

**Thannhauser v Holy Spirit Assn. for the Unification
of World Christianity**

2018 NY Slip Op 32244(U)

September 12, 2018

Supreme Court, New York County

Docket Number: 158725/2015

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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DANIEL THANNHAUSER,

Plaintiff

Index No. 158725/2015

v

DECISION AND ORDER

THE HOLY SPIRIT ASSOCIATION FOR THE
UNIFICATION OF WORLD CHRISTIANITY, NEW
YORKER HOTEL MANAGEMENT COMPANY, and
ROSCITI CONSTRUCTION COMPANY, LLC,

Defendants.

MOT SEQ 005

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action to recover damages for alleged personal injuries arising from a fall from an A-frame ladder at a construction site in Manhattan, the plaintiff moves pursuant to CPLR 3212 and Labor Law § 240(1) for summary judgment on the issue liability as against the defendants, The Holy Spirit Association for the Unification of World Christianity, New Yorker Hotel Management Company, and Rosciti Construction Company, LLC. The defendants oppose the motion. The motion is granted.

II. BACKGROUND

The plaintiff, Daniel Thannhauser, alleges that, on July 14, 2014, he fell from a ladder while installing cabling for a cell phone system at the New Yorker Hotel in Manhattan. Thannhauser

was working as an employee of Starcom Communications Services, Inc. (Starcom) at the time of the incident. He commenced this action against the defendants, asserting that they violated Labor Law § 240(1) in failing to supply him with safety devices necessary to provide proper protection to workers from fall-related injuries, and that his injuries were proximately caused by the absence of such protections. Named as defendants are The Holy Spirit Association for the Unification of World Christianity and New Yorker Hotel Management Company, Inc., owners of the subject premises at the time of the incident, and Rosciti Construction Company, LLC, the general contractor that subcontracted with Starcom to perform cabling work at the site.

III. DISCUSSION

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). The motion must be supported by evidence in admissible form (see Zuckerman v City of New York, 49 NY2d 557 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions. See CPLR 3212. The facts must be viewed in the light most favorable to the non-moving party. See Vega v Restani

Constr. Corp., 18 NY3d 499 (2012); Garcia v J.C. Duggan, Inc., 180 AD2d 579 (1st Dept. 1992). Once the movant meets his burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. See Vega v Restani Constr. Corp., supra.

Labor Law § 240(1) provides that “[a]ll contractors and owners and their agents . . . shall furnish or erect, or cause to be furnished or erected . . . 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 [construction workers employed on the premises].” The duty created by Labor Law § 240(1) is nondelegable, and an owner or contractor who breaches that duty may be held liable for damages “regardless of whether it has actually exercised supervision or control over the work.” Ross v Curtis-Palmer Hydro-Electric Co., 81 NY2d 494, 500 (1993); see Cahill v Triborough Bridge and Tunnel Authority, 4 NY3d 35 (2004). Moreover, “where an accident is caused by violation of the statute, the plaintiff’s own negligence does not furnish a defense.” Cahill v Triborough Bridge and Tunnel Authority, supra at 39. However, there can be no liability under Labor Law § 240(1) where there is no violation and the worker’s actions are the sole proximate cause of the accident. Id.; see Barreto v Metropolitan Transp. Authority, 25 NY3d 426 (2015); Blake v

Neighborhood Housing Services of New York City, Inc., 1 NY3d 280 (2003). The Appellate Division, First Department has stated that “[w]here a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240(1).” Kijak v 330 Madison Ave. Corp., 251 AD2d 152, 153 (1st Dept. 1998); see Klein v City of New York, 89 NY2d 833 (1996); Plywacz v 85 Broad Street LLC, 159 AD3d 543 (1st Dept. 2018); Schultze v 585 W 214th St. Owners Corp., 228 AD2d 381 (1st Dept. 1996). This is true whenever it is established that an unsecured ladder proximately caused a plaintiff’s injuries, regardless of whether that plaintiff’s behavior may have also contributed to the incident. Plywacz v 85 Broad Street LLC, *supra*; Gordon v City of New York, 2018 NY Slip Op. 05972 (1st Dept. 2018); Messina v City of New York, 148 AD3d 493 (1st Dept. 2017); Hill v City of New York, 140 AD3d 568 (1st Dept. 2016); Ausby v 365 W End LLC, 135 AD3d 481 (1st Dept. 2016); Carino v Webster Place Assoc., LP, 45 AD3d 351 (1st Dept. 2007).

