

**Socik v Feller**

2023 NY Slip Op 33893(U)

October 25, 2023

Supreme Court, Kings County

Docket Number: Index No. 518940/2018

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 25<sup>th</sup> day of October 2023

HONORABLE FRANCOIS A. RIVERA

-----X

BOGDAN SOCIK,

Plaintiff,

- against -

STEVEN FELLER, FIONAL SIMPSON, LUVA OF NY, LLC and JENN-CRAFT, LLC,

Defendants.

-----X

LUVA OF NY, LLC,

Third-Party Plaintiff,

-against-

AXTA INC.,

Third- Party Defendants.

-----X

STEVEN FELLER and FIONA SIMPSON,

Second Third-Party Plaintiffs,

-against-

AXTA INC.,

Second Third- Party Defendants.

-----X

LUVA OF NY, LLC

Third Third-Party Plaintiff,

-against-

**DECISION & ORDER**

Index No.: 518940/2018

JENN-CRAFT, LLC,

Third Third-Party Defendant.

-----X

STEVEN FELLER and FIONA SIMPSON,

Fourth Third-Party Plaintiffs,

-against-

JENN-CRAFT, LLC,

Fourth Third-Party Defendant.

-----X

By notice of motion, filed on November 16, 2021, under motion sequence number nine (9), plaintiff Bogdan Socik sought an order pursuant to CPLR §3212 seeking partial summary judgment on the issue of liability on his Labor Law § 240 (1) cause of action against defendants STEVEN FELLER, FIONA SIMPSON and LUYA OF NY, LLC. The following electronically filed papers were considered: NYSCEF document numbers 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 276, 277, 287, 310, 311, 312, 313, 314, 315, 316, 317, 332, 341, 342, 343, 344, 345, 346, 348, 394, and 416.

After oral argument, the order of the Court is as follows. "Labor Law § 240(1) imposes upon owners, contractors, and their agents a nondelegable duty to provide workers proper protection from elevation-related hazards" (*Cruz v 451 Lexington Realty, LLC*, 218 AD3d 733 [2d Dept 2023], quoting *Zoto v 259 W. 10th, LLC*, 189 AD3d 1523, 1524 [2d Dept 2020]). Liability is contingent upon "the existence of a hazard contemplated in [Labor Law] section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein" (*Cruz v 451 Lexington Realty, LLC*, 218 AD3d at 733, quoting *Narducci v Manhasset*

*Bay Assoc.*, 96 N.Y.2d 259, 267 [2001]). Moreover, in cases involving falling objects, the applicability of the statute does not depend upon whether the object has hit the worker, but rather whether the harm flows directly from the application of the force of gravity to the object (*Cruz v 451 Lexington Realty, LLC*, 218 AD3d at 733, citing *Runner v. New York Stock Exch., Inc.*, 13 NY3d 599, 604 [2009]).

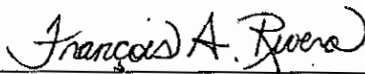
In order to prevail on summary judgment in a Labor Law § 240 (1) falling object case, the injured worker must demonstrate the existence of a hazard contemplated under that statute and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein (*Maisuradze v Nows The Time, Inc.*, 219 AD3d 722, 724 [2d Dept 2023], citing *Fabrizi v 1095 Ave. of the Ams., L.L.C.*, 22 NY3d 658, 662 [2014], quoting *Narducci*, 96 NY2d at 267). “Labor Law § 240(1) does not automatically apply simply because an object fell and injured a worker” (*Berman-Rey v Gomez*, 153 AD3d 653, 655 [2d Dept 2017], quoting *Fabrizi v. 1095 Ave. of the Ams., L.L.C.*, 22 N.Y.3d at 663). Accordingly, a plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking (*Maisuradze v Nows The Time, Inc.*, 219 AD3d at 724, citing *Outar v City of New York*, 5 NY3d 731, 732 [2005]).

In the instant action, plaintiff Bogan Socik, was employed by AXTA Inc. to do work at the subject premises owned by defendants Feller and Simpson. The plaintiff testified that on the date of the accident, the plaintiff was shaving a door at the subject premises to make sure the door could open and close properly. The plaintiff was injured when an access panel fell and hit the plaintiff on the head. The plaintiff’s injuries did not result from the type of elevation-related risk contemplated by Labor Law 240 (1). Moreover, the plaintiff failed to demonstrate that the access panel was being hoisted or secured; or that it required securing for the undertaking.

Accordingly, the motion of plaintiff Bogdan Socik for an order pursuant to CPLR 3212 for partial summary judgment on the issue of liability on his Labor Law §240(1) cause of action against defendants Steven Feller, Fiona Simpson and Luva of NY, LLC is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

  
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J.S.C.