SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

----------X

WOJCIECH CHOINSKI,

Index No. 158242/13
Motion Seq: 005

Plaintiff,

-against-

AISYRK CO., INC., and MOULIN & ASSOCIATES,

DECISION & ORDER
ARLENE P. BLUTH, JSC

Defendants.

----------X

The motion by plaintiff for summary judgment against defendant Moulin & Associates (Moulin) on claims under Labor Law § 240(1) is granted.

Background

This action arises out of injuries suffered by plaintiff on July 25, 2013 while he was working on a townhouse renovation project at 115 West 69th Street in Manhattan. Plaintiff was a junior mechanic for non-party Citron Brothers Plumbing & Heating (Citron). Citron was hired to assist with the renovation.

Plaintiff claims that from his first day on the job, he considered Anthony Ferranti[1] of Moulin to be the general contractor for the job site. Plaintiff alleges that he spoke with Mr. Ferranti

[1]The parties in the instant action rotate between spelling Mr. Ferranti's name as "Ferrante" and "Ferranti." For the purposes of this motion, the Court will assume that it is spelled "Ferranti."

about when and where work was to be done. Plaintiff further alleges that Mr. Ferranti was on the job site every day and that Mr. Ferranti directed and redirected plaintiff's work on many occasions. By contrast, Moulin claims it served only as the project manager and Mr. Ferranti never directed plaintiff ***how*** to do his job; he merely explained what tasks workers were supposed to accomplish and when.

Plaintiff was tasked with installing a sprinkler near the ceiling of a curved staircase on the third floor. Plaintiff claims that Mr. Ferranti directed him to build a platform to facilitate the installation of the sprinkler system. Even though plaintiff was not a carpenter, he built his own makeshift platform after Mr. Ferranti refused to ask the carpenters at the site to build the platform. Plaintiff claims that he was forced to use a ladder on top of the platform in order to reach the sprinkler pipe and connect it to a previously uninstalled elbow. Plaintiff claims that he had to place his ladder on the makeshift platform and lean it on an unfinished wall in order to work on the pipes above without any safety devices to protect him from falling. Plaintiff fell off the ladder when one of the pipes broke, causing him to lose his balance; he injured his left hand while grabbing a metal stud in an attempt to stop his fall.

Plaintiff moves for summary judgment as to liability against the defendant Moulin on the ground that Moulin is liable as a matter of law under Labor Law § 240(1) because plaintiff worked under the direction and control of defendant's employee Anthony Ferranti, and that Moulin acted as general contractor on site. Plaintiff argues that since Moulin was the general contractor, it had the responsibility of ensuring the safety of workers, including plaintiff, and allegedly failed to do so.

Moulin argues that plaintiff's motion should be denied because issues of fact remain pertaining to Mr. Ferranti's status as a general contractor. Defendant alleges Moulin was merely a

consultant and did not exercise the level of supervision and control of the work at the site as a general contractor would. Therefore, defendant argues, Moulin is not liable under Labor Law § 240(1).

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . 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" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other 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" (*id.* at 501).

Labor Law § 240 imposes a duty on general contractors to provide a safe working place for workers. "An implicit precondition to this duty to provide a safe place to work is that the party charged with that responsibility have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition"(*Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317 [1981]).

At plaintiff's deposition, he claimed that Moulin was the general contractor for the construction, demolition and renovation work performed on the site (Plaintiff's Exhibit E, 49:6 – 49:7). He also claimed that the work performed was under the direction and control of Moulin's employee, Anthony Ferranti on a regular basis (*id.* at 48:24 – 53:5). Plaintiff also testified that Mr. Ferranti denied plaintiff's requests for a special platform that plaintiff needed in order to safely embark upon a staircase (*id. at*, 84: 23 – 85:17). According to plaintiff, Mr. Ferranti told him to build a platform himself in order to access the sprinkler system (*id.* at 87:16 – 87:18). Plaintiff concluded that, "He [Mr. Ferranti] was the most important person on the job site, and I just had to listen to him. He would tell me to leave the job site if I didn't" (*id.* at 52:2 – 52:5).

In opposition, Moulin claims that plaintiff's accident occurred as a result of plaintiff's own means and methods, which resulted in plaintiff falling from a ladder placed on top of a platform constructed by plaintiff. Moulin argues Mr. Ferranti never exercised supervision or control and

had no authority over the means and methods under the terms of Moulin's contract with the owner. Moulin further claims that plaintiff testified that Mr. Ferranti did not oversee his work and that plaintiff's boss, Mr. Tatko of Citron, supervised plaintiff's work.

However, Mr. Szule, the president of Moulin & Associates and Mr. Ferranti's employer, acknowledged that Mr. Ferranti would be on the site "pretty much daily" and would open and close the site (Defendant's Affirmation in Opposition, **Exhibit B**, 20:25 – 21:6). Mr. Szule also testified Mr. Ferranti would have contact with the neighbors in the area to form construction schedules and would also coordinate the scheduling of other contractors (*id.* at 21:7 – 22:5). Mr. Ferranti also coordinated with engineering companies that were involved in the project (*id.* at 31:7 – 31:14). Mr. Szule further testified that if worker or foreman had questions they would go to Mr. Ferranti for answers (*id.* at 32:3 – 32:7). With regards to site safety, Mr. Szule testified Mr. Ferranti had the power to "stop the project and remedy an unsafe condition" (*id.* at 28:10 – 28:24). Furthermore, Mr. Ferranti would have occasional safety meetings (*id.* at 29:4 – 29: 12).

Here, the Court finds that Moulin was a general contractor and plaintiff is entitled to summary judgment on his Labor Law § 240(1) claim. The deposition testimonies from defendant and plaintiff demonstrate that Mr. Ferranti acted like a general contractor. He was consistently on the construction site, supervised the actions of several different trades, organized schedules and coordinated construction activities. Furthermore, Mr. Ferranti directed plaintiff to fix the sprinkler system without providing proper safety equipment, which allegedly led to the incident.

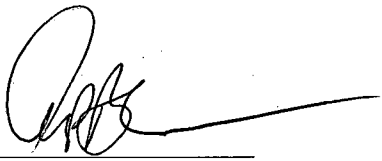
Even though Moulin's contract with the owner calls it a "consultant," the fact is that if an entity assigns tasks like a general contractor, supervises work like a general contractor and schedules work like a general contractor, then it is a general contractor.

Because Moulin is a general contractor, and general contractors who control and direct work are liable for the safety and protection of workers (Labor Law § 240[1]), plaintiff is granted summary judgement.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on its claim pursuant to Labor Law § 240(1) is granted.

Dated: November 5, 2018
New York, New York



HON. ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH