

Chun Chan v Mehran Holdings Ltd.
2020 NY Slip Op 33611(U)
October 30, 2020
Supreme Court, New York County
Docket Number: 152145/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
-----X

CHUN CHAN,

Index No. 152145/2015

Plaintiff

- against -

MEHRAN HOLDINGS LTD. and HONG KONG
PLAZA MANAGEMENT CORP.,

Defendants
-----X
-----X

MEHRAN HOLDINGS LTD.,

Third Party Plaintiff

- against -

JEFFREY WU,

Third Party Defendant
-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff sues to recover damages for personal injuries sustained May 30, 2014, when he fell from a ladder as he was performing demolition work on premises owned by defendant Mehran Holdings Ltd. and occupied by defendant Hong Kong Plaza Management Corp., pursuant to a lease that third party defendant Wu guaranteed. Mehran Holdings moves to reargue its first motion for summary judgment to the extent that Mehran Holdings sought dismissal of plaintiff's claim under New York Labor Law § 240(1),

which the court denied in an order dated April 30, 2019, and plaintiff's separate motion for summary judgment on Mehran Holdings' liability under Labor Law § 240(1), which the court granted in the same order. C.P.L.R. §§ 2221(d), 3212(b) and (e). Mehran Holdings also moves to reargue its second motion for summary judgment on its third party claims, which the court also denied in the same order. C.P.L.R. §§ 2221(d), 3212(b). For the reasons explained below, the court denies Mehran Holdings' current motion.

II. PLAINTIFF'S CLAIM UNDER LABOR LAW § 240(1)

Plaintiff consistently testified at his deposition that, as he worked at an elevation to remove a cylinder from a metal door above his head, a metal piece came loose, lacerated his arm, and caused the ladder to move. After the ladder moved, he lost his balance and fell to the ground. Plaintiff's testimony that the unsecured ladder he was using moved established a violation of Labor Law § 240(1). Tuzzolino v. Consolidated Edison Co. of N.Y., 160 A.D.3d 568, 568 (1st Dep't 2018); Plywacz v. 85 Broad St. LLC, 159 A.D.3d 543, 544 (1st Dep't 2018); Merino v. Continental Towers Condominium, 159 A.D.3d 471, 472 (1st Dep't 2018); Gonzalez v. 1225 Ogden Deli Grocery Corp., 158 A.D.3d 582, 583 (1st Dep't 2018).

Mehran Holdings claims no evidence established that the ladder was unsecured. First, plaintiff was not required to show a defect in the ladder to establish a Labor Law § 240(1) violation. Caminiti v. Extell W. 57th St. LLC, 166 A.D.3d 440,

441 (1st Dep't 2018); Hill v. City of New York, 140 A.D.3d 568, 570 (1st Dep't 2016); Fanning v. Rockefeller Univ., 106 A.D.3d 484, 485 (1st Dep't 2013); Estrella v. GIT Indus., Inc., 105 A.D.3d 555, 555 (1st Dep't 2013). Second, the ladder's movement in any event, even if caused by plaintiff's movement as he attempted to dislodge the metal cylinder and it spun toward him, demonstrated that the ladder was unsecured. Its movement and failure to prevent plaintiff from falling also demonstrated, supported by the opinion of plaintiff's expert Certified Site Safety Manager, that another safety device, such as a scissor lift or a scaffold, or a ladder secured by an anchor or co-worker was needed for adequate protection. Plywacz v. 85 Broad St. LLC, 159 A.D.3d at 544. The failure of the ladder to provide adequate protection from the hazards of work at an elevation also demonstrated that plaintiff was not the sole proximate cause of his injury. Nolan v. Port Auth. of N.Y. & N.J., 162 A.D.3d 488, 489 (1st Dep't 2018); Plywacz v. 85 Broad Street LLC, 159 A.D.3d at 543; Ross v. 1510 Assoc. LLC, 106 A.D.3d 471, 471 (1st Dep't 2013); Lizama v. 1801 Univ. Assoc., LLC, 100 A.D.3d 497, 498 (1st Dep't 2012).

Contrary to Mehran Holdings' contention, in granting plaintiff's motion for partial summary judgment based on the above principles, the court made no determination regarding what injuries plaintiff suffered from the movement of the ladder on which he stood, which caused him to fall from the ladder. What injuries the ladder's movement and plaintiff's fall caused are

issues that remain for trial.

