and a negligence claim.²

According to Romero’s examination before trial testimony, she began working at the subject Verizon premises as a Dynaserv employee in 2000. Her job responsibilities included cleaning the garbage, vacuuming, sweeping, mopping and cleaning the streets outside of the premises. She was the “lead” person in charge of the building for Dynaserv. As part of her role as lead person, she was responsible for making sure that there were no burnt light bulbs at the building, and if there were, she would change them.

Romero explained that several days prior to her accident, Verizon employee Roy Beauchamp (“Beauchamp”) asked her to change the light bulbs in the frame room on the first floor of the building because Verizon was going to be changing the ballasts. She had changed the light bulbs in that room on prior occasions. She explained that when she

¹ Pursuant to stipulation dated June 25, 2012, Dynaserv withdrew that portion of its motion seeking dismissal of the third-party complaint and Verizon withdrew its opposition to same.

² Romero has since withdrawn her Labor Law §241(6) claim.

would change a bulb, and the light would still not turn on, she would tie a red tag around the bulb as a way of indicating to Verizon that the ballast needed to be changed.

Romero told her supervisor, Frank O'Malley, that she was going to change the light bulbs and he told her to coordinate with her co-worker, Maria. On the morning of her accident, she had planned to change the bulbs with the help of Maria, who she had asked to come in to work by 10:00 a.m. Maria would usually hold the rolling ladder while Romero climbed up to change the bulbs. Maria did not arrive by 10:00 a.m., so Romero decided to change the light bulbs herself. She was in the process of tying a red flag around a bulb that would not turn on, when she fell from the ladder.

Beauchamp, a Verizon watch engineer, testified at an examination before trial that he was responsible for maintaining and repairing air conditioning, plumbing and electrical such as ballasts. He explained that Dynaserv was not responsible for doing anything further if a light bulb did not turn on. He maintained that he told Romero that "Dynaserv had to change the bulbs and whatever bulbs weren't working, then we would come in and change the ballasts." He knew that Romero would place red flags on the lights that would not turn on, but he had never directed her to do so. He explained that he was not aware the Romero was using a rolling ladder, that she could have used an A-frame ladder to do the job, and he did not instruct her on how to use a rolling ladder.

According to Dynaserv manager Juan Diaz, Dynaserv was responsible for providing ladders for light bulb maintenance under its contract with Verizon. Further,

Dynaserv manager Frank O'Malley ("O'Malley") explained that it was proper practice to have a second person hold a rolling ladder. Romero did not inform him that she was going to climb the rolling ladder by herself, and she was not authorized to climb a rolling ladder by herself even if she was asked to do so by a Verizon employee.

Verizon now moves for summary judgment dismissing the complaint. Verizon argues that (1) Romero's accident does not fall within the protection of Labor Law §240(1) because she was not involved in construction or renovation activity at the time of her fall; and (2) Romero's claims for violation of Labor Law §200 and negligence must be dismissed because Verizon did not direct or supervise Romero's injury-causing activity.

Dyanserv cross-moves for summary judgment dismissing the complaint, arguing that Romero's claims do not fall within the protection of the Labor Law because she was not involved in construction or renovation activity at the time of her fall.

Romero cross-moves for partial summary judgment on the issue of liability under Labor Law §240(1). Romero argues that she was performing "repair" work, an activity covered by Labor Law §240(1), and not "routine maintenance" at the time of her accident. Specifically, she was identifying which light fixtures were inoperable and required repair. She maintains that absolute liability must be placed on Verizon for failing to furnish her with an adequate safety device while she was performing repair work.

Discussion

Labor Law §240(1) imposes absolute liability on building owners, construction contractors and their agents with regard to elevation-related risks to workers at construction sites. *See Rodriguez v. Forest City Jay St. Assocs.*, 234 A.D.2d 68 (1st Dept. 1996). The statute was designed to prevent those types of accidents in which the protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person. *See Luongo v. City of New York*, 72 A.D.3d 609 (1st Dept. 2010). In order to be entitled to the statutory protection, a worker must establish that he or she sustained injuries while engaged in the "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." *Rhodes-Evans v. 111 Chelsea LLC*, 44 A.D.3d 430, 432 (1st Dept. 2007).

Whether a plaintiff's work constitutes protected activity under Labor Law §240(1) depends on the full context of the plaintiff's work. *See Fitzpatrick v. State of New York*, 25 A.D.3d 755 (2nd Dept. 2006). Here, the court finds that when Romero fell she was in the process of performing work in a non-construction and non-renovation context. Romero was not hired to perform, nor was she performing any "erection, demolition, repairing, altering, painting, cleaning or pointing" at Verizon's premises. Rather, she was performing work that she had done on many prior occasions pursuant to Verizon's contract with Dynaserv. Dynaserv was responsible for general maintenance at Verizon's premises, including light bulb maintenance, and Romero was in the process of changing

light bulbs at the time of her fall. She was not attempting to undertake any further electrical work or perform any repairs at the time of her fall. Rather, she was in the process of changing light bulbs and then, by tying a red flag around a light bulb, was merely indicating to Verizon that a ballast needed to be changed on the particular lightbulb, a task she had performed many times in the past. The general context of her work did not encompass activity protected under the statute. *See generally Picaro v New York Convention Ctr. Dev. Corp.*, 97 A.D.3d 511 (1st Dept. 2012); *Deoki v. Abner Props. Co.*, 48 A.D.3d 510 (2nd Dept. 2008); *Simpson v O'Shea*, 2010 NY Slip Op 32173U (N.Y. Sup. Ct. Suffolk Co., July 8, 2010). As such, Romero's claims under Labor §240(1) are dismissed.

Furthermore, Romero's Labor Law §200 and negligence claims must be dismissed. To be held liable under Labor Law §200 and for common-law negligence when the method and manner of the work is at issue, it must be shown that the party to be charged had the authority to supervise or control the performance of the work. *See Gasques v. State of New York*, 59 A.D.3d 666 (2nd Dept. 2009). In addition to the court's finding above that Romero's work was performed in a non-construction and non-renovation context thereby eliminating the protection of the Labor Law, the court also finds that there is no evidence that Verizon exercised actual supervision or control over the work in the course of which Romero was injured. *See generally Phillip v 525 E. 80th St. Condominium*, 93 A.D.3d 578 (1st Dept. 2012); *Gonzalez v. UPS*, 249 A.D.2d 210 (1st

Dept. 1998). As such, Romero's Labor Law §200 and common-law negligence claims are dismissed.

In accordance with the foregoing, it is hereby

ORDERED that defendant Verizon New York Inc.'s motion for summary judgment dismissing the complaint is granted and the complaint is dismissed; and it is further

ORDERED that third-party defendant Dynaserv Industries, Inc.'s cross-motion for summary judgment dismissing the complaint is granted and the complaint is dismissed; and it is further

ORDERED that plaintiff Ruth Romero's cross motion for partial summary judgment on the issue of liability under Labor Law §240(1) is denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, NY
October 12, 2012

FILED

OCT 15 2012

NEW YORK
COUNTY CLERK'S OFFICE

Param Scarpulla
J.S.C.