Chasig v Neighborhood Realty & Mgt. LLC
2021 NY Slip Op 31174(U)
April 6, 2021
Supreme Court, Kings County
Docket Number: 510396/2018
Judge: Ingrid Joseph
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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of April, 2021.

P R E S E N T:

HON. INGRID JOSEPH,
Justice.

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WILSON CHASIG,

Plaintiff,

-against-

NEIGHBORHOOD REALTY AND MANAGEMENT LLC and BT GENERAL BUILDERS INC.,

Defendants.

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Index No. 510396/2018
Motion Seq.: 2, 3

The following e-filed papers read herein:	NYSCEF #:
Notice of Motion/Cross Motion Affidavits/Affirmations, Exhibits Annexed Answer/Opposing Affidavits (Affirmations) Reply Papers	 34 - 45; 46 - 55 57 - 60; 61 - 65 73 - 77; 78 - 83

Upon the foregoing papers, plaintiff, Wilson Chasig ("plaintiff"), moves for an order: (1) pursuant to CPLR § 3212, granting summary judgment on the issue of liability against defendants Neighborhood Realty And Management LLC ("Neighborhood Realty") and BT General Builders Inc. ("BT General") (referred to collectively as "defendants") on his Labor Law §§ 240 (1) and 241 (6) causes of action. Defendants move pursuant to CPLR § 3212, granting summary judgment dismissing plaintiff's Labor Law §§ 241 (6) and 200, common-law negligence claims.

Plaintiff claims that he fell approximately two stories on August 10, 2017 while performing construction work in connection with his employment for non-party, MAG Builders ("MAG"), at the premises located at 85 Bartlett Street, Brooklyn, New York. The project involved the new construction of a commercial, mixed-use building that was owned by Neighborhood Realty. Neighborhood Realty engaged BT General as the General Contractor, which subcontracted with plaintiff's employer, MAG, to complete an exterior brick facade. An exterior pipe scaffolding with

floor-boards, or planking, which started at the second floor, was installed around two sides of the building. Plaintiff's task was to bring bricks, cement and other materials that was stored on, or lifted to, the scaffold to bricklayers who were working at the sixth-floor level when the accident occurred.

Plaintiff alleges that he wore his own hard hat and safety harness at the work site, but there were no life lines on which he could tie off the harness Plaintiff states that some of the floor-boards and planks for the scaffolds were missing, and there were no rails or guards. Plaintiff claims that he was traversing the scaffold at the sixth floor level to bring cement to the bricklayers when he reached an area where two of the wood planks shifted and collapsed. Plaintiff alleges that he fell from the sixth floor onto the wood planks that constituted the scaffold flooring at the fourth floor level. Plaintiff states that he was removed from the site by ambulance and subsequently, there was a post-incident investigation that resulted in the issuance of scaffolding violations and a stop work order from the New York City Department of Building.

As a preliminary matter, the court recognizes that plaintiff presented no arguments in response to that branch of the defendants motion for summary judgment on his Labor Law 200, common-law negligence cause of action. Plaintiff further omitted from his motion and responsive papers, any reference to his causes of action under Labor Law 241(6) Industrial Code § 23-1.5, 23-1.7, 23-1.8, 23-1.11, 23-1.15, 23-1.16, 23-1.17, 23-1.19, 23-1.22, 23-2.4, 23-5.1(f), 23-5.4, 23-5.4(a), 23-5.5, and 23-5.5(c). Thus, the issues presented herein concern plaintiff's causes of action under Labor Law §§ 240(1) and 241(6), Industrial Code § 23-5.1 (c)(2) and (c)(1).

Labor Law § 240 (1) imposes absolute liability on owners and contractors or their agents when their failure to protect workers employed on a construction site from the risks associated with falling objects proximately causes injury to a worker (*see Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 3 [2011]; *Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267-268 [2001]; *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 500 [1993]).[1] For a defendant to be held liable under Labor Law § 240 (1), a plaintiff's injuries must be "the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential"

[1] As is relevant here, Labor Law § 240 (1) provides that, "[a]ll 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."

(*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]; *Wilinski*, 18 NY3d at 10).

Here, the court finds that the plaintiff has established prima facie entitlement to summary judgment as a matter of law on the issue of liability regarding his cause of action alleging violations under Labor Law 240 (1). The Second Department, in *Campbell v 111 Chelsea Commerce, LP*, 80 AD3d 721 [2d Dept 2011] and *Jablonski v Everest Const. & Trade Corp.*, 264 AD2d 381 [2d Dept 1999], held that the fact of a plank collapse underneath a laborer, such as plaintiff, establishes prima facie entitlement to summary judgment on the issue of liability. Additionally, there are a plethora of cases, wherein the Second Department has held that, "since the scaffold [on which plaintiff was working] collapsed, the plaintiff established, prima facie, that he was not provided with an adequate safety device to do his work, as required under Labor Law 240 (1) *Bermejo v New York City Health & Hosps. Corp.*, 119 AD3d 500 [2d Dept 2014] *citing Tapia v Mario Genovesi & Sons, Inc.*, 72 AD3d 800, 801 [2d Dept 2010]; *see Vasquez v C2 Dev. Corp.*, 105 AD3d 729 [2d Dept 2013]; *Saldivar v Lawrence Dev. Realty*, LLC, 95 AD3d 1101 [2d Dept 2012]; *Campbell v 111 Chelsea Commerce, L.P.*, 80 AD3d 721 [2d Dept 2011]; *Inga v EBS N. Hills, LLC*, 69 AD3d 568 [2d Dept 2010]; *Saeed v NY/Enterprise City Home Hous. Dev. Fund Corp.*, 303 AD2d 484 [2d Dept 2003]; *Pineda v Kechek Realty Corp.*, 285 AD2d 496 [2d Dept 2001]; *La Lima v Epstein*, 143 AD2d 886 [2d Dept 1988]).

