Duarte v Cauldwell-Wingate Co.
2020 NY Slip Op 33127(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 151918/2018
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

----------X

ABRAHAM DUARTE,

Plaintiff,

- v -

CAULDWELL-WINGATE COMPANY, LLC,38-46 WEST 33 STREET LLC

Defendant.

----------X

INDEX NO. 151918/2018

MOTION DATE 09/24/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - SUMMARY.

The motion by plaintiff for summary judgment on liability for its Labor Law § 240(1) claim is granted.

Background

This case arises out of plaintiff's work using a jackhammer at a construction site located on West 33rd Street in Manhattan. Plaintiff claims that he was breaking and chipping a staircase between the fourth and fifth floors when the jackhammer caught onto a piece of rebar, which caused plaintiff to lose his balance and fall down to the fourth-floor landing. Plaintiff says he was about four or five steps up from the fourth-floor landing and was facing up the stairs when the accident happened. He claims that he was not provided with a harness or a lanyard. Plaintiff moves for summary judgment on his Labor Law § 240(1).

In opposition, defendants claim that harnesses do not need to be worn when steps are broken up because workers are not in danger of falling. Defendants also point out that the

staircase had guardrails and handrails. They argue that plaintiff was the sole proximate cause of his accident and his fall was not the result of the absence of a safety device. Defendants argue that he should have been standing on the step above where he was working and he would not have fallen had he followed this directive.

In reply, plaintiff emphasizes that defendants admit they did not have any safety devices on the job site. Plaintiff argues that there was nothing to prevent him from falling down the steps. He also observes that there is no evidence that he received specific instructions about how to perform his task and disregarded this guidance.

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 a 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).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The Court grants the motion. There is no question that this was an elevation related accident on a job site that falls under the auspices of the Labor Law (*Conlon v Carnegie Hall Socy., Inc.*, 159 AD3d 655, 70 NYS3d 833(Mem) [1st Dept 2018] [granting plaintiff summary judgment on a Labor Law § 240(1) claim where he tripped over an extension cord and fell down a staircase]). And there is no dispute that plaintiff was not provided with any safety devices to prevent his fall down the stairs.

The Court also rejects defendants' assertion that plaintiff was the sole proximate cause of his accident. Defendants argue in opposition that its witness testified that "typically, workers

were supposed to stand on the step above the one they were trying to break down, and in that sense safety devices would not be required because there would be no fall hazard" (NYSCEF Doc. No. 39, ¶ 18). But they do not argue or cite to any evidence demonstrating that plaintiff was informed that he was supposed to conduct his work in a certain way and plaintiff ignored those instructions. Simply because something may be typical is not a basis to find an issue of fact regarding whether plaintiff was the sole proximate cause of his fall. If plaintiff was not told or trained about how to safely perform a particular task, then he cannot be found wholly responsible for his accident.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment on liability on his Labor Law § 240(1) claim is granted.

9/25/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE