

NEW YORK COURT OF APPEALS

Fabrizi v. 1095 Avenue of Americas, L.L.C.

22 N.Y.3d 658 (2014) · Decided February 20, 2014

OPINION

PIGOTT, J.

OPINION OF THE COURT Pigott, J. Plaintiff, an electrician employed by Forest Electric Corp. (Forest), sustained injury when a 60-80 pound conduit pipe fell on his hand. Forest had been hired by defendant J.T. Magen Construction Company, Inc. (Magen) to overhaul the electrical system in offices leased by defendant Dechert, LLP (Dechert) from the building owner, defendant 1095 Avenue, of the Americas, L.L.C.

(1095). As part of the overhaul, Forest was responsible for the installation of conduit piping through the building's floors. The conduit enabled telecommunication wires to run from the building's sub-cellar through each floor's respective telecom*661munication closet.

The run of conduit on each floor contains a "pencil box" that provides access to the telecommunication wire. On the day of the incident, plaintiff was relocating a pencil box that Forest had installed the previous week.

The pencil box was situated between, and affixed to, two pieces of conduit that were four inches in diameter. The top section of conduit was 8 to 10 feet long and ran vertically from the top of the pencil box to the ceiling; the lower section ran vertically from the bottom of the pencil box to the floor.

The top conduit was connected to a similar horizontal conduit near the ceiling by a four-inch compression coupling. The pencil box proper was secured by a metal "Kindorf support." Because the pencil box was obstructing conduit that was to be installed adjacent to the box, plaintiff had to move it, which required him to drill holes in the floor to relocate the Kindorf support.

Before drilling the holes, however, plaintiff cut through the conduit just above and below the pencil box. He then removed the pencil box leaving the top conduit dangling by the compression coupling near the ceiling. Plaintiff knelt on the floor to begin drilling. Approximately 15 minutes later, while plaintiff was drilling, the top conduit fell, striking plaintiff on the hand.

Plaintiff thereafter brought this action against defendants and others, asserting, as relevant here, that defendants violated Labor Law § 240 (1). That statute 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.” After joinder of issue and completion of discovery, defendants 1095 and Magen moved for summary judgment dismissing the section 240 (1) cause of action.

Plaintiff opposed the motion and cross-moved for partial summary judgment on liability against *6621095, Magen and Dechert,¹ claiming, in reliance on plaintiff’s deposition testimony, that a more secure “set screw coupling,”² rather than the purportedly inadequate compression coupling, should have been used to secure the top conduit. Supreme Court granted plaintiffs motion for partial summary judgment on liability, and denied defendants’ motion seeking to dismiss the section 240 (1) claim, holding that the conduit, being attached to the ceiling by a compression coupling that failed, was not properly secured so as to afford plaintiff protection (2011 NY Slip Op 31529[U] [2011]).

A divided Appellate Division modified the order of Supreme Court by denying plaintiff’s motion for summary judgment, holding that plaintiff failed to establish as a matter of law that defendants’ failure to provide a protective device, i.e., a set screw coupling, was a proximate cause of his accident, but otherwise affirmed the order (98 AD3d 864, 865 [1st Dept 2012]).

The dissenting Justice contended that the coupling did not constitute a statutory safety device of the kind enumerated in section 240 (1) and therefore defendants should have been granted summary judgment (*id.* at 876 [Tom, J., dissenting]).

The Appellate Division certified the following question to this Court: “Was the order of the Supreme Court, as modified by this Court, properly made?” We answer the certified question in the negative. Labor Law § 240 (1) as cited above requires owners and contractors to provide proper protection to those working on a construction site (see *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]).

It imposes absolute liability where the failure to provide such protection is a proximate cause of a worker’s injury (see *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). In order to prevail on summary judgment in a section 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” (*Narducci v Manhasset Bay Assoc.*, 96 NY2d 259, 267 [2001], citing *Ross v Curtis-Palmer Hydro-Elec.*

Co., 81 NY2d 494, 501 [1993]). Essentially, the plaintiff must demonstrate that at the time the object fell, it either was being *663“hoisted or secured” (*Narducci*, 96 NY2d at 268), or “required

securing for the purposes of the undertaking” (*Outar v City of New York*, 5 NY3d 731, 732 [2005]; see *Quattrocchi v F.J. Sciamè Constr. Corp.*, 11 NY3d 757, 759 [2008]).

Contrary to the dissent’s contention, section 240 (1) does not automatically apply simply because an object fell and injured a worker; “[a] plaintiff must show that the object fell... because of the absence or inadequacy of a safety device of the kind enumerated in the statute” (*Narducci*, 96 NY2d at 268 [second emphasis supplied]).

The Appellate Division properly concluded that plaintiff had not established entitlement to summary judgment on liability. It erred, however, in denying summary judgment to defendants 1095 and Magen, because they established as a matter of law that the conduit did not fall on plaintiff due to the absence or inadequacy of an enumerated safety device.

The compression coupling, which plaintiff claims was inadequate, is not a safety device “constructed, placed and operated as to give proper protection” from the falling conduit. Its only function was to keep the conduit together as part of the conduit/ pencil box assembly.

The coupling had been installed a week before the incident and had been serving its intended purpose until a change order was issued and plaintiff dismantled the conduit/pencil box assembly. Plaintiff’s argument that the coupling itself is a safety device, albeit an inadequate one, extends the reach of section 240 (1) beyond its intended purpose to any component that may lend support to a structure.

It cannot be said that the coupling was meant to function as a safety device in the same manner as those devices enumerated in section 240 (1). It follows that defendants’ failure to use a set screw coupling is not a violation of section 240 (1)’s proper protection directive.³ A set screw coupling, utilized in the manner proposed by plaintiff, is not a safety device within the meaning of the statute.

Plaintiff concedes that compression and set screw couplings are “basic couplings” that serve identical purposes, namely, to function as support for the conduit/pencil box assembly, not to provide worker protection. Given that either coupling would have served the purpose, it is of no moment that defendants *664utilized compression couplings rather than set screw couplings as part of the assembly.

Accordingly, on the appeal by defendants 1095 and Magen, the order of the Appellate Division should be reversed, with costs, the motion by defendants 1095 and Magen for summary judgment dismissing the section 240 (1) claims against them should be granted, and the certified question answered in the negative.

The appeal, insofar as taken by Dechert, should be dismissed, without costs.⁴ Dechert did not move for summary judgment.. A set screw coupling has two screws on both sides that are placed

into the conduit and are tightened with either a ratchet or screwdriver, thereby locking the conduit in place..

The Appellate Division erroneously stated that plaintiff had “requested a set screw coupling to secure the pipe to prevent the pipe from falling during the disassembly” when he had been directed to move the pencil box (98 AD3d at 865).

The record demonstrates that plaintiff requested a set screw coupling a week before the incident for a task unrelated to the one at issue.. Since Dechert did not move for summary judgment and the Appellate Division denied plaintiffs motion for summary judgment, Dechert was not aggrieved by the Appellate Division order.