

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

Losito v. Manlyn Development Group, Inc.

85 A.D.3d 983, 925 N.Y.S.2d 643 (N.Y. App. Div. 2011) · Decided June 21, 2011

SUMMARY

The Appellate Division, Second Department, reversed a judgment dismissing the plaintiff’s Labor Law § 240(1) claim against Manlyn Development Group, Inc. and FB of Long Island, LLC. The court held that the plaintiff established that a defective A-frame ladder collapsed and that the defendants failed to raise a triable issue of fact, including regarding whether the foreman’s conduct constituted a superseding cause.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Eng, J.; Roman, J.; Miller, J.
JURISDICTION	New York
DECIDED	June 21, 2011
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed, as limited by his brief, from the portion of a judgment entered after a jury verdict that dismissed his Labor Law § 240 (1) cause of action against Manlyn Development Group, Inc., and FB of Long Island, LLC.
STANDARD OF REVIEW	De novo review of the summary-judgment determination and the legal sufficiency of the evidence supporting the Labor Law § 240 (1) liability determination; summary judgment is appropriate where the movant establishes entitlement as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published
PARTIES	Losito v. Manlyn Development Group, Inc., FB of Long Island, LLC

TOPICS

- construction law
- personal injury
- standard of review
- appellate procedure

PRACTICE AREAS

construction law

personal injury

civil procedure

QUESTIONS PRESENTED

1. Whether the plaintiff established prima facie entitlement to summary judgment on liability under Labor Law § 240 (1) by showing that the defective A-frame ladder collapsed and caused his injuries.
2. Whether the defendants raised a triable issue of fact that the foreman's act of stepping on the ladder constituted a superseding cause relieving them of Labor Law § 240 (1) liability.

HOLDINGS

1. The plaintiff was entitled to summary judgment on liability because he established prima facie that the defective A-frame ladder collapsed and caused his injuries, and the respondents failed to raise a triable issue of fact.
2. The respondents failed to raise a triable issue of fact that the foreman's act of stepping on the back of the plaintiff's ladder was an extraordinary or sufficiently attenuated superseding cause that relieved them of Labor Law § 240 (1) liability.

KEY QUOTATIONS

“In particular, the respondents failed to raise a triable issue of fact as to whether the foreman’s act of stepping on the back of the plaintiffs ladder just before it broke was a “of such an extraordinary nature or so attenuated from the statutory violation as to constitute a superseding cause sufficient to relieve [them] of liability”” (984)

FACTUAL BACKGROUND

The plaintiff was standing on an A-frame ladder when the ladder collapsed and caused his injuries. Immediately before the ladder broke, the defendants' foreman stepped on the back of the plaintiff's ladder. The defendants did not raise a triable issue of fact concerning whether the foreman's conduct was an extraordinary or attenuated superseding cause relieving them of liability under Labor Law § 240 (1).

PROCEDURAL HISTORY

The Supreme Court, Nassau County, denied the plaintiff's motion for summary judgment on liability under Labor Law § 240 (1). A jury then found for the respondents on liability, and judgment was entered dismissing that cause of action. The Appellate Division reversed the judgment insofar as appealed from, reinstated the cause of action, granted the plaintiff summary judgment on liability, modified the prior order accordingly, and severed the remaining causes of action.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Labor Law § 240 (1) cause of action against Manlyn Development Group, Inc., and FB of Long Island, LLC, is reinstated; the plaintiff is granted summary judgment on liability on that cause of action; the prior order is modified accordingly; and the remaining causes of action are severed.

CASES CITED

- Monioudis v City of New York, 82 AD3d 945 [2011]
- Zhu Wei Shi v Jun Lan Zhang, 76 AD3d 558, 559 [2010]
- Sozzi v Gramercy Realty Co. No. 2, 304 AD2d 555, 556 [2003]
- Zuckerman v City of New York, 49 NY2d 557, 560 [1980]
- deSousa v Dayton T. Brown, Inc., 280 AD2d 447, 448 [2001]
- Quinteros v P. Deblasio, Inc., 82 AD3d 861 [2011]
- Montalvo v J. Petrocelli Constr., Inc., 8 AD3d 173, 175 [2004]
- Van Eken v Consolidated Edison Co. of N.Y., 294 AD2d 352, 353 [2002]
- Cordero v Kaiser Org., 288 AD2d 424, 426 [2001]
- Mooney v PCM Dev. Co., 238 AD2d 487 [1997]

OPINION

PER CURIAM.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Nassau County (O'Connell, J.), dated April 19, 2010, as, upon an order of the same court (Mahon, J.), entered January 16, 2009, which, inter alia, denied that branch of his motion which was for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240 (1) against the defendants Manlyn Development Group, Inc., and FB of Long Island, LLC, and upon a jury verdict in favor of those defendants on the issue of liability on that cause of action, is in favor of those defendants and against him, dismissing that cause of action insofar as asserted against them. *984Ordered that the judgment is reversed insofar as appealed from, on the law, with costs, the cause of action alleging a violation of Labor Law § 240 (1) against the defendants Manlyn Development Group, Inc., and FB of Long Island, LLC, is reinstated, that branch of the plaintiffs motion which was for summary judgment on the issue of liability on the cause of action alleging a violation of Labor Law § 240 (1) against the defendants Manlyn Development Group, Inc., and FB of Long Island, LLC, is granted, the order entered January 16, 2009, is modified accordingly, and the remaining causes of action are severed.

The plaintiff, on his motion for summary judgment on the cause of action alleging a violation of Labor Law § 240 (1), against the defendants Manlyn Development Group, Inc., and FB of Long Island, LLC (hereinafter together the respondents), established, prima facie, that the A-frame

ladder on which he was standing was defective and collapsed, causing his injuries (see *Monioudis v City of New York*, 82 AD3d 945 [2011]; *Zhu Wei Shi v Jun Lan Zhang*, 76 AD3d 558, 559 [2010]; *Sozzi v Gramercy Realty Co. No. 2*, 304 AD2d 555, 556 [2003]).

In opposition, the respondents failed to raise a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). In particular, the respondents failed to raise a triable issue of fact as to whether the foreman's act of stepping on the back of the plaintiffs ladder just before it broke was a "of such an extraordinary nature or so attenuated from the statutory violation as to constitute a superseding cause sufficient to relieve [them] of liability" (*deSousa v Dayton T. Brown, Inc.*, 280 AD2d 447, 448 [2001]; see *Quinteros v P. Deblasio, Inc.*, 82 AD3d 861 [2011]; *Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 175 [2004]; *Van Eken v Consolidated Edison Co. of N.Y.*, 294 AD2d 352, 353 [2002]; *Cordero v Kaiser Org.*, 288 AD2d 424, 426 [2001]; *Mooney v PCM Dev.*

Co., 238 AD2d 487 [1997]). Accordingly, the Supreme Court should have granted that branch of the plaintiffs motion which was for summary judgment on his Labor Law § 240 (1) cause of action as asserted against the respondents.

The plaintiffs remaining contention has been rendered academic. Rivera, J.P., Eng, Roman and Miller, JJ., concur.