Flores v Parkview Owners, Inc.
2015 NY Slip Op 31884(U)
September 14, 2015
Supreme Court, Bronx County
Docket Number: 0300148/2009
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. **030014[illegible]8/2009**
Motion Calendar No. 8
Motion Date: 6/8/15

MIGUEL FLORES,

Plaintiff,

-against-

DECISION/ ORDER

Present:
Hon. Wilma Guzman
Justice, Supreme Court

PARKVIEW OWNERS, INC., HUDSON RIVER PROPERTY MANAGEMENT CORP., and DF RESTORATION, INC.

Defendants.

DF RESTORATION, INC.,

TP Index No. 84172/2009

Third-party Plaintiff,

-against-

LOPEZ CONSTRUCTION SERVICES CORPORATION,

Third-party Defendant.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for summary judgment:

Papers	**Numbered**
Notice of Motion, Affirmation in support, and Exhibits Thereto.....	**1**
Affirmation in Opposition, and Exhibits Thereto.....	**2, 3**
Reply Affirmation.....	**4**
Stipulation to Adjournment Motion.....	**5**

Upon the foregoing papers and after due deliberation, and following oral argument, the Decision/ Order on this motion is as follows:

Plaintiff moves this Court pursuant to CPLR §3212 for an order granting summary judgment on liability under Labor Law §§ 240(1) & 241(6) against defendants

DF RESTORATION INC. ("DF") and PARKVIEW OWNERS, INC. ("Parkview") in favor of the plaintiffs. Defendants DF and Parkview oppose plaintiff's motion.

This action arises from an incident that occurred on December 13, 2008. A section of parapet that was being worked on collapsed on top of the plaintiff. Parkview was the owner of the building. DF was hired by Parkview as the general contractor for the roof renovation.

To prevail on a summary judgment motion, the movant must show prima facie that they are entitled to judgment as a matter of law and that there are no material issues of fact. Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 (1985); Zuckerman v. City of New York, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718 (1980); Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404, 165 N.Y.S.2d 498, 144 N.E.2d 387 (1957). If movant fails to show prima facie that they are entitled to judgment as a matter of law, the motion must be denied. Winegrad v. New York Univ. Med. Center, 64 N.Y.2d at p. 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 (1985).

Defendant DF

The collapse of the parapet itself indicates that defendant DF violated Labor Law § 240(1). Marrero v. 2075 Holding Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (1st Dept. 2013). Plaintiff is not precluded from recovery under Labor Law § 240(1) merely because he was on the same level as the parapet. Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp., 18 N.Y.3d 1, 10, 959 N.E.2d 488, 494 (2011); Marrero v. 2075 Holding

Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (1st Dept. 2013). The duty imposed by Labor Law § 240(1) is not delegable, and it is not contested that the collapse led to plaintiff's injury. *See* Alonzo v. Safe Harbors of the Hudson Hous. Dev. Fund Co., 104 A.D.3d 446, 449, 961 N.Y.S.2d 91, 95 (1st Dept. 2013). As the general contractor, DF is liable for this violation. Keenan v. Simon Prop. Grp., Inc., 106 A.D.3d 586, 588, 966 N.Y.S.2d 378, 381 (1st Dept. 2013). To overcome summary judgment, DF must provide evidence that plaintiff's actions were the sole proximate cause of the accident (*id*).

To prevail in his Labor Law § 241(6) claim plaintiff must show violation of the Industrial Code. Plaintiff alleges violations of Industrial Code (12NYCRR) §§ 23-3.3(b)(3) or 23-3.3(c). *See*, Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 146, 950 N.Y.S.2d 35, 41 (1st Dept. 2012); Marrero v. 2075 Holding Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (1st Dept. 2013). The demolition falls within the meaning of demolition in § 23-3.3 since it involved "changes to the structural integrity of the building" Cardenas v. One State St., LLC, 68 A.D.3d 436, 439, 890 N.Y.S.2d 41, 43 (1st Dept. 2009), as evinced by the collapse. Plaintiff's uncontested testimony that he was applying primer when the wall collapsed as another worker demolished the wall (M. Flores Deposition p. 106-107) indicates that the performance of plaintiff's work could not have caused the collapse. Plaintiff's §§ 23-3.3(b)(3) or 23-3.3(c) claims are permissible: appropriate bracing and inspection could have prevented the collapse. Garcia v. 225 E. 57th St. Owners, Inc., 96 A.D.3d 88, 93, 942 N.Y.S.2d 533, 538 (1st Dept. 2012). Plaintiff's expert Yarmus's testimony as to defendants' violations of the Industrial Code

(Yarmus Affadavit, p. 6-9) are not contested by evidence. As liability for Labor Law § 241(6) violations extends to contractors, summary judgment must be granted against DF. *See* Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 146, 950 N.Y.S.2d 35, 41 (1st Dept. 2012). Defendant DF has not submitted evidence or expert testimony to overcome plaintiff's motion.

Defendant Parkview

The collapse of the parapet itself indicates that defendant Parkview violated Labor Law § 240(1). Marrero v. 2075 Holding Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (2013). Plaintiff is not precluded from recovery under Labor Law § 240(1) merely because he was on the same level as the parapet. Wilinski v. 334 E. 92nd Hous. Dev. Fund Corp., 18 N.Y.3d 1, 10, 959 N.E.2d 488, 494 (2011); Marrero v. 2075 Holding Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (1st Dept. 2013). The duty imposed by Labor Law § 240(1) is not delegable, and the collapse led to plaintiff's injury. *See* Alonzo v. Safe Harbors of the Hudson Hous. Dev. Fund Co., 104 A.D.3d 446, 449, 961 N.Y.S.2d 91, 95 (1st Dept. 2013). As the property owner, Parkview is liable for this violation. Keenan v. Simon Prop. Grp., Inc., 106 A.D.3d 586, 588, 966 N.Y.S.2d 378, 381 (1st Dept. 2013). To overcome summary judgment, Parkview must provide evidence that plaintiff's actions were the sole proximate cause of the accident (*id*).

To prevail in his Labor Law § 241(6) claim plaintiff must show violation of the Industrial Code. Plaintiff alleges violations of Industrial Code (12NYCRR) §§ 23-3.3(b)(3) or 23-3.3(c). *See* Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 146, 950 N.Y.S.2d 35, 41 (1st Dept. 2012); Marrero v. 2075 Holding Co. LLC, 106 A.D.3d 408, 409, 964 N.Y.S.2d 144, 146 (1st Dept. 2013). The demolition falls within the meaning of demolition in § 23-3.3, since it involved "changes to the structural integrity of the building" Cardenas v. One State St., LLC, 68 A.D.3d 436, 439, 890 N.Y.S.2d 41, 43 (1st Dept. 2009), as evinced by the collapse. Plaintiff's uncontested testimony that he was applying primer when the wall collapsed as another worker demolished the wall (M. Flores Deposition p. 106-107) indicates that the performance of plaintiff's work could not have caused the collapse. Plaintiff's §§ 23-3.3(b)(3) or 23-3.3(c) claims are permissible: appropriate bracing and inspection could have prevented the collapse. *See* Garcia v. 225 E. 57th St. Owners, Inc., 96 A.D.3d 88, 93, 942 N.Y.S.2d 533, 538 (1st Dept. 2012). Plaintiff's expert Yarmus's testimony as to defendants' violations of the Industrial Code (Yarmus Affadavit, p. 6-9) are not contested by evidence. As liability for 241(6) violations extends to owners, summary judgment must be granted against Parkview as well. *See* Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 146, 950 N.Y.S.2d 35, 41 (1st Dept. 2012). Defendant Parkview has not submitted evidence or expert testimony to overcome plaintiff's motion.

Summary judgment for plaintiffs as to liability on plaintiff's Labor Law §§ 240(1) and 241(6) claims is granted as to defendants DF and Parkview.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment as to as to liability on plaintiff's Labor Law §§ 240(1) and 241(6) claims is granted. It is further

ORDERED the Clerk of the Court enter judgment on Labor Law §§ 240(1) and 241(6) in favor of plaintiff against defendants DF and Parkview only. It is further

ORDERED that the Clerk of the Court mark the Court file accordingly. It is further

ORDERED that upon the payment of the appropriate fees, the completion of discovery and the filing of the Note of Issue the Clerk of the Court shall set this matter down for simultaneous trial on damages. It is further

ORDERED that plaintiffs shall serve a copy of this Order with notice of entry on all plaintiffs within thirty (30) days of entry of this Order.

This constitutes the decision and Order of the Court.

9/14/15
DATE

HON. WILMA GUZMAN
Justice Supreme Court