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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN Justice PART 57

Dopey FN

- v -

Stahl Stores Co

INDEX NO. 104984-2001

MOTION DATE

MOTION SEQ. NO. 02

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits	1
Answering Affidavits — Exhibits	2
Replying Affidavits	3
Memo of Law	4

SCANNED NOV 13 2003

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION/ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 11/6/03

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

FREDERICK W. DOXEY,

Plaintiff(s),

Index No.: 104984/2001

- against -

DECISION/ORDER

STAHL PARTNERS, CO., SEPHORA.COM and REGIONAL SCAFFOLDING & HOISTING, CO., INC.,

Defendant(s).

In this action for personal injuries brought pursuant to Labor Law §§ 200, 240(1) and 241(6), and for common law negligence, plaintiff moves for partial summary judgment as to liability against defendants Stahl Partners Co. ("Stahl") and Sephora.Com ("Sephora") on his section 240(1) cause of action.

The standards for summary judgment are well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action "sufficiently to warrant the court as a matter of law in directing judgment." (CPLR 3212[b]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980].) "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985].) Once such proof has been offered, to defeat summary judgment "the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd. [b])." (Zuckerman v City of New York, supra, at 562.)

It is undisputed that plaintiff was injured at a construction site owned by defendant Stahl

and leased by defendant Sephora at whose direction a renovation was being performed. Plaintiff was a laborer, employed by the general contractor at the premises, non-party Fisher Development ("Fisher"). At the time of the accident, plaintiffs job was to assist in removing ceiling beams on the top floor of the premises and, in particular, to lower the beams with a pulley system to the floor after they were cut. After the first beam was cut and lowered, the other beams came crashing down and plaintiff was hit by one of them.

In moving for partial summary judgment, plaintiff contends that defendants failed to provide him with an adequate safety device. Specifically, plaintiff contends that prior to the accident, there was scaffolding supporting the beams that were to be removed, but that the support scaffold was dismantled prior to the first beam being cut. In opposition, defendants do not deny that the support scaffolding would have protected plaintiff. Rather, they contend that plaintiff and his co-workers removed the support scaffolding prior to working on the beam, and that plaintiffs actions were therefore the sole proximate cause of his injuries.

Labor Law § 240 (1) provides:

> All contractors and owners and their agents, * * * 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.

"The purpose of the section is to protect workers by placing the 'ultimate responsibility' for worksite safety on the owner and general contractor, instead of the workers themselves." (Gordon v Eastern Ry. Supply, Tnc., 82 NY2d 555, 559 [1993]; Rocovich v Consolidated Edison Co., 78 NY2d 509 [1991].) "Thus, section 240(1) imposes absolute liability on owners, contractors and their agents for any breach of the statutory duty which has proximately caused injury." (Gordon, 82 NY2d at 559.) Comparative negligence is not a defense to a Labor Law

§ 240(1) claim. (Id. at 562.) To defeat a § 240(1) claim, a worker's acts must have been the "sole proximate cause" of his injuries. (Weininger v Hagedorn & Co., 91 NY2d 958,960 [1998], rearg denied 92 NY2d 875.)

Here, defendants fail to raise a triable issue of fact as to whether plaintiffs acts were the sole proximate cause of his injuries. At his deposition, plaintiff testified that one his co-workers, Brian Leddy, a carpenter on the site, removed the support scaffolding prior to cutting the ceiling beam. (See P.'s Dep. at 14, 73.) Plaintiffs affidavit in support of the motion further attests that, without consulting him, "Brian and Gus [a co-worker] dismantled the support scaffold and took the entire structure down" before the beam was cut. (P.'s Aff. In Support ¶12, 14.) In opposition, defendants do not submit any evidence which contradicts plaintiffs sworn testimony that he was not involved in the removal of the scaffolding. At most, they submit the testimony of Stephen Gambino, Fisher's superintendent at the site, that after the accident, plaintiff told him that "[w]e moved the screw jack." (Gambino Dep. at 31.) It is undisputed, however, that the screw jack and scaffolding were separate safety devices, both of which were provided for the beam removal. (see Aff. In Opp., ¶ 18.) As the record lacks any evidence that plaintiff made the decision not to use or otherwise interfered with the scaffolding, plaintiffs acts, as a matter of law, were not the sole proximate cause of his accident.

Defendants do, however, raise a triable issue of fact to the extent that they argue that the acts of plaintiffs co-workers, rather than defendants' failure to provide an adequate safety device, were the proximate cause of plaintiffs accident. "An independent intervening act may constitute a superseding cause, and be sufficient to relieve a defendant of liability, if it is of such an extraordinary nature or so attenuated from the defendants' conduct that responsibility for the injury should not reasonably be attributed to them." (Gordon, 82 NY2d at 562.) A co-worker's

act may relieve a defendant of liability under Labor Law § 240(1) if it meets this standard. (See Van Eken v Consolidated Edison Co., 294 AD2d 352 [2d Dept 20021; deSousa v Dayton T. Brown, Inc., 280 AD2d 447 [2d Dept 20011.) While mere adjustment of a safety device by a co-worker is not such an extraordinary act as to raise a triable issue of fact as to whether the act was a superseding cause (id. at 448), the dismantling of all or part of a safety device does raise a triable issue of fact as to whether the act was a superseding cause. (See Vouzianas v Bonasera, 262 AD2d 553 [2d Dept 1999][plaintiff's act in disassembling ladder]; Styer v Walter Vita Constr., Inc., 174 AD2d 662 [2d Dept 1991][plaintiff's act in partially removing scaffold's cross braces].) Here, similarly, there is a jury issue as to whether plaintiffs co-workers' undisputed act in dismantling the scaffolding constituted a superseding cause of plaintiffs accident.

It is accordingly hereby ORDERED that plaintiffs motion for partial summary judgment as to liability is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
November 6,2003

MARCY FRIEDMAN, J.S.C.