

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DUANE A. HART IA Part 18
Justice

	x	
FELIX SERRATY, et al.		Index Number <u>1487</u> 2006
- against -		Motion Date <u>October 3,</u> 2007
FRANKLIN AVENUE PLAZA LLC, et al.		Motion Cal. Number <u>30</u>
	x	Motion Seq. No. <u>2</u>

The following papers numbered 1 to 12 read on this motion by Franklin Avenue Plaza Three LLC (Franklin) for summary judgment in its favor and cross motion by plaintiff for summary judgment in his favor on his claims pursuant to Labor Law § 240(1).

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross Motion - Affidavits - Exhibits...	5-10
Answering Affidavits - Exhibits	11-12
Reply Affidavits	11-12

Upon the foregoing papers it is ordered that the motion and cross motion are decided as follows:

Plaintiff in this negligence action seeks damages for personal injuries sustained on June 13, 2004, when he fell from a ladder while working at 1305 Franklin Avenue, in Garden City, New York. The commercial property was owned by Franklin and, at that time, plaintiff was employed by T.J. Lam, Inc., and was involved in framing, ceiling framing and the installation of sheet rock. It is alleged that the "A" frame ladder from which plaintiff fell did not have rubber feet. In moving for summary judgment, Franklin contends that (1) the alleged defective ladder was not provided by them; (2) there was no act or omission on their part which was the proximate cause of the subject accident, and (3) plaintiff's act in attempting to balance a metal screw on the tip of a drill in his right hand while trying to hold up a three-foot piece of metal stud in his left hand, was the cause of plaintiff's fall. Plaintiff

opposes the motion and cross-moves for summary judgment in his favor on his Labor Law § 240(1) claims.

Motion

On a motion for summary judgment, the proponent "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case ..." (Winegrad v New York Univ. Med. Center, 64 NY2d 851, 852 [1985]). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial (Alvarez v Prospect Hospital, 68 NY2d 320 [1986]).

Plaintiff's claims under Labor Law § 200 are dismissed as against defendants, there being no evidence that they exercised supervisory control over plaintiff's work (see Comes v New York State Elec. & Gas Corp., 82 NY2d 876 [1993]).

Section 240(1) of the Labor Law imposes absolute liability on building owners, general contractors, and their agents for injuries to workers engaged in "the erection, demolition, repairing ... of a building or structure," which result from falls from ladders, scaffolding, or other similar elevation devices that do not provide "proper protection" against such falls (Melo v Consolidated Edison of New York, Inc., 92 NY2d 909 [1998]). Of relevance here, "Labor Law § 240(1) requires that safety devices such as ladders be so 'constructed, placed and operated as to give proper protection' to a worker" (Klein v City of New York, 89 NY2d 833 [1996]; see also Montalvo v J. Petrocelli Const., Inc., 8 AD3d 173 [2004]).

To establish liability, a plaintiff must prove that the statute was violated and that the violation was a proximate cause of the injuries sustained (Bland v Manocherian, 66 NY2d 452 [1985]). Proximate cause is demonstrated based on a showing that a "defendant's act or failure to act as the statute requires was a substantial cause of the events which produced the injury" (Gordon v Eastern Railway Supply, Inc., 82 NY2d 555, 562 [1993] [citation omitted]). It is not necessary for plaintiff to demonstrate that the precise manner in which the accident occurred, or the extent of the injuries, was foreseeable (Rodriguez v Forest City Jay Street Associates, 234 AD2d 68 [1996], citing Public Administrator of Bronx County v Trump Village Construction Corp., 177 AD2d 258 [1991]); and comparative negligence is not a defense (see Blake v Neighborhood Housing Services of New York City, Inc., 1 NY3d 280 [2003]).

Applying the above principles, the branch of the motion which seeks to dismiss plaintiff's Labor Law § 240(1) claims, is denied. The undisputed record indicates that the ladder had no safety feet attached to the bottom, no one held the ladder as plaintiff worked on it, and the ladder was not secured to the wall or floor in any manner. The failure to secure the ladder to insure that it remained steady and erect while the plaintiff was working on it constitutes a violation of Labor Law § 240(1), which results in the imposition of absolute liability upon the defendants for the plaintiff's injuries as a matter of law (Bland v Manocherian, 66 NY2d 452 [1987]; Haines v New York Tel. Co., 46 NY2d 132 [1987]).

"A plaintiff asserting a cause of action alleging a violation of Labor Law § 241(6) must allege that a specific and concrete provision of the Industrial Code was violated and that the violation proximately caused his or her injuries" (Rosado v Briarwoods Farm, 19 AD3d 396, 399 [2005] [citations omitted]). In the bill of particulars, plaintiff alleged that defendants violated 12 NYCRR 23-1.5, 12 NYCRR 23-1.7(d), 12 NYCRR 23-1.21(b)(3)(iv) and 12 NYCRR 23-1.21(4)(ii). The branch of the motion which seeks to dismiss plaintiff's Labor Law § 241(6) claim insofar as it is based upon the alleged violation of 12 NYCRR 23-1.5(a), is granted. That regulation sets forth a general standard of care and is not sufficiently specific to support a section 241(6) claim (see Maldonado v Townsend Ave. Enters., Ltd. Partnership, 294 AD2d 207 [2002]).

The remaining regulations cited by plaintiff are sufficiently specific to support a cause of action under Labor Law § 241(6) (see Norton v Park Plaza Owners Corp., 263 AD2d 531 [1999]). There are triable issues of fact as to whether defendants violated them (see Herman v St. John's Episcopal Hosp., 242 AD2d 316 [1997]; see generally Ross v Curtis-Palmer Hydro-Elec. Co., 81 NY2d 494 [1993]), and defendants failed to establish as a matter of law that they did not violate the noted regulations or that they are not applicable to plaintiff's accident (see Danchick v Contegra Services, Ltd., 299 AD2d 923, 924 [2002], citing Bockmier v Niagara Recycling, 265 AD2d 897 [1999]).

Cross Motion

Based upon undisputed evidence that the ladder had no safety feet attached to the bottom, that no one held the ladder as plaintiff worked and that the ladder was not secured to the wall or floor in any manner, plaintiff's cross motion for summary judgment in his favor on his claims pursuant to Labor Law § 240(1), is granted. As stated above, Labor Law § 240(1) imposes absolute

liability upon owners and contractors who fail to provide or erect safety devices necessary to give proper protection to workers exposed to elevation-related hazards (see Misseritti v Mark IV Constr. Co., 86 NY2d 487 [1995]). Thus, a defendant may be held liable under Labor Law § 240(1) even where the injured worker fell from a ladder which was not provided by the owner (see Mackey v Beacon City School Dist., 216 AD2d 534 [1995]; see also Harmon v Sager, 106 AD2d 704, 705 [1984]; Larson v Herald, 96 AD 1137 [1983]; see also Calla v Shulsky, 148 AD2d 60 [1989]).

Conclusion

The branch of the motion which seeks to dismiss plaintiff's claims under Labor Law § 200 is granted. The branch of the motion which seeks to dismiss plaintiff's claims under Labor Law § 240(1), is denied. The branches of the motion which seek to dismiss plaintiff's claims pursuant to Labor Law § 241(6) is granted in part and denied in part as stated above.

Plaintiff's cross motion for summary judgment in his favor on his claims pursuant to Labor Law § 240(1), is granted.

Dated: November 29, 2007

J.S.C.