Valencia v St. John's Univ., N.Y.
2021 NY Slip Op 33144(U)
December 16, 2021
Supreme Court, Queens County
Docket Number: Index No. 716770/2017
Judge: Robert J. McDonald
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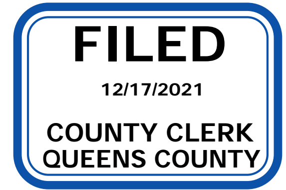
SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

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JAIRO VALENCIA, Index No.: 716770/2017

Plaintiff, Motion Date: 12/16/21

- against - Motion No.: 52

ST. JOHN'S UNIVERSITY, NEW YORK, Motion Seq.: 1

Defendant.

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The following electronically filed documents read on this motion by plaintiff for an Order pursuant to CPLR § 3212, granting plaintiff summary judgment against defendant on his Labor Law § 240(1) cause of action:

	Papers Numbered
Notice of Motion-Affirmation-Memo. of Law-Exhibits....	EF 15 - 24
Affirmation in Opposition-Exhibits....................	EF 26 - 32
Reply Affirmation.....................................	EF 34 - 36

This personal injury action arises out of an accident that occurred on June 9, 2016 at the premises located at 147-28 Union Turnpike, in Queens County, New York. At the time of the accident, defendant was the owner of the premises. Defendant contracted with plaintiff's employer, A-Tempo Inc. (A-Tempo), to paint the premises.

Plaintiff commenced this action by filing a summons and complaint on December 4, 2017. Defendant joined issue by service of an answer on February 16, 2018. Plaintiff now moves for summary judgment on his Labor Law § 240(1) claim.

At his examination before trial, plaintiff testified that he began working in the construction filed in 2008 as a helper. He has always worked doing painting and painting related activities. During this time, plaintiff worked with ladders of various sizes ranging from four to twelve feet. At the time of the accident, he was employed as a painter by A-Tempo. The accident occurred while

he was painting a dormitory at St. John's University. There were twenty to thirty A-Tempo workers on the painting project, divided into four to five groups of painters. The work required him to use metal ladders, owned by A-Tempo, ranging in size from four to twelve feet. He was never provided with or required to use a harness on the subject jobsite. On the date of the accident, he was working only with one other worker, whose nickname was Ochenta. At the time of the accident, he was doing touch-up work. Him and Ochenta were left with only one six-foot A-frame metal ladder, owned by A-Tempo, and a two-meter pole that extends to attach the roller to while using the roller for painting. The ladder was too short to do the job. He was standing on the step right below the end-cap of the ladder. Both of his feet were on the ladder at the time of the accident, but his hands were raised, holding the extension as he attempted to paint the ceiling. As he was painting the ceiling with the extension pole, the roller on the end of the extension pole did not touch the ceiling, he moved his body, stretching out, attempting to reach the ceiling with the roller. The ladder then turned, inclined towards the stairs to the third floor, the ladder fell and he fell with it, landing on the stairs leading to the third floor of the building. He did not know if Ochenta was actually holding the ladder when the accident occurred because he was looking up at the ceiling. He did not have an adequate ladder to work with. If he had ten-foot ladder, he would not have had the accident. He told his boss, but his boss said they did not have any more ladders. Ochenta was his superior at the jobsite. They decided to not immediately call the boss about the accident because they were afraid that they would get fired because the paint that fell from the ladder stained the rug.

Darrin J. Deans, the employee director of branch campus operations, appeared for a deposition on behalf of defendant. Deans testified that he would perform periodic inspections and check on jobs that were going on. He did not keep any written records of these inspections. A-Tempo had been a painting contractor for defendant for more than ten years. His contact at A-Tempo was the president. A-Tempo was doing annual dormitory painting, which involved painting fourteen to fifteen townhouses. There was a written contract for the painting project between defendant and A-Tempo. Defendant did not provide any materials or equipment for the project. He did not perform any investigation into the accident or speak to anyone about it. He is not aware of anyone who witnessed the accident. He is not familiar with plaintiff. He does not know if defendant requires contractors to fill out accident reports if one of their employees is injured. He does not recall if he ever saw an accident report relating to this incident.

The proponent of a summary judgment motion has the initial burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing an entitlement to judgment as a matter of law (see Ayotte v Gervasio, 81 NY2d 1062 [1993]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]; Zuckerman v City of New York, 49 NY2d 557 [1980]). Once the requisite showing has been made, the burden shifts to the opposing party to produce admissible evidence sufficient to establish the existence of a triable issue of fact (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]).

Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with appropriate safety devices to protect against "such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured" (Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494, 501 [1993]). To prevail on a Labor Law § 240(1) cause of action, a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the accident (see Blake v Neighborhood Hous. Servs. of New York City, Inc., 1 NY3d 280 [2003]).

Here, plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability on the cause of action alleging a violation of Labor Law § 240(1). Plaintiff submitted evidence demonstrating that he was caused to sustain injuries because the ladder was too short to permit him to reach the location where he was working, forcing him to work from the top step and causing the ladder to wobble and fall (see Hoxhaj v West 30th HL LLC, 195 AD3d 503 [1st Dept. 2021], Cuentas v Sephora USA, Inc., 102 AD3d 505 [1st Dept. 2013]; Pacheco v Halsted Communications, Ltd., 144 AD3d 768 [2d Dept. 2016]).

In opposition, defendant contends that plaintiff's credibility is called into issue as plaintiff is the sole witness of the accident, waited two hours before reporting the accident, did not call 9-1-1, an ambulance or any of his bosses directly at A-Tempo, and continued to work for three months following the accident.

Contrary to defendant's contention, plaintiff did identify a witness. Even if plaintiff's accident was unwitnessed, such does not preclude a granting of summary judgment in plaintiff's favor (see Begeal v Jackson, 197 AD3d 1418 [3d Dept. 2021]; Fox v H&M Hennes & Mauritz, L.P., 83 AD3d 889 [2d Dept. 2011]). Likewise, the fact that plaintiff did not report the accident immediately does not preclude a granting of summary judgment in plaintiff's

favor (see Capuano v Tishman Const. Corp., 98 AD3d 848 [1st Dept. 2012]; Perrone v Tishman Speyer Props., L.P., 13 AD3d 146 [1st Dept. 2004).

Accordingly, for the reasons stated above, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim is granted.

Dated: Long Island City, NY
December 16, 2021

Robert J. McDonald
____
ROBERT J. McDONALD
J.S.C.