SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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LUIS MARIO GUERRERO-SEGARRA

Plaintiff,

-against-

STERLING EQUIPMENT, INC. and RICHMOND INDUSTRIAL CENTER, INC.,

Defendants.

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DCM PART 4
Present:
Hon. Kim Dollard

DECISION AND ORDER

Index No. 150684/2016

Motion Nos. 1, 2

The following papers numbered 1 to 6 were fully submitted on the 17th day of October, 2018:

	Pages Numbered
Notice of Motion for Summary Judgement on behalf of Plaintiff, Attorneys Affirmation and Exhibits (Dated July, 30 2018)	1
Notice of Motion for Summary Judgement on behalf of Defendants, Attorneys Affirmation and Exhibits (Dated August 3, 2018)	2
Affirmation in Opposition to Plaintiff's Motion with Exhibits (Dated October 12, 2018)	3
Affirmation in Opposition to Defendant's Motion (Dated October 12, 2018)	4
Reply on behalf of defendants (Dated October 16, 2018)	5
Reply on behalf of plaintiff (Dated October 17, 2018)	6

On the accident date of September 5, 2013, the plaintiff, Luis Mario Guerror-Segarra, was employed by May Ship as a welder. The plaintiff's employer, May Ship, was in the business of ship manufacture and vessel fabrication at 3075 Richmond Terrace, Staten Island, New York.

The defendant, RICHMOND INDUSTRIAL CENTER, INC., (hereinafter "Richmond"), owned the property located at 3075 Richmond Terrace, which was partially leased to May Ship. Richmond had an office located at 3075 Richmond Terrace, at a stand alone building completely separate from the premises leased to May Ship. The leased portion to May Ship was gated.

The defendant, STERLING EQUIPMENT, INC., (hereinafter "Sterling") is a foreign corporation engaged in the marine equipment rental business. Sterling entered into a contract with May Ship in April of 2013, pursuant to which May Ship was to construct, test, launch, equip, sell and deliver a hopper barge to Sterling. Sterling later exercised its option to purchase a second identical barge. At the time of the accident on September 5, 2013, the vessels were still being manufactured and May Ship was the titled owner of the vessels. Title was only to be transferred to Sterling once construction was completed. An affidavit submitted by Mark Quinn, Vice President of Sterling, attests to the fact that title to the barges or ships had not passed to Sterling at the time of the accident.

At the time of the accident, neither Richmond nor Sterling controlled or supervised plaintiff's work. Plaintiff never met or spoke to anyone from either Richmond or Sterling. The plaintiff, was employed as a welder for May Ship at the time of his accident on September 5, 2013. On the accident date, the plaintiff was welding in the hull of one of the barges. He wore a helmet, gloves and welding apron to perform his work. After finishing his welding, he was instructed by a May Ship supervisor to clean up the work area. The plaintiff then proceeded to clean up and remove approximately fifteen angle irons scattered about the work area. Each angle iron was about 4 to 5 feet in length and weighed approximately 60 lbs. After removing about ten angle irons by lifting and carrying them, an angle iron slipped out of plaintiff's hands and fell onto his foot, causing injury. The angle irons usually had grease on them, which plaintiff would wipe off before moving them. Plaintiff had successfully moved about ten angle irons before this accident. The plaintiff had oil or grease on his gloves that day as a result of cleaning other angle irons prior to attempting to lift the angle iron involved in his accident.

Plaintiff moves for summary judgment pursuant to alleged Labor Law §240(1). Defendants move for summary judgment and to dismiss the plaintiff's complaint also based upon Labor Law §240(1).

By order of this court dated October 19, 2018, and without opposition, the defendants' summary judgment motion was granted to the extent of dismissing plaintiff's causes of action for general negligence, for breach of Labor Law §200 and for breach of Labor Law §241(6). Additionally, pursuant to this order, and without opposition, the complaint was dismissed with respect to defendant, Sterling Equipment, Inc.

The remaining issues to be decided by the court are the plaintiff's motion for summary judgment premised upon Labor Law §240(1) and the defendant, Richmond's motion to dismiss the remaining cause of action pursuant to Labor Law §240(1).