The plaintiff makes a prima facie showing of entitlement to judgment as a matter of law by submitting proof, in the form of the plaintiff’s deposition testimony and the plaintiff’s affidavit in support of this motion, that the A-frame ladder from

which the plaintiff fell while performing his work at the subject premises was not properly secured so as to ensure that it remained steady and erect while being used. Specifically, the plaintiff testified twice at his deposition that immediately before his fall, the ladder "wobbled" and he lost his balance. The plaintiff's affidavit similarly states that the ladder "wobbled, rocked and twisted" while he was standing on it, and that he subsequently lost his balance and fell, sustaining injuries. Thus, the plaintiff establishes that the ladder was a proximate cause of his injuries, as is required for a finding of liability under Labor Law § 240(1). Furthermore, it is undisputed that the defendants The Holy Spirit Association for the Unification of World Christianity and New Yorker Hotel Management Company, Inc., as owners of the subject premises at the time of the incident, and the defendant Rosciti Construction Company, LLC, as the general contractor that subcontracted with Starcom to perform cabling work at the subject premises, are each subject to liability pursuant to the statute.

In opposition to the plaintiff's motion, the defendants submit two unsworn accident reports filed by the plaintiff stating that he sustained his injuries when he lost his balance and fell from the ladder. Contrary to the defendants' assertions, these statements do not contradict the plaintiff's consistent deposition and affidavit testimony that he fell after

the ladder suddenly wobbled and he lost his balance. See Rom v Eurostruct, Inc., 158 AD3d 570 (1st Dept. 2018); Hill v City of New York, 140 AD3d 568, 570 (1st Dept. 2016). In any event, as the Appellate Department, First Division, has observed, it is "irrelevant whether [the plaintiff] fell because the ladder wobbled" or because he lost his balance; "it is clear that the ladder did not prevent plaintiff from falling and there is no dispute that no safety devices, other than the ladder, were provided." Hill v City of New York, supra at 570 (quotation omitted); see Yu Xiu Deng v A.J. Contr. Co., Inc., 255 AD2d 202 (1st Dept. 1998).

The defendants' argument that the plaintiff was required to demonstrate that the ladder was defective in order to satisfy his burden as to Labor Law § 240(1) is similarly without merit. See Hill v City of New York, supra. "It is sufficient for purposes of liability under [Labor Law § 240(1)] that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent." Orellano v 29 E 37th St. Realty Corp., 292 AD2d 289, 291 (1st Dept. 2002). Moreover, in contrast to the cases the defendants cite for the proposition that a plaintiff's failure to utilize safety devices properly does not give rise to liability under Labor Law § 240(1), there is no evidence here that the plaintiff failed to follow safety

instructions or used the safety features of the ladder inappropriately.

Since the plaintiff has established, prima facie, that his injuries were the direct consequence of using a ladder that did not provide adequate protection from the class of injuries contemplated by Labor Law § 240(1), and the defendants have not come forward with evidence sufficient to raise a triable issue of fact, the plaintiff is entitled to summary judgment on the issue of liability.

IV. CONCLUSION

In light of the foregoing, it is

ORDERED that the plaintiff's motion for summary judgment on the issue of liability is granted as against the defendants, The Holy Spirit Association for the Unification of World Christianity, New Yorker Hotel Management Company, and Rosciti Construction Company, LLC; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount of damages that the plaintiff is entitled to; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for

placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the

issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further


ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

This constitutes the Decision and Order of the court.

Dated: September 12, 2018

ENTER:

 J.S.C.

HON. NANCY M. BANNON