III. MEHRAN HOLDINGS' SECOND MOTION FOR SUMMARY JUDGMENT

Regarding Mehran Holdings' second motion for summary judgment against Wu, Mehran Holdings again fails to excuse the motion's lateness, C.P.L.R. § 3212(a); Aristova v. Derkach, 155 A.D.3d 517, 517 (1st Dep't 2017); Kenny v. Turner Constr. Co., 155 A.D.3d 479, 479-80 (1st Dep't 2017); Puello v. Georges Units, LLC, 146 A.D.3d 561, 562 (1st Dep't 2017); Hennessey-Diaz v. City of New York, 146 A.D.3d 419, 420 (1st Dep't 2017), or how the motion against Wu on breach of contract and indemnification claims may be considered a timely cross-motion responsive to and addressing claims "nearly identical" to plaintiff's timely motion for summary judgment on his Labor Law § 240(1) claim. Jarama v. 902 Liberty Ave. Hous. Dev. Fund Corp., 161 A.D.3d 691, 692 (1st Dep't 2018); Gualpa v. Leon D. Matteis Constr. Corp., 121 A.D.3d 416, 419 (1st Dep't 2014); Alonzo v. Safe Harbors of the Hudson Hous. Dev. Fund Co., Inc., 104 A.D.3d 446, 449 (1st Dep't 2013). Now, for the first time, and contrary to C.P.L.R. § 2221(d)(2), Mehran Holdings attempts to show a connection between the two motions based on co-defendant Hong Kong Plaza Management's breach of the lease that Wu guaranteed by failing to carry out its alterations of the leased premises in compliance with all laws, which include Labor Law § 240(1). People v. D'Alessandro, 13 N.Y.3d 216, 219 (2009); Jones v. City of New York, 146 A.D.3d 690, 690-91 (1st Dep't 2017); Setters v. AI Props. & Devs. (USA) Corp., 139 A.D.3d 492, 492 (1st Dep't 2016); Onglingswan v. Chase

Home Fin., LLC, 101 A.D.3d 543, 544 (1st Dep't 2013). Mehran Holdings never shows, however, that Hong Kong Plaza Management or Wu was a general contractor or statutory agent of Mehran Holdings subject to Labor Law § 240(1). Ferluckaj v. Goldman Sachs & Co., 12 N.Y.3d 316, 318-19 (2009); Reyes v. Bruckner Plaza Shopping Ctr. LLC, 173 A.D.3d 570, 571 (1st Dep't 2019). See Karowski v. 1407 Broadway Real Estate, LLC, 160 A.D.3d 82, 85 (1st Dep't 2018); Henningham v. Highbridge Community Hous. Dev. Fund Corp., 91 A.D.3d 521, 523 (1st Dep't 2012).

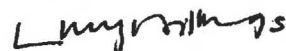
Even were the second motion for summary judgment considered timely, however, Mehran Holdings again fails to show any justification for the second of the successive motions for summary judgment. Landis v. 383 Realty Corp., 175 A.D.3d 1207, 1207 (1st Dep't 2019); Ferolito v. Vultaggio, 99 A.D.3d 19, 29 (1st Dep't 2012); Jones v. 636 Holding Corp., 73 A.D.3d 409, 409 (1st Dep't 2010); Turner Constr. Co. v. H.E.L.P. Social Serv. Corp., 43 A.D.3d 731, 732 (1st Dep't 2007). Finally, while each of these failings was an independent basis for denying Mehran Holdings' second motion for summary judgment, the court also pointed out that Mehran Holdings failed to establish its claims by authenticated, admissible evidence of Wu's guarantee. See Whalen v. New York City Dept. of Env'tl. Protection, 89 A.D.3d 416, 417 (1st Dep't 2011); Jones v. 636 Holding Corp., 73 A.D.3d 409, 410 (1st Dep't 2010). Although Wu's signature on the guarantee is authenticated by a notary public, no witness ever identified the guarantee that he signed. Mehran Holdings'

witness at his deposition identified only the lease between Mehran Holdings and co-defendant Hong Kong Plaza Management and not the guarantee by Wu.

V. CONCLUSION

For all these reasons, Mehran Holdings has failed to show that the court overlooked or misapprehended any facts or law in granting plaintiff's motion for partial summary judgment and denying Mehran Holdings' motions for summary judgment. C.P.L.R. § 2221(d); Jones v. City of New York, 146 A.D.3d at 690; Pezhman v. Chanel, Inc., 126 A.D.3d 497, 497 (1st Dep't 2015); Windham v. New York City Tr. Auth., 115 A.D.3d 597, 600 (1st Dep't 2014); Hernandez v. St. Stephen of Hungary School, 72 A.D.3d 595, 595 (1st Dep't 2010). Therefore the court denies defendant Mehran Holdings Ltd.'s motion to reargue its first motion for summary judgment to the extent that Mehran Holdings sought dismissal of plaintiff's claim under Labor Law § 240(1), plaintiff's separate motion for summary judgment on Mehran Holdings' liability under Labor Law § 240(1), and its second summary judgment on its third party claims. C.P.L.R. § 2221(d).

DATED: October 30, 2020



LUCY BILLINGS, J.S.C.

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