In support of his motion, the plaintiff asserts that this case falls within the purview of Labor Law §240(1) because plaintiff was forced to lift a 60 pound angle iron without adequate protection. Plaintiff relies upon those cases holding that when plaintiff and the object dropped are on the same level, an elevation differential cannot be considered de minimus when the weight of the object being lifted or hoisted is capable of generating an extreme amount of force, even though it only traveled a short distance (see, Marrero v. 2075 Holding Co., LLC, 106 A.D.3d 408, 1st Dept., 2013).

In opposition to the plaintiff's motion, and in support of its motion for summary judgment, the defendant, Richmond, argues that the plaintiff was involved in the normal manufacturing process and was not engaged in the erection, demolition, repairing, altering, painting, cleaning, pointing, construction or excavation work. The defendants further contend that the plaintiff's accident was not the result of any elevation related risk covered under Labor Law §240, because he did not fall from a height and since he was not struck by a falling object.

Labor Law §240(1) provides in relevant part "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, 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." NYS Labor § 240(1).

In interpreting this statute the Appellate Division, Second Department summarized a line of Court of Appeals cases as follows:

. . . Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective devices proved inadequate to shield the injured worker from harm directly flowing for the application of the force of gravity to an object or person . . . Labor Law § 240 (1) therefore applies where the accident is the result of a difference in elevation between the worker and the work being performed, or a difference between the elevation level where the worker is positioned and the higher level of the material being hoisted or secured (see, Jacome v. State, 266 A.D.2d 345, 2nd Dept., 1999).

The issue in this case is whether Plaintiff's accident was the result of a significant risk due to elevation deferential and thus whether it falls under the purview of Labor Law §240(1).

Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1)" (Narducci v Manhasset Bay Assoc., 96 NY2d 259, 267, 750 NE2d 1085, 727 NYS2d 37 [2001]). The accident must have been caused by the "special hazards that arise when the work site either is itself elevated or is positioned below the level where materials or loads are hoisted or secured" (Orner v Port Auth. of N.Y. & N.J., 293 AD2d 517, 740 NYS2d 414 [2002]; see Narducci v Manhasset Bay Assoc., 96 NY2d at 267; Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501, 618 NE2d 82, 601 NYS2d 49 [1993]).

Whether an elevation differential is de minimus and outside the scope of Labor Law §240(1) depends upon whether the weight of the object being lifted or hoisted is capable of generating an extreme amount of force, even though it only travels a short distance (see, Marrero v. 2075 Holding Co., LLC, 106 A.D.3d 408, 1st Dept., 2013.

Therefore, where posts 14 inches off the ground and weighing between 80 and 120 lbs. fell on plaintiff's foot it was held insufficient to invoke Labor Law §240 coverage (Russell v. Hudson River Park Trust of N.Y., 45 Misc.3d 1219(A), 2014). However, in Marrero, *supra*, where 1,000 lbs. fell from a cart injuring the plaintiff, and in Runner v. New York Stock Exchange, Inc., 13 N.Y.3d 599, 922 N.E.2d 868 (2009), where the plaintiff was injured while moving an 800 pound reel of wire down four stairs, Section 240 of the Labor Law was held to apply.

In the present case, the angle iron being lifted by plaintiff weighed approximately 60 pounds and appears to have been lifted slightly above the ground as the plaintiff moved it. The Court finds the weight and height to which the angle iron was lifted is de minimus and outside the scope of Labor Law §240(1), as it is not an elevation related hazard.

Moreover, the plaintiff was lifting angle irons that had grease on them as well as on his gloves. The plaintiff cannot recover under Labor Law §240(1) where he was the sole proximate cause of his injuries (see, Saavedra v. 64 Annfield Court Corp., 137 A.D.3d 771, 2nd Dept., 2016).

Accordingly, it is

ORDERED, that plaintiff's motion for summary judgment based on Labor Law §240(1) is denied; and it is further,

ORDERED, that the summary judgment motion on behalf of defendants pursuant to Labor Law §240(1) is granted, and the complaint is dismissed, as this was the sole remaining cause of action.

ENTER

Date: Dec. 3, 2018

Kim Dollard

Hon. Kim Dollard
Acting Supreme Court Justice