

Bonczar v. American Multi-Cinema, Inc.

Court of Appeals of New York. April 28, 2022 38 N.Y.3d 1023 188 N.E.3d 1000 168 N.Y.S.3d 711 2022 N.Y. Slip Op. 02835 (Approx. 5 ...

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38 N.Y.3d 1023

Court of Appeals of New York.

David M. BONCZAR, Appellant,

v.

AMERICAN MULTI-CINEMA, INC., Doing Business as AMC Theatres Webster 12 (as Successor in Interest to Loews Boulevard Cinemas, Inc., Formerly Known as Loew's Boulevard Corporation and/or Loews Theater Management Corp.), Respondent.

No. 26

April 28, 2022

Synopsis

Background: Worker brought action under scaffold law against movie theater owner, seeking damages for injuries he sustained when he fell from ladder as he was retrofitting a fire alarm system in theater's lobby. The Supreme Court, Erie County, Joseph R. Glownia, J., entered summary judgment in favor of worker on issue of liability. Theater owner appealed. The Supreme Court, Appellate Division, 158 A.D.3d 1114, 70 N.Y.S.3d 305, reversed. On remand, the Supreme Court, Glownia, J., entered judgment upon jury verdict in favor of theater owner. Worker appealed. The Supreme Court, Appellate Division, affirmed. Worker filed motion for leave to appeal, which was granted.

Holding: The Court of Appeals held that Appellate Division's nonfinal order reversing the grant of summary judgment to worker did not necessarily affect the final judgment, and thus Court of Appeals could not review the nonfinal order in the current appeal.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment; Judgment.

West Headnotes (1)
1 Appeal and Error
Appellate Division's nonfinal order reversing grant of partial summary judgment in favor of worker on issue of liability, in worker's action under scaffold law against movie theater owner to recover for injuries sustained when he fell from ladder when working in the theater, did not necessarily affect the final judgment entered in favor of theater owner on scaffold law claim after trial, and thus Court of Appeals could not review the nonfinal Appellate Division order on worker's appeal from Appellate Division's affirmance of the final judgment; the nonfinal order, which concluded there were factual questions as to whether statutory violation occurred and as to proximate cause, did not remove any issues from the case, and parties litigated those issues further during jury trial. N.Y. CPLR § 5501(a); N.Y. Labor Law § 240(1).
3 Cases that cite this headnote

Attorneys and Law Firms

Lipsitz Green Scime Cambria LLP, Buffalo (John A. Collins of counsel), for appellant.

Russo & Gould LLP, New York City (Josh H. Kardisch of counsel), for respondent.

OPINION OF THE COURT

MEMORANDUM.

*1024 The 2020 order of the Appellate Division should be affirmed, with costs.

Plaintiff David Bonczar was injured when he fell from a ladder while retrofitting a fire alarm system working at a movie theater. After climbing up and down to the third or fourth step of the ladder several times without issue, he began to descend *1025 a final time when the ladder shifted and wobbled. Plaintiff fell and was injured.

Plaintiff brought this action seeking damages against defendant for violating Labor Law § 240(1) and moved for partial summary judgment as to that claim. Supreme Court granted partial summary ***712 **1001 judgment on the issue of section 240(1) liability for plaintiff. The Appellate Division reversed, with two Justices dissenting, holding that plaintiff failed to show he was entitled to judgment as a matter of law (158 A.D.3d 1114, 1115, 70 N.Y.S.3d 305 [4th Dept. 2018]). The court held a factual issue existed as to whether a statutory violation had occurred and if plaintiff's own acts and omissions, particularly as to the ladder's positioning and plaintiff's failure to check the ladder's locking mechanisms, were the sole proximate cause of his injury (id.).

On remand, plaintiff's Labor Law § 240(1) claim was tried to a jury. At the close of evidence, plaintiff moved for a directed verdict. The court reserved judgment and the jury returned a verdict for defendant, finding no violation of Labor Law § 240(1) and that plaintiff's failure to position the ladder properly was the sole proximate cause of plaintiff's injuries. Supreme Court denied plaintiff's motion to set aside the verdict as against the weight of the evidence. The Appellate Division unanimously affirmed the judgment in defendant's favor entered upon the verdict (185 A.D.3d 1423, 125 N.Y.S.3d 606 [4th Dept. 2020]). We granted plaintiff leave to appeal (see CPLR 5602[a][1][i]).

Plaintiff seeks review of both the 2018 Appellate Division order denying him partial summary judgment and the 2020 Appellate Division order affirming the judgment entered upon the jury verdict.

The 2018 Appellate Division order may be reviewed on appeal from a final paper only if, pursuant to CPLR 5501(a), the nonfinal order "necessarily affects" the final judgment. "It is difficult to distill a rule of general applicability regarding the 'necessarily affects' requirement" (Siegmond Strauss, Inc. v. East 149th Realty Corp., 20 N.Y.3d 37, 41-42, 956 N.Y.S.2d 435, 980 N.E.2d 483 [2012]) and "[w]e have never attempted, and we do not now attempt, a generally applicable definition" (Oakes v. Patel, 20 N.Y.3d 633, 644, 965 N.Y.S.2d 752, 988 N.E.2d 488 [2013]). That said, to determine whether a nonfinal order "necessarily affects" the final judgment, in cases where the prior order "str[uck] at the foundation on which the final judgment was predicated" we have inquired whether "reversal would inescapably have led to a vacatur of the judgment" (see *1026 Matter of Aho, 39 N.Y.2d 241, 248, 383 N.Y.S.2d 285, 347 N.E.2d 647 [1976]; see also Matter of Tyrone D. v. State of New York, 24 N.Y.3d 661, 666, 3 N.Y.S.3d 291, 26 N.E.3d 1146 [2015]; Arthur Karger, Powers of the New York Court of Appeals § 9:5, at 300 [3d ed rev 2005]). This is not such a case. In other cases, we have asked whether the nonfinal order "necessarily removed [a] legal issue from the case" so that "there was no further opportunity during the litigation to raise the question decided by the prior non-final order" (Siegmond Strauss, Inc., 20 N.Y.3d at 41, 956 N.Y.S.2d 435, 980 N.E.2d 483; see also Oakes, 20 N.Y.3d at 644-645, 965 N.Y.S.2d 752, 988 N.E.2d 488).

In resolving plaintiff's summary judgment motion, the Appellate Division held that factual questions existed as to whether a statutory violation occurred and as to proximate cause, or more specifically as to whether plaintiff's own acts or omissions were the sole proximate cause of the accident (Bonczar, 158 A.D.3d at 1115, 70 N.Y.S.3d 305). That nonfinal order did not remove any issues from the case. Rather, the question of proximate cause and liability was left undecided. The parties had further opportunity to litigate those issues and in fact did so during the ***713 **1002 jury trial. 1 Accordingly, the Appellate Division order denying summary judgment did not necessarily affect the final judgment and thus, this Court cannot review the 2018 Appellate Division order (see Koutz v. State Univ. of N.Y., 58 N.Y.2d 747, 459 N.Y.S.2d 31, 445 N.E.2d 207 [1982]). 2

The judgment was properly affirmed. A rational trier of fact could have found in defendant's favor on the Labor Law § 240(1) claim (see Szczerbiak v. Pilat, 90 N.Y.2d 553, 556, 664 N.Y.S.2d 252, 686 N.E.2d 1346 [1997]; Cohen v. Hallmark Cards, 45 N.Y.2d 493, 499, 410 N.Y.S.2d 282, 382 N.E.2d 1145 [1978]).

Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur. Judge Troutman took no part.

The 2020 order of the Appellate Division affirmed, with costs, in a memorandum.

All Citations

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Footnotes

- 1 Both parties additionally submitted evidence beyond that on the record at the time of the summary judgment motion.
2 Accordingly, no appeal lies pursuant to CPLR 5601(d) and, on the appeal properly before the Court pursuant to CPLR 5602(a) from the final 2020 Appellate Division order, we do not review the nonfinal 2018 Appellate Division order.

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