

Gallegos v Bridge Land Vestry, LLC

2019 NY Slip Op 35024(U)

November 6, 2019

Supreme Court, Bronx County

Docket Number: Index No. 29392/2018E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. 1

JOAQUIN GALLEGOS,

Index No.: 29392/2018E

Plaintiff,

- against -

DECISION and ORDER

BRIDGE LAND VESTRY, LLC, RELATED
CONSTRUCTION LLC, BWK CONTRACTING CORP.,
and JEM CONTRACTING CORPORATION,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff's motion is whether he has established a *prima facie* case entitling him to summary judgment as to liability on his Labor Law §240(1) claim. This court finds he has not.

Labor Law §240(1) imposes a nondelegable duty upon owners and contractors to provide safety devices to protect workers from risks inherent in elevated work sites. *See McCarthy v. Turner Constr., Inc.*, 17 N.Y.3d 369, 953 N.E.2d 794, 929 N.Y.S.2d 556 (2011). Plaintiff must demonstrate both a violation of the statute and the violation's proximate cause of the injury. *See Blake v. Neighborhood Hous. Servs.*, 1 N.Y.3d 280, 803 N.E.2d 757, 771 N.Y.S.2d 484 (2003). Specifically, the hazards contemplated by the statute "are those related to the effects of gravity where protective devices are called for...because of a difference between the elevation level of the required work and a lower level. *Gordon v. Eastern Ry. Supply*, 82 N.Y.2d 561, 626 N.E.2d 912, 606 N.Y.S.2d 127 (1993).

The special hazards referred to are limited to such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or

inadequately secured. 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. The right of recovery afforded by the statute does not extend to other types of harm, even if the harm in question was caused by an inadequate, malfunctioning or defectively designed scaffold, stay or hoist. *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 618 N.E.2d 82, 601 N.Y.S.2d 49 (1993).

Here, Plaintiff alleged he was injured at a construction site when a stone slab that was being hoisted became loose from the straps hoisting it, causing it to fall on Plaintiff. Plaintiff attached his affidavit to the instant motion, but he has not been deposed. Defendants argued that Plaintiff's motion is premature since he has not been deposed and further argued that the mere fact an object fell on Plaintiff is not sufficient for Plaintiff to establish a *prima facie* case pursuant to Labor Law §240(1). Defendants posited that Plaintiff must still establish that the object that fell on him while being hoisted fell due to the absence or inadequacy of a safety device described in the statute.

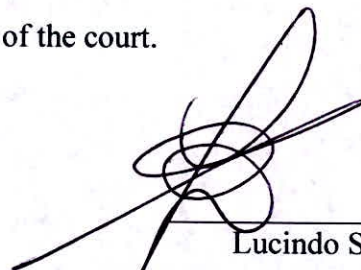
Plaintiff merely provided his affidavit which does not provide information as to how the stone slab fell on him. There were no other sworn affidavits from witnesses including an expert affidavit providing information as to whether the device used on the date of Plaintiff's injury was inadequate. Defendants have therefore, suggested there is still discovery that is necessary that may lead to relevant evidence. See *DaSilva v. Haks Engrs., Architects & Land Surveyors, P.C.*, 125 A.D.3d 480, 4 N.Y.S.3d 162 (1st Dep't 2015).

Accordingly, it is

ORDERED, that Plaintiff's motion for summary judgment is denied, without prejudice with leave to re-file if at all.

This constitutes the decision and order of the court.

Dated: November 6, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.