The defendants' arguments concerning inconsistent accounts of the accident from plaintiff and other labors at the work site, and plaintiff's alleged speculation of what caused the planks to collapse, are not based on a plausible view of the evidence. Additionally, there is no evidence that the plaintiff's own acts or omissions caused the accident (*Bermejo v New York City Health & Hosps. Corp.*, 119 AD3d 500, 502 [2d Dept 2014]). Thus, the court finds that the plaintiff is entitled to summary judgment as a matter of law on the issue of liability on his Labor Law 240 (1) cause of action.

Regarding plaintiff's Labor Law § 241 (6) cause of action, under that section an owner, general contractor or their agent may be held vicariously liable for injuries to a plaintiff where the plaintiff establishes that the accident was proximately caused by a violation of an Industrial Code section stating a specific positive command that is applicable to the facts of the case (*Rizzuto v L.A. Wenger Contr. Co., Inc.*, 91 NY2d 343, 349-350 [1998]; *Honeyman v Curiosity Works, Inc.*, 154 AD3d 820, 821 [2d Dept 2017]).

Plaintiff's cause of action under Labor Law § 241 (6), as provided in the Complaint, generically refers to Industrial Code Section 23. In the Verified Bill of Particulars, plaintiff asserts that the defendants violated Sections 23-1.5, 23-1.7, 23-1.8, 23-1.11, 23-1.15, 23-1.16, 23-1.17, 23-1.19, 23-1.22, 23-2.4, as well as subparts 23-5, 23-5.1(c)(2), 23-5.1(e), 23-5.1(f), 23-5.4, 23-5.4(a), 23-5.5, 23-5.5(c). However, as previously noted, plaintiff's motion addresses Industrial Code Section 23-5.1 (c)(2) and (e)(1) only.

Section 23-5.1 (c)(2) provides, that every scaffold shall be provided with adequate horizontal and diagonal bracing to prevent any lateral movement. Subsection (e)(1), entitled scaffold planking, provides that "scaffold planks shall extend not less than six inches beyond any support nor more than 18 inches beyond any end support. Such six inch minimum requirement shall not apply when such planks are securely fastened in place. Scaffold planks shall be laid tight and inclined planking shall be securely fastened in place.

Plaintiff's expert, Nicholas Bellizzi, P.E., a registered and licensed Professional Enginner in New York and New Jersey, opined that violations existed at plaintiff's work site, because the scaffold's wood planks were not constructed, equipped, arranged, operated and conducted so as to provide reasonable and adequate protection and safety to plaintiff due to its structural instability. Mr. Bellizzi stated that the wood plank flooring at the sixth floor level was loose, unstable and not placed or secured properly. Mr. Bellizzi noted that the structural failure of the wood floor planks and lack of a tie-line were substantial factors in the cause of plaintiff's injuries. Mr. Bellizzi, opined violations of Labor Law §§ 240 (1) and 241 (6) , as well as Industrial Code § Industrial Code Section 23-5.1 (c)(2) and (e)(1), among other code subparts, were violated.

The defendants' expert, Bernard P. Lorenz, P.E., who is employed as a Professional Engineer with Affiliated Engineering, opined that a safety harness and tie line is not required when a person is working on a scaffold with guardrails. Mr. Lorenz further opined, in conclusory fashion, that the scaffold on which plaintiff was traversing had guardrails. Mr. Lorenz stated that there was no evidence to show that the scaffold in question lacked adequate bracing prior to plaintiff's fall. Mr. Lorenz expounded that the term "bracing" refers to scaffold components, such as cross braces and ties that prevent lateral movement. Mr. Lorenz opined that if the components were not provided or improperly installed, lateral movement of the scaffold would have been evident soon after the scaffold was installed and further, that not all movement of a scaffold is indicative of inadequate

bracing.

Upon consideration of the documents submitted, the court finds that the plaintiff has established prima facie entitlement to summary judgment on the issue of liability concerning Labor Law § 241(6), Industrial Code Section 23-5.1 (c)(2) and (e)(1). The defendants' expert did not proffer an opinion regarding causation or violations of Industrial Code 23-5.1(e)(1) and his opinion, which was based upon a mere fraction of the record, was vague, ambiguous and conclusory at best, and failed to raise a material issues of fact.

Based upon the foregoing, it is hereby

ORDERED, that plaintiff's motion (Motion Sequence 2) is granted to the extent that summary judgment on the issue of liability against defendants Neighborhood Realty And Management LLC and BT General Builders Inc. on his Labor Law §§ 240 (1) and 241 (6), Industrial Code § 23-5.1 (c)(2) and (e)(1) causes of action, and it is further

ORDERED, that defendants' motion (Motion Sequence 3) for summary judgment is granted to the extent that plaintiff's Labor Law § 200, common-law negligence, and Labor Law § 241(6), Industrial Code § 23-1.5, 23-1.7, 23-1.8, 23-1.11, 23-1.15, 23-1.16, 23-1.17, 23-1.19, 23-1.22, 23-2.4, 23-5.1(f), 23-5.4, 23-5.4(a), 23-5.5, and 23-5.5(c) are dismissed.

This constitutes the decision and order of the court.

ENTER,

HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice