

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND DEPARTMENT

Inga v. EBS North Hills, LLC

69 A.D.3d 568 · Decided January 5, 2010

SUMMARY

The court held that the plaintiff established entitlement to summary judgment on liability under Labor Law § 240(1) after falling when a scaffold supporting his ladder collapsed. The court further held that R&B Drywall Corporation was liable as a statutory agent of the owner or general contractor because it had authority to supervise and control the plaintiff's work.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Prudenti, P.J.; Covello, J.; Lott, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	January 5, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff moved for summary judgment on liability under Labor Law § 240(1). The Supreme Court granted the motion, and the Appellate Division reviewed that determination.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant makes a prima facie showing of entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the plaintiff was entitled to summary judgment on liability under Labor Law § 240(1) based on evidence that the ladder and scaffold failed to provide proper protection and proximately caused his injuries.
2. Whether the fact that the accident was unwitnessed precluded summary judgment.
3. Whether R and B Drywall Corporation was liable as a statutory agent under Labor Law § 240(1), despite delegating the work to another entity.

HOLDINGS

1. The plaintiff established prima facie entitlement to summary judgment on liability because his affidavit and deposition testimony demonstrated that the ladder and scaffold failed to provide proper protection and that this failure was a proximate cause of his injuries.
2. An unwitnessed accident does not, by itself, preclude the plaintiff from obtaining summary judgment on liability under Labor Law § 240(1).
3. R and B Drywall Corporation was liable under Labor Law § 240(1) as a statutory agent because it had authority to supervise and control the particular work in which the plaintiff was engaged; it could not avoid liability by delegating that work to another entity.

KEY QUOTATIONS

“The fact that the accident was unwitnessed does not preclude granting summary judgment to the plaintiff”
(569)

“Once R&B became such an agent, it could not escape liability by delegating its work to another entity”
(570)

FACTUAL BACKGROUND

The plaintiff was injured while working on a construction project owned by EBS North Hills, LLC. He was standing on an open A-frame ladder resting on a scaffold platform positioned on top of an elevator car inside an elevator shaft when the scaffold collapsed, causing him to fall. The general contractor hired R and B Drywall Corporation, which hired the plaintiff's employer to perform drywall-related work.

PROCEDURAL HISTORY

The plaintiff commenced an action against EBS North Hills, LLC, North Hills Construction Corporation, and R and B Drywall Corporation for injuries sustained in a construction accident. The Supreme Court granted the plaintiff summary judgment on liability under Labor Law § 240(1), and the Appellate Division held that the ruling was proper.

DISPOSITION

affirmed

CASES CITED

- Blake v. Neighborhood Hous. Servs. of N.Y. City, 1 N.Y.3d 280 (2003)
- Klein v. City of New York, 89 N.Y.2d 833 (1996)
- Barr v. 157 5 Ave., LLC, 60 A.D.3d 796 (2009)
- Rivera v. Dafna Constr. Co., Ltd., 27 A.D.3d 545 (2006)
- Russin v. Louis N. Picciano & Son, 54 N.Y.2d 311 (1981)
- Miller v. Yeshiva Zichron Mayir Gedola, 44 A.D.3d 1017 (2007)
- Taeschner v. M & M Restorations, 295 A.D.2d 598 (2002)
- Tomyuk v. Junefield Assoc., 57 A.D.3d 518 (2008)
- Nasuro v. PI Assoc., LLC, 49 A.D.3d 829 (2008)
- McGlynn v. Brooklyn Hosp.-Caledonian Hosp., 209 A.D.2d 486 (1994)

OPINION

PER CURIAM.

*569The plaintiff allegedly sustained injuries while working on a construction project on property owned by EBS North Hills, LLC (hereinafter EBS). North Hills Construction Corporation (hereinafter North Hills), the general contractor, hired R and B Drywall Corporation (hereinafter R&B) to perform the drywall installation associated with the project, and R&B hired the plaintiffs employer to perform some of the work associated with the drywall installation.

According to the plaintiffs affidavit and deposition testimony, the injuries occurred while he was standing on an open A-frame ladder, which was resting on the platform of a scaffold positioned on top of an elevator car inside an elevator shaft.

The scaffold collapsed, causing the plaintiff to fall and sustain injuries. The plaintiff commenced this action against EBS, North Hills, and R&B. The plaintiff made a prima facie showing of his entitlement to judgment as a matter of law on the issue of liability on so much of the complaint as alleged that the defendants were in violation of Labor Law § 240 (1) through the submission of his affidavit and deposition testimony, which demonstrated that the ladder and scaffold failed to afford him proper protection for the work being performed, and that this failure was a proximate cause of his injuries (see Blake v Neighborhood Hous.

Servs. of NY. City, 1 NY3d 280 [2003]; Klein v City of New York, 89 NY2d 833, 835 [1996]). The fact that the accident was unwitnessed does not preclude granting summary judgment to the plaintiff (see Klein v City of New York, 89 NY2d at 834-835; Barr v 157 5 Ave., LLC, 60 AD3d 796, 797 [2009]; Rivera v Dafna Constr. Co., Ltd., 27 AD3d 545 [2006]).

In opposition, the defendants failed to raise a triable issue of fact. The defendants did not offer any evidence, other than mere speculation, that undermined the prima facie case or presented a bona fide issue regarding the plaintiffs credibility as to a material fact (see Klein v City of New York, 89 NY2d at 835; Barr v 157 5 Ave., LLC, 60 AD3d at 798; Rivera v Dafna Constr.

Co., Ltd., 27 AD3d at 545-546). Additionally, contrary to R&B's contention, it is liable under Labor Law § 240 (1) as a statutory agent of the owner or general contractor, since it had the authority to supervise and *570control the particular work in which the plaintiff was engaged at the time of his injury (see *Russin v Louis N. Picciano & Son*, 54 NY2d 311, 317-318 [1981]; *Miller v Yeshiva Zichron Mayir Gedola*, 44 AD3d 1017 [2007]; *Taeschner v M & M Restorations*, 295 AD2d 598, 600 [2002]).

Once R&B became such an agent, it could not escape liability by delegating its work to another entity (see *Tomyuk v Junefield Assoc.*, 57 AD3d 518, 521 [2008]; *Nasuro v PI Assoc., LLC*, 49 AD3d 829, 830-831 [2008]; *McGlynn v Brooklyn Hosp.-Caledonian Hosp.*, 209 AD2d 486 [1994]).

Accordingly, the Supreme Court properly granted that branch of the plaintiffs motion which was for summary judgment on the issue of liability pursuant to Labor Law § 240 (1). Prudenti, EJ., Covello, Lott and Sgroi, JJ., concur..